

Legislative History of VAWA (94, 00, 05), T and U-Visas, Battered Spouse Waiver, and VAWA Confidentiality

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Background²

In the late eighties and early nineties, the United States Congress began discussing legislation designed to protect and provide support for adults and children who were victims of domestic violence, sexual assault and child abuse, while at the same time removing barriers to immigrant victims' ability and willingness to turn to the justice system and other government agencies for assistance. As a result of these deliberations Congress with bipartisan support passed the Violence Against Women Act (VAWA) and the Trafficking Victim's Protection Act (TVPA) which were improved with each of their reauthorizations over the years. Improvements to protections for immigrant victims and human trafficking victims building upon VAWA and the TVPA have also been included in other pieces of legislation.

This document recounts the legislative history of laws offering protection for victims of domestic violence, child abuse, sexual assault, and human trafficking with a particular focus on the immigration relief developed by Congress to protect immigrant survivors. Each section includes quotations from the statute, the Congressional Record, legislative committee reports, and other Congressional Reports. The goal of this publication is to provide readers access to the content of this important legislative history of VAWA and the TVPA's protections for immigrant survivors.³

Violence Against Women Act 1994

SENATE – INTRODUCTION OF VAWA

In 1993, Senator Biden introduced the Violence Against Women Act of 1993. Following introduction, the Bill was sent to the Senate Judiciary Committee, amended, and placed on the Senate calendar in November.⁴

SEN. BIDEN, DE

- *“The women who suffer the consequence of domestic violence are women who are shot, murdered, killed, beaten, deformed. This violence is of a most coarse nature. It is perpetrated and committed by someone who a person in that household trusts; had at one time, at least, loved; in fact lives with. It is the worst of all violence.... The bill I introduce today attacks violent crime against women at all levels--from our streets to our homes, from squad cars to courtrooms, from schoolrooms to hospitals.”⁵*

HOUSE – INTRODUCTION OF VAWA

Representative Patricia Schroeder introduced the Violence Against Women Act of 1993 in February, following Senator Biden's introduction of a similar bill in the Senate. After being

² The fonts used in this document are *italics for statements of members of Congress* and plain text for other parts of the Congressional Record and Congressional Reports.

³ The documents cited in this publication can be accessed at <https://niwaplibrary.wcl.american.edu/legislative-history>.

⁴ 47 Cong. Rec. S739 (1993).

⁵ 47 Cong. Rec. S739 (1993).

referred to the House Judiciary Committee and amended, the Bill returned to the House floor for debate. The House passed the bill on November 20, 1993 and was then referred to the Senate.⁶
REP. SCHROEDER, CO

- *“This country has taken the violence against women and shuddered every single year as the numbers got higher and higher, but we have done nothing and tended to treat it as a lesser crime. When we are told that three out of four women will probably be the victim of a violent crime before they die, by the Justice Department, it is time we act. And so I encourage all sorts of Members to join us in cosponsoring this. We have seen the rape rate among women double in the 1980's. We have seen domestic violence becoming the leading cause of injury to American women. It is time we stop it.”*⁷
- The 1993 House Judiciary Committee Report explains the legislative history of the Original Violence Against Women Act (VAWA) 1994:
 - “[The Violence Against Women Act] was introduced on February 24, 1993, by Rep. Pat Schroeder, Rep. Louise Slaughter, Rep. Charles Schumer, and Rep. Connie Morella. [The Violence Against Women Act] was substantially similar to the earlier versions...which had been the subject of numerous hearings in both the House of Representatives and the Senate.
 - On November 16, 1993, the Subcommittee on Crime and Criminal Justice met to consider [The Violence Against Women Act]. The Subcommittee adopted an amendment in the nature of a substitute which omitted Titles III and IV of the bill as introduced. These provisions were not within the jurisdiction of the Subcommittee on Crime and Criminal Justice. The amendment in the nature of a substitute also narrowed substantially the provisions of [The Violence Against Women Act] dealing with the treatment of battered women under immigration laws. The amendment in the nature of a substitute also deleted the provision of [The Violence Against Women Act] relating to a National Board on Violent Crime Against Women, instead creating a National Task Force on Violence Against Women. The amendment in the nature of a substitute also deleted the provision of [The Violence Against Women Act] relating to Post Office regulations maintaining the confidentiality of addresses of abused persons, replacing it with a provision providing for a study of the confidentiality issue.”⁸
- The 1993 House Judiciary Committee Report further details the added provisions of VAWA, before it was considered by the Judiciary Committee in November 1993:
 - The amendment in the nature of a substitute also added provisions: prohibiting persons who have been convicted of domestic violence offenses or who are subject to protection orders related to domestic violence from receiving firearms,

⁶ *Actions: HR 3355: Violent Crime Control and Law Enforcement Act of 1994*, United States Congress (last updated 1994), <http://beta.congress.gov/bill/103rd-congress/house-bill/3355/actions>.

⁷ 47 Cong Rec. H3619 (1993).

⁸ H.R. REP. NO. 103-395, p. 28-29 (1993).

and prohibiting the transfer of firearms to such persons; directing the Attorney General to report to the Congress on domestic violence statistics; authorizing the Office for Victims of Crime to provide payments to the victims of sexual assaults of the costs of two tests for sexually transmitted diseases; authorizing the Bureau of Justice Assistance to make grants to establish projects in local communities to coordinate intervention and prevention of domestic violence; and authorizing the Bureau of Justice Assistance to make a grant to a nonprofit organization for the purpose of establishing a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

- A reporting quorum being present, the Subcommittee then reported [The Violence Against Women Act], as amended, favorably reported by voice vote.
- On November 17, 1993, the Committee on the Judiciary met to consider [The Violence Against Women Act]. The Committee adopted by voice vote an amendment providing for the education and training of, and study by, Federal and State judges on issues relating to violence against women and women in the courts, and expressing the sense of the Congress relating to the admissibility of expert testimony on domestic violence; an amendment limiting the scope of the provisions prohibiting persons with histories of domestic violence from receiving firearms; and an amendment clarifying the extent to which aliens may obtain relief from deportation when abuse has occurred. A reporting quorum being present, the Committee then ordered the bill, as amended, favorably reported by a roll call vote of 34-1.”⁹
- VAWA 1994 was passed and enacted into law as Section IV of the Violence Crime Control and Law Enforcement Act of 1994.¹⁰

The House Judiciary Committee Report of 1994 explains that VAWA was created in response to a:

- “[R]ising tide of violence as targeted American women both in the streets and in their own homes. Police, hospital emergency rooms, rape crisis centers, and battered women's shelters have recorded an increasing incidence of rape, sexual assault and domestic violence against women in the United States. Violence is the leading cause of injury to women ages 15 to 44, more common than automobile accidents, muggings, and cancer deaths combined.’ Three out of four American women will be victims of violent crimes sometime during their life. This violence cuts across race, class, age, and ethnic boundaries. The only similarity that all of these victims share is their gender.
- Since 1988, the rate of incidence of rape has risen four and a half times as fast as the total crime rate. There were 109,062 reported rapes in the United States in 1992--one

⁹ H.R. REP. NO. 103-395, p. 29 (1993); *see generally* WILLIAM A. KANDEL, CONGRESSIONAL RESEARCH SERVICE, IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) (2012) (useful summary of VAWA provisions and critiques).

¹⁰ *Violence Against Women Act*, American Bar Association (last updated April 8, 2013),

http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/access_to_legal_services/vawa_home.html.

- every five minutes. The actual number of rapes committed is approximately double that figure, according to studies showing the reporting rate for rape victims to be about 50%.⁵ Even when the rape is reported, barely half of all reports result in an arrest.
- In addition to the often serious physical injuries, the experience of rape carries with it long-term psychological wounds. One study found that victims of rape were 8.7 times as likely as non-victims to have attempted suicide and twice as likely to experience major depression.
 - Sexual assault is also prevalent on college campuses. At least 119 campus gang rapes have been documented in the past decade. An estimated 4 million American women are battered each year by their husbands or partners.⁹ Approximately 95% of all domestic violence victims are women. About 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence." One study of battered women found that 63 percent of the victims had been beaten while they were pregnant.
 - Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. citizen or lawful permanent resident can, but is not required to, file a relative visa petition requesting that his or her spouse be granted legal status based on a valid marriage. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the spouse. Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation.
 - 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. A survey conducted in the District of Columbia by AYUDA found the rate of domestic violence among alien Latina women married to U.S. citizens or lawful permanent residents to be 77%; in 69% of these cases, the spouse had not filed a visa petition on the behalf of the abused alien.
 - The law enforcement response to the epidemic of violence against women has been inadequate. The legal system has historically failed to address violence against women with appropriate seriousness, and has even accepted it as legitimate. Under English common law, the 'rule of thumb' stipulated that a man could only beat his wife with a 'rod not thicker than his thumb.'" The attitude exemplified by this rule is found throughout the criminal justice system.

- A study of the response of District of Columbia police officers to domestic violence incidents found that in 1986, 19,000 calls from victims complaining of domestic violence resulted in fewer than 40 arrests.
- Some jurisdictions have adopted mandatory arrest policies to combat the tendency to dismiss domestic violence incidents as unworthy of law enforcement response. These policies have been highly effective. A joint study conducted by the Minneapolis Police Department and the National Police Foundation found that the rate of recurrence of domestic violence within six months of a police visit was 19% when the batterer was arrested, and 37% when the police simply "advised " the batterer.
- The underenforcement problem continues at the prosecutorial and judicial levels. A judicial commission in Maryland found that prosecutors often refuse to pursue rape and domestic violence complaints, and the 'cases involving domestic violence are regarded [by judges] as trivial or unimportant.' A panel of California judges found that 'victims of domestic violence are often denied access to the protection of the justice system.' In Connecticut, a review commission found that 'victim of sexual assault suffer not only because of the crime, but frequently suffer psychological trauma from what they experience within the justice system.' A committee of judges in Georgia found that 'police, prosecutors and judges often have gender-biased attitudes about domestic violence' and that rape 'victims receive treatment from police, prosecutors and judges which is adversely affected by gender bias.'"¹¹
- The House Judiciary Committee Report of 1994 also explains the purpose of VAWA as to:
 - "[D]eter and punish violent crimes against women. The bill is based on a recognition that law enforcement efforts against domestic violence and rape have been insufficient. The bill seeks to supplement these efforts by providing assistance to State and local law enforcement agencies, by making interstate domestic violence and violations of certain protection orders crimes punishable by Federal prosecution, by encouraging arrest of domestic violence offenders, by funding rape education and prevention programs, by training judges to better handle cases involving violence against women, by providing that victims of sexual assault receive compensation from the offender, by preventing violators of certain restraining orders from obtaining firearms, and by permitting battered immigrant women to leave their batterers without fearing deportation.
 - The bill also provides for reports on issues related to domestic violence and sexual assault, and for a national task force on violence against women."¹²
- In 1994 the Violence Against Women Act became law as Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (H.R. 3355), the largest bipartisan crime bill at the time of its passage.

¹¹ H.R. REP. NO. 103-395, p. 1, at 25-28 (1993).

¹² H.R. REP. NO. 103-395, p. 25 (1993).

- REP. FOWLER

“Mr. Speaker, each year some 4 million women are battered by their partners. The pain and suffering imposed on these women merits the strongest response from Congress.” [Extension of Remarks by Representative Fowler].¹³

- A Conference Report on the Violent Crime Control and Law Enforcement Act of 1994 was filed on August 21, 1994. The House passed the bill on August 21, 1994, while the Senate passed the bill on August 25, 1994. On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 and it became law.¹⁴
- Conference Report on the Violent Crime Control and Law Enforcement Act (Aug. 21, 1994)

- SEN. D’AMATO, NY

*“When you batter women, we are going to go after you.”*¹⁵

- House Congressional Record: Violent Crime Control and Law Enforcement Act (Aug. 21, 1994)
 - Subtitle G: Protections for Battered Immigrant Women and Children Legislative History:

- REP. MORELLA, MD

“[The Violence Against Women Act] provide[s] protections for battered immigrant women who are the spouses of U.S. citizens, or legal residents, and their children.... This legislation will have a very real impact on the lives of women everywhere in this country. Every 5 minutes, a woman is raped; every 15 seconds, a woman is beaten by her husband or intimate partner. Violence is a sad fact for women and girls, no matter where we live, work, or go to school.” [Floor statement of Representative Morella, during final debate prior to vote of the Violent Crime Control and Law Enforcement Act of 1994].¹⁶

- REP. MFUME, MD

“This bill also enacts the Violence Against Women Act. This is an important and long overdue effort to combat crimes against women.”

¹³ 140 Cong. Rec. H8415 (1994).

¹⁴ *Actions: HR 3355: Violent Crime Control and Law Enforcement Act of 1994*, United States Congress (last updated 1994), <http://beta.congress.gov/bill/103rd-congress/house-bill/3355/actions>.

¹⁵ *Conference Report on the Violent Crime Control and Law Enforcement Act of 1994*, 103d Cong. 22 (Aug. 25, 1994) (Statement of Senator D’Amato).

¹⁶ 140 Cong. Rec. H8981 (1994).

Women have, too often, been victims of crime because of their gender.”
[Floor statement of Representative Mfume, during final debate prior to
vote of the Violent Crime Control and Law Enforcement Act of 1994].¹⁷

- The House Judiciary Committee legislative history on VAWA 1994 included the following statements:
 - “An estimated 4 million American women are battered each year by their husbands or partners. Approximately 95% of all domestic violence victims are women. About 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence. One study of battered women found that 63 percent of the victims had been beaten while they were pregnant.” H.R. Rep. No. 103-395 at 26.
 - A joint study conducted by the Minneapolis Police Department and the National Police Foundation found that the rate of recurrence of domestic violence within six months of a police visit was 19% when the batterer was arrested, and 37% when the police simply "advised " the batterer. H.R. Rep. No. 103-395 at 27.
- The House passed version of the Violence Against Women Act contained immigration protections. The Senate accepted these protections in Conference and the House Immigration Protections became part of the final VAWA 1994 bill that was signed into law. The House passed H.R. 1133: The Violence Against Women Act (as amended by the House Judiciary Committee) on November 20, 1993 contained specific immigration-related provisions.
- House Judiciary Committee Report for the Violence Against Women Act 1993:
 - Subtitle D: Protection for Immigrant Women (Amends Section 204(a)(1) and (b) of the Immigration and Nationality Act)
 - Section 241: Provides new standards to allow immigrant crime victims the ability to self-petition for status.¹⁸
 - Section 242: Sets forth the evidence standards for determining if an alien or alien’s child had been “battered or subject to extreme cruelty.”¹⁹
 - Section 243: Creates new grounds for suspension of deportation for abused spouses, abused children, and an alien spouse whose child is being abused. The provision waives the pre-1994 seven-year residency requirement to apply for suspension of deportation for those who have been “battered or subject to extreme cruelty” (by a spouse or parent); alien or alien’s child asking for

¹⁷ 140 Cong. Rec. H9000 (1994).

¹⁸ Staff of H. Comm. on the Judiciary Rep. No 38, at § 241, 38 (1994).

¹⁹ Staff of H. Comm. on the Judiciary Rep. No 38, at § 242, 38 (1994).

suspension must prove that he or she is of “good moral character and that deportation would result in extreme hardship.”²⁰

- In the formal legislative history of the VAWA 1994 immigration protections the House Judiciary Committee found:
 - “Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizens legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. Citizen or lawful permanent resident can, but is not required to file a relative visa petition requesting that his or her spouse be granted legal status based on a valid marriage. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the "spouse. Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges or calling the police, because of the threat or fear of deportation.

