

Senator Chris Murphy
Chair, Subcommittee on Homeland Security
Senate Appropriations Committee
136 Hart Senate Office Building
Washington, DC 20510

Congressman Dave Joyce
Chair, Subcommittee on Homeland Security
House Appropriations Committee
2065 Rayburn House Office Building
Washington, DC 20515

Senator Katie Boyd Britt
Ranking Member, Subcommittee on
Homeland Security
Senate Appropriations Committee
SD-B40A Dirksen Senate Office Building
Washington, DC 20510

Congressman Henry Cuellar
Ranking Member, Subcommittee on
Homeland Security
House Appropriations Committee
2372 Rayburn House Office Building
Washington, DC 20515

March 24, 2023

Re: *Department of Homeland Security (DHS) Fiscal Year 2024 Appropriations Act and the accompanying Committee Report*

Dear Chair Murphy, Chairman Joyce, and Ranking Members Boyd Britt and Cuellar,

On behalf of the sixty-six undersigned national, statewide, and local organizations who work to advance the safety and autonomy of survivors of domestic violence, sexual assault, human trafficking, and other forms of gender-based violence, we submit the following requests as you work to develop the Department of Homeland Security Appropriations bill to address the needs of immigrant survivors. We write to urge you to include the following recommendations in the Department of Homeland Security (DHS) Fiscal Year 2024 (FY 2024) Appropriations Act and the accompanying Committee Report.

The following requests support the purpose of the bipartisan Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) by enhancing access to safety and critical services for immigrant victims of domestic violence, sexual assault, and human trafficking. Immigrant victims continue to face extended wait times for access to legal status or employment authorization, often with negative health and mental health consequences. In addition, these survivors are unable to lawfully work without employment authorization, making it more difficult to

obtain and maintain stable housing, support the health and well-being of their families, and ultimately contribute fully to their communities. Immigrant survivors with pending applications for relief are also ineligible for public benefits, and risk losing their children to Child Protective Services without access to stable housing. We urge the Appropriations Committees to prioritize funding in the DHS budget to uphold Congress' commitment to *all* survivors of sexual and domestic violence, including by upholding the immigration protections in VAWA, the TVPA, and under the United Nations Convention Relating to the Status of Refugees.

I. THE DELAYS IN OBTAINING PROTECTIONS UNDER VAWA AND THE TRAFFICKING VICTIMS PROTECTION ACT PUT VICTIMS AT UNDUE RISK

As noted previously immigrant survivors are experiencing protracted delays in the processing of their VAWA Self-Petitions, U-visa, and T-visa petitions.¹ The National Strategy on Gender Equity and Equality has raised the importance of seeking “timely adjudication of immigration petitions for survivors of domestic violence, sexual assault, human trafficking, and other crimes.”² This includes over 188,974 principal applicants³ with pending U-visa petitions, and additional derivatives (e.g. victims' children) languishing in limbo. While USCIS has begun implementing the Bona Fide Determination (BFD) process to initially review U-visa applications and issue employment authorization for individuals who have established eligibility for the program,⁴ there is still an extensive, years-long backlog of applications to be processed for this preliminary relief. Timely access to employment authorization for victims in the U-visa program and in the T-visa and VAWA-Self-Petition programs are critical for victims to escape and overcome abuse.

¹ As of March 2023, the median wait time for a U visa applicant (Form I-918) to be placed on the U visa waiting list or for a Bona Fide Determination application was 59.5 months to 60.5 months. <https://egov.uscis.gov/processing-times/> These wait times have not significantly improved during the last two years.

<https://www.uscis.gov/sites/default/files/document/reports/USCIS-Humanitarian-Petitions.pdf>

² <https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf>, at p. 25

³ There are over 314,800 pending petitions, including principal and derivative applicants. *See*

https://www.uscis.gov/sites/default/files/document/data/I918u_visastatistics_fy2022_qtr4.pdf.

⁴ USCIS, National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions, <https://www.uscis.gov/records/electronic-reading-room/u-nonimmigrant-status-bona-fide-determination-process-faqs>.

