



**Early Access to Work
Authorization
For VAWA Self-Petitioners
and U Visa Applicants**

**By: Krisztina E. Szabo, David Stauffer,
Benish Anver, and Leslye E. Orloff**

February 12, 2014

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Introduction

Congress through the Violence Against Women Act (VAWA) in 1994¹ and the VAWA Reauthorization of 2000² created the VAWA self-petition and the U Visa crime victim immigration relief, with the goals of freeing immigrant domestic abuse survivors who were trapped in abusive marriages to U.S. citizens or Legal Permanent Residents, and of providing immigrant crime victims who have cooperated with law enforcement tools to promote their use of the justice system and to help them start anew to overcome the crime victimization and atrocities they have suffered. While both programs (VAWA self-petition and U Visa) are invaluable in rehabilitating and empowering immigrant survivors of violence, often-times the initial process of obtaining a work authorization takes too long and exposes immigrant survivors of violence to retaliation, coercion, and further harm including incidents of violence and abuse.

The Department of Homeland Security (DHS)'s case processing practices between January 2009 and September 2013 resulted in battered immigrants, immigrant victims of sexual assault, and immigrant crime victims who have filed VAWA self-petitions and U visas having to wait for as long as between 1 year and 18 months to receive employment authorization. What this means in the lives of battered immigrants can include having to continue to reside with the abuser until the victim's VAWA self-petition or U visa application is approved. Immigrant victims of sexual assault in the work place are forced to remain employed by their abusive employer until their U visa case is approved and they receive work authorization.

We commend the US Citizenship and Immigration Services (USCIS) for the steps taken during the fall of 2013 to significantly increase the numbers of adjudicators working in the VAWA unit at the Vermont Service Center by adding 152 adjudicators. As of January 2014, this has resulted in a 74% reduction in the backlogs in adjudication of VAWA self-petition and U-visa cases and cases being processed within 6 months of filing. These case processing times include the time that it takes for attorneys representing immigrant crime victims to respond to requests for further evidence. It also resulted in USCIS issuing 10,000 U visas and reaching the U visa cap for FY 2014 earlier in the year than ever before – December 11, 2013.³

This accomplishment demonstrates USCIS' capacity and current commitment to case processing time frames that are consistent with the express intent of Congress creating and through reauthorizations continually improving the VAWA self-petition and the U visa making them more effective in protecting the safety of victims and their children. These visas at the same time play a crucial role as tools that help law enforcement officials and prosecutors fight crime in communities across the country.

¹ Violence Against Women Act of 1994 (VAWA 1994) in the Violent Crime Control & Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-40703, 108 Stat. 1902-1955 (Sept. 13, 1994).

² Violence Against Women Act of 2000 (VAWA 2000) in the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 1501-1513, 114 Stat. 1464 (2000).

³ USCIS Approves 10,000 U Visas for 5th Straight Fiscal Year, USCIS, (Dec. 11, 2013), <http://www.uscis.gov/news/alerts/uscis-approves-10000-u-visas-5th-straight-fiscal-year>.

The legislative and administrative history contained in this report and the results of a national survey reported here provide support for the efforts USCIS has made to achieve these results and urge USCIS and DHS to maintain the VAWA, T, and U visa as a permanent case processing priority.

Part I of this report demonstrates that the legislative and regulatory history on providing work authorization to immigrant survivors of crimes envisioned granting earlier access to employment authorization.

Part II discusses the effect that not having work authorization has on immigrant crime victim's lives and the importance of obtaining work authorization earlier in the process (please see APPENDIX A for illustrative stories).

Part III reports the result of the national survey conducted by the National Immigrant Women's Advocacy Project (NIWAP) in October of 2013. The survey's goals were to document the waiting times VAWA self-petitioners and U victims face and to demonstrate how immigrant victims and their children are coping during the pendency of their immigration relief. Complete summaries of NIWAP's survey are included in APPENDIX B.

Part IV, recommends policy changes in processing VAWA self-petitions and U visa applications so that survivors, the advocates that support them, and the police and prosecutors they are working with, predictably know that the victim will not have to wait more than 6 months for attaining work authorization. Importantly, NIWAP's recommendations are supported by existing legislative and regulatory authority. This section concludes by underscoring the importance of predictable, 6 months maximum processing time for employment authorization.

I. History of Access to Employment Authorization

Legislative and regulatory history of VAWA's supports early access to employment authorization for both VAWA self-petitioners and U visa victims. Beginning as early as 1996, when the VAWA self-petitioning regulations were issued by the Immigration and Naturalization Services (INS),⁴ the interim regulations included creation of case processing systems that were to result in VAWA self-petitioners attaining work authorization while their case was pending and without having to await final adjudication.

Work Authorization for VAWA Self-petitioners

In all VAWA self-petitioning cases, USCIS conducts safe address checks and makes prima facie determinations providing the initial review of validity in VAWA self-petition cases shortly after the VAWA self-petition has been filed. The safe address and the prima facie determinations are the first point in the VAWA self-petitioning process in which USCIS screens the case for fraud and for validly filed cases issues a prima facie determination. This prima facie

⁴ When the Immigration and Naturalization Services was moved from the U.S. Department of Justice to the Department of Homeland Security in March of 2003, U.S. Citizenship and Immigration Services (USCIS) was created as the agency in the Department of Homeland Security responsible for overseeing and adjudicating lawful immigration to the United States. See, <http://www.uscis.gov/about-us/our-history>.

determination facilitates VAWA self-petitioners' access to state and federal public benefits,⁵ but does not provide work authorization. However, the history of work authorization policies for VAWA self-petitioners supports granting work authorization through deferred action earlier in the case than at the stage of approval.

When the VAWA regulations were issued in March of 1996, INS devoted significant discussion in the preamble to the regulations to the means by which VAWA self-petitioners could access work authorization.⁶ INS provided three avenues through which victims could receive work authorization:

(1) Filed for adjustment of status where perpetrator is a U.S. citizen or the perpetrator is a lawful permanent resident and the victim has a current priority date: “Many self-petitioners will qualify for employment authorization under 8 CFR 274a.12(c)(9). This provision allows a person who has properly filed an adjustment of status application under section 245 of the Act to request employment authorization while the adjustment application is pending before the Service.”

(2) Voluntary departure: “Most other self-petitioners will be eligible to request voluntary departure prior to or after a deportation hearing ... and may qualify for employment authorization based on the grant of voluntary departure.” Voluntary departure may be granted under a variety of reasons and “...including to a person in whose case the district director has determined there are compelling factors warranting a grant of voluntary departure. A person who has been granted voluntary departure ... may be granted permission under 8 CFR 274a.12(c)(12) to be employed for the period of time prior to the date set for voluntary departure, if the person shows an economic need to work.”

(3) Deferred action status: “A person who has been placed in deferred action status, an act of administrative convenience to the Government that assigns a lower priority to the alien’s removal from the United States, may also request employment authorization under 8 CFR 274a.12(c)(14) if the person shows an economic need to work.”⁷

⁵ Jacquelyn A. Bednarz, *Field Guidance Re: Prima Facie Review of Form I-360 when filed by a Self-Petitioning Battered Spouse/Child*, U.S. DEP’T OF JUSTICE, Immigration and Naturalization Service (Mar. 27, 1998), available at: http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_Bednarz%20Prima%20Facie%20Memo_03.27.98.pdf.

⁶ INS Interim Final Rule, “*Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children*,” 61 Fed. Reg. No. 59, 13070-71, (Mar 26, 1996); see also Memorandum HQ 204-P, “*Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents*,” DEP’T OF JUSTICE (Apr. 16, 1996).

⁷ *Id.*

Following the issuance of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA),⁸ one of the primary means by which the VAWA regulations anticipated providing work authorization to self-petitioners, voluntary departure, was eliminated, leaving the adjustment of status and the deferred action process as the only avenues to secure work authorization.⁹

On March 27, 1998, field guidance established the prima facie (“at first view”) review for VAWA self-petitioning battered spouses or children,¹⁰ enabling them to receive public assistance during the pendency of their VAWA self-petitioning case. The decision to issue a Notice of Prima Facie Case is based upon an initial review of the self-petition and supporting documentation in which USCIS ascertains that the applicant has credibly addressed each of the required elements.¹¹

Throughout the years, backlogs in self-petition adjudications at the VAWA Unit have been an ongoing problem.¹² In response, VAWA 2005 removed some of the delay in access to work authorization by providing that USCIS could provide work authorization to approved VAWA self-petitioners incident to approval under INA §204(a)(1)(K). This removed the requirement that approved self-petitioners apply for work authorization after approval, which particularly helped victims who would need to wait for their priority dates to become current before they could apply for lawful permanent residency and sped up the process for all VAWA self-petitioners to obtain work authorization.¹³

⁸ Illegal Immigration Reform and Immigrant Responsibility Act of 1996. PL No. 104-208. (1996).

⁹ “By their nature, VAWA cases generally possess factors that warrant consideration for deferred action.” Paul W. Virtue, *Supplemental Guidance on Battered Alien Self-petitioning Process and Related Issues Memorandum*, U.S. DEP’T OF JUSTICE, Immigration and Naturalization Service: Office of Programs, 3 (May 6, 1997), available at: http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_INSOP%20VAWA%20Self-Petition%20memo_5.6.97_OVW_3.31.09.pdf.

¹⁰ Jacquelyn A. Bednarz, *Field Guidance Re: Prima Facie Review of Form I-360 when filed by a Self-petitioning Battered Spouse/Child*, U.S. DEP’T OF JUSTICE, Immigration and Naturalization Service (Mar. 27, 1998), available at: http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_Bednarz%20Prima%20Facie%20Memo_03.27.98.pdf.

¹¹ *Id.*

¹² William R. Yates, *Extension of Validity Period for Notices of Prima Facie Case Issued in Connection with a Form I-360 Filed by a Self-petitioning Battered Spouse/Child*, U.S. DEP’T OF HOMELAND SECURITY, U.S. Citizenship and Immigration Services, (Apr. 8, 2004).

¹³ The original Violence Against Women Act did not specifically establish that approved VAWA self-petitioners could apply for work authorization; however, subsequent guidance did provide that a qualified self-petitioner may be eligible to apply for work authorization under the existing provisions of 8 CFR §274a.12, like adjustment pending under (c)(9) [adjustment pending] or (c) (14) [deferred action status] eligibility. See INS Interim Final Rule, “*Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self Petitioning for Certain Battered or Abused Spouses and Children*,” 61 Fed. Reg. 13061, (Mar 26, 1996). Aleinkoff, Executive Associate Commissioner, Office of Programs, INS Mem/HQ 204-P (April 16, 1996). See also Cronin, Acting Executive Associate Commissioner, Office of Programs, INS Mem/HQ 204-P (December 22, 1998); Cronin, Acting Executive Associate Commissioner, Office of Programs, INS Mem. HQ/AND/70/6.1P (September 8, 2000). While USCIS guidance does indicate that employment authorization for approved VAWA self-petitioners can be found at 8 CFR 274a.12(c)(31), current versions of the 8 CFR do not include this provision for who qualifies for a (c)(31) work permit. See Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.15 (AFM Update AD 06-32) (08/31/2011/).

In a 2012 draft policy memorandum, USCIS confirmed that deferred action status remains another avenue, in addition to receiving work authorization incident to the approval of self-petitioner's VAWA application, through which VAWA self-petitioners may apply for and receive a work permit based on deferred action.¹⁴ Although USCIS has the ability to access deferred action on its own in valid cases in which there is no evidence of fraud, the problem remains that USCIS has not implemented such a process in VAWA self-petitioning cases and nor is there a process through which VAWA self-petitioners can apply for and receive deferred action status in advance of having their self-petition approved.

Work Authorization for U Visa Applicants

Granting employment authorization to U visa applicants prior to full adjudication is explicitly authorized by legislation. "The Secretary may grant work authorization to any alien who has a pending, *bona fide* application for nonimmigrant status under section 101(a)(15)(U)."¹⁵ While express statutory authority to grant work authorization to U visa applicants who have met *bona fide* determination exists, this has not been implemented for all U visa applicants.¹⁶

For U visa cases, where immigrant crime victims have cases in proceedings before immigration judges, current DHS policies allow USCIS to make deferred action determinations by using the *prima facie* standard.¹⁷ USCIS also makes deferred action determinations based on *prima facie* evidence for U visa victim's children who have or will age out before the U visa case has been adjudicated.¹⁸ Such determinations are made by USCIS without requiring any additional filing by U-visa applicants or any derivative family members included in their applications,¹⁹ allowing them to obtain employment authorization based on deferred action.

Delaying employment authorizations for U visa applicants who are not in removal proceedings or in immigration court undermines the reason Congress mandated a *bona fide* standard. The goal was to provide work authorization early to sever victim's economic

¹⁴ The draft policy memorandum provides, "although section 204(a)(1)(K) of the Act allows for the eligibility of work authorization incident to the approval of a VAWA self-petition, the principal VAWA self-petitioner still has the option to request work authorization under deferred action if deferred action was provided." Draft Policy Memorandum, *Eligibility for Employment Authorization upon Approval of a Violence Against Women Act (VAWA) Self-Petition; and, Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants*, U.S. Citizenship and Immigration Services, 2 (Dec. 12, 2012).

¹⁵ Public Law 110-457—Dec. 23, 2008; TVPRA 2008 Senate-House Passed (Pub. L 110-457) available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/human-trafficking/statutes/TVPRA%202008%20Senate-House%20Passed%20-Pub.%20L%20110-457.pdf/view>.

¹⁶ This approach is similar to the approach taken in T visa cases in which the *bona fide* determination stays removal proceedings. Within the T visa's framework, *bona fide* application means an application for T status, which after initial review has been determined that the application is complete; there is no evidence of fraud; and presents *prima facie* evidence of eligibility for T status including admissibility. See INS Final Rule "New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status" 67 Fed. Reg. No. 21, 4800-01, (Jan. 31, 2002).

¹⁷ Peter S. Vincent, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal, USCIS (Sep. 25, 2009).

¹⁸ Draft PM-602-0077: *Age-Out Protection for Derivative U nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status*, USCIS (Oct. 24, 2012).

¹⁹ Therefore, this policy does not implicate the Paperwork Reduction Act.

dependence on a perpetrator and to prevent financial instability of crime victims, who having received certifications from law enforcement (or other government officials) are being helpful and have an ongoing obligation to cooperate in the investigation or prosecution of criminal activity.²⁰

II. Importance of Work Authorization

The importance of receiving early access to work authorization for immigrant crime victims cannot be overstated. The delays in adjudication that survivors of intimate partner violence (IPV), sexual assault, and other crimes experience, can have a devastating impact on survivors and their children. The constraints that stem from an inability to work lawfully to support themselves and their children often places victims in the unconscionable position of having to remain in or return to the violent environments they sought to abandon, or to subject themselves to other abusive and exploitative situations as they struggle to survive.

Re-victimization

During the unnecessarily prolonged waiting period for work authorization, immigrant survivors of violence are particularly vulnerable. The lifetime prevalence of IPV among immigrant women is higher than for general community samples, and immigrant women are likely to be repeatedly victimized.²¹ Immigrant victims abused by U.S. citizen husbands or former husbands experience an abuse rate of 59.5%.²² This rate exceeds the reported lifetime prevalence of domestic violence in the general population by a range of almost 8% to 28%.²³

Studies have shown that the risk of violence, abuse, and homicide increases when victims take steps to leave their abusers or get help from the criminal or civil justice systems.²⁴ Research also shows that immigrant survivors of intimate partner violence continue to live with or return

²⁰ USCIS Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. No. 179,53033 (Sep. 17, 2007).

²¹ See generally Julia L. Perilla et al, *Culture and Domestic Violence: The Ecology of Abused Latinas*, Violence and Victims, Vol. 9 No. 4, at 325-339 (1994); Young I. Song, BATTERED WOMEN IN KOREAN IMMIGRANT FAMILIES: THE SILENT SCREAM (1996); Margaret Abraham, SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES (2000); Giselle Aguilar Hass, Mary Ann Dutton, and Leslye E. Orloff, *Lifetime Prevalence of Domestic Violence Against Latina Immigrants: Legal and Policy Implications*, Domestic Violence: Global Responses, Special Issue of the International Review of Victimology, Vol. 7 (1/2/3), at 93-113(2000); Anita Raj and Jay Silverman, *Violence Against Immigrant Women: Roles of Culture, Context and Legal Immigrant Status on Intimate Partner Violence*, Violence Against Women, Sage Publications, Vol 8. No. 3, at 385-87 (2002); Christopher Carlberg, *Cooperative Noncooperation: A Proposal for an Effective Uniform Noncooperation Immigration Policy for Local Governments*, 77 GEO. WASH. L. REV. 740 (2009); Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 B.C. J.L. & SOC. JUST. 185 (2012).

²² Giselle Aguilar Hass, Nawal Ammar, & Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, LEGAL MOMENTUM, 1-10 (Apr. 24, 2006).

²³ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, National Institute of Justice, U.S. DEP’T OF JUSTICE, Publication #NCJ83781 (Nov. 2000), available at: <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.

