

Reauthorization of the Violence Against Women Act (VAWA): The Current State of Provisions Related to Immigrant Survivors (S1925 and HR4970)

Congress Still Has Time to Ensure All Victims Receive Protection

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For the past several months, the U.S. Congress has been debating the reauthorization of the Violence Against Women Act (VAWA) and different versions of a VAWA reauthorization bill were passed in the Senate (S1925) and in the House (HR 4970). At this time, the law has not yet changed and VAWA continues to be an important resource for immigrant victims of domestic violence, sexual assault, and human trafficking.

The next step to reconcile both bills should begin at the bipartisan Senate bill, S1925. S1925 best protects all victims; however, it is not perfect and section 1008 should be removed to ensure unrelated immigration policy riders are kept off. The House version, HR4970, undercuts existing protections for immigrant survivors, endangers victims, and goes against the intent of VAWA to provide safety for all victims.

Background and Existing Protections

- Since its enactment in 1994, VAWA has received broad bipartisan support and has always included important protections for immigrant survivors of domestic violence, recognizing that the abusers of immigrant victims often use their victims' lack of immigration status as a tool for abuse, leaving the victim afraid to seek services or report the abuse to law enforcement.
- VAWA "self-petitioning" was created in 1994 to assist those victims married to U.S. citizen or lawful permanent resident abusive spouses, whose spouses use their control over the victims' immigration status as a tool of abuse (either failing to petition for them and thus leaving victims without legal status or threatening to withdraw it).
- In 2000, the U visa was created as a law enforcement tool, to encourage victims to come out of the shadows to report crimes to law enforcement and to protect victims who cooperate with law enforcement in the investigation or prosecution of relevant crimes. To be eligible for a U visa, victims must obtain law enforcement certification demonstrating that they have assisted in a criminal investigation or prosecution. Likewise, the T visa was created to help victims of human trafficking and to gain their help in turn with investigations and prosecutions of traffickers.
- In 2005, the "International Marriage Broker Regulation Act" (IMBRA) was enacted as part of VAWA, to regulate the so-called "mail-order bride" industry and make changes to the process by which Americans petition to sponsor visas for foreign fiancé(e)s and spouses to protect against abuse and exploitation.
- Congress has repeatedly reaffirmed its commitment to these provisions in each reauthorization of VAWA, reflecting bipartisan recognition that domestic violence is a serious crime and public safety issue that cannot be fully addressed if all victims are not safe and all perpetrators are not held accountable.

Congress must begin the next steps to reauthorize VAWA with the bipartisan S1925, by taking out unrelated immigration policy riders and ensuring that all victims have access to meaningful protections from harm.

Congress Must Reject Harmful Provisions Added in HR4970

- **HR4970, Section 801, limits meaningful access to VAWA self-petitioning protection for many victims and creates inefficiencies and delays in the adjudication process that may keep the victim trapped with the abuser by:**
 - **Requiring duplicative interviews, which will create backlogs and inefficiencies in the adjudication process and significantly increase risks for victims.** The current process relies on a specially-trained VAWA Unit of the United States Customs and Immigration Services (USCIS) to process these applications and already requires self-petitioners to attend an in-person interview at the local USCIS office when they seek to adjust their immigration status to lawful permanent resident. Putting in place an additional requirement for abused spouses to also have to appear for an initial interview in order to start the VAWA self-petition process is duplicative, wastes already strained government resources, and will cause further delays that increase risks for victims. This requirement will significantly diminish access to VAWA protections as many immigrant victims live with the abusers and would have to wait additional months (and those in more rural areas would have to travel long distances) for an initial interview at the USCIS office. Additionally, untrained adjudicators at the local USCIS offices often do not know the VAWA laws or have expertise in interviewing victims of domestic violence and sexual assault, which both compromises the quality of justice and judgment calls made by local offices, and can re-traumatize victims and their children.
 - **Suspending adjudication of VAWA self-petitions while criminal charges are pending against the abuser, and allowing adjudicators to draw negative inferences against self-petitioners based on the outcome.** This requirement would be burdensome and unworkable for the USCIS VAWA unit since they have no way of monitoring the status of ongoing criminal cases at local levels. Additionally, such a provision would further delay a path to safety for immigrant victims and could have the unintended consequence of discouraging victims from pursuing criminal charges since it would impede their access to the VAWA self-petition remedy and would leave them vulnerable to decisions made by prosecutors and others in a criminal justice system over which they have no control. Furthermore, for undocumented spouses still living with an abuser, it would be unfair and dangerous to draw negative inferences if they have not filed criminal charges out of fear of reprisal and further harm.
 - **Weakens historic confidentiality protections by allowing abusers to potentially influence the VAWA decision-making process.** Victim protection should not be in the hands of the abuser.
- **HR4970, Section 802, imposes arbitrary and unreasonable barriers for victims, and undermines the law enforcement purpose of the U visa by:**
 - **Imposing unreasonable and arbitrary burdens on crime victims** by requiring that law enforcement certifications for U visas occur only in cases where the related criminal activity is under active investigation or prosecution, resulting in protection that would be very difficult to obtain. Current law already requires law enforcement to certify that the victim was helpful, is being helpful, or is likely to be helpful in an investigation or prosecution.
 - **Requiring that the Victim must provide information** that will assist in identifying the perpetrator. Many sexual assault or child victims may not know the identity of the perpetrator or have specific information regarding the identity of the assailant. The decisions about whether to certify that a crime victim is helpful to the investigation or prosecution of a crime should be left to local law enforcement.
- **HR4970, Section 806, places victims on a path “from report to deport” and discourages victims of**