Request (1): The backlogs in the U-Visa program could be significantly alleviated by an increase in the number of U-visas available to the program. Although the U-visa program was enacted in the Battered Immigrant Women Protection Act of 2000 (VAWA 2000), due to the delay in the issuance of regulations until 2007, the 10,000 visas available annually were not allocated during FY 2001-FY 2007. Recapture of these unallocated visas from the first years of implementation of the U-visa program would assist in alleviating a significant portion of the backlog of over 188,974⁵ primary applicants awaiting U-visas. This minor technical change would significantly reduce U visa backlogs and thereby enhance efficiency across the agency; applications would simply be adjudicated once and approved, rather than being reviewed multiple times by different officers in the interim until more visas become available.

We request the ***inclusion of legislative language*** to implement the recapture of any previously unused U-visas from the date of the enactment of the U-visa program until the present day. We urge the committee to include the following ***bill language***: *SEC. XXX RECAPTURE OF CRIME VICTIM VISAS: Section 214(p)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(p)(2)(A) is amended by adding at the end the following—“U visas that were made available in fiscal year 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 that were unused shall be added to the number of U-visas available during FY 2024, and each fiscal year thereafter until no more previously unused visas remain available, and in any such year, the number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title may exceed 10,000, without limitation.”* At a minimum, we request ***that legislative authority be provided to USCIS*** to recapture these unused U-visas notwithstanding the annual cap found in 8 U.S.C. 1184(p)(2)(A).

⁵ See USCIS. I-918 Number of Form I-918, Petition for U Nonimmigrant Status By Fiscal Year, Quarter, and Case Status Fiscal Years 2009-2022, available at https://www.uscis.gov/sites/default/files/document/data/I918u_visastatistics_fy2022_qtr4.pdf

Request 2. The extensive delays in the initial processing of survivor-based applications, combined with other barriers (lack of employment authorization, and lack of access to financial support), leave victims without access to economic resources, making them more vulnerable to ongoing victimization and trauma. We request an allocation of a minimum of ***\$15,000,000 in funding for USCIS*** as part of a larger ***\$400,000,000 for backlog reduction efforts*** in order to ***increase adjudications staffing of the Vermont Service Center Humanitarian Unit and the Nebraska Service Center U Visa Unit.***⁶ We seek ***Report Language***, which builds on language that was included in House FY21 Report, urging “*sufficient staffing to initially review and adjudicate VAWA Self-Petitions or petitions for nonimmigrant status under section 101(a)(15)(T) or 101(a)(15)(U) and Special Immigrant Juvenile applications within 90 days of submission as well as issue attendant employment authorization within 180 days of submission after the date that is the earlier of the date on which the individual filed the application or the individual’s application is approved, as well as provide for staff training.*”

Request (3). Because of the extensive backlogs in processing immigration cases, as well as significant immigration court backlogs, immigrant survivors continue to face the risk of removal while their applications are pending. While we appreciate steps that the Administration has taken to incorporate a victim-centered approach,⁷ immigrant survivors of domestic and sexual violence continue to face pending removal cases when they are encountered in the course of enforcement actions, and others face barriers in accessing legal assistance to establish their eligibility for immigration-related protections. Accordingly, we request ***legislative bill language*** reducing funding for ICE, similar to HR 4431, [Section 218 of the FY22 House DHS Appropriations bill](#), by ***restricting the use of funds, resources, or fees made available to the Secretary of Homeland Security shall be***

⁶ Currently, these units adjudicate humanitarian visas but we request an increase in adjudications staffing at whatever units are ultimately tasked with these adjudications at the time of enactment.

⁷ <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>

used for the apprehension, detention or removal of individuals who have a pending or approved application under section 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), or 244(a)(3) (as in effect on March 31, 1997) of the Immigration and Nationality Act; are VAWA self-petitioners, as defined in section 101(a)(51), with a pending application for relief under a provision referred to in one of the subparagraphs (A) through (G) of such section; have a pending or approved petition for SIJS under INA section 101(a)(27)(J); or continued presence under 22 USC 7105(c)(3); until there is a final denial of the noncitizen's application for status after the exhaustion of administrative and judicial review.

