BATTERED IMMIGRANT WOMEN PROTECTION ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

H.R. 3083

JULY 20, 2000

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THURSDAY, JULY 20, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2226, Rayburn House Office Building, Hon. Lamar Smith [chairman of the subcommittee] presiding.

Present: Representatives Lamar Smith, Sheila Jackson Lee, and John Conyers, Jr. (ex officio).

Staff present: George Fishman, chief counsel; Lora Ries, counsel; Kelly Dixon, clerk; Leon Buck, minority counsel; and Nolan Rappaport, minority counsel.

OPENING STATEMENT OF CHAIRMAN SMITH

Mr. SMITH. The Subcommittee on Immigration and Claims will come to order.

Today we are conducting a legislative hearing on H.R. 3083 , the Battered Immigrant Women Protection Act of 1999. Let me make a couple of announcements before we begin with our first witness, and that is to say that we are expecting votes at 11:30 this morning. So in an effort not to have to ask our third panel of expert witnesses to come back after lunch, we are going to be trying to move through the hearing so that we can finish by 11:30 in fairness to the witnesses and in fairness to those who are interested in the particular subject.

[The bill, H.R. 3083, follows:]

106TH CONGRESS
1ST SESSION

H. R. 3083

To amend the Immigration and Nationality Act to provide protection for battered immigrant women, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 1999

Ms. SCHAKOWSKY (for herself, Ms. JACKSON LEE of Texas, Mrs. MORELLA, Mr. CAPUANO, Mr. MEEKS of New York, Mr. MCGOVERN, Mr. BERMAN, Mr. WAXMAN, Mr. SANDERS, Mr. WEINER, Mr. HINCHEY, Mr. FROST, Mr. FARR of California, Mr. STUPAK, Mr. LEACH, Ms. BERKLEY, Ms. WOOLSEY, Mr. ABERCROMBIE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WYNN, Mrs. MALONEY of New York, Ms. NORTON, Mrs. MINK of Hawaii, Ms. SLAUGHTER, Ms. MILLENDER-MCDONALD, Mrs. CAPPS, Ms. LEE, Mr. TOWNS, Ms. BROWN of Florida, Mrs. LOWEY, Mr. GREEN of Texas,

Mr. MCNULTY, Mr. GEORGE MILLER of California, Mr. CROWLEY, Ms. MCKINNEY, Mr. CONYERS, Mrs. MEEK of Florida, Mr. KIND, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Banking and Financial Services, Education and the Workforce, Agriculture, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend the Immigration and Nationality Act to provide protection for battered immigrant women, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Battered Immigrant Women Protection Act of 1999".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

(2) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children; and

(3) there are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this Act are—

(1) to promote criminal prosecutions of all persons who commit acts of battery or extreme cruelty against immigrant women and children;

(2) to offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes; and

(3) to correct erosions of the Violence Against Women Act of 1994 immigration protections that occurred as a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Balanced Budget Act of 1997.

SEC. 3. RESTORING IMMIGRATION PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA).

(a) REMOVING BARRIERS TO ADJUSTMENT OF STATUS FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) IMMIGRATION AMENDMENTS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(A) in subsection (a), by inserting "or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1) or" after "into the United States"; and

(B) in subsection (c), by striking "Subsection (a) shall not be applicable to" and inserting the following: "Other than an alien who has an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1), subsection (a) shall not be applicable to".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to applications for adjustment of status pending on, or made on or after, January 14, 1998.

(b) REMOVING BARRIERS TO CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) NOT TREATING SERVICE OF NOTICE AS TERMINATING CONTINUOUS PERIOD.—

(A) IN GENERAL.—Section 240A(d)(1) of such Act (8 U.S.C. 1229b(d)(1)) is amended by striking "when the alien is served a notice to appear under section 239(a) or" and inserting "(A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a) or (B)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208, 110 Stat. 587).

(2) EXEMPTION FROM ANNUAL LIMITATION ON CANCELLATION OF REMOVAL FOR BATTERED SPOUSE OR CHILD.—

(A) IN GENERAL.—Section 240A(e)(3) of the Immigration and Nationality Act (8 U.S.C. 1229b(e)(3)) is amended by adding at the end the following:

"(C) Aliens in removal proceedings who applied for cancellation of removal under subsection (b)(2).".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208, 110 Stat. 587).

(3) MODIFICATION OF CERTAIN TRANSITION RULES FOR BATTERED SPOUSE OR CHILD.—

(A) IN GENERAL.—Subparagraph (C) of section 309(c)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note), as amended by section 203(a) of Public Law 105–100, is amended—

(i) in the heading by inserting "AND FOR BATTERED SPOUSES AND CHILDREN" after "FROM DEPORTATION"; and

(ii) in clause (i)—

(I) by striking, "or" at the end of subclause (IV);

(II) by striking the period at the end of subclause (V) and inserting "; or", and

(III) by adding at the end the following new subclause:

"(VI) is an alien who was issued an order to show cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the date of the enactment of this Act).".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note).

(c) ELIMINATING TIME LIMITATIONS ON MOTIONS TO REOPEN REMOVAL AND DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) REMOVAL PROCEEDINGS.—

(A) IN GENERAL.—Section 240(c)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)(C)) is amended by adding at the end the following:

"(iv) SPECIAL RULE FOR BATTERED SPOUSES AND CHILDREN.—There is no time limit on the filing of a motion to reopen, and the deadline specified in subsection (b)(5)(C) for filing such a motion does not apply—

"(I) if the basis for the motion is to apply for relief under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A), clause (ii), (iii), or (iv) of section 204(a)(1)(B), or section 240A(b)(2); and

"(II) if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(2) DEPORTATION PROCEEDINGS.—

(A) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)), there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—

(i) if the basis of the motion is to apply for relief under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii), (iii), or (iv) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and

(ii) if the motion is accompanied by a suspension of deportation application to be filed with the Attorney General or by a copy of the self-petition that will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen.

(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who—

(i) are, or were, in deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

(ii) have become eligible to apply for relief under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii), (iii), or (iv) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)) as a result of the amendments made by—

(I) subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.); or

(II) this Act.

SEC. 4. REMEDYING PROBLEMS WITH IMPLEMENTATION OF THE IMMIGRATION PROVISIONS OF VAWA.

(a) EFFECT OF CHANGES IN ABUSERS' CITIZENSHIP STATUS ON SELF-PETITION.—

(1) RECLASSIFICATION.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), as amended by paragraphs (4), (5), and 6) of section 7(c), is amended by adding after clause (vii) the following new clause:

"(viii) For the purposes of any petition filed under clause (iii), (iv), (v), or (vi), denaturalization, loss or renunciation of citizenship, death of the abuser, or changes to the abuser's citizenship status after filing of the petition shall not adversely affect the approval of the petition and, for approved petitions, shall not preclude the classification of the eligible self-petitioning spouse, child, or son or daughter as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.".

(2) LOSS OF STATUS.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)), as amended by paragraphs (4) and (5) of section 7(d), is amended by adding after clause (v) the following new clause:

"(vi)(I) For the purposes of petitions filed or approved under clause (ii), (iii), or (iv), loss of lawful permanent resident status by a spouse or parent or death of a spouse or parent who was a lawful permanent resident after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under sections 245(a) and 245(c) or obtain status as a lawful permanent resident based on the approved self-petition under such clause (ii), (iii), or (iv).

"(II) Upon the lawful permanent resident spouse or parent becoming a United States citizen through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii), (iii), or (iv) on behalf of an alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.".

(3) DEFINITION OF IMMEDIATE RELATIVE.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1154(b)(2)(A)(i)) is amended by adding at the end the following new sentence: "For purposes of this clause, an alien who has filed a petition under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) remains an immediate relative in the event that the United States citizen spouse, parent, son, or daughter loses United States citizenship or dies after the filing of the petition.".

(b) EXEMPTION FOR BATTERED IMMIGRANT WOMEN WHO ENTERED THE UNITED STATES ON FIANCÉ VISAS FROM CONDITIONAL RESIDENCY STATUS REQUIREMENT.—Section 245(d) of the Immigration and Nationality Act (8 U.S.C. 1255(d)) is amended by adding at the end the following: "This subsection shall not apply to aliens who seek adjustment of status on the basis of an approved self-petition for classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B).".

(c) REDUCING AN ABUSER'S CONTROL OVER A BATTERED IMMIGRANT'S IMMIGRATION CASE.—Section 205 of the Immigration and Nationality Act (8 U.S.C. 1155) is amended by adding at the end the following: "Whenever a beneficiary of a petition filed under section 204 provides the Attorney General with credible evidence of battery or extreme cruelty as described in section 216(c)(4)(C), 204(a)(1)(A), or 204(a)(1)(B), the Attorney General shall adjudicate the petition filed under section 204 notwithstanding—

"(1) the withdrawal by the petitioner of the petition;

"(2) the failure of the petitioner to appear at the interview;

"(3) the failure of the petitioner to file an affidavit of support; or

"(4) a prior revocation or denial based on withdrawal of, or failure to prosecute, the petition or any other determination based on the petitioner's actions that could result or have resulted in the denial or revocation of the petition (but for this section).".

(d) REQUIRING PROSECUTOR COOPERATION WITH BATTERED IMMIGRANT VAWA APPLICANTS.—Section 2101(c) of the Omnibus Crime Contro' and Safe Streets Act of 1968 (42 U.S.C. 3796hh(c)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following:

"(5) certify that their laws, policies, and practices do not discourage or prohibit prosecutors and law enforcement officers from granting access to information about the citizenship or lawful permanent residency status of a domestic violence perpetrator to the victim, the child, son, or daughter or their advocate so long as release of the information does not jeopardize ongoing prosecution of the abuser.".

(e) ALLOWING REMARRIAGE OF BATTERED IMMIGRANTS.—Section 204(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h)) is amended by adding at the

end the following new sentence: "Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) or marriage of an alien described in subsection (a)(1)(A)(iv), (a)(1)(A)(vi), (a)(1)(B)(iii), or (a)(1)(B)(iv) shall not be the basis for revocation under section 205.".

SEC. 5. WAIVERS AND EXCEPTIONS TO INADMISSIBILITY FOR OTHERWISE QUALIFIED BATTERED IMMIGRANTS.

(a) DISCRETIONARY WAIVERS FOR CERTAIN INADMISSIBILITY AND REMOVAL GROUNDS.—

(1) INADMISSIBILITY GROUNDS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following:

"(r) DISCRETIONARY WAIVER AUTHORITY.—The Attorney General, in the Attorney General's discretion, may waive any provision of this section (other than paragraphs (3), (10)(A), (10)(D), and (10)(E) of subsection (a)) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the alien demonstrates a connection between the crime or disqualifying act and battery or extreme cruelty for any alien who qualifies for—

"(1) classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B); or

"(2) relief under section 240A(b)(2) or under section 244(a)(3) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).".

(2) REMOVAL GROUNDS.—Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) is amended by adding at the end the following:

"(d) DISCRETIONARY WAIVER AUTHORITY.—The Attorney General, in the discretion of the Attorney General, may waive any provision of this section (other than subsections (a)(2)(D)(i), (a)(4), or (a)(5)) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest in the case of an alien who demonstrates a connection between the crime or disqualifying act and battery or extreme cruelty for any alien who qualifies for—

"(1) classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B); or

"(2) relief under section 240A(b)(2) or under section 244(a)(3) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).".

(b) OFFERING EQUAL ACCESS TO VAWA IMMIGRATION PROTECTIONS FOR ALL QUALIFIED BATTERED IMMIGRANT SELF-PETITIONERS.—

(1) ELIMINATING CONNECTION BETWEEN BATTERY AND UNLAWFUL ENTRY.—Section 212(a)(6)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(A) by amending subclause (I) to read as follows:

"(I) the alien qualifies for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1), and";

(B) by striking ", and" in subclause (II) and inserting a period; and

(C) by striking subclause (III).

(2) BATTERED IMMIGRANT EXCEPTION.—Section 212(a)(9)(A)(iii) of such Act (8 U.S.C. 1182(a)(9)(A)(iii)) is amended by adding at the end the following: "Clauses (i) and (ii) also shall not apply to aliens to whom the Attorney General has granted classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B).".

(3) ELIMINATING CONNECTION BETWEEN BATTERY AND VIOLATION OF THE TERMS OF AN IMMIGRANT VISA.—Section 212(a)(9)(B)(iii)(IV) of such Act (8 U.S.C. 1182(a)(9)(B)(iii)(IV)) is amended by striking "who would be described in paragraph (6)(A)(ii)" and all that follows and inserting "who is described in paragraph (6)(A)(ii).".

(4) BATTERED IMMIGRANT EXCEPTION.—Section 212(a)(9)(C)(ii) of such Act (8 U.S.C. 1182(a)(9)(C)(ii)) is amended by adding at the end the following: "Clause (i) shall also not apply to aliens to whom the Attorney General has granted classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B).".

(5) WAIVER OF CERTAIN REMOVAL GROUNDS.—Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227), as amended by subsection (a)(2), is further amended by adding at the end the following:

"(e) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—The Attorney General is not limited by the criminal court record and may waive the application of subsections (a)(2)(E)(i), (a)(2)(E)(ii), (a)(2)(A)(i), and (a)(2)(A)(iii) in the case of an alien who has

been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

"(1) upon determination that—

"(A) the alien was acting in self-defense;

"(B) the alien was found to have violated a protection order intended to protect the alien; or

"(C) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime where there was a connection between the crime and having been battered or subjected to extreme cruelty; or

"(2) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.".

(6) MISREPRESENTATION WAIVERS FOR BATTERED SPOUSES OF UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS.—

(A) WAIVER OF INADMISSIBILITY.—Section 212(i)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(i)(1)) is amended by inserting before the period at the end the following: "or, in the case of an alien granted classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or clause (ii), (iii), or (iv) of section 204(a)(1)(B), or who qualifies for relief under section 240A(b)(2) or under section 244(a)(3) (as in effect before the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident or qualified alien parent, child, son, or daughter".

(B) WAIVER OF DEPORTABILITY.—Section 237(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(H)) is amended—

(i) in clause (i), by inserting "(I)" after "(i)";

(ii) by redesignating clause (ii) as subclause (II); and

(iii) by inserting after clause (i) the following new clause:

"(ii) is an alien who qualifies for classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or clause (ii), (iii), or (iv) of section 204(a)(1)(B), or who qualifies for relief under section 240A(b)(2) or under section 244(a)(3) (as in effect before the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).".

SEC. 6. CALCULATION OF PHYSICAL PRESENCE IN VAWA CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION.

(a) CANCELLATION OF REMOVAL PROCEEDINGS.—Section 240A(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(2)) is amended by adding at the end the following: "In the case of an alien applying for cancellation of removal under subsection (b)(2), the Attorney General may waive the provisions of this subsection for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if the alien demonstrates that the absences were connected to the battery or extreme cruelty forming the basis of the application for cancellation of removal under such subsection.".

(b) SUSPENSION OF DEPORTATION PROCEEDINGS.—With respect to applications filed under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the title III–A effective date, as defined in section 309(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–625)) (8 U.S.C. 1254(a)(3)), the Attorney General may waive the physical presence requirement for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the alien demonstrates that the absences were connected to the battery or extreme cruelty forming the basis of the application for suspension of deportation.

SEC. 7. IMPROVED ACCESS TO VAWA IMMIGRATION PROTECTIONS FOR BATTERED IMMIGRANT WOMEN.

(a) INTENDED SPOUSE DEFINED.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(50) The term 'intended spouse' means any alien who meets the criteria set forth in section 204(j)(1)(B) or 204(k)(1)(B).".

(b) ENSURING PROTECTION FOR ABUSED CHILDREN AND CHILDREN OF BATTERED IMMIGRANTS.—Section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)) is amended—

(1) in paragraph (1), by striking "The term" and inserting "Subject to paragraph (6), the term", and

(2) by adding at the end the following new paragraph:

"(6) For the purposes of clauses (iii) and (iv) of section 204(a)(1)(A), clauses (ii) and (iii) of section 204(a)(1)(B), section 240A(b)(2), and section 244(a)(3) (as in effect before the date of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) and for the purposes of attaining lawful permanent residency under those sections either under section 245 or by obtaining an immigrant visa under section 203, an individual who turns 21 years old remains a child under paragraph (1) if, on the date a petition or application was filed by the individual or their parent under any of these sections the individual—

"(A) met the definition of child in one of subparagraphs (A) through (F) of paragraph (1); and

"(B) was under the age of 21 on the date the application or petition was filed.".

(c) IMMEDIATE RELATIVE STATUS FOR SELF-PETITIONERS MARRIED TO U.S. CITIZENS.—

(1) SELF-PETITIONING SPOUSES.—

(A) BATTERY OR CRUELTY TO ALIEN OR ALIEN'S CHILD.—Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(iii)) is amended to read as follows:

"(iii) An alien who is described in subsection (j) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien as defined in paragraph (1) or (6) of section 101(b) if the alien demonstrates to the Attorney General that—

"(I) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

"(II) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.".

(B) DESCRIPTION OF PROTECTED SPOUSE OR INTENDED SPOUSE.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

"(j) DESCRIPTION OF PROTECTED SPOUSE OR INTENDED SPOUSE.—For purposes of subsection (a)(1)(A)(iii), an alien described in this subsection is an alien—

"(1)(A) who is the spouse of a citizen of the United States; or

"(B)(i) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed; and

"(ii) who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

"(C) who was a bona fide spouse of a United States citizen within the past two years and whose spouse died within the past two years, or whose spouse lost immigration status within the past two years due to an incident of domestic violence, or who demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse;

"(2) who is a person of good moral character;

"(3) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

"(4) who has resided with the alien's spouse or intended spouse.".

(2) GUARANTEEING ACCESS TO VAWA RELIEF FOR BATTERED IMMIGRANTS BROUGHT INTO THE UNITED STATES ON FIANCÉ VISAS.—Section 204(a)(1)(C) of the Immigration and Nationality Act, as inserted by subsection (d)(6), is amended by adding at the end the following new clause:

"(iii) For aliens who entered the country on fiancé visas, failure to marry the sponsor or failure to marry the sponsor within 90 days as required under section 101(a)(15)(K) shall not bar access to relief under clause (iii), (iv), (v), or (vi) of subsection (a)(1)(A), under clause (ii), (iii), or (iv) of subsection (a)(1)(B), under section 240A(b)(2), or under section 244(a)(3) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to aliens who otherwise qualify.".

(3) SELF-PETITIONING CHILDREN.—Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(iv)) is amended to read as follows:

"(iv) An alien who is the child of a citizen of the United States (as defined in paragraph (1) or (6) of section 101(b)) or who was a child of United States citizen parent who died within the past two years or lost immigration status due to an incident of domestic violence within the past two years, and who is a person of good

moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides or has resided in the past with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.".

(4) SELF-PETITIONING PARENTS.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)) is amended by adding after clause (iv) the following new clause:

"(v) An alien who is the parent of a citizen of the United States or who was a parent of United States citizen who died within the past two years or lost immigration status due to an incident of domestic violence within the past two years, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided with the citizen daughter or son may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen son or daughter.".

(5) SELF-PETITIONING SON OR DAUGHTER.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), as amended by paragraph (4), is amended by adding after clause (v) the following new clause:

"(vi) An alien who is the son or daughter of a citizen of the United States or who was the son or daughter of United States citizen parent who died within the past two years or lost immigration status due to an incident of domestic violence within the past two years, and who is a person of good moral character, who is eligible for classification by reason of a relationship described in paragraph (1) of section 203(a), and who resides or has resided in the past with the citizen parent may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by, or has been the subject of extreme cruelty perpetrated by, the alien's citizen parent and 1 or more incidents of battery or extreme cruelty occurred before the son or daughter reached the age of 21. For purposes of this clause, residence includes any period of visitation.".

(6) FILING OF PETITIONS.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154 (a)(1)(A)(iv)), as amended by paragraphs (4) and (5), is amended by adding after clause (vi) the following new clause:

"(vii) An alien who is the spouse, intended spouse, child, parent, son, or daughter of a United States citizen living abroad and who is eligible to file a petition under clause (iii), (iv), (v), or (vi) shall file such petition with the Attorney General under the procedures that apply to self-petitioners under such clauses.".

(d) SECOND PREFERENCE IMMIGRATION STATUS FOR SELF-PETITIONERS MARRIED TO LAWFUL PERMANENT RESIDENTS.—

(1) SELF-PETITIONING SPOUSES.—Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)(ii)) is amended to read as follows:

"(ii) An alien who is described in subsection (k) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien as defined in paragraph (1) or (6) of section 101(b)) if such a child has not been classified under clause (iii) of section 203(a)(2)(A) and if the alien demonstrates to the Attorney General that—

"(I) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

"(II) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.".

(2) DESCRIPTION OF PROTECTED SPOUSE OR INTENDED SPOUSE.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154), as amended by subsection (c)(1)(B), is further amended by adding at the end the following:

"(k) DESCRIPTION OF PROTECTED SPOUSE OR INTENDED SPOUSE.—For purposes of subsection (a)(1)(B)(ii), an alien described in this subsection is an alien—

"(1)(A) who is the spouse of a lawful permanent resident of the United States; or

"(B)(i) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed; and

"(ii) who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not

legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

"(iii) who was a bona fide spouse of a lawful permanent resident within the past two years and whose spouse died within the past two years, or whose spouse lost status within the past two years due to an incident of domestic violence, or who demonstrates a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the United States citizen spouse;

"(2) who is a person of good moral character;

"(3) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

"(4) who has resided in the United States with the alien's spouse or intended spouse.".

(3) SELF-PETITIONING CHILDREN.—Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)(iii)) is amended to read as follows:

"(iii) An alien who is the child of an alien lawfully admitted for permanent residence as defined in paragraph (1) or (6) of section 101(b) or who was a child of a lawful permanent resident parent who died within the past two years or lost immigration status due to an incident of domestic violence within the past two years, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides or has resided in the past with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent. For purposes of this clause, residence includes any period of visitation.".

(4) SELF-PETITIONING SON OR DAUGHTER.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)), as amended by section 4(a)(2), is further amended by adding at the end the following:

"(iv) An alien who is the son or daughter of an alien lawfully admitted for permanent residence or who was a son or daughter of a lawful permanent resident parent who died within the past two years or lost immigration status due to an incident of domestic violence within the past two years and who is a person of good moral character, who is eligible for classification by reason of a relationship described in paragraph (2) of section 203(a), and who resides or has resided in the past with the alien's legal permanent resident parent may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by, or has been the subject of extreme cruelty perpetrated by, the alien's legal permanent resident parent and 1 or more incidents of battery or extreme cruelty occurred before the son or daughter reached the age of 21. For purposes of this clause, residence includes any period of visitation.".

(5) FILING OF PETITIONS.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)), as amended by paragraph (4), is further amended by adding after clause (iv) the following new clause:

"(v) An alien who is the spouse, intended spouse, child, son, or daughter of a lawful permanent resident living abroad is eligible to file a petition under clause (ii), (iii), or (iv) shall file such petition with the Attorney General under the procedures that apply to self-petitioners under such clauses.".

(6) TREATMENT OF PETITIONS INCLUDING DERIVATIVE CHILDREN TURNING 21 YEARS OF AGE.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)) is amended –

(A) by redesignating subparagraphs (C) through (H) as subparagraphs (D) through (I), respectively; and

(B) by inserting after subparagraph (B) the following:

"(C)(i)(I) Any derivative child who attains 21 years of age and who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if no visa has been issued to the child by such date) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date as that assigned to the petition in any petition described in clause (ii).

"(II) Any individual described in subclause (I) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

"(ii) The petition referred to in clause (i) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) in which the child is included as a derivative.".

(e) ACCESS TO NATURALIZATION FOR DIVORCED VICTIMS OF ABUSE.—Section 319(a) of the Immigration and Nationality Act (8 U.S.C. 1430(a)) is amended—

(1) by inserting ", and any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty," after "United States" the first place it appears; and

(2) by inserting "(except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent)" after "has been living in marital union with the citizen spouse".

SEC. 8. IMPROVED ACCESS TO VAWA CANCELLATION OF REMOVAL.

(a) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.—Section 240A(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(2)) is amended to read as follows:

"(2) SPECIAL RULE FOR BATTERED SPOUSE, PARENT, CHILD, SON, OR DAUGHTER.—

"(A) IN GENERAL.—The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

"(i)(I) the alien has been battered or subjected to extreme cruelty in the United States by a spouse, parent, son, or daughter who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty in the United States by such citizen parent);

"(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such permanent resident parent), or

"(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

"(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application (and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States);

"(iii) the alien has been a person of good moral character during such period;

"(iv) the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraphs (1)(G) or (2) through (4) of section 237(a), and has not been convicted of an aggravated felony, unless the Attorney General waives application of this clause pursuant to section 237(d) or for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; and

"(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General. For aliens who entered the country on fiancé visas, failure to marry the sponsor, or failure to marry the sponsor within 90 days as required under section 101(a)(15)(K), shall not bar access to relief under this paragraph to aliens who otherwise qualify.

"(B) INCLUSION OF OTHER ALIENS IN CANCELLATION OF REMOVAL APPLICATIONS.—An alien applying for relief under this paragraph may include—

"(i) the alien's children, sons, or daughters in the alien's application and, if the alien is found eligible for cancellation, the Attorney General may adjust the status of the alien's children, sons, daughters; or

"(ii) the alien's parent or child in the alien child's (as defined in paragraph (1) or (6) of section 101(b)) application in the case of an application filed by an alien who was abused by a citizen or lawful perma-

nent resident parent and, if the alien child is found eligible for cancellation, the Attorney General may adjust the status of the alien child applicant and the alien child's parent and child.

"(C) INCLUSION OF OTHER ALIENS IN SUSPENSION OF DEPORTATION APPLICATIONS.—An alien applying for relief under section 244(a)(3) (as in effect before the date of the enactment of Illegal Immigration Reform and Immigrant Responsibility Act of 1996) may include—

"(i) the alien's children, sons, or daughters in the alien's application and, if the alien is found eligible for suspension, the Attorney General may adjust the status of the alien's children, sons, or daughters; or

"(ii) the alien's parent or child in the alien child's (as defined in paragraph (1) or (6) of section 101(b)) application in the case of an application filed by an alien who was abused by a citizen or lawful permanent resident parent and, if the alien child is found eligible for suspension, the Attorney General may adjust the status of the alien child applicant and the alien child's parent and child.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 587).

(c) TREATMENT OF FAMILY MEMBERS.—

(1) IN GENERAL.—Section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)) is amended—

(A) by inserting "(1)" before "A spouse or child"; and

(B) by adding at the end the following:

"(2) A spouse, parent, or child as defined in paragraph (1) or (6) of section 101(b) if not otherwise entitled to an immigrant status and immediate issuance of a visa shall be entitled to attain lawful permanent resident status if their spouse, parent, or child was granted such status pursuant to section 240A(b)(2) or section 244(a)(3) (as in effect before the date of the enactment of Illegal Immigration Reform and Immigrant Responsibility Act of 1996) by accompanying or following to join the spouse, child, or parent.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.).

SEC. 9. GOOD MORAL CHARACTER DETERMINATIONS.

(a) DETERMINATIONS OF GOOD MORAL CHARACTER FOR SELF-PETITIONING IMMEDIATE RELATIVES.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), as amended by sections 7(c) and 4(a)(1), is further amended by adding after clause (viii) at the end the following new clause:

"(ix) For the purposes of making good moral character determinations under this subparagraph, the Attorney General is not limited by the criminal court record and may make a finding of good moral character notwithstanding the existence of a disqualifying act or criminal conviction in the case of an alien who otherwise qualifies for relief under clause (iii), (iv), (v), or (vi), but who committed, was arrested for, has been convicted of, or who pled guilty to—

"(I) violating a court order issued to protect the alien;

"(II) prostitution if the alien was forced into prostitution by an abuser;

"(III) a domestic violence-related crime, if the Attorney General determines that the alien acted in self-defense; or

"(IV) a crime where there was a connection between the commission of the crime and having been battered or subjected to extreme cruelty.".

(b) DETERMINATIONS OF GOOD MORAL CHARACTER FOR SELF-PETITIONERS SEEKING SECOND PREFERENCE IMMIGRATION STATUS.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)), as amended by sections 7(d) and 4(a)(2), is further amended by adding after clause (vi) the following new clause:

"(vii) For the purposes of making good moral character determinations under this subparagraph, the Attorney General is not limited by the criminal court record and may make a finding of good moral character notwithstanding the existence of a disqualifying act or criminal conviction in the case of an alien who otherwise qualifies for relief under clause (ii), (iii), or (iv), but who committed, was arrested for, has been convicted of, or who pled guilty to—

"(I) violating a court order issued to protect the alien;

"(II) prostitution if the alien was forced into prostitution by an abuser;

"(III) a domestic violence-related crime, if the Attorney General determines that the alien acted in self-defense; or

"(IV) a crime where there was a connection between the commission of the crime and having been battered or subjected to extreme cruelty.".

(c) DETERMINATIONS OF GOOD MORAL CHARACTER IN VAWA CANCELLATION OF REMOVAL PROCEEDINGS.—Section 240A(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(2)), as amended by section 8(a), is further amended by adding at the end the following new subparagraph:

"(D) GOOD MORAL CHARACTER DETERMINATIONS.—For the purposes of making good moral character determinations under this subsection, the Attorney General is not limited by the criminal court record and may make a finding of good moral character notwithstanding the existence of a disqualifying act or criminal conviction in the case of an alien who has been battered or subjected to extreme cruelty but who committed, was arrested for, has been convicted of, or who pled guilty to—

"(i) violating a court order is sued to protect the alien;

"(ii) prostitution if the alien was forced into prostitution by an abuser;

"(iii) a domestic violence-related crime if the Attorney General determines that the alien acted in self-defense; or

"(iv) committing a crime where there was a connection between the commission of the crime and having been battered or subjected to extreme cruelty.".

(d) DETERMINATIONS UNDER SUSPENSION OF DEPORTATION.—For the purposes of making good moral character determinations under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) (8 U.S.C. 1254(a)(3)), the Attorney General is not limited by the criminal court record and may make a finding of good moral character notwithstanding the existence of a disqualifying act or criminal conviction in the case of an alien who has been battered or subjected to extreme cruelty but who committed, was arrested for, has been convicted of, or who pled guilty to—

(1) violating a court order issued to protect the alien;

(2) prostitution if the alien was forced into prostitution by an abuser;

(3) a domestic violence-related crime if the Attorney General determines that the alien acted in self-defense; or

(4) committing a crime where there was a connection between the commission of the crime and having been battered or subjected to extreme cruelty.

SEC. 10. ECONOMIC SECURITY ACT FOR BATTERED IMMIGRANT WOMEN.

(a) NONAPPLICABILITY OF SPECIAL RULES RELATING TO THE TREATMENT OF NON-213A ALIENS.—Section 408(f)(6) of the Social Security Act (42 U.S.C. 608(f)(6)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(D) described in section 421(f) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631(f)) but for the fact that the individual is a non-213A alien.".

(b) PUBLIC CHARGE.—Section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION.—The following aliens are not subject to public charge determinations under this paragraph:

"(i) An alien who qualifies for classification as a spouse, parent, child, son, or daughter of a United States citizen or lawful permanent resident under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or clause (ii), (iii), or (iv) of section 204(a)(1)(B).

"(ii) An alien who qualifies for classification under clause (i) or (ii) of section 204(a)(1)(A) or section 204(a)(1)(B)(i) and who presents credible evidence of having been battered or subjected to extreme cruelty by their United States citizen or lawful permanent resident spouse, parent, son, or daughter. In the case of alien sons or daughters, one or more incidents of battering or extreme cruelty must have occurred before the alien turned 21 years of age. This clause shall apply whether or not an affidavit of support has been filed on the alien's behalf.

"(iii) An alien who qualifies for status as a spouse, parent, child, son, or daughter of a United States citizen or lawful permanent resident, or as a parent of a child of a United States citizen or lawful permanent resident, pursuant to section 240A(b)(2) or section 244(a)(3) (as

in effect before the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

"(iv) Any child (as defined in paragraph (1) or (6) of section 101(b)) included in the application of an alien described in clause (i), (ii), or (iii).".

(c) WAIVER OF FILING FEES.—

(1) PETITIONS FOR CLASSIFICATION.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)), as amended by section 7(c), is further amended by adding at the end the following new subparagraph:

"(I) No fee shall be charged for the filing or processing of any application under clause (iii), (iv), (v), or (vi) of subparagraph (A) or clause (ii), (iii), or (iv) of subparagraph (B), or the first application for work authorization filed by an applicant under such a clause.".

(2) CANCELLATIONS OF REMOVAL.—Section 240A(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b), as amended by section 9(c), is amended by adding at the end the following new subparagraph:

"(E) PROHIBITION OF CHARGING FEES.—No fee shall be charged for the filing or processing of any application under this paragraph or the first application for work authorization filed by applicants under this paragraph.".

(3) SUSPENSION OF DEPORTATION.—No fee shall be charged for the filing or processing of any application under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) (8 U.S.C. 1254(a)(3)), or the first application for work authorization filed by applicants under such section.

(d) ACCESS TO FOOD STAMPS AND SSI FOR QUALIFIED BATTERED ALIENS.—Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding at the end the following:

"(L) EXCEPTION FOR CERTAIN BATTERED ALIENS.—With respect to eligibility for benefits for the specified Federal program (as defined in paragraph (3)), paragraph (1) shall not apply to any individual described in section 431(c).".

