

# Building Legal Protections for Immigrant Survivors: Past, Present and Future

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Community Lecture

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***Why Legislative Reforms  
Were Needed to Help  
Battered Immigrants***

# What Were the Legal Options for Immigrant Victims in 1993- Pre-Violence Against Women Act?

- Little access to Justice system (police, courts, prosecutors)
- No independent access to legal immigration status
- Few programs nationally helping immigrant or LEP victims
- No language access government help

# Pre VAWA Help for Immigrant Victims

- Number programs serving immigrant victims
  - Less than 50 (most in urban areas)
  - Most operating with little funding
  - Isolated from one another
- Most only offering domestic violence services
- Few if any immigration options
- Virtually no access to family courts
  - protection orders
  - custody

# VAWA Immigration Provisions Needed To:

- Sever abuser/perpetrator control
  - History - Coverture
  - Spouse and children (VAWA)
  - Employer/employee (U and T visas)
    - Locking them in abusive relationships
    - Keeping them from seeking help

# Immigration Law Historically Gave:

- Spouses and Parents
- Control over the immigration status of
- Alien spouse and children
- Citizen or permanent resident controls
  - Whether to file
  - When to file
  - Whether alien family member can attain or keep legal immigration status

# Immigration Related Abuse -- Examples

- Threats to report victim to immigration authorities
- Calls to immigration authorities to involve them in taking action against the victim
- Threats of deportation
- Not filing immigration papers
- Keeping her identification documents
- Hiding notices to appear in immigration court
- Filing papers for children but not spouse
- Raising immigration in family court to win custody
- Obtaining/making spouse work with false papers
- Asking family court judge to report victim to DHS

# Immigration-Related Abuse Lock's Immigrant Women in Abusive Relationships

- Keeps victims from
  - seeking help
  - Getting protection order
  - Calling police
  - Cooperating in prosecutions
- NIJ Research found that 65% of immigrant victims report some form of immigration related abuse



# Dependence On Spouse For Legal Immigration Status

- Exacerbates:
  - Likelihood of domestic violence
  - Severity of the violence
  - Isolation of the victim from help
- Higher Risk When Abuser is a
  - Spouse; and a
  - Citizen
  - Lawful permanent resident
  - Lawful Immigrant Visa Holder

# Threats About and Fear of Deportation: Primary Barrier

- Unaddressed blocks all access to
  - Victim services
  - Health Care
  - Justice system
  - Shelter
  - Police
- Role of lack of information about US legal and social services system
- Role of threats of deportation
- Affects both documented and undocumented immigrant victims

# Domestic Violence Prevalence Rates and Severity

- U.S. in general – 22.1% (NIJ)
- Immigrant women – 30-50%
- Research has found that immigrant victims
  - Stay longer
  - Have fewer resources
  - Sustain more severe physical and emotional consequences of abuse

# Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

# Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for victims:
  - 72.3% never file immigration papers.
  - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant victims report some form of immigration related abuse (NIJ)

# Immigration Related Abuse as a Lethality Factor

- **10 times higher** in relationships with physical/sexual abuse as opposed to psychological abuse
- Lethality factor can predict abuse escalation
- Corroborates existence of physical and sexual abuse

# *Protecting Immigrant Mothers, Protects Children*

- Immigrant victims who receive help including immigration relief child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

# NIJ funded research on protection orders and immigrant survivors found

- With advocates support immigrant victims will use and benefit from protection orders
  - 60.9% *first* learned about protection orders from their advocates/legal services attorneys
  - 81% chose to seek and got a protection order with help from advocate/attorney
  - Evidence of benefits of safety planning
    - Strong correlation between severity of violence and undocumented immigrant victims' willingness to seek a protection order
  - 96% found them helpful
  - Protection orders reduced violence but –
    - 68.3% of violations immigrant related abuse



# Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
  - Stable (citizen/permanent resident) 34.4%
  - Temporary (temporary visa) 16.7%
  - Undocumented 14.8%

# History and Evolution of Violence Against Women Act Protections

# Violence Against Women Act -- Purpose

- Federal role in stopping
  - Domestic violence
  - Sexual assault
  - Trafficking in persons
- By meeting two equally important goals
  - Increasing justice system's role in offender accountability
  - Offering services, protection, counseling for victims

# Designed to Help All Victims

- Underserved populations
  - Communities of color
  - Disabled
  - Aliens
  - Limited English Proficient
  - Rural communities
- Immigration relief key component of legislation
- All parts of VAWA included all populations