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. A survey conducted in the District of Columbia by AYUDA found the rate of domestic violence among alien Latina women married to U.S. citizens or lawful permanent residents to be 77%; in 69% of these cases, the spouse had not filed a visa petition on behalf of the abused alien.[Footnoted included in the House Judiciary Committee Report: San Francisco Neighborhood Legal Assistance Foundation, Family Violence Prevention Fund, Asian Law Caucus, and AYUDA, “Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Permanent Residents on Immigrant Spouses (1993)” H.R. Rep. No. 103-395 at 26-27.²¹

- “The purpose of H.R. 1133 is to deter and punish violent crimes against women. The bill is based on a recognition that law enforcement efforts against domestic violence and rape have been insufficient. The bill seeks to supplement these efforts by providing assistance to State and local law enforcement agencies, by making

²⁰ Staff of H. Comm. on the Judiciary Rep. No 38, at § 241, 38-39 (1994).

²¹ This report contained an analysis of preliminary data from the first 57.2% of the interviews conducted in the AYUDA survey that was later completed and published. The published findings from the AYUDA survey analyzing data from the full 289 interviews ultimately conducted found a 50.8% abuse rate among immigrant spouses married to U.S. citizens and lawful permanent residents, with 72.3% never filing immigration papers for their abused spouses. In the 27.7% of the cases in which the abusive U.S. citizen or lawful permanent resident spouses did file immigration papers for their immigrant spouses there was a mean delay of 3.97 years between the marriage and filing of immigration papers on the immigrant spouse's behalf. Further, when the data from this same survey was analyzed to understand the domestic abuse rate when an immigrant's spouse was a U.S. citizen the survey found that abuse rate rose to 59.5%. See, Mary Ann Dutton, Leslye E. Orloff and Giselle Aguilar Hass, *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, Summer 2000 available at <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors>; Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses* (April 24, 2006) available at <https://niwaplibrary.wcl.american.edu/pubs/battered-immigrants-u-s-citizen-spouses>; Giselle Aguilar Hass, Mary Ann Dutton, and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications (2000) in Domestic Violence: Global Responses*, pp. 93-113 A B Academic Publishers Printed in Great Britain available at <https://niwaplibrary.wcl.american.edu/pubs/lifetime-prevalence-dv-latinas>.

- interstate domestic violence and violations of certain protection orders crimes punishable by Federal prosecution, by encouraging arrest of domestic violence offenders, by funding rape education and prevention programs, by training judges to better handle cases involving violence against women, by providing that victims of sexual assault receive compensation from the offender, by preventing violators of certain restraining orders from obtaining firearms, and by permitting battered immigrant women to leave their batterers without fearing deportation. The bill also provides for reports on issues related to domestic violence and sexual assault, and for a national task force on violence against women.” H.R. Rep. No. 103-395 at 26.
- A study of the response of District of Columbia police officers to domestic violence incidents found that in 1986, 19,000 calls from victims complaining of domestic violence resulted in fewer than 40 arrests. H.R. Rep. No. 103-395 at 27.
 - Senate Congressional Record: Violent Crime Control and Law Enforcement Act (Aug. 25, 1994)

SEN. LAUTENBERG, NJ

- *“Mr. President, last week I visited a coalition center for who have been battered and sexually abused. Rape is among the least reported crimes. There is a reason for it-- because if they report it, they are liable to pay for it with their lives because they cannot escape their environment. There are children often involved and there is no other place to go. We have to be able to help, Mr. President, by having that \$1.6 billion available for the Violence Against Women Act.”*²²

Violence Against Women Act 2000

In 2000 Congress reauthorized the Violence Against Women Act which included the creation of new forms of immigration relief for immigrant victims of domestic violence, sexual assault, human trafficking and other criminal activities. VAWA 2000 created the U visa for crime victims, the T visa and continued presence to help immigrant victims of human trafficking, and expanded VAWA self-petitioning, battered spouse waiver and protections against deportation for immigrant survivors. The Congressional record contains the following statements that form key parts of the legislative history of VAWA 2000’s immigration protections.

SENATE – CONGRESSIONAL RECORD - JANUARY 19, 1999

SEN. BIDEN, DE

“Of course, a comprehensive effort to reduce violence against women and lessen the harm it causes must do more than just arrest, convict and imprison abusers—we must also help the victims of violence. This legislation proposes to assist these crime victims in three fundamental ways: Providing a means for immediate protections from their abusers, such as through access to shelters; easier access to the courts and to the legal assistance necessary to

²² 140 Cong. Rec. 24,005 (1994).

keep their abusers away from them: and removing the “catch-22s” that sometimes literally compel women to stay with their abusers—such as discriminatory insurance policies that could force a mother to choose between turning in the man who is beating her or keeping health insurance for her children., Another “catch-22” affects immigrant women who are sometimes faced with a similar insidious “choice.” In 1994, we worked out provisions so battered immigrant women—whose ability to stay in the country was dependent on their husbands—would not have to choose between staying in this country and continuing to be beaten, or leaving their abusers, but in doing so have to also leave our country (perhaps even without their children). This bill fixes aspects of this problem that leave an abused woman with such a horrible, unfair and immoral choice”²³

SENATE – CONGRESSIONAL RECORD - OCTOBER 11, 2000

SEN. KENNEDY, MA

“One of the most important provisions in the bill is the Battered Immigrant Protection Act. This provision helps battered immigrants by restoring access to a variety of legal protections undermined by the 1996 immigration laws. The Violence Against Women Act passed in 1994 included provisions that allowed battered immigrants to apply for legal status without the cooperation of their abusers, and enabled victims to seek protective orders and cooperate with law enforcement officials to prosecute crimes of domestic violence.

Unfortunately, the subsequent changes in immigration laws have reduced access to those protections. Thousands of battered immigrants are again being forced to remain in abusive relationships, out of fear of being deported or losing their children. The pending bill removes obstacles currently hindering the ability of battered immigrants to escape domestic violence safely and prosecute their abusers.

It restores and expands vital legal protections like 245(i) relief. This provision will assist battered immigrants, like Donna, who have been in legal limbo since the passage of the 1996 immigration laws. Donna, a national of Ethiopia, fled to the U.S. in 1992 after her father, a member of a prominent political party, was murdered. In 1994, Donna met Saul, a lawful permanent resident and native of Ethiopia. They married and moved to Saul’s home in Massachusetts. Two years later, Saul began drinking heavily and gradually became physically and verbally abusive. The abuse escalated and Donna was forced to flee from their home. She moved in with close family friends who helped her seek counseling. She also filed a petition for permanent residence under provisions of the Violence Against Women Act.

Unfortunately, with the elimination of 245(i), the only way for Donna to obtain her green card is to return to Ethiopia, the country where her father was murdered. The possibility of returning there terrifies her. This legislation will enable her to obtain her green card here, where she has the support and protection of family and access to the domestic violence counseling she needs.²⁴

²³ 145 Cong. Rec. S444 (1999).

²⁴ 146 Cong. Rec. S10170-71. (2000)

Under this act, battered immigrants will also have up to one year from the entry of an order of removal to file motions to reopen prior deportation orders. The Attorney General may waive the one-year deadline on the basis of extraordinary circumstances or hardship to the battered immigrant's child.

This Act will also expand remedies for battered immigrants living abroad with spouses and parents serving in the United States military or other federal positions. Current law only allows battered immigrants residing in the United States to request this relief. This bill will make it easier for these immigrants and their children to escape abusive relationships and obtain the help they deserve.

The legislation also grants the Attorney General the discretion to waive certain bars to immigration relief for qualified applicants. For example, battered immigrant women acting in self-defense are often convicted of domestic violence crimes. Under the 1996 immigration law, they became deportable and are denied relief under the Violence Against Women Act. The Attorney General will be able to use the waiver authority to help battered immigrants who otherwise qualify for relief.

Also, recently divorced battered immigrants will be able to file self-petitions. Current law allows only battered immigrant women currently married to their abusive spouses to qualify for relief. As a result, many abusers have successfully rushed to the courthouse to obtain divorces, in order to deny relief to their immigrant spouse. This provision will prevent this unfair result and ensure that victims are not wrongly deprived of the legal protection they need.

These and other important measures will do a great deal to protect battered immigrants and their children from domestic violence and free them from the fear that often prevents them from prosecuting these crimes. Congress enacted the Violence Against Women Act in 1994 to help all victims of domestic violence, regardless of their citizenship. It is long past time to restore and expand these protections.

I am also pleased that the legislation includes authorization for increased funds for the National Domestic Violence Hotline. Consistent with last year's funding, the bill authorizes \$2 million a year for the hotline and ensures that the Hotline will be an effective source of assistance, providing vital services to women, children, and their families.

A second, equally important part of the bill we are considering today is the Trafficking Victims Protection Act, which condemns and combats the trafficking of persons into forced prostitution or forced labor, a practice that is tantamount to modern day slavery.

Enactment of this legislation will strengthen laws that punish traffickers and ensure protection for their victims—most of whom are women and children.²⁵

One of the most important of these provisions expands assistance and protection to victims of severe forms of trafficking, ensuring that they receive appropriate shelter and care, and are able to remain in the United States to assist in the prosecution of traffickers. Relief from

²⁵ 146 Cong. Rec. S10170-71. (2000)

*deportation is also critical for victims who could face retribution or other hardship if removed from the United States.*²⁶

Sara, a native of Sri Lanka, was promised a lucrative job as a housekeeper. Upon arrival in the U.S., Sara was virtually imprisoned in her employer's Massachusetts home, and subjected to physical and sexual assault. She bore three children as a result of rape. After 5 years of living in captivity and isolation, she was finally able to escape. This legislation will provide persons like Sara with the protection and rights they need to assist in the prosecution of these despicable crimes."²⁷

SEN. BOXER, CA

*"We also, for the first time, look at battered immigrants, which is a very important issue, because we sometimes have people coming here who don't understand their rights. They need to understand their rights, that their bodies don't belong to anyone else, and they have a right to cry out if they are abused"*²⁸

SEN. LAUTENBERG, NJ

"The underlying Trafficking Victims Protection Act addresses a very serious human rights issue in Europe and elsewhere, where people are trafficking particularly for sexual exploitation. Finally, we are taking action to combat trafficking and to help these victims. I am pleased that this conference report will also reauthorize the Violence Against Women Act and expand coverage to include new programs for immigrant women, elderly women, and women in the military service.

Throughout my career, I have worked to help prevent domestic violence. I strongly supported the original Violence Against Women Act, which Congress passed in 1994. I am so pleased that we are going to take care of those aberrations of behavior that leave women and families devastated. But we are getting onto another subject, as well, which I think is critical, and that is to provide justice for victims of terrorism as part of the trafficking victims protection conference report."²⁹

SEN. LEAHY, VT.

"In 1994, we designed VAWA to prevent abusive husbands from using control over their wives' immigration status to control them. Over the ensuing six years we have discovered additional areas that need to be addressed to protect immigrant women from abuse, and have attempted to do so in this legislation. VAWA II will ensure that the immigration status of battered women will not be affected by changes in the status of their abusers. It will also make it easier for abused women and their children to become lawful permanent residents and obtain cancellation of removal. With this legislation, battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States.

²⁶ 146 Cong. Rec. S10170-71 (2000).

²⁷ 146 Cong. Rec. S10170 (2000).

²⁸ 146 Cong. Rec. S10173 (2000).

²⁹ 146 Cong. Rec. S10178 (2000).

I am pleased that we have taken these additional steps to protect immigrant women facing domestic abuse in the United States. I would also like to point out the difficult situation of immigrant women who face domestic violence if they are returned to their home country.”³⁰

SEN. SANTORUM, PA

“I commend Senator SAM BROWNBACK and Senator PAUL WELLSTONE for their bipartisan leadership on the International Trafficking of Women and Children Victim Protection Act. The bill specifically defines “trafficking” as the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport, purchase, sell, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude or slavery-like conditions. Using this definition, the legislation establishes within the Department of State an Interagency Task Force to Monitor and Combat Trafficking. The Task Force would assist the Secretary of State in reporting to Congress the efforts of the United States government to fight trafficking and assist victims of this human rights abuse. In addition, the bill would amend the Immigration and Nationality Act to provide for a non-immigrant classification for trafficking victims in order to better assist the victims of this crime.”³¹

SEN. BIDEN, DE

“Also, maybe the single most important provisions we add to the Violence Against Women Act is the battered immigrant women provision. This strengthens and refines the protections for battered immigrant women in the original act and eliminates the unintended consequence of subsequent charges in immigration law to ensure that abused women living in the United States with immigrant victims are brought to justice and battered immigrants also escape abuse without being subject to other penalties.”³²

“And let’s not forget the plight of battered immigrant women, caught between their desperate desire to flee their abusers and their desperate desire to remain in the United States. A young Mexican woman who married her husband at the age of 16 and moved to the United States suffered years of physical abuse and rape—she was literally locked in her own home like a prisoner. Her husband threatened deportation if she ever told police or left the house. When she finally escaped to the Houston Area Women’s Center in Texas, she was near death.”³³

That shelter gave her a safe place to live and provided her the legal services she needed to become a citizen and get a divorce.”³⁴

Our bipartisan bill expands upon the protections for battered immigrant women.”³⁵

³⁰ 146 Cong. Rec. S10185 (2000).

³¹ 146 Cong. Rec. S10199 (2000).

³² 146 Cong. Rec. S10204.

³³ 146 Cong. Rec. S10205 (2000).

³⁴ 146 Cong. Rec. S10205 (2000).

³⁵ 146 Cong. Rec. S10205 (2000).

SEN. ABRAHAM, MI

“Finally, I am very pleased that the conference report includes the core provisions from the Senate bill that I developed along with Senator KENNEDY, Senator HATCH, and Senator BIDEN to address ways in which our immigration laws remain susceptible of misuse by abusive spouses as a tool to blackmail and control the abuse victim.

This potential arises out of the derivative nature of the immigration status of a noncitizen or lawful permanent resident spouse’s immigration status. Generally speaking, that spouse’s right to be in the U.S. derives from the citizen or lawful permanent resident spouse’s right to file immigration papers seeking to have the immigration member of the couple be granted lawful permanent residency.

In the vast majority of cases, granting that right to the citizen or lawful permanent resident spouse makes sense. After all, the purpose of family immigration is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse’s visa as a means to blackmail and control the spouse. The abusive spouse can do this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse.

VAWA 1994 changed this by allowing immigrants who demonstrate that they have been battered or subject to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse.

VAWA 1994 also allowed abused spouses placed in removal proceedings to seek “cancellation of removal,” a form of discretionary relief from removal available to individuals in unlawful immigration status with strong equities, after three years rather than the seven ordinarily required. Finally, VAWA 1994 granted similar rights to minor children abused by their citizen or lawful permanent resident parent, whose immigration status, like that of the abused spouse, would otherwise be dependent on the abusive parent.

The conference report follows the Senate VAWA reauthorization bill in building on the important work of VAWA 1994 in these areas. I will not describe all of the provisions of title V of division B of this bill, but I will discuss one of them, which I believe is the most important one.