(e) EXEMPTION FROM 5-YEAR BAN.—Section 403(b) of the Personal Responsibility and Work Opportunity Act of 1996 (8 U.S.C. 1613(b)) is amended by adding at the end the following:

"(3) BATTERED IMMIGRANTS.—An alien described in section 431(c).".

(f) ACCESS TO HOUSING FOR BATTERED WOMEN AND QUALIFIED IMMIGRANTS.—(1) Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended—

(A) in subsection (a), in the matter before paragraph (1), by striking "a resident of the United States and is";

(B) in paragraphs (1) through (6) of subsection (a), by inserting "a resident of the United States and is" before "an alien" each place it appears;

(C) in subsection (a)(5), by striking "or" at the end;

(D) in subsection (a)(6), by striking the period and inserting "; or";

(E) by adding at the end of subsection (a) the following new paragraph:

"(7) a qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).";

(F) in subsection (b)(2), by adding at the end the following: "Proration shall not apply in the case of a qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).";

(G) in subsection (c)(1)(A), by adding at the end the following: "Proration shall not apply in the case of a qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).";

(H) in subsection (c)(1)(A), by striking "paragraphs (1) through (6)" and inserting "paragraphs (1) through (7)";

(I) in subsection (c)(2)(A), by inserting "(other than a qualified alien as described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)))" after "any alien"; and

(J) in subsection (d)(1)(B), by inserting before the period ", including a qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641)".

(2) Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611) is amended by adding at the end the following new subsection:

"(d) ACCESS TO SHELTER AND SERVICES FOR BATTERED IMMIGRANTS.—Notwithstanding any other provision of law, no private, government, or nonprofit organization providing shelter or services to battered women, abused children, or providing any other services listed in subsection (b) that receives any Federal funds shall deny, restrict, or condition assistance to any applicant based on alienage.".

(g) CLARIFYING WELFARE REPORTING REQUIREMENTS FOR BENEFIT APPLICANTS.—The Social Security Act (42 U.S.C. 301 et seq.) is amended—

(1) in section 411(a)(1) (42 U.S.C. 611(a)(1)), by adding at the end the following new subparagraph:

"(C) INFORMATION ON IMMIGRATION STATUS.—Collection of information about, and inquiries into, the immigration status of an individual who is a parent applying on behalf of his or her child who is a United States citizen or a qualified alien (as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) for assistance under the State program funded under this part, shall not be made if the individual is not applying for benefits for themselves, whether or not the individual is determined, under Federal or State law, to be part of a family unit receiving assistance under that program."; and

(2) in section 1631(e)(9) (42 U.S.C. 1383(e)(9)), by adding at the end the following: "Collection of information about, and inquiries into, the immigration status of an individual who is a parent applying on behalf of his or her child who is a United States citizen or a qualified alien (as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) for benefits under this title (or for benefits supplemented by a State with an agreement under section 1616), shall not be made if the individual is not applying for benefits for themselves, whether or not the individual is determined, under Federal or State law, to be part of a family unit receiving such benefits.".

(h) CONFORMING DEFINITION OF "FAMILY" USED IN LAWS GRANTING WELFARE ACCESS FOR BATTERED IMMIGRANTS TO STATE FAMILY LAW.—Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)) is amended—

(1) in paragraph (1)(A), by striking "by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty," and inserting "by a spouse or parent, or by any individual having a relationship with the alien covered by the civil or criminal domestic violence statutes of the State or Indian country where the alien resides, or the State or Indian country in which the alien, the alien's child, or the alien child's parents received a protection order, or by any individual against whom the alien could obtain a protection order,"; and

(2) in paragraph (2)(A), by striking "by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty," and inserting "by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by any person having a relationship with the alien covered by the civil or criminal domestic violence statutes of the State or Indian country where the alien resides, or the State or Indian country in which the alien, the alien's child or the alien child's parent received a protection order, or by any individual against whom the alien could obtain a protection order,".

(i) EXPANSION OF DEFINITION OF BATTERED IMMIGRANTS.—

(1) IN GENERAL.—Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)) is amended—

(A) in paragraphs (1)(A), (2)(A), and (3)(A) by inserting "or the benefits to be provided would alleviate the harm from such battery or cruelty or would enable the alien to avoid such battery or cruelty in the future" before the semicolon; and

(B) in the matter following paragraph (3), by inserting "and for determining whether the benefits to be provided under a specific Federal, State, or local program would alleviate the harm from such battery or extreme cruelty or would enable the alien to avoid such battery or extreme cruelty in the future" before the period.

(2) CONFORMING AMENDMENT REGARDING SPONSOR DEEMING.—Section 421(f) of such Act (8 U.S.C. 1631(f)(1)) is amended—

(A) in subparagraph (A), by inserting "or would alleviate the harm from such battery or extreme cruelty, or would enable the alien to avoid such battery or extreme cruelty in the future" before the semicolon; and

(B) in subparagraph (B), by inserting "or would alleviate the harm from such battery or extreme cruelty, or would enable the alien to avoid such battery or extreme cruelty in the future" before the period.

(j) ENSURING THAT BATTERED IMMIGRANTS HAVE ACCESS TO FOOD STAMPS AND SSI.—

(1) QUALIFYING QUARTERS.—Section 435(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1645(2)) is amended by striking "and the alien remains married to such spouse or such spouse is deceased" and inserting "if such spouse is deceased or if the alien remains married to such spouse (except that qualified aliens covered by section 431(c) may continue after divorce to count the qualifying quarters worked by their spouse during the marriage)".

(2) FOOD STAMPS ACCESS FOR BATTERED IMMIGRANT QUALIFIED ALIENS AND THEIR CHILDREN.—Section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2016) is amended by adding at the end the following:

"(k) BATTERED IMMIGRANT QUALIFIED ALIEN ELIGIBILITY FOR FOOD STAMPS.—Qualified alien battered immigrants under section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and their children are eligible to receive food stamps.".

(k) TECHNICAL CORRECTIONS TO QUALIFIED ALIEN DEFINITION FOR BATTERED IMMIGRANTS.—Section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B)) is amended—

(1) in clause (i), by striking "clause (ii), (iii), or (iv)" and inserting "clause (ii), (iii), (iv), (v), or (vi)";

(2) in clause (ii), by striking "clause (ii) or (iii)" and inserting "clause (i), (ii), (iii), or (iv)"; and

(3) by amending clause (iii) to read as follows:

"(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the date of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).".

SEC. 11. ACCESS TO LEGAL REPRESENTATION AND SERVICES FOR BATTERED IMMIGRANTS.

(a) CONSTRUCTION.—Section 502 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1998 (Public Law 105–119; 111 Stat. 2511) is amended by adding at the end the following:

"(c) CONSTRUCTION.—This section shall not be construed to prohibit a recipient from—

"(1) using funds derived from a source other than the Legal Services Corporation to provide related legal assistance (as that term is defined in subsection (b)(2)) to any alien who has been battered or subjected to extreme cruelty by a person with whom the alien has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incidence of violence occurred;

"(2) using Legal Services Corporation funds to provide related legal assistance to any alien who has been battered or subjected to extreme cruelty who qualifies for classification under clause (iii), (iv), (v), or (vi) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii), (iii), or (iv) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or subsection (b)(2) of section 240A of such Act (8 U.S.C. 1229b) or section 244(a)(3) of the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note).".

(b) LAW ENFORCEMENT AND PROSECUTION GRANTS.—

(1) Section 2001(b)(5) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b)(5)) is amended—

(A) by striking "to racial, cultural, ethnic, and language minorities" and inserting "to underserved populations"; and

(B) by inserting "providing immigration assistance to victims of domestic violence," after "protection orders are granted,".

(2) Section 2002 of such Act (42 U.S.C. 3796gg) is amended—

(A) in subsection (h)(1), by inserting before the period the following: ", the demographics of underserved populations in the State and details about the percentage of funding that went to serve which underserved populations, the programs that received such funding, and the involvement of programs serving underserved populations in the development of the State plan under subsection (c)(2)";

(B) in subsection (d)(1)(D), by striking "age, marital status, disability, race, ethnicity and language background" and inserting "marital status and characteristics of any underserved populations";

(C) in subsection (d)—

(i) by striking "and" at the end of paragraph (2),

(ii) by striking the period at the end of paragraph (3) and inserting "; and", and

(iii) by adding at the end the following:

"(4) in the case of a State, Indian tribal government, or unit of local governments applying as subgrantee for a grant under this section, a certification that its laws or official policies comply with each of the provisions of section 2101(c). The requirements of paragraph (4) do not apply to a nonprofit, nongovernmental entity that is applying for grants under this section."; and

(D) by adding at the end the following new subsection:

"(i) REPORT ON SERVICES FOR UNDERSERVED POPULATIONS.—The Violence Against Women Grants Office in the Department of Justice shall submit to Congress, not later than 1 year after the date of the enactment of this subsection, a report that contains the following information:

"(1) The quantity and percentage of funding awarded to serve underserved populations by each State under each of the following:

"(A) Grants to combat violent crimes against women under section 2001.

"(B) Grants to encourage arrest under section 2101.

"(C) Rural domestic violence and child abuse enforcement assistance grants under section 40295(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322, 42 U.S.C. 13971(a)(2)).

"(D) Civil legal assistance grants under title I of the Department of Justice Appropriations Act, 1999.

"(E) Campus domestic violence grants under section 826 of the Higher Education Amendment Act of 1998 (Public Law 105–244; 20 U.S.C. 1152).

"(2) The percentage of each underserved population in the demographic make up of each State compared to the amount of funding aimed at addressing the needs of that underserved population.

"(3) The extent to which grants to provide services to underserved populations are awarded to programs with experience and history working with underserved populations of battered women or sexual assault victims, to programs that have bilingual or bicultural staff, and to collaborations between domestic violence or sexual assault programs and programs experienced in serving particular underserved populations and to other grantees.

"(4) The extent to which nonprofit, nongovernmental victim service organizations with experience serving various underserved populations of battered women and sexual assault or stalking victims were consulted in the development of the State plan under section 2001(c)(2), the application under section 2102(a)(4), or the community cooperation referred to in section 40295(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322, 42 U.S.C. 13971(a)(3)).".

(3) Section 2003(7) of such Act (42 U.S.C. 3796gg–2(7)) is amended to read as follows:

"(7) the term 'underserved populations' includes populations underserved because of race, ethnicity, age, disability, sexual orientation, religion, alienage status, geographic location (including rural isolation), language barriers, and any other populations determined to be underserved in the State planning process; and".

(4) Section 2004(b)(3) of such Act (42 U.S.C. 3796gg–3(b)(3)) is amended by striking all that follows "relationship of victim to the offender" and inserting "and the membership of persons served in any underserved populations; and".

(c) GRANTS TO ENCOURAGE ARRESTS.—

(1) Section 2101 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh) is amended—

(A) in subsection (b)(5), by inserting before the period the following: ", including strengthening legal advocacy for domestic violence victims in immigration cases";

(B) in subsection (c)—

(i) by striking "and" at the end of paragraph (3);

(ii) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(iii) by adding at the end the following new paragraphs:

"(5) certify that their laws, policies, and practices require issuance of protection orders that are jurisdictionally sound and that all protection orders are issued after a finding, after an admission by the abuser, or based on the facts in the victim's petition that are uncontested by the abuser; and

"(6) certify that their laws, policies, and practices—

"(A) keep locational information and services provided to victims of domestic violence confidential and comply with all State and Federal laws and rules of professional practice regarding confidentiality;

"(B) guarantee that information is not released to any person without the express permission of the abuse victim, except when such information is required for a legitimate law enforcement purpose unrelated to the victim's abuser; and

"(C) assure that locational information about a victim or the services obtained by a victim are not considered a matter of public record."; and

(C) by adding at the end the following new subsection:

"(d) ADDITIONAL PROVISIONS.—(1) The requirements of subsection (c) do not apply to nonprofit, nongovernmental entities applying for grants under this section.

"(2) All grantees and subgrantees of grants in effect on the date of the enactment of this subsection or submitting new applications for funding after such date that are States, Indian tribal governments, or units of local government shall submit a certification by the chief executive officer of the State, tribal government, or local government entity that the conditions of subsections (c)(5) and (c)(6) are met (or will be met) not later than the date on which the next session of the State or Indian tribal legislature ends, but in no case later than 2 years after such date of enactment.

"(3) Failure by a grantee to comply with the certifications contained in paragraphs (1) thorough (6) of subsection (c) may result in suspension or revocation of funding. Once a grantee or subgrantee has been notified that its funding will be revoked, they shall be granted 6 months to bring their laws, policies, or practices into compliance before the revocation takes effect. Any funds that are not distributed to grantees or are removed from grantees under this paragraph shall be distributed to other eligible entities within the State. For grants under section 2002, the funds are to be redistributed first to entities within the same formula category and then, if there are no eligible entities within the same formula category, to other eligible entities without regard to the formula.".

(2) Section 2103 of such Act (42 U.S.C. 3796hh–2) is amended by adding at the end the following: "Each report shall include information about the demographics of underserved populations in the State and details about the percentage of funding that went to serve which underserved populations, the programs that received such funding, and the involvement of programs serving underserved populations in the community participation described in section 2102(a)(4).".

(d) RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT GRANTS.—Section 40295 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322, 108 Stat. 1953, 42 U.S.C. 13971(aa)(2)) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) to provide treatment, counseling, and legal assistance to victims of domestic violence and child abuse, including assistance to victims in immigration matters; and"; and

(2) by adding at the end the following new subsections:

"(d) APPLICATION REQUIREMENTS.—States, Indian tribal governments, and units of local government applying for grants under this section must certify that their laws, policies, and practices comply with each of the provisions of section 2101(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh(c)).

"(e) GRANTEE REPORTING.—Upon completion of the grant period under this part, a State or Indian tribal grantee shall file a performance report with the Attorney General. The report shall explain the activities carried out and shall evaluate the effectiveness of projects developed with the funds provided under the grant. The report shall include information about the demographics of underserved populations in the State and details about the percentage of funding that went to serve which underserved populations, the programs that received such funding, and the involvement of programs serving underserved populations in the community cooperation in subsection (a)(3).",

(e) FAMILY VIOLENCE PREVENTION AND SERVICES ACT.—

(1) Section 303(a)(2)(C) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)(2)(C)) is amended by striking "populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation" and inserting "populations underserved because of race, ethnicity, age, disability,

sexual orientation, religion, alienage status, geographic location (including rural isolation), language barriers, and any other populations determined to be underserved".

(2) Section 311(a)(4) of such Act (42 U.S.C. 10410(a)(4)) is amended by striking "underserved racial, ethnic or language-minority populations" and inserting "underserved populations as the term is used in section 303(a)(2)(C)".

(3) Section 303(a)(4) of such Act (42 U.S.C. 10402(a)(4)) is amended by inserting after the first sentence the following: "This performance report shall include information about the demographics of underserved populations in the State and details about the percentage of funding that went to serve which underserved populations, the programs that received such funding, and the involvement of programs serving underserved populations in the procedures described in subsection (a)(2)(C).".

(4) Section 303 of such Act (42 U.S.C. 10402) is further amended by adding at the end the following new subsection:

"(g) The Secretary shall submit to Congress, not later than 1 year after the date of the enactment of this subsection, a report that contains the following information:

"(1) The quantity and percentage of funding awarded to serve underserved populations by each State under programs funded under this Act.

"(2) The percentage of each underserved population in the demographic make up of each State compared to the amount of funding aimed at addressing the needs of that underserved population.

"(3) The extent to which grants to provide services to underserved populations are awarded to programs with experience and history working with underserved populations of battered women or sexual assault victims, to programs that have bilingual or bicultural staff, and to collaborations between domestic violence or sexual assault programs and programs experienced in serving particular underserved populations and to other grantees.

"(4) The extent to which nonprofit, nongovernmental victim service organizations with experience serving various underserved populations of battered women and sexual assault or stalking victims were involved in the procedures described in subsection (a)(2)(C).".

(f) CIVIL LEGAL ASSISTANCE.—Title I of the Department of Justice Appropriations Act, 1999 (contained within the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277)) is amended, under the heading of "Office of Justice Programs, State and Local Law Enforcement Assistance", by striking the period at the end and inserting the following: ", of which $206,750,000 shall be available for Grants To Combat Violence Against Women, to States, units of local government, and Indian tribal governments, as authorized by section 1001(a)(18) of said Act, including $23,000,000 which shall be used exclusively for the purpose of strengthening civil legal assistance programs for victims of domestic violence. Civil legal assistance under this heading includes (but is not limited to) legal assistance to victims of domestic violence, stalking or sexual assault in divorce, custody, child support, protection orders, immigration, public benefits, housing, consumer law and any other legal matter that will further the health, safety, and economic well-being of victims of domestic violence, stalking, or sexual assault.".

(g) CAMPUS DOMESTIC VIOLENCE GRANTS.—Section 826 of the Higher Education Amendments of 1998 (Public Law 105–244; 20 U.S.C. 1152) is amended—

(1) in subsection (b)(5), by inserting before the period at the end the following: ", including legal assistance to victims in civil, criminal, administrative, immigration, or disciplinary matters"; and

(2) in subsection (c)(2)(C), by striking "and number of students" and inserting "number of students, and services being offered to various underserved populations (as such term is defined in section 2003(7) of the Omnibus Crime Control and Safe Streets Act of 1968);".

(h) STATE JUSTICE INSTITUTE GRANTS.—Section 206(c) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(c)) is amended—

(1) by redesignating paragraph (15) as paragraph (16); and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) to support studies and investigate and carry out research on issues of battering and extreme cruelty against non-citizens, including the ramifications of the immigration provisions of the Violence Against Women Act of 1994 and subsequent immigration law reforms on the ability of victims to access civil, family, and criminal courts and the immigration consequences of civil, family, and criminal court actions; and".

SEC. 12. VIOLENCE AGAINST WOMEN ACT TRAINING FOR INS OFFICERS, IMMIGRATION JUDGES, AND CIVIL AND CRIMINAL COURT JUSTICE SYSTEM PERSONNEL.

(a) VIOLENCE AGAINST WOMEN.—

(1) MILITARY TRAINING CONCERNING DOMESTIC VIOLENCE.—The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after section 2006 (42 U.S.C. 3796gg–5) the following new section:

"SEC. 2007. MILITARY TRAINING CONCERNING DOMESTIC VIOLENCE.

"Each branch of the United States military is required to train its supervisory military officers on domestic violence, the dynamics of domestic violence in military families, the types of protection available for battered immigrant women and children abused by their United States citizen or lawful permanent resident spouse or parent under the Violence Against Women Act of 1994, and the problems of domestic violence in families in which a United States citizen or lawful permanent resident member of the military is married to a non-United States citizen.".

(2) INS TRAINING.—Section 2001 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3795gg) is amended—

(A) in subsection (a), by inserting "the Immigration and Naturalization Service and the Executive Office of Immigration Review," after "Indian tribal governments,";

(B) in subsection (b)(1), by inserting ", immigration and asylum officers, immigration judges," after "law enforcement officers"; and

(C) in subsection (b)—

(i) by striking "and" at the end of paragraph (6),

(ii) by striking the period at the end of paragraph (7) and inserting "; and", and

(iii) by adding at the end the following new paragraph:

"(8) training justice system personnel on the immigration provisions of the Violence Against Women Act of 1994 and their ramifications for victims of domestic violence appearing in civil and criminal court proceedings and potential immigration consequences for the perpetrators of domestic violence.".

(b) EFFECT ON OTHER GOALS.—Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) is amended by adding at the end the following:

"(11) Congress finds that public policy favors encouraging the prosecution of criminals; and therefore, nothing in this section may be construed to discourage crime victims, including domestic violence victims, from cooperating with law enforcement officials and prosecutors, including reporting of crimes committed against them to police, from cooperating in criminal prosecutions, or from seeking from courts protection orders or other legal relief available under State or Federal laws needed to protect crime victims from ongoing violence.".

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives on—

(1) the number of and processing times for petitions under clauses (iii) and (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)) and under clauses (ii) and (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)) at district offices of the Immigration and Naturalization Service and at the regional office of the Service in St. Albans, Vermont;

(2) the policy and procedures of the Immigration and Naturalization Service by which an alien who has been battered or subjected to extreme cruelty who is eligible for suspension of deportation or cancellation of removal can place such alien in deportation or removal proceedings so that such alien may apply for suspension of deportation or cancellation of removal, the number of requests filed at each district office under this policy, and the number of these requests granted, reported separately for each district; and

(3) the average length of time at each Immigration and Naturalization office between the date that an alien who has been subject to battering or extreme cruelty eligible for suspension of deportation or cancellation of removal requests to be placed in deportation or removal proceedings and the date that immigrant appears before an immigration judge to file an application for suspension of deportation or cancellation of removal.

SEC. 13. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING CRIMES AGAINST WOMEN.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—

(A) Trafficking of humans, particularly women and children, is denounced by the international community as an egregious human rights violation perpetuated increasing by organized and sophisticated criminal enterprises.

(B) Trafficking to place persons in forced labor, servitude, or in slavery-like conditions has been identified as a multinational crime problem of growing severity with increasing ties to internal organized crime. Traffickers recruit and transport persons, especially women and children, to the United States in order to exploit them under horrific conditions through the use of force, violence, debt bondage, or other coercive tactics.

(C) Similarly, immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, incest, battery or extreme cruelty, sexual assault, female genital mutilation, forced prostitution, being held hostage or other violent crimes. All women and children who are victims of trafficking, domestic violence, sexual assault, being held hostage, and other human rights violations committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the criminal prosecution of their abusers.

(2) PURPOSE.—

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of trafficking of aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of violations to law enforcement officials by exploited aliens who are not in a lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations, prosecutions, and civil law enforcement proceedings. By providing temporary legal status to aliens who have been severely victimized by trafficking or similar egregious offenses, it also reflects the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert such nonimmigrants to permanent resident status when it is justified on humanitarian grounds, to assure family unity, or when it is otherwise in the public interest.

(b) ESTABLISHMENT OF HUMANITARIAN/MATERIAL WITNESS NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) by striking "or" at the end of subparagraph (R);

(2) by striking the period at the end of subparagraph (S) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(T) subject to section 214(m), an alien (and the spouse, children, and parents of the alien if accompanying or following to join the alien) who files an application for status under this subparagraph, if the Attorney General determines that—

"(i) the alien possesses material information concerning criminal or other unlawful activity;

"(ii) the alien is willing to supply or has supplied such information to Federal or State law enforcement officials or a Federal or State administrative agency investigating or bringing an enforcement action;

"(iii) the alien would be helpful, were the alien to remain in the United States, to a Federal or State investigation or prosecution of criminal or other unlawful activity; and

"(iv) the alien (or a child of the alien) has suffered substantial physical or mental abuse as a result of the criminal or other unlawful activity.".

(c) CONDITIONS FOR ADMISSION.—

(1) NUMERICAL LIMITATIONS, PERIOD OF ADMISSION, ETC.—Section 214 of such Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(m)(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(T) in any fiscal year may not exceed 2,000.

"(2) The period of admission of an alien as such a nonimmigrant may not exceed 3 years and such period may not be extended.

"(3) As a condition for the admission (or the provision of status), and continued stay in lawful status, of an alien as such a nonimmigrant, the alien—

"(A) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission (or obtaining such status); and

"(B) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

"(4) The provisions of section 204(a)(1)(H) shall apply to applications to obtain nonimmigrant status under section 101(a)(15)(T). Credible evidence to meet the conditions described in clauses (i), (ii), or (iii) of section 101(a)(15)(T) may include certification from a Federal or State law enforcement officer or prosecutor or a Federal or State official responsible for bringing enforcement actions that the alien is willing to cooperate or has cooperated in a criminal or civil court action or investigation or Federal or State administrative agency enforcement action or investigation.".

(2) PROHIBITION OF CHANGE OF NONIMMIGRANT CLASSIFICATION.—Section 248(1) of such Act (8 U.S.C. 1258(1)) is amended by striking "or (S)" and inserting "(S), or (T)".

(d) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(l)(1) The Attorney General may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(T) (and a spouse, child, or parents admitted under such section) to that of an alien lawfully admitted for permanent residence if—

"(A) in the opinion of the Attorney General, the alien's continued presence in the United States is justified on humanitarian grounds, to assure family unity, or is otherwise in the public interest; and

"(B) the alien is not described in subparagraph (A)(i)(I), (A)(ii), (A)(iii), (C), or (E) of section 212(a)(3).

"(2) Upon the approval of adjustment of status under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current.".

(2) EXCLUSIVE MEANS OF ADJUSTMENT.—Section 245(c)(5) of such Act (8 U.S.C. 1255(c)(5)) is amended by striking "sections 101(a)(15)(S)," and inserting "subparagraph (S) or (T) of section 101(a)(15)".

SEC. 14. ACCESS TO CUBAN ADJUSTMENT FOR BATTERED IMMIGRANT SPOUSES AND CHILDREN.

(a) IN GENERAL.—The last sentence of the first section of Public Law 89–732 (November 2, 1966; 8 U.S.C. 1255 note) is amended by striking the period at the end the following: ", except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(H) of the Immigration and Nationality Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.).

SEC. 15. ACCESS TO THE NICARAGUAN AND CENTRAL AMERICAN RELIEF ACT FOR BATTERED SPOUSES AND CHILDREN.

Section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 203(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (title II of Public Law 105–100, 111 Stat. 2196) is amended—

(1) by striking "or " at the end of subclause (IV);

(2) by striking the period at the end of subclause (V) and inserting a semicolon; and

(3) by adding at the end the following:

"(VI) is, at the time of filing of an application under subclause (I), (II), (V), or (VI) of this clause, the spouse or child (as defined in paragraph (1) or (6) of section 101(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)) of an individual described in subclause (I), (II) or (V) of this clause and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subclause (I), (II), or (V); or

"(VII) is, at the time of filing of an application under subclause (I), (II), (V), or (VII) of this clause, the unmarried son or daughter of an individual described in subclause (I), (II) or (V) of this clause who has been battered or subjected to extreme cruelty by the par-

ent described in subclause (I), (II), or (V) and, in the case of a son or daughter who is 21 years of age or older at the time the decision is rendered to suspend the deportation or cancel the removal of the son or daughter, the son or daughter must have entered the United States on or before October 1, 1990.

In acting on a petition filed under subclause (VI) or (VII), the provisions set forth in section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) shall apply."

SEC. 16. ACCESS TO THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998 FOR BATTERED SPOUSES AND CHILDREN.

Section 902(d)(1) of the Haitian Refugee Immigration Fairness Act of 1998 (title IX of the Treasury and General Government Appropriations Act, 1999, contained in Public Law 105–277) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B)(i)(I) the alien is the spouse, child, or unmarried son or daughter, of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), or (II) at the time of filing of the application for adjustment of status under subsection (a) or this subsection the alien is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a) and the spouse, child, son, daughter or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subsection (a); and

"(ii) in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that he or she has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed;"; and

(2) by adding after and below subparagraph (D) the following:

"In acting on an application filed under this section for an individual described in subparagraph (B)(i)(II), the provisions set forth in section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) shall apply."

○

Mr. SMITH. We will have our opening statements to start with, and then we will start immediately with our first witness.

I recognize myself for purposes of an opening statement, and before I do that, I do want to recognize the presence of the ranking member of the full Judiciary Committee, John Conyers of Michigan, and he will have some comments in a minute as well.

Domestic abuse is a major and disturbing problem in this country and throughout the world. When the abused is an alien, the problem becomes even more complex. The purposes of today's hearing is to examine H.R. 3083, the Battered Immigrant Women's Protection Act. Currently, at least 11 forms of immigration relief exist for battered aliens in the Immigration and Nationality Act. These forms of relief address many of the concerns raised in the bill.

For instance, spouses and children of abusive spouses and parents may self-petition for a visa so they do not need to rely on the abusive spouse or parent to petition for a visa on their behalf. An abused alien may apply for a waiver from filing a joint petition with her abusive spouse to remove her conditional resident status.

Battered illegal aliens also can apply for suspension of deportation and cancellation of removal by showing that they have continuous physical presence in the U.S. for 3 years instead of the usual 7 or 10. The 1996 act also gave battered illegal aliens waivers of inadmissibility for entering the U.S. without inspection and for

being illegally present in the U.S. if they can show a connection between the immigration violation and the battery or abuse.

The 1996 act exempted battered aliens from the requirement that their spouse file an affidavit of support which is used to overcome the public charge ground of inadmissibility. The 1996 act also amended the Personal Responsibility and Work Opportunity Reconciliation Act so that battered aliens can qualify for Federal benefits such as Head Start, educational assistance programs, and child nutritional programs.

The bill we are considering today, H.R. 3083, gives aliens who have been battered additional forms of immigration relief. Supporters of the bill say that legal protections for battered aliens need to be restored and expanded so they can flee violent homes, obtain court protection, and cooperate in the criminal prosecution of their abusers without fear of deportation.

However, many of the benefits created in this bill do not require battered aliens to cooperate with law enforcement officers to enable them to investigate or prosecute the aliens' abusers. This is contrary apparently to the alleged purpose of the bill. The bill permits a self-petitioning spouse and child of a U.S. citizen to remain as an immediate relative, even if the abusive U.S. citizen loses citizenship or dies after a petition is filed.

Some provisions in the bill raise concerns. The bill restores section 245(i) which rewarded illegal aliens and which Congress wisely repealed several years ago.

The bill also deletes the time-stop rule for battered aliens. This could lead to dilatory tactics in court for up to 3 years, after which an alien becomes eligible for cancellation of removal. The bill also waives several grounds of inadmissibility and deportability. These grounds are unrelated to battery or cruelty and should not be waived. The waivers do not further the stated purpose of this bill.

For example, the bill deletes the 3-and 10-year bars of inadmissibility if an alien has been unlawfully present in the U.S. and has been battered. With this provision, a claim of battery becomes a trump card to deportation for almost any illegal alien. The bill contains waivers for many crimes, including aggravated felonies, if the alien can show the crime was related to being abused. The question arises, should criminal and illegal aliens receive the relief simply because they claim to have been abused? This could open up our immigration system to widespread fraud as criminal and illegal aliens learn that the way to defeat our immigration laws is simply to claim to be battered.

The bill removes the requirement that a battered alien live with the abuser in the U.S. This grants self-petitioning relief to battered aliens living abroad. But perhaps this, as several other points that I mentioned, was unintended. It also deletes the good moral character and extreme hardship requirements for the self-petitioner.

H.R. 3083 extends self-petitioning to battered aliens who file within 2 years of divorce or whose U.S. citizen spouse died. If the spouse is deceased-or divorced, the alien, of course, is no longer in the abusive circumstances that gave rise to the visa.

So the stated purpose of the bill to allow women to flee violent homes is not achieved by this provision. In short, the bill aims to achieve worthy goals but can be improved, and I hope the sponsors

of the bill will consider the changes that I have suggested in my opening statement.

That concludes my opening statement and I will now yield to the ranking member, Mr. Conyers, for his opening statement as well.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF HON. LAMAR S. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Domestic abuse is a major and disturbing problem in this country and throughout the world. When the abused is an alien, the problem becomes more complex. The purpose of today's hearing is to examine H.R. 3083, the "Battered Immigrant Women's Protection Act."

Currently, at least 11 forms of immigration relief exist for battered aliens in the Immigration and Nationality Act. These forms of relief address many of the concerns raised by the bill.

For instance, spouses and children of abusive spouses and parents may self-petition for a visa so they do not need to rely on the abusive spouse or parent to petition for a visa on their behalf. An abused alien may apply for a waiver from filing a joint petition with her abusive spouse to remove her conditional resident status.

Battered illegal aliens also can apply for suspension of deportation and cancellation of removal by showing they have had continuous physical presence in the U.S. for 3 years, instead of the usual 7 or 10 years. The 1996 act also gave battered illegal aliens waivers of inadmissibility for entering the U.S. without inspection and for being unlawfully present in the U.S. if they can show a connection between the immigration violation and the battery or abuse.

The 1996 act exempted battered aliens from the requirement that their spouse file an affidavit of support, which is used to overcome the public charge ground of inadmissibility. The 1996 act also amended the Personal Responsibility and Work Opportunity Reconciliation Act so that battered aliens can qualify for federal benefits such as Head Start, educational assistance programs, and child nutritional programs.

The bill we are considering today, H.R. 3083, gives aliens who claim to have been battered additional forms of immigration relief. Supporters of the bill say that legal protections for battered aliens need to be restored and expanded so that they can flee violent homes, obtain court protection, and cooperate in the criminal prosecution of their abusers, without fear of deportation. However, most of the benefits created in this bill do not require battered aliens to cooperate with law enforcement officers to enable them to investigate or prosecute the aliens' abusers. This is contrary to the alleged purpose of the bill.

The bill permits a self-petitioning spouse and child of a U.S. citizen to remain as immediate relatives, even if the abusive U.S. citizen loses citizenship or dies after a petition is filed.

It exempts abused spouses from the conditional residency status requirement after obtaining a fiance visa if the alien seeks adjustment of status based on an approved battered self-petition visa. It also permits divorced abused aliens to naturalize in 3 years, as if no divorce occurred, instead of 5 years.

Some provisions in the bill raise concerns. The bill restores section 245(i). Section 245(i) rewarded illegal aliens and Congress wisely repealed it several years ago.

The bill also deletes the time-stop rule for battered aliens. This could lead to dilatory tactics in court for up to 3 years, after which an alien becomes eligible for cancellation of removal.