# What VAWA's Immigration Protections have done?

- VAWA self-petitions approved = 68,461
  - As of Sept 30, 2011
- U-visas approved = 35,250
  - As of August 21, 2012
  - Children included in U-visa applications = 19,755
- T- visas approved = 2,618
  - As if September 30, 2011
  - Children included in T-visa applications = 2,154

# Why Is VAWA Important

- Historically bipartisan support
  - Prosecute perpetrators
  - Improve community/ police safety
  - Protect victims
- Example where advocates, attorneys, grassroots, government
  - Work together to make a difference

# • VAWA Has Always Been Bipartisan-Key Leaders

- 1994- Simpson, Hatch, Morella, Lamar Smith, Kennedy, Biden, Schroeder, Schumer
- IIRAIRA 1996 – Smith, Simpson, Kennedy
- Battered Immigrant Fix – LSC Kennedy
- 2000– Abraham, Hatch, Kennedy, Biden, Hyde, Chris Smith, Wellstone, Brownback, McCollum
- 2003 – VAWA self-petitioner housing fix - Bond
- 2005 – Sensenbrenner, Conyers, Spector, Biden, Kennedy, Leahy

# Reason VAWA Works for Immigrant Victims

- Removes deportation barrier
- Improves victim safety
- Brings legal work authorization
  - path to economic independence
- Help victims maintain custody of children
- Increases access to victim services
- Increases willingness to call police
- Increases victim's ability provide assistance in the detection, investigation and/or prosecution of crimes



# Benefits to Law Enforcement

- Encourages victims to report crimes
- Improves law enforcement's ability to comprehensively investigate and prosecute crimes
- Demonstrates the department's commitment to protecting immigrant community members
- Makes it easier to identify victim witnesses and pursue prosecutions of perpetrators
- Fosters community policing partnerships
- Improves community and officer safety