Suggested Report Language accompanying this request is as follows: *Congress created the VAWA, T and U visa programs, and Special Immigrant Juvenile provisions to protect survivors of domestic violence, violent crimes, and trafficking and to protect abused, abandoned, and neglected children whose best interests are to remain in the United States, as determined by a state juvenile court. In addition, these programs help promote public safety by helping victims to participate in criminal investigations. However, apprehending, detaining, and removing individuals with pending or approved applications for VAWA, T or U visa, or SIJS relief hinders these investigative processes and undermines the protective purpose of these programs. The Committee, therefore, reinforces the value of VAWA and SIJS protections and T and U visas by asking that no funds be used to apprehend, detain and remove applicants and beneficiaries. The Committee instead urges ICE to prioritize full implementation of its victim-centered approach guidance and maximize utilization of continued presence and deferred action to further Congress' goals of victim protection and reducing trauma.*

II. AN AGENCY-WIDE APPROACH TO COORDINATE VICTIM-RELATED RESPONSES

While DHS' Office of Civil Rights and Civil Liberties (CRCL) and Office of Inspector General oversee complaints against DHS, the USCIS Ombudsman fields USCIS-related inquiries, and the Council to Combat Gender-Based Violence (CCGBV) aims to streamline the

Department's efforts to combat gender-based violence, this scheme lacks dedicated, full-time expert points of contact to address survivors' safety and privacy needs throughout the immigration enforcement and adjudications lifecycles.

Furthermore, acute and long-term physical and emotional trauma, searing social stigmas, and threats of retaliation for reporting or fleeing violence are hallmarks of gender-based violence that render survivors particularly vulnerable to abuse and exploitation by individual perpetrators as well as on a systemic level. Survivors in DHS custody or without legal representation are at even further risk and survivor-based remedies such as the U and T visa are highly technical. Meaningful access to immigration relief is critical.

Request (4). We request \$1,000,000 to fund two Full-Time Equivalent Policy Advisors within the DHS Office of Civil Rights and Civil Liberties (CRCL), Council on Combating Gender-Based Violence (the Council or CCGBV), by including *Bill Language* as follows:

1. *The Secretary of Homeland Security shall establish within the Department of Homeland Security (the Department or DHS) Office of Civil Rights and Civil Liberties (OCRCL) Council on Combating Gender-Based Violence (the Council or CCGBV) two Full-Time Equivalent Policy Advisors pursuant to the authority vested in the Secretary through Section 872 of the Homeland Security Act (6 U.S.C. § 452). There shall be authorized \$1,000,000 for the establishment of these positions.*
2. *“Gender-based violence” (GBV) refers to any type of harm inflicted on an individual because of their sex, gender, sexual orientation, gender identity, and/or gender identity expression.*
3. *The Policy Advisors shall be senior officials with specialized expertise in the dynamics of GBV and trauma-informed, victim-centered best practices for implementation of laws designed to protect survivors of GBV.*
4. *The functions of the Policy Advisors shall be to—*
 - a. *field inquiries from stakeholders regarding the implementation of immigration laws, regulations, and policies relating to gender-based violence;*
 - b. *track, investigate, and issue recommendations for Department action on complaints from stakeholders to CRCL relating to the implementation of immigration laws, regulations, and policies relating to gender-based violence; refer complaints to the Office of Inspector General (OIG) or other agencies as appropriate;*
 - c. *propose and provide expertise to the Department in developing and implementing policies that impact and pertain to survivors of gender-based violence, including assisting with regulatory drafting;*