The bill also waives several grounds of inadmissibility and deportability. These grounds are unrelated to battery or cruelty and should not be waived. The waivers do not further the stated purpose of this bill.

For example, the bill deletes the 3 and 10-year bars of inadmissibility if an alien has been unlawfully present in the U.S. and has been battered. With this provision, a claim of battery becomes a trump card to deportation for almost any illegal alien.

The bill contains waivers for many crimes, including aggravated felonies, if the alien can show the crime was related to being abused. Should criminal and illegal aliens receive this relief simply because they claim to have been abused? This could open up our immigration system to widespread fraud as criminal and illegal aliens learn that the way to defeat our immigration laws is to claim to be battered?

The bill removes the requirement that a battered alien live with the abuser in the U.S. This grants self-petitioning relief to battered aliens living abroad. Perhaps this was unintended. It also deletes the good moral character and extreme hardship requirements for the self-petitioner.

H.R. 3083 extends self-petitioning to battered aliens who file within 2 years of divorce or whose U.S. citizen spouse died. If the spouse is deceased or divorced, the alien of course is no longer in the abusive circumstances that give rise to the visa. So the stated purpose of the bill—to allow women to flee violent homes—is not achieved by this provision.

In short, the bill aims to achieve worthy goals but can be improved. I hope the sponsors of the bill will consider the changes I've suggested.

Mr. CONYERS. Thank you, Chairman Smith, and Ranking Member Jackson Lee.

I begin by welcoming Congresswoman Schakowsky to our hearing. She has done a very important thing by putting together this measure. I am proud to be on it.

I want to thank the chairman of the subcommittee for holding the hearing. I think this is a very important avenue for examining these issues that are before us here.

Now, prior to the enactment of the Violence Against Women Act in 1994, the immigration laws permitted abusive husbands to have too much control over the immigration status of their family members. Battered immigrant women and children were not able to appeal to law enforcement agencies and courts for protection because they simply feared being reported to the INS and deported.

The immigration provisions contained in VAWA, 1994, helped to remedy this situation. Among other things, it permitted battered immigrants to file an application for immigration relief without cooperation of the abusive spouse or parent. But despite the successes of VAWA, intervening legislative changes enacted mostly by the majority have severely undermined protections for battered immigrants.

For example, by making domestic violence a deportable crime, an unintended effect of the 1996 immigration law is that a spouse's VAWA petition for immigration relief becomes void when her husband is deported. This creates a perverse incentive for a battered immigrant spouse to tolerate the abuse rather than report it.

The 1996 law also harmed battered immigrants by capping the number of cancellation of deportation grants and increasing the evidentiary requirement needed to show a relationship between abuse and unlawful entry.

In addition, in 1998, the majority eliminated the benefits of section 245(i) of the immigration law for immigrants seeking permanent residency status. What it means then is that battered immigrant women and children with approved VAWA petitions are forced to leave the United States to obtain their green cards. Traveling outside the United States, of course, deprives these immigrants of the protection provided by the courts, custody decrees and law enforcement. Once abroad, the battered immigrant is, of course, vulnerable to stalking and retaliatory attacks by the abuser.

So we, on our side of the aisle, have expressed concern about these and other problems facing battered immigrants for the last two Congresses. I have introduced bills with Congresswoman Morella, Congresswoman Schakowsky, and Congresswoman Jackson Lee, that would address these problems facing battered immigrants. I believe we should have considered these changes as part of our violence against women reauthorization in the Full Commit-

tee last month. We attempted to do so, but were refused again by the majority to allow this, promising us this hearing instead.

And so it is now incumbent upon us, and the chairman hopefully, to move the legislation as rapidly as we can so that we can get the bill to the President's desk before adjournment.

By the way, I do want to say a word about the ranking member of this subcommittee, Ms. Jackson Lee, who has worked tirelessly in the whole area of immigration issues, and in no area has she worked with more vigor than on the question of battered women immigrants. And I wanted to congratulate her in that regard. I thank you, Chairman Smith.

Mr. SMITH. Thank you, Mr. Conyers.

The ranking member of the subcommittee, the Congresswoman from Texas, Ms. Jackson Lee, is recognized for her opening statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me add my applause and appreciation for you agreeing to hold this hearing, and to the ranking member of the full Judiciary Committee, allow me to thank him for his constant persistence on issues of justice and fairness, and to thank him for joining with other colleagues in the effort to have this issue in conjunction with the Violence Against Women Act. That effort was valiant and we appreciated it greatly.

I just came upstairs from presiding over a group of Americans dealing with education and children's issues, the Yale University Child Study Center. And when I mentioned why I had to depart, in order for them to understand this issue, I talked about how America has addressed the question of violence against women. We have the Violence Against Women Act. We understand that it was important as a Nation to stand up against domestic violence and domestic abuse. And I simply had to raise the question that immigrant women do not have the is same protections and they immediately understood the purpose and the importance of why we are here today.

The bill that we are examining today, H.R. 3083, the Battered Immigrant Women Protection Act of 1999, will provide much-needed access to battered immigrant victims of domestic violence. Congresswoman Schakowsky has been a valiant light in ensuring that this matter has been brought before the United States Congress, and I am delighted to join her on this legislation. We thank you for your work.

In evaluating provisions of H.R. 3083, we should be mindful that but for the failure of citizens or permanent resident abusers to submit immigration petitions for their immigrant spouses and children, the beneficiaries of the battered immigrant provision would already have lawful immigration status through a family-based visa petition. A citizen or permanent resident batterer also manipulates such misconceptions by convincing his victim that he will prevail in court because he is a male and he has more money, some of that from the cultural history of these particular immigrants.

Moreover, a batterer often uses his immigration status against his victim as a tool of control threatening to report her to the INS or refusing to withdraw immigration petitions that would grant her status.

The Congress addressed this vexing issue in the bipartisan 1994 Violence Against Women Act. This legislation created a mechanism that enables immigrant victims of domestic violence to gain permanent residence in the United States without the knowledge or participation of their abusive citizen or permanent resident spouse. The 1994 VAWA bill requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser.

The spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice. However, as those who might oppose this bill ask, why do we need this bill? I can say that unfortunately, our job as lawmakers is not yet done. Our intent in 1994 was to provide battered immigrants with a meaningful access to lawful immigration status, thus allowing them to safely leave their abusers. Nevertheless, we are still finding groups of immigrants who are trapped in abusive relationships despite the access to such lawful status.

Why do we need this bill? We need this bill because H.R. 3083 would provide VAWA relief to abused children who subsequently turn 21, as long as they can demonstrate that one or more incidents of battery or extreme cruelty occurred before they turned 21. Of note, battered immigrants living abroad currently have no access to VAWA immigration relief. The abused children of spouses married to members of the U.S. Armed Forces and U.S. Government employees living abroad are trapped overseas, unable to escape and seek assistance. Filing a family-based visa petition at an American consulate is permissible, while filing a VAWA self-petition is not.

In addition, divorced battered immigrants do not have access to VAWA immigration relief. There are many savvy abusers who know that if they divorce their abused spouse, they will cut off their victim's access to VAWA relief.

H.R. 3083 allows battered immigrants to file such relief of self-petitions if it is filed within 2 years of divorce. Why do we need this bill? Because far too often the pleas for help of these innocent victims are not heard because of language or cultural barriers. They do not know where to turn. Moreover, many victims remain silent because of threat of deportation looms over them and their children and they may be separated from their children. As a result, immigrant women are caught in an intersection of immigration, family and welfare laws that does not positively reflect on their needs or life experiences, leaving them vulnerable to exploitation with few options to redress their situations.

There are real human illustrations as to why we need this bill. Carla, a Guatemalan woman has lived with her boyfriend, a legal permanent resident, for 5 years. When she asks him about getting married, she can apply for her own legal residency, he beats her and accuses her of only wanting to be with him so that she had get her immigration status recognized.

Tai Lin, a Chinese woman has difficulty finding support to escape her abusive husband. She lost her factory job because she has no work permit. The immigrant service agency she approached encourages her stay with her husband and advised her to try her best to cope with her difficult situation. Can you imagine staying with

an abuser who might cost you your life? Moreover, because she speaks Cantonese, the battered women's shelter she calls cannot communicate with her.

And Leticia, an undocumented, Filipino woman who went to a civil court and obtained a restraining order against her violent husband. When her husband comes to her house violating the restraining order, he calls the police. Her husband flees before the police arrive. The officer who responds makes a report and then asks her for her green card.

These are real life stories that impact women and children and they have no place to go. A battered woman who is not a legal resident, whose immigration status depends completely on her partner, is often isolated by unique cultural dynamics which may prevent her from leaving her husband or seeking asylum.

For instance, a battered immigrant woman may not understand that she is entitled to personally tell her story in court, or further, that a judge may believe her. Based on her experience in her native country, she may believe that only those who are wealthy or have ties to the government will prevail in court.

Finally, if anyone ever asks why we need this bill, it is because H.R. 3083, the Battered Immigrant Women Protection Act of 1999, will improve the lives of human beings, of women of children together collectively.

Mr. Chairman, I have heard your assessment of the legislation. What I believe we will find out today as we listen to these very, very strong stories and testimony of the need of this bill is that we will find a way to move this legislative initiative along, and we will work in a bipartisan way to get a bill that will help save lives. With that, Mr. Chairman, I thank you.

Mr. SMITH. Thank you, Ms. Jackson Lee.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank-you Mr. Chairman for agreeing to hold this very important hearing on a subject matter that impacts so many people. The bill that we are examining today, the H.R. 3083, The Battered Immigrant Act of 1999, would provide much needed access to battered immigrant victims of domestic violence.

In evaluating provisions of H.R. 3083, we should be mindful that but for the failure of citizens or permanent resident abusers to submit immigration petitions for their immigrant spouses and children, the beneficiaries of the Battered Immigrant provisions would already have lawful immigration status through a family- based visa petition.

A citizen or permanent resident batterer often manipulates such misconceptions by convincing his victim that he will prevail in court because he is a male and he has more money. Moreover, a batterer often uses his immigration status against his victim as a tool of control, threatening to report her to INS or refusing or withdrawing immigration petitions that would grant her status.

The Congress addressed this vexing issue in the bipartisan 1994 Violence Against Women Act. This legislation created a mechanism that enables immigrant victims of domestic violence to gain permanent residence in the U.S. without the knowledge or participation of their abusive citizen or permanent resident spouses.

The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser. The spirit and intent of the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice. However, as are those who might oppose this bill ask, "Why do we need this bill? I can say that unfortunately, our job, as lawmakers, is not yet done. Our intent in 1994 was to provide battered immigrants with meaningful access to lawful immigration status, thus allowing them to safely leave their abusers.

Nevertheless, we are still finding groups of battered immigrants who are trapped in abusive relationships despite the access to such lawful status. WHY DO WE NEED THIS BILL?

We need this bill because H.R. 3083 would provide VAWA relief to abused children who subsequently turn 21 as long as they can demonstrate that one or more incidents of battery or extreme cruelty occurred before they turned 21.

Of note, battered immigrants living abroad currently have no access to VAWA immigration relief. Abused children of spouses married to members of the U.S. Armed forces and U.S. government employees living abroad are trapped overseas unable to escape and seek assistance. Filing a family-based visa petition at an American consulate is permissible, while filing VAWA self-petitions are not.

In addition, divorced battered immigrants do not have access to VAWA immigration relief. There are many "savvy" abusers who know that if they divorce their abused spouse they will cut off their victim's access to VAWA relief. H.R 3083 allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce. WHY DO WE NEED THIS BILL?

We need this bill because far too often, the pleas for help by these immigrant victims are not heard because of language or cultural barriers. Moreover, many victims remain silent because the threat of deportation looms over them and their children. As a result, immigrant women are caught in an intersection of immigration, family, and welfare laws that do not reflect their needs and life experiences, leaving them vulnerable to exploitation with few options for redress. There are real human illustrations as to why we need this bill.

Carla, a Guatemalan woman, has lived with her boyfriend, a legal permanent resident for five years. When she asks him about getting married so she can apply for her own legal residency, he beats her and accuses her of only wanting to be with him so she can get her immigration status recognized.

And Tai Lin, a Chinese woman, has difficulty finding support to escape her abusive husband. She lost her factory job because she has no work permit. The immigrant service agency she approached encourages her to stay with her husband and advised her to try her best to cope with her difficult situation. Moreover, because she speaks Cantonese, the battered women's shelter she calls cannot communicate with her.

And Leticia, an undocumented Filipina woman, who went to civil court and obtained a restraining order against her violent husband. When her husband comes to her house violating the restraining order, she calls the police. Her husband flees before the police arrived. The officer who responds makes a report and then asks her for her "green card."

Such compelling real-life stories illustrate the unique array of legal, economic, and social problems battered immigrant women face today.

A battered woman, who is not a legal resident, or whose immigration status depends completely on her partner, is often isolated by unique cultural dynamics which may prevent her from leaving her husband or seeking assistance from the American legal system.

For instance, a battered immigrant woman may not understand that she is entitled to personally tell her story in court, or further, that a judge will believe her. Based on her experience in her native country, she may believe that only those who are wealthy or have ties to the government will prevail in court.

Finally, if anyone ever asks why we need this bill . . . it is because H.R. 3083, The Battered Immigrant Act of 1999, will improve the lives of battered immigrants and send them on a path to rebuilding their lives and the lives of their children.

WE NEED THIS BILL.

Thank-You Mr. Chairman.

Mr. SMITH. We will now go to our first witness and welcome our colleague from Illinois, Congresswoman Jan Schakowsky. And we look forward to your testimony if you will please proceed.

STATEMENT OF HON. JANICE SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you so much. Mr. Chairman. I really want to express my appreciation to you for scheduling this hearing, to the ranking member of the full committee, Mr. Speaker, Conyers, the ranking member of this committee, Ms. Jackson Lee, who is a cosponsor of this legislation, and members of the subcommit-

tee. I appreciate the opportunity to address the desperate needs of battered immigrant women and their families. I appreciate your interest in exploring the complex issues facing battered immigrant women and your commitment to work toward solutions that would allow battered immigrants to escape the violence and to provide a safe future for themselves and their children.

I wanted to give a special thanks to Congresswoman Morella and Congresswoman Jackson Lee for their leadership on this bipartisan bill, and Mrs. Morella for her years of outstanding leadership on the Violence Against Women Act on which this legislation builds. I know that she has submitted written testimony on this legislation.

I am grateful to the 103 cosponsors of this bill. And to Senators Abraham and Kennedy who have a companion measure in the Senate as part of the VAWA bill.

I represent a very, very diverse district. A human tapestry that serves as gateway to America for immigrants from all parts of the globe. Every day these hardworking immigrants are embracing the challenges of their adopted Nation and contributing to the vibrancy of our community. But as in every community there exists the tragedy of domestic violence. While the victims of abuse are, by definition, in a traumatic situation, immigrant women who must rely on their abusers to avoid deportation are even in worse trouble.

H.R. 3083, the Battered Immigrant Women Protection Act, is intended to assist these victims. It seeks to strengthen and expand access to a variety of legal protections for battered immigrants so that they may flee violent homes, obtain court protection, cooperate in the criminal prosecution of their abusers, and take control of their lives without fear of deportation.

Let me emphasize first what this bill will not do. It will not open the floodgates to undocumented or unwanted immigrants. According to experts, this bill will increase the number of VAWA filings and approvals by at most 10 percent. Last year that would have amounted to 190 additional approvals. It is important to understand that almost all of the individuals who benefit from this bill would, but for the abuse, have access to legal immigration status. Let me say that again. Nearly all beneficiaries of this bill are currently eligible through traditional family-based immigration policy to legalize their immigration status. It is only when they flee their abusers that their status is in jeopardy.

What the Battered Immigrant Women Protection Act does do is continue the work that began with the passage of the first VAWA Act in 1994, allowing battered immigrant women to escape domestic violence by addressing negative incentives that trap them in violent relationships.

Specifically, H.R. 3083 addresses five areas of concern in current immigration law: It re-defines who is eligible for protection under VAWA; addresses implementation problems in VAWA 94; continues the commitment that you, Chairman Smith, put further in 1996 by assuring that battered immigrants have access to the economic safety net crucial to their ability to escape their abusers; provides INS and law enforcement officers with the necessary training and tools to ensure that abusers are prosecuted; and makes technical corrections that remove ambiguities in the current law.

This is a complex issue, and as a non-lawyer, I found it easiest to understand through examples. Let me share just a couple. I will try and do that before my time runs out. H.R. 3083 ends an unintended incentive for victims to stay with their abusers. Under current immigration laws, abusers who are convicted of domestic violence crimes may be stripped of their legal immigration status and deported from the United States, a policy which I strongly support. And, in fact, the first purpose listed on page 3 of the bill is to promote criminal prosecutions of all persons who commit acts of battery or extreme cruelty.

Because victims must be married to their abusive U.S. citizen or legal permanent resident spouse at the time they file their VAWA application, it creates a perverse incentive for the battered immigrant to tolerate the abuse rather than report it. This bill allows the battered immigrant access to permanent immigration status and to fully cooperate with the criminal prosecution of her abuser, even if her abuser is deported. For example, Marta was stabbed by her permanent resident spouse, who was subsequently arrested for the crime of domestic violence. Marta wanted to cooperate in the criminal prosecution of her spouse, but was afraid since her immigration status was dependent on her husband maintaining his legal immigration status. This decision proved deadly as Marta was killed later by her husband.

May I continue?

Mr. SMITH. Please continue.

Ms. SCHAKOWSKY. Thank you. H.R. 3083 extends access to divorced victims of domestic abuse. Under current immigration laws, the abused immigrant spouse must be married to the U.S. citizen or permanent resident. Savvy abusers often sprint to the courthouse for a quick divorce because they know this will cut off her access to immigration relief. This bill allows battered immigrants who are divorced from their abusers to file their applications for immigrant status within 2 years of the divorce, death, or loss of citizenship of the abuser.

Example: Mona, who is from Poland, married a U.S. citizen. She was severely abused during the first years of her marriage. She fled to a shelter and immediately her spouse sought a divorce to effectively cut her off from any permanent resident status. Mona will not have access to immigration status if she had not submitted her application prior to the final divorce.

Let me give you one more. H.R. 3083 extends access to abused sons and daughter over the age of 21. Under current immigration laws, only spouses or minor children of U.S. citizens or residents have access to permanent immigration status. Abused sons or daughters over 21 have no access to permanent immigration status, even though they have suffered years of domestic—it could even be sexual abuse perpetrated by their citizen or resident parent. This bill contains provisions that extend immigration relief to individuals over 21 who can demonstrate that battery or extreme cruelty had occurred during their childhood prior to turning 21 years old.

Sandra is the 22-year-old daughter of a U.S. citizen. At 10 years old, she came with her mother when her mother married the U.S. citizen. She was sexually abused for 8 years by her mother's husband. This abuser never filed immigration status for Sandra.

Under current laws, Sandra now has no access to legal immigration relief.

Let me conclude with this. With the passage of the Violence Against Women Act, Congress sent a clear message to this Nation that violence against women is not just wrong, it is a crime. Prior to 1994, abusive citizens and permanent residents had total control over their spouse's immigration status. As a result, battered immigrant women and children were forced to remain in abusive relationships. By passing this Act, the committee has an opportunity to build on our strong record of opposing all violence against women by keeping victims safe and holding abusers accountable.

My bill, I feel, balances the INS's need to maintain the integrity of our immigration system with the delicate special needs of battered immigrant women and their families. It provides them with a legal way to escape the abuse and end the cycle of violence without the fear of deportation or being separated from their children.

And finally, Mr. Chairman, I would like to ask to include as part of my written testimony a list of the more than 200 organizations around this country that support this bill and a letter from leading domestic violence advocates who support H.R. 3083.

Mr. SMITH. Without objection, that list will be made a part of the record as will some testimony that I have, as well as anything that the ranking member wants to include as well.

Congresswoman Schakowsky, thank you for your testimony.

[The prepared statement of Ms. Schakowsky follows:]

PREPARED STATEMENT OF HON. JANICE SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

I would like to thank Chairman Hyde, Chairman Smith, Congresswoman Jackson Lee and members of the Subcommittee for holding this hearing and allowing me the opportunity to address the desperate needs of battered immigrant women and their families. I appreciate your interest in exploring the complex issues facing battered immigrant women and your commitment to working towards solutions that will allow battered immigrants to escape the violence and to provide a safe future for themselves and their children. I would also like to acknowledge and thank Congresswomen Morella and Jackson Lee for their leadership on this bipartisan bill, and Mrs. Morella for her years of outstanding leadership on the Violence Against Women Act (VAWA), on which this legislation builds.

I represent the 9th Congressional District in Illinois, a Chicago and suburban district that is a human tapestry and serves as a gateway to America for immigrants from all parts of the globe. Every day these hardworking immigrants are embracing the challenges of their adopted nation and contributing to the vibrancy of our community.

But, as in every community, there exists the tragedy of domestic violence. While the victims of abuse are by definition in a traumatic situation, the immigrant victim who must rely on her abuser to avoid deportation is in even worse trouble. H.R. 3083, the Battered Immigrant Women Protection Act, is intended to assist these victims. It seeks to strengthen and expand access to a variety of legal protections for battered immigrants so they may flee violent homes, obtain court protection, cooperate in the criminal prosecution of their abusers and take control of their lives without fear of deportation.

Let me begin by emphasizing what my bill will NOT do: It will NOT open the floodgates to undocumented or unwanted immigrants. According to experts, this bill will increase the number of VAWA filings and approvals by at most 10 percent. Last year that would have amounted to 190 additional approvals. It is important to understand that almost all of the individuals who would benefit from this bill would, but for the abuse, have access to legal immigration status. Let me say that again: Nearly all potential beneficiaries of this bill would be eligible, through traditional family based immigration policy, to legalize their immigration status.

As it stands now, under immigration law, a spouse who is married to a U.S. citizen or legal permanent resident must wait either two or five years before filing a

joint petition to legalize his or her immigration status. If an immigrant spouse leaves a violent home to escape abuse, that person must self-petition for legal immigration status (relief provided under VAWA) and must also meet a litany of very high evidentiary standards in order to obtain legal status.

These barriers are so daunting that many immigrant spouses who suffer from domestic violence choose to stay with their abuser, hoping to live out the years it will take before they are eligible to file a joint petition. This is particularly true when they have no access to attorneys or advocates, a situation that often occurs for people who are isolated in their communities because of language barriers or threats by their abusive spouse. Sadly, many immigrant spouses find their gamble never pays off because their abuser refuses to file a joint petition, using his or her power to maintain their spouse' undocumented status as leverage to keep the spouse from leaving.

In essence, what our immigration policy is saying to abused spouses is, "put up with the abuse, risk your life and the lives of your children, and maybe you'll get legal immigration status." I do not believe this is the message we wish to convey to immigrants. I believe the disparity in our message unfairly burdens VAWA applicants and undermines VAWA's original intent to protect battered immigrant women.

The Battered Immigrant Women Protection Act continues the work that began with the passage of the first Violence Against Women Act in 1994, allowing battered immigrant women to escape domestic abuse by addressing adverse incentives that trap them in violent relationships.

Specifically, H.R. 3083 addresses five areas of concern in current immigration law. It redefines who is eligible for protection under VAWA; addresses implementation problems in VAWA '94; continues the commitment Chairman Smith put forth in 1996 by ensuring that battered immigrants have access to the economic safety net crucial to their ability to escape their abusers; provides INS and law enforcement officers with the necessary training and tools to ensure that abusers are prosecuted; and makes technical corrections that remove ambiguities in current law.

This is a complex issue, which I found easiest to understand through examples. Let me share a few.

- *H.R. 3083 ends an unintended incentive for victims to stay with their abusers.* Under current immigration laws, abusers who are convicted of domestic violence crimes may be deported from the U.S. One unintended effect is that the battered immigrant loses his/her access to permanent immigration status once the abusive spouse is deported for a crime of domestic violence. This situation creates a perverse incentive for the battered immigrant to tolerate the abuse rather than report it. This bill allows the battered immigrant to access permanent immigration status and to fully cooperate with the criminal prosecution of her abuser even if her abuser is deported.

  Example: Marta was stabbed by her permanent resident spouse. He was arrested. Marta would like to cooperate in the criminal prosecution of her spouse, but is afraid since her immigration status is dependent on her husband's. He is subsequently convicted of a crime of domestic violence. INS is now initiating deportation proceedings against her spouse. Marta loses her access to permanent immigration status if her immigration application is not approved before his deportation.

- *H.R. 3083 extends access to divorced victims of domestic abuse.* Under current immigration laws, the abused immigrant spouse must be married to the U.S. citizen or permanent resident. Savvy abusers often sprint to the courthouse for a quick divorce because they know this will cut off her access to immigration relief. This bill allows battered immigrants who are divorced from their abusers to file their applications for immigration status within 2 years of the divorce, death or loss of citizenship of the abuser.

  Example: Mona, who is from Poland, married a U.S. citizen. She was severely abused during the first years of her marriage. She fled to a shelter and immediately her spouse sought a divorce to effectively cut her off from any permanent immigration status. Mona will not have access to permanent immigration status if she had not submitted her application prior to the final divorce.

- *H.R. 3083 allows VAWA self-petitioners to adjust their status in the U.S.* Under current immigration laws, abused immigrants are forced to leave the U.S. to obtain their lawful permanent residence. Traveling outside the U.S. deprives these women of the protection provided by courts, legislation, cus-

tody decrees, and law enforcement. This bill allows women to safely obtain permanent immigration status in the U.S.

Example: Marie is originally from Haiti. She married a permanent resident when she came to the U.S. He burnt her with cigarettes, hit her, and threw objects at her throughout their marriage. She filed a protection order against him ensuring her safety within U.S. borders. Marie is in the final stages of obtaining her green card. Under current law, she must travel back to Haiti to complete the filing process. She fears that her husband will follow her to Haiti and she will not have the safety of her protection order or receive the same police protection as in the U.S.

- *H.R. 3083 extends access to elder immigrants who are victims of domestic abuse.* Under current law, the abused immigrant parent of a U.S. citizen or legal permanent resident has no access to immigration relief without the cooperation of the abusive adult son or daughter. This bill allows the battered immigrant parent to file their own application for immigration relief.

Example: Alejandro, a 71-year-old native and citizen of Peru, came to the United State on a tourist visa to visit with his daughter, Rosa, a naturalized U.S. citizen. Once he arrived, Alejandro suffered severe abuse at the hands of his daughter and her U.S. citizen husband. Alejandro's daughter and husband cut off his ability to contact the police and report the abuse. Alejandro's tourist visa eventually expired, and therefore, his status changed from non-immigrant to illegal. Under current law, Alejandro has no access to immigration relief.

- *H.R. 3083 extends access to abused sons and daughters over age 21.* Under current immigration laws, only spouses or minor children of U.S. citizens or residents have access to permanent immigration status. Abused sons or daughters over 21 years old have no access to permanent immigration status even though they have suffered years of domestic or sexual abuse perpetrated by their citizen or resident parent. This bill contains provisions that extend immigration relief to individuals over 21 who can demonstrate that battery or extreme cruelty had occurred during their childhood prior to turning 21 years old.

Example: Sandra is the 22-year-old daughter of a U.S. citizen. At 10 years old, she came with her mother when her mother married the U.S. citizen. She was sexually abused for 8 years by her mother's husband. This abuser has never filed immigration status for Sandra. Under current laws, Sandra has no access to legal immigration relief.

- *H.R. 3083 extends access to battered immigrant spouses who unknowingly marry bigamists.* Under current law, the abused immigrant spouse of a U.S. citizen or legal permanent resident has no access to legal immigration status if his/her spouse is proven to be a bigamist. This bill allows spouses who entered their marriage in good faith, but unknowingly married a bigamist, to file their own application for immigration status.

Example: Catherine, a native and citizen of Ireland, came to the United States on a student visa, but remained after the visa had expired. In the meantime, while living in New York, she met and fell in love with James, a U.S. citizen. Within a year of meeting each other, the two were married. Shortly after marriage, however, the relationship became extremely abusive. While otherwise eligible for VAWA relief, Catherine found out that James's "ex-wife" was really still his wife. He had not obtained a proper divorce in the state of California, and therefore remained legally married to his first wife, and engaged in a bigamist relationship with Catherine. Consequently, because Catherine is, technically, the wife of a bigamist, she is not eligible for VAWA relief.

Domestic violence is an economic and heath crisis for this nation. It harms not only men and women, but also the lives of children who witness violence in their homes or experience violence themselves. Every 15 seconds, someone in our country is battered. Every day, four women die in this country as a result of domestic violence. That's over 1,400 women a year. In addition, at least 170,000 violent incidents are serious enough to require hospitalization, emergency room care or a doctor's at-

tention. Every incident of domestic violence should be of concern to us. Every person—woman, man or child—should feel safe at home and in their neighborhoods.

But there are some victims, namely immigrant women and their children, who face additional obstacles to breaking free from the violence. In addition to having an abuser who uses their immigration status as a tool to control and coerce, the barriers of a different language and culture often lead to isolation and compound the ability of battered immigrants to seek traditional domestic violence and support services.

With the passage of the Violence Against Women Act, Congress sent a clear message to this nation that violence against women is not just wrong, it's a crime. Prior to 1994, abusive citizens and permanent residents had total control over their spouse's immigration status. As a result, battered immigrant women and children were forced to remain in abusive relationships.

That is why VAWA '94 was an important first step. It included provisions to protect battered immigrant women and children. Among them, battered immigrants were allowed to file their own applications for immigration relief without the cooperation of their abusive spouse. The intent of these protections was that no one should be forced to choose between deportation and abuse. But, despite some successes of the immigration provisions of VAWA '94, subsequent legislation and the complexities of immigration law continue to place barriers in the way of the very people who need relief the most.

By passing the Battered Immigrant Women Protection Act, this Committee has the opportunity to build on our strong record of opposing all violence against women, keeping victims safe and holding abusers accountable. My bill balances the INS' need to maintain the integrity of our immigration system with the delicate special needs of battered immigrant women and their families. It provides them with a legal way to escape the abuse and end the cycle of violence without the fear of deportation or being separated from their children. Thank you.

Mr. SMITH. I have one quick question for you and then we will recognize others.

How many aliens do you estimate need the benefits that you have in your bill?

Ms. SCHAKOWSKY. The experts that I consulted thought that it might increase approvals under VAWA by about 10 percent. If we look at last year's approvals, 1900 such applications were approved. And so I used the number 190, a couple of hundred.

Mr. SMITH. You mentioned that in your testimony. So that would take it to a little over 2,000, perhaps, total individuals who would benefit?

Ms. SCHAKOWSKY. That is the number that we are looking at, yes.

Mr. SMITH. I recognize the ranking member for her questions.

Ms. JACKSON LEE. First of all, thank you very much for your testimony. We were glad to reach this point.

Two questions I have. One, what in your view, from the experts that you have consulted with, is the importance of the provision dealing with children over 21? What is the crux of why that is so vital?

And then lastly, a question we have all heard of some of the delays with the INS. In fact we have had hearings in your own city. How would this specific legislation help to channel faster these applicants for these particular documents?

Ms. SCHAKOWSKY. Okay. I think all of us who have had any experience with the issue of child abuse know that sometimes those issues do not come to the fore until an adult has gotten themselves together and are able to come forward with the abusive situation and to make the charges.

This would say that adults who for years may have been subjected to this kind of abuse, and whose abusive parent never sought

legal status for that child, would be able to use the fact of that abuse as a way to stay in this country. And let's understand that often we are talking about individuals who have been here for decades, who have been here legally because they have been associated with that abuser and now simply hope to not be deprived of their residency here, their legal status here because of abuse. That would be so cruel, I would think, and would be an exception that we could make that would not count a lot of people, but those who are desperately in need.

The Vermont center that handles these questions of VAWA applications has a great deal of expertise in moving along these petitions. And so it seems to me that we would be able to address fairly rapidly the needs of this small but needy group of victims and provide them the status that they deserve.

Ms. JACKSON LEE. Thank you very much. I think the reason for this legislation is to solve it and to move the process along quickly. Thank you.

Mr. SMITH. Thank you, Ms. Jackson Lee. The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. CONYERS. Ms. Schakowsky's testimony was so penetrating that I do not have a single question for you.

Ms. SCHAKOWSKY. Thank you very much.

Mr. CONYERS. It was excellent. A good beginning. Could I announce, though, that I am introducing a comprehensive immigration bill that will include NACARA, late amnesty and other corrections, including this part of your idea of battered immigrant women which is so good. And I am going to do that on Tuesday, so I wanted to alert you about that. And by the way, Ms. Jackson Lee is also an original cosponsor on this bill. I presume you are, too.

Ms. SCHAKOWSKY. I appreciate that.

Mr. CONYERS. But at any rate, we are still staying on this case, because unless you review legislation, you find a lot of loopholes. If everything that it meant and said was being done, we wouldn't have much to do around here. The Constitution would be taking care of everything. Thirteenth, 14th, 15th amendment, what do you need civil rights laws and voters rights acts and affirmative action for? But you do and you have to stay on the case, and that is what I like about this work you are doing. And I thank you.

Mr. SMITH. Thank you, Mr. Conyers. Congresswoman Schakowsky, before you leave, your response to some comments by Congresswoman Jackson Lee reminded me of a question that I do want to ask you before you go. That is, as I understand that under your bill, if you had someone in the country who was an illegal alien and suppose she was 35 years old. 15 years ago she had been subject to abuse and had been battered by a spouse. Under your bill, that individual would be allowed to self-petition and stay in the United States, even though it had been 15 years since the incident and she had been in the country illegally for 15 years? Is that the case? I can ask the INS the question.