In this bill, we establish procedures under which a battered immigrant can take all the steps he or she needs to take to become a lawful permanent resident without leaving this country. Right now, no such mechanism is available to a battered immigrant, who can begin the process here but must re- turn to his or her home country to complete it.

VAWA 1994 created a mechanism for the immigrant to take the first step, the filing of an application to be classified as a battered immigrant spouse or child. But it did not create a mechanism for him or her to obtain the necessary papers to get lawful permanent residency while staying in the U.S. That is because at the time it was enacted, there was a general

mechanism available to many to adjust here, which has since been eliminated. As a result, under current law, the battered immigrant has to go back to his or her home country, get a visa, and return here in order to adjust status.

That is not true of spouses whose citizens or lawful permanent resident husband or wife is filing immigration papers for them. They do have a mechanism for completing the whole process here. Section 1503 of this bill gives the abused spouse that same right.

The importance of such a provision is demonstrated, for example, by the case of a battered immigrant whose real name I will not use, but whom I will instead call Yaa. I use her as an example because her case arose in my own State of Michigan.

Yaa is a 38-year-old mother of two from Nigeria. She met her husband, whom I will call Martin, while he was visiting family members in Nigeria. After a long courtship, Martin persuaded Yaa to marry him and join him in the United States. He told her he would help her further her education and file the necessary papers to enable her to become a lawful permanent resident.

Following their marriage, Martin assisted Yaa in obtaining a visitor's visa. When she arrived in the United States, however, he did not follow through on any of his promises. He refused to support her going to school, and indeed would not let her leave the house for fear that other men might find her attractive and steal her away. He also refused to file immigration papers for her and threatened her with deportation if she ever disobeyed his orders.

After the birth of their first child, Martin began physically abusing Yaa. He slapped her if she questioned his authority or asked about her immigration status. He spat on her if she refused to have sex with him. He used a hidden recording device to tape all of her phone conversations. As a result, she came to feel that she was a prisoner in her own home.

On one occasion, Martin beat Yaa with his fists and a bottle of alcohol. Yaa suffered severe facial injuries and had to be rushed to a hospital by ambulance for treatment. This incident resulted in Martin's arrest and prosecution for domestic violence. Martin retaliated by refusing to pay the mortgage, buy food, or other necessities. At that point, with the help of her best friend, Yaa moved out, found a job, and filed a self-petition under VAWA. INS approved her self-petition, and Yaa has obtained a restraining order against Martin.

Unfortunately, she still has to go to Nigeria to obtain a visa in order to complete the process of becoming a lawful permanent resident. And this is a major problem. Martin's family in Nigeria blames her for Martin's conviction. They have called her from there and threatened to have her deported because she "brought shame" to the family. They also know where she lives in Nigeria and they have threatened to hurt her and kidnap the children if she comes back. She has no one in the U.S. to leave the children with if she were to return alone. She is also frightened of what Martin's family will do to her if she sets foot in Nigeria.

Yaa should be allowed to complete the process of becoming a lawful permanent resident here in the United States, without facing these risks. Our legislation will give her the means to do so.

Of all the victims of domestic abuse, the immigrant dependent on an abusive spouse for her right to be in this country faces some of the most severe problems. In addition to the ordinary difficulties that confront anyone trying to deal with an abusive relationship, the battered immigrant also is afraid that if she goes to the authorities, she risks deportation at the instance of her abusive spouse, and either having her children deported too or being separated from them and unable to protect them.

We in Congress who write the immigration laws have a responsibility to do what we can to make sure they are not misused in this fashion. That is why I am so pleased that the final version of this legislation includes this and other important provisions.

I would like to extend special thanks to Senator KENNEDY and his staff, especially Esther Olavarria, who has worked tirelessly on this portion of the bill; to Senator HATCH and his staff, especially Sharon Prost, whose assistance in crafting these provisions and willingness to invest time, effort and capital in making the case for them has been indispensable; to Senator BIDEN and his staff, especially Bonnie Robin-Vergeer, whose commitment to these provisions has likewise been vital; to House Judiciary Committee Chairman HYDE and House Crime Sub-committee Chairman BILL MCCOLLUM, for their support at key moments; to the indefatigable Leslye Orloff of the NOW Legal Defense Fund, whose ability to come up with the “one more thing” desperately needed by battered immigrants is matched only by her good humor and professionalism in recognizing that the time for compromise has come; and to the sponsors of H.R.3244 and S. 2449, for allowing their bill to become the vehicle for this important legislation.”³⁶

SEN. BINGAMAN, NM

“The battered immigrant women provision is also important to many New Mexico residents. No longer will battered immigrant women and children be faced with deportation for reporting an abuser on whom they may be dependent on for an immigration benefit. No person residing in the United States should be immune from prosecution for committing a violent crime because of a loophole in an immigration law.”³⁷

SEN. HATCH, UT

“Finally, it makes important revisions to the immigration laws to protect battered immigrant women.”³⁸

I am proud to have worked with the women’s groups in Utah and elsewhere in seeing that VAWA is reauthorized. With their help, we have been able to make targeted improvements to the original legislation that will make crucial services better and more available to women and children who are trapped in relationships of terror. I am proud of this achievement and what it will do to save the lives of victims of domestic violence.”³⁹

³⁶ 146 Cong. Rec. S10219-20 (2000).

³⁷ 146 Cong. Rec. S10223-24 (2000).

³⁸ 146 Cong. Rec. S10191 (2000).

³⁹ 146 Cong. Rec. S10191 (2000).

“Several points regarding the provisions of Title V, the Battered Immigrant Women Protection Act of 2000, bear special mention. Title V continues the work of the Violence against Women Act of 1994 (“VAWA”) in removing obstacles inadvertently interposed by our immigration laws that many hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related to the abused spouse’s immigration status. We would like to elaborate on the rationale for several of these new provisions and how that rationale should inform their proper interpretation and administration.”⁴⁰

First, section 1503 of this legislation allows battered immigrants who unknowingly marry bigamists to avail themselves of VAWA’s self-petition procedure. This provision is also intended to facilitate the filing of a self-petition by a battered immigrant married to a citizen or lawful permanent resident with whom the battered immigrant believes he or she had contracted a valid marriage and who represented himself or herself to be divorced. To qualify a, a marriage ceremony, either in the United States or abroad, must actually have been performed. We would anticipate that evidence of such a battered immigrant’s legal marriage certificate or marriage license would ordinarily suffice as proof that the immigrant is eligible to petition for classification as a spouse without the submission of divorce decrees from each of the abusive citizen’s or lawful permanent resident’s former marriages. For an abused spouse to obtain sufficient detailed information about the date and the lace of each of the abuser’s former marriages and the date and place of each divorce, as INS currently requires, can be daunting, difficult and dangerous task, as this information is under the control of the abuser and the abuser’s family members. Section 1503 should relieve the battered immigrant of that burden in the ordinary case.

Second, section 1503 also makes VAWA relief available to abused spouses and children living abroad of citizens and lawful permanent residents who are members of the uniformed services or government employees living abroad, as well as to abused spouses and children living abroad who were abused by a citizen or lawful permanent resident spouse or parent in the United States. We would expect that INS will take advantage of the expertise the Vermont Service Center has developing in deciding self-petitions and assign it responsibility for adjudicating these petitions even though they may be filed at U.S. embassies abroad.

Third, while VAWA self-petitioners can include their children in their applications, VAWA cancellation of removal applicants cannot. Because there is a backlog for applications for minor children of lawful permanent residents, the grant of permanent residency to the applicant parent and the theoretical available of derivative status to the child at that time does not solve this problem. Although in the ordinary cancellation case the INS would not seek to deport such a child, an abusive spouse may try to bring about that result in order to exert power and control over the abused spouse. Section 1504 directs the Attorney General to parole such children, thereby enabling them to remain with the victim and out of the abuser’s control. This directive should be understood to include a battered immigrant’s children wither or not they currently reside in the United States, and therefore to include the use of his or her parole power to admit them if necessary. The protection offered by section 1504 to children abused by their

⁴⁰ 146 Cong. Rec. S10192 (2000).

U.S. citizen or lawful permanent resident parents is available to the abused child even though the courts may have terminated the parental rights of the abuser.

Fourth, in an effort to strengthen the hand of victims of domestic abuse, in 1996 Congress added crimes of domestic violence and stalking to the list of crimes that render an individual deportable. This change in law has had unintended negative consequences for abuse victims because despite recommended procedure to the contrary, in domestic violence cases many officers still makes dual arrests instead of determining the primary perpetrator of abuse. A battered immigrant may well not be in sufficient control of his or her life to seek sufficient counsel before accepting a plea agreement that carries little or no jail time without understanding its immigration consequences. The abusive spouse, on the other hand, may understand those consequences well and may proceed to turn the abuse victim into the INS.

To resolve this problem, section 1505(b) of this legislation provides the Attorney General with discretion to grant a waiver of deportability to a person with a conviction for a crime of domestic violence or stalking that did not result in serious bodily injury and that was connected to abuse suffered by a battered immigrant who was not the primary perpetrator of abuse in a relationship. In determining whether such a waiver is warranted, the Attorney General is to consider the full history of domestic violence in the case, the effect of the domestic violence on any children, and the crimes that are being committed against the battered immigrant.

Similarly, the Attorney General is to take the same types of evidence into account in determining under sections 1503(d) and 1504(a) whether a battered immigrant has proven that he or she is a person of good moral character and whether otherwise disqualifying conduct should not operate as a bar to that finding because it is connected to the domestic violence, including the need to escape an abusive relationship. This legislation also clarifies that the VAWA evidentiary standard under which battered immigrants in self-petition and cancellation proceedings may use any credible evidence to prove abuse continues to apply to all aspects of self-petitions and VAWA cancellation as well as to the various domestic violence discretionary waivers in this legislation and to determinations concerning U visas.

Fifth, section 1505 makes section 212(i) waivers available to battered immigrants on a showing of extreme hardship to, among others, a “qualified alien” parent or child. The reference intended here is to the current definition of a qualified alien from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, found at 8 U.S.C. 1641.

Sixth, section 1506 of this legislation extends the deadline for a battered immigrant to file a motion to reopen removal proceedings, now set at 90 days after the entry of an order of removal, to one year after final adjudication of such an order. It also allows the Attorney General to waive the one-year deadline on the basis of extraordinary circumstances or hardship to the alien’s child. Such extraordinary circumstances may include but would not be limited to an atmosphere of deception, violence, and fear that make it difficult for a victim of domestic violence to learn of or take steps to defend against or reopen within the deadline on account of a child’s lack of capacity due to age. Extraordinary circumstances may also include violence or cruelty of such a nature that, when the circumstances surrounding the domestic violence and the consequences of the abuse are considered, not allowing the battered immigrant to reopen the deportation or removal proceeding would thwart justice or be contrary to the humanitarian

purpose of this legislation. Finally, they include the battered immigrant's being made eligible by this legislation for relief from removal not available to the immigrant before that time.

Seventh, section 1507 helps battered immigrants more successfully protect themselves from ongoing domestic violence by allowing battered immigrants with approved self-petitions to remarry. Such remarriage cannot serve as the basis for revocation of an approved self-petition or rescission of adjustment of status.”⁴¹

HOUSE – CONGRESSIONAL RECORD

October 6, 2000

REP. SLAUGHTER, OH

“Mr. Speaker, the conference report also reauthorizes the Violence Against Women Act. I am proud to have a long history of activism on domestic violence issues. Fifteen years ago our greatest challenge was convincing Americans that domestic violence was a real problem. Many women knew only too well that we were in the midst of a deadly epidemic, but the culture of silence that surrounded the issue made it difficult for them to speak out or to get help. Being a victim of domestic violence was a source of fear and shame. Many women were trapped in these situations without any means of escape. Furthermore, domestic violence tended to be trivialized by law enforcement, by the judicial system, by health care providers and sometimes even by friends, family or neighbors.

We have come a long way in the 15 years since I began working on these issues. The single most important thing that Congress did to effect a change was pass the Violence Against Women Act. The Violence Against Women Act catapulted domestic violence onto the national agenda, providing Federal support for programs like shelters for battered women and their children, education for law enforcement officers and judges, and resources mostly for prevention and education. I am proud to have been the author of provisions of VAWA that protected battered immigrant women who were often trapped in abusive relationships by the threat of deportation. VAWA transformed the national landscape for victims of domestic violence. Today, a woman in an abusive relationship has options, a place to live, help with court proceedings, assistance for herself and her children, and protection from her batterer.

Nevertheless, we still have a long way to go. Too many women still die at the hands of an abusive spouse or boy- friend. Protective orders can be ineffective. Going on welfare is far from an ideal choice even as a temporary step. Convictions against batterers remain infrequent and penalties can be extremely light. It is imperative that Congress reauthorize these vital programs.”⁴²

REP. JACKSON-LEE, OH

“Particularly, let me appreciate the battered immigrant provisions that have come from the legislation that the gentlewoman from Illinois (Ms. SCHAKOWSKY) and the gentlewoman

⁴¹ 146 Cong. Rec. S10192 (2000).

⁴² 146 Cong. Rec. H9030-31 (2000).

from Maryland (Mrs. MORELLA) and myself have sponsored, H.R. 3083. We had a hearing on the bill in the committee that I serve on, the Subcommittee on Immigration and Claims. And I thank the gentleman from New Jersey (Mr. SMITH), my chairman.

I say to the gentleman from Michigan (Mr. CONYERS), I had the unfortunate privilege of visiting in Bangladesh, women who were battered, as well as women who were sold into slavery, sold for sexual activities, and see the children, see the abuse, the depression, the mutilation, the injuries that they suffered. So this bill is extremely important.

Mr. Speaker, I thank the Committee on International Relations and all of those who worked on the human rights aspect to stop that. It is also important to recognize that VAWA that gives rights to American women finally will reach a point where we can see it reauthorized and have the centers open, protect the children who have seen abuse in their homes.

Mr. Speaker, I do want to thank the conference committee for putting in the elements dealing with battered immigrant women, because without those elements, VAWA did not cover immigrant women; in particular, we would find situations where the abuser would hold it over the head of the immigrant woman that you can stay here all the time and I can abuse you, but you will not have the rights to access relief under VAWA.

Take, for example, the idea of an abuser saying to the abused that I will keep you from being a citizen or legal resident, because all you came to do was to come here to this country with your children and seek to be a legal resident, and, therefore, I will punish you and I will continue to abuse you.

Mr. Speaker, I am gratified that elements that will allow for self-petition are included in this legislation and that an abused woman can as well seek that.

Finally, let me say that I hope we can improve some elements of this bill. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) for yielding me the time.

Mr. Speaker, I come to the floor today in my capacity as Ranking Member of the Subcommittee on Immigration and Claims. Inside this report is the agreement authorizing VAWA, and some very important provisions that deal with Battered Immigrant Women. I joined with Congresswoman JAN SCHAKOWSKY and Congresswoman CONNIE MORELLA to sponsor H.R. 3083, The Battered Immigrant Women Protection Act of 1999, would provide much needed access to battered immigrant victims of domestic violence. Fortunately, many of the provisions of this bill were included in this conference report.

These provisions are important because 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.

I am relieved to stand before the House in order that we might be able to consider legislation that will reauthorize the Violence Against Women Act (VAWA) before the close of the 106th Congress. This act was first passed in 1994, and it marked a turning point in our nation's response to family violence, offering states a comprehensive means of addressing domestic violence and sexual assault. Although VAWA has contributed to a decline in the rates of domestic violence, there is still much work to be done."