- d. *coordinate stakeholder engagement on issues impacting survivors of gender-based violence across the Department, and maintain a Department website with relevant resources and information for public use;*
 - e. *serve as liaisons to the Department of Health and Human Services, the Department of State, and the Department of Justice on issues relating to gender-based violence to promote a coordinated, consistent, and holistic approach to serving survivors; and*
 - f. *provide expertise to the Department in developing and presenting training curricula for Department personnel on the implementation of all laws, regulations, and policies designed to protect survivors of gender-based violence.*
5. *The Policy Advisors shall—*
- a. *execute the work of the Council;*
 - b. *ensure that the functions of the Council complement and coordinate with existing functions within the Department, to avoid duplication and maximize consistency and efficiency;*
 - c. *prepare a report to Congress on an annual basis on the Council’s activities, investigations, findings, and recommendations, with all personally identifiable information redacted;*
 - d. *hold national, regional, and/or local stakeholder meetings to solicit, track, and incorporate stakeholder feedback, and to promote accessibility and accountability; and*
 - e. *convene an advisory group of survivors of gender-based violence and experts on its impacts, to provide input on the Department’s survivor-related trainings, policies and programs; the group must include individuals from a variety of socio-economic, racial, ethnic, religious, gender identity, and educational backgrounds.*
6. *The Directors of U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services, and the Commissioner of U.S. Customs and Border Protection shall each designate gender-based violence liaisons to serve as points of contact for the Policy Advisors.*

Proposed Report Language: *Within 90 days of the Enactment of the Act the Secretary shall submit to the Committees a plan for the immediate creation of the two Gender-Based Violence Policy Advisor positions.*

The Policy Advisors can assist stakeholders in situations such as: 1) development of appropriate privacy safeguards, policies, and protocols for handling victim information held by DHS, 2) improper application by USCIS of the “any credible evidence” standard in victim-related adjudications; 3) ICE keeping trans individuals in custody at grave risk to their safety; 4) ICE denying U visa petitioners’ requests for stays of removal; 5) a pattern of lack of trauma-informed interviewing during affirmative asylum interviews; and 6) CBP agents unlawfully telling would-be

asylum seekers at the border that gender is not a basis for asylum. Addressing these issues in individual cases will also allow CRCL to identify and rectify systemic problems, thereby relieving pressure on an already overburdened system to the benefit of all stakeholders.

In addition to fielding complaints specifically related to the implementation of gender-based violence related policies, the Policy Advisors' duties will include maintaining data on GBV-related complaints, promoting inclusion of in-depth information on the dynamics of GBV in Department training curricula, liaising with key government agencies, assisting with policy development, making resources available to the public, and engaging directly with stakeholders. These functions fill a critical gap in promoting accountability, consistency, efficiency, and public confidence in our immigration system for survivors whose rights, safety, and lives are at stake.

Request (5) We seek legislative language clarifying that both the DHS Office for Civil Rights and Civil Liberties (CRCL) and Office of the Immigration Detention Ombudsman (OIDO) have clear authority to provide U-visa certifications for non-citizens who have been harmed by DHS personnel or contractors, in instances where either agency has conducted investigations of wrongdoing that arises to the level of criminal activity. We propose *Bill Language* as follows: *CRCL and OIDO are authorized to issue I-918B U visa law-enforcement certifications pursuant to the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000 and 8 CFR 214.14(c)(2)(i), on behalf of individuals who experience harms that meet the definition of qualifying crimes under 8 USC §1101(a)(15)(U)(iii), by means of their authority to investigate abuses that may involve the commission of criminal activity.*

Congress created the U visa in 2000 because many non-citizen crime victims do fear that contact with law enforcement could lead to their deportation. The U visa was created with the express purpose of strengthening the ability of law enforcement agencies to detect, investigate, and prosecute crimes committed against undocumented immigrants, while simultaneously offering protection to the

survivor from coercion and threats by those who have harmed them. U visas support survivors to report crimes and cooperate in investigations by offering temporary legal status and work authorization. Similarly, recognizing CRCL and OIDO as agencies already empowered to investigate abuse will clarify that these agencies are able to issue I-918B certifications, encouraging greater participation in their processes by immigrants harmed while in DHS custody or in interactions with DHS.