crime from cooperating with law enforcement in the investigation and/or prosecution of crime by denying access to lawful permanent resident status to most victims who obtain a U visa. The limited exception included in this section is insufficient and fails to protect most victims, especially in complex or dangerous criminal investigations or prosecutions or where the victim may fear retaliation. It also eliminates stability for vulnerable crime victims and their children that will discourage victims from reporting and could result in children being left in the custody of abusers when the victim is later deported after the U visa expires.

- **HR4970, Section 814, burdens victims and existing state criminal court processes** addressing domestic violence by discouraging plea bargains. Because this provision will allow evidence outside the criminal conviction record in determining if someone is deportable due to a domestic violence conviction, it will be impossible for defendants to know whether to accept a plea. This will result in additional criminal trials and more victims being forced to face their abusers in criminal cases.

Additionally, S1925, Section 1008, sets a dangerous precedent by using VAWA as an avenue to pass unrelated immigration provisions by expanding the definition of aggravated felony in this unrelated immigration rider that has nothing to do with domestic violence, sexual assault, stalking and trafficking. This provision should not be included in a final VAWA bill.

Congress Must Ensure Protection for All Victims

The Senate made some modest changes and slight improvements to VAWA's protections for immigrant survivors as part of S1925. Some of these provisions are also found in HR4970. Current improvements in S1925 do not expand or rewrite VAWA; they simply close the gap that exists under current law to ensure that victims have meaningful access to legal protections. Congress must ensure that all victims have protection from domestic violence, sexual assault, child abuse and human trafficking.

- **S1925, Section 801 ensures protection for victims of stalking** by adding "stalking" to the crimes covered by the U visa recognizing that perpetrators use different techniques to abuse their victims.
- **S1925, Section 802 requires annual reports to Congress** regarding outcomes and processing times for VAWA Self Petitions, U visas (for victims of certain serious crimes) and T visas (for victims of human trafficking) to ensure efficiency and victims' timely access to life-saving protections.
- **S1925, Section 803/HR4970, Section 808 extends the widow fix¹ to abused victims of domestic violence** who survive their abusive parents. Abusive spouses and parents would not be eligible.
- **S1925, Section 804/HR4970, Section 809 clarifies that victims should not be charged as inadmissible based on public charge** by exempting a VAWA self-petitioner, a "U" visa petitioner or holder, or an alien who was battered and "qualified aliens" under the 1996 Welfare Reform law.
- **S1925, Section 805(a) ensures victims of crimes who cooperate with law enforcement receive protection** by allowing DHS to issue up to 5,000 additional visas for the next few years through recapture of unused U visas from prior years' annual allotments.

¹ In 2009, Congress enacted the so-called "widow's and widower's fix" to enable a spousal-based petition for lawful permanent residence (LPR) to survive when a U.S. citizen spouse died after filing the petition for their non-citizen spouse. This will offer children of VAWA self-petitioners the same protection.

- **S1925, Section 805(b)/HR4970, Section 810 ensures protection for children of U visa applicants** by clarifying that when an applicant files for a U-visa that includes their under 21 year old children, they will be able to receive the benefits and protection of the U-visa, along with their parent, even if the child turns 21 after the application is filed.
- **S1925, Section 806/HR4970, Section 811 extends hardship waivers for conditional residents** where the abuse occurred at the hands of a U.S. citizen or LPR spouse, but the underlying marriage was invalid because the U.S. citizen or LPR committed bigamy unbeknownst to the non-citizen victim spouse.
- **S1925, Sections 807 and 808, strengthens existing protections for foreign fiancé(e)s and spouses of U.S. citizens** to prevent them from entering or remaining in abusive marriages through amendments to the International Marriage Broker Regulation Act (IMBRA) (e.g., by disclosing criminal background information about their US citizen-sponsors, and by advising them about rights and resources for domestic violence victims in the United States). **HR4970, Section 804** includes some of these same amendments (although it omits some of the more important amendments included in S1925 intended to close gaps and ensure full implementation and enforcement of the 2005 law).