"Let me pay tribute to a lady who will benefit from this legislation, Calla, a Guatemalan woman who lived with her fiancé, a legal permanent resident, for 5 years; and when she asked about getting married so she could 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.

This bill is long overdue. The battered immigrant women provisions are necessary. Though I would have wanted to see access to food stamps, access to housing, access to other benefits, we must move this bill forward, and we must move the programs that provide sexual assault prevention programs and education and training of judges. That is a key element for providing relief to those abused individuals.

I would like to thank the Committee on International Relations for protecting the victims of terrorism and those subjected to slavery. This is a good conference report and I ask for my colleagues to vote for it.

Mr. Speaker, first, I would like to thank the leaders like Congressman JOHN CONYERS who has been a leader on VAWA issues for years, Congressman SAM GEJDENSON, the Ranking Member of the International Relations Committee for his leadership in being instrumental in reaching a compromise on this bill, Congressman TOM LANTOS, who is a champion on Human Rights around the globe, and his true counterpart on the other side, Congressman

CHRIS SMITH, who also has been a champion of Human Rights, and Congressman LAMAR SMITH the Chairman of the Subcommittee on Immigration and Claims, who I have been able to work very well with throughout the 106th Congress.

I come to the floor today in my capacity as Ranking Member of the Subcommittee on Immigration and Claims. Inside this report is the agreement authorizing VAWA, and some very important provisions that deal with Battered Immigrant Women. I joined with Congresswoman JAN SCHAKOWSKY and Congresswoman CONNIE MORELLA to sponsor H.R.3083. The Battered Immigrant Women Protection Act of 1999 would provide much needed access to battered immigrant victims of domestic violence. Fortunately, many of the provisions of this bill were included in this conference report.

The 1994 VAWA requires the victim to be married to a citizen or permanent resident and prove battery or extreme cruelty by the abuser. There is a provision in this report that eliminates the requirement that an immigrant victim has to prove extreme hardship. The spirit and intent of

the 1994 law was to allow immigrants to safely escape the violence and bring their abusers to justice, now this can be done with the adoption of this report.

This Conference Report has language that 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.

This conference report gives battered immigrants living abroad new 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. This Conference Report makes it possible for battered immigrant women to file their own petitions. This is a major change.

This Conference Report now allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce. 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. Provisions in this report change that.

I am very disappointed that some missing provisions that were in the House bill, H.R. 3083 are not in the Conference Report. They are provisions that: exempted fiancés from conditional residency requirements, a provision that extended VAWA to sons and daughters of legal permanent residents who are 21 and would allow them to include children in the self-petition; a provision that would have given battered immigrants the option of having children follow to join them rather than placing them in deportation proceedings; and deeply regret that there are no provisions in the re- port that provide access to food stamps to battered aliens; and access to housing, and access to benefits that would enable the alien to avoid battery or extreme cruelty in the future. We need this language 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.

Such compelling real-life stories illustrate the unique array of legal, economic, and social problems battered immigrant women face today. Most importantly, when these women are facing desperate times and struggles, they have children who are directly impacted. Often times when the mothers are in shelters or de- ported, the children become the custody of local child welfare agencies.

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. With the adoption of this report, a woman in this position is now provided relief. The language in this report will improve the lives of battered immigrants and send them on a path to re- building their lives and the lives of their children. I urge the adoption of this report.

While the sweeping provisions of Battered Immigrant Women are included in this report, there is also the reauthorization of the Violence Against Women Act for five years. The money for these programs will combat violence against women, including battered women’s shelters and services, sexual assault prevention programs and education and training judges. While I favored the Conyers version in committee, it does seem that compromise was reached to include some much needed provisions from his bill.”⁴³

REP. SCHAKOWSKY, IL

“When I had the privilege of traveling with the President to India, I saw little girls who had been sold into the sex industry. No child should be subjected to such horrors. We know that the Violence Against Women Act has saved lives and helped to rebuild even more. And I am grateful that my provisions to expand legal protections for battered immigrant women and children and to fund transitional housing for domestic abuse victims were included in the report.

The 1996 immigration laws made some changes that forced many immigrant women to remain in dangerous situations, putting themselves and their children at great risk. Today we have the opportunity to end this injustice. With the passage of this conference report, immigrant women will be empowered to move away from their abusers. They will have the additional legal protections along with access to critical transitional housing services that will enable them to alleviate the abuse and break the cycle of violence. Mr. Speaker, I urge my colleagues to vote yes on this conference report.”⁴⁴

REP. GEJDENSON, CT

“The bill also includes additional legislation that the conferees felt must be moved quickly. In particular, the legislation now includes the Violence Against Women Act of 2000. The original Violence Against Women Act expired last Thursday, leaving millions of American women without protection from the violence that they suffer in their lives. This Act reauthorizes through Fiscal Year 2005 the key programs included in the original Violence Against Women Act, such as the STOP, Pro- Arrest, Rural Domestic Violence and Child Abuse Enforcement, and campus grants; battered women’s shelters; the National Domestic Violence Hotline; rape prevention and education grant programs; and three victims of child abuse programs, including the court-appointed special advocate program (CASA). It also makes some improvements responding to the experience with the original act, including authorizing grants for legal assistance for victims of domestic violence, stalking, and sexual assault and strengthening and refining the protections for battered immigrant women, including a new visa for battered immigrant women. It is fitting that this bill addresses the severe problems of both trafficking and of violence against women in the United States.”⁴⁵

⁴³ 146 Cong. Rec. H9041-42 (2000).

⁴⁴ 146 Cong. Rec. H9035 (2000).

⁴⁵ 146 Cong. Rec. H9040 (2000).

. . . [T]he conference agreement on H.R. 3244 represents landmark legislation that not only seeks to put a stop to the heinous practices of modern-day slavery, but also addresses the millions of American women who face violence in their lives each year.⁴⁶

REP. PELOSI, CA

“We must work to support America’s young women, our future leaders, and this bill reaches out to them through efforts to prevent campus sex crimes and efforts to prevent teen suicide. In light of the recent attention to many immigration issues, I am pleased this bill addresses the needs of battered immigrant women and takes protective steps to address their plight.”⁴⁷

REP. SMITH, NJ

“Mr. Speaker, I am also very proud that Division B is the Violence Against Women Act of 2000, of which I was also a co-sponsor along with HENRY HYDE, BILL MCCOLLUM, CONNIE MORELLA and other colleagues from both parties. This Act includes provisions to reauthorize federal programs that combat violence against women, to strengthen law enforcement to reduce violence against women, to strengthen services to victims of violence, to limit the effects of violence on children, to strengthen education and training to combat violence against women, to enact new procedures for the protection of battered immigrant women, and to extend the Violent Crime Reduction Trust Fund.

Mr. Speaker, we cannot wait one more day to begin saving the millions of women and children who are forced every day to submit to the most atrocious offenses against their persons and against their dignity as human beings. I urge unanimous support for the Victims of Trafficking and Violence Protection Act of 2000.”⁴⁸

REP. MINK, HI

“Mr. Speaker, I rise today to urge all of my colleagues to vote for H.R. 3244, the Trafficking Victims Protection Act, which includes reauthorization of the Violence Against Women Act.

The Strengthened Violence Against Women Act (VAWA) we will vote on today reauthorizes current VAWA grant programs for five years, makes targeted improvements, and adds important new programs.

The bill strengthens law enforcement efforts to reduce violence against women, increases services to victims of violence, seeks to limit the effects of violence on children, enhances education and training to combat violence against women, and provides important new protections for battered immigrant women.

⁴⁶ 146 Cong. Rec. H9039 (2000).

⁴⁷ 146 Cong. Rec. H9041 (2000).

⁴⁸ 146 Cong. Rec. H9045 (2000).

The original VAWA bill authorized \$1.5 billion for programs to protect women and children from domestic abuse. The bill we will vote on today provides \$3.4 billion for the 2001–2005 reauthorization period.

The passage of the Violence Against Women Act in 1994 was one of the greatest accomplishments of the 103rd Congress and the Clinton Administration. Since 1995, VAWA grants have provided a major source of funding for national and local programs to reduce rape, stalking, and domestic violence. The 1994 Act bolstered the prosecution of child abuse, sexual assault, and domestic violence cases; provided services for victims by funding shelters and sexual assault crisis centers; increased resources for law enforcement and persecutors; and created a National Domestic Violence Hotline.”⁴⁹

REP. MORELLA, MD

These two bills form a natural alliance by protecting women around the globe from being abused, raped, bought, sold or forced against their will. We can all celebrate the message being sent to women everywhere when we pass this legislation that women’s minds and bodies are their own. By passing this conference report, we empower millions of women around the world to escape from pain and fear.⁵⁰

REP. NADLER, NY

The Violence Against Women Act] is grouped with part of the sex trafficking act. We all want to put an end to sex trafficking. That is a good provision.⁵¹

SECTION-BY-SECTION SUMMARY – DIVISION B. THE VIOLENCE AGAINST WOMEN ACT OF 2000

(CONGRESSIONAL RECORD –SENATE – OCTOBER 11, 2000 S10195-S10196)
Title V – Battered Immigrant Women

Strengthens and refines the protections for battered immigrant women in the original Violence Against Women Act. Eliminates a number of “catch 22” policies and unintended consequences of subsequent changes in immigration law to ensure that domestic abusers with immigrant victims are brought to justice and that the battered immigrants Congress sought to help in the original Act are able to escape the abuse.⁵²

TITLE V – The Battered Immigrant Women Protection Act of 2000—Section-by-Section Summary

Title V is designed to improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or leaving the abusive relationship.

⁴⁹ 146 Cong. Rec. H9046 (2000).

⁵⁰ 146 Cong. Rec. H9040 (2000).

⁵¹ 146 Cong. Rec. H9032 (2000).

⁵² 146 Cong. Rec. S10195 (2000).

This could happen because generally speaking, U.S. immigration law gives citizens and lawful permanent residents the right to petition for their spouses to be granted a permanent resident visa, which is the necessary prerequisite for immigration to the United States. In the vast majority of cases, granting the right to seek the visa to the citizen or lawful permanent resident spouse makes sense, since the purpose of family immigration visas is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse's visa as a means to blackmail and control the spouse. The abusive spouse would do this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse.⁵³

VAWA 1994 changed this by allowing immigrants who demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse. VAWA 1994 also allowed abused spouses placed in removal proceedings to seek "cancellation of removal," a form of discretionary relief from removal available to individuals in unlawful immigration status with strong equities, after three years rather than the seven ordinarily required. Finally, VAWA 1994 granted similar rights to minor children abused by their citizen or lawful permanent resident parent, whose immigration status, like that of the abused spouse, would otherwise be dependent on the abusive parent. VAWA 2000 addresses residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law.⁵⁴

Sec 1501. Short Title

Names this title the Battered Immigrant Women Protection Act of 2000.⁵⁵

Sec 1502. Findings and Purpose

Lays out as the purpose of the title building on VAWA 1994's efforts to enable battered immigrant spouses and children to free themselves of abusive relationships and report abuse without fear of immigration law consequences controlled by their abusive citizen or lawful permanent resident spouse or parent.⁵⁶

Sec. 1503. Improved Access to Immigration Protections of the Violence Against Women Act of 1994 for Battered Immigrant Women.

Allows abused spouses and children who have already demonstrated to the INS that they have been the victims of battery or extreme cruelty by their spouse or parent to file their own petition for a lawful permanent resident visa without also having to show they will suffer "extreme hardship" if forced to leave the U.S, a showing that is not required if their citizen or

⁵³ 146 Cong. Rec. S10195 (2000).

⁵⁴ 146 Cong. Rec. S10195 (2000).

⁵⁵ 146 Cong. Rec. S10195 (2000).

⁵⁶ 146 Cong. Rec. S10195 (2000).

lawful permanent resident spouse or parent files the visa petition on their behalf. Eliminates U.S. residency as a prerequisite for a spouse or child of a citizen or lawful permanent resident who has been battered in the U.S. or whose spouse is a member of the uniformed services or a U.S. government employee to file for his or her own visa, since there is no U.S. residency prerequisite for non-battered spouses' or children's visas. Retains current law's special requirement that abused spouses and children filing their own petitions (unlike spouses and children for whom their citizen or lawful permanent resident spouse or parent petitions) demonstrate good moral character, but modifies it to give the Attorney General authority to find good moral character despite certain otherwise disqualifying acts if those acts were connected to the abuse.

Allows a victim of battery or extreme cruelty who believed himself or herself to be a citizen's or lawful permanent resident's spouse and went through a marriage ceremony to file a visa petition as a battered spouse if the marriage was not valid solely on account of the citizen's or lawful permanent resident's bigamy. Allows a battered spouse whose citizen spouse died, whose spouse lost citizenship, whose spouse lost lawful permanent residency, or from whom the battered spouse was divorced to file a visa petition as an abused spouse within two years of the death, loss of citizenship or lawful permanent residency, or divorce, provided that the loss of citizenship, status or divorce was connected to the abuse suffered by the spouse. Allows a battered spouse to naturalize after three years residency as other spouses may do, but without requiring the battered spouse to live in marital union with the abusive spouse during that period.

Allows abused children or children of abused spouses whose petitions were filed when they were minors to maintain their petitions after they attain age 21, as their citizen or lawful permanent resident parent would be entitled to do on their behalf had the original petition been filed during the child's minority, treating the petition as filed on the date of the filing of the original petition for purposes of determining its priority date.⁵⁷

Sec. 1504. Improved Access to Cancellation of Removal and Suspension of Deportation under the Violence Against Women Act of 1994.

Clarifies that with respect to battered immigrants, IIRIRA's rule, enacted in 1996, that provides that with respect to any applicant for cancellation of removal, any absence that exceeds 90 days, or any series of absences that exceed 180 days, interrupts continuous physical presence, does not apply to any absence or portion of an absence connected to the abuse. Makes this change retroactive to date of enactment of IIRIRA. Directs Attorney General to parole children of battered immigrants granted cancellation until their adjustment of status application has been acted on, provided the battered immigrant exercises due diligence in filing such an application.⁵⁸

Sec 1505. Offering Equal Access to Immigration Protections of the Violence Against Women Act of 1994 for All Qualified Battered Immigrant Self-Petitioners.

Grants the Attorney General the authority to waive certain bars to admissibility or grounds of deportability with respect to battered spouses and children. New Attorney General

⁵⁷ 146 Cong. Rec. S10195 (2000).

⁵⁸ 146 Cong. Rec. S10195 (2000).

waiver authority granted (1) for crimes of domestic violence or stalking where the spouse or child was not the primary perpetrator of violence in the relationship, the crime did not result in serious bodily injury, and there was a connection between the crime and the abuse suffered by the spouse or child; (2) for misrepresentations connected with seeking an immigration benefit in cases of extreme hardship to the alien (paralleling the AG's waiver authority for spouses and children petitioned for by their citizens or lawful permanent resident spouse or parent in cases of extreme hardship to the spouse or parent); (3) for crimes of moral turpitude not constituting aggravated felonies where the crime was connected to the abuse (similarly paralleling the AG's waiver authority for spouses and children petitioned for by their spouse or parents); (4) for health related grounds of inadmissibility (also paralleling the AG's waiver authority for spouses and children petitions for by their spouse or parent); and (5) for unlawful presence after a prior immigration violation, if there is a connection between the abuse and the alien's removal, departure, reentry, or attempted reentry. Clarifies that a battered immigrant's use of public benefits specifically made available to battered immigrants in PRWORA does not make the immigrant inadmissible on public charge ground.⁵⁹

Sec. 1506. Restoring Immigration Protections under the Violence Against Women Act of 1994.