²⁴ Jacqueline Campbell, et al., *Assessing Risk Factors for Intimate Partner Homicide*, NIJ JOURNAL, No. 250 (Nov. 2003), available at: <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>.

to their abusers because dependence cannot be effectively severed until survivors are self-sufficient.²⁵

VAWA self-petitioners and U Visa applicants are essentially trapped in their abuser's cycle of coercive control and abuse. The abuse can take many forms, including physical, psychological, economic, immigration-related, or all the above. This occurs particularly when the perpetrator is a family member and when the perpetrator is an employer or supervisor. Therefore, receiving employment authorization plays a critical role in improving abused immigrant women's, children's, and crime victim's safety, justice system participation, and economic survival.

Exposure to Immigration-related Abuse

Immigration-related abuse is a unique form of abuse that affects 65% of immigrant victims²⁶ and it is considered the principal barrier to help-seeking.²⁷ Immigration-related abuse includes: (1) threats of deportation if she tells anyone about the abuse, (2) refusal to file or withdrawal of immigration papers, (3) threats of taking the children if she leaves the marriage or relationship, and (4) use of her immigration status against her in custody hearings.²⁸ Access to

²⁵ See Jody Raphael and Richard M. Tolman, *Trapped By Poverty, Trapped By Abuse: New Evidence Documenting the Relationship between Domestic Violence and Welfare*, THE TAYLOR INSTITUTE, (Apr 1997); see also Richard M. Tolman, *The Development of a Measure of Psychological Maltreatment of Women by their Male Partners*, *Violence and Victims* 4(3): 159-177 (1989).

²⁶ Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study*, U.S. DEP'T OF JUSTICE, (Nov. 2003), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Erez%20Ammar%20Kent%20Study.11.14.03.pdf/>.

²⁷ Mary Ann Dutton, Leslye E. Orloff, Giselle Aguilar Hass, *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 *GEO. J. POVERTY LAW & POL'Y* 245 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf/>.

²⁸ Hoan N. Bui & Merry Morash, *Domestic Violence in the Vietnamese Immigrant Community: An Exploratory Study*, *Violence Against Women*, 5, at 769-795 (1999); Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, *Hispanic Journal of Behavioral Sciences* Vol. 21 No. 2 107-133 (1999); Martina J. Acevedo, *Battered Immigrant Mexican Women's Perspectives Regarding Abuse and Help-Seeking*, 8 *J. MULTICULTURAL SOC. WORK* 243 (2000); Mary Ann Dutton, Leslye E. Orloff, Giselle Aguilar Hass, *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 *GEO. J. POVERTY LAW & POL'Y* 245 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf/>; Merry Morash, Hoan N. Bui, and Anna M. Santiago, *Cultural-Specific Gender Ideology and Wife Abuse in Mexican-Descent Families*, *International Review of Victimology*, Vol. 7 No. 1-3 67-91 (2000); Marianne R. Yoshioka, Jennifer DiNoia, and Komal Ullah, *Attitudes Toward Marital Violence: An Examination of Four Asian Communities*, *Violence Against Women*, Vol. 7 No. 8 900-926 (2003); Anita Raj & Jay G. Silverman, *Immigrant South Asian Women at Greater Risk for Injury From Intimate Partner Violence*, *AM. J. OF PUBLIC HEALTH* 93(3): 435-437 (2003); Elana Grodner & Jay Sweifach, *Domestic Violence in the Orthodox Jewish Home: A Value-sensitive Approach to Recovery*, *Journal of Women and Social Work*, 19(3) (2004); Aarati Kasturirangan, Sandhya Krishnan, and Stephanie Riger, *The Impact of Culture and Minority Status on Women's Experience of Domestic Violence*, *Trauma, Violence & Abuse*, Sage Publication, 5(4): 318-332 (2004), available at: <http://www.sagepub.com/counselingstudy/Journal%20Articles/Kasturirangan.pdf>; Catherine Kaukinen, *Status Compatibility, Physical Violence and Emotional Abuse in Intimate Relationships*, *Journal of Marriage and Family* 66(2) (2004); Giselle Aguilar Hass, Nawal Ammar, and Leslye E. Orloff, *Battered Immigrants and U.S. Citizen*

legal immigration status frees battered immigrants from the ongoing threats and retaliation from their perpetrators.

Lack of Economic Independence

It is well established within the domestic violence literature that battered women who leave their abusers face economic challenges.²⁹ According to a recent study, 99% of domestic violence survivors who report psychological abuse also reported economic abuse.³⁰ “[A]busive men hide jointly earned money, prevent their partners from having access to joint bank accounts, lie about shared assets, and withhold information about their finances.”³¹ In fact, withholding financial resources from the victim is a classic tactic of an abuser:

[B]y controlling resources (e.g., money, employment, etc.), the batterer ensures that the victim remains dependent upon the batterer, thus reinforcing subjugation and reducing the likelihood of escape by the victim. Isolating the victim from resources or sources of emotional support is another way of controlling the victim. By separating the victim from friends and family either physically... or emotionally..., the batterer creates an atmosphere of dependence and control.”³²

Economic difficulties are even more severe for battered immigrants without access to public benefits or legal work authorization.³³ A review of grantee narratives reported by

Spouses, NIWAP (2006), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf; Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, NIWAP (2012), available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf>; Adam B. Horowitz, *Giving Battered Immigrant Fiancées a Way Out of Abusive Relationships: Proposed Amendments to the Immigration and Nationality Act*, 78 BROOKLYN L. REV. 123 (2012);

²⁹ R. Emerson Dobash and Russel Dobash, *VIOLENCE AGAINST WIVES* (1983); Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM URB. L.J. 1141 (1995); Martha F. Davis, *The Economics of Abuse: How Violence Perpetuates Women's Poverty*, in *THE TIES THAT BIND: BATTERED WOMEN, CHILDREN, AND WELFARE REFORM* 17, 18-21 (Ruth A. Brandwein ed., 1999).

³⁰ Adams et al, *Development of the Scale of Economic Abuse*, 14 *VIOLENCE AGAINST WOMEN* 563, 566 (2008), available at: <http://vaw.sagepub.com/content/14/5/563.abstract>.

³¹ *Id.*

³² Anderson et al, *Why Doesn't She Just Leave? A Descriptive Study of Victim Reported Impediments to Her Safety*, 18 J. FAMILY VIOLENCE 151 (June 2003), available at: <http://www.springerlink.com/content/v433568j6918q72l/fulltext.pdf>.

³³ Mary Ann Dutton, Leslye E. Orloff, Giselle Aguilar Hass, *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. POVERTY LAW & POL'Y 245 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20WomenOVW%2010.23.01.pdf>; Leslye E. Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. OF WOMEN & L. 597 (2001); Anita Raj and Jay Silverman, *Violence Against Immigrant Women: Roles of Culture, Context and Legal Immigrant Status on Intimate Partner Violence*, *Violence Against Women*, Sage Publications, Vol 8. No. 3, at 385-87 (2002); Cecilia Menjivar and Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, *Gender and Society*, Vol. 16, No. 6 (2002), available at: <http://www.sagepub.com/counselingstudy/Journal%20Articles/Menjivar.pdf>; Olivia Golden et al., *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for*

organizations receiving Legal Assistance for Victims grants from the Office on Violence Against Women (OVW) found that case processing times and certification delays caused severe economic hardship and high levels of anxiety for the immigrant victims.³⁴

Economic dependence on the abuser dramatically limits an immigrant victim's options for physical and legal separation from the abuser.³⁵ In fact, more than two-thirds of battered immigrant women who stayed with their abusers reported a lack of money as the primary reason for not leaving a violent home.³⁶

Limited Access to the Public Benefits Safety Net

Even when immigrant survivors attempt to break the cycle of abuse and are able to escape violent situations, their lack of employment authorization and ineligibility to access financial support significantly limit the options available to them.³⁷

Generally, emergency domestic violence shelters set limits on the length of shelter stays. However, shelters have some flexibility to allow a longer stay for a victim who can predictably articulate that staying for a specified additional period of time will enable them to complete a court case (e.g. obtain a needed protection order or temporary custody). Unfortunately, this option is not open to immigrant victims awaiting work authorization in a VAWA or U visa case because the length of time that their applications are pending is either unpredictable or is too long. Similarly, to be accepted into a transitional housing program, an immigrant crime victim

Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits; (2003), available at: <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/origin/policyguidanceregardinginquiriesintocitizenshipimmigrationstatus.html>.

³⁴ Giselle Hass, Karen Monahan, Edna Yang, and Leslye E. Orloff, *U-Visa Legal Advocacy: Overview of Effective Policies and Practices*, NIWAP (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/november-12-15-2012-atlanta-ga/plenary/OVW-U-visa-Practice-Policy-Brief.pdf>.

³⁵ See Debra S. Kalmuss & Murray A. Strauss, WIFE'S MARITAL DEPENDENCY AND WIFE ABUSE, IN PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8145 FAMILIES 369, 369-71 (Murray A Strauss & Richard J. Gelles eds., 1990); see also Thomas L. Kirsch II, *Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers?*, WM. & MARY J. WOMEN & L. 383, 392-93 (2001) (reporting that prosecutors, judges and victim-witness advocates in Lake County, Indiana responded that financial dependence upon their abusers is the overwhelming reason for battered women's reluctance to cooperate in the prosecution of their batterers).

³⁶ About a third cited lack of place to go (35%) and lack of employment (32%) as reasons that they have not left an abusive relationship. See Mary Ann Dutton et al., *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal Policy and Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 271 (2000).

³⁷ Soraya Fata, Leslye E. Orloff, and Monique Drew, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, in *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault*, NIWAP (2013), available at: <http://niwaplibrary.wcl.american.edu/cultural-competency/Empowering-Survivors-MANUAL-SA.pdf>. In the vast majority of jurisdictions in the United States today, most immigrant victims with pending VAWA self-petitions or U-visa applications cannot rely on the public benefits safety net for support if they leave their abusive homes and must choose between staying with their abuser or working unlawfully as undocumented workers. *Id.*

must show that they are on a path to and will be likely to attain self-sufficiency within 2 years.³⁸ Proving this is difficult when many victims have to wait for over a year to attain work authorization.

Hindering Law Enforcement's and Prosecutors' Ability to Combat Violent Crimes

Unpredictable waiting periods to receive work authorization interfere with the ability of police and prosecutors to undertake criminal investigations and successful prosecutions of violent perpetrators. If police or prosecutors working with immigrant crime victims could predictably know that within 6 months of filing a VAWA self-petition or U visa case, the cooperating victim would attain legal work authorization, then they could plan the timing of their investigation and prosecution accordingly. Such predictability would allow prosecutors to bring the case to trial and have the victim testify when the victim is more stable, more secure, and no longer economically dependent on the perpetrator. Victim safety will be enhanced and the victim will be less susceptible to the perpetrator's intimidation and coercion, which in turn will make the victim a better witness for the prosecution. Importantly, if victims predictably receive access to legal work authorization within 6 months of filing their VAWA self-petition, significantly fewer cases will have to be dropped because the victim cannot safely participate in the prosecution and delays will not create conflicts with speedy trial laws.

Benefits of Receiving Work Authorization Earlier

The benefits of granting work authorization to victims faster are numerous. Early access to work authorization:

- 1) Allows survivors to establish their financial independence and security;
- 2) Enhances safety planning for immigrant victims because advocates and attorneys working with them will be able to advocate to allow victims to remain in shelters for up to 6 months, until they receive work authorization;
- 3) Enables survivors of violence to more effectively use the justice system to end the cycle of coercive control, abuse, and repeat victimization;
- 4) Provides victims with pending cases greater protection from removal (through deferred action) thereby shielding survivors from being put into removal proceedings as the result of being arrested (for driving without a license, for instance) or as a result of "tips" from the perpetrators falling victim to immigration enforcement actions;
- 5) Facilitates immigrant survivors to begin the healing process, by stepping out of social isolation and thus strengthening their recovering sense of self;³⁹

³⁸ Letter from Andrew Cuomo, Sec'y, U.S. Dep't of Hous. And Urban Dev, to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/>.

³⁹ Studies show that having legal status is critical to immigrant victims' vision of self-esteem and dignity.

- 6) Empowers survivors to achieve personal fulfillment (such as getting an education, finding a job, being able to travel within the U.S. without fear, etc.), thereby allowing them to become productive members of society much sooner;
- 7) Creates safer communities. Importantly, faster access to work authorization is not only beneficial to the survivors, but to their communities as well. When immigrant survivors are not subject to repeat violence, there is less law enforcement involvement. Consequently, this also translates into safer communities and decreased need for victims' services. Victims who lack work authorization are particularly vulnerable and are endangered because they must simultaneously help law enforcement investigate or prosecute their perpetrators, and at the same time they must also continue living with or working for their perpetrator because without work authorization they do not have a way to support themselves and their children.

III. NIWAP's Survey on Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants

In the fall of 2013, NIWAP conducted a two-part national survey containing over 90 questions. Part 1 of the survey documented the wait times for VAWA self-petitioners and U visa victims from the date they filed their immigration case until they receive legal work authorization. Part 2 collected information about what happens in the lives of immigrant crime victims while they are waiting for work authorization. This includes: What choices do victims make about staying in or leaving abusive situations? How does lack of access to work authorization affect their and their children's safety from ongoing abuse or re-victimization? What options do they have to support themselves and their children? How are they surviving?

324 respondents from 47 states and 3 U.S. territories filled out the survey and reported on approximately 4,800 cases. The survey participants came from all U.S. Census Bureau regions. The Census Bureau divides the country into the following regions and divisions:

- Northeast:
 - Middle Atlantic (NY, PA, NJ)
 - New England (NH, ME, VT, RI, MA, CT)
- Midwest:
 - West North Central (ND, MN, SD, NE, IA, MO, KS)
 - East North Central (WI, MI, IL, IN, OH)
- South:
 - West South Central (OK, TX, AR, LA)
 - East South Central (KY, TN, MS, AL)
 - South Atlantic (FL, GA, SC, NC, VA, DC, DE, MD, WV)
- West Region:
 - Mountain (MT, ID, WY, NV, UT, CO, AZ, MN)
 - Pacific (WA, OR, CA, AK, HI)

The responding agencies were located in the following regions:

Figure 1

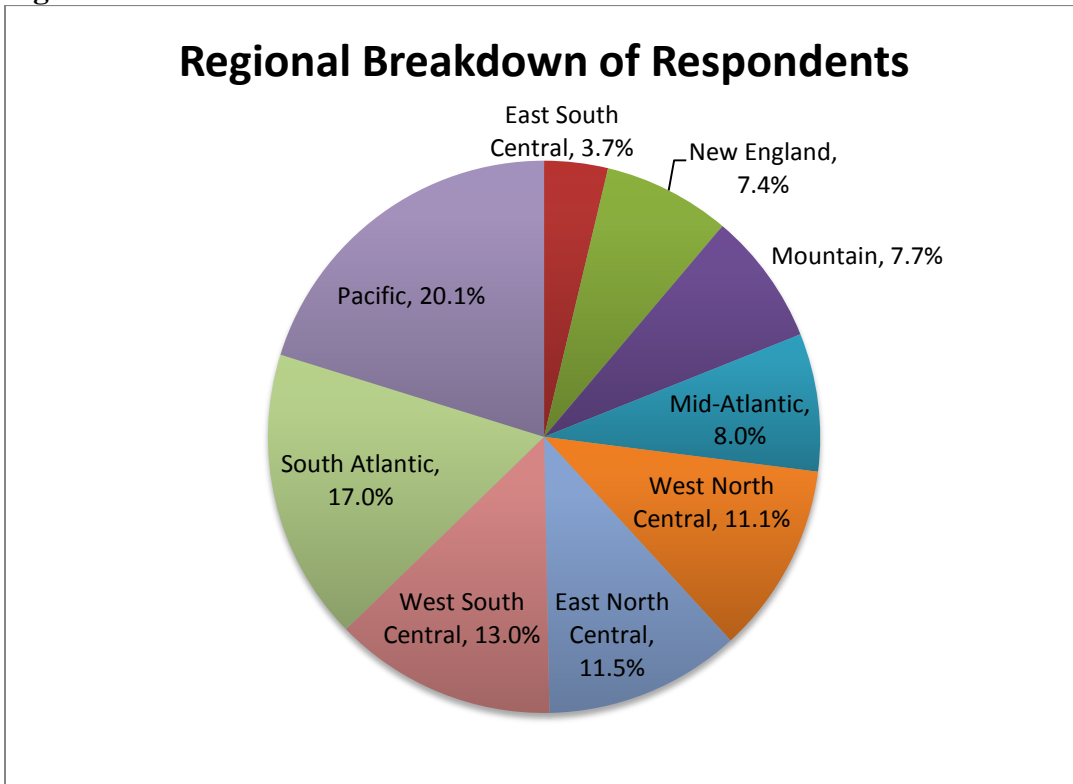
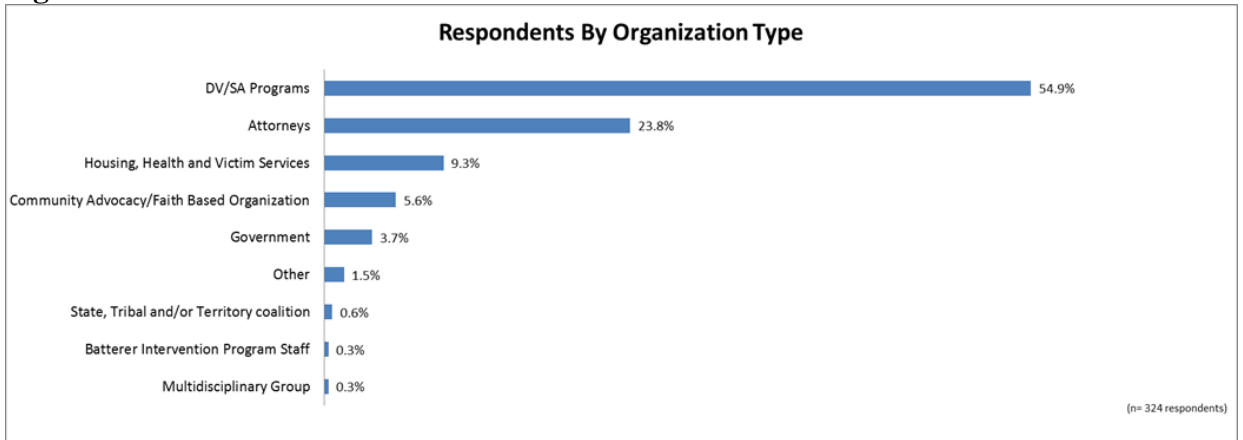


Figure 2



Over half (55.1%, n=178) of the respondents were service providers in domestic violence and/or sexual assault programs,⁴⁰ and 23.8% (n=77) were attorneys serving immigrant victims of domestic violence, sexual assault and human trafficking. Housing, health, and victim services agencies comprised 9.3% (n=30) and culturally and linguistically specific, immigrant and faith based organizations made of 3.7% (n=18) of survey participants.