Ms. SCHAKOWSKY. If she were still married to him, then it would be. If they had been divorced or separated long ago? Then the answer is no, that spouse would not. She has 2 years from the time of the divorce, death or deportation to make that claim.

Mr. SMITH. Okay. And I have some other technical questions, I will wait and ask the INS.

Ms. SCHAKOWSKY. And I wanted to just end with my commitment, Mr. Chairman, to work with all members of this committee, and particularly with you in the hopes that we can come to a resolution that would expand the opportunities for victims.

Mr. SMITH. I know you heard my suggestions in my opening statement. If you will take a look at those maybe we can all sit down and visit about that. Thank you, and thank you for your testimony.

We will go to our second panel and welcome Barbara Strack, Acting Executive Associate Commissioner for Policy and Planning, Immigration and Naturalization Service.

Ms. Strack, if you will proceed when you are ready.

STATEMENT OF BARBARA STRACK, ACTING EXECUTIVE ASSOCIATE COMMISSIONER FOR POLICY AND PLANNING, IMMIGRATION AND NATURALIZATION SERVICE

Ms. STRACK. Thank you. Good morning Mr. Chairman and members of the subcommittee. Thank you for inviting the Immigration and Naturalization Service to appear tc comment on H.R. 3083, the Battered Immigrant Women Protection Act of 1999. My name is Barbara Strack, and I am the acting executive associate commissioner for the Office of Policy and Planning at INS.

I would like to summarize my written statement and request that it be submitted for the record. Let me begin by addressing the impact that the immigration provisions of the Violence Against Women Act, commonly known as VAWA, have had. It has helped thousands of immigrant spouses and children of U.S. citizens and lawful permanent residents who are victims of domestic violence. We know that fear of deportation or removal means that abused family members are less likely to report domestic violence or to leave an abusive household because an abusive spouse or parent has a powerful weapon by controlling the immigration process. VAWA allows qualified individuals to self-petition and allows those who self-petition to keep an earlier priority date if there has already been a petition filed by the batterer.

Since the publication of the interim regulation in March 1996, INS has received more than 11,000 applications for self-petitions and has approved over 6,500.

This number does not include children of self-petitioners who derive immigration status through a parent's self-petition. While the majority of the applications have been from women, the service has also approved self-petitions filed by men and by children.

The success of this program in providing vital immigration relief to battered immigrants is due, in large part, to the centralization of the process at our Vermont Service Center. These applications receive special handling from the mailroom and data entry through the adjudications process. They are assigned to the VAWA unit in Vermont, which is a special team consisting of special adjudicators who have received extensive training to ensure that they understand the dynamics of domestic violence. The Service has worked closely with many organizations that provide assistance to victims of domestic violence, and their expertise has been invaluable in es-

tablishing a program that is truly working to help victims of domestic violence find safety and independence.

While the current law and regulations have been extremely effective, our experience in implementing VAWA has revealed gaps in the law that we believe are unintended but that prevent many battered immigrants with approved self-petitions from completing the process and becoming lawful permanent residents.

I am here today to express INS support for specific provisions of H.R. 3083 that would eliminate these gaps. The INS believes that such improvements to VAWA are consistent with its purpose of giving battered aliens the same immigration opportunity as similarly-situated aliens who have not been battered.

One of the most important issues is how the sunset of section 245(i) limits the ability of battered immigrants to become lawful permanent residents. Specifically, many self-petitioners whose petitions have been approved find themselves either statutorily ineligible for adjustment of status in the United States, or forced to leave the country to obtain an immigrant visa after having accrued lengthy periods of "unlawful presence" in the United States. Many of them will be ineligible for readmission for 3 or 10 years. These battered immigrants also risk exposing themselves to the very hardship and danger documented in the self-petition. Section 3 of the bill would improve this situation by ensuring that battered immigrants with approved self-petitions could remain in the United States to seek adjustment of status.

Another gap is that the current immigration law establishes waivers of certain grounds of inadmissibility only for spouses or children who benefit from a relative petition filed by a U.S. citizen or LPR spouse. These waivers are not available to most self-petitioning battered immigrants. INS supports those portions of section 5 of the bill that would create a more flexible humanitarian waiver that would be helpful to many self petitioning immigrants.

I highlighted several sections of H.R. 3083 that we consider very helpful. I would also like to draw the subcommittee's attention to certain parts of the bill that concern us. I would stress that we are still reviewing the bill and may have additional comments at a later date.

First, we are concerned that H.R. 3083 proposes to change current eligibility requirements by making this relief available to individuals who live outside the United States and have never resided in the United States with the abusive spouse or parent.

Another provision of the bill that deserves careful scrutiny is section 7. This section would amend the INA to permit individuals who enter the United States with a nonimmigrant fiance visa to apply for benefits that are currently reserved for the battered spouse or child of a U.S. citizen or lawful permanent resident. A fiance visa is temporary, valid for only 90 days. A person who fails to enter into marriage during this period should be treated like other temporary nonimmigrants and should not stay in the United States indefinitely.

We address several other concerns we have with the bill in my written statement.

Finally, INS would like to reiterate the administration's support for establishing a new nonimmigrant visa category, the T-visa,

which will facilitate enforcement of trafficking laws while protecting the victims of such offenses.

In closing, let me emphasize INS's support for the underlying goals of H.R. 3083 and for many provisions of the bill. We would welcome the opportunity to work further with the sponsors and with the subcommittee on this important legislation. That concludes my testimony. Once again, thank you and I would be happy to answer your questions.

Mr. SMITH. Thank you.

[The prepared statement of Ms. Strack follows:]

PREPARED STATEMENT OF BARBARA STRACK, ACTING EXECUTIVE ASSOCIATE COMMISSIONER FOR POLICY AND PLANNING, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee, thank you for inviting the Immigration and Naturalization Service to appear before you to comment on HR 3083, the Battered Immigrant Women Protection Act of 1999. My name is Barbara Strack, and I am the Acting Executive Associate Commissioner for the Office of Policy and Planning at the Immigration and Naturalization Service (INS).

Let me begin by describing the impact that the immigration provisions of the Violence Against Women Act of 1994—commonly known as have had. It has helped thousands of spouses and children of U.S. citizens and lawful permanent residents (LPR) who are victims of domestic violence but who are not themselves U.S. citizens or LPRs. We know that fear of deportation or removal from the United States means abused family members are less likely to report domestic violence or to leave an abusive household. An abusive spouse or parent has a powerful weapon by controlling the immigration application process. This can be misused in many ways: threatening to report a family member to the INS, making false promises to file a petition some time in the future, withdrawing a petition that has already been filed, withholding important documentation, or refusing to appear for the scheduled interview with INS. VAWA allows qualified individuals to self-petition and—under the INS interim rule—allows those who self-petition to keep the earlier priority date if there has already been a petition filed by the batterer on the victim's behalf. This takes away one of the tools that a batterer could otherwise use to control the victim of abuse.

Since the publication of the interim regulation in March 1996, INS has received more than 11,000 self-petitions, and has approved over 6,500. This number does not include the children of self-petitioners who derive immigration status through a parent's self-petition. While the majority of the applicants are women. the Service has also approved self-petitions filed by battered men and children.

The success of this program in providing vital immigration relief to battered immigrants is due in large part to the centralization of the adjudication process at the Vermont Service Center in St. Albans, Vermont. The centralization of this process at the Vermont Service Center is particularly appropriate for this type of small volume, complex adjudication. At the Service Center we have established a streamlined procedure for careful and sensitive processing of these self-petitions. Realizing the urgent need and unique circumstances of these individuals, the applications receive special handling from the mailroom and data entry to the adjudication process. For example, they are pre-screened to ensure that the Service uses a safe address for any correspondence with the self-petitioner.

The self-petitions are then assigned to the VAWA unit. This is a special team consisting of experienced adjudicators who have received extensive training to ensure they understand the dynamics of domestic violence and its impact on issues such as whether victims report these crimes to the police or victims' need for access to public benefits to escape the abuse. Most importantly, the training focuses on how batterers use their authority over victims' immigration status to control victims and prevent them from seeking assistance from the criminal justice system. The Service has worked closely with many of the organizations that provide assistance nationwide to victims of domestic violence. Their expertise has been invaluable in establishing a program that is truly working to help victims of domestic violence find safety and independence.

While the current law and regulations have been extremely effective, our experience in implementing VAWA over several years has revealed the existence of gaps in VAWA that we believe are unintended, but that prevent many battered immigrants with approved self-petitions from completing the process by applying for adjustment of status or an immigrant visa. I am here today to express INS support

for specific provisions of HR 3083 which would eliminate those gaps, ensuring that qualified battered immigrants are able to complete the immigration process that leads to lawful permanent residence. The INS believes that such improvements to VAWA are consistent with its purpose of giving battered aliens the same immigration opportunities as similarly situated aliens who have not been battered.

One of the most important issues is how the sunset of Section 245(i) of the Immigration and Nationality Act (INA) limits the ability of battered immigrants to become lawful permanent residents. Specifically, many self-petitioners whose petitions have been approved find themselves either statutorily ineligible for adjustment of status in the United States, or forced to leave the country to obtain an immigrant visa after having accrued lengthy periods of "unlawful presence" in the U.S. Because of that time accrued in unlawful status, many of them will be ineligible for admission for three or ten years, under one of the provisions added to the INA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. These battered immigrants also risk exposing themselves to the very hardship and danger documented in the self-petition. Section 3 of HR 3083 would improve this situation by ensuring that battered immigrants with approved self- petitions could remain in the United States to seek adjustment of status.

Another gap is that current immigration law establishes waivers of certain grounds of inadmissibility only for spouses or children who benefit from a relative petition filed by a U.S. citizen or LPR spouse. These waivers are not available to most self-petitioning battered immigrants, either because the spousal relationship no longer exists, or because a substantial connection cannot be established between the battery and the entry into the United States. INS supports those portions of Section 5 of HR 3083 because it grants a more flexible waiver based on humanitarian considerations that address the special circumstances of a self- petitioning battered immigrant.

HR 3083 is a wide-ranging bill that expands immigration benefits and alters the application of the INA in significant ways, and I've highlighted several sections that we consider very helpful. INS would also like to draw the Subcommittee's attention to certain parts of the bill that concern us. I should stress that we are continuing to review the bill and may have additional comments at a later date. We look forward to working with you in this regard.

We are concerned that HR 3083 proposes to change the current eligibility requirements by making this relief available to individuals who live outside the United States or have never resided in the United States with the abusive spouse or parent, by eliminating the requirement that the self-petitioner be *physically present in the United States* at the time of filing, or have *resided in the United States* with the abusive spouse. Although INS does consider spouses or children of U.S. citizens or LPRs who are serving in the military or work on behalf of the United States Government outside the U.S. to be in the United States for the purpose of filing a self-petition, legislation clarifying this eligibility would be helpful.

Another significant proposed change in HR 3083 that deserves careful scrutiny is Section 7. This section would amend the INA to permit individuals who enter the United States with a non-immigrant visa as a fiance to be eligible to apply for benefits that are currently reserved for the battered spouse or child of a U.S. citizen or LPR. A fiance(e) visa is temporary, valid only for 90 days. A person who fails to enter into marriage with the U.S. citizen after entering the United States on a short-term nonimmigrant fiance(e) visa should be treated just like any other nonimmigrant when the rationale for temporary admission no longer applies and should not stay in the United States indefinitely.

Additionally, the INS recommends striking Section 7(e), Access to Naturalization for Divorced Victims of Abuse. Under current law, most immigrants must wait 5 years to naturalize, but spouses in intact marriages to United States citizens are eligible for citizenship after only 3 years. Section 7(e) would allow *self-petitioners* to naturalize after 3 years instead of the usual 5, but would leave the usual 5-year rule in place for abused spouses who leave their abusive relationship *after* obtaining LPR status, giving self-petitioners more favorable treatment than these other abused immigrant spouses.

Finally, INS wants to reiterate the Administration's support for establishing a new, non-immigrant visa category (T-visa) which will facilitate enforcement of trafficking laws while protecting the victims of such offenses.

I want to reiterate INS' support for the underlying goals of HR 3083 and for many provisions of the bill. We would welcome the opportunity to work with the sponsors of HR 3083 and with the Subcommittee to craft meaningful legislation that fills in the unintended gaps of VAWA and helps immigrants who are victims of domestic violence.

This concludes my testimony before the Subcommittee. Once again, thank you for the opportunity to share the views of the Immigration and Naturalization Service on this important bill. I would be happy to answer your questions.

Mr. SMITH. I have a few questions and as you just heard, we have a vote, and this is not an expected vote. It is not the vote I thought we would have at 11:30, so what we will do is break and return for half an hour before we have another vote.

The first question is what is your view, and you just mentioned it a while ago, of removing the 90-day time limit to file motions to reopen? Do you think that is one of the concerns you have about the bill or not?

Ms. STRACK. The Department of Justice has not taken a position on that, and that is something we would like to look at further. In general, having some finality is helpful to us. However, we would be willing to look at this special population to examine whether there are some special circumstances that would warrant an exception in these cases.

Mr. SMITH. So no position or you have concerns about it? We were told one thing last week, and I am wondering if you are going to contradict what we were told last week.

Ms. STRACK. I think it is fair to say that the Department of Justice has some concerns.

Mr. SMITH. Okay. And I will leave it up to you all to work out that arrangement. This is a question that goes to the heart of a lot of what we are trying to do today. In the 1996 bill, we had waivers of inadmissibility for battered aliens. That was an attempt to recognize the problem, and to at least take some initial steps to try to rectify it. Yet this administration still has not issued regulations in that 3½ year period since we allowed for those waivers.

What good reason do we have for the administration not issuing regulations to help these battered spouses?

Ms. STRACK. Well, we have issued regulations with respect to battered immigrants. There is an——

Mr. SMITH. But not in respect to the waivers of inadmissibility from the 1996 act for battered spouses.

Ms. STRACK. That is correct. That is part of a larger regulation, 212(a), which is not——

Mr. SMITH. If the administration cares about battered immigrant spouses, why have they not issued regulations in 3½ years?

Ms. STRACK. We do care about battered immigrant spouses. Those regulations are part of a larger regulation, and it is the difficulty of covering so many issues in a single regulation that has delayed the issuance of the regulations. But if I could address what we have learned during this period of time through looking at the 11,000 applications we have, we now know things about this population that we did not know before. And we can look at some of these things on the face of it, and see that there are some problems with applying the law as it exist.

Mr. SMITH. Okay. Let me go on. How many battered aliens have actually been removed to your knowledge? Been deported?

Ms. STRACK. The information I believe that we provided to you in the letter, and if you will give me a moment, I can find that—we do not have statistics on having removed aliens who were recipients of approved self-petitions.

Mr. SMITH. To your knowledge, none have been deported so far?

Ms. STRACK. None to my knowledge.

[A more detailed answer was submitted after the hearing and follows.]

Clarification of response to Mr. Smith's question regarding deportation of "battered aliens"

The Chairman asked how many "battered aliens" have been removed by INS, but Strack responded in terms of *approved self-petitioners*. The information below clarifies this exchange.

No battered alien who has filed a self petition (Form I–360) and those whose application has bee approved by INS has been deported. Approved self-petitioners are placed in deferred action status, which reflects INS's decision not to pursue removal proceedings against them. However, INS does not have statistic reflecting whether other battered aliens—*i.e.*, those who are not eligible for relief under VAWA or who are eligible but have not applied—may have been deported.

Approved VAWA petitions for the last 3 years:

1997	1998	1999	2000 (year-to-date)
1,210	1,677	1,921	1,768

Mr. SMITH. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, and thank you for your testimony this morning. Let me quickly go—you mentioned, I believe, in your INS statement or your statement regarding the INS, that the INS has approved more than 6,500 VAWA petitions since that publication of interim regulations in March of 1996. What have you done over the last 3 years?

Ms. STRACK. The 11,000 is the cumulative total since that date. It is 11,000 filings and 6,500 cumulative approvals to date.

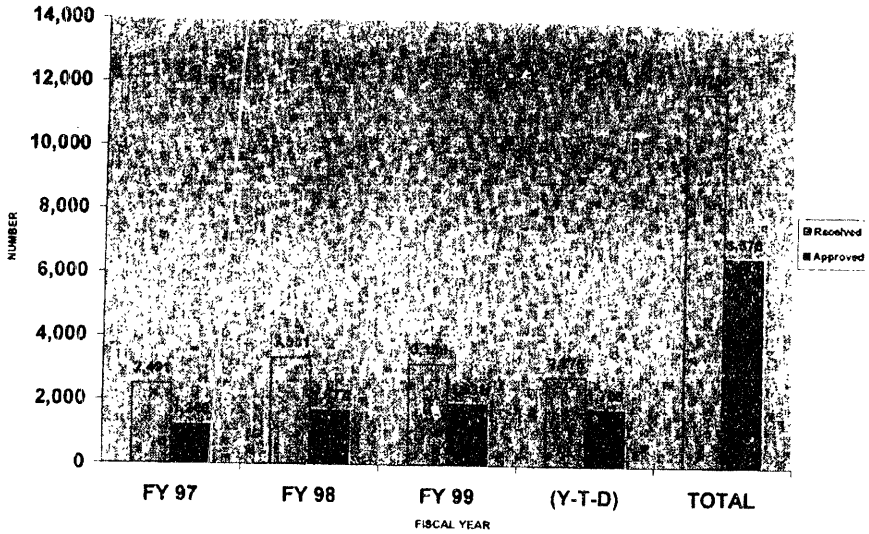
Ms. JACKSON LEE. So how many in the last 3 years, which would take us back to 1997?

Ms. STRACK. The individual annual totals for 1997, 1998, 1999, and year to date, 2000, the filings are 11,756, and the approvals are 6,576.

Ms. JACKSON LEE. I will get that back from you in writing if you can break that down by year, and specifically the last 3 years.

[The information referred to follows:]

TOTAL I-360 PETITIONS
FY 1997 - FY 2000(THRU JUNE)



Ms. JACKSON LEE. Let me ask, what do you do to identify fraudulent applications?

Ms. STRACK. There are three major schemes, three major mechanisms through which we identify fraudulent applications. The first is looking at the application itself for internal consistency. And that sometimes will contain evidence that is inconsistent, which may be an indicator of fraud. The other thing that we have learned, there are a surprising number of these cases where, in fact, a family preference petition had previously been filed for the same person who is now a self-petitioner. We are finding that in many instances, the self-petition is not the applicant's first effort to contact the Immigration Service. That again gives us a basis for comparison and looking back and trying to identify if there is any fraud in the case.

The third way that we approach fraud is really by having a small, dedicated unit at the Vermont Service Center. These are highly trained people. They review a number of cases. They are available to speak with one another and compare notes on cases, and this allows them to identify duplicate use of documents—patterns, essentially—that could indicate fraud. That would enable them to either request additional information or, in some instances, to refer the case to a district office for further investigation.

Ms. JACKSON LEE. Thank you. I will explore further with you in writing. Thank you very much.

Mr. SMITH. Thank you.

Mr. Conyers?

Mr. CONYERS. Thank you very much for your testimony. I want to say that you are a breath of fresh air from the kind of INS people that have come over here to testify before. I mean, INS needs

more attention than almost any other part of the Department of Justice, except for prisons and corrections. And so I am excited and encouraged by your testimony that we can work something out.

Now, the main question hanging over the Schakowsky bill is simply this: Is this going to open the door for everybody to make excuses that my spouse battered me and beat me up and so now I want to become a citizen? That is the main problem here.

How can you allay the nervous nellies in the Congress that might be worried about such a prospect?

Ms. STRACK. To some extent, I think in terms of what is the scope of the problem of domestic violence, some of the other witnesses who are coming later may be better equipped than the Immigration Service to tell you what the rest of the problem is. What I can talk about is the cases that we have seen so far, 6,500 that we have approved. These are approved self-petitions, which means that we have found it is a valid marriage. We have found that the person has good moral character, a finding of battery or extreme cruelty and a finding that there would be extreme hardship if the person was removed. But this is a two-step process, and that is just the first step, having an approved petition.

The next step is being able to apply for adjustment of status which means actually getting your green card. What we have seen, looking at the kinds of people so far in those approved cases, we think there are many obstacles that will prevent them from being able to get their green card in step 2, and those are the issues that I highlighted here today, things that will keep those people with approved self-petitions from actually perfecting the process and actually getting their green card at the end of the road.

Mr. CONYERS. So you do not see the floodgates opening up, so to speak?

Ms. STRACK. We have no reason to think that they would.

Mr. CONYERS. Well, I want to thank you very much. And I thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Conyers.

Thank you, Ms. Strack, for your testimony. We will stand in recess for about 15 minutes, and then we will begin with the third panel when we return.

[Recess.]

Mr. SMITH. The Subcommittee on Immigration and Claims will reconvene, and let me introduce our witnesses in this third and last panel. They are Dwayne "Duke" Austin, former INS Senior Spokesman; Jacqueline Rishty, staff attorney, Catholic Charities; Leslye Orloff, director, Immigrant Women Program, NOW Legal Defense and Education Fund; and Maria Ortiz, Shelter for Abused Women; and Bree Buchanan, director of public policy, Texas Council on Family Violence.

We welcome you all and we will begin with Mr. Austin.

STATEMENT OF DWAYNE "DUKE" AUSTIN, FORMER INS SENIOR SPOKESMAN

Mr. AUSTIN. Thank you, Mr. Chairman and other members of the committee who are not present, for inviting me here and giving me this opportunity to testify on this important piece of legislation.

Any professional public affairs practitioner would tell you that it is unwise, if not foolhardy, to come in here and testify against a bill entitled Protection of Battered Women. However, the bill is unnecessary. As you have already stated, there are numerous avenues of relief for battered women in the Immigration and Nationality Act, not the least of which is the 1996 act, which you mentioned regulations have still not be published yet.

Many of the provisions of the legislation do not address the core issue of abuse, but only grant benefits to an alien who may have been abused in the distant past.

The bill is a collage of exceptions of existing immigration law, and the bill will be an instrument of fraud. The effect of the law will be to burden the INS with another impossible task of adjudicating applications with a minimum amount of information.

It sets the standard that a self-initiated affidavit is credible evidence that abuse has occurred, that an alien in a remote corner of the world can submit an application for benefits with an affidavit as the sole standard of proof. It permits an alien to apply even after the abuser is dead and buried, even years after.

It permits the adjudicator to totally disregard criminal violations and convictions which would deem the alien inadmissible under all other provisions of the Immigration and Nationality Act and ineligible for benefits. It permits an alien visiting a parent for one day inside or outside the United States to file applications on some real or perceived abuse. It removes all the filing deadlines and permits previously denied applications to be refiled and resubmitted, which will increase the INS backlog, something I know that concerns all Members of Congress. Fees would be waived so the INS would have to deal with increased caseload without additional resources, which will mean lengthening delays in the adjudications of all types of applications.

There are many other exceptions to the basic Immigration and Nationality Act which will only apply to these applicants. Resurrection of the 245(i) exception, as you mentioned, deleting all age and residency provisions of the Immigration and Nationality Act, ignoring prior misrepresentations to the INS and even ignoring prior deportations from the United States.

It even provides for the use of taxpayer dollars to obtain legal counsel in immigration hearings affiliated with this bill. That is a new precedent, something that has never happened before.

The net effect of this legislation would be to burden the INS with another impossible task of becoming Solomon, judging applications in Vermont dealing with possible abuses in some remote corner of the world with only a self-initiated affidavit. The adjudicator will be faced with two choices: One, to hold the application and attempt to obtain additional information from some source of which I am unaware, which will result in increased delays and more backlogs, or the adjudicator can rubber stamp the applications based solely on the affidavit without any additional information, which is a recipe for fraud.

In conclusion, the bill as currently constructed is unnecessary, a collage of exceptions, inconsistent with current immigration law, will cause unforeseen burdens on the INS and become an instru-

ment for fraud and does very little to address the core issue of abuse.

Asking the INS to get a hold on and implement this bill in a fair and uniform manner consistent with the overall philosophy of our immigration laws is impossible. You might just as well try to handcuff an octopus.

Thank you.

[The prepared statement of Mr. Austin follows:]

PREPARED STATEMENT OF DWAYNE "DUKE" AUSTIN, FORMER INS SENIOR SPOKESMAN

INTRODUCTION

Mr. Chairman, Madam Ranking Minority Member and members of the Subcommittee, I am Duke Austin, a retired career employee of the Immigration and Naturalization Service. Since my retirement in 1995, I have continued to follow closely enforcement and policy issues related to immigration.

I accepted to share with you my concerns about provisions in H.R.3083 because I am convinced that, if enacted, this bill would have long-term harmful effects for our country. My concern is not with the concept of offering protection to aliens against physical or psychological abuse. That is an objective that I endorse. However, H.R.3083 goes far beyond that objective. It also misses an important point. If spousal abuse is going to be diminished, it must be faced squarely and the perpetrators must be seen to pay a penalty for their actions. When it is widely understood that spousal abuse will cost the perpetrators heavily, including loss of immigration status in this country, there will be a much greater deterrence against future spousal abuse.

This bill takes the approach that spousal abuse is a no-fault offense and does not require the abuse to be investigated and punished. Instead, it encourages those who are abused to opt out of the abusive relationship by granting them immigration status to which they otherwise may not be entitled. In this process, a vast loophole of potential fraud and abuse is opened for illegal immigrants who seek to obtain legal residence.

There are three main questions which should be focused on in considering this legislation. Is the legislation necessary? If there is a need, does the legislation meet that need? If the legislation is needed and offers appropriate remedies, does it go beyond that objective and create new problems?

My review of this bill has led me to the conclusion that by and large it is not needed. Secondly, even if it were needed, the approach taken in this bill would not achieve the long-tem objective of confronting and discouraging spousal abuse. Finally, this bill contains a Pandora's Box of unrelated measures that will be inimical to immigration law enforcement if adopted. I will explain each of these conclusions briefly.

H.R.3083 IS NOT NEEDED

There is no doubt that immigrant women, especially illegal alien women are vulnerable to spousal abuse. Part of the problem is that they and the person to whom they are married or in a relationship with are from societies in which spousal abuse is tolerated or not considered abuse. Another problem is distrust of police and limitations on effectively using legal protections that are available because of language or cultural barriers. To attempt to address this issue, a series of laws have been adopted, beginning in 1990. The process of becoming or remaining a legal resident in the United States that depends on a family relationship has been altered to permit the victim of spousal abuse to terminate the relationship without losing the opportunity to remain in the United States legally.

Those measures were designed to remove the power of the abusive spouse to threaten loss of immigration status as a means to subjugate the spouse. We are told now that those provisions are not adequate, because they are not sufficiently understood or sufficiently automatic to end the problem. However, there will continue to be a problem as long as there is a constant flow of newcomers who are unfamiliar with U.S. laws and who are especially vulnerable because they are in the country illegally.

The Violence Against Women Act of 1994 (VAWA) expanded the scope of protections. Self-petitioning was provided for spouses and children of U.S. citizens and legal permanent residents (LPRs). Relief was provided against deportation of illegal aliens who were battered spouses. Other provisions of VAWA that were specifically

designed to address the special legal situation of illegal immigrants are not yet fully in effect because the INS has not yet issued regulations to facilitate their implementation. It makes little sense to be adopting new regulations when existing ones that are already on the books lie dormant.

Other issues addressed in H.R.3038 as problem areas are not real problems. For example, the provisions protecting children against losing immigration benefits by aging out of their status as a child, have been addressed by INS policy decisions. Similarly, in practice, the INS is so overwhelmed with the volume of aliens currently in the country and the scope of the services required by legal immigrants and the law enforcement challenge presented by the enormous and growing number of illegal immigrants, that no effort is expended on identifying abused spouse illegal immigrants for deportation.

Thus, a realistic appraisal of the current situation is that adequate protections exist in the law and in INS procedures and practice to protect abused spouses and their children.

THE APPROACH TAKEN IN THIS BILL WOULD NOT ACHIEVE THE LONG–TERM OBJECTIVE OF CONFRONTING AND DISCOURAGING SPOUSAL ABUSE

Even if the protections referred to above did not exist and needed to be enacted, the approach taken in this bill is off target. Our legal system is predicated on deterrence by exposing illegal activity and punishing it. A demonstration effect of the consequences for law breaking is fundamental to effective disincentives. That is not the approach taken by this bill.

There are no provisions in this bill that require abused spouses or their children to take legal action against their abuser. On the other hand, there are provisions that discourage resort to criminal or civil law by an abused woman. In those cases where the abuser is an immigrant, legal or illegal, the law provides that the person is no longer welcome in our society and should be removed. That is a tangible consequence, which if more often practiced and better understood would constitute a major protection to vulnerable women. This legislation does not pursue that objective, and, in fact, discourages it by treating spousal abuse as a no-fault offense.

UNRELATED MEASURES INIMICAL TO IMMIGRATION LAW ENFORCEMENT

Our country currently is confronting a massive problem of illegal entry, alien smuggling, visa overstays and attendant problems of demands for uncompensated emergency medical services, incarceration expenses, schools crowded with non-English speaking children, over-taxed social service programs, and uninsured motorists to identify only some of the issues that were addressed by the U.S. Commission on Immigration Reform and have been the subject of legal reform efforts by this Committee.

I trust that your approach to this legislation will include a critical focus on how it will further or hinder efforts to restore control over our nation's borders. It is my understanding that the vast majority of the aliens for whom the VAWA protections were adopted are illegal aliens. While spousal abuse should not be condoned in any situation, we should not allow our concerns about the victims of past abuse to override our insistence on respect for our immigration law once the threat of on-going abuse has been removed.

My approach to this issue was best summarized by the honorable Barbara Jordan, Chairman of the U.S. Commission on Immigration Reform, when she testified before this Subcommittee on February 24, 1995. She reminded us that a fundamental component of our immigration policy must be that ". . . *those who should not be here will be required to leave.*" She underscored that point when she added ". . . *for the system to be credible, people actually have to be deported at the end of the process.*"

The approach in H.R.3038 runs counter to that fundamental principal. Instead, the legislation prevents actions designed to remove persons who are in illegal status or have committed acts that should lead to their removal. It also confers legal resident status on illegal aliens who have been abused, even though that status is unnecessary to their further protection against abuse. The legislation is designed as if its primary objective were achieving legal residence status for illegal aliens, bypassing all of the provisions in the law that would deny that recourse.

The problem with that approach is not just that it undermines respect for our immigration law, but that it opens up numerous broad loopholes in the immigration law that will invite abuse by illegal aliens and alien smugglers in seeking a new route to undermine our system of legal immigration.

There are so many of these loopholes, that I will not try to identify all of them, and I know that your staff has a better capability to do so than I can offer. Nevertheless, let me offer a few examples of my concerns.

The evidentiary standards provided for in this bill submission of an affidavit is so amorphous that it is virtually impossible to administer by the INS and, therefore, becomes an attractive opportunity for fraud.

Retroactivity provisions incorporated in the bill open an enormous body of litigation that will further undermine current enforcement capabilities.

Time-clock provisions are introduced in the bill that will allow illegal aliens to continue to accrue residence status in this country (albeit illegal residence) as part of a process to gain status for claiming an immigration benefit. This will have the perverse effect of encouraging legal delaying tactics to take advantage of the ticking clock.

Removal of the filing deadlines and permitting previously denied applications to be refilled will increase INS backlogs. Fees would be waived by the bill, so the INS would have to address the workload increase without any additional resources.

The bill resuscitates Section 245(i) in the INA. This is a provision that was removed from the law because of objections to the idea of allowing illegal aliens to become legal residents without leaving the country for U.S. Conuslar screening. The bill attempts to recreate this provision as a backdoor route to permanent residence.

An entirely new term in federal law, "intended spouse," not only undermines the marriage relationship as a provision in immigration law for derivative immigration status, but it also invites abuse. If an illegal alien marries an already married U.S. citizen, the alien can gain legal residence status by alleging that she did not know she had entered a bigamous relationship. It is easy to see how tempting this would become as a way to gain legal residence, especially if there was no adversarial requirement that the alien take legal action against the bigamist.

The bill also provides an array of relief for persons who seek VAWA benefits that are not available to other immigrants. These include aging-out benefits that are not even available to children of asylum beneficiaries. They also include welfare benefits. It is easy to see how these benefits would attract fraud.

Other collateral provisions open doors to persons who have never set foot in the United States to self-petition for admission and legal residence on the basis of an abusive relationship that occurred abroad. The irony of this provision is that it would allow an abused spouse the opportunity to follow to join the abuser in the United States. If the objective of the drafters of this bill were truly to protect the spouse against future abuse, they would never have included such a provision.

The bill goes far beyond offering protections to spouses against ongoing abuse. It furnishes them fast-track ability to gain legal residence and to confer immigration benefits on other family members. The bill vastly increases the population of potential VAWA alien beneficiaries to include parents and adult children and their offspring.

CONCLUSION

Although I have been able to touch only briefly on some of my major concerns with H.R.3038, I trust that you will understand the problems that would arise if it were to be adopted in its current form. In fact, my conclusion is that the bill contains so many undesirable problem areas, that it would be extremely harmful for the nation in the long-term if it were adopted.

Please keep in mind that my opposition to this bill is not because I am unsympathetic to the problem of spousal abuse. However, the fact is that substantial protections for aliens against spousal abuse already exist in the law and in practice. Even more fundamental, in my view, is that this bill is not designed to achieve the long-term objective of confronting and discouraging spousal abuse.