Establishes mechanisms paralleling mechanism available to spouses and children petitioned for by their spouse or parent to enable VAWA-qualified battered spouse or child to obtain status as lawful permanent resident in the United States rather than having to go abroad to get a visa.

Addresses problem created in 1996 for battered immigrants' access to cancellation of removal by IIRIRA's new stop-time rule. That rule was aimed at individuals gaming the system to gain access to cancellation of removal. To prevent this, IIRIRA stopped the clock on accruing any time towards continuous physical presence at the time INS initiates removal proceedings against an individual. This section eliminates application of this rule to battered immigrant spouses and children, who if they are sophisticated enough about immigration law and has sufficient freedom of movement to "game the system," presumably would have filed self-petitions, and more likely do not even know that INS has initiated proceedings against them because their abusive spouse or parent has withheld their mail. To implement this change, allows a battered immigrant spouse or child to file a motion to reopen removal proceedings within 1 year of the entry of an order of removal (which deadline may be waived in the Attorney General's discretion if the Attorney General finds extraordinary circumstances or extreme hardship to the alien's child) provided the alien files a complete application to be classified as VAWA-eligible at the time the alien files the re-opening motion.⁶⁰

Sec. 1507. Remediating Problems with Implementation of the Immigration Provisions of the Violence Against Women Act of 1994

Clarifies that Negative changes of immigration status of abuser or divorce after abused spouse and child file petition under VAWA have no effect on status of abused spouse or child. Reclassifies abused spouse or child as spouse or child of citizen if abuser becomes citizen

⁵⁹ 146 Cong. Rec. S10195-96 (2000).

⁶⁰ 146 Cong. Rec. S10196 (2000).

notwithstanding divorce or termination of parental rights (so as not to create incentive for abuse victim to delay leaving abusive situation on account of potential future improved immigration status of abuser). Clarifies that remarriage has no effect on pending VAWA immigration petition.⁶¹

Sec. 1508. Technical Correction to Qualified Alien Definition for Battered Immigrants

Makes technical change of description of battered aliens allowed to access certain public benefits so as to use correct pre-IIRIRA name for equitable relief from deportation/removal (“suspension of deportation” rather than “cancellation of removal”) for pre-IIRIRA cases.⁶²

Sec. 1509. Access to Cuban Adjustment Act for Battered Immigrant Spouses and Children

Allows battered spouses and children to access special immigration benefits available under Cuban Adjustment Act to other spouses and children of Cubans on the basis of the same showing of battery or extreme cruelty they would have to make as VAWA self-petitioners; relates them of Cuban Adjustment Act with showing that they are residing with their spouse/parent.⁶³

Sec. 1510. Access to the Nicaraguan Adjustment and Central American Relief Act for Battered Spouses and Children

Provides access to special immigration benefits under NACARA to battered spouses and children similarly to the way section 509 does with respect to Cuban Adjustment Act.⁶⁴

Sec. 1511. Access to the Haitian Refugee Fairness Act of 1998 for Battered Spouses and Children

Provides access to special immigration benefits under HRIFA to battered spouses and children similarly to the way section 509 does with respect to Cuban Adjustment Act.⁶⁵

Sec. 1512. Access to Services and Legal Representation for Battered Immigrants

Clarifies that Stop grants, Grants to Encourage Arrest, Rural VAWA grants, Civil Legal Assistance grants, and Campus grants can be used to provide assistance to battered immigrants. Allows local battered women’s advocacy organizations, law enforcement or other eligible Stop grants applicants to apply for Stop funding to train INS officers and immigration judges as well as other law enforcement officers on the special needs of battered immigrants.⁶⁶

Sec. 1513. Protection for Certain Crime Victims Including Victims of Crimes Against Women

⁶¹ 146 Cong. Rec. S10196 (2000).

⁶² 146 Cong. Rec. S10196 (2000).

⁶³ 146 Cong. Rec. S10196 (2000).

⁶⁴ 146 Cong. Rec. S10196 (2000).

⁶⁵ 146 Cong. Rec. S10196 (2000).

⁶⁶ 146 Cong. Rec. S10196 (2000).

Creates new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime. The crime must involve rape, torture, trafficking, incest, sexual assault, domestic violence, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, man- slaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, attempt or conspiracy to commit any of the above, or other similar conduct in violation of Federal, State, or local criminal law. Caps visas at 10,000 per fiscal year. Allows Attorney General to adjust these individuals to lawful permanent resident status if the alien has been present for 3 years and the Attorney General determines this is justified on humanitarian grounds, to promote family unity, or is otherwise in the public interest.⁶⁷

VAWA 2000 LEGISLATIVE HISTORY WRITTEN INTO THE STATUTE QUOTES FROM THE STATUE PUBLIC LAW 106-386 OCT. 28, 2000

In VAWA 2000, the statute was drafted to include legislative history in the statute in findings and purpose sections that were an important part of the legislation itself. These sections of VAWA however, do not become part of the U.S. Code. The following include the sections of VAWA and the TVPA discussing the purpose and making findings regarding the Battered Immigrant Protections in VAWA 2000, the creation of the U Visa to protect immigrant crime victims, and the Trafficking Victim’s Protection Act’s findings on human trafficking and the need for the TVPA.

Statutes Legislative History of VAWA 2000’s Battered Immigrant Women Protections

TITLE V—BATTERED IMMIGRANT WOMEN SEC. 1502. 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 frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control; and

⁶⁷ 146 Cong. Rec. S10196 (2000).

(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 as a result of action by their abusers 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 title are.—

(1) To remove barriers to criminal prosecutions of persons who commit act of battery or extreme cruelty against immigrant women and children; and

(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.

SEC. 1512. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(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 domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary

legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

Statute’s Legislative History of U Visas

FINDINGS AND PURPOSE

STATUTORY LANGUAGE ON U VISA FINDINGS AND PURPOSE

“SEC. 1502. 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 without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control; 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 as a result of action by their abusers 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 title are—

- (1) to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and
- (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.”⁶⁸

⁶⁸ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106–386 §1513(a) (OCT. 28, 2000).

Legislative History of T visas and the Trafficking Victims Protection Act

The following section discusses the legislative history of the Trafficking Victim's Protection Act (TVPA). It begins with quoting the Congressional Findings that discuss the purpose, goals, and congressional findings supporting passage of the TVPA. The findings contained in the TVPA statute are followed by quotes from statements by members of Congress these statements start off with statements discussing these findings in more detail. Topics addressed include Modern day slavery, international cooperation on curbing human trafficking and helping victims, trafficking case examples and the role of organized crime in human trafficking.

This section also contains the statutory text of the purpose of the TVPA followed by statements by members of Congress regarding the TVPA's purpose. Topics covered include the bipartisan development of the TVPA, the importance of services and support for victims as well as and in addition to holding traffickers accountable for their crimes.

FINDINGS:⁶⁹

Congress finds that:

- (1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.
- (2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.
- (3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.
- (4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, salesclerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

⁶⁹ Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

- (5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.
- (6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.
- (7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.
- (8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.
- (9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.
- (10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.
- (11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.
- (12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.
- (13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of title 18, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

- (14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.
- (15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.
- (16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.
- (17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.
- (18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.
- (19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.
- (20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.
- (21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.
- (22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.
- (23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international

concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

- (24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

Trafficking Victim's Protection Act Legislative History – Statements by Members of Congress

History and Purpose

SEN. SANTORUM, PA

- *One of the most disturbing human rights violations of our time is trafficking of human beings, particularly that of women and children, for purposes of sexual exploitation and forced labor. Every year, the trafficking of human beings for the sex trade affects hundreds of thousands of women throughout the world. Women and children whose lives have been disrupted by economic collapse, civil wars, or fundamental changes in political geography have fallen prey to traffickers. According to the Department of State, approximately 1-2 million women and girls are trafficked annually around the world.⁷⁰*

REP. SMITH, NJ

- *Each year as many as two million innocent victims—of whom the overwhelming majority are women and children—are brought by force and/or fraud into the international commercial sex industry. Efforts by the United States government, international organizations, and others to stop this brutal practice have thus far proved unsuccessful.*

⁷⁰ 146 Cong. Rec. S10199 (2000).

*Part of the problem is that current laws and law enforcement strategies—in the United States as in other nations—often punish victims more than they punish the perpetrators.*⁷¹

REP. PITTS, PA

- *‘Sexual trafficking is a huge problem that urgently needs to be addressed. To conceptualize how immense the problem is, imagine a city the size of Minneapolis or St. Louis, made up entirely of women and children. Imagine that those women and children are kidnapped, raped, and forced into prostitution. Imagine it happening every year. Then stop imagining, because it is happening now and in those numbers.’ (quoting Dr. Laura Lederer)*⁷²

REP. PRYCE, OH

- *Victims of trafficking are first acquired in a number of different ways. Some are forcibly kidnapped and taken out of their countries. Others are deceived with offers of good work or a better life. But no matter how they are taken, trafficking victims are universally subject to cruel mental and physical abuse, including beatings, rape, starvation, forced drug use, confinement and seclusion. Many victims suffer mental breakdowns and are exposed to sexually transmitted diseases. Ultimately, many cannot survive these harsh conditions.*⁷³

REP. SLAUGHTER, NY

- *This bill recognizes the fact that trafficking is not exclusively a crime of sexual exploitation. Taken independently, this action is an egregious practice in and of itself. It is also important, however, to be aware that people are being illegally smuggled across borders to work in sweatshops, domestic servitude or other slavery-like conditions.*⁷⁴

REP. GEJDENSON, CT

- *One of the most shocking aspects of this problem is that our laws often punish the victims, not the international criminal syndicates perpetrating these abuses. We need to reverse this situation.*⁷⁵

REP. MILLENDER-MCDONALD, CA

- *Trafficking is a grave human rights, economic, migration, and transnational crimes issue.*⁷⁶

⁷¹ 146 Cong. Rec. H9045 (2000).

⁷² 146 Cong. Rec. H9043 (2000).

⁷³ 146 Cong. Rec. H9030 (2000).

⁷⁴ 146 Cong. Rec. H9030 (2000).

⁷⁵ 146 Cong. Rec. H9039 (2000).

⁷⁶ 146 Cong. Rec. H9044 (2000).

SEN. WELLSTONE, MN

- *“Our Government estimates that 2 million people are trafficked each year. Of those, 700,000 women and children, primarily young girls, are trafficked from poor countries to rich countries and sold into slavery, raped, locked up, physically and psychologically abused with food and health care withheld. Of those, as many as 50,000 immigrants are brought into the United States each year, and they wind up trapped in brothels, sweatshops, and other types of forced labor, abused and too fearful to seek help.”*⁷⁷
- *“Seeking financial security, many innocent persons are lured by traffickers’ false promises of a better life and lucrative jobs abroad. Seeking this better life, they are lured by local advertisements for good jobs in foreign countries at wages they could never imagine at home. However, when they arrive, these victims are often stripped their passports, held against their will, some in slave-like conditions, in the year 2000.”*⁷⁸
- *“This legislation aims to prevent trafficking in persons, provide protection and assistance to those who have been trafficked, and strengthen prosecution and punishment for those who are responsible for the trafficking. It is designed to help Federal law enforcement officials expand anti-trafficking efforts here and abroad, to expand domestic anti-trafficking and victim assistance efforts, and to assist nongovernment organizations, governments and others worldwide, who are providing critical assistance to victims of trafficking. It addresses the underlying problems which fuel the trafficking industry by promoting public anti-trafficking awareness campaigns and initiatives in other countries to enhance economic opportunity, such as microcredit lending programs and skills training, for those who are most susceptible to trafficking, and have an outreach so women and girls as young as 10 and 11 know what they might be getting into.”*⁷⁹
- *“It also increases protections and services for trafficking victims by establishing programs designed to assist in the safe reintegration of victims into their communities and ensure that such programs address both the physical and mental health needs of trafficking victims.”*⁸⁰

Modern Slavery

REP. SMITH, NJ

- *Most of our nation’s citizens may still believe that the trafficking of human beings ended with the Fourteenth Amendment to our Nation’s Constitution, which outlawed the practice of slavery.*⁸¹

⁷⁷ 146 Cong. Rec. S10167 (2000).

⁷⁸ 16 Cong. Rec. S10167 (2000).

⁷⁹ 146 Cong. Rec. S10167 (2000).

⁸⁰ 146 Cong. Rec. S10168 (2000).

⁸¹ 146 Cong. Rec. H9034 (2000).

REP. HYDE, IL

- *The . . . bill . . . addresses one of the enduring and pernicious forms of slavery that still blights our time. While Lincoln may have freed the slaves in America, there are those today who engage in other forms of slavery on persons of many colors. Throughout the world there are criminals who smuggle persons into this country, principally women and children, in order to force them into sexual slavery, or to work in sweatshops for years in order to pay off the exorbitant fees charged by their traffickers for their illegal entry.*⁸²

SEN. BROWNBACK,

- *“Irina always assumed that her beauty would somehow rescue her from the poverty and hopelessness of village life. A few months ago, after answering a vague ad in a small Ukrainian newspaper, she slipped off a small tour boat, when it out in at Haifa, hoping to make a bundle dancing naked on tops of tables. She was 21, self-assured, and glad to be out of Ukraine. Israel offered a new world, and for a week or two everything seemed possible. Then, one morning, she was driven to a brothel, where her boss burned her passport before her eyes. “I own you,” she recalled his saying. “You are my property and you will work until you earn your way out. Don’t try to leave. You have no papers and you don’t speak Hebrew. You will be arrested and deported. Then we will get you and bring you back.”*⁸³

International Cooperation

SEN. HUTCHINSON, AR

- *It is a sad consequence of globalization that crime has become more international in its scope and reach. These seedy sex industries know no boundaries. Traffickers use international borders to trap their victims in a foreign land without passports, without the ability to communicate in the local language, and without hope. But, just as trafficking as become global, so must our efforts to fight trafficking.*⁸⁴

SEN. ASHCROFT, MO

- *Unfortunately, existing laws in the United States and other countries are inadequate to deter trafficking, primarily because they do not reflect the gravity of the offenses involved. Where countries do have laws against sexual trafficking, there is too often no enforcement.*⁸⁵

REP. MILLENDER-MCDONALD, CA

- *H.R. 3244 engages the U.S. government with foreign countries to meet minimum standards for the elimination of trafficking and establishes a policy not to provide non-*

⁸² 146 Cong. Rec. H9038 (2000).

⁸³ 146 Cong. Rec. S10164 (2000).

⁸⁴ 146 Cong. Rec. S10217 (2000).

⁸⁵ 146 Cong. Rec. S10221 (2000).