⁴⁰ Survey respondents included domestic violence and sexual assault program staff, shelters, rape crisis centers, victim services organizations, transitional housing programs, social service organization staff, victim-witness specialists, and immigrant organization staff.

Overall, respondents had significant expertise working with immigrant survivors reporting lower numbers of RFEs (“requests for evidence”) than the national average.⁴¹ In VAWA self-petitioning cases 42.3% (n=808) of the cases filed by survey respondents received no RFEs when nationally only 25.4% of cases are approved with no RFEs required. In U visa cases survey respondents reported 56.6% (n=2578) of the cases filed received no RFE compared to a 21.1% rate of U visa cases processed nationally that do not require RFEs.

Figure 3

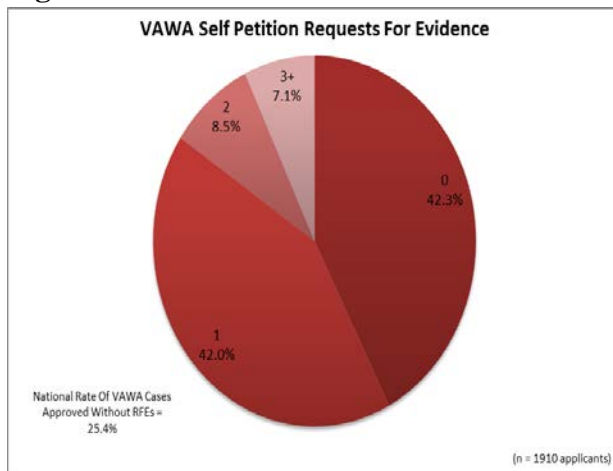
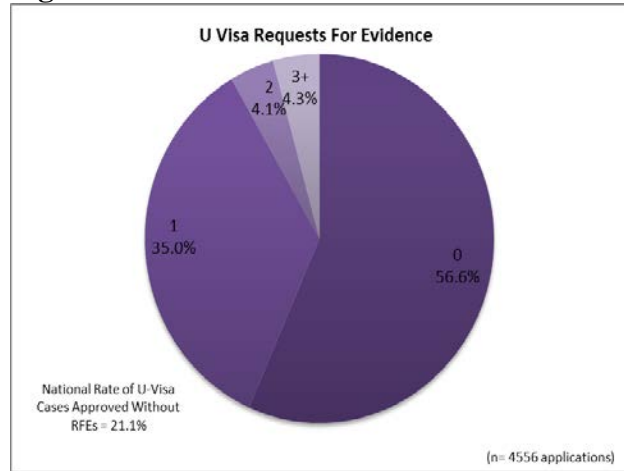


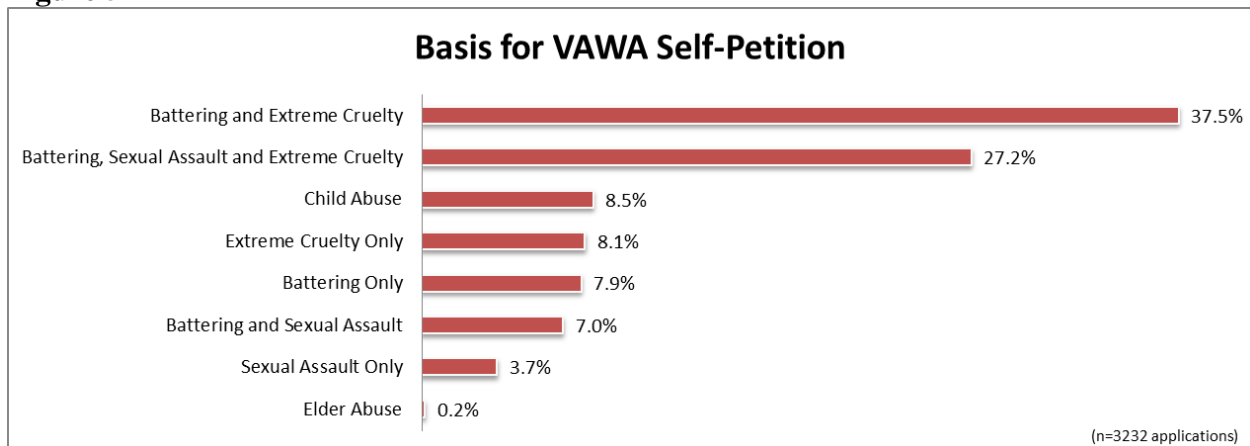
Figure 4



Profile of VAWA Self-Petitioners and U Visa Applicants

Most VAWA self-petitioners who apply for relief suffer from multiple forms of abuse. Agencies responding to the survey reported that their clients’ VAWA self-petitions were based upon either a combination of *battering and extreme cruelty*, or a combination of *battering, sexual assault and extreme cruelty*. These two groups combined constituted 64.7% (n=2090) of total self-petitions.

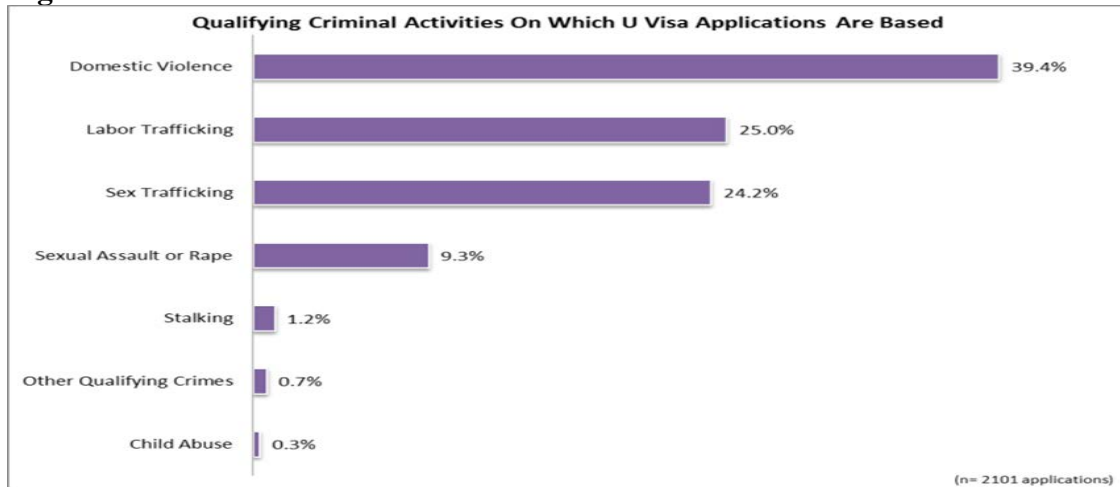
Figure 5



⁴¹ U.S. Citizenship and Immigration Services, Approval Rates and Request for Evidence (RFE) for All Forms Types, Fiscal Years 2003 - 2011

As for U visas, respondents reported on 2,101 U Visa cases that were based on a range of criminal activities with many victims reporting having suffered multiple types of criminal activities. The proportion of cases reported in this survey in which victims experienced each of the following criminal activities were: 39.4% domestic violence (n=827); 25% (n=525) labor trafficking; 24.2% (n=508) sex trafficking; and 9.3% (n=195) based on sexual assault or rape.

Figure 6



VAWA Self-petitioners’ and U Visa Applicants’ Children

The VAWA and U visa remedies provide important protections for children living in immigrant families. The vast majority of VAWA self-petitioners (82.2%, n=2614) and U visa applicants (74.7%, n=3736) included one or more children in their applications.

Figure 7

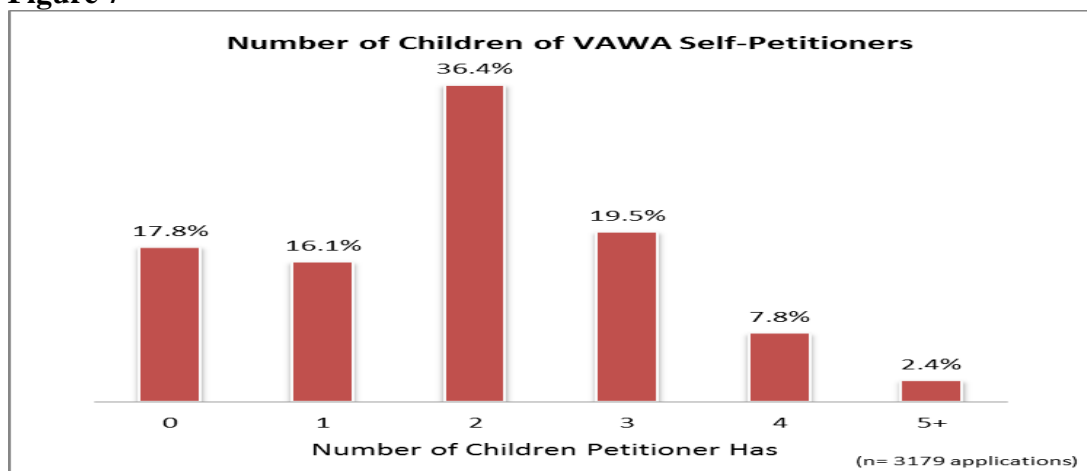
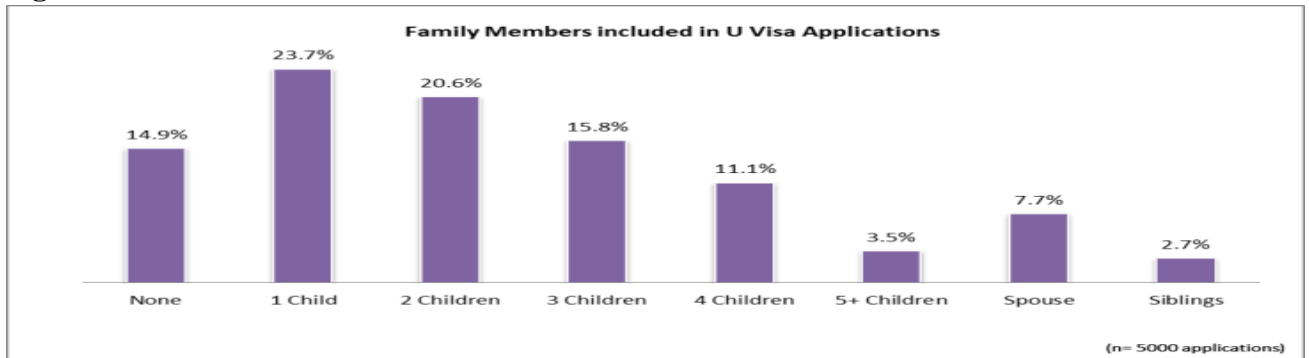


Figure 8

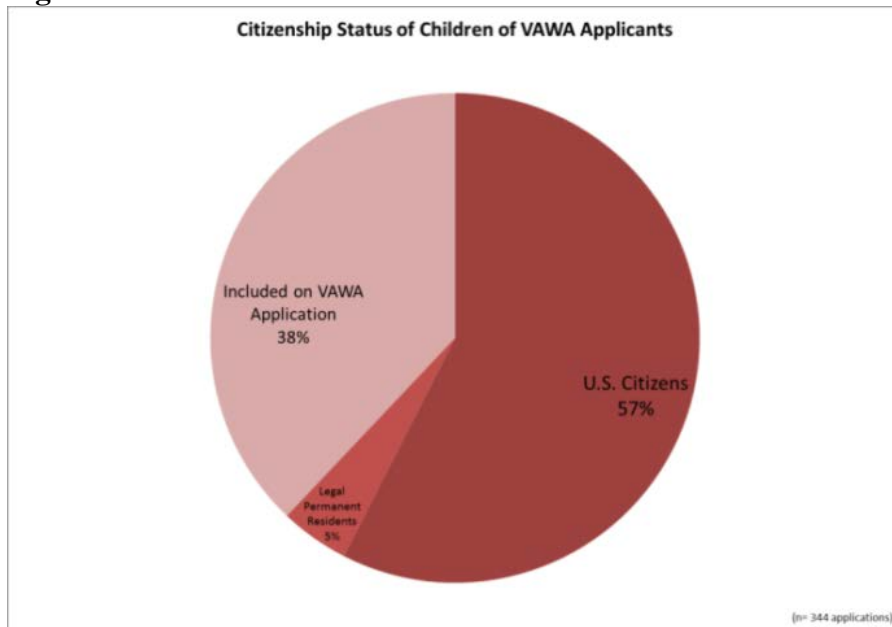


The total number of children who benefited from the VAWA self-petitions filed between January 2011 and September 2013 by agencies participating in the survey was:

- Approximately 6066 children were included in VAWA self-petitions filed by responding agencies
- About 8711 children were included in U visa applications filed by responding agencies

Many VAWA self-petitioners had children in addition to those included as beneficiaries in the victim’s VAWA self-petition. Survey respondents reported that 57% (n=196) of VAWA self-petitioners’ children were U.S. citizens and another 5% (n=17) were lawful permanent residents. This includes instances in which all of the self-petitioners children were either U.S. citizens or lawful permanent residents.

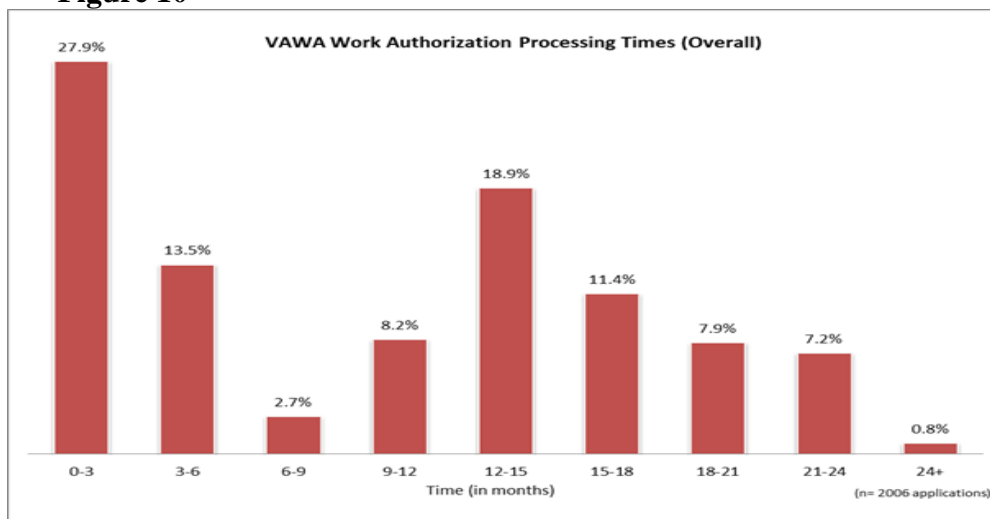
Figure 9



Processing Times Since 2011⁴²

According to NIWAP's 2013 survey on processing times since 2011, only 52.3% of VAWA self-petitioners received work authorization within one year of filing (41.4% receive their work authorization within 0-6 months and another 10.9% receive it within 6-12 months). However, 47.7% are waiting over a year to receive employment authorization.

Figure 10



Among VAWA self-petitioners 63% (n=1264) were abused by U.S. citizen spouses or parents. (Figure 10) VAWA self-petitioners who are spouses or children of citizens are able to file for work authorization at the same time they file their VAWA self-petition. These VAWA self-petitioners are immediately eligible for work authorization. Despite that fact, only 54.8% (n=1099) of VAWA self-petitioners abused by citizens received work authorization within 6 months of filing and 36.2% (n=726) waited longer than one year to receive work authorization. Since the agencies responding to this survey appear to have a high level of expertise and low RFE rates (Figures 3 and 4), these delays appear to be more likely due in significant part to case processing rather than victims who failed to file work authorization requests concurrent with their VAWA self-petitions.