Thank you for the opportunity to testify, and I welcome the opportunity to answer any questions that you may have.

Mr. SMITH. Thank you, Mr. Austin.

Ms. Rishty.

STATEMENT OF JACQUELINE RISHTY, STAFF ATTORNEY, CATHOLIC CHARITIES

Ms. RISHTY. Thank you. My name is Jacqueline Rishty, and I am a Senior Attorney with Catholic Charities Immigration Services in Maryland. 1 am pleased to testify today on behalf of Catholic Charities USA.

Catholic Charities USA is the Nation's largest social service provider. Our 1400 local agencies provide a wide range of human serv-

ices. Many of Catholic Charities USA's local agencies, including my own, assist battered immigrant women and see the problems these women face every day.

In my own experiences I have already helped women seek and obtain permanent resident status through the VAWA provision. These women have transformed from women who were afraid, who lacked confidence, who were unable to talk to anyone about their situation, to fear having to be deported from the United States. They transformed into people who were confident, who are working now, who are successfully contributing to our great country of the United States.

While Catholic Charities USA and our local agencies are strong supporters of marriage and family, the Catholic Church does not counsel victims of domestic violence to remain in abusive situations. Battered women should not have to choose between remaining in a violent marriage to a citizen or permanent resident who can provide them legal immigration status or leaving that relationship and risking deportation.

We applaud the work of Chairman Smith and Ranking Member Jackson Lee in calling this hearing, and we support H.R. 3083 in its entirety because it would correct many of the grievous injustices in the immigration system that presently bar some battered immigrant women from the relief granted them in 1994 by the Violence Against Women Act.

Rather than focus on the specific legal aspects behind each issue, I would like to use my time today to focus on the individuals who would benefit from H.R. 3083. I would ask that my longer statement which addresses each of these specific issues to be entered into the record.

The adjustment of status provisions in H.R. 3083 would greatly assist battered immigrants who seek to adjust their status in the United States but who are in some cases forced to return to their country of origin to obtain a green card. H.R. 3083 would do this by allowing victims of abuse to now adjust their status in the United States.

This will make a real difference in these women's lives. In one case of a woman that was represented by Catholic Charities in Florida, she told Catholic Charities about an incident that occurred after she separated from her abusive husband. She had obtained a protection order in the United States but said that her husband came to see her despite the order. At the time, her husband said that if she did not comply with his request for oral sex, he was going to call the immigration office and have her self-petition canceled. He also threatened that he had what he needed to beat her and that if she returned to Mexico he would send someone to kill her and her two sons. The woman obviously fears returning to Mexico but under the current pro isions she is unable to adjust in the United States. The proposed legislation would help this woman.

Many of Catholic Charities' local agencies have directly seen the impact of the abuser's power related to a battered immigrant's legal status. Clients in Arizona, Virginia, Florida and all throughout the country have said that their husbands threatened instituting deportation proceedings against them if they come forward about the abuse. Enactment of H.R. 3083 will be critical in sever-

ing some of the control abusive U.S. Citizen or lawful permanent resident spouses and parents currently exert over the lives and immigration status of their spouses and children.

H.R. 3083 would also allow battered immigrant women to obtain waivers of some of the bars on inadmissibility and grounds for removal if the circumstances from which the bars arise are related to the abuse or would cause extreme hardship to the battered immigrant's children. An example is a Filipino immigrant who is a client of Catholic Charities in Hawaii. She suffered ongoing physical and verbal abuse by her husband. Twice when she and her husband had a fight, her husband, who was a lawyer, made it appear to the police that the woman abused him and showed the police bruises and scratches on his arm which he in fact willingly inflicted on himself. After both incidents, the woman was arrested and put in jail. If the woman had been convicted or accepted a plea agreement, she could have then faced deportation.

In another case a battered immigrant shoplifted baby food to feed her starving children when she escaped from the abuser. Even if she received no jail term but a one-year suspended sentence for a $15 crime, this woman will currently face deportation.

These harsh consequences on battered immigrants should be remedied by allowing the INS and the immigration judges to waive inadmissibility and deportation grounds in cases of battered immigrants where the crime or inadmissible act was connected to the abuse.

Catholic Charities USA commends this subcommittee for holding this hearing to address the needs of battered women. We believe the protections in H.R. 3083 represent justice and compassion for battered immigrant women while maintaining the essential principles of our immigration system.

[The prepared statement of Ms. Rishty follows:]

PREPARED STATEMENT OF JACQUELINE RISHTY, STAFF ATTORNEY, CATHOLIC CHARITIES

SUMMARY

Catholic Charities USA is the nation's largest social serv provider. Our 1400 local agencies provide a wide range of human services. Man f Catholic Charities USA's local agencies assist battered immigrant women and see the problems these women face every day. While Catholic Charities USA and our local agencies are strong supporters of marriage and family, the Catholic Church does not counsel victims of domestic violence to remain in abusive situations. We strongly urge the Committee to support H.R. 3083 to ensure protection of the rights of battered immigrant women.

We fully support H.R 3083 in its entirety but would like to highlight five issues:

- *Adjustment of Status*—H.R. 3083 would allow battered immigrant women who obtain an approved self-petition to also obtain a green card without leaving the U.S. This would allow a battered immigrant woman to maintain the protections of the U.S. judicial system while proceeding through adjustment of status proceedings.
- *Self-Petitions*—H.R. 3083 would allow battered immigrant women to self-petitioner for legal status even if their abusers divorce them, die, or are deported. Catholic Charities USA also supports H.R. 3083's provision to allow women and children to file self-petitions and adjust their status to legal permanent residents while remaining in the U.S.
- *Cancellation of Removal*—H.R. 3083 would consider a battered immigrant's total physical time in the U.S. when evaluating her access to cancellation of removal proceedings. In addition, we support the elimination of the cap on the

number of green cards available under cancellation of removal proceedings for battered immigrants.

- *Waivers of Inadmissibility and Bars on Re-entry*—H.R. 3083 would provide battered immigrant women meaningful access to waivers of inadmissibility and bars on reentry. We support the provisions in H.R. 3083 which waive inadmissibility and deportability requirements for battered immigrant women if the abuse was the reason for the battered immigrant woman's action. Further, we support the provisions which provide meaningful exceptions by allowing battered immigrant women to demonstrate extreme hardship to their children if not allowed to remain or enter the U.S.
- *Access to Legal Services*—H.R. 3083 would allow battered immigrant women to obtain legal assistance in VAWA immigration cases from organizations funded by VAWA grants or through the National Legal Services Corporation. H.R. 3083 would allow legal services organizations to provide legal services, with non-federal funds, to anyone covered by a State's civil protection order statute.

STATEMENT

Introduction

My name is Jacqueline Rishty and I am a senior attorney with Catholic Charities Immigration Legal Services in Maryland. I am pleased to testify today on behalf of Catholic Charities USA.

Catholic Charities USA is the nation's largest social service provider. Our 1400 local agencies provide a wide range of human services. Many of Catholic Charities USA's local agencies assist battered immigrant women and see the problems these women face every day. Many of these women are placed in the untenable situation of choosing to remain in a violent relationship to protect their immigration status, or leaving the relationship and having to leave the United States as well.

While Catholic Charities USA and our local agencies are strong supporters of marriage and family, the Catholic Church does not counsel victims of domestic violence to remain in abusive situations. Battered women should not have to choose between remaining in a violent marriage to a citizen or lawful permanent resident who could provide them legal immigration status, or leaving that abusive relationship and risk deportation. Thus, we strongly urge the Committee to support H.R. 3083 to ensure protection of the rights of battered immigrant women. Our local agencies, who see the problems these women face every day, have conveyed to us how important this bill is.

We applaud the work of Chairman Smith and Ranking Member Jackson Lee in convening this hearing. We believe H.R 3083 would correct many of the grievous injustices in the immigration system that bar battered immigrant women from the relief granted them in 1994 by the Violence Against Women Act (VAWA).

1. Adjustment of Status

Under prior section 245(i) of the Immigration and Nationality Act, a battered immigrant woman who was not a legal permanent resident could adjust her status to legal permanent resident and obtain a green card without leaving the United States. She could file a self-petition and if INS granted it, she would be automatically granted a green card. Since expiration of section 245(i), immigrant women who are married to U.S. citizens or lawful permanent residents may still file self-petitions to change their status to that of lawful permanent residents. But if an immigrant is "out-of-status" (e.g. overstaying a visa) for more than six months, even if the Immigration and Naturalization Service (INS) approves their self-petitions, they must *leave* the U.S. and *return* to their country of origin to obtain their green cards (unless they are a spouse or child of a U.S. citizen).

The expiration of this provision has created danger and extreme hardship for many battered immigrant women and children. These women lose the protection provided by civil protection orders when they travel abroad to obtain their green cards, even though their abusers can freely travel to follow them. Many of these women are forced to leave their children behind with caretakers who may not be able to adequately protect the children from the abuser. Requiring the battered immigrant to leave the country also provides the abuser leverage to convince a court that the battered immigrant has abandoned the children and that custody should be awarded to him. Moreover, if an untrained consular official chooses not to honor the INS' approval of the self-petition, and instead denies a battered immigrant woman a green card, she has no venue for appealing and can not return to the U.S. and her children.

Faced with such choices, many battered immigrant women may choose to *stay with their abusers to protect their children rather than seek a green card* and leave the country. These women make that choice despite the fact that obtaining a green card, and, later, citizenship, could allow them and their children to escape ongoing violence.

For example, a Mexican client of Catholic Charities in Florida told a caseworker about an incident after she separated from her husband because he beat her. She obtained a protection order but said her husband came to see her despite the order. At that time, her husband said that if she did not comply with his requests for oral sex, he was going to call the immigration office and have her application for legal status canceled. He also threatened that he had what he needed to "beat the crap" out of her and that if she returned to Mexico he would send someone to kill her and her two sons. The woman feared returning to Mexico because the court system does not offer the same protections as in the U.S. and her husband's entire family lives in Mexico. She had to choose between continuing with her application for legal status, which would require her to go to Mexico to obtain a green card, and withdrawing her application because of fear of retribution.

Catholic Charities USA thus supports H.R. 3083's provision to allow women and children to file self-petitions and adjust their status to legal permanent residents while remaining in the U.S. This was the approach originally contemplated when VAWA became law in 1994, and would be restored by H.R. 3083.

2. Self-Petitions and Changes to the Immigration Status of the Abuser

a. Continuation of Self-Petitions

Catholic Charities USA also supports the provisions in H.R. 3083 which would allow a battered immigrant woman's self-petition to be filed and continue even if the abuser's immigration status changes or the abuser divorces the self-petitioner.

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress made domestic violence a deportable crime. If a battered immigrant woman brings charges of abuse against her legal permanent resident spouse, the spouse may thus be subject to deportation. However, if the spouse is deported before the battered immigrant *learns* about self-petitioning, has filed the self-petition and has had the self-petition approved by INS, the battered immigrant woman's self-petition becomes void because her ability to obtain relief is directly linked to her abuser's immigration status.

Given the structure of current law, abusers have the upper hand in a relationship in which the battered immigrant woman is dependent on the abuser for her legal status in the U.S. Many battered immigrant women delay or choose not to report abuse because they do not want to jeopardize their self-petitions.

In addition, under current law, self-petitions are only available to battered immigrant women who are still married to their abusers at the time of filing. Abusers can thus leverage current law to continue their abusive relationships. This rule is particularly problematic. For example, an abuser who knows his spouse fears deportation proceedings may threaten divorce as a means of forcing the battered immigrant woman to stay in the abusive relationship or may institute divorce proceedings to cut off the battered immigrant woman's ability to self-petition. In addition, an abuser who is not a U.S. citizen may taunt his spouse that she can not call the police during or after physical abuse because the abuser's arrest and conviction can lead to his deportation and jeopardize her immigration status. To sever some of the control U.S. citizen and lawful permanent resident spouses and parents continue to exert over the lives and immigration status of their spouses and children even after VAWA, battered immigrant women need to have the ability to file a VAWA self- petition, for at least a limited time, following divorce, the abuser's loss of status or death.

These are not speculative concerns. Many of Catholic Charities' local agencies have directly seen the impact of the abuser's power in these situations. One client of Catholic Charities in Arizona said that her husband routinely reminded her that she had to accept whatever he did because her legal status was dependent on him. Another client, a Russian mail-order bride who received assistance from Catholic Charities in Virginia, said her husband constantly threatened her because she did not have a green card and he could institute deportation proceedings against her. Another Russian client in Florida said her husband threatened deportation if she did not do as he said.

We therefore strongly support H.R. 3083's provision to allow the self-petition to be evaluated regardless of the abuser's immigration status. H.R. 3083 would allow a battered immigrant woman up to two years to file a self-petition after the death, deportation or loss of citizenship of her abuser. H.R 3083 would also allow a self-petition to remain valid even if her spouse is deported due to domestic violence.

These provisions would not be anomalous in immigration law. An example of an analogous provision is section 204(a)(1)(A)(ii) of the INA which provides widows two years from the time of their spouse's death to file a self-petition. We believe that battered immigrant women should have a similar time frame if their spouse divorces them, dies, or is deported.

b. Extreme Hardship

Under current law, for a self-petition to adjust status to be approved, a battered immigrant woman must not only demonstrate a valid marriage to a legal permanent resident or citizen, good moral character, and evidence of battering or extreme cruelty but also demonstrate that denial of the petition would cause "extreme hardship" to herself or her children if the self-petition is denied and she would have to leave the U.S.

We have discovered that, in practice, this additional requirement creates a high burden of proof which is often unsurmountable without legal assistance. For many battered immigrant women such legal assistance is unavailable or unaffordable. The extreme hardship requirement results in the denial of self-petitions for many battered immigrants who file pro se applications with INS and who can prove the other requirements of a self-petition to INS' satisfaction—a valid marriage to a U.S. citizen or lawful permanent resident; battering or extreme cruelty existed in the marriage; and good moral character. Proving all of this evidence in a self-petition should be deemed sufficient. The safety of battered immigrant women and their children, and the ability to prosecute abusers for criminal acts committed against battered immigrant women and/or their children, will be enhanced with elimination of the extreme hardship requirement.

3. Cancellation of Removal

a. Calculation of Time in the U.S.

Catholic Charities USA supports changing the accrual method of counting the time a battered immigrant woman is in the United States from current law to the provision originally included in the Violence Against Women Act of 1994.

In addition to offering battered immigrant women and children the protection of self-petitioning, VAWA also provided battered immigrants who had been physically present in the United States for longer than 3 years with a defense against deportation or removal—regardless of whether the battered immigrant woman had filed a self-petition. This provision provided a much needed remedy for battered immigrants whose husbands divorced them before they could file their self-petition or whose husbands placed them in deportation proceedings. In addition, it assisted many mothers who sought to remain in the U.S. to protect their children from an abusive father or step-father. If the mothers were deported, the children may have had to continue residing with their abusive father or step-father.

Under VAWA, this option was available to any woman who had been residing in the U.S. for at least three years, regardless of whether INS had instituted deportation proceedings. The woman would still have to demonstrate "good moral character." prove that she has been subjected to battering or extreme cruelty by her U.S. citizen or lawful permanent resident spouse or former spouse, and prove that deportation would cause extreme hardship to herself or her children.

IIRIRA, however, amended the law to provide that once INS begins deportation proceedings, the accumulation of the 3 years necessary to verify cancellation of removal *stops*. This has removed the effectiveness of the provision for many battered immigrant women. Since an abuser may turn his spouse in to INS for deportation or threaten harm if she attends the deportation hearing, the battered immigrant woman may be unable to defend against the deportation action. This is even more egregious when an abuser does not allow a battered immigrant access to her mail so she never receives notice that she is subject to a deportation hearing. Since the abusers can initiate deportation proceedings, they may purposely start proceedings right before a battered immigrant meets the three year requirement, thus foreclosing her access to cancellation of removal proceedings.

We support the provision originally included in VAWA, and now included in H.R. 3083, which specified the method of counting a battered immigrant's time in the U.S. for purposes of cancellation of removal. That original provision does not stop the clock when deportation proceedings are initiated but rather counts the total time a battered immigrant is physically present in the U.S. For example, assume a battered immigrant woman has resided in the U.S. for 2½ years. Her spouse then notifies INS of his spouse's unlawful presence in the U.S. (which was related to the abuse because he refused to allow her to reapply for a visa) and INS undertakes deportation proceedings. If the deportation proceedings take eight months (not unusual for INS proceedings), current law would not allow the battered immigrant

woman to apply for cancellation of removal even though her total time in the U.S. is over three years (2½ years prior to initiation of proceedings + 8 months after initiation = 3 years, 2 months). The original provision in VAWA would allow her access to cancellation of removal because her *total* time in the U.S. is over 3 years. This approach was crafted with the goal of offering protection to a broader group of battered immigrants.

In addition, the original provision furthers the aims of the criminal justice system. In some situations, abusers institute deportation proceedings against battered immigrants to prevent their participation in criminal proceedings. The provision was based on an understanding that for every battered immigrant who could not attain relief under cancellation of removal, there often was a U.S. citizen or lawful permanent resident abuser who could not be effectively prosecuted for abuse inflicted on the battered immigrant. Restoring the calculation of the three year time period to physical presence would allow battered immigrant women to access cancellation of removal procedures as intended by VAWA.

b. Removing the Cap on Green Cards Issued through Cancellation of Removal

IIRIRA also placed a cap on the number of cancellation of removal procedures INS could approve—whether for VAWA or non-VAWA cases. The current limit is 4,000. We believe battered immigrant women should have access to cancellation of removal proceedings without a cap and without a link to non-VAWA cases.

Under IIRIRA, "suspensions of deportation" became "cancellation of removal." There was a yearly cap of 4,000 on the number of suspensions of deportation and cancellations of removal INS could grant. Under NACARA (the Nicaraguan and Central American Relief Act), Congress exempted VAWA suspension of deportation applicants from the 4,000 cap. (This exemption applied to any VAWA applicant who had received notice from INS of the initiation of deportation proceedings before April 1, 1997.) The provisions in H.R. 3083 would lift the cap on cancellations of removal, providing the same exemption as Congress enacted in NACARA.

4. Waivers of Inadmissability and Bars on Re-Entry For Otherwise VAWA Eligible Battered Immigrants

Catholic Charities USA also supports developing a meaningful waiver of certain inadmissibility and deportation grounds for battered immigrant women who can demonstrate that a connection exists between their inadmissibility or deportability grounds and the abuse they have suffered.

With the passage of IIRIRA, Congress imposed a variety of new inadmissability and deportability grounds that reduced the access battered immigrants previously had to VAWA's protections. These included:

- *a bar to re-entry* for applicants who were lawfully admitted to the U.S. but "out-of-status" for more than six months (3 year bar) or more than one year (ten year bar)—even if the applicant could demonstrate extreme hardship to a child;
- *a bar to re-entry* for applicants who entered the United States illegally on more than one occasion—even if a battered immigrant's departure or reentry to the U.S, was related to the abuse;
- *a bar to re-entry* for applicants who had been previously deported from the United States—even if the deportation, the reentry and/or the attempt to re-enter the United States was connected to the abuse;
- deeming applicants *inadmissible* when they have been convicted of certain crimes—even if a battered immigrant woman acted in self- defense, under duress from the abuser, or when the crime they plead guilty to was connected to the abuse or being able to survive the abuse;
- *deporting victims* of domestic violence who were arrested for, plead guilty to or were convicted—even if, as noted above, they acted in self- defense, under duress or if they were wrongly convicted of violation of a protection order issued to protect them.
- deeming applicants *inadmissible* if they use fraud or willful misrepresentation of a material fact to obtain admission into the United States—even if the misrepresentation was connected to the abuse or being able to survive the abuse.

a. Bars on Reentry

In IIRIRA, Congress enacted a number of new bars on reentry. Any immigrant who entered the U.S. illegally is inadmissible. Immigrants who remain in the U.S. "out-of-status" (e.g. with an expired visa) for more than six months have to leave

the U.S. to apply to become legal permanent residents (unless they are a spouse or child of a U.S. citizen).

The situations that cause a battered immigrant woman to be subject to a bar on reentry vary. Some battered immigrant women, especially those who live near the Mexican or Canadian borders, often leave the U.S. either because their abusers force them to leave or they flee to escape abuse and/or heal from injuries. The abuser may stalk or threaten the battered immigrant and force her to re-enter the U.S. In some of these instances, the battered immigrant may have been previously deported and either her deportation, her attempt to reenter, or her application to reenter may have been related to the abuse. In these situations, the battered immigrant women will not be able to reenter directly as a result of the abuse inflicted by their U.S. citizen and lawful permanent resident spouses. Battered immigrant women and children should not be subject to these bars since the effect of doing so is to let the abusers of immigrant spouses go free.

One specific provision of IIRIRA imposes a three year bar on reentry for any immigrant who has been out-of-status for more than six months, and a ten year bar on reentry for anyone out-of-status for more than one year. A waiver to this inadmissibility does exist. To be eligible for the exemption, however, an individual must show extreme hardship to the citizen or legal permanent resident spouse or parent of the applicant. For example, if an individual is subject to the 3 year bar (because she was out-of-status for more than six months and not married to a U.S. citizen) but demonstrates that her *spouse* has a severe disability and would be unable to take care of his needs without assistance from the spouse, INS could determine the spouse is eligible for an exemption based on extreme hardship. But if a battered immigrant woman demonstrated that her citizen *children* would be subject to extreme hardship if she were not allowed to return because they would have to remain with their abusive father, she would not be eligible since the exception is limited to extreme hardship to her spouse or parent.

Catholic Charities USA supports the provisions in H.R. 3083 which would allow the Attorney General to waive the bar for humanitarian purposes, to assure family unity, or if there is a connection between the grounds for inadmissibility and the abuse.

b. Bars Related to Misrepresentation

The issue of an exemption that does not provide practical relief also exists with misrepresentation. Under current law, a battered immigrant woman may only receive a waiver of inadmissibility for misrepresentation if the legal permanent resident or citizen spouse of the immigrant subject to the bar would suffer extreme hardship. As stated above, it would be unlikely that a battered immigrant would choose to demonstrate extreme hardship to her abuser since that would presumably require her to return to the abuser to mitigate his extreme hardship.

Current law does not allow consideration of whether the bar might cause extreme hardship to the battered immigrant or her children (who often are U.S. citizens and remain in the U.S.). Battered immigrants should be afforded the same access to waivers as they would have had if their spouse was not an abuser.

We support the provisions in H.R. 3083 which would allow battered immigrant women to obtain a waiver for misrepresentation by demonstrating extreme hardship to their citizen or legal permanent resident child or parent.

c. Waiver of Deportation for Criminal Convictions

Finally, IIRIRA imposed many changes in admissibility and deportation grounds that have significantly heightened danger for battered immigrant women. Some battered immigrant women become involved as defendants in criminal prosecutions. This happens for a number of reasons. In many instances their inability to speak English fluently can result in their arrests for domestic violence either together with or instead of the abuser because police officials do not obtain an interpreter and listen to only the spouse's version of the incident. One example involves a Filipino immigrant, a client of Catholic Charities in Hawaii. The woman's husband verbally and physically abused her. Twice when she and her husband had a fight, her husband, a lawyer, made it appear to the police that the woman abused him and showed the police bruises and scratches on his arm which he, in fact, willingly inflicted on himself. After both incidents, the woman was arrested and put in jail. The husband ultimately dropped the charges and the woman eventually separated from him.

But if the woman had been convicted, or accepted a plea agreement, she could have then faced deportation. Battered immigrants who are arrested often accept plea offers instead of contesting the case because judges and lawyers do not understand or inform them of the immigration consequences of such pleas. The battered

immigrant woman's primary focus is often to do what she can to be released from jail because there is no safe person to care for her children. In another case, a battered immigrant shoplifted baby food to feed her starving children once she escaped from her abuser. Even if she received no jail time but a one year suspended sentence for a $15 crime, she could face deportation. Under current law, battered immigrant self-petitioners and all battered non-citizens could be placed in deportation proceedings with no possible remedy. These harsh consequences on battered immigrants should be remedied by allowing the INS and immigration judges to waive inadmissibility and deportation grounds in cases of battered immigrants where the crime or inadmissable act was connected to the abuse.

d. Conclusion

The rules on inadmissibility and deportability which were enacted in IIRIRA should not preclude a battered immigrant woman from residing in the United States or shutting her and her children off from all access to legal remedies, including protection for herself and her children through the courts, custody decrees, and law enforcement. Depending on her country of origin, she may not have judicial protection and may herself be placed in danger either from the abuser or others who believe her allegations of abuse bring disgrace on her and/or her family. VAWA eligible battered immigrants abused by citizens and lawful permanent residents need and deserve our protection. Waivers should be available for acts that are connected to the history of abuse or their attempts to end the abuse and similarly battered non- citizens should be able to obtain waivers of deportation grounds.

We support the provisions in H.R. 3083 which waive inadmissibility and deportability requirements for battered immigrant women if the abuse was the reason for the battered immigrant woman's action. Further, we support the provisions which provide meaningful exceptions by allowing battered immigrant women to demonstrate extreme hardship to their children if not allowed to remain or enter the U.S.

5. Access to Legal Services

The legislation increases access to funding for legal service organizations representing battered immigrants. For example, H.R. 3083 clarifies that VAWA civil legal assistance funds can be used to increase direct legal services to immigrant battered women, including in VAWA immigration cases. It would also allow legal services organizations to provide legal assistance to battered immigrant women in VAWA immigration cases.

Battered women often need access to legal services to obtain legal relief to help them halt the abuse and create a new home for their children apart from the abuser. This legal assistance most often includes seeking a protection order, custody order, child support, assistance in immigration matters or sometimes help obtaining legal separation or a divorce. Under current law, organizations funded through the Legal Services Corporation may provide services to immigrants with non-federal funds only in very limited circumstances. These circumstances exist, however, only when the person committing the domestic violence is a spouse or parent. H.R. 3083 expands these circumstances to include any individual in a relationship accorded redress under a State protection order statute.

6. Conclusion

Catholic Charities USA commends this subcommittee for convening this hearing to address the needs of battered immigrant women. We believe protections in H.R. 3083 would represent justice and compassion for battered immigrant women while maintaining the essential principles of our immigration system. We urge you to act expeditiously on H.R 3083 to address the issues that I have highlighted and other issues that interfere with the ability of battered immigrant women and children to obtain protection from ongoing abuse and undermine our ability to hold abusers accountable. We look forward to working with you to ensure these provisions become law in the remaining days of this Congress.

Mr. SMITH. Thank you.

Ms. Orloff.

STATEMENT OF LESLYE ORLOFF, DIRECTOR, IMMIGRANT WOMEN PROGRAM, NOW LEGAL DEFENSE AND EDUCATION FUND

Ms. ORLOFF. Thank you, Chairman Smith. I am Leslye Orloff, Director of the Immigrant Women Program at NOW Legal Defense

and Education Fund and Cofounder and Codirector of the National Network on Behalf of Battered Immigrant Women. The Network I am also representing here today is made up of over 400 groups from across the country that provide direct services to battered women. I am an attorney with 17 years of experience representing battered immigrant women in family court cases and advocating for improvements in local and Federal laws that help battered immigrant women and children.

I am going to summarize my statement here and ask that it be accepted for the record. Before I begin, I want to warmly thank Congresswomen Schakowsky, Jackson Lee and Morella for their leadership in introducing this bill; Congressman Conyers for his leadership on the Violence Against Women Act; I want to recognize Congressman McCollum's work in 1994 in including battered immigrant children in the original VAWA; and Chairman Smith and the members of the subcommittee for inviting me to testify today.

Lastly, I would like to acknowledge the work of Senators Abraham and Kennedy in sponsoring parallel legislation in the Senate.

I am going to focus first on some statistics that I think are important to keep in mind. Research indicates that between 34 and 49.8 percent of immigrant women in this country experience domestic violence in their lifetimes. When you only look at those women who are married, the abuse rate jumps to 59.5 percent. Among battered immigrant women married to U.S. citizens and lawful permanent residents, 72.3 percent never file papers on their behalf, and of the percentage who do file, most of them wait over 4 years before filing, clearly using the abuse as a tool to perpetrate domestic violence. Another fact that research shows us is that where there is immigration-related abuse in the relationship, it usually coexists with physical and emotional abuse and appears to be a predictor of the lethality of abuse in those relationships.

The other point that I think is important to recognize is that there is a 70 percent overlap between domestic violence and child abuse, and so not acting, as this bill does, to stop domestic violence on behalf of immigrant women has the effect of perpetrating child abuse against their children.

Congress understood this in 1994 when they passed the Violence Against Women Act which was a valiant effort to try to keep immigrant women from being trapped in abusive relationships. And one of the major problems that was happening is that battered immigrant women, when they cannot get out of abusive relationships, cannot call the police, cannot get help, is that their abusers essentially are immune from prosecution and the criminal process cannot reach them.

There was a case in New York in which a battered immigrant woman was attacked with a machete in front of a nunnery. The victim wanted to prosecute, but could not because her abusive husband would have her deported because he controlled her immigration status. We need that to be able to stop.

In 1994 we passed Violence Against Women Act. In 1996, Chairman Smith took a leadership role in ensuring that that act was preserved as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and extending welfare benefits to battered immigrants.

The problem is that, as Barbara Strack stated earlier, there have been a lot of problems with implementation of VAWA that we did not recognize in the beginning. These are problems that this bill is intended to fix.

The overall goals of this legislation are to restore access to VAWA, and VAWA's protective provisions for battered immigrants, where those provisions were unintentionally weakened by subsequent legislation, particularly in 1996. To correct omissions, like the people that were left out, including the adult incest victims that Congresswoman Schakowsky was talking about. Also to correct unforeseen implementation problems. Examples include children who age out of the process. They are included when their mother files a self-petition but they turn 21 before they can get their green cards. In another example, if the abuser loses his status while her case is pending because he is deported because of a domestic violence offense, she loses access to VAWA.

The bill also removes legal impediments that provide a perverse incentive for battered immigrant woman to choose to stay with their abusers, even though they qualify for VAWA, rather than seeking help. Some of those incentives include the extreme hardship requirement, public charge, the fact that she has to wait for 5 years to naturalize instead of 3, and the fact that her kids are not included in cancellation proceedings and given protection there.

And, finally, it offers improvements to cover some groups that were left out in the beginning. These improvements include better access to legal services for battered immigrants. Legal services attorneys are the best prepared attorneys in the country to help in domestic violence cases and no woman should be turned away from getting a protection order because of her immigration status.

In conclusion I would like to say that there is a grave need for action this year. Every day that we wait, there are battered immigrant women and there are abused immigrant children or U.S. citizen children who grow up witnessing this abuse. These children are learning that domestic violence is okay and are learning to perpetrate it as adults. This is something we have to stop.

We need reforms to ensure that kids can be protected, that women can flee violent homes where their immigration status is used to hold them hostage, so that they can be free to work with police and cooperate in prosecutions so that their abusers can be brought to justice. And in the end, this legislation will help create safe and secure, violence-free homes where abused battered immigrant women can raise their children in peace and help their children address the aftermaths of abuse.

Thank you.

[The prepared statement of Ms. Orloff follows:]

PREPARED STATEMENT OF LESLYE ORLOFF, DIRECTOR, IMMIGRANT WOMEN PROGRAM, NOW LEGAL DEFENSE AND EDUCATION FUND

Introduction

Mr. Chairman, Members of the Subcommittee, my name is Leslye Orloff and I am the Director of the Immigrant Women Program at NOW Legal Defense and Education Fund. NOW Legal Defense and Education Fund is a leading national, nonprofit civil rights organization with a 30 year history of defining and defending women's rights. We provide a broad range of legal and educational services aimed at eliminating sex-based discrimination and securing equal rights for all women focusing on issues of domestic violence, child care, employment, immigration, repro-

ductive rights, and economic justice. NOW Legal Defense and Education Fund's Immigrant Women Program co-chairs the National Network on Behalf of Battered Immigrant Women[1], a broad-based national coalition of more than four hundred member organizations and individuals that work to improve protections for and provide services to immigrant victims of domestic violence. We appreciate the opportunity to submit this testimony in support of H.R. 3083, the Battered Immigrant Women's Protection Act of 1999, legislation that will enhance protections for one of the most marginalized groups in the United States: immigrant victims of domestic violence.

Before I begin, I want to thank Chairman Smith and the Members of the Subcommittee for inviting me to testify today. I am especially grateful to Congresswomen Schakowsky, Jackson Lee, and Morella for sponsoring H.R. 3083 and for spearheading this bipartisan effort to protect battered immigrant women and children. A special thanks to Ranking Member Sheila Jackson Lee for her leadership and to Congressman McCollum for his commitment to these issues. Lastly, I would like to acknowledge Senators Abraham and Kennedy for sponsoring Title V of S. 2787 the Violence Against Women Act, the Senate counterpart to H.R. 3083, which is also devoted to ending violence against immigrant women and children.