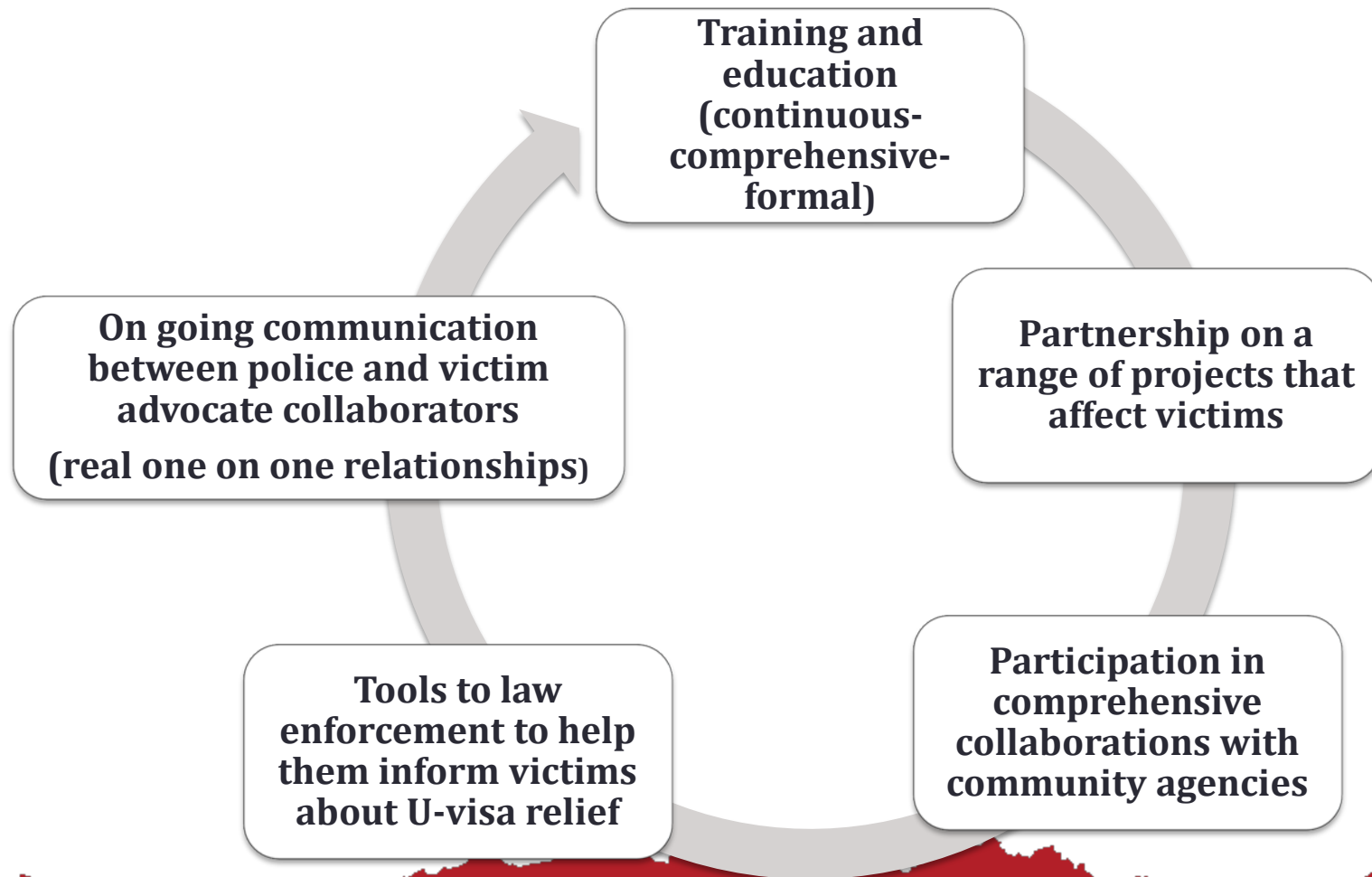
# Collaborative Legislative Advocacy

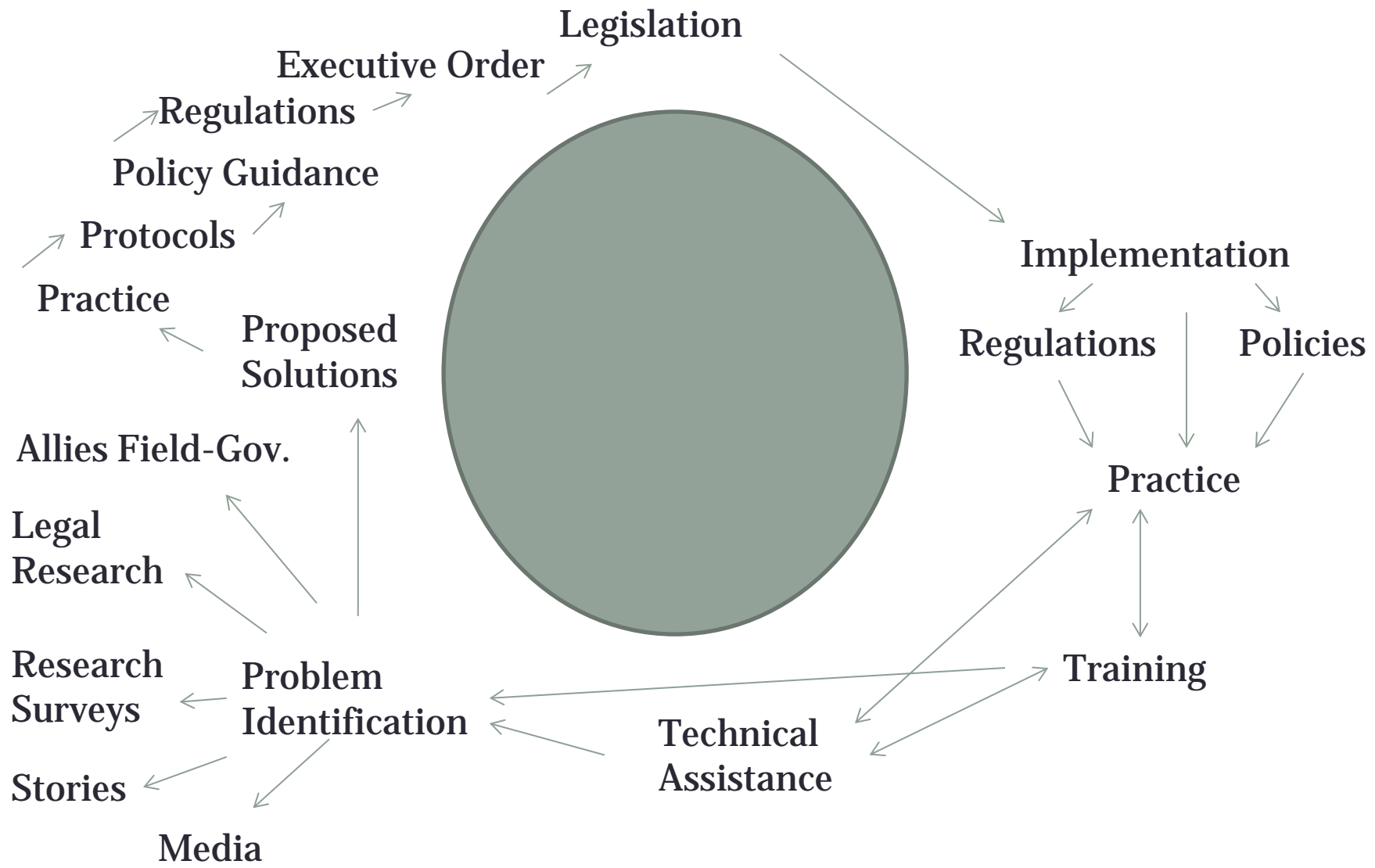
- Battered Spouse Waiver – 1990
- Violence Against Women Act – 1994
- Carve outs and benefits access for battered immigrants in the 1996 Welfare and Immigration Reforms
- Access to Legal Services for Battered Immigrants-1997
- Violence Against Women Act 2000
- Victims of Trafficking Protection Act 2000
- Funding for INS processing of domestic violence crime victim and trafficking cases 2001
- Violence Against Women Act of 2005
- International Marriage Broker Regulation Act of 2005
- Trafficking Victims Protection Reauthorization Act of 2008
- Health Care Reform – Lawful Presence