⁴²For processing times during 2009, 2010 and 2011 see Leslye E. Orloff, *National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants*, (Sept. 28, 2011), available at <http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/immigration-relief-for-immigrant-survivors/Timing%20of%20Immigrant%20Victim%20Access%20to%20Work%20Authorization%206.4.12%20Update.pdf/vi>. “Out of the VAWA self-petitioners, 73.9% must wait over 6 months to receive work authorization and 27.1% wait for between 13 months to 2 years before they are granted work authorization. Case processing delays in U-visa cases result in only 6.1% of immigrant crime victims receiving approval and work authorization within 6 months. The remainder wait a year (63.9%) or up to 18 months (30%).”

Figure 11

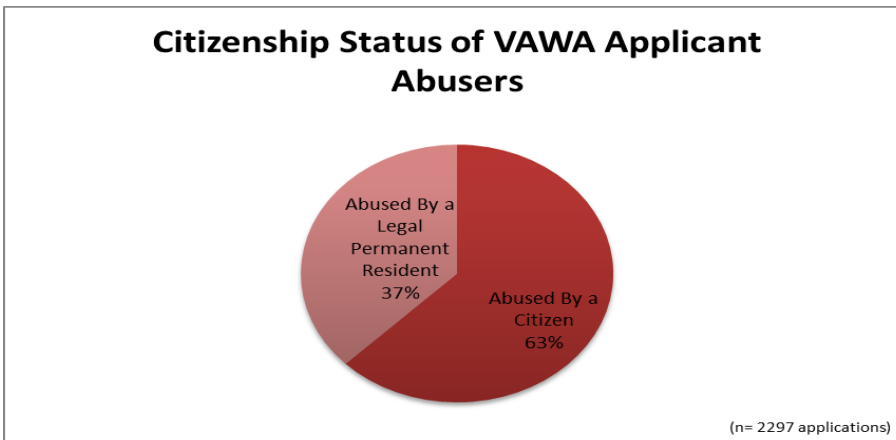


Figure 12

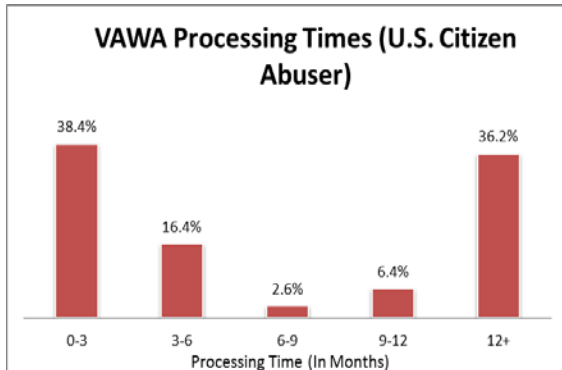
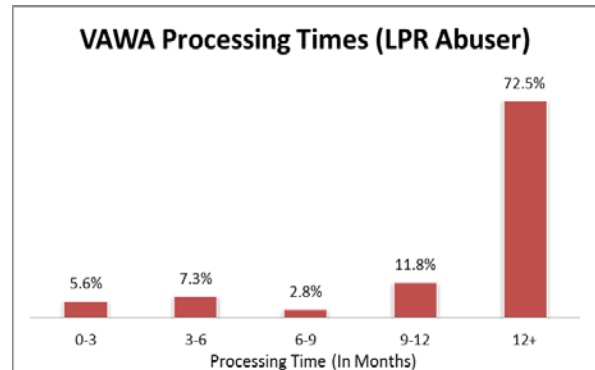


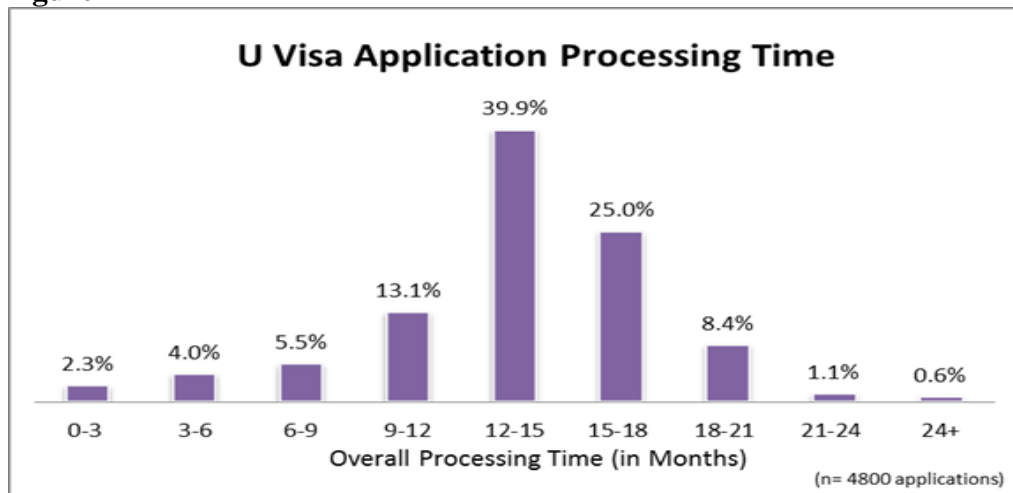
Figure 13



Only a small number of VAWA self-petitioners abused by lawful permanent residents are immediately eligible for work authorization at the time the self-petition is filed. This group consists of battered immigrant spouses of lawful permanent residents who previously filed and then withdrew a family based visa petition they filed on their immigrant spouse’s behalf. This group accounts for the 12.9% of VAWA self-petitioners abused by lawful permanent residents who received work authorization within 6 months of filing. (Figure 13)

Most U visa applicants (83.5%) experience waits of between 7 to 18 months. Only 6.3% receive their employment authorization within 6 months. This survey found that virtually all U visa applicants (93.7%) endure waits of over 6 months for work authorization, with 15.9% waiting between 18 months and 2 years for adjudication.

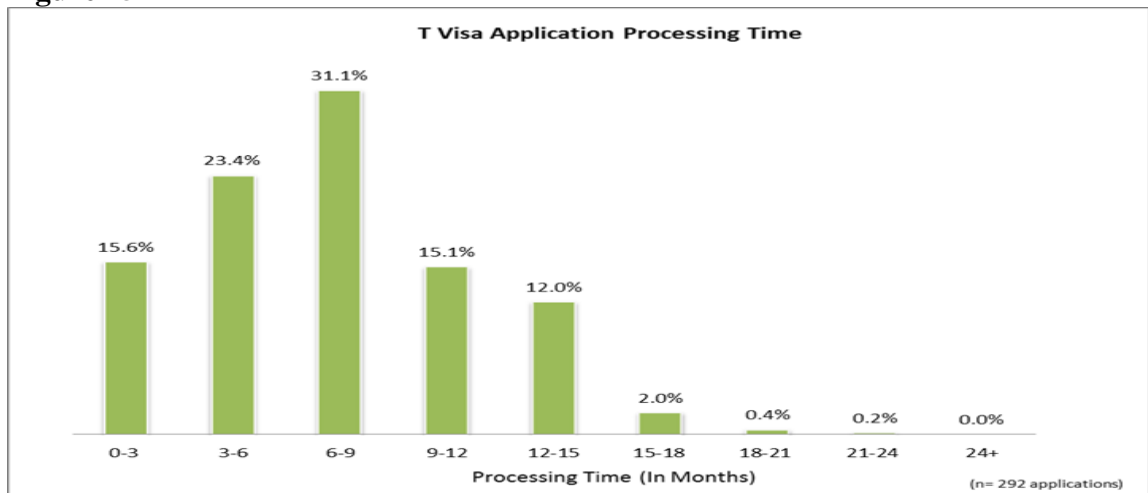
Figure 14



NIWAP's findings of processing times are congruous with the processing times reported by USCIS. As of June 2013, VAWA self-petitioners wait up 19 months for a decision, and as of May 2013, U visa applicants wait up to 15 months.⁴³

Agencies participating in the survey reported shorter case processing times for T visa applications than for VAWA self-petitions and U visa cases. While 39% (n=114) of T visa applicants received work authorization within 6 months of filing, another 31.1% (n=91) waited up to 9 months and another 1% of T visa applicants wait for their work authorization between 9-15 months. These findings provide support to ensuring that the policies and regulations that need to be implemented to sustain case processing for crime victims within 6 months of filing apply not only to VAWA self-petitions and U visa cases but need to apply to T visa cases as well.

Figure 15



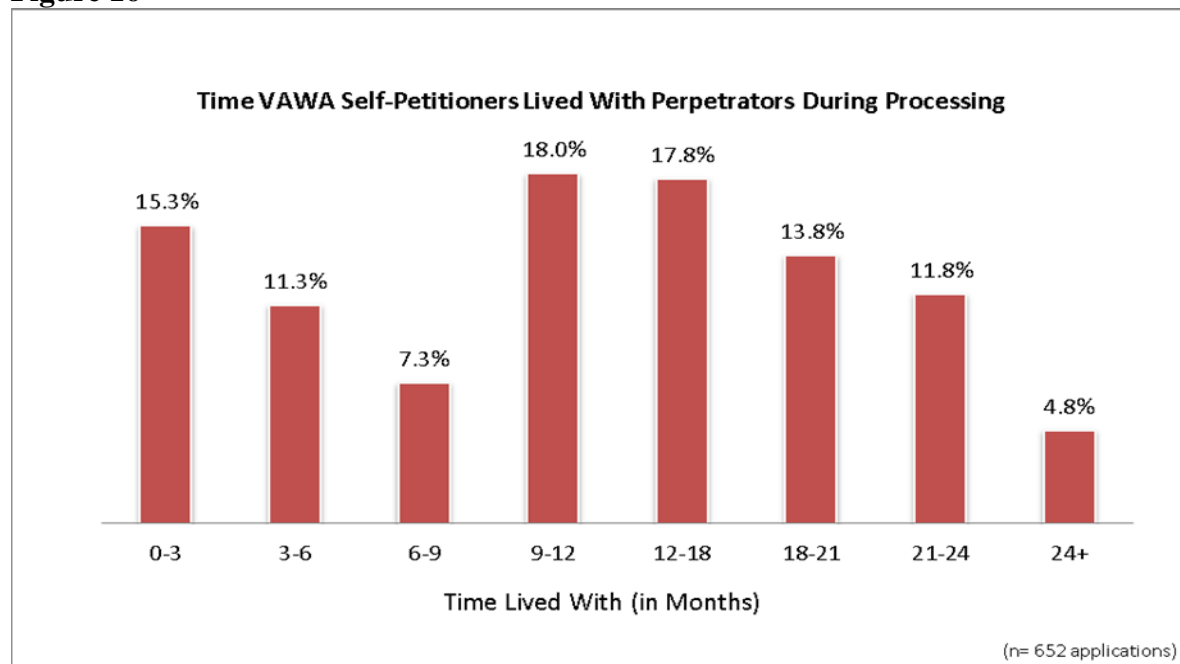
⁴³ Ombudsman Annual Report 2013 (June 27, 2013), available at: <https://www.dhs.gov/ombudsmans-annual-report-congress>.

VAWA Self-petitioners and U Visa Applicants Remain in Abusive Environments

Victims' ability to leave their abuser or perpetrator is tied to how long they have to wait for work authorization.⁴⁴ Without a work authorization victims continue living in abusive homes and working at places of employment where they are victims of rape, sexual assault and other U visa criminal activities.

The NIWAP survey found that only 26.6% (n=173) of VAWA self-petitioners are able to leave their perpetrators within the first 6 months. Most battered immigrant VAWA self-petitioners (43.1%, n= 280) remain with their abusers during the 6-18 months needed to receive employment authorization. Upon receiving approval of their immigration case and work authorization most battered immigrants are able to leave their perpetrators. Work authorization appears to play a significant role in promoting victim separations from their abusers. With all but a small minority of VAWA self-petitioners (4.8%, n=31) leaving their abusers. Most leave upon receiving work authorization or within 6 months thereafter once they have been able to secure employment.

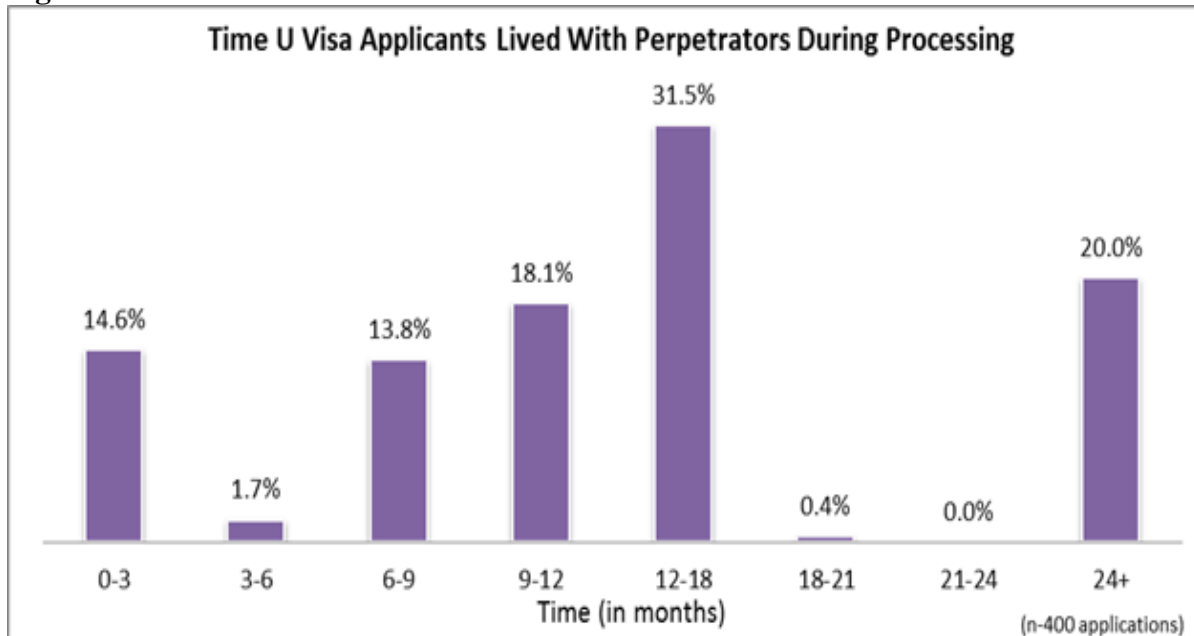
Figure 16



Similarly, among U visa applicants who are victims of domestic violence, without a work authorization, only 16% of U visa applicants are able to leave their perpetrators within the first 6 months. Well over half (63.4%, n=254) live with their perpetrators between 6 and 18 month while waiting for their U visa case to be adjudicated. Of this group, 40.6% (n=162) live with their perpetrators for 9-18 months and 20% (n=80) live with their perpetrators over 2 years.

⁴⁴ For this reason, Congress included an annual reporting requirement in VAWA 2013 requiring reports on time to work authorization separately form and in addition to time completion of adjudication.

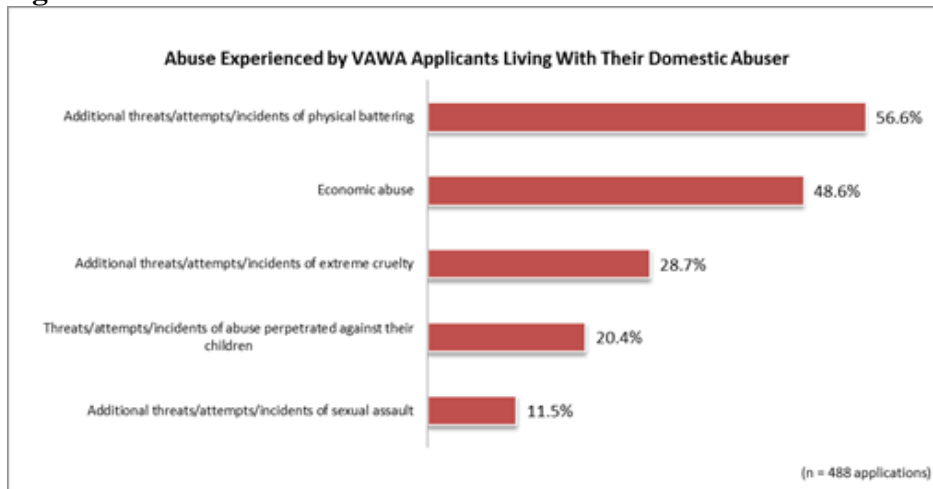
Figure 17



Ongoing Abuse by Perpetrator While VAWA Self-petitioners and U Visa Applicants Await Work Authorization

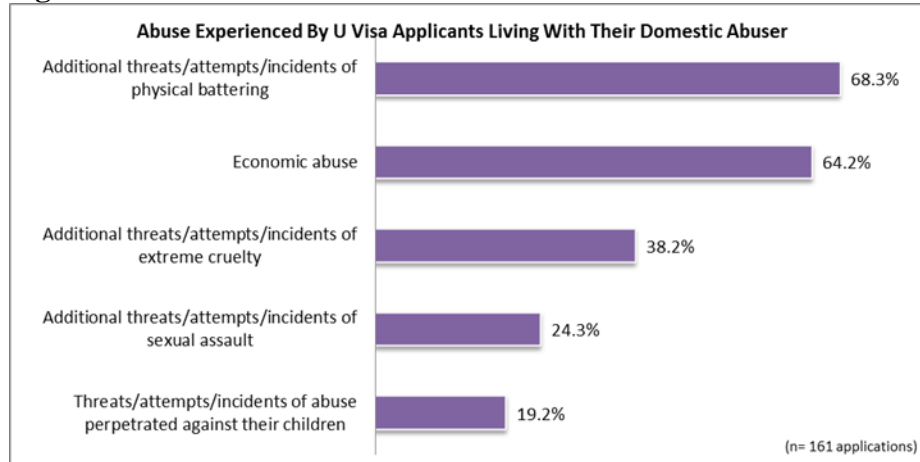
The battered immigrant spouses and children who had filed self-petitions experienced high levels on ongoing abuse perpetrated by their citizen or lawful permanent resident spouse or parent between the time they filed their self-petition and the time their case was adjudicated by DHS. Over half of self-petitioners (56.5%, n=276) report threats, attempts, or incidents of physical battering while their application was pending. Just under half, (48.6%, n=237) report economic abuse and 28.7% report further threats, attempts, or incidents of extreme cruelty. Children also become targets of abuse with 20.4% (n=96) reporting that the abuser threatened, attempted or perpetrated abuse against their children.