Domestic Violence, Power, and Control Against Immigrants

Domestic violence is a societal problem of epidemic proportions. Experts estimate that two to four million American women are battered every year,[2] and that between 3.3 and 10 million children witness violence in their homes.[3] As information about the extent and impact of domestic violence emerges, it has been identified as a criminal justice issue, a public health crisis, and a costly drain on economic productivity.[4] Domestic violence crosses ethnic, racial, age, national origin, religious, gender, geographical and socioeconomic lines.[5] However, immigrants have been particularly vulnerable to becoming victims of domestic violence. Research has found that 34–49.8% of immigrant women experience domestic violence over the course of their lifetimes.[6] Immigrant married women experience higher levels of domestic violence (59.5%)[7] and research has found that over 50% of immigrant women surveyed were still living with their abusers.[8]

Victims of domestic violence are particularly vulnerable because they face even greater obstacles in their efforts to escape violent relationships.[9] Language, culture and immigration status often block victims from access to information about legal remedies, and complicate their efforts to obtain the relief needed to end the violence.[10] As is the case with all victims of domestic violence, battered immigrants experience physical violence, coercion, threats, intimidation, isolation, destruction of important documents or possessions, and emotional, sexual or economic abuse.[11]

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[1] The National Network on Behalf of Battered Immigrant Women is co-chaired by NOW Legal Defense and Education Fund, The Family Violence Prevention Fund, and the National Immigration Project of the National Lawyer's Guild.

[2] *Criminal Vicitmization in the United States: 1990–1997 Trends.* Bureau of Justice Statistics. Washington, DC: U.S. Department of Justice, December 1997, pp.57–58.

[3] Howard A. Davidson. *The Impact of Domestic Violence on Children; A Report to the President of the American Bar Association.* ABA. 1 (1994).

[4] *See e.g.*, Ted Miller et al. National Institute of Justice. US Dept of Justice. *Victim Costs and Consequences: A New Look.* 18–19 (1996) (Finding that domestic violence costs $67 billion a year in property damage, medical costs, mental health care, police and fire services, victim services, and lost worker productivity).

[5] David M. Zlotnik. *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders.* 56 Ohio St.L.J. 1153, 1162–63, 1215 (1995).

[6] Rodriquez, R. (1995 May/June), Evaluation of the MCN Domestic Violence Assessment Form and Pilot Prevalence Study. *The Clinical Supplement of the Migrant Clinicians Network, 1–2.*

[7] Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Lega l and Policy Implications. Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, Summer 2000. Page

[8] Coalition for Immigrant and Refugee Rights and Service(CIRRS). (1990). *A needs assessment of undocumented women.* Author; San Francisco. and Mary an Dutton, et. al. Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications. Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, 13 (Summer 2000).

[9] Mary Ann Dutton, et. al., Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Lega l and Policy Implications. Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, 38 (Summer 2000). Language barriers (29.7%), lack of knowldege about formal services available to help battered immigrants (23%) and fear, particularly immigrant consequences (27%) appear to pose significant barriers to battered immigrant Latinas' access to institutionally based legal, social and health services.

[10] Id. at 36

[11] *See* Power and Control Wheel Produced by the Domestic Abuse Intervention Project, Duluth, MN.

Cases of battered immigrants are ultimately complicated by their abuser's use of immigration status as a tool of control. Immigration-related abuse is a critical way in which batterers of immigrant women exert power and control to dominate and isolate their abused family members. Research indicates that immigration-related abuse most often co-exists with or appears to be a predictor of physical and/or sexual violence.[12]

The 1994 VAWA Immigration Provisions Congressional Intent

In 1994, Congress enacted the Violence Against Women Act (VAWA) in an effort to deter and punish violence crimes against women.[13] Acknowledging the complexity of hardships facing battered immigrants, VAWA contained immigration provisions that would protect battered immigrants.[14] Prior to this enactment, the citizen or lawful permanent resident spouse had full control over the legal status of their immigrant spouse. Because abusers often use immigration status as a form of control, many battered immigrants who could have been granted legal immigration status if their abusive spouse chose to file a visa application with the Immigration and Naturalization Service were left without legal immigration status in the U.S. Research has found that in abusive relationships, 72.3% of citizen and legal permanent resident spouses never filed immigration papers for their immigrant wives.[15]

Subtitle D of the Act recognized the importance of extending all VAWA protections to battered immigrant women and children, whose immigration status remained uncertain in the hands of savvy U.S. citizen and lawful permanent resident abusers. When enacting Subtitle D of the Act, Congress recognized that many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.[16] "This fear of deportation paralyzed immigrant victims and prevented them from calling the police for help, from cooperating with prosecutors bringing criminal cases against their abusers and from seeking protection orders.[17] Consequently, Congress enacted the self-petitioning provisions in Subtitle D of the Act Ato permit self-petitioning for battered immigrant women to prevent the citizen or legal resident spouse from using the petitioning process as a means to control or abuse an alien spouse."[18]

By allowing for self-petitioning and by assuring that all the other provisions of the Act applied to battered immigrants, Congress envisioned several overall benefits: removing the abuser's control over the victim's immigration status,[19] encouraging reporting of the abuse without the risk of deportation,[20] and facilitating prosecution of abusers, by making law enforcement officials more receptive to complaints of domestic violence and thereby eliminating a class of abusers immune from criminal prosecution.[21]

The goal of H.R. 3083 is identical to that of VAWA's immigration provisions--to free abused immigrant spouses to cooperate in their abuser's prosecution and to obtain justice system protection for themselves and their children. The amendments proposed in H.R. 3083 will improve access to the criminal justice system for battered immigrants abused by citizens or other persons lawfully permitted to reside in the United States, will remove legal impediments that continue to encourage battered immigrants to choose to remain with their abuser and will correct omissions and implementation problems that prevent the prosecution of batterers who abuse immigrant family members.

Legal Impediments That Trap Battered Immigrants in Violent Relationships

NOW Legal Defense and Education Fund's Immigrant Women Program and the National Network on Behalf of Battered Immigrant Women receive over 2,000 calls a year from advocates and attorneys trying to help women and children who have been victims of domestic violence. Although over 5200 battered immigrants have received help under VAWA, we are finding that several categories of immigrants battered by citizen and lawful permanent resident spouses and parents cannot attain

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[12] See Mary Ann Dutton, et. al. Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered . migrant Latinas: Lega l and Policy Implications. Georgetown Journal on Poverty Law & Policy, Volume VII, Number 2, 6–7(Summer 2000).

[13] House Report No. 395, 103*rd* Cong., 1st Sess. (1993) 25.

[14] Id.

[15] See Mary Ann Dutton, et. al., Characteristics of Help-Seeking Behaviors, Resources and Service Need of Battered Immigrant Latina's: Legal and Policy Implications at 15.

[16] *House Report No. 395, 103rd Cong., 1st Sess (1993)* 26–27.

[17] Id. at 26.

[18] Id. at 37.

[19] Id. at 37.

[20] Id. at 38 (discussed in the context of child abuse).

[21] Id. at 25, 27.

VAWA protections either because of omissions in the original legislation or because of implementation problems.[22] The following are some examples of the access problems advocates report:

Vanna is a Cambodian wife of a member of the U.S. military who is currently stationed abroad in a country that is not her homeland. During her abusive marriage she has lived with her citizen husband in the U.S. and in various countries in which he has been stationed. Her relationship has been plagued with sexual abuse with her husband forcing Vanna to engage in sexual behaviors that made her feel demeaned and humiliated. His physical and sexual abuse has included threats to kill Vanna in which he told her that he could make her death look like an accident. Her husband also restricts the amount of food she is allowed to eat and where she was allowed to go. He threatens her with withdrawing the immigration papers he filed for her and telling her that she would be deported back to Cambodia where she would probably be killed. She feels trapped and isolated on the military base. Vanna wants to return to the U.S., but she does not qualify for VAWA self-petitioning because she lives abroad. H.R. 3083 would help Vanna by allowing abused spouses and children of U.S. citizens and lawful permanent residents to file for VAWA protection whether or not they were residing in the United States.

Sara is the 21-year old Panamanian daughter of an abusive lawful permanent resident. She has been sexually abused by her father since she was in junior high school. Her father brought her mother and Sara into the U.S. without visas when she was twelve years old. Her father has never filed a family-based petition for his wife nor Sara. By the time she finally found the courage to disclose the sexual abuse to her mother, who had also been abused by her father Sara was already 21 and it was too late for Sara to receive protection under VAWA. She is afraid to report the incest to authorities because she has no immigration status and fears being deported to her home country where she knows no one. As a result her father goes unpunished and Sara struggles to overcome the effects of the abuse. H.R. 3083 would allow Sara to file for relief under VAWA.

Lupe was born in El Salvador. She came to the U.S. at age five and grew up in the United States where she met and married her lawful permanent resident spouse. Shortly after the marriage her husband began closely monitoring her every move. When Lupe was pregnant with their first child Lupe fled to her parents house. Her husband followed her and ordered her to get into his car. When she refused he dragged her by the hair into the passenger's seat. Her pregnant belly got stuck between the seats and she could not move. When her mother and brother tried to help, he threw her mother to the ground and sped off with Lupe. He drove her to his apartment and locked her inside. After the baby was born, he began raping Lupe and threatening that if she didn't comply, she would never see the baby again. When she found him abusing the baby, locking him in a closet to punish him for crying, and crushing his favorite toys underfoot, Lupe fled back to her parents' house. After a restraining order was issued, he again abducted her and threatened to drown her. Following this incident Lupe retained an attorney and filed a self-petition that has been approved. Lupe fears having to return to El Salvador to obtain her lawful permanent residency. Her husband continues to stalk her and has many family members there. Lupe does not speak Spanish and her protection order, which granted her custody, cannot be enforced if she leaves the United States. Leaving the country to obtain permanent residency is too dangerous for her. H.R. 3083 would allow Lupe to safely apply for adjustment of status in the United States.

H.R. 3083: Restoring Access, Addressing Omissions, and Correcting Unintended Effects and Implementation Problems of VAWA 1994

H.R. 3083 continues Congress's commitment to the plight of battered immigrants and the work that began with the passage of VAWA 1994 to help battered immigrant women secure lawful immigration status and legal protection so they may flee violent homes, cooperate in the criminal prosecution of their abusers, and take control of their lives without fearing deportation. The specific purposes behind H.R. 3083 are tri-fold. First, the bill restores access to VAWA relief that was weakened by subsequent legislation. Second, H.R. 3083 offers access to lawful permanent residence status to victims who were inadvertently omitted under VAWA 1994. Finally, the bill corrects unintended effects and implementation problems of VAWA 1994

[22] Immigration and Naturalization Service, November 1999.

that were not anticipated when the bill was enacted. Some of the highlights of H.R. 3083's provisions include:

Restoring Access to VAWA

Adjustment of Status: Changes to immigration laws that occurred after VAWA became law in 1994 now force many battered immigrant women and children with approved VAWA self-petitions to choose between remaining without access to lawful permanent residency status and being required to leave the United States to obtain their lawful permanent residency. This is true despite the fact that the INS has already determined that they will suffer extreme hardship if returned to their home country. Further, the law makes no exceptions for battered immigrants who have proven that returning home will jeopardize their safety, undermine the treatment they rely on to overcome the abuse or interfere with custody decrees crafted to protect children from the harmful effects of domestic violence. H.R. 3083 allows battered immigrants with approved self-petitions to adjust their status to lawful permanent resident while remaining safely in the United States.

Addressing Omissions in VAWA 1994

Children Who Age-Out: The fact that domestic violence often spreads from the battered spouse as the target of the violence to abuse of the children has been well documented.[23] Battered immigrant women fleeing abusive relationships must be able to protect to their children. VAWA allows battered immigrants to include their undocumented children who are under 21 years old at the time of filing. Currently, even if a child is under 21 when the self- petition is filed, they must remain under 21 until they can obtain lawful permanent residency status based on the approved VAWA self-petition. Since the waiting time between filing of the self-petition and obtaining lawful permanent residency can range from 6 months to almost 5 years, many children who were to be offered protection by including them in their mother's petition Aage out by turning 21. The effect of this gap in the legislation is to force battered immigrants with older children to remain with their abusers as the only hope that her older children will benefit from a petition that their abusive spouse can file for the child even if the child turns 21. In order to assure that children over 21 have access to VAWA provisions, H.R. 3083 allows derivative children who are under 21 when the self-petition is filed, to continue to be included in their parent's petition until they can obtain their permanent residence status.

Deleting the Residence in the U.S. Requirement: Battered immigrants married to either citizens or permanent residents living outside the U.S. have no access to VAWA immigration relief. Current VAWA provisions state that an applicant must reside within the territory of the U.S. to file a self-petition. There is not a residency requirement in regular family-based visa petitions. A citizen or legal permanent resident spouse living abroad can file a visa petition on behalf of their immigrant spouse at the American Consulate. Battered immigrants need the same access to immigration benefits they would have if their spouse was not abusive. H.R. 3083 allows abused spouses and children of citizens and permanent residents to file for VAWA protection without regard to where they currently reside, this removes an incentive for abused immigrant spouses and children to remain with their abusers. Because of the transient nature of the military (military members move twice as often as the civilian workforce), military spouses are particularly affected by this provision. This is important because the frequency of abuse in military families is proportionally much greater and more severe than in civilian families.[24]

Effect of Changes in the Abuser's Immigration Status: Conviction of a domestic violence crime is a removable offense. One unintended effect is that the battered immigrant's pending VAWA self-petition becomes void when her husband is deported. This creates a perverse incentive for the battered immigrant to tolerate the abuse rather than report it or to not cooperate in his prosecution. H.R. 3083 allows battered immigrants to file a VAWA self-petition that would remain valid even if the batterer is.

Unintended Effects and VAWA Implementation Problems

Deleting Extreme Hardship: VAWA self-petitioning applicants would normally be beneficiaries of regular family-based petitions, but for the actions of the abusive spouse or parent. To win approval of a family-based visa petition the parties must prove that they have a valid marriage or parent/child relationship. In addition to this proof, VAWA self-petitioners must prove that they have been victims of battery

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[23] See Hughes, HM et al (1989). Witnessing spouse abuse and experiencing physical abuse: "A double whammy," Journal of Family Violence, 4, 197–209.

[24] The Miles Foundation, *"Domestic Violence in the Military Facts and Statistics* "(visited June 7,2000) <*http://pages.cthome.net/milesfdn*>.

or extreme cruelty at the hands of their citizen or resident spouse or parent and that they are persons of good moral character. Once the self-petitioner has proved all of these facts, they must additionally prove that their deportation would cause extreme hardship to themselves or their children. Extreme hardship is a difficult evidentiary test that battered immigrants who file applications with INS without the assistance of an attorney find almost impossible to meet. The extreme hardship requirement has resulted in INS denials of self-petitions of many unrepresented battered immigrants are of good moral character, who present compelling evidence of abuse and whom INS believes are in good faith valid marriages. This result is contrary to VAWA's goal of providing relief to battered immigrants; with the end result of abusers continuing to go unprosecuted. INS' reviewed VAWA cases and found that in no instance did they find credible evidence of marriage fraud and credible evidence of domestic violence in the same case.[25] VAWA's evidentiary requirements are ,even without extreme hardship, much higher than the proof requirements in all other family based visa cases. H.R. 3083 deletes the extreme hardship requirement recognizing that it poses a difficult, unnecessary hurdle that deprives many needy victims of VAWA's protections and allows their abusers to go free.

Public Charge: In legislation crafted by Chairman Smith, Congress provided battered immigrants who were eligible under VAWA or who were the beneficiaries of petitions filed by their spouses or parents, access to the public benefits safety net. Under current immigration laws, however, immigrants who use those benefits may be deemed public charges and denied lawful permanent residency. H.R. 3083 creates an exception to the public charge ground of inadmissibility for battered immigrants who need access to benefits in order to flee their abusers and survive economically.

Discretionary Process to Reinstate a Revocation: As the protections offered battered immigrants through VAWA become more well known in immigrant communities, the National Network on Behalf of Battered Immigrant Women has been receiving increased reports of abusers seeking to revoke approved family-based visa petition and have their spouses placed in removal proceedings. H.R. 3083 would prevent an approved petition from being revoked and would allow INS to reinstate a revoked family-based visa petition when INS received credible evidence that the citizen or lawful permanent resident spouse or parent has perpetrated battery or extreme cruelty. Further, the H.R. 3083 provisions will require that once the INS or the immigration judge determines that the spouse or parent is an abuser, they must act to undo any harm that has occurred as a result of the abusers withdrawal or revocation of the petition or his report that initiated removal proceedings. For example, if an abuser revoked a petition and convinced INS to place his abused immigrant wife in removal proceedings, INS would be explicitly authorized to close those proceedings and to allow the victim to self-petition under VAWA.

Access to Legal Services: Battered immigrants are far more successful in their applications for VAWA self-petitions when they are represented by lawyers who have received domestic violence training. Legal Services Corporation (LSC) funded programs provide the vast majority of legal services to battered women in the country. Recognizing this fact, in 1997 Congress amended legal services appropriations legislation to allow lawyers working for LSC-funded programs to represent battered immigrant women, a variety of domestic violence related matters, without regard to their immigration status in so long as those services are funded with non-LCS dollars. The legislation, however, used the INS definition of family relationships (spouses and children) rather than each states' own domestic violence definition. This had the effect of cutting off access to legal services for many battered immigrants who would be protected if the state definition had been used B including immigrant women battered by their citizen boyfriends. H.R. 3038 will make an important technical correction to fix this problem.

Recommendations and Conclusion

On behalf of NOW Legal Defense and Education Fund and the National Network on Behalf of Battered Immigrant Women, thank you for the opportunity to present this testimony in support of the Battered Immigrant Women's Protection Act of 1999. The Act will go far toward furthering the original purpose of VAWA's immigration provisions—freeing battered immigrant women abused by citizen and lawful permanent resident spouses or parents to report the abuse to police, to seek help and to prosecute their abusers for the multiple crimes they commit against family members. We have learned much over the six years, since VAWA's enactment, about instances in which the original legislation works effectively and when it does not.

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[25] Immigration and Naturalization Service, International Matchmaking Organizations: A Report to Congress, March 4, 1999, 5 *<http://www.ins.usdoj.gov/graphics/aboutins/repstudies/Mobrept.htm>*.

H.R. 3083 is designed to correct unforseen problems in the legislation and erosions in access to VAWA that have prevented many of the needy domestic violence victims VAWA sought to protect from seeking help. Helping battered immigrant women escape abuse and bring their abusers to justice will reduce domestic violence in our communities and will ensure that the citizen children of immigrant parents have the same opportunity to live lives free of domestic violence that VAWA sought to provide to all domestic violence victims.

Mr. SMITH. Thank you.

Ms. Ortiz.

STATEMENT OF MARIA ORTIZ, SHELTER FOR ABUSED WOMEN

Ms. ORTIZ. Good morning, Chairman Smith, members of the subcommittee. Thank you for the opportunity to speak to you today on behalf of battered immigrant women.

My special thanks to Ms. Sheila Jackson Lee and Ms. Schakowsky for cosponsoring this bill.

My name is Maria de la Luz Teresa Mendoza V. Ortiz. I am employed for the Shelter for Abused Women in Collier County and work in the outreach office in Immokalee. Today I come before you wearing several hats. I am a survivor of domestic violence, a licensed clinical social worker, a bilingual counselor for battered immigrant women.

In our rural office in Immokalee we have served over 1,000 battered women. About 40 percent of our clients are immigrants. As a survivor, I know firsthand the fear and pain of living in an abusive situation. I am a fifth generation Mexican-American from San Antonio, Texas. I can identify with the culture, religious, economic and emotional barriers that victims of domestic violence experience.

However, the immigrant women have special issues. They suffer even more fears, more threats, intimidation and isolation than their American sisters.

I would like to tell you about Juana. Juana is a 20-year-old Mexican married female with three children. She had her first child when she was 14. Her husband, a lawful permanent resident, had been arrested several times for domestic violence and had been divorced. She was not aware of this. When she married him, she did not know the particulars of his first case.

One day he slapped her and pulled her hair. In the morning, he said I am going to go out and get drunk and when I come back I am going to kill you, and he even showed her the knife that he was going to use. She was very afraid. She had never called 911. Once when he beat her up and threw her out of the house and locked the door behind her two days before Christmas she went to the neighbor for help. The neighbor called the police. The police came and a very nice Spanish-speaking victim advocate responded in understanding—that was very understanding and helpful to Juana. This gave Juana courage to continue and find out what else she could do.

Juana lived for 7 years in an abusive relationship. She is hiding now somewhere in this country. Her husband kept his immigration status from her, kept the power and control over her and she was not able to do anything about it until someone who knew about VAWA and knew about the benefits that she could get from this

bill. She was able to file an injunction. She was able to get some benefits for herself.

When her husband was arrested for the last time, he was in jail, he even in jail continued to batter her and threaten her. He had the water, the lights, the cable and the telephone disconnected all on the same day. She came to our office in tears. What can I do? We have no lights. We have no electricity. We have no water. We scrambled to contact community agencies for deposits to turn on at least the water and the electricity within 24 hours.

Juana says her husband receives three different bank statements but she has no idea how much money he makes or what he has. She was referred to Florida Immigration Advocacy Center to file a self-petition. She now has employment and is supporting her three children, but she has not been able to come up with the thousand dollars she needs to finish her application. She does not want child support from him because she is afraid for him to find out where she is working.

He has told her before, if she ever leaves the children with anybody, the Department of Children and Family would take them from her and she would not be able to see them. For a long time, she believed his lies and she was terrified of losing her children.

Her story is one of thousands of women who seek protection from this Congress today. Having legal status is paramount to battered immigrant women. It is threshold to eliminating barriers that keep her in fear and in the shadows. The monies that are available through H.R. 3083 will allow that other service providers will help immigrant women eliminate barriers for women like VAWA. It will also insure that women like Juana have more access to more advocates like myself. Thank you.

[The prepared statement of Ms. Ortiz follows:]

PREPARED STATEMENT OF MARIA ORTIZ, SHELTER FOR ABUSED WOMEN

Good Morning, Mr. Smith, and members of this Subcommittee. Thank you for the opportunity to speak to you today on behalf of battered immigrant women. My special thanks to Shelia Jackson Lee who is co-sponsoring this bill. My name is Maria de la Luz V. Ortiz. I am employed by The Shelter for Abused Women of Collier County, the only certified domestic violence center in Collier County Florida. I currently work in the Shelter's Immokalee Outreach Office in Immokalee, Florida. Today I come before you wearing many different hats; I am a survivor of domestic violence, a licensed clinical social worker, and a bi-lingual counselor to battered immigrant women. In the past year, our rural Immokalee office has serviced over 1,000 battered women. About 40% of our clients are immigrants.

As a survivor, I know first hand the fears and pain of living in an abusive relationship. Daily I hear battered women share their personal experiences. I am a 5th generation Mexican-American from San Antonio, Texas. I can identify with the cultural, religious, economic, and emotional barriers that victims of domestic violence experience. Who can I tell? Where can I go for help? Who can I trust? How can I make it on my own? It is such a personal problem. Questions such as these are perpetually swirling around a victims head.

This morning, however, I would like to address the special issues of battered immigrant women. They suffer even more fear, threats, intimidation and isolation than their American sisters. They are the ones who really tug at my heart strings. I want to tell you about Juana. I wish she were here today, but she is still hiding. She left her abusive husband for the fifth time in October, 1998. Juana was one of my first clients. She had been admitted to The Shelter the week before I began working for SAWCC. Juana is a 20 year old Mexican, married female with three children, ages 5, 4 and 3. Her husband, a Lawful Permanent Resident, had been arrested for the second time for Battery, DV. The day before, he had slapped her and pulled her hair. In the morning, he told her he was tried of her and was going out to drink. He said he was going to kill her when he returned and even showed

her which knife he was going to use. When he left again, she called the Collier County Sheriff's Office to speak to the victim advocate she had befriended and he was arrested. Juana had never dialed 911; she was too scared. Things would only get worse, she thought. A neighbor called once when her husband threw her outside their home two days before Christmas and locked the door behind her. She went to the neighbor for help. The Spanish-speaking victim advocate that responded was understanding and helpful to Juana. It was to her that Juana turned to about three years ago to begin knocking down the barriers that kept her from accessing services. But, let me go back in time for a more complete picture of Juana.

Juana's mother died two weeks after her birth and her father remarried within a year. Juana always felt like an outsider in the family. When she was 13, her step mother pushed her to seek work in the United States. A recently divorced son, Juan, of a family friend was visiting and needed a caregiver /housekeeper to help him with his three sons, ages 7, 6 and 4. Juana did not know he had been arrested three times for domestic violence and his wife had finally left and divorced him. Juana did not even like him. He was 33 years old. But she hoped for a happier, more peaceful life away from her wicked step-mother, and besides, her father approved of the move, so she came with Juan to Florida.

Juana was happy for about one month. Then she realized that she had been tricked, Juan demanded sex from her also. Away from family, she was at his mercy. He beat and raped her almost daily. Being pregnant did not stop the abuse. She did not know about pre-natal care during her first pregnancy. Their first daughter was born when she was 14. By the time she was 18 years old, she had three children. They were married in the fall of 1992. About that same time, Juan found his ex-wife and would bring her to their trailer and have sex with her in their bedroom while Juana took care of the six children in the living room, her three children and his three boys from his first wife. Somehow, Juana had managed to work up a little courage and protested. She knew a neighbor who had left an abusive husband. She was going to leave him, she told him for the first time. He threaten to kill her, cut her up and feed her to the alligators. Without a body, he would say, he could not be convicted of her murder. Fear is the number one reason for staying. She stayed for seven years.

Juana filed an Injunction for Protection while he was in jail. From jail, he called her father in California and he threaten him and her to make her drop the charges against him. He said he had not done anything wrong. She was just making up stories because she probably had a boy friend and wanted him out of the picture. At he hearing, he brought his parents and three children to support him, as he claimed he was a victim. He controlled everything they had. From jail, he had the water, lights, cable, and telephone disconnected all on the same day. Juana came to the office in tears. She did not have any money for the connection fees. We scrambled to contacted community agencies for deposits to turn on the electricity and water within twenty four hours.

Juana said her husband received three different bank statements but she does not have any idea how much money he makes or has.

Juana was referred to Florida Immigrant Advocacy Center to file a Self-Petition. She has Employment Authorization now and is working to support her three children. He will stop at nothing to locate her. Living and working in a rural community has advantages and disadvantages. Twice he has come to our office and my home to ask for her address. He said that he had received a letter from her father and needed to send it to her immediately. We neither confirm or deny and contact with our clients. She is afraid of filing for child support because he could locate her. During his two week vacation time last year, he visited her sister in Georgia to obtain Juana's current address. After the first of several visits, Juana's sister begged her to return to Juan. "He cried all night for you. He sounds so sad. You should go back to him, Juana. He is your husband," her sister told her. Since Juana dare not even tell her own sister her true address, he was unsuccessful and returned to Florida. Twice she has moved because she has seen neighbors or his friends in town.

He constantly reminded her that he had legal status and she did not. She did not have any rights in this country. He would see to it that she never saw her children again, if she even thought about leaving him. No one would want her. He really made her feel extremely self-conscience; she was terrified of him. He did not need any weapons to control her, one look would do it. When they were out in public, she had to keep her head and eyes down, least some male see her. He would not allow her to learn English or to work. He told her that if she left the children with someone the Department of Children and Families would take them from her because she could not take care of them. For a very long time she believed him and was terrified at the thought of losing her children.

Her story is one of thousands who seek protection from this Congress today. Having legal status is paramount for battered immigrant women. It is threshold to eliminating the barriers that keep her in fear and in the shadows. Bill H.R. 3083 provides for the various pots of money that is available through VAWA to all service providers will help to eliminate the barriers for women like Juana. Passage of this bill will ensure that women like Juana have more excess to more advocates like me.

I have enclosed a drawing by Juana which best expresses her situation as a battered

Translation:
I am sick
I am scared
I am alone
My heart is crying,
it is alone,
it is dead
I feel that I am alone
in the world
in the town
in the country

Mr. SMITH. Thank you Mrs. Ortiz.
Ms. Buchanan.

STATEMENT OF BREE BUCHANAN, DIRECTOR OF PUBLIC POLICY, TEXAS COUNCIL ON FAMILY VIOLENCE

Ms. BUCHANAN. Good morning. I am Bree Buchanan, the Public Policy Director for the Texas Council on Family Violence. We are one of the oldest and largest domestic violence coalitions in the country and home of the National Domestic Violence Hotline. As the Domestic Violence Coalition of the state, we have certainly been able to learn a lot about the challenges that battered immigrant women face. In preparation for this hearing today I called around the State and spoke with those who provide direct services to those women every day and I asked them "what would you like me to convey to this committee?" I would like to highlight just a few of those things today and would refer you to my written statement and ask that that be incorporated into the record.

First, they had asked me to tell you that changes to the batterer's immigration status should not penalize the victim and her children. Right now if she calls the police, which we want her to do, she may be arrested, convicted and deported and then she—which means that she will lose her ability to self-petition. As a result we hear over and over again that women are simply too fearful to contact the police and too fearful to cooperate with prosecution if he is charged.

Second, INS should have the discretion, and I underline the word "discretion," to waive the good moral character requirement. In Texas right now we have a huge problem with what is called dual arrest. That means along with the batterer the woman is arrested for any acts of self-defense. And, unfortunately all too often, because they do not speak the language, they do not understand our legal system, they want to avoid potential jail time and the loss of their children, they will accept a plea bargain for probation, not realizing what it will later do to their immigration case. INS should be able to review the circumstances surrounding these arrests and then have the discretion to not always automatically deny the woman relief.

Third, battered immigrant women must have access to civil legal representation. Most of these women cannot find anyone to help them. Right now in Texas there are very few who are providing services to these women, and those who are doing the work are absolutely overwhelmed. In the Valley, for instance, there is a staff person who circuit rides between Brownsville, Harlingen, and McAllen and currently has a caseload of 165 cases. At the program in Austin that works with these women they serve 16 counties and the woman there told me that it is not uncommon for them to get desperate calls for help from as far away as Amarillo. And if you have ever been to Texas, Austin is a long way from Amarillo.

And finally, those working with battered immigrant women really must have training about VAWA and about the dynamics of domestic violence. We hear that local INS officers are still not familiar with the provisions of VAWA of 1994. We hear about police asking battered immigrant women what their immigration status is when these women have actually gotten the courage to call the police for intervention. We can have the best laws in the world, and I generally think that we do, but it is not going to make any difference if those who are charged with the enforcement and administration of those laws do not know about those laws.

In talking about these issues, I certainly do not want to give the impression that they are the only important provisions of H.R. 3083. Everyone I talked to in Texas about this legislation was so enthusiastic about it and excited about how it can help the women that they work with, and wanted me to convey to the committee how vital it is that this legislation be passed and how necessary this legislation is.

Finally, one advocate in El Paso had asked me will you please tell the committee something. Please tell them to think about the children involved in these cases. We talk about the battered woman a lot and we need to do that. We talk about the batterer a lot, and we have to do that. But we also have to talk about the children in these cases, the children who are often U.S. citizens.

If the batterer has her completely isolated and too terrified to call the police, the abuse is going to go on uninterrupted and the children in these situations are going to continue suffering the effects of violence. If she does involve the police and he is deported and she is deported because she can no longer adjust her status, what happens to the children? They are taken away from probably the only home they have ever known, from their school, their support systems, and for so many who are U.S. citizens they are denied the wonderful things that this country has to offer and to which they are entitled.

So in closing, just on behalf of the folks back in Texas I would ask this committee when they are considering this legislation to please think about how the children in these homes are affected.

I do want to thank everyone on the committee as well as Congresswoman Schakowsky. I want to say special thanks to my fellow Texans, to Ranking Member Congresswoman Jackson Lee for sponsoring this legislation, as well as to Chairman Smith for holding this hearing. Thank you very much.

[The prepared statement of Ms. Buchanan follows:]

PREPARED STATEMENT OF BREE BUCHANAN, DIRECTOR OF PUBLIC POLICY, TEXAS COUNCIL ON FAMILY VIOLENCE

PRIORITIES FOR BATTERED IMMIGRANT WOMEN IN TEXAS

Importance of the Battered Immigrant Women Protection Act, H.R. 3083

Since passage of the Violence Against Women Act in 1994, the domestic violence community has gained invaluable experience working with battered immigrant women. While witnessing many successes, we have also learned the limitations in the original VAWA. Six years later, we now have the expertise to identify these limitations and recommend improvements that will better protect these vulnerable women and their children.

The Battered Immigrant Women Protection Act incorporates the lessons learned and recommendations made by advocates working on behalf of battered immigrant women and builds on the protections incorporated in the original VAWA. If enacted, this vital legislation will complete a statutory system that will:

- maximize the ability of these victims to escape the violence in their homes,
- enhance prosecution of violent offenders, and
- reduce the effects of violence on the innocent children in these homes.

The provisions contained in H.R. 3083 will advance these important public policies and enhance protection of battered immigrant women who are a particularly vulnerable population of victims of domestic violence.

Battered immigrant women and their children are more vulnerable to domestic violence

Immigrant women face a type of violence and control beyond what U.S. citizen victims of domestic violence face because their abusers have additional tools for exerting control and intimidation. Some common tactics used include:

- Deterring battered immigrant women from contacting law enforcement or cooperating with prosecutors, by threatening to withdraw support of their petition for residency status, or may threaten that they "will get them deported."
- Abusers give misinformation to the women about laws in this country to control her through fear. For example, an abuser will tell his wife that, because he helped her get a green card, he can have it taken away.
- In many cases, the abuser speaks better English than the woman and may take advantage of her inability to communicate. For example, he may be able to talk his way out of being arrested when police come to the scene of domestic violence incident.
- Abusers may also take advantage of language, and cultural barriers by isolating her from the community in which they live. Such isolation makes separa-

tion from the abuser extremely difficult for the woman and, at the same time, easier for him to continue his control and intimidation of her.