# Key Role of Collaborations

- Federal agency staff
- Hill staff oversight function
- State and Local law enforcement
  - Police and Prosecutors
- Researchers
- Grassroots including faith based organizations, police, prosecutors, advocates, attorneys
  - Victim's rights
  - Immigrant's rights

# What works: Law enforcement- Advocate Collaboration





# Regulations and Policy Success

- 1994 – January 2001
  - VAWA regulations 1996
  - Programs necessary to protect life and safety 1996
  - Creation of the VAWA Unit 1997
  - LSC Kennedy Amendment implementation 1997
  - VAWA confidentiality implementation 1998
  - Access to shelter and transitional housing for up to 2 years 2001
  - Access to HHS funded health care 2001

# Key Role of the DHS VAWA Unit 1997 -2012

- For Immigrant Victims Addressing Deportation Risks  
Critical First Step
- VAWA funding led to development of model justice system programs that effectively serve victims
- In developing the VAWA Unit – DHS followed this enlightened model
- Successful VAWA unit meets dual goals
  - Granting VAWA immigration protection to abuse victims who qualify
  - Denying fraudulent applications
- Model for responsiveness to the needs of victims – good working relationships with victim advocates

# Regulations and Policy Success

- 2001 – 2008
  - DHS/ICE VAWA Confidentiality Implementation 2005
  - U-visa regulations 2007
  - T and U adjustment rule 2008
  - Waivers of Fees 2008
  - Lawful permanent residency in the US for victims who entered unlawfully 2008



# Regulations and Policy Success

- 2009-2012
  - Humanitarian Release
    - Created raids only 2007-2008
    - Expanded to all cases 2009
    - Breastfeeding mothers
    - Sole/primary caregivers of children
  - Post secondary educational grants and loans for VAWA self-petitioners 2010
  - Health care reform implementation for lawfully present immigrants 2010

# DHS Memos

- Protections for crime victims
  - Initiation of VAWA confidentiality computer check system (12.21.2010)
  - Prosecutorial discretion for crime victims (6.17.2011)
- DHS Enforcement priorities
  - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
  - Low priority immigrants vs. high priority immigrants (3.3.2011)
  - Prosecutorial discretion (6.17.2011)
  - DHS and White House Directives regarding immigration case processing (8.18.2011)
  - Protections for immigrants who came to US as children (6.15.2012)

# DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
  - Victims of crime
  - Witnesses to crime
  - Individuals pursuing legitimate civil rights complaints
  - To call the police and pursue justice
- Designed to stop immigration officials from acting
  - When local police make dual arrests
  - Leading to victims being arrested and having their fingerprints turned over to DHS

# Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood\*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat\*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly\*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition\*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness\*

# Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
  - spouse, child of a citizen or lawful permanent resident
  - Domestic violence, trafficking or victim of other serious crime
  - Crime victim
  - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

# Negative Factors to Consider

- Clear risk to national security\*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind\*
- Known gang members or other individuals who pose a clear danger to public safety\*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud\*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

# Temporary protections for immigrants who entered US as children

- Came to the United States **under the age of sixteen**;
- Has **resided in the United States for a least five years** preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently **in school**, has **graduated from high school** or GED, or is an **honorably discharged veteran** of the Coast Guard or Armed Forces of the United States;
- Has **not been convicted** of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is **not above the age of thirty**

# VAWA IV 2012



# First Time VAWA is Partisan

- Immigration provisions center of controversy
  - Along with LGBT and Native Women
- House Bill HR 4960 sought to cut “fraud” in VAWA self-petitioning and U-visa programs