Figure 18



U Visa applicant battered immigrants also experience high rates of ongoing domestic violence. Over two-thirds (68.3%, n=110) report threats, attempts, or incidents of physical battering while their application was pending and 24.3% (n=39) report threats, attempts, or ongoing incidents of sexual assault. U visa victims also report high rates of economic abuse (64.2%, n=103). Like VAWA self-petitioners approximately one-fifth (19.2%, n=31) of U visa victims report that their abusers threaten, attempt or perpetrate abuse of their children.

Figure 19



Frequency of Ongoing Abuse by Perpetrator While Awaiting Work Authorization

Over half (55.8%, n=214) of VAWA self-petitioners who live with their domestic abuser report abuse at least once a month. Whereas almost all (97.4%, n=37) U visa applicants who live with their domestic abuser experience monthly abuse.

Figure 20

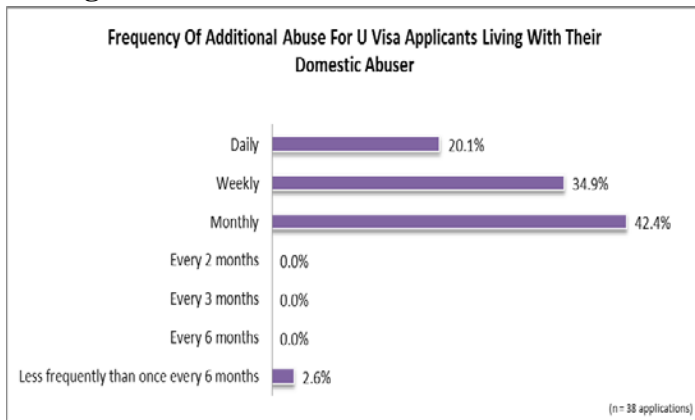
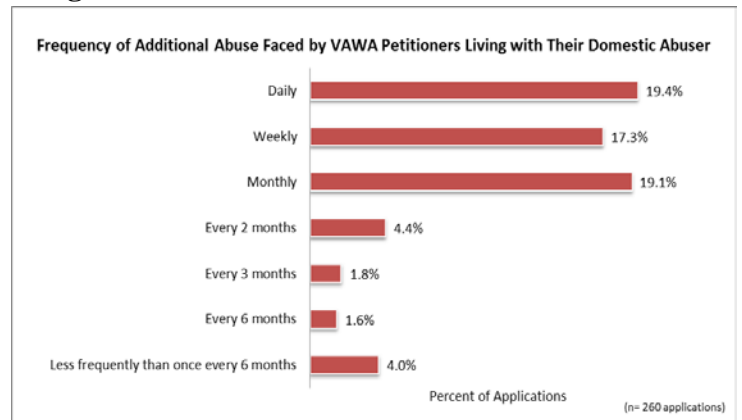


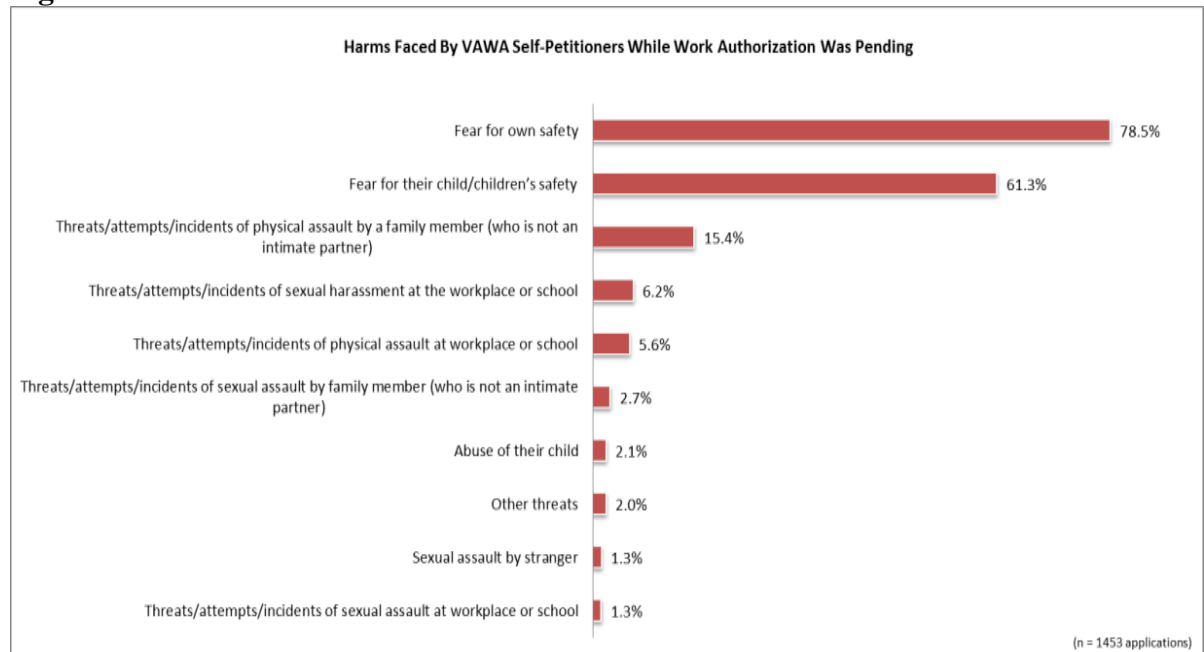
Figure 21



Harm to VAWA Self-Petitioners and U Visa Victims from Sources Other than Their Domestic Abuser

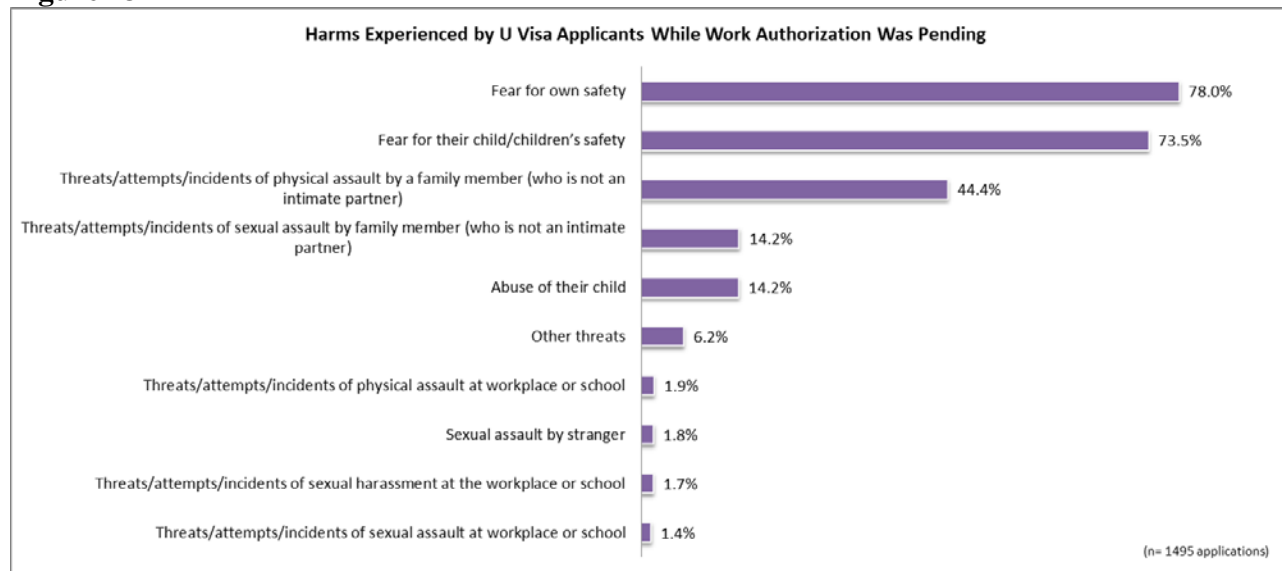
During the time that VAWA self-petitioners and U visa applicants await a decision in their immigration case, they experience various forms of ongoing abuse and fear. High proportions of VAWA self-petitioners (78.5%, n=1141) fear for their own safety and the safety of their children (61.3%, n=891). Some 18.4% (n=267) experience threats, attempts or incidents of physical or sexual assault perpetrated by family members who are not their intimate partners. Others 11.8% (n=171) experience physical assault or sexual harassment at their workplace or school.

Figure 22



U visa victims awaiting outcomes in their immigration cases also experience fear and various forms of abuse. Over three-quarters (78%, n=1166) of U visa applicants fear for their own safety and 73.5% fear for their children's safety during processing times. Well over half (58.6%, n=876) report threats, attempts, or incidents of physical or sexual assault by a family member who is not and intimate partner and 14.2% (n=212) report child abuse. Some also report experiencing threats, attempts or incidents of physical or sexual assault or sexual harassment at their workplace, school or other location.

Figure 23



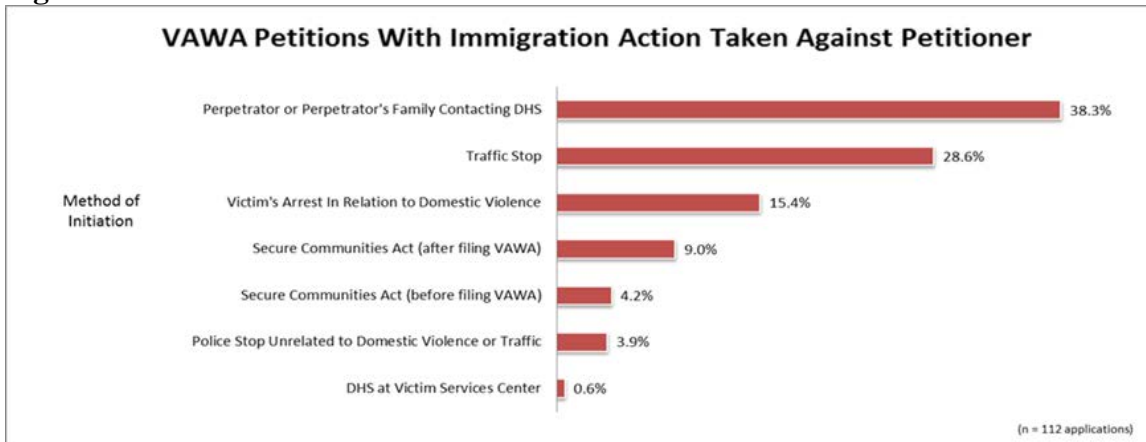
Triggers of Immigration Enforcement Actions Taken Against VAWA Self-petitioners and U Visa Applicants

While their cases are pending, 28% of VAWA self-petitioners become the subject of DHS enforcement actions. The most significant causes of those actions being: traffic stops (28.6%, n=32),⁴⁵ the victim is reported by the abuser or the abuser's family (26.7%, n=30); or the victim was arrested when the police were called to a domestic violence incident in which the battered immigrant victim ended up being arrested (15.4%, n=17).⁴⁶

⁴⁵ It is important to note that in the vast majority of states VAWA self-petitioners and U visa victims cannot obtain driver's licenses until they receive work authorization. Only Maine explicitly grants drivers licenses to VAWA self-petitioners and U visa victims. See, Amanda Baker and Leslye E Orloff, *Acceptable Forms of Identification for State Drivers' License/Identification Cards* (March 13, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-issued-drivers-licenses-and-identification/Drivers-License-Access.pdf/view>

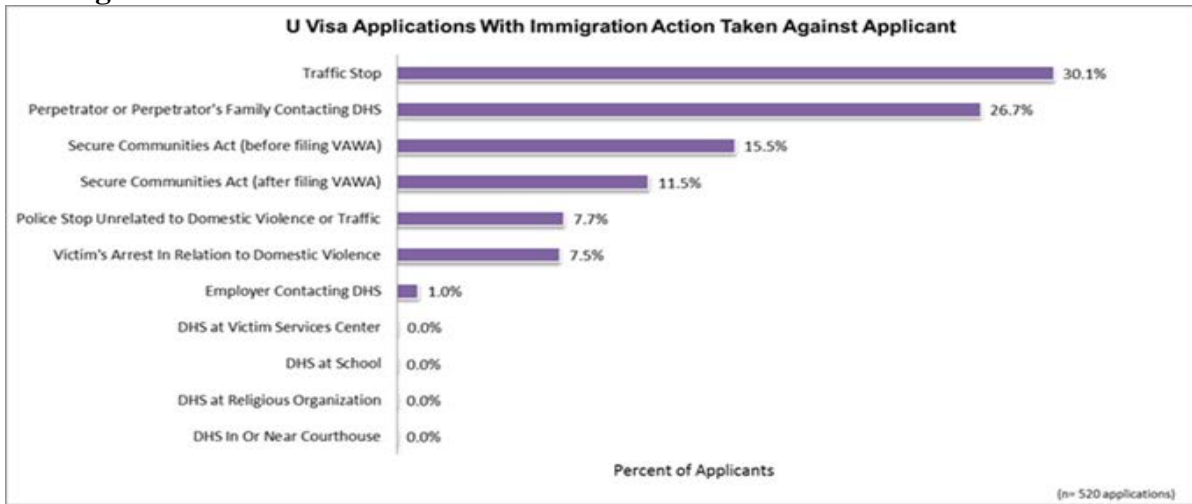
⁴⁶ Most of these arrests of the victim occur for two reasons. 1) The police arrive on the scene, do not determine primary aggressor and make a dual arrest of both parties. Such arrests continue to be made despite the fact that such arrests are contrary to best practices, training and VAWA funding requirements that have been in place for almost two decades. 2) The police fail to attain a qualified interpreter and either do not communicate with the victim, including when the victim called the police for help, or use an unqualified interpreter to communicate with the victim which includes the perpetrator, and the perpetrators family members. As a result the limited English proficient victim, rather than the perpetrator, is arrested. See, Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access*, NIWAP (2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Police-Response-Survey-Report-FINAL-bja.pdf/view>. The fact that to date less than a handful of police and sheriff's departments nationally provide training for the departments officers working in the field on how to work with LEP crime victims and witnesses, contributes to this problem.

Figure 24



Once a U visa case has been filed and while the case is pending, 30% (n=156) of U visa applicants become the subject of DHS enforcement actions. Among victims who fall subject to DHS enforcement actions, the two most significant causes are traffic stops (30.1%, n=157) and reporting by perpetrator or perpetrator's family member (26.7%, n=139).

