

ALLIANCE FOR IMMIGRANT SURVIVORS

AIS Priority Principles Addressing Immigrant Survivors in Federal Legislation

MARCH 2021

From the very first Violence Against Women Act (VAWA), Congress has included critical protections to enable immigrant survivors to escape violence. Recognizing that victims of violence should never be forced to choose between living with abuse or facing deportation, Congress created self-petitioning in VAWA 1994, the U and T visas in VAWA 2000, and have strengthened these provisions in subsequent reauthorizations in 2005 and 2013. This longstanding inclusion reflects bipartisan recognition that domestic violence and sexual assault should be taken seriously, and cannot be fully addressed if all victims are not safe and perpetrators are not held accountable.

As Congress looks to reauthorize VAWA in 2021, it has a special obligation to safeguard and enhance protections for immigrant survivors of abuse. Abusive partners, rapists, traffickers, or other abusers often exploit a victim's lack of, or dependent immigration status, as a way to maintain power and control and to keep victims silent. In the anti-immigrant climate of the last several years, it appears that abusers' threats of deportation are being actualized. Although we have taken steps to increase legal protections for survivors, obstacles to immigrant survivors' access to safety and justice still remain. In light of immigration enforcement priorities that are resulting in increased risks of harm to survivors, reiterating and bolstering the immigration remedies already created and furthering the intent to protect victims is critical.

We urge members of Congress to endorse and apply the following principles so that immigrant survivors continue to robustly be protected in VAWA and other federal legislation. Many policy proposals reflecting these principles have previously been introduced, including some that have previously passed the Senate during the debate about Comprehensive Immigration Reform in 2013.

Congress should look for ways to proactively protect vulnerable immigrant populations by:

Strengthening Survivor-Based Protections, including the U Visa Program

- ▶ Lifting the cap on the number of U visas annually available, from the current 10,000 to meet the need. Congress envisioned the U visa as a powerful tool for law enforcement: to promote public safety by encouraging immigrant victims to come forward, and cooperate with law enforcement in investigations and prosecutions.

- ▶ Address barriers imposed by certification. Victims who have cooperated with law enforcement efforts are often thwarted in accessing the U visa by the lack of uniform policies relating to law enforcement certification.
- ▶ Prevent the detention and removal for those eligible for U-visas and other Survivor Based Immigration Protections. Given the long processing times for U-visas (currently approximately 5 years for initial review of applications), as well as other survivor-based immigration protections, and the breadth of immigration enforcement priorities, protections from detention and removal, especially for those whose applications are still pending, will enhance victim safety, reduce trauma, enhance community safety, and help prevent law enforcement and prosecution from losing witnesses.
- ▶ Encourage victims to access U-visas and other Survivor-Based Protections by strengthening confidentiality and limiting information sharing about survivor-based immigration applications, in particular, for referral for enforcement.
- ▶ Including child abuse and elder abuse as U visa qualifying crimes to protect these already vulnerable populations from abuse, and to promote reporting and prosecutions.

Safeguard Abused Dependent Spouses and Children

If abused immigrants rely on a spouse or parent for their own legal status (derivatives), they should be provided with an opportunity to independently petition for legal status rather than have to choose between continued abuse and deportation.

- ▶ Enhance protections for VAWA Self-Petitioners. Survivors who have suffered extensive abuse by their abusive LPR or USC spouses are sometimes not able to receive immigration benefits because of immigration violations in the past that are often related to the abuse, for example, in instances where victims have been deported in the past, where they have unlawful presence and have reentered after leaving, or where they may have falsely claimed U.S. Citizenship in the past. These barriers can be rectified by expanding exceptions and discretionary waivers for immigration violation related bars to admissibility.
- ▶ Protect abused spouses and children of nonimmigrant visa holders (those who are here for temporary work or education purposes) so that they need not remain in abusive relationships to maintain their immigration status for the same time period as the principal visa holder.
- ▶ Eliminate restrictive barriers in non-immigrant visa programs for victims who are eligible VAWA, SIJ, or TVPRA protections. Examples may include, waiving the 2-year foreign residency requirement for J visa exchange, allowing visa waiver entrants in removal proceedings to apply for humanitarian protections, strengthening protections for abused fiancées.
- ▶ Codifying the process of reunification for derivatives of U visa applicants and lift current limits/restrictions against the use of the parole process for designated categories of individuals.

Support Survivor Self-Sufficiency and Remove Vulnerabilities to Further Victimization

- ▶ Improve and protect survivor access to critical safety-net benefits to help survivors and their children avoid the choice of remaining with their abusers or becoming homeless or foregoing vital services, including access to housing, health, and federal benefits. This would include adding U-visa applicants to those deemed qualified aliens, and eliminated the five-year bar to access benefits for VAWA applicants.
- ▶ Grant timely employment authorization documents (EADs) to VAWA self-petitioners, U visa and T visa applicants who currently struggle to survive during the long pendency of their applications. Due to lengthy delays in the adjudication of these applications (currently in some cases almost 3 years) and lack of access to financial resources, survivors face additional risks of violence, exploitation, manipulation, and trauma.
- ▶ Undo the harmful impacts of the Public Charge Rule and Related Policies by rejecting efforts to bar, limit, or penalize accessing safety-net benefits could be detrimental to survivors and undermine their ability to leave abusive situations.

Prevent Detention and Removal Of Victims and Encourage Them To Seek Protection

- ▶ Expand protection against enforcement in certain protected locations by codifying limits to enforcement in places where victims are likely to be found, including courts, victim advocacy programs, childcare centers, schools.
- ▶ Expand the availability of judicial review of removal decisions based on denials of protections under VAWA, TVPRA and for SIJ cases. Cases where immigration courts have failed to appropriately identify the impacts of domestic violence, sexual assault, human trafficking and other abuse should be subject to judicial review
- ▶ Expand processes to identify those eligible for protections under VAWA & TVPRA, and SIJ to prevent expedited removal of victims, including increased training
- ▶ Reject increased entanglement with local law enforcement and immigration enforcement
- ▶ Reject expanding grounds of inadmissibility, ineligibility or deportability for domestic violence, which can actually have a negatively impact victims since abusers often use the criminal legal system against their victims as a way to further misuse, exploit, and harm their victims.

For more information, please contact:

Grace Huang

Asian Pacific Institute on Gender-Based Violence, ghuang@api-gbv.org

Cecelia Friedman Levin

ASISTA Immigration Assistance, Cecelia@asistahelp.org

Olivia Garcia

Casa de Esperanza: National Latin@ Network, ogarcia@casadeesperanza.org

Archi Pyati

Tahirih Justice Center, ArchiP@Tahirih.org