# Government Research Finds No Fraud

- Congressional research service
  - No empirical evidence of fraud
  - Current system has numerous anti-fraud provisions that work well
- VAWA Unit specialized training and expertise that
  - Efficiently discerns fraudulent petitions
  - Fairly adjudicates legitimate petitions
  - Protects victims from violation of VAWA confidentiality
  - Only part of Citizenship and Immigration Services (USCIS) with its own fraud investigators
  - (USCIS report 2010)

# VAWA Unit Degree of Diligence and Vigilance in Self-Petition Adjudications

- Rank #1 in requests for further evidence
  - 68% vs. other DHS cases 19% (CRS)
- Approval rates relatively low
  - Ranking 58<sup>th</sup> of 73 types of petitions (CRS)
  - Average approval rate self-petitions 74% vs. 88% for all other types of petitions (USCIS)
  - Combination of reasons
    - Ferreting out fraud
    - Notarios and others who prey on immigrant victims
- Process in two parts
  - Deferred action and work authorization
  - Apply for lawful permanent residency with required interview

# VAWA Unit Degree of Diligence and Vigilance in U- Visa Adjudications

- Certification requirement is a built in protection against fraud
- VAWA Unit adjudicators may
  - Request further evidence from victim
  - Communicate with government certifier
- Average denial rate 22%
  - Due to substantial injury requirement
  - Criminal background check requirement
- USCIS Fraud Detection and National Security Directorate says: Have not seen U-visa fraud

# Who's Behind Fraud Allegations

- SAVE –Stop Abusive and Violent Environments
- SAVE's treasurer, Natasha Spivack owns
- Encounters International
- \$434,000 civil judgment upheld unanimously by the Maryland court of appeals finding that Spivack
  - Knew about abuse
  - Withheld critical information that
  - Led to further harm of battered immigrant spouse

# Stories About a Few Individual Cases That May Have Been Incorrectly Approved

- Julie Poner testified at Senate Judiciary Hearing on July 13, 2011
  - Her husband's VAWA self-petition approved 1997 or 1998
  - VAWA unit just formed
  - First trainings were held in 1998
- Other stories DHS trial attorneys
- Original fraud protection all Self-petitioners would have legal status but for abusers

# VAWA IV – Both Bills

- Age-out protection children included in U-visa applications
- VAWA confidentiality national security exception
  - Limits disclosure for law enforcement or national security purposes to release in a manner that keeps information confidential
  - DHS and DOJ guidance on VAWA confidentiality for T-visa victims
    - Senate also State Department
- Children of self-petitioners who died included in Widow fix
- Public charge fix
- Battered spouse waiver for bigamy
- Many IMBRA improvements
- Various reports to Congress and/or GAO

# Senate Bill VAWA IV

- Adds stalking
- U-visa recapture
  - Up to 15,000
  - Visa lottery fee - paygo



# VAWA IV House

- Authorizes DHS to consider perpetrator submitted information
  - DHS cannot contact perpetrator
- Mandates district office in person interview for VAWA self-petitioners
  - Credibility decided by local office
  - VAWA Unit may make final decision
  - Require consultation
- Mandates consideration of prior filed petitions, but only with regard to denials

# VAWA IV- House VAWA Self- Petitions

- Authorizes DHS to consider any credible evidence the perpetrator submitted
  - DHS cannot contact perpetrator
- Mandates district office in person interview for VAWA self-petitioners
  - Credibility decided by local office
  - VAWA Unit may make final decision
  - Require consultation
- Mandates consideration of prior filed petitions, but only with regard to denials
- Requires final written decision and findings *with particularity* for approval
- Preponderance of the evidence (current law)
- DHS must seek out information about any criminal investigation or prosecution undertaken
  - Consider whether no investigation or prosecution
  - Stay adjudication if case ongoing
- Denial of VAWA self-petition cancels affidavits of support

# VAWA IV – House- U-Visas

- No certification allowed unless
  - The there is an active criminal investigation or prosecution
  - Victim has provided information that will assist in identification of the perpetrator *or* the identify of the perpetrator is already known
- U-visa amendments of VAWA IV immediately apply to all pending cases
- Ends access to lawful permanent residency for U-visa victims starting at enactment
  - Except when perpetrator & victims have same home country
- Allows immigration judges in DV removal cases to
  - Not be bound by state criminal court decisions
  - Allowed to consider police reports and other types of evidence of domestic violence
  - Reducing plea bargaining options for perpetrators

# Collaborative Partners

- Police
- Researchers
- Field Stories

# Technical Assistance and Materials

- PowerPoint Presentations and Materials for This Conference At—
- [niwap.org/go/boston](http://niwap.org/go/boston)
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