Figure 25



Income Sources While Awaiting Work Authorization

During the wait for work authorization, over half of the VAWA self-petitioners 50.1% (n=1001) and U visa applicants (59.4%, n=1109) are working without formal work authorization in order to support themselves and their children. On top of struggling to provide for themselves and their children, 48.6% (n=115) of VAWA self-petitioners and 64.2% (n=103) of U visa applicants experience economic abuse.⁴⁷

⁴⁷ Please see Figure 18 and Figure 19 on page 23

Figure 26

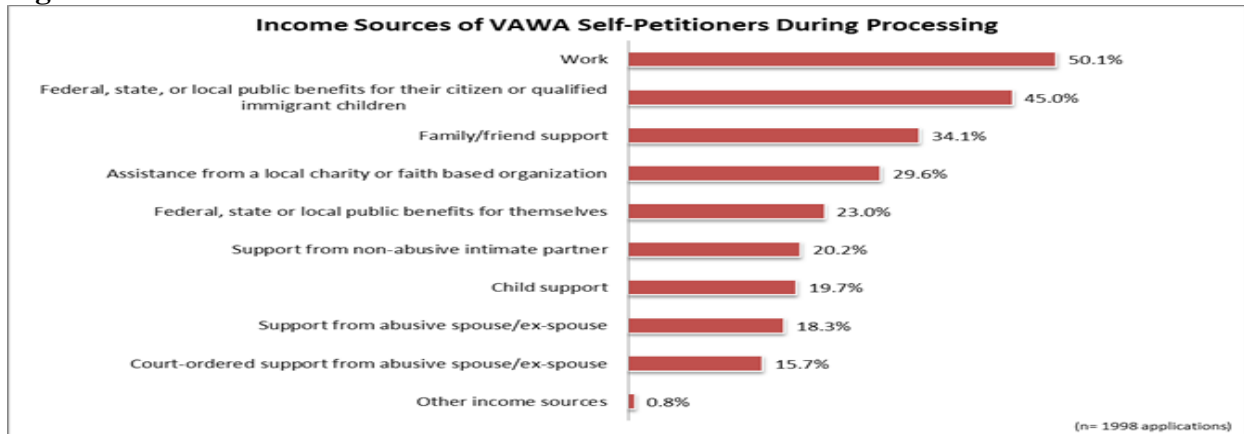
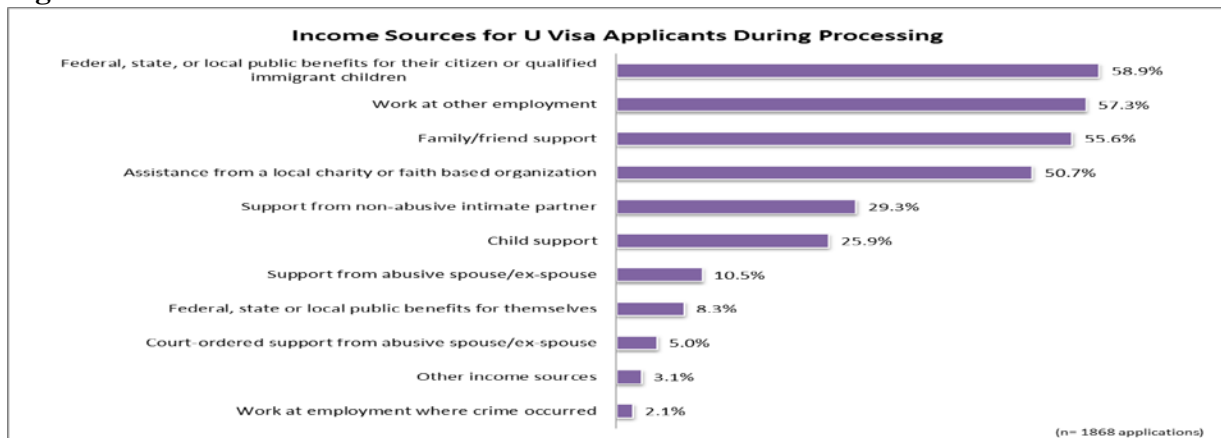


Figure 27



Without any means to work lawfully to support themselves and their children, reliance on state and federal benefits that their children are entitled to receive is the first or second most important source of support for VAWA (45%, n=899) and U visa victims (58.9%, n=1100). The vast majority of these benefits are for child and pregnant or nursing mother nutrition, child, and prenatal victim health care, and subsidized childcare needed by immigrant victim working mothers. VAWA self-petitioners as qualified immigrants have access to some benefits for themselves in addition to what their children receive. U visa victims in most states can only file to receive benefits for their children and can access health care for themselves only from public health clinics. Some states offer some state funded benefits to VAWA self-petitioners and fewer offer limited state funded benefits to U visa victims.⁴⁸

⁴⁸ For state by state charts on benefits access for immigrant crime victims see <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access>

Figure 28

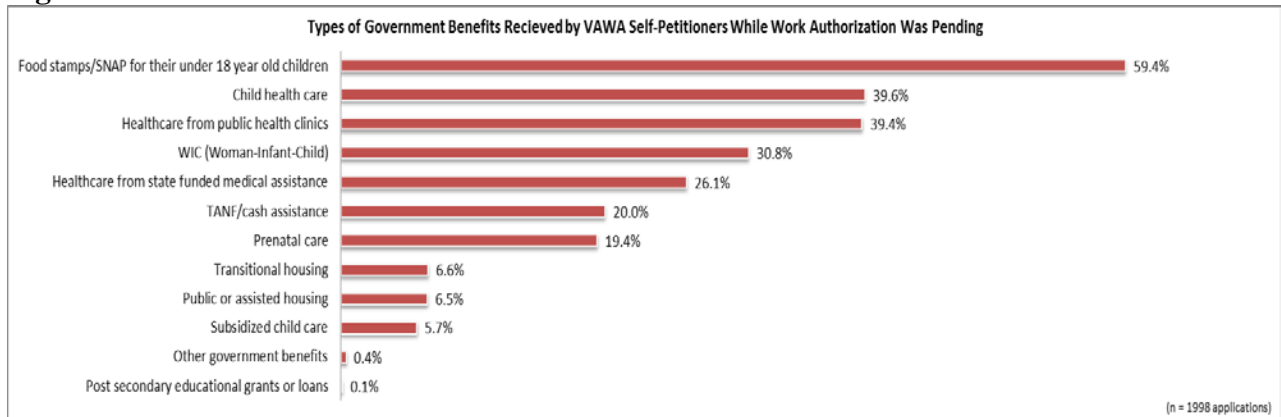
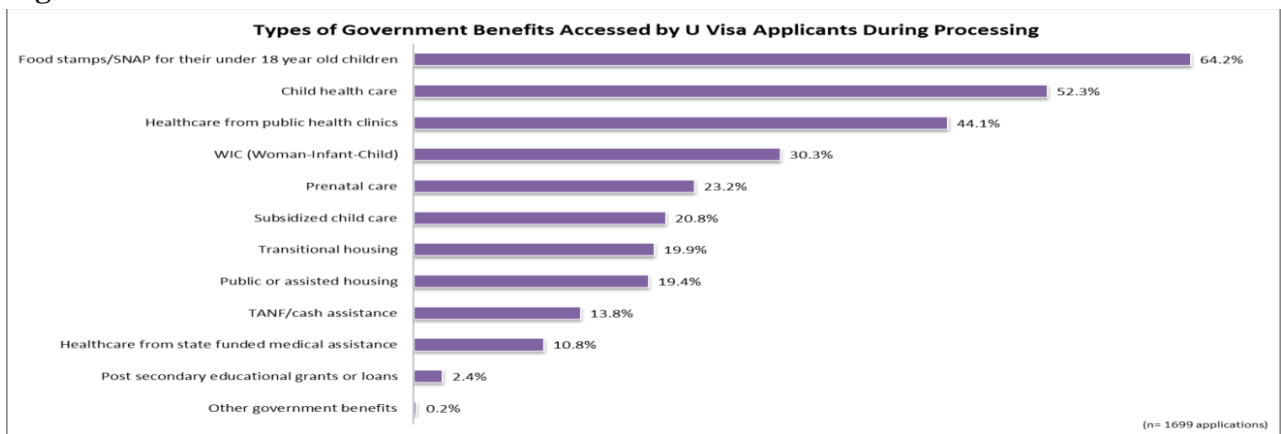


Figure 29



Other significant sources of support for both VAWA self-petitioners (34.1%, n=681) and U visa applicants (55.6%, n=1039) while their immigration case is pending is from friends and family members. Friends and family members who provide support to domestic violence and crime victims do so, despite the risk of retaliation by the perpetrator against them.

Finally, this survey found that local charities and faith based institutions and organizations play a significant role in providing economic support to help immigrant crime victims and their children survive during the long waits for work authorization (VAWA self-petitioners 29.6%, n=591 and U visa applicants 50.7%, n=948). The economic support for victims and their children received from work, public benefits, charity, faith based organizations, friends and family plays a lifesaving safety net role helping survivors who have filed for immigration relief and who are during this time filing police reports and participating in criminal investigations and prosecutions against their perpetrators.

Interaction with the Justice System

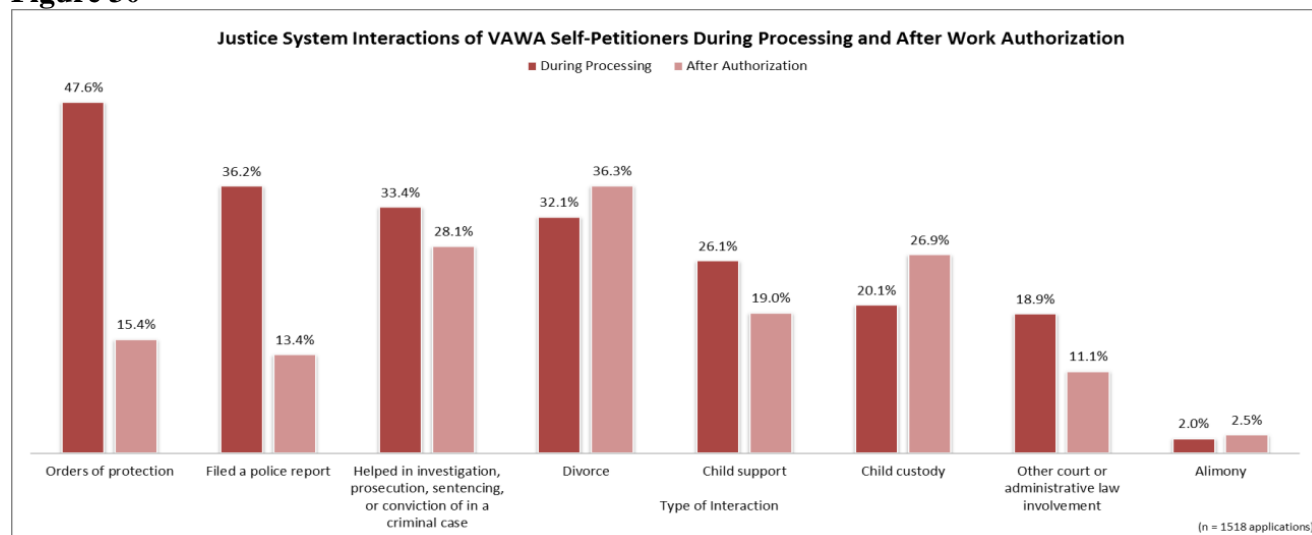
Despite the fact that significant numbers of U visa applicants and VAWA self-petitioners continue living with their abusers and working for abusive employers during the pendency of

their applications, both VAWA self-petitioners and U visa applicants have high rates of justice system participation.

VAWA self-petitioners participation in the criminal justice system: One important finding of the survey was that, while VAWA self-petitioners are not required to interact with the criminal justice system as a pre-requisite to obtain immigration relief,⁴⁹ they are filing police reports at a significant rate of 36.2% (n= 643).

VAWA Self-petitioners seeking help from family courts: Almost half of VAWA self-petitioners (47.6%, n=723) seek protection orders after filing their immigration case and while their cases are pending. Another 15.4% (n=234) wait to file for protection orders until after their work authorization is granted. Despite VAWA self-petitioners willingness to get protection orders, their willingness to seek child custody and child support until after their case is adjudicated may be due in part to the fact that so many stay with their abusers until they receive work authorization through their immigration case. While awaiting work authorization, only 20.1% (n=305) of VAWA self-petitioners file cases in family court seeking child custody and 26.1% (n=396) seek child support. After adjudication, the rate of VAWA self-petitioners seeking child custody rises by 25.3% to 26.9% and divorce increases by 11.5% to 36.3%. However, with work authorization bringing options for economic independence VAWA self-petitioners seeing child support drops from 26.1% to 19%.

Figure 30



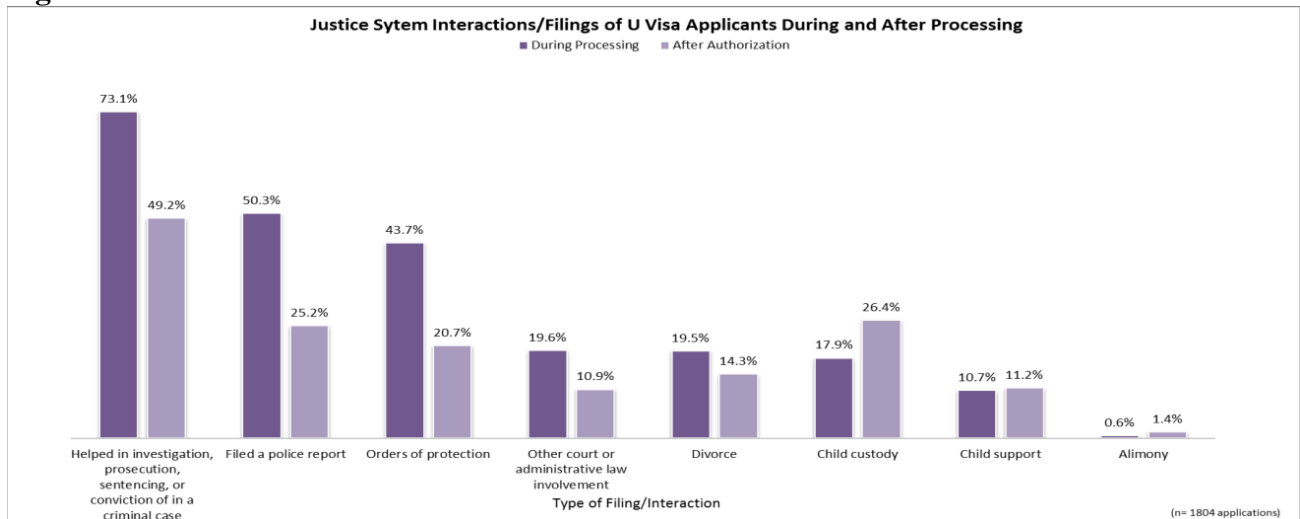
U visa applicants' participation in the criminal justice system: Despite being trapped in abusive environments, 73.1% (n=1319) of U visa applicants are cooperating with law enforcement and 25.2% (n=438) continue to file police reports once their cases are approved.⁵⁰

⁴⁹ This is because VAWA self-petitioners are immigrants who have a path to lawful immigration status based on their family relationship to a citizen or lawful permanent resident. Immigrants abused by their U.S. citizen or lawful permanent resident family members who could have filed an immigration case on the immigrant family member's behalf are eligible to VAWA self-petition.

⁵⁰ These U visa cooperation rates are similar to those reported in prior research. See, Leslye Orloff, Levi Wolberg, and Benish Anver, *U-Visa Victims and Lawful Permanent Residency*, NIWAP (2012) available at

U visa applicants seeking help from family courts: U visa victims also pursue civil or sexual assault protection orders are significant rates (43.7%, n=788) while their cases are pending. Another 20.7% (n=373) wait to seek protection orders until after their U visa is granted. While awaiting work authorization, victims are reluctant to seek child custody (17.9%, n=323) and child support (10.7%, n=193). After adjudication, the rate of U visa victims seeking child custody rises from 32.2% to 26.4% and child support rises only 4.5% to 11.2%.

Figure 31



The fact that the advocates and attorneys responding to the survey were knowledgeable and experienced working with immigrant survivors may have contributed to the levels of justice system cooperation found in the survey. The National Institutes of Justice funded research on the effectiveness of protection orders for immigrant crime victims and found a strong connection between the level of violence and undocumented immigrant survivors' willingness to seek protection orders.⁵¹ Safety planning and victim advocacy played a key role in encouraging immigrant and undocumented victims to seek protection orders.⁵² Research among Latina battered immigrants similarly found that a significant connection between having spoken to others about abuse including help-seeking from advocates and attorneys and battered immigrants willingness to call the police for help.⁵³ This research also found a significant relationship

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/U-Visas-and-Lawful-Permanent-Residency.pdf/view>.

⁵¹ Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, Criminal Justice Review (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf/>.

⁵² *Id.*

⁵³ Mary Ann Dutton, Leslye E. Orloff, Giselle Aguilar Hass, *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. POVERTY LAW & POL'Y 245 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf/>.

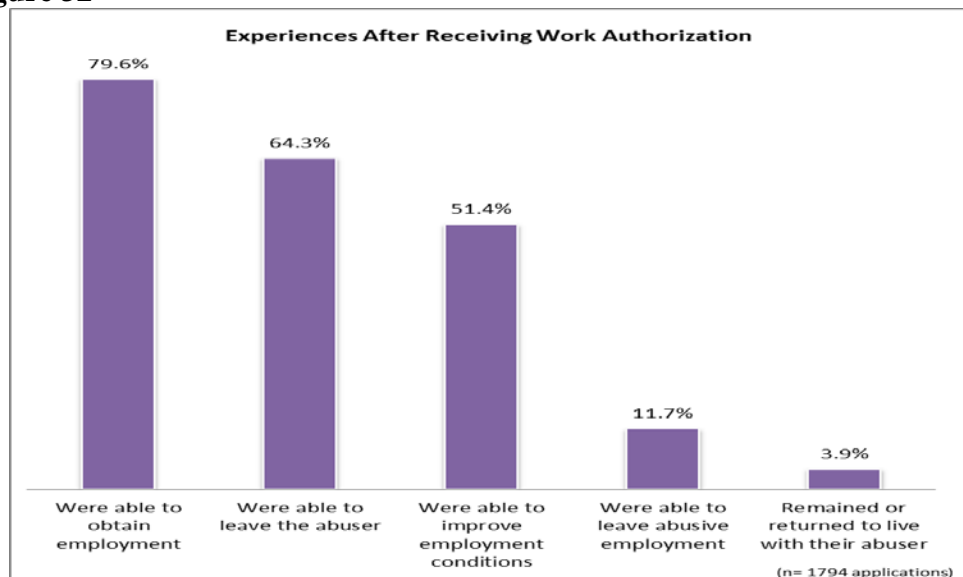
between having sought a protection order and battered immigrants' willingness to call the police for help.⁵⁴

NIWAP's findings confirm that with trained advocacy, immigrant crime victims are willing to access the civil and criminal justice systems for help. However, the effectiveness of justice system intervention is undermined by long delays in access to legal work authorization and the perpetrators' success retaliation by triggering immigration enforcement actions taken against victims that continue after victims have filed their VAWA or U visa cases.