Very often, and perhaps most frightening for a battered immigrant woman, the abuser uses threats directed at the children to maintain con rol and prevent her from leaving or from contacting the police. He may threaten to ibduct the children from the United States. Using deportation proceedings to take away custody of their children is another threat frequently used.

Issues facing battered immigrant women in Texas

In preparation for this hearing, the Texas Council on Family Violence contacted service providers in Texas working on behalf of immigrant battered women and asked them to identify the most critical problems addressed by the Battered Immigrant Women Protection Act. While passage of H.R. 3083 in its entirety to fully protect battered immigrant women, this statement will focus on areas identified by service providers in Texas as the highest priorities.

1. Changes in the abuser's immigration status due to deportation or death should not penalize the victim and her children

Because the abuser's deportation will deny a battered immigrant woman the right to self-petition, current immigration law actually discourages her from reporting violence and from cooperating with prosecution of these offenses. Advocates working with battered immigrant women report that these women often fail to seek police intervention or any other help because they know that if a conviction results in his deportation, she will not be eligible to adjust her status. Even if law enforcement intervenes and charges are filed, victims are often too fearful to cooperate with prosecution. In the event the abuser is deported due to his criminal behavior, the battered woman may also face deportation and be forced to take her children—often U.S. citizens—with her. Ultimately, she and the children are punished for his bad acts.

Advocates also report situations where the battered immigrant woman is denied relief because her abuser died. In one case, the drug addicted husband died from a cocaine overdose. Because of this, she became ineligible to self-petition.

2. Divorce should not terminate the victim's right to self-petition

Terminating the right to self-petition upon divorce essentially serves as a deterrent to severing relations with the abuser by the victim. Rather than promoting the battered woman's attempts to free herself from violence, current law actually encourages her to remain in a dangerous situation as long as the immigration proceedings remain pending.

Current law poses an especially difficult problem in Texas where a divorce may be finalized only sixty days after filing. Because preparing the self-petition and gathering supporting documentation will almost always require considerable more time, the abuser can use finalization of the divorce proceedings as a tool to manipulate the victim. He can also this to his advantage to gain an upper hand in negotiations regarding property division or children in the divorce.

3. Demonstration of "Extreme Hardship" impedes protection of the victim and should be eliminated

Lawyers and other service providers assisting immigrant battered women report that proving "extreme hardship" is extremely daunting. The burden is even greater if the woman is facing return to a developed country. They report that INS focuses on country conditions and may deny relief for women who are facing return to countries such as Canada or England, even in cases with very compelling stories of domestic violence.

For women attempting to file their self-petition pro se or who are working with a lay advocate, this requirement presents an almost impossible hurdle because they lack access to resources needed to research and prove hardship.

Ultimately, the requirement to prove extreme hardship is simply a barrier erected to deny women, who are otherwise eligible, the relief to which they are entitled under VAWA. It runs counter to the intent of VAWA and results in the deportation of women the law was designed to protect. Proving domestic violence should be the only "extreme hardship" a battered immigrant woman should be required to prove.

4. Training is critical to implementation of VAWA and H.R. 3083

INS officers in Texas, as well as judges, lawyers, law enforcement, are profoundly unaware of VAWA's immigration provisions. Immigration service providers report that local INS officers often lack knowledge regarding VAWA and routinely ask about what the law provides. Implementation of a law is impossible if individuals charged with its enforcement and administration are unaware of its existence. To

ensure that Congress' intentions regarding VAWA and, if enacted, the Battered Immigrant Women Protection Act, are carried out, training must be a high priority.

Additionally, those officials interacting with battered immigrant women and abusers must be knowledgeable regarding the dynamics of domestic violence. Lacking this information, officials are subject to manipulation by abusers and may actually become unwitting parties to the abuser's manipulation of the victim. They may also engage in actions that discourage reporting of violence or cooperation with prosecution by the victim. Because the dynamics of domestic violence can be so complex, all officials working with victims and abusers must be educated if laws are to be carried out and further harm to the victim is to be avoided.

5. Battered immigrant women must have access to civil legal assistance

Representation in civil matters is a critical unmet need for all low-income battered women in Texas. Because of the highly complex nature of immigration matters, battered immigrant women have an even greater need for legal representation. Unfortunately, affordable legal services are virtually nonexistent. Those few programs that do exist are overrun with requests for assistance, often receiving desperate calls for help from victims living hundreds of miles away. The private bar, lacking knowledge about the complex issues involved in family violence as well as immigration, is unwilling to fill this void through *pro bono* services.

Without access to civil legal assistance, battered immigrant women are effectively denied access to the legal remedies afforded them in VAWA. Tragically, innocent—often U.S. citizen—children of the victim are also denied legal protections to which they are entitled.

6. Discretionary waivers of good moral character should be permitted

Dual arrest of both the abuser and victim is a problem occurring in Texas with an alarming frequency. All too often, if the victim takes any action to defend herself, she is arrested along with the batterer. In situations where the victim is an immigrant with poor English skills who cannot explain the circumstances to law enforcement, this occurrence is even more prevalent. Battered immigrant women lack knowledge of the American legal system and access to resources to adequately defend themselves against the charges. All too often, battered women in this situation simply accept a plea bargain (often for deferred adjudication or probation) to avoid trial, potential jail time and the loss of their children. A conviction for this "family violence assault" is now considered evidence that she is not of good moral character and can result in denial of her request for relief.

Immigration officials should have the discretion to take into consideration circumstances surrounding the conviction, such as when the victim is not the primary aggressor but has been convicted for acts of self-defense or for violation of a protective order intended to protect the victim.

H.R. 3083 should be passed out of subcommittee favorably and in its entirety

The "Battered Immigrant Women Protection Act of 1999" will go far towards remedying these concerns identified as high priorities by service providers in Texas. Passage of this vital legislation is necessary to protect battered immigrant women who are extremely vulnerable to abuse and manipulation.

H.R. 3083 will also advance basic public policy considerations on which safe and healthy communities are based. If battered immigrant women are too fearful to report the abuse, enforcement of the law is hindered. If cooperating with prosecution results in her deportation, she is not likely to assist the state in securing a conviction. If immigration laws effectively discourage intervention, children will continue to suffer the effects of exposure to domestic violence.

Passage of H.R. 3083 in its entirety will maximize the ability of battered immigrant women to escape the violence in their homes, enhance prosecution of abusers and reduce the effects of violence on the innocent children in these homes.

On behalf of immigrant battered women and their children in Texas, the Texas Council on Family Violence strongly encourages this subcommittee to pass H.R. 3083 out of committee favorably and in its entirety.

Mr. SMITH. Thank you, Ms. Buchanan. Let me begin with my questions and the first one I would like to address to you, Mr. Austin.

It is this: You mentioned it in your opening statement but I would like for to you elaborate on the concern you have about fraud. And I know we heard the INS say they wanted to address

it, but would you elaborate on your concerns about abuse and fraud?

Mr. AUSTIN. Thank you, sir. Yes, first of all, I would say that I don't believe there has ever been an immigration law passed that wasn't subject to some fraud. If there has been one I am unaware of it that did not have some level of fraud. But there are just two provisions in the law that strike me as potential fraud avenues.

One is the new category of intended spouses. I believe it will be possible now for women to marry someone who is already married with that knowledge beforehand, pay them money, and then claim they have married a bigamist. And I think that is going to be a very difficult one that INS is going to have to handle.

Secondarily, I think another avenue of fraud is one that you touched on earlier; that is, children who have been abused. Although there is a 2-year limitation on spouses who have been abused, that they must file within 2 years, there is no such limitation in the statute on children. So we could visualize a case of somebody who was abused at age 7 or 8 and applying for relief from this benefit at age 35. And I don't know how the INS would go back and reconstruct that record of potential abuse 20 years ago. So I think those are just a couple. But there are numerous others that I visualize.

Mr. SMITH. Thank you, Mr. Austin.

Mrs. Rishty, I wanted to ask you a quick question. Are you aware of any cases that exist where a battered alien has left the United States, gone back to their home country to get a visa, and then been followed by an abusive spouse and battered again?

Ms. RISHTY. Fortunately, in the cases that we have dealt with so far the women were not required to go back because those women were wives of U.S. citizens and they had entered the United States legally, so they were able to benefit from 245(a) and adjust here in the United States.

Mr. SMITH. We do not know of any cases that are addressed in that situation?

Ms. RISHTY. I'm sorry?

Mr. SMITH. Do you know of any examples?

Ms. RISHTY. Where women have gone back?

Mr. SMITH. Correct.

Ms. RISHTY. What I was saying was that we haven't had the experience of women going back. But we have had the experience of women discussing with us what is going to happen when they go back and they have been able to present documentation showing that family members were going to persecute them if they go back. In a lot of these countries——

Mr. SMITH. I understand the specter of fear. I just wondered if we had any actual cases. And not that we know of and hopefully we won't.

Ms. Orloff, a quick question for you. Do you not think the bill could be improved if we required cooperation with law enforcement officials to go after the abusers?

Ms. ORLOFF. One of the problems with that approach is that if you look at FBI statistics it is very clear that the risk of violence goes up upon separation and particularly when there is involvement with the criminal justice system or a divorce pending.

And so lots of times you have women who may want to cooperate but are legitimately terrified that if in fact they cooperate with law enforcement they will get killed. And so I don't think it would be wise to have any piece of legislation that requires such cooperation, and, in fact, original VAWA did not for that reason.

Mr. SMITH. If you do not require the cooperation, you are unlikely to get it. My point is if you wanted to carve out an exception, perhaps the example that you gave, that would be fine. But I have a major disagreement with the bill if it is not going to require cooperation with law enforcement officials to try to stop the abuse from occurring. Otherwise the abuse may occur with another spouse and you are not really going to the core problem in my judgment.

Let me ask you one more question. In your prepared statement you said research has found that 44 to 49 percent of immigrant women experience domestic violence over the course of their lifetimes. How does that compare to nonimmigrant women?

Ms. ORLOFF. It is about 10 percent higher.

Mr. SMITH. Why is that?

Ms. ORLOFF. Because of the abuser's control over her immigration status. Research indicates that control over immigration status, intimidation, isolation with language, cultural barriers, all accentuate the ability to abuse.

Mr. SMITH. Right. If it is 34, close to 50 percent of immigrant women experience domestic violence, is it likely that somewhere near that number will also get relief under this bill?

Ms. ORLOFF. No, because not all are married to U.S. citizens or lawful permanent residents. Second, a lot of women put up with abuse for a very long time before leaving or look for other remedies for the problem.

Mr. SMITH. Then you therefore agree with the universe that we are talking about, which is 10 percent more than under current law?

Ms. ORLOFF. I would agree that is true because the enhancements in terms of new people eligible, there is not that many people in each category, although each category is very compelling on its facts, particularly when talking about incest victims.

Mr. SMITH. Thank you. The gentlewoman from Houston is recognized for her questions.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I am delighted to have the opportunity to hear these witnesses with their different perspectives. And Ms. Buchanan, let me welcome you as a fellow Texan. We appreciate your work, as we do the other witnesses who are here in their different capacities, whether we agree or disagree.

I would like to start with Mr. Austin. Generally just pose the question, what is your assessment of the performance and work of the INS?

Mr. AUSTIN. Boy, that is a big question. I have often said that the INS could be given the national defense budget and it would absorb that without dramatically changing the current situation.

Ms. JACKSON LEE. You think they are efficient and effective?

Mr. AUSTIN. I think they are well meaning and dedicated. Do I think they are efficient and effective? In some categories I do; in some I do not.

Ms. JACKSON LEE. And your position on this legislation, if you were to say it in just a few words, would be what?

Mr. AUSTIN. My position would be, Congresswoman, one, that there is not a need for it, that most of the cases that were described here would have already benefited under current law, and, two, that it draws a distinction between these applicants over all other types of applicants within the immigration law. It ignores provisions of the law which says that you are ineligible for certain benefits and it just draws one exception after another exception after another. Criminal convictions, misrepresentations to the INS, prior deportations, et cetera, et cetera, et cetera, that is unfortunate.

Ms. JACKSON LEE. Do you think it is open to fraud?

Mr. AUSTIN. Oh, yes, I don't think there is any question, I don't think there is any question there will be fraud.

Ms. JACKSON LEE. Huge fraud? A great deal of fraud?

Mr. AUSTIN. I don't think it would be a great deal of fraud in the potential of fraud within INS, because this would be, as related here, not a significant number of applications or a huge number of applications when we look at the INS backlog and what they are dealing with, which we are all too familiar with. But would there be a percentage of fraud applications if this bill was passed? Would it increase the fraud? Yes, I believe it would.

Ms. JACKSON LEE. And you understand that your present representative of the INS disagreed in her testimony in the question posed by Mr. Conyers, who said whether or not there would be a great fear of fraud, and she very clearly said "no" on the record. And she is presently with the INS. So I think there is a difference of opinion and I just wanted to note that.

I want to pose some other questions, and just to acknowledge the fact I think there are numbers that will be impacted by this legislation that we cannot even assess. It is hard to be able to give reasonable assessment of who is being abused because now these women are frightened. We are trying to cure a terrible loophole, which I think if it is the responsibility of the INS to be proposing or supporting the, if you will, compliance with our laws, then they also have to be an agency that recognizes that immigrants are here because of the policies that we have in the United States.

I do want to note, Mr. Chairman, for the record that I am very pleased that these courageous women were able to be here. I believe Mrs. Brhane Abrhame from Ethiopia is here, who suffered tragically 6 years of abuse, but has great peace now that she was able to get her status through VAWA, and I am delighted that you were able to come, along with Francisca Salamanca, if I have that correct, from El Salvador, 11 years of abuse, who is courageously here this morning. And I hope that we will be able to chat with them, Mr. Chairman.

But let me finish with Mr. Austin and just indicate that I have pause and concern, and the chairman knows I always do, with some of the principles that have been enunciated by the organization that you are an advisory member of, and we do have freedom of association. But I believe it is of importance for me to just raise this issue in a statement that you made.

The issue was a ruling by Judge Sterling Johnson about detained Haitians. He said in his decision lambasting the government, which is us, "Some are pregnant mothers, others are children. Simply put, they are merely the unfortunate victims of a fatal disease." they happen to have been infected with HIV/AIDS. And Johnson, who conducted a 2-week trial in New York in March, said he was particularly disturbed that witness Dwayne Austin, an official of the United States Immigration and Naturalization Service, was quoted in an interview saying of the detained, "They're going to die anyway, aren't they?" .

My only concern about your testimony here about opposing this legislation, I would like to be able to fix it and take your considerations into account. But what was behind that comment and how am I to be able to justify my consideration of your comments and criticisms with what I think is clearly an anti-immigrant bias?

Mr. AUSTIN. I would agree with you if you took that statement on its face basis. The explanation for that statement is very easy. That was taken completely out of context. And let me—I had to testify in that trial. I was subpoenaed and went up and the court record demonstrates clearly what I said. And I had a witness, in fact, to my response. When I was asked by the reporter, a Mr. Cobb from the Miami Associated Bureau, what are you going to do, leave them here to die in the HIV camp on Guantanamo? I said I wish to God that bringing them to the United States would change that eventuality. And in fact I believe if the United States Government had that possibility, that they would not hesitate to bring them to the United States. But bringing them to the United States is not going to change that eventuality at all. They are getting the same treatment there they would get in the United States. Whether we bring them or not, they are going to die. That was the total statement.

That reporter chose to take it completely out of context and put it in the report. I got hate mail from as far as China for that response. When I went to the court proceedings in New York, I stated it just as I have stated it now. There was no rebuttal to that, and the judge ignored it in his final decision. And I was told by lawyers out of the Justice Department that that borders on judicial malfeasance.

Ms. JACKSON LEE. I appreciate your explanation, and if you have the transcript that you would like to submit to the record, I would ask the chairman to allow to you do so because I think it is an important clarification.

Working for the INS—and I thank the chairman for his indulgence, I will be completed in just a moment—do you view yourself as having an anti-immigrant bias?

Mr. AUSTIN. No, I do not.

Ms. JACKSON LEE. So if we can prove to you as we listen to—I assume the chairman will allow me another round as well so that we can ask some of the more detailed questions—but if we can prove to you the need and we take into consideration some of the aspects of the chairman's comments, my comments on the legislation, that is why these hearings are being held, I would venture to say that you would comply with the laws of the land or you would seek to have the INS comply with the laws of the land, which

would include the protection of battered immigrant women through this legislation.

Mr. AUSTIN. There is no question but I believe that there is current legislation that addresses that issue. I think this goes beyond that a little bit, and I think it opens up some avenues that other aliens do not have available to them. And I am not sure that that exception is a wise one.

Ms. JACKSON LEE. If we solve that problem of your thinking that that is the case, then you would be willing to look at this as viable and needed legislation? If we could solve your—answer your concern as to whether or not it is needed, there is enough documentation to say that but we need to convince you, if we do that I assume you would follow and believe that that law should be implemented?

Mr. AUSTIN. I would have to see what the final result of the law would be and would have to analyze that. But may I add one other point? You do not really believe that a Federal agency would let a senior spokesman continue in his position if he was so calloused as the response which was reported in The New York Times or anywhere else, "Why bring them here? They are going to die anyway"?

Mr. SMITH. Mr. Austin, sounds like you would be a good witness for media bias as well.

Ms. JACKSON LEE. Let me just indicate that the Nation and its Federal officials, all of us, are enormously diverse. We do not hold a litmus test to those who are hired by government agencies as to their particular political positions. So I would say to you that yes, they probably would inasmuch as that would not be grounds because of the freedom of speech. My job here this morning is to determine the objectivity of your testimony, and I appreciate you saying that. I will not ask for an explanation because I am sure you have a long one, but you were cited another time in The Washington Post, May 26, 1991, "If we had a way to send the Cubans back, believe me we would." I know there is an explanation and I will give you a chance, but I have already heard that you do not have that bias and we will be able to work together.

Mr. Chairman, I yield back the time that I may still have and look forward to another opportunity. I thank the chairman very much.

Mr. SMITH. Let me interject a couple of things. First of all, without objection we will make a part of the record anything that you would like to submit, Mr. Austin, as well as the more complete opening statements of the witnesses, as well as additional testimony that we have in hand.

And Ms. Jackson Lee, why don't you go on and proceed with any additional questions that you might have. I think we are going to need to break in a minute.

Ms. JACKSON LEE. Thank you very much. Ms. Buchanan, I was very fascinated that you took the time to do a survey. And the real crux of this, and I think the Congresswoman from Illinois was very on point in her very effective testimony in laying out the parameters of this legislation. But we need to get to the bottom line, and that is why this legislation is needed.

In your own experience in the interviewing that you took time to do, which I really appreciated, can you just succinctly, short of the two ladies who are sitting on the front row, who I am sure

would be eloquent in expressing what it was like to experience 6 years of abuse with no help whatsoever or 11 years of abuse, can you narrow down for us what the crux of the need is, please?

Ms. BUCHANAN. I can talk to you about that from my experience with the National Domestic Violence Hotline, which we run. And we hear from women so often, battered immigrant women who are caught in this relationship and that at this point in their experience they are still too terrified even to access any of the benefits of VAWA. They are in the relationship, they are absolutely terrified to contact the police. They are continually threatened with deportation. They are threatened if they call the police that the batterer will have them deported; That if they do anything, he will have her deported and take away her children.

I can give you one quick example from the hotline. There was a Spanish-speaking woman who called, she was married to an American citizen and he had been beating her for years. She finally left the home but the batterer would not allow her to take the young son away with her. He refused to let her see the child, and then he began threatening that he had a lawyer and if she did not sign custody of the child over to him he would call immigration and have her deported.

I think those are the kinds of stories that we hear over and over again at the hotline and that women are experiencing. And this legislation will protect these women and their ability to actually go forward and call the police and seek intervention in these cases.

Ms. JACKSON LEE. Thank you very much. And I need to pose this question to you, Ms. Orloff, and thank you very much, as I thank all the witnesses for their leadership. Let's get to the crux of it. Why are the procedures of VAWA not sufficient to address this issue? And as you explain that, tell me what is wrong for the immigrant women to leave the country and then apply back for a green card, and as well, how they would use the 245(i). I will repeat them, but the crux really is why not the procedures that are presently utilized with VAWA?

Ms. ORLOFF. First of all, let me start with the whole issue of adjustment of status. When VAWA originally passed 245(i) was in place and battered immigrants could get their green cards in the U.S.; 245(i) ended. And I need to correct some misinformation from other witnesses on the record. We are not restoring 245(i) here. All we are doing is saying that battered immigrants, like the spouses of citizens who are battered immigrants, can get their green cards in this country through 245(a) and (c). We are not touching anything else. It is really important to make that distinction.

The reason for this change is that these are women, the vast majority of whom already have exemption from 3- and 10-year bars, so making them leave the country is just an exercise in futility that puts them in a position of danger with no purpose.

Ms. JACKSON LEE. I think you answered leaving the country, what is wrong with leaving the country and having them apply for the green card?

Ms. ORLOFF. It is a variety of things. One, if they have a protection order, the moment they step over the border into Mexico or go to leave the United States that protection order stops helping them. We know from farm worker families, particularly in Texas,

sometimes he will drag her over the border, beat her up there and bring her back because he knows if he beats her in Mexico he cannot be held accountable. That is what we want to stop. Many of these guys are stalkers. We have a book, I think we submitted it with our testimony, which contains stories from all over the country, virtually every State, of battered immigrants who are at risk because of the fact that they have to leave the country to get their green cards.

As to some of the other issues, I think one of the other reasons we need this legislation is there were changes to the immigration laws that I really believe inadvertently harm battered immigrants. We heard a lot of questions about waivers. Prior to the 1996 act, the Immigration Act, battered immigrants had more access to VAWA protection than they do today. If the ultimate goal is to be able, as Chairman Smith said, to prosecute these abusers, every time you cut off all relief to a battered immigrant married to a U.S. citizen—I think about the nuns and watching the machete incident—there is a citizen that can get away with it. If we really want these guys to be prosecuted, we have to be able to allow their spouses and children to come forward and testify. And without immigration relief, that will never happen.

We are not creating new whole categories here. What we are doing is fixing the problems that we did not anticipate in the first place.

Ms. JACKSON LEE. The red light is on. Let me, Mr. Chairman, thank Jackie Rishty for her great testimony, and the commitment of Catholic Charities, and finish with Mario Ortiz, just because you suffered in isolation as a battered spouse and an immigrant. And I think the key element here is whether we are creating more individuals on public assistance and what it is like to be isolated.

You are now—forgive me if it sounds in any way patronizing, but it is not—gainfully employed. You have regained your dignity. Explain how this legislation ties into that and to refute the fear that all we are doing is bringing in more people to be on public assistance.

Ms. ORTIZ. I need to make a correction, Ms. Jackson Lee. Did I understand you to say that I am an immigrant? I am not.

Ms. JACKSON LEE. Oh, I did not know that.

Ms. ORTIZ. But in my past experience with domestic violence, and my husband and I are still married—and my dad—I want to explain to this committee how difficult it is for someone, even a U.S. citizen, to put up with domestic violence. How fearful, how intimidating, how my self-esteem was very low. And I did not feel like doing anything. I used to be terrified of my husband. I would iron his clothes and everything and put everything in order because I was afraid things may not be exactly like he wanted it. And most of the women that I see in my office now tell me stories that I remember myself feeling.

However, immigrant women have even more issues at stake besides all those fears that I had. I am not afraid of INS. I am not—I speak English, too. So I am not afraid to be able to access the services that are available to me, to be able to work, to be able to go to school and get a higher education. All of those things are

available to me. They are not available to battered immigrant women.

Mr. SMITH. Thank you, Ms. Jackson Lee, for all of your good questions, and thank you all as witnesses for testifying today. It was all very helpful. We appreciate your being here. And also before we conclude, let me thank Lora Ries, our Immigration Counsel, for arranging and putting on this helpful and informative hearing as well.

Ms. JACKSON LEE. May I thank Mr. Leon Buck, and thank the witnesses very much.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

NOW LEGAL DEFENSE AND EDUCATION FUND,
IMMIGRANT WOMEN PROGRAM,
Washington, DC, March 9, 2000.

DEAR MEMBERS OF CONGRESS: As members and supporters of the the National Task Force to End Violence Against Women, we are writing to request your support and sponsorship of the Battered Immigrant Women Protection Act of 1999, (H.R. 3083) which was introduced mid-October. This bill sponsored by Reps. Schakowsky (D-IL), Morella (R-MD) and Jackson Lee (D–TX) restores and expands critical legal protections for battered immigrants and their children.

On January 31, 2000, all of the national domestic violence organizations met in Washington, D.C. to forge a consensus on issues that are of the utmost priority to the thousands of battered women's advocates, shelters and state domestic violence coalitions across the nation. These national organizations included: NOW Legal Defense and Education Fund, National Coalition Against Domestic Violence, National Network to End Domestic Violence, Family Violence Prevention Fund, Texas Council on Family Violence , National Domestic Violence Hotline, and the Pennsylvania Coalition Against Domestic Violence. Our collective conclusion was that, in addition to the Re-authorization of the 1994 Violence Against Women Act, the Battered Immigrant Women Protection Act, transitional housing, civil legal assistance, and VAWA's full faith and credit provisions, are our five highest priorities for passage this session

Across the country, organizations have been experiencing increased calls for help from battered immigrant women and abused immigrant children who desperately need the legislative reforms that are included in the Battered Immigrant Women Protection Act of 1999. Several of the changes to immigration laws that have occurred since 1994 have heightened the danger for battered immigrants abused by their U.S. citizen and lawful permanent resident spouses. The Violence Against Women Act's immigration protections have been undermined and we need to restore them

The original goal of VAWA's immigration provisions was to encourage battered immigrants abused by U.S. citizen and lawful permanent resident family members to call the police for help; to cooperate in their abuser's prosecution; to obtain protection, and to successfully remove their children from abusive homes. Intervening changes in the law have lessened the accomplishment of VAWA's protective and criminal justice goals. This critical piece of legislation would go far to remedy these problems and offer enhanced protection to battered immigrant women and children who - without your support - would remain at the mercy of abusive citizen and lawful permanent resident spouses and parents. This bill will improve protection for at-risk children of battered immigrant women and for teenage children who have been victims of incest and sexual assault perpetrated by the U.S. citizen and lawful permanent resident fathers and step-fathers. This bill grants these groups improved access to VAWA's immigration protections.

In light of the increased work many organizations have been doing on domestic violence in the military, we are also very pleased that this bill extends VAWA protection to spouses and children of U.S. military members and government personnel residing abroad

Your immediate support will ensure that the health, welfare and lives of battered immigrant women across the country are not further endangered. On behalf of each of our programs and the thousands of domestic violence organizations and service providers we represent and the battered immigrant women and children who you

will help, we thank you in advance for your sponsorship of the Battered Immigrant Women's Protection Act of 2000.

To join the growing list of co-sponsors of H.R. 3083, please contact Kim Muzeroll in Rep. Schakowsky's office at (202) 225–2111. A summary of H.R. 3083 is available from the NOW Legal Defense and Education Fund's Immigrant Women Program by calling (202) 546–1100. We look forward to continuing to work with you on this important bi-partisan response to the needs of battered immigrants and their families.

Sincerely,

LESLYE ORLOFF, *Senior Staff Attorney and Director, Immigrant Women Program, NOW Legal Defense and Education Fund.*

JULEY FULCHER, *Director, Public Policy Office, National Coalition Against Domestic Violence.*

BREE BUCHANNAN, *Director of Public Policy, Texas Council on Family Violence and the National Domestic Violence Hotline.*

Washington, DC, July 13, 2000.

ORGANIZATIONS SUPPORTING THE BATTERED IMMIGRANT WOMEN PROTECTION ACT OF 1999 (H.R. 3083)

National Organizations

American College of Nurse-Midwives
American Immigration Lawyers Association
American Medical Student Association
American Medical Women's Association
American Psychological Association
Asia Pacific Center for Justice and Peace
Asian and Pacific Islander American Health Forum
Center for Constitutional Rights
Center for Women Policy Studies
Church Women United
Equality NOW
Equal Rights Advocates
The Feminist Majority—The National Center for Women and Policing
Family Violence Prevention Fund
McAuley Institute
Mexican American Legal Defense and Eduacation Fund (MALDEF)
Na' Amat—USA
National Association for the Advancement of Colored People (NAACP)
National Black Women's Health Project
National Center on Poverty Network
National Coalition Against Domestic Violence
National Council of Catholic Women
National Council of Jewish Women
National Gay and Lesbian Task Force
National Immigration Forum
National Immigration Law Center
National Immigration Project of the National Lawyer's Guild
National Latina Institute for Reproductive Health
National Latino Alliance for the Elimination of Domestic Violence
National Network on Behalf of Battered Immigrant Women
National Organization for Victim Assistance
National Organization for Women
National Organization for Women Legal Defense and Education Fund (NOW LDEF)
National Sexual Violence Resource Center

National Task Force to End Violence Against Women
National Women's Health Network
National Women's Law Center
National Women's Party—Washington, D.C.
Network, A National Catholic Social Justice Lobby
North American Council for Muslim Women
Union of American Hebrew Congregations
Women's Division—United Methodist Church
Women's Institute for Freedom of the Press
YWCA of the U.S.A.