Clarifying this authority would also allow for greater protection of immigrants asserting violations of their civil rights—who fear retaliation upon coming forward—and deterrence of unlawful activity by DHS personnel and contractors. Because these investigations often uncover the commission of criminal conduct by DHS personnel that is qualifying for U visa purposes, such as physical assault and sexual violence, both agencies should qualify as certifying agencies per the requirements of the Victims of Trafficking and Violence Protection Act (see 8 CFR 214.14(c)(2)(i), providing that any authority that “has responsibility for the investigation *or* prosecution of a qualifying crime or criminal activity” may serve as a certifying agency).

CONCLUSION

Supporting the purpose and intent of immigration protections created in the bipartisan VAWA and TVPA, and our nation’s asylum laws through these recommended measures will help protect victims and help make our communities safer. We urge you to include provisions in the FY 2023 DHS appropriations bill that will strengthen the protections for survivors of sexual assault, domestic violence, and other gender-based violence that ultimately help survivors, their families, and society at large thrive. If you have any questions, please contact Grace Huang at the Asian Pacific Institute on Gender-Based Violence (ghuang@api-gbv.org), Irena Sullivan or Casey Swegman at Tahirih Justice Center (irenas@tahirih.org, or caseys@tahirih.org), Kirsten Rambo at ASISTA Immigration Assistance (kirsten@asistahelp.org), or Yasmin Campos Mendez at Esperanza United

(ycomposmendez@esperanzaunited.org). Thank you for your leadership throughout this process, and we look forward to working with you on these important issues.

Sincerely,

Alliance for Immigrant Survivors

Asian Pacific Institute on Gender-Based Violence
ASISTA Immigration Assistance
Esperanza United
Tahirih Justice Center

National Organizations

Alliance of Tribal Coalitions to End Violence
Caminar Latino - Latinos United for Peace and Equity
Futures Without Violence
Immigration Center for Women and Children
Jewish Women International
Justice for Migrant Women
Legal Momentum, the Women's Legal Defense and Education Fund
National Alliance to End Sexual Violence
National Center on Domestic and Sexual Violence
National Coalition Against Domestic Violence
National Domestic Violence Hotline
National Network to End Domestic Violence
National Organization for Women
National Resource Center on Domestic Violence
SouthAsian SOAR
Refugees International
ValorUS®
YWCA USA

Statewide Organizations

Arizona Coalition to End Sexual and Domestic Violence
Arkansas Coalition Against Sexual Assault
California Partnership to End Domestic Violence
Colorado Coalition Against Sexual Assault
Florida Council Against Sexual Violence
Illinois Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Kentucky Association of Sexual Assault Programs, Inc
Louisiana Foundation Against Sexual Assault
Maine Coalition to End Domestic Violence
Maryland Coalition Against Sexual Assault
Minnesota Coalition Against Sexual Assault
Violence Free Minnesota
Mississippi Coalition Against Sexual Assault
New Hampshire Coalition Against Domestic and Sexual Violence

New Jersey Coalition to End Domestic Violence
New York State Coalition Against Domestic Violence
North Carolina Coalition Against Domestic Violence
North Carolina Coalition against Sexual Assault
Ohio Alliance to End Sexual Violence
Pennsylvania Coalition Against Rape
Day One, Rhode Island
Tennessee Coalition to End Domestic and Sexual Violence
Texas Association Against Sexual Assault
Vermont Network Against Domestic and Sexual Violence
Northwest Immigrant Rights Project, WA
Wisconsin Coalition Against Sexual Assault

Regional and Local Organizations

Campeños Sin Fronteras
Women and Children's Horizons
Cia Siab, Inc.
RCC Sexual Violence Resource Center
Stepping Stones, Inc.
Alternatives to Violence Center
Family Violence Prevention Center
Townhall II
Survivor Advocacy Outreach Program
YWCA of Northwest Ohio
A.L.I.V.E. Inc
Open Arms Domestic Violence and Rape Crisis Services
Tri-County Help Center, Inc.
Center Against Sexual & Domestic Abuse, Inc.
UNIDOS
Her Justice, Inc.
Women Helping Women