Impact of Receiving Work Authorization⁵⁵

Receiving work authorization translates into a dramatic increase in quality of life for immigrant crime victims. In examining how immigrant U visa applicants lives changed after work authorization this survey documented the following positive experiences reported by U visa applicants as a result of receiving their work authorization. Almost two-thirds 64.3% (n=1154) were able to leave their abuser. Following receipt of work authorization victims' economic viability improved substantially with 79.6% (n=1428) reporting that they were able to obtain employment and 51.4% (n=922) were able to improve their employment conditions as a result of receiving work authorization.

Figure 32



Life-time Traumas Experienced by VAWA Self-petitioners and U Visa Applicants

The impact that work authorization and adjudication of VAWA self-petitioners' and U visa victims' immigration cases has on alleviating suffering is important to emphasize, particularly in light of the high levels of significant trauma histories experienced by the

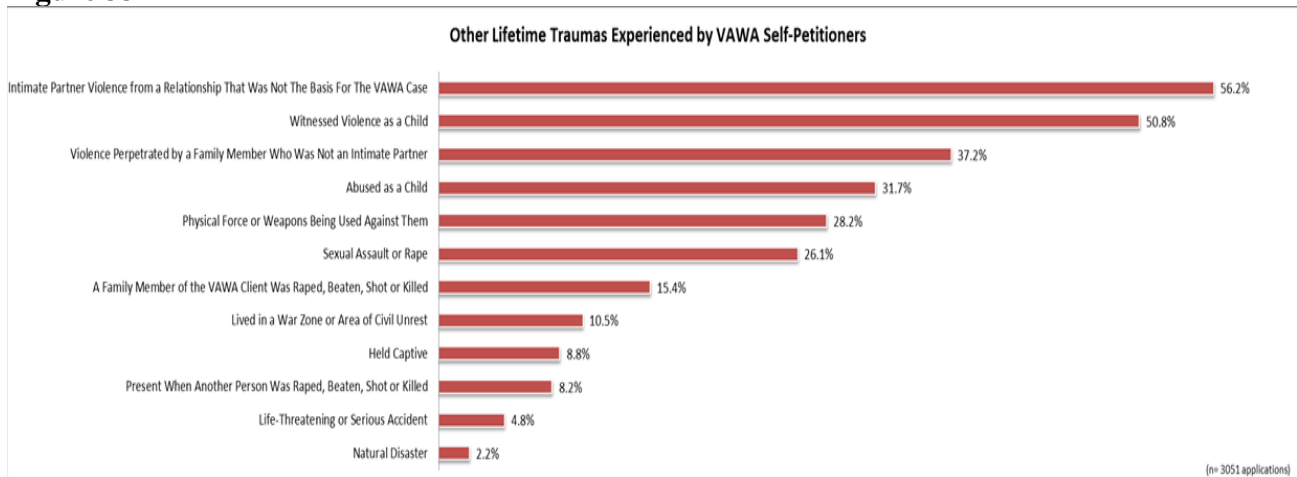
⁵⁴ *Id.*

⁵⁵ Due to technical issues, a corresponding chart for VAWA self-petitioners is omitted. However, the impact of receiving a work authorization for U visa applicants is also applicable to VAWA self-petitioners.

immigrant victims the survey participant agencies were representing and assisting through the immigration process. Survey respondents were asked to report on any lifetime traumas experienced by their VAWA self-petitioner and U Visa clients that were in addition to and apart from the family violence or U visa criminal activity that served as the basis for their application.

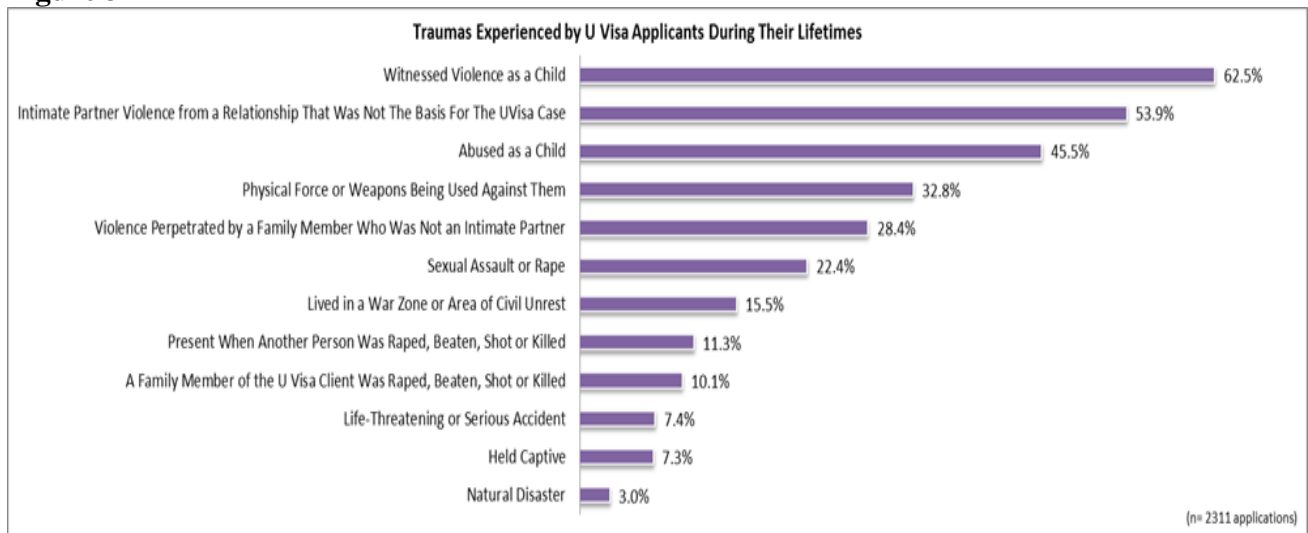
VAWA self-petitioners reported high levels of life time traumas including: intimate partner violence in other relationships (56.2%, n=1715); witnessing violence as a child (50.8%, n=1550); suffering abuse perpetrated by family members who were not their intimate partners (31.7%, n=967); child abuse (31.7%, n=967); assaults including with weapons (28.2%, n=860); and sexual assault or rape (26.1%, n=796).

Figure 33



U visa applicants also have significant trauma histories that include higher rates of child abuse (45.5%, n=1052) and witnessing violence as children (62.5%, n=1444). Many (53.9%, n=1246) U visa crime victims were also victims of intimate partner domestic violence that was in addition to the violence that was the basis for the U visa application. This reflects a combination of battered immigrant U visa applicants who suffer domestic abuse in prior relationships and U visa victims of other forms of criminal activity who also suffered domestic violence in their intimate partner relationships. Immigrant crime victims applying for U visas also suffered high rates of physical assault including from weapons (32.8%, n=758), assault by family members who were not intimate partners (28.4%, n=656) and rape or sexual assault (22.4%, n=518).

Figure 34



The prevalence of multiple life-time traumas among immigrant survivors filing VAWA self-petitions and U visa applications is extremely important. Research examining battered immigrant women’s willingness to seek protection orders and to call the police for help found that battered immigrant with histories of multiple and significant traumas were less likely to turn to the justice system for help that battered immigrants without such trauma histories.⁵⁶ Research has also found a strong causal relationship between the advocacy and support immigrant battered immigrants receive from victim advocates and victims’ attorneys and battered immigrant’s willingness to seek protection orders.⁵⁷ In this survey immigrant survivors are overcoming trauma histories to file VAWA and U visa cases. Further, when immigrant survivors file VAWA self-petitions and U visa applications, engagement with and initiation of a crime victim related immigration case, combined with supportive advocacy delivered by highly trained advocates results in sustained criminal justice system participation by VAWA and U visa victims. This remains true despite the fact that many victims have been forced by the economic constraints of not having legal work authorization to have to continue living with their abusers until their VAWA or U visa case is adjudicated.

⁵⁶ Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, and Nawal Ammar, *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 713 UCLA WOMEN’S L.J. 43, 55 (2003); Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle Aguilar-Hass, *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the U.S.A.*, International Journal of Police Science & Management, Vol. 7 Issue 4 at 230–244 (2005); Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, Criminal Justice Review (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf/>.

⁵⁷ Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, *Use and Outcomes of Protection Orders by Battered Immigrant Women*, prepared for National Institute of Justice Office of Justice Programs, U.S. Department of Justice (2006); Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, Criminal Justice Review (2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf/>.

IV. Recommendations

Under current USCIS case procedures, immigrant survivors of violence can only receive employment authorization if one of the following occurs:

- a) The VAWA self-petition⁵⁸ or U visa application is approved;⁵⁹
- b) The U visa applicant is granted deferred action based on prima facie determination, which is currently available when: (a) a U visa case is before the immigration courts,⁶⁰ or (b) in cases where children will age out;⁶¹
- c) The applicant satisfies the bona fide standard under T visa;⁶² or
- d) The applicant is granted Continued Presence.⁶³

Survivors of violence who do not fall into the above-mentioned categories have historically been left without access to work authorization for long periods of time, often over a year. Although the VAWA self-petitioning regulations issued in 1996 contemplated granting access to work authorization to VAWA self-petitioners and U visa applicants with bona fide cases should receive work authorization, these mechanisms have not been used prior to September 2013 to provide work authorization to battered immigrants and immigrant crime victims. To remedy this, DHS in the fall and winter of 2013 and 2014 took the steps to reduce waiting times and eliminate backlogs of cases that had been pending for more than six months.

The steps taken included:

⁵⁸ 8 C.F.R. §274a.12(c)(9) [adjustment pending] or (c) (14) [deferred action status] eligibility. *See* INS Interim Final Rule, “*Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self Petitioning for Certain Battered or Abused Spouses and Children*,” 61 Fed. Reg. 13061, (Mar 26, 1996). Aleinkoff, Executive Associate Commissioner, Office of Programs, INS Mem/HQ 204-P (April 16, 1996). *See also* Cronin, Acting Executive Associate Commissioner, Office of Programs, INS Mem/HQ 204-P (December 22, 1998); Cronin, Acting Executive Associate Commissioner, Office of Programs, INS Mem. HQ/AND/70/6.1P (September 8, 2000). While USCIS guidance does indicate that employment authorization for approved VAWA self-petitioners can be found at 8 CFR 274a.12(c)(31), current versions of the 8 CFR do not include this provision for who qualifies for a (c)(31) work permit. *See* Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen; Revisions to Adjudicator’s Field Manual (AFM) Chapter 21.15 (AFM Update AD 06-32) (08/31/2011/).

⁵⁹ 8 C.F.R. 274a.12(a)(19) and (20).

⁶⁰ Peter S. Vincent, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal, USCIS (Sep. 25, 2009).

⁶¹ Draft PM-602-0077: Age-Out Protection for Derivative U nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status, USCIS (Oct. 24, 2012).

⁶² 8 C.F.R. §214.1. The bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for a T visa. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T visa applicants to obtain certification from HHS which allows them to access public benefits.

⁶³ 22 U.S.C. 105(c)(3). Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Continued Presence allows the victim to receive temporary work authorization. 28 CFR §1100.35(b).

- Adding 152 adjudicators to the VAWA Unit;
- Adjudicating U visa cases, hitting the cap, and implementing procedures set forth in the U visa regulations to issue wait-list approvals to U visa victims whose cases have been favorably adjudicated; and
- Increasing the speed with which VAWA self-petitioning cases are approved.

NIWAP appreciates the steps USCIS has taken to vastly improve case processing of VAWA and U visa cases and makes recommendations on steps USCIS and DHS can take that will make the recent changes permanent and for additional reforms in policy, in case processing and that can be included as USCIS finalizes the VAWA self-petitioning and U visa regulations. NIWAP proposes the following changes for processing VAWA self-petitions and U visa applications in order to provide earlier access to work authorization. The proposed changes are supported by legislative and regulatory authorities.⁶⁴

Goal of Recommendations:

Ultimately, the goal is for VAWA self-petitioners and U Visa applicants to predictably attain work authorization within 6 months of filing their application with the VAWA Unit of USCIS.⁶⁵ By implementing NIWAP's proposed changes, DHS will have few or no U visa cases or VAWA self-petitioners who have been waiting longer than 6 months without work authorization by December 1, 2014, when reports to Congress on timing of access to work authorization and case processing times are due.

U Visa Applications

NIWAP commends USCIS for approving the allotted 10,000 U visas as early in the fiscal year as possible and strongly recommends that USCIS continue this process in future years. Once all visas are issued, USCIS should continue adjudicating U visa cases and issue wait-list approvals that provisionally approve U-visa cases pending the availability of U visas in the next fiscal year. U visa victims receiving wait-list approvals will also receive bona fide determinations making them statutorily eligible for work authorization while victims wait for visas to become available. This is the process the VAWA Unit began using in the fall and winter of 2013-2014.

The USCIS has statutory⁶⁶ and regulatory authority to issue conditional approvals on the U-visa applications by issuing *bona fide* determinations. The U visa regulations state that:

USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stay from removal...providing employment authorization to alien victims so

⁶⁴ Please see Part II discussing the legislative and regulatory history on work authorization.

⁶⁵ Importantly, employment authorizations are only be valid for a year, and thus, cases should be adjudicated within a year or employment authorization should be while the case is further pending.

⁶⁶ INA §101(a)(15)(U); 8 C.F.R. § 214.14(d)(2).

they will have lawful means through which to support themselves and their families.⁶⁷

The actions that USCIS took in the fall/winter of 2013-2014 implementing a process of for *bona fide* determinations in U visa applications was long discussed by USCIS.⁶⁸ The U-visa *bona fide* standard is similar to the definition of the *bona fide* determination that exists in the T visa regulations. The fact that the VAWA Unit at USCIS was able to staff up, reach the U visa cap so early in the year and issue wait list approvals is based on the expertise VAWA Unit staff has developed in their experience in granting *bona fide* determinations in the T visa context. *Bona fide* determinations enable T visa victims to receive access to public assistance to the same extent as refugees.⁶⁹

Within the T visa's framework, *bona fide* application means an application for T status, which after initial review has been determined that the application is complete; there is no evidence of fraud; and presents *prima facie* evidence of eligibility for T status including admissibility.⁷⁰ U visa victims whose case has been wait-list approved would receive *bona fide* determinations under INA Section 214(p)(6) and would receive deferred action under 8 CFR 214.14(d)(2). Together these remedies give U visa victims the protection two important remedies needed to protect them while they await issuance of their U visas – work authorization and protection from deportation. The *bona fide* standard used would be: *prima facie* evidence of eligibility including admissibility/waiver of inadmissibility + no evidence of fraud.

Bona fide determinations and deferred action determinations should continue to be made in U visa cases within 6 months of filing. We strongly encourage USCIS to maintain staffing levels of specially trained adjudicators at the VAWA unit that are required to keep case processing times under 6 months from filing to adjudication. However, we recognize that over time priorities could once again change. The following changes in policy, regulations and

⁶⁷ USCIS Interim Rule, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. No. 179,53033 (Sep. 17, 2007).

⁶⁸ See Advance Questions/Discussion Topics for VSC Meeting, 2 (Aug. 20, 2009). “The *Bona Fide* standards have not been set. We do know they will be different from the standards for Interim Relief. For example it is expected that a properly filed U Nonimmigrant Status Certification (Form I-918, Supplement B) will be required for the *Bona Fide* determination.” See also Q&A, Filing T, U, and VAWA Petitions with USCIS, 4 (June 30, 2009). “For FY 2010, we are engaged in internal discussions concerning how to best leverage available resources to make *bona fide* determinations and balance resources needed to fully adjudicate cases... Given that we have not yet conducted a *bona fide* determination, we are unable to provide a description of what meets the *bona fide* standard. Nonetheless, we are engaged in internal discussions, particularly with respect to how the *bona fide* standard may differ from the standard currently used in *prima facie* determinations, and intend to have guidance in place by the end of August to give the VSC time before the end of the fiscal year to prepare to implement the standard after October 1.”

⁶⁹ Section 107(b) of the TVPA also provides that aliens who are victims of severe forms of trafficking in persons who have been granted continued presence, or who have filed a *bona fide* application for T nonimmigrant status, also are eligible to receive certain kinds of public assistance to the same extent as refugees.