Organizations

Access Immigration Services—San Diego, CA
Acercamiento Hispano / Hispanic Outreach—Columbia, SC
ACTION OHIO—Coalition for Battered Women—Columbus, OH
Albuquerque Border City Project—Albuquerque, NM
Alliance Against Family Violence and Sexual Assault--Bakersfield, CA
Alliance for Children and Families—Washington, D.C.
Apna Ghar—Chicago, IL
Arab Community Center for Economic and Social Services (ACCESS)—Rochester, MI
Asian American Family Counseling Center--Houston, TX
Asian and Pacific Islander Women and Family Safety Center—Seattle, WA
Asian Law Alliance—San Jose, CA
Asian Pacific American Legal Center—Los Angeles, CA
Asian/Pacific Islander Domestic Violence Resource Project—Washington, D.C.
Asian Human Services—Chicago, IL
Asian Women's Shelter—San Francisco, CA
Atlanta Women's Foundation—Atlanta, GA
Ayuda Inc.—Washington, D.C.
Casa de Proyecto Libertad—Harlingen, TX
Catholic Charities—Council Bluffs, IN
Center for Women and Families—Louisville, KY
Center for Legal and Social Justice at St. Mary's University School of Law—San Antonio, TX
Central American Resource Center—Los Angeles, CA
Centro Legal—St. Paul, MN
Chicago Foundation for Women—Chicago, IL
Chicago Metropolitan Battered Women's Network—Chicago, IL
Chicago Abused Women Coalition—Chicago, IL
Children and Families of Iowa, Family Violence Center—Des Moines, IA
Coalition for Humane Immigrant Rights of Los Angeles—Los Angeles, CA
Coalition of Asian Social Work Students—Univ. of MI School of Soc. Work—Ann Arbor, MI
Countering Domestic Violence / Neville House—Bloomington, IL
Crisis Center Foundation—Jacksonville, IL
Crisis Intervention and Advocacy Center—Adel, IA
De Colores Domestic Violence Shelter—Chicanos Por la Causa—Phoenix, AZ
Diocesan Migrant and Refugee Services, Inc.—El Paso, TX
Domestic Violence Intervention Program—Iowa City, IA
Domestic and Sexual Abuse Resource Center—Decorah, IA
El Buen Samaritano Episcopal Mission—Austin, TX
Family Shelter Service—Chicago, IL
Family Rescue—Chicago, IL
Family Crisis Center—Brentwood, MD
Family Violence Clinic—State Univ. of NY at Buffalo School of Law, Getzville, NY

Family Resources—Violence Intervention Counseling Services—Davenport, IA
Family Violence Network—Lake Elmo, MN
Family Violence Outreach Clinic—Widener University School of Law—Wilmington, DE
Fort Bend County Women's Center Inc.—Richmond, TX
Friends of Battered Women and their Children—Chicago, IL
Georgia Commission on Family Violence—Atlanta, GA
Governing Board of the Sisters of St. Francis—Dubuque, IA
Grace Smith House—Poughkeepsie, NY
H.O.P.E. of Rochelle—Rochelle, IL
Hadassah—New York, NY
Hamdard Center for Health and Human Services—Chicago, IL
Heartland Alliance for Human Needs and Human Rights—Chicago, IL
Hidalgo County Family Violence Task Force—Edinburg, TX
Illinois Center for Violence Prevention—Chicago, IL
Illinois Coalition for Immigrant and Refugee Rights—Chicago, IL
Immigration Project—Granite City, IL
Immigration Services—Catholic Social Services—Atlanta, GA
International Advocacy Center for Women, P.C.—Ann Arbor, MI
Japanese American Services of the East Bay—Berkeley, CA
Japanese American Service Committee—Chicago, IL
Korean American Women in Need—Chicago, IL
La Casa de las Madres—San Francisco, CA
Lake County Crisis Center—Lakeview, OR
Legal Services for Prisoners with Children—San Francisco, CA
Life Span Center for Legal Services and Advocacy—Chicago, IL
Men Stopping Violence—Atlanta, GA
Mid-Minnesota Legal Assistance / Western MN Legal Services—Willmar, MN
Midwest Immigrant and Human Rights Center—Chicago, IL
Migrant Clinicians Network, Inc.—Austin, TX
Minnesota Coalition for Battered Women—St. Paul, IL
Mujeres Latinas en Accion—Chicago, IL
Multicultural Therapeutic Intervention Services Inc.—Washington, DC
Mutual Ground, Inc.- Chicago, IL
National Lawyer's Guild—Hawaii Chapter—Honolulu, HI
Neopolitan Lighthouse-Domestic Violence Program—Chicago, IL
New York Task Force on Immigrant Health—New York, NY
New York Association for New Americans—New York, NY
Newcomers Center—Chicago, IL
Nihonmachi Legal Outreach—San Francisco, CA
North Dakota Council on Abused Women's Services—Bismarck, ND
Northern Manhattan Coalition for Immigrant Rights—New York, NY
Northwest Immigrants Rights Project—Granger, WA
Northwest Immigrants Rights Project—Seattle, WA
Ohio Domestic Violence Network—Columbus, OH
Pacific Regional Psychological Associates- PARPA—Hilo, HI
Polish American Association—Chicago, IL
Project COPE—Children and Families of Iowa—Creston, IA
Public Law Center—Santa Ana, CA
RAKSHA—Atlanta, GA
RESPOND Inc.—Somerville, MA
SAFE NEST—Temporary Assistance for Domestic Crisis—Las Vegas, NV
San Luis Valley Christian Community Services Immigrant Assistance—Alamosa, CO
San Francisco District Attorney's Office—San Francisco, CA

Sanctuary for Families—Center for Battered Women's Legal Services—New York, NY
Sarah's Inn—Oak Park, IL
Sistering Women & Children Out of Viol. Task Force—Sisters of St. Francis—Dubuque, IA
South Asian Network—Artesia, CA
St. Cloud State University Women's Center—St. Cloud, MN
St. Lukes / Roosevelt Hospital Center's Crime Victims Treatment Center—New York, NY
Tahirih Justice Center—Falls Church, VA
Tahoe Women's Services—Incline Village, NV
Texas Association Against Sexual Assault—Austin, TX
The Women's Center, Inc.—Carbondale, IL
The Women's Office, Sisters of Charity, BVM—Chicago, IL
The Women's Center of Monmouth County Inc.—Hazlet, NJ
The Rape Crisis Center—San Antonio, TX
The Haven of Religious Community Services—Clearwater, FL
Travelers & Immigrants Aid—Chicago, IL
Tri-State Coalition Against Domestic and Sexual Abuse—Keokuk, IA
Tu Casa, Inc.—Alamosa, CO
Turning Point—Knoxville, IA
Unidos Against Domestic Violence—Fond du Lac, WI
University of Hawaii President's Commission on the Status of Women—Lihue, HI
University Family Practice Center at Vailsburg—Newark, NJ
Visitation House—San Antonio, TX
Volunteer Counseling Service—Community Change Project—New York, NY
Whatcom Crisis Services—Bellingham, WA
Women In Need, Inc.—Chambersburg, PA
Women Empowered Against Violence (WEAVE)—Washington, DC
YWCA Crisis Center—Enid, OK
YWCA of North Orange County—Fullerton, CA
YWCA of Boulder County—Boulder, CO
YWCA of Bucks County—Trevose, PA
YWCA of McKeesport—McKeesport, PA
YWCA of Greater Miami—Miami, Florida
YWCA of Greater Des Moines—Des Moines, IA
YWCA of Wichita—Wichita, KS
YWCA of Northwest LA—Shieveport, LA
YWCA of Metropolitan Chicago—Chicago, IL
YWCA of Monterey County—Monterey, CA
YWCA of Meadville, PA—Meadville, PA
YWCA of Plainfield/North Plainfield—Plainfield, NJ
YWCA of Dayton—Dayton, OH
YWCA of Butler—Butler, PA
YWCA of Sauk Valley—Sterling, IL
YWCA of Greater Los Angeles—Los Angeles, CA
YWCA of Grand Rapids—Grand Rapids, MI
YWCA of Troy-Cohoes—Troy, NY
YWCA of Santa Monica—Santa Monica, CA
YWCA of Oklahoma City—Oklahoma City, OK
YWCA of Rockford—Rockford, IL

State Coalitions

Alabama Coalition Against Domestic Violence
Arizona Coalition Against Domestic Violence
Florida Coalition Against Domestic Violence

Georgia Coalition Against Domestic Violence
Hawaii Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Kansas Coalition Against Sexual and Domestic Violence
Maine Coalition Against Domestic Violence
New Hampshire Coalition Against Domestic and Sexual Violence
New York State Coalition Against Domestic Violence
North Carolina Coalition Against Domestic Violence
Pennsylvania Coalition Against Rape
Rhode Island Coalition Against Domestic Violence
Wisconsin Coalition Against Domestic Violence

PREPARED STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

INTRODUCTION

Surely no one would oppose a bill designed to protect immigrant women against physical or mental abuse if it were designed to have only that consequence and did not appear to open up broad avenues of undesirable unintended consequences. Unfortunately, H.R.3083 suffers from both of those problems. In fact, the bill has so many unfortunate side effects that it should not be passed in its current form.

We are taught from a young age not to look a gift horse in the mouth. It is considered ungracious. We also learn at a somewhat later age that the Trojans made a fatal mistake because they failed to look a gift horse in the mouth. Heeding the latter lesson, we at the Federation for American Immigration Reform have taken a close look at H.R.3083. What we have found is that within the shell of this proposed legislation are many dangerous provisions which, if enacted into law, would damage the enforceability of the nation's immigration law.

Protections for vulnerable populations are noble. Few would disagree that illegal aliens are a vulnerable population. The authors of this legislation are so focused on the issue of protection that they ignore the consequence of the illegal status. Illegal immigration is so massive a problem at present that we believe that any measure, such as this bill, that encourages or even rewards illegal immigration should be avoided if at all possible. On the other hand, we would support workable provisions that are designed to prevent the loss of immigration benefits for a legal immigrant whose family relationship has been terminated as a result of spousal abuse.

The argument might be made that the problem of violence against immigrant women is so serious a social problem that we should overlook some possible unintended consequences. In other words, avoid throwing the baby out with the bathwater. That is a misleading argument. The protections against spousal abuse adopted in 1994 will be continued by adoption of H.R.1248, a bill that does not contain the destructive consequences of H.R. 3083.

H.R. 3083 contains more than three dozen substantive amendments that repeal or weaken provisions of the Immigration and Nationality Act (INA), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The bill would eliminate or weaken every statutory standard applicable to petitions for adjustment of status to legal permanent residence where the petitioner invokes Violence Against Women Act (VAWA) provisions. Every cancellation of removal requirement for VAWA beneficiaries and an expanded class of derivative relatives would be repealed or weakened.

Before entering a detailed discussion of the bill's provisions, four examples of the pitfalls included in the bill will demonstrate the nature of our concerns.

- The bill would create a new INA category of "intended spouse" (Section 7(c)(1)). This is a term that exists nowhere else in federal law. The adoption of this provision would serve as a wedge for undermining the institution of marriage as well as opening a loophole so wide that it could be used for litigating a panoply of perhaps unintended issues such as same sex relationships. The bill would disadvantage law-abiding traditional immigrant families, reward fraudulent behavior, and attack privacy protections for American citizens at the expense of privileged treatment for inter alia illegal immigrants.

- Another provision would open the door to persons who have never set foot in this country to self-petition to enter the country for permanent residence on the basis of a VAWA assertion that they had been abused by a U.S. citizen or resident (Section 7(c)(1)). In other words it would allow the alien to "rejoin" in the United States a person who is resident abroad, or if that person has returned to the United States, to rejoin the abuser.
- The bill removes most of the adversarial nature of legal proceedings that allow an accused person to defend himself. The adversarial proceedings that are removed by the bill would serve to expose the possible use of the bill for fraudulent application for immigration benefits. It may be argued that the accused abuser does not need the opportunity to defend himself against the abuse charges, because under the bill, he does not face any legal repercussions as a result of the accusation. That argument identifies another major flaw in this bill; acts of abuse that are serious enough to justify VAWA protections are actions that should result, if proven, in legal repercussions against the abuser. If the abuser is an alien the actions should lead to his removal.
- Other provisions in the bill would establish new substantive and procedural legal preferences favoring VAWA beneficiaries—including illegal aliens—over all other non-citizens. Included among these are a backdoor reestablishment of INA Section 245(i) which allows illegal aliens to obtain legal residence without leaving the country. Many of the provisions include retroactivity features that would reopen years of immigration litigation, compounding current backlog problems.

These are only four examples of a long list of serious flaws embedded in H.R. 3083. The cumulative harmful effect of the bill, if adopted, would not, however, be confined to such provisions. A broader concern is that evidentiary standards in this bill are set so low that the bill's provisions would become a super-highway for fraudulent claims to immigration benefits. The minimal standards would seriously impede any effort by the INS to investigate, expose and prevent fraud, whether by individuals or by racketeers.

The immigration and other benefits provided by this bill are so 'big-hearted' that they may be seen by some illegal aliens as outweighing the threat of detection for fraudulent allegations of abuse. Rather than protecting them from abuse, it seems possible that the bill will encourage immigrants to feign abuse in order to be able to qualify for benefits that include not only preferential status for legal residence but also welfare eligibility.

H.R.3083 is reminiscent of the most unsuccessful provisions of the Illegal Immigration Control Act of 1986. The IRCA provision for employer sanctions was designed to deter illegal immigration by denying jobs to illegal entrants and visa overstayers. The 1986 amnesty was accepted as a necessary evil to facilitate the implementation of the new illegal immigration deterrence provisions. Despite the good intentions, the country ended up with the worst features of the amnesty—including rampant fraud—without the benefits of the deterrence, because the sanctions system was established without the necessary immigration status verification provisions needed to make it effective. In practice, rather than deterring illegal immigration, IRCA now stands as a landmark pointing to an increase in illegal immigration.

Like IRCA, H.R.3083 is portrayed as offering a benefit to society in exchange for overlooking illegal alien status. The bill also includes an amnesty feature. But, by not addressing the fundamental problem, i.e., discouraging violence against women by identifying and punishing the abuser, the bill will instead result in a one-way street of benefits for illegal aliens without the benefits to the country by removing persons whose presence is undesirable. In addition, H.R.3083 will open new avenues for bypassing our system of legal immigration.

DETAILED PROVISIONS

A full analysis of the potential harm embedded in H.R.3083 requires an itemized discussion of the bill's provisions and how they relate to the current legal protections that are already provided. In addition not all of the deleterious effects of the proposed provisions are obvious on the surface, so it is necessary to speculate how the provisions might work in practice if adopted rather than accept them at their face value.

Our comments are arranged in seven sections as outlined below:

1. Expansion of the existing VAWA self-petitioning criteria;
2. Expansion of cancellation of removal provisions for VAWA beneficiaries;
3. Restoration of welfare benefits for VAWA beneficiaries

4. Weakening of immigration law enforcement;
5. Restriction of state and local enforcement against illegal aliens;
6. Establishment of new preferences for VAWA beneficiaries;
7. New "amnesties" for Cuban, Central American and Haitian VAWA beneficiaries.

1. Expansion of the existing VAWA self-petitioning criteria

H.R. 3083 would eliminate or erode every statutory standard applicable to petitions for adjustment of status to legal permanent resident where the petitioner is a VAWA beneficiary, including: Those standards include the requirement for a bona fide marriage, proof of good moral character, meeting the extreme hardship criteria, status derivation based on the U.S. residence of the petitioner, or the traditional parent-child relationship. All of these standards disappear in the proposed legislation, if battery or extreme cruelty is alleged and the low evidentiary standards of act are met. A fast-track naturalization benefit unavailable to other immigrants is provided for VAWA aliens.

H.R. 3083 creates new institutional benefits for unmarried non-citizens that are unavailable to married non-citizens. The effect is that married aliens are placed in a disadvantage. All of the benefits and purported "protections" in the bill require that the spouses, children and even the elderly parents separate permanently and then formally denounce their U.S. citizen or legal permanent resident (LPR) spouse or parent.

The federal benefits from asserting abusive treatment include legalization and access to welfare under a faster and more expansive procedure than offered to any other class of non-citizens. The accuser receives these benefits without any reciprocal responsibility to cooperate with the INS or local law enforcement to punish or deport the purportedly abusive father or husband. The absence of provisions to link the immigration benefits for the VAWA petitioner with sanctions against the "abusers" under immigration law suggest that H.R. 3083 was never intended to serve as a deterrent to future abuse in immigrant communities.

Rather than focusing public opinion against spousal abuse, the ironical effect of H.R. 3083 is more likely to be to create a focus by alien smugglers on how the bill's provisions can be exploited to facilitate the lucrativeness of their smuggling operations. This assessment is based on experience with the coaching by Chinese "snakehead" smugglers of their illegal alien clients to claim asylum under the Chinese family planning provision added in 1996 by Section 601 of IIRAIRA. The likelihood is that VAWA relief provisions will be rapidly exploited by organized crime and immigrant advocacy organizations with the concomitant effect that physical and mental abuse (or at least allegations of such treatment) will increase, and patterns of dependence, poverty and social dysfunction will blossom in immigrant communities.

Section 4(e) would allow a VAWA self-petitioning spouse to remarry before obtaining LPR status, revoking current regulation 8 CFR 204.29(c)(1)(ii). *Thereby an illegal alien would be able to enter into a sham marriage or intimate relationship with a U.S. citizen or LPR, provoke or simply allege abuse, divorce or separate from that person and marry a fellow illegal alien and be able to not only gain LPR status but also confer a derivative immigration benefit on the new spouse.*

Section 7(a) would create the new INA category of "intended spouse." This would be an entirely new status in federal law. This new status is defined in a way to cover aliens who may once have had a derivative immigration status based on a relationship with a citizen or LPR, but who has lost that status by death, divorce or legal provision and they assert that lost immigration status involved domestic violence. *The implication of this provision is that an illegal alien who terminates a marriage or relationship with a U.S. citizen or LPR by killing him does not lose a derivative immigration benefit if there is some evidence of abuse. In theory, the alien could gain a benefit by murder that was withheld by the murder victim while alive. Thus, the alien would be able to gain legal residence by an act that constitutes a basis for termination of legal residence.*

Section 7(c)(1) allows "intended spouse's" to self-petition for VAWA benefits. It also removes the current requirement that they reside in the U.S. As previously noted, *"intended spouse" is a provision that does not exist elsewhere in federal law, and, if enacted, would establish an entirely new alternative to marriage as a standard for judging what constitutes a family relationship.*

INA Section 204(a) which establishes the basis for self petitioning for immediate relative and spousal second preference status, currently provides that the petitioning alien must reside in the United States. By removing that requirement, *an en-*

tirely new population of aliens would become eligible to obtain preferential immigration status.

The range of aliens who are made eligible to self-petition is widely expanded by including, in addition to spouses, children and adult sons and daughters of citizens (Sections 7(c)(6) and 7(d)(5)).

Section 7 also removes the current requirement that a VAWA illegal alien self-petitioner prove "extreme hardship" to family members if they were to be sent home. *This provision would give privileged status to illegal aliens who invoke the VAWA provisions over all other applicants for withholding of removal.*

Another provision in current law—that self-petitioners be legally married to the abuser at the time the petition—is removed by the bill (Sections 7(c)(1)(B) and 7(d)(1–2)). If adopted, the alien would become able to self-petition up to two years *after* a divorce from, or death of, or loss of legal immigration status of the abusive US citizen or LPR. *This provision expands the scope of the VAWA statute as a defensive claim against deportation. In a similar vein to the counsel given thousands of illegal aliens that they may escape or delay deportation if they can show a well-founded fear of persecution if deported, a new standard of relief from abuse may arise as a defensive measure. The difference is that the "well-founded" test will be replaced by a much lower standard of evidence.*

The Immigration Marriage Fraud Act would be weakened by the bill. The IMFA provides that women sponsored by citizens or LPRs for fiance (K) visas must marry within 90 days. This was adopted to prevent the fiance visa from being used for fraudulent entry. The bill undermines that anti-fraud measure by providing that the marriage requirement may be waived for aliens who self-petition for VAWA adjustment of status (Section 7(c)(2)).

The requirement that fiances and their children remain in conditional resident status for two years before becoming LPRs—in order to deter the practice of marriages of convenience as a way to gain immigration benefits—is also eliminated by Section 4(b). By asserting abuse by the fiance, the alien is able to bypass the waiting period and apply for an immediate waiver to adjust to permanent status. *Elimination of the requirement for the putative fiance to document the basis for a battered spouse waiver will inhibit investigation of marriage fraud.*

Adult sons and daughters (aged 21 or older) of a VAWA petitioner are made eligible for immigration preference as a "child"—currently unavailable under INA § 101(b)—if they or their mother claim abuse occurred before they turned 21 (Section 7(b)). Thus, *aliens who are ineligible under current law for either an immediate relative visa or a second preference visa reserved for children, become eligible for that status by asserting abuse of the parent or abuse of themself.* These adult "children" can include their own children (i.e. the abusive parent's grandchildren) on their petition. They would not need to have lived with the abusive parent, but simply have spent a "period of visitation," (Sections 7(c)(3) and (d)(3)). *With no time limits on petitioning, this provision invites fraudulent applications.*

The bill provides alien parents who are abused by U.S. citizen children with the same immigration benefits as "intended spouses" (Section 7(c)(4))

2. Expansion of Cancellation of Removal (COR) Provisions for VAWA Beneficiaries:

H.R. 3083 provides VAWA beneficiaries with a way around virtually every current COR requirement including:

- documentation of extreme cruelty,
- continuous presence,
- good moral character,
- inadmissibility on criminal grounds,
- the extreme hardship rule,
- the annual cap on petitions, and
- the even the deadline for filing petitions.

Cancellation of removal (COR) was intended to provide discretionary relief for a very small number of aliens deportable for violations of immigration law or minor criminal convictions—capped at 4,000 per year—if their removal would cause "extreme hardship" to relatives in the U.S.

Section 3(b)(2) would remove the numerical restriction on COR cases by exempting VAWA COR applicants from the ceiling. *The consequence, in combination with other H.R. 3083 provisions creating VAWA loopholes throughout the immigration law, will be a dramatic increase in illegal alien applicants for COR and suspension of deportation status.*

Current INA 240A(b)(2)—a special VAWA provision, adopted in 1996—reduces the 7-year continuous residence standard to a 3-year continuous (unlawful) physical

presence. But the clock stops on accrual of that residence when the INS serves a Notice to Appear (NTA) on the alien. Under H.R. 3083 (Sections 3(b)(1) & (b)(3)) COR applicants who have been placed in deportation proceedings would *continue to accrue* time towards the 3-year requirement. Section 3(b)(1) would repeal the so-called "stop-time" rule, which cuts off the accrual of "continuous presence" once the INS issues an NTA. *Retroactivity of the provision back to the enactment date of IIRAIRA would affect all current cases and encourage new and reopened ones.*

Another provision (Sections 6(a) and 6(b)) would allow the INS to weaken the continuous presence/residence requirements even further by creating a waiver of continuous presence for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the alien demonstrates that the absences were connected to the battery or extreme cruelty forming the basis" for the COR or suspension of deportation applicants. *This broad discretionary standard for waiving the requirement is an open invitation to abuse.*

Eligibility for COR that is now limited to battered spouses and children would be greatly expanded in scope by Section 8. It would expand the "special rule" for eligibility for COR (and adjustment of status) in INA 204(b)(2) to the son or daughter of a US citizen, or an "intended spouse" of a bigamous US citizen or LPR.

Section 8(a) would also exempt VAWA COR applicants from the termination of accrual time towards the 3-year continuous residence requirement, although it refers to the NTA as a "charging document" *Considering the routine grant of continuances by immigration judges, and the statutory rights of the alien to file a motion to reconsider and a motion to reopen under 240(c), or a petition for review of removal under 242, H.R. 3083 makes it much easier for a VAWA applicant to qualify for COR within a period of time significantly shorter than three years.*

Section 8(a) is would allow the Attorney General to waive ineligibility for COR to benefit a wide range of criminals and undesirables, including aggravated felons, inadmissible criminals under INA 212(a)(2), and aliens who are deportable for major crimes or marriage fraud under INA 237(a). *Because the waiver provision invokes vague humanitarian, family unity, or public interest grounds for the proposed waiver of inadmissibility in Section 5(a), but without the restrictions on waivers in INA 212(a)(3) or 237(a)(4), the waiver authority appears to extend COR benefits even to aliens excludable on security risk and terrorist grounds.*

Section 8(b) would make the revised special COR rules retroactive to April 1, 1997, facilitating motions to reopen removal or deportation proceedings.

Section 8(c) retroactively permits VAWA suspension of deportation applicants to adjust the status of illegal children, spouses, adult sons and daughters, and parents (of child applicants).

3. Elimination of Welfare Reform for VAWA Beneficiaries

Welfare reform measures adopted in 1996 (PRWORA) would be restored for a greatly expanded class of VAWA beneficiaries. H.R. 3083 would grant subsidized legal assistance not available to most citizens and legal permanent residents. *The provisions create what amounts in practice to a preferential treatment to illegal immigrant spouses and children from tenuous or broken homes, and would reward fraudulent behavior.*

The bill exempts immediate relatives, second preference derivative immigrants, battered self- petitioners, COR and suspension of preference deportation applicants, plus derivative spouses, children, from public charge determinations (Section 10(b)). Proposed INA § 212(a)(4)(E)(ii) is particularly pernicious because it would expand the waiver to cover any person eligible to petition for classification as a family preference immigrant under INA 203(a) "who has been battered or subjected to extreme cruelty," plus "any derivatives or immediate relative children" of these persons. As written, *the provision drops the requirements that the alien be of "good moral character" and that the petitioner show "extreme hardship." This exemption would in practice benefit a much larger group than just the INA 204(a) battered aliens.*

Sections 10(d), 10(e), and 10(f) contain several related provision that would eliminate restrictions on the use by VAWA aliens of food stamps and SSI, on federal housing assistance or access to federally-funded services or shelter "provided to battered women or abused children," and exempts them from the 5 year ban on receipt by immigrants of public benefits. Sections 11(a) and 11(f) make the same class eligible for free legal assistance funded by the Legal Services Corporation. *This provision would overturn a present prohibition against LSC-funded attorneys representing illegal aliens.*

Section 10(h) would expand the term "family" in the definition of "qualified alien" eligible for public benefits and welfare from spouse, parent, and child to "any individual having a relationship with the alien covered by the civil or criminal domestic violence statutes in the State . . . in which the alien could obtain a protective

order." *Such a "covered relationship" could include remote relations, informal relations, same-sex relations, cohabiting relations, extended customary or tribal relations, lodgers, etc., depending on the jurisdiction. The uniform federal standard would be eliminated.*

Section 10(i) would also expand the definition of "qualified alien" eligible for federal, state, or local welfare to include any VAWA alien for whom welfare benefits "would alleviate the harm from such battery or cruelty or enable the alien to avoid [it] in the future." It would also add similar language to expand the grounds for exemption from the PRWORA sponsorship income deeming rule. VAWA applicants would also become eligible from PRWORA deeming requirements for purposes of suspension of deportation. A married VAWA beneficiary would become allowed to divorce her spouse and still qualify for SSI and food stamps using the spouses' qualifying "quarters" of work (Section 10(j)).

4. Weakened Federal Enforcement of Illegal Immigration Laws

H.R. 3083 would create a broad (and easily abused) waiver of INA provisions defining the classes of both inadmissible and removable aliens (Section 5). Waivers could be granted at the Attorney General's discretion for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."*The very broad scope of the proposed waiver would cover "any provision" of INA 212 or 237,* keeping absolute bars only for terrorists, national security threats, polygamists, international child abductors (domestic kidnapers would apparently be eligible for the waiver), and wealthy Americans who renounced citizenship to avoid taxation. *Inadmissibility standards that could be waived would include health-related grounds; public charge grounds; labor certification qualifications; restrictions on illegal immigrants, parole violators, previously removed aliens, unlawful voters, uncertified physicians and unqualified foreign health care workers; standards for granting H1–B visas; and standards for computing prevailing wage levels.*

Even exclusion on criminal grounds and for obtaining a visa by fraud or falsely claiming citizenship could be waived by the INS if the crime was committed by a VAWA petitioner and the alien could "demonstrate a connection between the crime or disqualifying act and battery or extreme cruelty" (Section 5(a)(1)). *A "connection" is a very vague legal standard, which could cover numerous factual circumstances.* Section 5 also would make eligibility for waiver relief retroactive to April 1, 1997. *These provisions invite extensive litigation relating to pending or closed removal cases.*

Grounds for removal under INA 237 that could be waived for VAWA beneficiaries under Section 5(a)(2) include alien smuggling, marriage fraud, multiple criminal convictions, aggravated felonies, high speed flight, controlled substances laws, firearms offenses, illegal voting, smuggling for immoral purposes, *domestic violence* and *child abuse.*

The new language would form a much weaker standard than the current waiver provision in 212(h), which is limited to simple possession of 30 grams or less of marijuana, and only if exclusion would result in extreme hardship to the alien's US citizen or LPR immediate family members. A restrictive interpretation of the text would limit the waiver to battered class petitioners, but rules of statutory interpretation would favor a more expansive interpretation.

Under current law, aliens convicted of crimes of domestic violence, stalking, child abuse and violations of protective orders are deportable. Section 5(b)(5) would allow the Attorney General to waive deportability for any alien convicted of these crimes, regardless of membership in the class of battered petitioners, for "humanitarian reasons," or alternatively if the alien committed the crime in self-defense or under duress, or was not the "principal or primary perpetrator of violence in the relationship."

The bill would allow the Attorney General to disregard criminal court records and declare VAWA aliens to be of good moral character—and thus eligible for classification or relief—if the petitioner was convicted of any crime where the alien could claim "a connection between the crime and having been battered. *This makes no sense if the alien is no longer in the abusive relationship, and therefore no longer in need of protection.*

Current law exempts battered spouses and children who have entered the U.S. unlawfully from inadmissibility or removal if they can show a "substantial connection" between the battery and their illegal entry into the U.S. Section 5(b)(1) would eliminate illegal entry as a bar to admissibility or a waiver or removal for any VAW petitioner, by deleting the "substantial connection" clause entirely. *A claim of abuse would become an "open ticket" to LPR status for illegal aliens.*

Aliens who procure a visa or admission into the U.S. by fraud or misrepresentation are excludable under current law, although the rule can be waived at the dis-

cretion of the Attorney General if exclusion would result in extreme hardship to the citizen/LPR spouse or parent. Rhe bill would expand eligibility for the waiver to include parents, children, and adult sons and daughters of VAWA beneficiaries (Section 5(b)(6)(A)). Similar changes are made to waivers of deportability provisions.

The Immigration Marriage Fraud Act is weakened by the bill (Section 7(c)(2)) Aliens who enter the U.S. on fiance (K) visas and fail to marry within the statutory 90 days could apply for COR or suspension of deportation or self-petition to adjust status, even if they subsequently marry a third party.

5. New Restrictions on Local and State Enforcement of Illegal Immigration Laws:

PRWORA mandated new regulations requiring verification of proof of citizenship status by Federal agencies and states administering federally-funded programs. H.R. 3083 would prohibit state agencies that administer federal welfare programs from inquiring or collecting information about the immigration status of an alien applying for welfare benefits on behalf of a U.S. citizen or qualified alien (Section 10(g)(1)). Another Section 10 provision would bar reports of illegal aliens to the INS by the Social Security Administration, or state agencies with which it has cooperative agreements.

Section 12(b) modifies Section 133 of IIRAIRA to require that, as a matter of public policy, no cooperative agreement with local law enforcement agencies may "discourage crime victims, including victims of domestic violence," from cooperating with police and prosecutors. This appears to preclude any agreement that would allow local law enforcement to detain, or inform the INS of, illegal aliens who were "crime victims," broadly defined.

6. New Legal Preferences Favoring VAWA Beneficiaries:

Section 3(a) reopens the 245(i) adjustment of status loophole for "battered" illegal alien self-petitioners and their derivative relatives so that they can legalize their status to permanent resident without leaving the country. This loophole was closed on January 14, 1998.

Section 3(c) eliminates the 90 and 180-day deadlines for filing motions to reopen or rescind removal or deportation proceedings or orders imposed by IIRAIRA. This could allow large numbers of illegals to re-adjudicate their cases with no showing of changed circumstances, and benefit from the concomitant delays.

Section 4(a) would allow a VAWA self-petitioner to derivatively maintain the permanent resident or citizenship status of the abuser accused in the petition at the time of filing, regardless of the death or any negative change whatsoever in the status of the accused, except that if the change in the abuser's status is positive, the VAWA applicant's status will also be upgraded automatically.

Sections 4(c) creates a legal presumption against a U.S. citizen or LPR against whom "credible evidence" has been provided in a VAWA self-petition that requires the INS to grant a petition "notwithstanding" [any] "determination based on the petitioners actions that could result—in denial or revocation of the petition." In other words, as long as battery is alleged under this very low evidentiary standard, the citizen or LPR is stripped of the ability to oppose the proceeding.

Section 4(c) would create a preferential exemption in the Privacy Act to allow alien immediate relatives access to confidential INS files for "immigration relief or other domestic violence-related court or administrative remedies."

However, files of illegal aliens who had submitted "evidence" of battered or extreme cruelty status would be exempt from disclosure. Moreover, Section 4(d) would add a statutory requirement that state and local law enforcement agencies and prosecutors certify that their "laws, policies, and practices do not discourage or prohibit" access to information by a VAWA beneficiary regarding the immigration status of an accused abuser, while maintaining Privacy Act protections for the illegal VAWA beneficiaries.

Section 13 would create a new "T" visa category for aliens "who have suffered substantial physical or mental abuse as a result of . . . criminal or other unlawful activity." Although there is a provision for supplying information to law enforcement officials, *this is an even looser requirement than the "credible evidence of battery or extreme cruelty" standard to be used for other VAWA beneficiaries. The bill is similar to, but with much weaker program controls, than H.R. 3244.*

7. New "Amnesties" for VAWA Beneficiaries from Cuba, Central America, and Haiti:

Section 14(a) exempts a "battered" child or spouse of a Cuban applicant for LPR status under the preferential rules of the Cuban Adjustment Act from the requirement that the spouse or child reside with the applicant in the United States.

Sections 15 and 16 extend eligibility for relief for derivative aliens who were at the time of application the spouse, child or unmarried son or daughter of a Central

American, Cuban, and Haitian who has adjusted status under NACARA or HRIFA, if the derivative alien was battered or subject to extreme cruelty.

Other Harmful Provisions

Sections 14, 15 and 16 all require the INS to accept "any credible evidence" in processing applications from VAWA applicants, a very low evidentiary standard that will encourage and abet fraud and abuse in these amnesty programs.

The current requirement that self-petitioners must be legally married to the abuser at the time the petition is filed is replaced with a provision that allows filing of a self-petition up to two years *after* a divorce from, or death of, or loss of legal immigration status of the abusive US citizen or LPR.

The bill weakens the Immigration Marriage Fraud Act by allowing women who enter the U.S. on fiance (K) visas sponsored by citizens or LPRs and who fail to marry within the statutory 90 days to self-petition for VAWA adjustment of status, even if they subsequently marry a third party (Section 7(c)(2)). The current anti-fraud requirement that fiances and their children remain in conditional status for two years and then file a battered spouse waiver to adjust to permanent status is eliminated by Section 4(b). *Elimination of the requirement for the putative fiance to document a battered spouse waiver will inhibit investigation of marriage fraud.*

The categories of aliens who gain immigration benefits under this bill are greatly expanded beyond the provisions in current law. Those who will gain access to LPR status include aliens 21 or older for whom a VAWA petition was filed—either directly as an abused child, or as a derivative child of a battered spouse—before the child turned 21.

These adults who are treated as children are provided self-petitioning rights on a similar basis to "intended spouses," as long as they have spent at least "any period of visitation" with the abusive citizen parent. These "children" can include their own children (i.e. the abusive parent's grandchildren) on their petition. Another provision in Section 7 would allow adult sons and daughters of U.S. citizens and LPRs to self-petition for adjustment of status if at least one incident of battery occurred before the petitioner was 21. *With no time limits on petitioning, this provision invites fraudulent applications.*

In addition to the adult "children," Section 7 also extends VAWA self-petitioning to alien parents who have been abused by U.S. citizen children on the same basis as "intended spouses." No evidence has been introduced that establishes a need for these protections, and they simply open up new avenues of immigration to the United States for persons who would otherwise be ineligible for visa.

Conclusion

Mr. Chairman, the above lengthy listing of serious problems that would be created by H.R.3083 is not exhaustive. The bill contains so many new features with far-reaching implications that it would be difficult to unravel all of them in my testimony. Nevertheless, the above survey should serve to indicate the gravity of the implications that would be unleashed if this legislation were enacted.

The American public demands increased respect for the nation's immigration laws and a reduction in today's mass immigration. This bill would weaken those laws, further overburden the enforcement and adjudications capability of the INS, increase the ease of fraudulent access to residence in this country by illegal aliens, and increase the number of people able to immigrate to this country by backdoor provisions.

We trust that this Subcommittee will withhold its approval of this bill and use its expertise to eliminate any of these harmful provisions if they should be introduced elsewhere.

[NOTE: Statistical information provided to Chairman Smith by the Executive Office for Immigration Review is on file with the Judiciary Committee's Subcommittee on Immigration and Claims.]

[NOTE: Statistical information provided to Chairman Smith by the Immigration and Naturalization Service is on file with the Judiciary Committee's Subcommittee on Immigration and Claims.]

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