*humanitarian foreign assistance to countries which do not meet these minimum standards.*⁸⁶

SEN. UDALL, CO

- *Worldwide, the conference report takes important steps to make the United States a full partner in the international effort to curb exploitation of women who are the victims of the international sex trade. This is very important because recent favorable international developments—including the breakup of the Soviet Union and greater freedom of travel—have also had the effect of making it easier for this exploitation to occur.*⁸⁷

REP. FOLEY, FL

- *. . . [R]egrettably, there is not enough internationally being done in other countries to make certain that they are enforcing the laws as well. So this goes to the heart of both domestic combatting of these issues, as well as working with our foreign colleagues, foreign governments, in order to meet a higher standard, an international standard for elimination of the trafficking of individuals. So I commend my colleagues to vote for this entirety of this report. I think it is a solid bill.*⁸⁸

SEN. HELMS, NC

- *Significantly, the legislation calls on the executive branch to identify clearly the nations where trafficking is the most prevalent. For regimes that know there is a problem within their borders, but refuse to do anything about it, there will be consequences. No country has a right to foreign aid. The worst trafficking nations must have such U.S. aid cut off. And if they don't receive U.S. bilateral aid, then their officials will be barred from coming onto American soil. Our principles demand these significant and important symbolic steps. Some may complain that this is another "sanction" in the alleged proliferation of sanctions Congress passes. But denying taxpayer-supported foreign aid is not a "sanction." Foreign aid is not an entitlement.*⁸⁹

REP. MCCARTHY, MO

- *This lifesaving legislation for women and girls in the United States is a strong, positive example to all nations around the world that violence against women and girls is intolerable and must end.*⁹⁰

⁸⁶ 146 Cong. Rec. H9044 (2000).

⁸⁷ 146 Cong. Rec. H9046 (2000).

⁸⁸ 146 Cong. Rec. H9032-33 (2000).

⁸⁹ 146 Cong. Rec. S10212 (2000).

⁹⁰ 146 Cong. Rec. H9046 (2000).

REP. GEJDENSON, CT

- *By our action, we can encourage other countries to do more, and several countries have already indicated that they are looking at U.S. legislation as a model for their own response.*⁹¹

REP. LOWEY, NY

- *This legislation devotes critical funds to helping foreign governments fight trafficking and assist their victims, and pledges the full force of U.S. law to stopping this practice here at home.*⁹²

Cases of Trafficking

REP. GEJDENSON, CT

- *According to human rights organizations, in a typical case, a woman is recruited with promises of a good job in another country or province, and lacking better options at home, she agrees to migrate. There are also cases in which women are lured with false marriage offers or vacation invitations, in which children are bartered by their parents for a cash advance and/or promises of future earnings, or in which victims are abducted outright. Next an agent makes arrangements for the woman's travel and job placement, obtaining the necessary travel documentation, contacting employers or job brokers, and hiring an escort to accompany the woman on her trip. Once the arrangements have been made, the woman is escorted to her destination and delivered to an employer or to another intermediary who brokers conditions of her employment. Many women learn they have been deceived about the nature of the work they will do, most have been lied to about the financial arrangements and conditions of their employment, and all find themselves in coercive and abusive situations from which escape is both difficult and dangerous.*⁹³
- *In New York, hearing impaired men and women were recruited from Mexico and brutalized into selling trinkets on the street. In the Carolinas, teenage girls were held in slavery and forced to work as prostitutes. In Chicago, traffickers met Russian and Latvian women at the airport, seized their passports and return tickets, beat them and threatened to kill their families if they refused to dance nude in a nightclub. In Florida, traffickers used alcohol and drugs to lure field workers to isolated locations and hold them under cruel conditions of debt bondage. In New Jersey, a Bangladeshi woman was forced to work 18 to 20 hours a day, seven days a week, and after receiving no pay for 3 months, was forced to leave upon asking for her back pay and given only for her entire work \$370, amounting to 25 cents an hour. She was also forced to shovel snow in the sandals she arrived in, and when she got sick, they refused to take her to a doctor. They told her not to go out on her own, that the police were surely waiting to arrest her. In*

⁹¹ 146 Cong. Rec. H9039 (2000).

⁹² 146 Cong. Rec. H9043 (2000).

⁹³ 146 Cong. Rec. H9039 (2000).

California, a Thai boy who had contracted AIDS through his prostitute mother was used as a decoy to try to traffic a woman into the United States, trying to make immigration officials believe that the two adults accompanying him were his parents. Right here in Washington, D.C., we heard cases of a woman who was paid virtually nothing and then sexually abused and refused any medical treatment.⁹⁴

REP. MILLENDER-MCDONALD, CA

- *While many of us are prospering in the global economy, still others are exploited by traffickers seeking to capitalize on foreign labor markets, the disintegrating social networks, and lower status of women. Victims are lured into trafficking networks through false promises of jobs, good working conditions, high pay and foreign adventure. Yet, slave-like conditions in jobs as domestic workers, factory workers, sex workers, nannies, waitresses, and service workers mire trafficked women and children at the bottom, lock them into the most insecure occupations, and leave victims open to ongoing exploitation and isolation.⁹⁵*

REP. SMITH, NJ

- *When a sex-for-hire establishment is raided, the women (and sometimes children) in the brothel are typically deported if they are not citizens of the country in which the establishment is located—without reference to whether their participation was voluntary or involuntary, and without reference to whether they will face retribution or other serious harm upon return. This not only inflicts further cruelty on the victims, it also leave nobody to testify against the real criminals, and frightens other victims from coming forward.⁹⁶*

SEN. HUTCHINSON, AR

- *Inge had hoped for a better life when she left her home in Veracruz, Mexico—for legitimate work that would pay her well. She was hoping to earn money in a restaurant or a store and earn money to bring back to her family. She never expected a smuggling debt of \$2,200. She never expected to be beaten and raped until she agreed to have sex with 30 men a day. She never expected to be a slave—especially not in the United States—not in Florida. So she got drunk before the men arrived. And when her shift was done, she drank some more. Inge would soak herself in a bathtub filled with hot water—drinking, crying, smoking one cigarette after another—trying any way she could to dull the pain. And she would go to sleep drunk or pass out—until the next day when she had to do it all again. Unfortunately, Inge’s case is not unique. It is a horrific story played out every day in countries all over the world.⁹⁷*

SEN. BROWNBACK, KS

⁹⁴ 146 Cong. Rec. H9039 (2000).

⁹⁵ 146 Cong. Rec. H9044 (2000).

⁹⁶ 146 Cong. Rec. H9045 (2000).

⁹⁷ 146 Cong. Rec. S10217 (2000).

- *I can still see the girls I met in Nepal who were trafficked at 11 and 12 years of age, coming back to their home country and to their villages, 16, 17 years of age, in terrible condition, having been subjected to sex trafficking, beaten by brothel owners, in some cases locked up at night, raped repeatedly, and told, “You have to work this off; I own you,” and then released to go home when they contract horrible diseases. In not all cases that works that way, but in too many cases it does work that way.*⁹⁸

SEN. WELLSTONE,

- *“‘I answered an ad to be a waitress,’ said Tamara, 19, a Ukrainian prostitute in a massage parlor near Tel Aviv’s old Central Bus Station, a Russian-language ghetto for the cheapest brothels. ‘I’m not sure I would go back now if I could. What would I do there, stand on a bread line or work in a factory for no wages?’ Tamara, like all other such women interviewed for this article, asked that her full name not be published. She has classic Slavic features, with long blond hair and deep green eyes. She turned several potential customers away so she could speak at length with a reporter. She was willing to talk as long as her boss was out. She said she was not watched closely while she remained within the garish confines of the ‘health club.’ ‘I didn’t plan to do this,’ she said, looking sourly at the rich red walls and leopard prints around her. ‘They took my passport, so I don’t have much choice. But they do give me money. And believe me, it’s better than anything I could ever get at home.’”*⁹⁹

REP. LOWEY, NY

- *[L]ast March I was honored to be in Southeast Asia. We heard the terrifying stories of trafficking victims and spoke with dedicated individuals who have devoted their lives to helping those women. Today, we have the opportunity to assure these women and children that they are not alone; that the international community recognizes their struggle and is committed to putting an end to this barbaric practice.*¹⁰⁰

REP. MILLENDER-MCDONALD, CA

- *Approximately 50,000—100,000 women and children are trafficked into the United States each year primarily from Southeast Asia and the former Soviet Union.*¹⁰¹

Organized Crime

REP. MCCARTHY, MO

- *Currently, trafficking is the third largest source of profits for organized crime. America has a responsibility to address this problem because over 50,000 women are illegally trafficked into our country each year. Through prevention and immigration services, this*

⁹⁸ 146 Cong. Rec. S10211 (2000).

⁹⁹ 146 Cong. Rec. S10169 (2000).

¹⁰⁰ 146 Cong. Rec. H9043 (2000).

¹⁰¹ 146 Cong. Rec. H9044 (2000).

*measure will aid these women who have been forcibly removed from their homes and shipped overseas.*¹⁰²

REP. PRYCE, OH

- *This is a major criminal enterprise generating billions of dollars annually. Trafficking is now considered the third largest source of profits for organized crime, behind only drugs and guns.*¹⁰³

REP. SMITH, NJ

- *. . . [W]e all know now that especially with the breakup of the Soviet Union and the ascendancy of the Mob, organized crime in Moscow, in the Ukraine, and all around the world, is trafficking in women and children as never before. The estimates are as high as 2 million individuals, mostly women, who are being trafficked every year. About 50,000 are coming into the United States, and many of those are forced into prostitution.*¹⁰⁴
- *We have had three hearings in my subcommittee on this issue, and we heard from the victims themselves, who talked about how even the NGOs . . . are under tremendous duress by the Mafia, as well as very much underfunded.*¹⁰⁵

SEN. HUTCHINSON, AR

- *These women and children are forced into the sex industry or forced into harsh labor, often by well-organized criminal networks. Traffickers disproportionately target women and girls—all this for money.*¹⁰⁶

LEGISLATIVE PURPOSE OF THE TRAFFICKING VICTIM'S PROTECTION ACT AND STATEMENTS BY MEMBERS:¹⁰⁷

The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

SEN. HUTCHINSON, AR

- *Trafficking of women and children is more than a crime—it is an assault on freedom. It is an assault on that founding principle of our nation, “. . . that all men are created equal, that they are endowed by their Creator with certain unalienable rights. . . .” It is an assault on the very dignity of humanity. Yet the protections we have against trafficking are inadequate. That is why the Trafficking Victims Protection Act is so vital.*¹⁰⁸

¹⁰² 146 Cong. Rec. H9046 (2000).

¹⁰³ 146 Cong. Rec. H9030 (2000).

¹⁰⁴ 146 Cong. Rec. H9033 (2000).

¹⁰⁵ 146 Cong. Rec. H9033 (2000).

¹⁰⁶ 146 Cong. Rec. S10217 (2000).

¹⁰⁷ Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

¹⁰⁸ 146 Cong. Rec. S10217 (2000).

SEN. BROWNBAC, KS

- *This is an important day for women and children subject to violence, both domestically and abroad. It is an important day that this body is going to follow the House and put in place needed protections for people, women and children, subject to this violence, both domestically and abroad. It is an important day for those who have worked as advocacy groups and defenders of the defenseless, including people trafficked across international borders, with their papers burned and told: You owe.*¹⁰⁹
- *If I can encourage you anymore, I say pull out a picture from your billfold, pull out a picture of a child or grandchild. Those are the ages, somewhere between 9 and 15, who are the most frequently trafficked victims. Young ages.*¹¹⁰

REP. SMITH, NJ

- *The central principle behind the Trafficking Victims Protection Act is that criminals who knowingly operate enterprises that profit from sex acts involving persons who have been brought across international boundaries for such purposes by force or fraud, or who force human beings into slavery, should receive punishment commensurate with the penalties for kidnapping and forcible rape. This would be not only a just punishment, but also a powerful deterrent.*¹¹¹
- *We want all of the world's governments, especially those that are countries of origination, to do all that they can to mitigate and hopefully end this egregious practice.*¹¹²

REP. PAYNE, NJ

- *This act will work to combat trafficking in persons, especially into the sex trade, slavery and involuntary servitude in the United States and in other countries; it also enacts tough criminal laws against buying, selling, either by force, fraud or coercion, or where the victim is a minor. It authorizes the rehabilitation and shelter programs; it authorizes law enforcement assistance to help foreign governments fight trafficking; and encourages the Secretary of State to produce an annual list of foreign countries who do not meet minimum international standards to eliminate trafficking. This has grown tremendously. Some report it at least \$7 billion per year, second only to drug and international arms trade. The victims are young people who have no hope.*¹¹³

SEN. ASHCROFT, MO

- *It is tragic that as we stand on the brink of the 21st Century the world is still haunted by the practice of international trafficking of women and children for sex, forced labor and*

¹⁰⁹ 146 Cong. Rec. S10211 (2000).

¹¹⁰ 146 Cong. Rec. S10212 (2000).

¹¹¹ 146 Cong. Rec. H9045 (2000).

¹¹² 146 Cong. Rec. H9033 (2000).

¹¹³ 146 Cong. Rec. H9043 (2000).

*for other purposes that violate basic human rights. The frequency of these practices is frightening.*¹¹⁴

REP. PELOSI, CA

- *The Sex Trafficking Victims Protection Act will help end trafficking—a terrible modern version of slavery—that rapes, starves, physically brutalizes its victims, ultimately victimizing all women. Since many victims residing in the U.S. lack U.S. citizenship or appropriate documentation, existing U.S. laws are inadequate to protect these victims. This bill seeks to end trafficking and ensure traffickers are held accountable for their crimes. (Pelosi, CA)*¹¹⁵

REP. HYDE, IL

- *Twelve years ago, the Supreme Court held that our existing anti-slavery statutes only prohibited the use of force or the abuse of the legal process to force a person into involuntary servitude. But the sad fact is that those who traffic in human beings today also use deceptive schemes and other lies, together with threats of force to family members in a home country, to coerce the victim into labor . . . it will fill another gap in the law by punishing, for the first time, those who traffic in human beings in order to provide the supply of labor to those who will enslave them once they arrive on our shores. The legislation will also substantially increase the penalties for the existing involuntary servitude laws already on the books.*¹¹⁶
- *This conference report will prevent and punish sex trafficking and other forms of trafficking in human beings. As such, it is another step toward the full and complete enforcement of the anti-slavery amendments to our Constitution.*¹¹⁷

REP. PRYCE, OH

- *This legislation combats the trafficking of persons into the sex trade, slavery, and slavery-like conditions in the United States and many other countries around the world. Through prevent, prosecution and enforcement against traffickers, as well as protection and assistance for victims of trafficking, this important legislation fairly allocates resources, modifies existing law, and increases international cooperation to decrease the global trade of men, women, and children.*¹¹⁸
- *H.R. 3244 works to prevent trafficking through measures to increase awareness and enhance economic opportunity for potential victims of trafficking as a method to deter them from becoming victims in the first place. Further, this legislation urges countries to prohibit and punish severe forms of trafficking and establishes minimum standards*

¹¹⁴ 146 Cong. Rec. S10221 (2000).

¹¹⁵ 146 Cong. Rec. H9041 (2000).

¹¹⁶ 146 Cong. Rec. H9038 (2000).

¹¹⁷ 146 Cong. Rec. H9038 (2000).

¹¹⁸ 146 Cong. Rec. H9030 (2000).