⁷⁰ Liana Sun Wyler and Alison Siskin, *Trafficking in Persons: U.S. Policy and Issues for Congress*, Congressional Research Service, 22 (Feb. 18, 2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/human-trafficking/government-memoranda-and-factsheets/CRS%20trafficking%202-18-10.pdf/view>; see also INS Final Rule “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” 67 Fed. Reg. No. 21, 4800-01, (Jan. 31, 2002).

procedures will help maintain USCIS' ability to adjudicate U visa cases and issue work authorization within 6 months of filing.

- **DHS and USCIS should act now to put in place policies and procedures that are needed to maintain and preserve the integrity of the specially trained VAWA Unit and its staff in perpetuity.** NIWAP is submitting a separate memo on the VAWA Unit including the importance of:
 - maintaining specially trained adjudicators in the unit and not subjecting them to standard rotation, and
 - recruiting and promoting supervisors from within the VAWA unit or from the Vermont Service Center staff with significant experience, expertise and positive performance ratings during their work in the VAWA unit.
- **Create a process for issuing bona fide determinations and deferred action in U visa cases within 6 months of the case being filed any time a request for further evidence is issued.** Such a process would build into the system of U visa case processing a mechanism to ensure that U visa victims are not harmed in the future should case processing backlogs return either temporarily⁷¹ or long term. USCIS should commit to a process⁷² that ensures that each case is reviewed by the adjudicator assigned to the case within 6 months of the case being filed. At the time of the review the adjudicator should approve the case if there is sufficient evidence in the case for approval. If the case cannot be approved at that time bona fide case determinations⁷³ and deferred action determinations should be made in any case that in which an RFE is issued where the response date set in the RFE is for a date that would fall beyond 6 months after the U visa case was filed. This would be in cases in which there is no evidence of fraud (including biometrics results) and prima facie evidence of eligibility. When an adjudicator is issuing a request for further evidence the adjudicator has been involved in a close review of the facts and the evidence in the case. The adjudicator would have the information to simultaneously with the RFE do the following:
 - Make a prima facie determination based on evidence of
 - U visa eligibility
 - Admissibility or eligibility for a waiver of admissibility

⁷¹ There may be instances in the future in which U visa and VAWA case filings increase temporarily over what had been anticipated and time is needed to add additional adjudicators. This will be discussed in detail at the end of this recommendation section.

⁷² USCIS should issue policy memoranda implementing this process and include a description of this process in the final U visa regulation when amending 8 CFR 214.14(d)(2) and should include language in the preamble to the final regulation describing this regulatory change.

⁷³ We recognize that there could be some cases in which there is no evidence of fraud but the evidence in the case may not be sufficient for a bona fide determination (the missing information is being sought in the RFE). In these cases where there is no evidence of fraud and based on biometrics results and/or the evidence in the case supporting a waiver of inadmissibility that has been filed, the adjudicator would issue deferred action only and not a prima facie determination.

- Determine that there is no evidence of fraud
- Review biometrics and make a deferred action determination
- **Make U visas issued for victims who have received wait list approvals relate back, nunc pro tunc, to the date that the date the applicant was provided a wait-list approval.** This will allow U visa victims to apply for lawful permanent residency 3 years after their wait-list approval. It will also improve access that U visa victims have to the federal, state and local benefits systems. Such an approach could create an opportunity for U visa victims who are wait-list approved:
 - to gain access to purchase insurance through state and federal health care exchanges; and
 - to be considered lawfully present for purposes of prenatal care and child health care.

Issuing policies and including in the final U visa regulations amendments and preamble language describing the need for this approach will help assure that backlogs in case processing of U visa cases will never again jeopardize the life and safety of U visa victims and their children and will no longer undermine detection, investigation and prosecution of criminal activity.

VAWA Self-petitions

NIWAP commends USCIS and DHS for the significant improvements in reducing case processing backlogs in VAWA self-petitioning cases that occurred as the result of adding adjudicator staff at the VAWA Unit in the fall/winter of 2013-2014. The survey results reported above underscore the importance of swift adjudications of VAWA self-petitioning cases and the safety benefits for battered immigrants and their children that come with deferred action and early access to work authorization. As discussed above with regard to the U visa we are encouraged and want to make recommendations there that we believe, if implemented will prevent VAWA self-petitioners from ever again having to wait more than 6 months before receipt of deferred action and work authorization. The following changes in policy, regulations and procedures will help maintain USCIS' ability to adjudicate VAWA self-petitions and issue work authorization within 6 months of filing:

- **Issue biometrics appointments to VAWA self-petitioners at the beginning of the case automatically in the same way biometrics are issued in every other immigration case type.** The address to be used to send the biometrics appointment must be the address that the VAWA Unit has determined is the self-petitioner's safe address. Having fingerprint notices issued immediately after the VAWA self-petition is filed will facilitate early deferred action determinations in VAWA self-petitioning cases. Although finger prints are not required to find good moral character in VAWA self-petitioning cases and are not required to approve the VAWA self-petition, all VAWA self-petitioners are required to submit biometrics as part of their

lawful permanent residency application. VAWA self-petitioners whose abusers are U.S. citizens or who can capture a priority date from a visa petition their abuser previously filed on their behalf are currently issued fingerprint appointments because they can simultaneously file the application for adjustment of status together with their VAWA self-petition. The biometrics receive from the fingerprints facilitates adjudication in these cases and has over the years resulted in many, but not all, of the VAWA self-petitioners who with prior priority dates or whose abusers are U.S. Citizens being granted work authorization within 6 months of filing the VAWA self-petition. When USCIS issues the final VAWA regulations issuance of appointments for biometrics at the beginning of the VAWA self-petitioning case should be included in the final regulations. The final regulations should require that biometrics be issued to all VAWA self-petitioners and inform VAWA self-petitioners about the process for filing for a waiver of the biometrics fee under INA Section 245(l)(7).

- **Create a process for issuing bona fide determinations and deferred action in VAWA self-petitioning cases within 6 months of filing any time a request for further evidence is issued.** As discussed above with U-visa cases, there is a need to put in place policies and operating procedures that will ensure that VAWA self-petitioners are not harmed in the future should case processing backlogs return either temporarily⁷⁴ or long term. USCIS should commit to a process⁷⁵ that ensures that each case is reviewed by the adjudicator assigned to the self-petition within 6 months of the case being filed. When this care review occurs within 6 months of filing the adjudicator should:
 - Approve the self-petition if it is immediately approvable and along with approval issue deferred action and work authorization as is current practice.
 - If the VAWA self-petition is not immediately approvable and the adjudicator is issuing an RFE, the adjudicator should concurrently determine:
 - Whether a prima facie determination be issued to the self-petitioner?
 - If no prima facie determination has been issued, does the evidence in the case support a prima facie determination?
 - If the a prima facie determination has or can be made, if there is no evidence of fraud in the case the adjudicator should issue the self-petitioner deferred action and send the deferred action notice together with the request for further evidence.
 - Allow all VAWA self-petitioners to file work authorization applications together with their VAWA self-petitions

⁷⁴ There may be instances in the future in which U visa and VAWA case filings increase temporarily over what had been anticipated and time is needed to add additional adjudicators. This will be discussed in detail at the end of this recommendation section.

⁷⁵ This process should be codified when the final VAWA regulation is issued.

This process can be initiated now under current law and together with the increased staffing at the VAWA Unit can help ensure that VAWA self-petitioners will continue to receive deferred action and the ability to apply for work authorization within 6 months of their VAWA self-petition being filed. Adding a biometrics process to VAWA self-petitioning cases in the final VAWA regulation will bring case processing of VAWA self-petitioning cases in line with all other case types for biometrics purposes will improve this process further. The suggested changes will also help ensure that should backlogs begin to grow again in VAWA case adjudications there is a system in place to mitigate the harm of these backlogs on the lives and safety of battered immigrants and their children. Having the ability to work lawfully will also sever economic power and control that crime perpetrators exert over victims and strengthen the ability of law enforcement and prosecutors to bring perpetrators of crimes against immigrants to justice.

Overall, by building upon USCIS' recent VAWA case processing successes and creating the institutional and legal framework to make these improvements permanent USCIS will be playing the significant role Congress envisioned making a direct and crucial contribution to the personal and societal benefits that come from improving protections for immigrant crime victims while enhancing the safety in communities across the United States.

APPENDIX A

Illustrative Cases Showing the Impact of Delays in Processing Times for VAWA Self-Petitioners and U Visa Applicants with Pending Cases⁷⁶

Maria

Maria worked for several years at a “panaderia” a bakery in the San Francisco bay area. There was a robbery at the location. The police were called and during the crime investigation of the robbery as we reviewed the surveillance camera tapes to gather evidence and identify the robber, we saw on that tape Maria being raped by one of her supervisors. I approached Maria and because of the U-visa I was able to get her to make a police report and assist in the identification and criminal investigation of her attacker. As we were in the process to attempting to arrest the supervisor for the rape, the employer tipped off the perpetrator who fled. Police have not been able to locate the perpetrator to execute the warrant. We signed a U-visa certification in Maria’s case and Maria filed her U-visa application. A significant period of time passed after Maria filed her U-visa application. Maria continued to work for her employer. She could not leave because her income from the bakery was the sole source of support for herself and her children. Maria was a single mother. Maria’s employer hired a new supervisor who many months later while Maria’s U-visa was pending also raped Maria. This time she went to the San Francisco Police Department immediately to report the rape. The perpetrator was arrested and convicted and Maria received a second U-visa certification for her assistance in this second rape case. Maria again continued to work for the employer where the rapes occurred until she finally received a U-visa approval and work authorization that allowed her to seek new employment. Maria’s inability to expeditiously obtain legal work authorization left her with no other option than to continue working for her employer who assisted her first rape perpetrator in eluding prosecution and hired a second supervisor who raped her again. The second rape could have been prevented if Maria had been able to obtain legal work authorization in her first U-visa case much earlier.⁷⁷

Ana

Ana is a monolingual Spanish-speaking Mexican national who was employed as a night shift janitor for a large building services contractor called XYZ Industries. Alfredo Barbera, the bilingual foreman of her building who had access to all floors and offices the janitors cleaned, introduced himself to her as the “boss,” and was the only supervisor physically on the premises during the night shift. While Alfredo did not have the authority to hire, fire, promote, demote, transfer or discipline Ana, he assigned Ana to her work stations, provided her training regarding her job duties, directed, inspected and evaluated her work areas on a nightly basis, and approved or withheld approval for certain types of schedule changes she requested. During Ana’s employment, Alfredo made humiliating

⁷⁶ The names and identifying details about the cases reported here have been changed to protect the confidentiality of the victims whose stories are related here.

⁷⁷ From conversations and trainings presented by Sergeant Inspector Tony Flores, San Francisco Police Department (2011 and 2012).

sexually explicit comments to her, exposed himself to her, touched her breasts and buttocks against her will and ultimately raped her when she was cleaning an empty office during one of her shifts. Alfredo repeatedly warned Ana if she told anyone, no one would believe her because he was “the boss” and she was just a “temporary” worker. And after Ana mustered the courage and complained to management about Alfredo’s sexual harassment and assault, management told her they would take responsibility for notifying the police about the sexual assault. Ana offered to speak to the police together with the human resources staff from the company but the company never contacted the police or filed a police report. Ana was forced to sign a confidentiality agreement in English, which discouraged her from speaking with anyone outside the company about her allegations or else face the threat of discipline, up to termination. She was also immediately transferred to a shorter-term position and terminated from her job soon thereafter. Months later when Ana learned no police report had ever been filed she went to the police and filed a police report on the sexual assault.⁷⁸

Rosie

Rosie is a Spanish-speaking Salvadoran national who was employed as a line cook for a small fast food restaurant chain called La Barbacoa Grill. Jose and Miguel, two bilingual kitchen supervisors, did not have the authority to fire, hire, promote, demote, transfer or discipline workers, but they directed Rosie on how to cook and clean her station, and they oversaw her work during her shifts. Jose and Miguel also had the ability to send Rosie home and assign her different tasks; she was also required to take orders from them. During Rosie’s employment, both Jose and Miguel subjected her to unwelcome sexual advances, including sexually explicit comments and jokes, demands for sexual touching and touching her breasts and buttocks against her will. Jose stalked Rosie and forced her to seek a restraining order. After Rosie complained to management about Jose’s sexual harassment, her hours were significantly cut. Her employer attributed the change in Rosie’s schedule to business slowing down for a bit, but her hours were never restored. Within months following her complaint about Jose, Miguel raped her, and she could no longer continue working there. Rosie reported the rape to the police and cooperated in the criminal prosecution of Miguel who pled guilty and was sentenced for two crimes – sexual battery and attempt to keep a victim witness from filing a police report.⁷⁹

Maria Luisa

Maria Luisa, a Mexican native, married Victor, a Mexican-American U.S. citizen, in Mexico. Victor brought Maria Luisa and her three Mexican born children to the U.S. illegally, but later never wanted to file legal status papers for them. For years, Victor subjected Maria Luisa to emotional and physical abuse. He would shove and beat her, and threaten to kill her. After he threatened her with a shotgun in October of 1997, Maria Luisa fled to a shelter in a nearby state. Because there was not enough room for her and her children in the shelter, they stayed in a motel for several months before being moved to another shelter because she could not afford the motel due to the fact that she did not have

⁷⁸ Case information on file with counsel for the victim Equal Rights Advocates, San Francisco, California.

⁷⁹ Case information on file with counsel for the victim Equal Rights Advocates, San Francisco, California.

work authorization and could not work. After the stress of being moved around and not being able to afford housing, Maria Luisa eventually contacted Victor through a friend, despite the restraining order she had received to keep him away from her.⁸⁰

Madeleine

When Madeleine's ten year old son told her that his stepfather had sexually abused him and his nine year old sister (the abuser's biological child), Madeleine left the abuser with her children. She then reported the abuse to the police, and her estranged husband was arrested. Following his arrest for incest and sexual abuse on a child, it was discovered that this pedophile had abused a six-year-old neighbor child as well. All charges are currently pending against him and Madeleine's U visa case was certified by DA. She was encouraged to report by availability of U. However, since her U visa application is still pending, she is suddenly single parent and needs employment authorization to provide for her children. She is also fearful that the perpetrator will take her kids away from her because of her inability to work and support her children.⁸¹

Gisela

In the summer of 2012, Gisela's husband strangled her and threatened her with a knife in front of their two-year-old daughter and six-year-old son. This violent episode followed years of abuse. Gisela called the police, who arrested and jailed her husband. Gisela cooperated fully in the investigation and prosecution of the domestic violence crime against her. Gisela was completely financially dependent on her husband. Since her husband's arrest, Gisela has lived in 4 shelters in less than a 1-year period because the shelters require her to work after a short grace period. Gisela applied for the U visa on November 28, 2012, but has not yet received work authorization because USCIS has not yet adjudicated her application. Moving from shelter to shelter has magnified her and her children's already traumatized state. Gisela's children also are unable to live in a stable, calm environment because they move so often to new shelters and schools due to Gisela's inability to work.⁸²

⁸⁰ Leslye E. Orloff, et al, *New Dangers for Battered Immigrants: The Untold Effects When Immigrant Victims Have to Leave the U.S. to Obtain Lawful Permanent Residency as VAWA Self-Petitioners*, National Network to End Violence Against Immigrant Women, 140 (1999), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/immigrant-victims-stories/New%20Dangers%20245i%20LPRStatus%20Abroad%202011.pdf>.

⁸¹ *Stories From the Field: A Collection of Stories of Immigrant Survivors Documenting the Need for VAWA Immigration Protections*

In the Violence Against Women Act (VAWA) Reauthorization of 2012, NIWAP (May 16, 2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/immigrant-victims-stories/Stories%20From%20the%20Field-Need%20for%20VAWA%20Immigration%20Protections%209.15.12.pdf>.

⁸² Letter to the Department of Homeland Security (Aug. 23, 2013). In August 2013, 135 national, state and local organizations submitted a letter to DHS in support of issuing work authorization for VAWA, U and T visa applicants while their applications are pending. The case was adapted from the contribution by the Immigration Center for Women and Children in California.

Jin

Jin is from Japan and came to the U.S. in 2001. She lived with her boyfriend, Max, a truck driver. In the six months they lived together, Max regularly abused Jun, preventing her from leaving the house, pushing her, grabbing her, hitting her, kicking her, raping her and threatening to kill her. At one point, the police appeared at the apartment Max and Jin shared to check on Jin's welfare because they heard from a Japanese woman in the community that Jin was being beaten and held against her will. The officers saw Jin's bruises and through an interpreter, listened to her describe the abuse she had been suffering. A protection order and arrest warrant for Max was issued, but Max has not been apprehended yet. Jin is currently homeless and without employment. Because she is undocumented, she cannot obtain a work authorization or transitional housing that would help her get back on her feet after Max's abuse of her.⁸³

⁸³ Leslye E. Orloff and Anna Pohl, *Barriers to the Safety of U Visa Protection: Immigrant Crime Victims At Risk*, NOW Legal Defense and Education Fund: Immigrant Women Program (May 2003), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/immigrant-victims-stories/Barriers%20to%20the%20Safety%20of%20U-Visa%20Protection.pdf>.