*applicable to countries that have a significant trafficking problem and assistance for programs and activities designed to meet these standards.*¹¹⁹

- *For those who are unfortunate enough to have been trafficking victims, the legislation establishes programs and initiatives to assist in their safe integration, reintegration, or resettlement. For victims in the United States, the bill provides protection while in Federal custody and amends current law to grant non-immigrant visas to victims who would face a significant possibility of retribution or other harm if they were forced to leave. In addition, we make those funds seized from traffickers available for victims' restitution and victims' assistance programs.*¹²⁰

SEN. HELMS, NC

- *This conference report is a solid and effective measure to help the victims of violence and abuse, the kind of abuse which is nothing short of evil. Those victims are most often women and children, and this legislation goes a long way to protect them.*¹²¹
- *[T]his conference report is a splendid example of Congress reasserting its moral underpinning in U.S. foreign policy. It will effectively combat the disgrace of women and children being smuggled, bought and sold as pathetic commodities—most often for the human beasts who thrive on prostitution.*¹²²

REP. MILLENDER-MCDONALD, CA

- *In our county, where we have fought to secure women rights for nearly a century, we too are plagued by these terrible practices. Women and girls suffer extreme physical and mental abuse including rape, torture, starvation, imprisonment and sometimes death. Women and children trafficked in the sex industry are exposed to deadly disease including HIV and AIDS.*¹²³
- *H.R. 3244 will permit the U.S. government to extend our efforts to combat trafficking in women and children and ensure a just and effective punishment of traffickers and protect their victims.*¹²⁴

REP. LEE, CA

- *Women and children are depending on passage of this important provision within this bill to help stop violent crimes too often committed against them. H.R. 3244 addresses the devastating problems of international sex trafficking, sexual predators, violence against women and much more.*¹²⁵

¹¹⁹ 146 Cong. Rec. H9030 (2000).

¹²⁰ 146 Cong. Rec. H9030 (2000).

¹²¹ 146 Cong. Rec. S10212 (2000).

¹²² 146 Cong. Rec. S10212 (2000).

¹²³ 146 Cong. Rec. H9044 (2000).

¹²⁴ 146 Cong. Rec. H9044 (2000).

¹²⁵ 146 Cong. Rec. H9040 (2000).

REP. SLAUGHTER, NY

- *H.R. 3244 sets forth policies not only to monitor but to eliminate trafficking here in the United States and abroad. More importantly, it does so in a way that punishes the true perpetrators, the traffickers themselves, while at the same time taking the necessary steps to protect the victims of this heinous crime. Finally, it uses our Nation's considerable influence throughout the world to put pressure on other nations to adopt policies that will hopefully lead to an end [to] this abhorrent practice.*¹²⁶

REP. GEJDENSON, CT

- *It is simply intolerable that as we begin the 21st century, human beings are being trafficked into modern day slavery, including thousands of women and children trafficked into the United States each year.*¹²⁷

REP. MALONEY, NY

- *Attacking the sex trafficking industry is an important step in the continued fight for women's rights and freedom around the world.*¹²⁸

REP. SLOUGHTER, NY

- *[D]eveloping this initiative has been a long and arduous process. At the beginning of this endeavor many of the groups involved had different approaches to defining and dealing with this issue. In addition, we also had to deal with a State Department that was less than cooperative when dealing with the Congress. Nevertheless, we are here today because this is an issue that is important enough to cross both partisan and personality divides.*¹²⁹

REP. FOLEY, FL

- *. . . [T]he Trafficking Victims Protection Act, it is again a very important provision of the bill. I think if people read through the bill, they would not use words like "foolish" or "political sound bites," but recognize these are indeed very, very important issues.*¹³⁰

Bipartisan Development

REP. GEJDENSON, CT

- *At so many junctures over the past months, the bill appeared headed towards the very full dustbin on the 106th Congress, but with tremendous bipartisan work both in this House*

¹²⁶ 146 Cong. Rec. H9030 (2000).

¹²⁷ 146 Cong. Rec. H9039 (2000).

¹²⁸ 146 Cong. Rec. H9044 (2000).

¹²⁹ 146 Cong. Rec. H9030 (2000).

¹³⁰ 146 Cong. Rec. H9032 (2000).

*and in the other body, I am happy to report that we are reporting a good bill to the house of Representatives.*¹³¹

- *Now, the Clinton Administration is negotiating an international protocol to end trafficking in human beings, and the Congress is doing its part by passing comprehensive legislation. A broad coalition from across the political and ideological spectrum helped move this issue to the top of the national agenda.*¹³²

REP. SMITH, NJ

- *H.R. 3244 has attracted such broad support not only because it is pro-woman, pro-child, pro-human rights, pro-family values, and anti-crime, but that also addresses a problem that cries out for a solution.*¹³³
- *. . . [T]his is the result of an enormous amount of bipartisanship.*¹³⁴
- *Our legislation . . . has been very bipartisan. It throws the book at those who would commit these heinous crimes and make money off the exploitation of women and children.*¹³⁵

REP. GILMAN, NY

- *Although the administration initially opposed the legislation, I am pleased they have now considered their position and ultimately came to recognize the necessity for this measure.*¹³⁶

TRAFFICKING BILL VICTIM PROTECTIONS INCLUDING T VISAS

REP. PITTS, PA

- *As Americans, we have always worked for justice and freedom in our borders and worldwide, and that is what this bill is all about; justice through criminal penalties and victim restitution for those who would traffic women and children, and freedom for the victims as the United States takes the lead in fighting to end this criminal business around the world.*¹³⁷

SEN. SANTORUM, PA

- *The bill specifically defines “trafficking” as the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport, purchase,*

¹³¹ 146 Cong. Rec. H9039 (2000).

¹³² 146 Cong. Rec. H9039 (2000).

¹³³ 146 Cong. Rec. H9045 (2000).

¹³⁴ 146 Cong. Rec. H9033 (2000).

¹³⁵ 146 Cong. Rec. H9033 (2000).

¹³⁶ 146 Cong. Rec. H9037 (2000).

¹³⁷ 146 Cong. Rec. H9043 (2000).

*sell, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude or slavery-like conditions.*¹³⁸

SEN. HUTCHINSON, AR

- *This legislation takes several approaches to address this human rights abuse. It requires expanded reporting by the State Department in its annual human rights report on trafficking, including an assessment and analysis of international trafficking patterns and the steps foreign governments have taken to combat trafficking. It also requires the President to establish an interagency task force to monitor and combat trafficking.*¹³⁹
- *The bill also creates protections and assistance for victims of. Trafficking, including a new nonimmigrant “T” visa. At the same time, punishments for traffickers are increased through asset seizure and greater criminal penalties. All of these provisions are important for strengthening U.S. and foreign law and for combating trafficking. I strongly support them*¹⁴⁰
- *As a means of deterring trafficking, the President, through the Agency for International Development (AID) must establish initiatives, such as microlending programs to enhance economic opportunities for people who might be deceived by traffickers’ promises of lucrative jobs. In addition, this legislation establishes certain minimum standards for combating trafficking and authorizes funding through AID and other sources to assist countries to meet these standards. The President can take other punitive measures against countries that fail to meet these standards.*¹⁴¹

REP. MALONEY, NY

- *[B]y establishing criminal and civil penalties for traffickers this bill punishes traffickers for profiting from the victimization of women. In addition, it authorizes assistance, through non-governmental organizations to the native countries of sex trafficked victims to help the victims and to take steps to stop the industry.*¹⁴²
- *The International Sexual Trafficking Bill is important because not only does it take steps to eliminate the sex trafficking industry by punishing the predators that exploit women around the world, but it also takes steps to protect the victims of trafficking. The bill sets forth the minimum international standards for the elimination of sex trafficking. It establishes criminal and civil penalties. And it does many other things.*¹⁴³

¹³⁸ 146 Cong. Rec. S10199 (2000).

¹³⁹ 146 Cong. Rec. S10217 (2000).

¹⁴⁰ 146 Cong. Rec. S10217 (2000).

¹⁴¹ 146 Cong. Rec. S10217 (2000).

¹⁴² 146 Cong. Rec. H9044 (2000).

¹⁴³ 146 Cong. Rec. H9044 (2000).

REP. MILLENDER-MCDONALD, CA

- *[T]his bill targets individuals who are known to traffic in persons. The Secretary of State is instructed to establish a list of such persons to identify and sanction such persons who are significant traffickers in persons. The Attorney General is empowered to strengthen the prosecution and punishment of traffickers.*¹⁴⁴
- *H.R. 3244 will help create economic alternatives to deter women from traffickers by providing them clear choices to improve their economic conditions.*¹⁴⁵

REP. SMITH, NJ

- *. . . [T]he logical corollary of this principle is that we need to treat victims of these terrible crimes as victims, who desperately need our help and protection. The bill implements these principles by toughening up enforcement and by providing protection and assistance for victims.*¹⁴⁶
- *[T]he life imprisonment aspect to it, the protection for the women themselves so they are not put on the next plane and sent back to Kiev or St. Petersburg or anywhere else where they might be in danger is very important. We try to put sandbags of protection around them and to say we will help you, we will give you a hand and assistance, and that is what this legislation does.*¹⁴⁷

REP. HYDE, IL

- *[I]t includes a number of important, bi-partisan pieces of legislation that, together, advance the cause of justice for crime victims and truly offer the prospect of improving public safety.*¹⁴⁸

REP. GILMAN, NY

- *The conference report on this measure contains a number of provisions designed to make certain that our government uses its influence around the world to stop this trafficking of human beings. In addition, it enhances some protections on the U.S. law for victims of trafficking in our country.*¹⁴⁹

REP. LOFGREN, CA

- *I think the provision of visas for those who are fleeing from their oppressors, whether it be sweatshop or sexual abuse, is extremely important.*¹⁵⁰

¹⁴⁴ 146 Cong. Rec. H9044 (2000).

¹⁴⁵ 146 Cong. Rec. H9044 (2000).

¹⁴⁶ 106 Cong. Rec. H9045 (2000).

¹⁴⁷ 146 Cong. Rec. H9033 (2000).

¹⁴⁸ 146 Cong. Rec. H9038 (2000).

¹⁴⁹ 146 Cong. Rec. H9037 (2000).

¹⁵⁰ 146 Cong. Rec. H9033 (2000).

Violence Against Women Act 2005

This next section contains the legislative history of VAWA 2005 including amendments and improvements to VAWA self-petitioning, battered spouse waivers, U Visas and T Visas.

HOUSE – CONGRESSIONAL RECORD

EXTENSIONS OF REMARKS – DECEMBER 18, 2005

- VAWA 2005 created the U and T Visas, and extended other protections for battered immigrant victims.

REP. CONYERS, MI

- *“I wanted to clarify for the record that VAWA 2005 contains language in Sections 801, 803, 804, 813 and 832 that are designed to amend sections of the Immigration and Nationality Act (INA) to reflect the current delegation of authority and reassignment of immigration functions from the Department of Justice (DOJ) to the Department of Homeland Security (DHS). When DOJ and DHS are cited as having shared authority under this Act, that shared authority should be limited to instances in which DHS is making an immigration determination in a case in which DOJ has an active federal investigation or prosecution.”¹⁵¹*
- *“I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violent crime continue to be adjudicated by the specially trained VAWA unit.”¹⁵²*
- *“I feel it is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection.”¹⁵³*

LEGISLATIVE HISTORY HOUSE JUDICIARY COMMITTEE REPORT¹⁵⁴

The legislative history of the protections for immigrant victims that were contained in VAWA 2005 are reported in two separate places. The House Judiciary Committee Report that accompanied the passage of VAWA 2005 in the house contains a detailed description of the history and purpose of the immigration protections contained in VAWA 2005. Some of the provisions included in the House bill, however, were not included in the final bill and the bill that emerged from conference and was signed into law contained some provisions that were not

¹⁵¹ 151 Cong. Rec. E2605 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 114-118, 123, 125, 126.

¹⁵² 151 Cong. Rec. E2606 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁵³ 151 Cong. Rec. E2607 (2005).

¹⁵⁴ 146 CONG. REC. H9045 (2000) at 114-126

included in the House bill.

Thus, the legislative history of VAWA 2005's immigration protections are made of two separate reports that are both included here.¹⁵⁵ The first section below contains the text of the House Judiciary Committee Report. This is followed by John Conyers' Extension of Remarks that were reported in the Congressional Record accompanying the conference report and passage of VAWA 2005. The Conyers Extension of Remarks includes much of the original language from the House Judiciary Report amended to reflect the section numbers and modification that were part of the final bill. At the end of the Conyers' Extension or Remarks, Mr. Conyers included a chart that tracks which section numbers in the final bill incorporated which section numbers of the House passed bill.

- *Section 900. Short Title of Title; References to VAWA-2000; Regulations:*¹⁵⁶
 - This section requires that regulations implementing both this Act (including materials and dissemination under section 922) and the Act reauthorizing the Violence Against Women Act in 2000 ("VAWA 2000"), be issued within 180 days of this Act's enactment. In applying such regulations, in the case of petitions or applications affected by the changes made by the Acts, there shall be no requirement to submit an additional petition, application, or certification from a law enforcement agency with the date of the application for interim relief establishing the priority date of counting time towards adjustment of status. However, the Department of Homeland Security may request additional evidence be submitted when the documentation supporting an outstanding VAWA self-petition or justifying interim relief is now insufficient.

- *Section 901. Conditions Applicable to U and T Visas.*
 - "U visas are available to victims of certain crimes who cooperate with law enforcement in investigations and/or prosecutions. T visas are available to the victims of trafficking who cooperate with law enforcement in investigations and/or prosecutions. Certain family members of T visa recipients can also receive T visas. Section 901(a) provides that certain family members and trafficking victims can receive T visas without having to first show that the visas are necessary to avoid 'extreme hardship.' Section 901(b) provides that T and U visas shall be issued for 4 years and may be extended under certain conditions. This provides victims who qualify for permanent residence sufficient time to file before their visas expire. An extension shall be granted upon certification from a government official that the victim's presence is required to assist a criminal

¹⁵⁵ The following sections are numbered in the 900's because they are taken from a Report from the House, and the House version of VAWA 2005 put its immigration related provisions in Title IX. The Senate version's immigration related provisions were in Title VIII, and the Senate version of the bill became the final law. Thus, while many of the provisions discussed in the House Report still exist in the final version of VAWA 2005, the provisions in the final version will be numbered in the 800's. To determine whether or not a particular section from the House Report is in the final version of VAWA 2005, and to determine the number of that provision in the final bill, please see the cross-referenced list provided in the Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

¹⁵⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP'T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 114.

investigation or prosecution, or to give the Bureau of Citizenship and Immigration Services (“CIS”) time to adjudicate the petitions for permanent residence and for adjustment of status to permanent residence. Section 901(c) provides that aliens in the U.S. on K (fiancé or spouse) and S (informant) visas, or pursuant to the visa waiver program, are not prohibited from qualifying for T and U visa status. Aliens who came to the U.S. on J visas to receive graduate medical training, and aliens who are subject to the 2-year foreign residence requirement, may also qualify for T and U status.”¹⁵⁷

- “Section 901(d) provides that aliens can qualify for T status if they respond to and cooperate with requests for evidence and information from law enforcement officials. It also permits State and local law enforcement officials investigating or prosecuting trafficking-related crimes to file a request (and certification) asking DHS to grant continued presence to trafficking victims.”¹⁵⁸
- *Section 902. Clarification of Basis for Relief Under Hardship Waivers for Conditional Permanent Residence*
 - “The Secretary of Homeland Security can remove the conditional status of an alien who became a permanent resident, as the spouse of a U.S. citizen or permanent resident without the joint filing of a petition with the U.S. citizen or permanent resident spouse, upon the showing of hardship, battery, or certain other factors. This section provides that an application for such relief may be amended to change the ground or grounds for such relief without having to be resubmitted. The ability in current law to file hardship waivers while outside of the United States will not be available to applicants who have a final removal order in effect that was issued after the alien was granted conditional residency.”¹⁵⁹
- *Section 903. Adjustment of Status for Victims of Trafficking*
 - “The Secretary of Homeland Security can adjust the status of a T visa recipient to that of a permanent resident after 3 years of physical presence in the U.S. under a T visa or after being granted “continued presence” by Federal law enforcement officials. Section 903(a) provides that for aliens who have been granted both a T visa and continued presence, the required 3-year period may be counted by starting from the earlier of either the date on which an alien was granted continued presence by DHS, or the date on which the T visa was granted. In addition, the Secretary may waive or reduce the required 3-year period if the Federal, State, or local law enforcement official investigating or prosecuting the relevant trafficking has no objection. An alien seeking to adjust status must be of good moral character through the 3-year period. Section 903(b) provides that the Secretary may waive a factor that would otherwise disqualify the alien from being

¹⁵⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 114.

¹⁵⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 115.

¹⁵⁹ H. H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 115.

considered to have good moral character if there is a connection between the disqualifying factor and the trafficking of the alien. The Committee recognizes that DHS has issued policy memoranda defining “connection” in two other VAWA related contexts. The Committee encourages the Department of Homeland Security to use standards and analysis similar to those described in these memos when defining the term “connection” for the purposes of this section, sections 917, 919, 932, and 935 of this Act, and other VAWA-related provisions of the Immigration and Nationality Act (“INA”).¹⁶⁰

- Section 903(c) provides that the Secretary must, as part of an already required annual report, include statistics regarding the number of law enforcement officials who have been trained in the identification and protection of trafficking victims and their eligibility for T visas.¹⁶¹
- *Section 911. Definition of VAWA Petitioner*
 - “This section defines a ‘VAWA petitioner’ as an alien who has applied for classification or relief under a number of provisions of the INA, including those who have filed self-petitions for permanent residence as the battered spouses and children of U.S. citizens and permanent residents and, pursuant to this bill, as the battered parents of U.S. citizens. Also included in this definition are applicants for certain benefits under the Cuban Adjustment Act, the Haitian Refugee Immigrant Fairness Act (‘HRIFA’), and the Nicaraguan Adjustment and Central American Relief Act (‘NACARA’).”¹⁶²
 - In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created “to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .” to “[engender] uniformity in the adjudication of all applications of this type” and to “[enhance] the Service’s ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.”¹⁶³
 - “Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§202 or 203), and VAWA HRIFA petitions,

¹⁶⁰ See USCIS Inter-office Memorandum HQOPRD 70/8.1/8.2, January 19, 2005, from Paul E. Novak to William R. Yates and INS Memorandum HQADN/ 70/8, January 2, 2002, from Michael A. Pearson to Stuart Anderson.

¹⁶¹ *Id.* at 116.

¹⁶² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶³ *Id.*; See 62 Fed. Reg. 16607–16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation.”¹⁶⁴

- *Section 912. Self-Petitioning for Children*

- “This section ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections. Additionally, this section extends Child Status Protection Act relief to children who qualify for VAWA immigration relief.”¹⁶⁵
- “Section 912(a) provides that the minor child of a U.S. citizen or permanent resident may self-petition for permanent residence if the abusive parent has died or otherwise terminated the parent- child relationship within the past 2 years (or, if later, 2 years after the date the child attains the age of 18). Also, the alien spouse of a permanent resident may self-petition for permanent residence if the abusive permanent resident spouse died within the past 2 years.”¹⁶⁶
- “Section 912(b) provides protections that prevent children from ‘aging out’ of access to VAWA relief. The section guarantees that child self-petitioners, who are abused by citizen parents, will continue to be treated as immediate relatives (or as petitioners for preference status if subsequently married) if they turn 21 during the processing of their petitions. Child self-petitioners who are abused by permanent resident parents will be treated as applicants for ‘2A’ preference status as the minor children of a permanent resident, if they turn 21 during the processing of their petitions.”¹⁶⁷
- “Section 912(c) provides that the application for adjustment of status to permanent residence of an alien who self-petitioned for permanent residence shall also serve as an adjustment application for any derivative children. Derivative children of self-petitioners will receive lawful permanent residency along with their self-petitioning parents.”¹⁶⁸
- “Section 912(d) provides that alien child abuse and incest victims who would have qualified to self-petition as the minor children of U.S. citizens or permanent residents can file the petition until the aliens attain the age of 25. This allows child abuse victims time to escape their abusive homes, secure their safety, access services and support that they may need, and address the trauma of their

¹⁶⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, at 116.

¹⁶⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 116.

¹⁶⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁶⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

abuse.”¹⁶⁹

- *Section 913. Self-Petitioning Parents*
 - “This section extends the ability to self-petition to the parent of an adult U.S. citizen who resides or has resided with the U.S. citizen son or daughter, if the alien demonstrates that he or she has been battered by, or has been the subject of extreme cruelty perpetrated by, their U.S. citizen son or daughter.”¹⁷⁰
- *Section 914. Promoting Consistency in VAWA Adjudications*
 - “This section promotes consistency in VAWA adjudications by making technical corrections that replace references to ‘domestic violence’ with references to ‘battery or extreme cruelty,’ the domestic abuse definition codified in the Violence Against Women Act of 1994 (‘VAWA 1994’), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (‘IIRIRA’) and regulations implementing the battered spouse waiver.”¹⁷¹
- *Section 915. Relief for Certain Victims Pending Actions on Petitions and Applications for Relief*
 - “Section 915(a)(1) provides that the Secretary of Homeland Security may grant deferred action to an alien who has filed a prima facie valid petition as a VAWA petitioner, or for T or U visa status, during the pendency of the application. The current practice of granting deferred action to approved VAWA self-petitioners shall continue. Aliens with deferred action status shall not be removed or deported. Prima facie determinations and deferred action grants called for in this section shall be made by the specially trained unit of immigration benefits adjudicators (currently at CIS) responsible for adjudicating VAWA petitions. These immigration benefits adjudicators (CIS) have authority to grant deferred action status in VAWA cases for the Department of Homeland Security. Immigration enforcement officials (currently at the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Immigration Enforcement) are not authorized to revoke deferred action, but may ask the specially trained CIS unit to review a case and determine whether or not to revoke a deferred action grant. Only the Secretary of Homeland Security (or a delegated official but only if that official has management authority over both the immigration services and immigration enforcement functions) may overrule a CIS grant of deferred action to an alien victim. Immigration enforcement officers should refer aliens they encounter who may qualify for relief under this Act to immigration benefits

¹⁶⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁷⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

¹⁷¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 117.

adjudicators handling VAWA cases at CIS.”¹⁷²

- “This Committee encourages the Secretary of DHS to (a) develop a training program for trial attorneys and other DHS staff who regularly encounter alien victims of crimes, and (b) craft and implement policies and protocols on appropriate handling by DHS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.”¹⁷³
- “Section 915(a)(2) aims to discourage detention of aliens whom VAWA offers immigration relief. This section requires that an alien whose application as a VAWA petitioner or for T or U visa status has been approved may not be detained unless detention is required for terrorist activity or certain criminal activity.”¹⁷⁴
- “Section 915(a)(3) provides that an alien whose petition as a VAWA petitioner or for T status has been approved shall be granted work authorization. U visa applicants are provided work authorization under existing law.”¹⁷⁵
- “Section 915(b) provides that an alien who has filed a prima facie application for cancellation of removal as a battered alien shall not be removed or deported during the pendency of the application.”¹⁷⁶
- “Under current law DHS has the discretionary authority to consent to the readmission of a previously removed alien (using the existing I-212 process). The protection VAWA offers immigrant victims of domestic violence, sexual assault and trafficking is undermined when otherwise qualified victims are cut off from VAWA benefits because of a prior removal from the United States. The victims, should they return to the U.S. without authorization, become subject to reinstatement of removal. This Committee encourages DHS to make use of its discretion in granting readmission to appropriately assist aliens with humanitarian cases including but not limited to, victims of domestic violence, sexual assault, victims of trafficking and crime victims who are cooperating in criminal investigations.”¹⁷⁷
- *Section 916. Access to VAWA Protection Regardless of Manner of Entry*
 - “Section 916 has been designed to address Congress’ concerns about U.S. citizen abusers who use the K visa process to petition for aliens outside the United States

¹⁷² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

and abuse them. This section protects these abused aliens by allowing them to self-petition for permanent residence as well as making them eligible for VAWA cancellation of removal and VAWA suspension of deportation. The section also works in conjunction with section 922 to prevent further abuse by instituting measures to distribute information that can help the K visa recipients learn about domestic violence protections available to them in the United States. It also provides them specific information about their U.S. citizen petitioners' criminal conviction history. Additionally, this section limits the ability of abusive U.S. citizens to repeatedly petition for K visas for aliens outside the U.S.”¹⁷⁸

- “Section 916(a) provides that an alien may self-petition as, or in the same manner as, the spouse of a U.S. citizen if the alien entered the U.S. under a K visa with the intent to enter into a valid marriage and the alien (or the alien’s child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition. Also, such an alien does not have to depart within 3 months if the marriage does not occur.”¹⁷⁹
- “Section 916(b) provides that a VAWA petitioner and a K visa recipient who seeks adjustment of status to that of permanent residence on the basis of an approved petition as a VAWA petitioner does not have to first go through 2 years of conditional permanent residence. Also, an alien who entered under a K visa with the intent to enter into a valid marriage and the alien (or child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition is eligible for cancellation of removal as a battered alien if the alien meets the other requirements for cancellation.”¹⁸⁰
- “The Committee seeks to deter filing of K visa applications by U.S. citizens with histories of domestic violence, sexual assaults, and child abuse, by requiring full disclosure to K visa recipients of information on any criminal convictions for these offenses by their petitioners. Section 916(c) provides that a U.S. citizen filing a petition for an alien for a K visa must include information on any criminal convictions for domestic violence, sexual assault, or child abuse. Following current practice, this information will be provided under penalty of perjury.”¹⁸¹
- “A consular officer may not approve a petition without verifying that the petitioner has not previously petitioned for more than two aliens applying for K visas. If the petitioner has had such a petition previously approved, the consular officer must verify that 2 years have elapsed since the filing of the previous petition. The Secretary of Homeland Security may grant waivers of the 2-year waiting period or the limit on filing more than two petitions. The waivers included

¹⁷⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 118.

¹⁷⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸¹ See e.g., Form I-130 (Rev. 06/05/02) (requiring petitioner to “certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct”).

here were designed to give DHS the discretion to waive both the time and number limitations when K visa applications are filed by non-abusive U.S. citizens. Such waivers may be appropriate, for example, for non-abusive U.S. citizens who live abroad and may be more likely to marry foreign spouses, or in cases of unusual circumstances, such as the sudden death of an alien approved for a prior K visa.”¹⁸²

- “Section 916(d) provides that an alien who was the spouse or minor child of an alien granted asylum at the time of the granting of asylum, and who (or whose child) was battered or the subject of extreme cruelty by the asylee, is eligible for adjustment of status although they may have divorced or separated from the asylee.”¹⁸³
- “Under current law, visa waiver entrants who are placed in removal proceedings are precluded from obtaining relief from removal, other than asylum. Section 916(e) guarantees access to VAWA relief for entrants under the visa waiver program by allowing those placed in removal proceedings to seek VAWA adjustment of status, VAWA cancellation of removal, VAWA self-petition, VAWA suspension of deportation and T and U visas.”¹⁸⁴
- “Section 916(f) provides that an alien who has failed to meet the 2-year return requirement of a J visa may still file a petition as a VAWA petitioner, or for a T or U visa.”¹⁸⁵
- *Section 917. Eliminating Abusers’ Control Over Applications for Adjustments of Status*
 - “VAWA 2000 created routes to lawful permanent residence for abused spouses and children of primary applicants under various nationality-based immigration laws. Section 917 assures that a family members’ eligibility for status will hinge neither on an abuser’s filing status, nor on an ongoing relationship with or marriage to the abuser in order to eliminate an abuser’s control over the abused family member. See section 936 for further amendments regarding the motions to reopen removal proceedings for battered aliens under VAWA.”¹⁸⁶
 - “Section 917(a) and (b) provide that the motions to reopen for abused aliens apply to all VAWA petitioners, VAWA cancellation of removal applicants and to those seeking adjustment of status in proceedings.”¹⁸⁷

¹⁸² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 119.

¹⁸³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

- “Section 917(c) allows abused spouses and children eligible for legal immigration status as Nicaraguans or Cubans under NACARA to apply for such status, even if the abuser did not apply for status and even through the deadline for filing has past.”¹⁸⁸
- “Section 917(d) provides that an alien who was the spouse of a Cuban eligible for adjustment under the Cuban Adjustment Act shall continue to be treated as such a spouse for 2 years after the date on which the Cuban dies, or for 2 years after the date of termination of the marriage, if the alien demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban.”¹⁸⁹
- “Section 917(e) provides that if an alien abuser was eligible for status under HRIFA, but did not apply for status, the alien’s abused spouse or children at the time may now apply for legal immigration status on their own.”¹⁹⁰
- “Section 917(f) allows abused spouses and children to file their own suspension of deportation applications under NACARA if they were abused by a Guatemalan, Salvadoran or Eastern European abuser who was eligible for suspension of deportation under pre-1996 rules pursuant to NACARA. Abused spouses and children are also allowed to file motions to reopen their prior removal or deportation case using VAWA.”¹⁹¹
- “Section 917(g) provides that an individual who was a VAWA petitioner, or had a T or U visa, may not file an immigrant or non- immigrant petition for the person who committed the battery or extreme cruelty or trafficking against the individual which established the individual’s eligibility as a VAWA petitioner, or for T or U status.”¹⁹²
- *Section 918. Parole for VAWA Petitioners and for Derivatives of Trafficking Victims*
 - “VAWA 2000 allowed victims of domestic violence abused by U.S. citizen and lawful permanent resident spouses to file VAWA self- petitions from outside of the U.S. if they had been abused in the U.S. or if their abuser was a member of the uniformed services or a government employee. Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, section 918 assures that VAWA petitioners, their derivative children and children of trafficking victims, can enter the U.S. by requiring the Secretary of Homeland

¹⁸⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁸⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 120.

¹⁹² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

Security to grant parole to:”¹⁹³

- “a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a U.S. citizen spouse, parent, or child and who is admissible and eligible for an immigrant visa;
 - a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a permanent resident spouse or parent, who is admissible and who would be eligible for an immigrant visa but for the fact that an immigrant visa is not immediately available, if at least 3 years have elapsed since the alien’s priority date; and
 - an alien who the Secretary of State determines would, but for an application or approval, meet the conditions for approval for a T visa as a family member of the trafficking victim.”¹⁹⁴
- *Section 919. Exemption of Victims of Domestic Violence, Sexual Assault and Trafficking from Sanctions for Failure to Depart Voluntarily*
 - “Section 919 provides that an alien who is a VAWA petitioner, or is seeking a T or U visa, or is seeking cancellation of removal or VAWA suspension as a battered alien is not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if there is a connection between the failure to depart and the battery or extreme cruelty, trafficking, or criminal activity making them eligible to seek such status. As discussed in section 903, the Committee encourages the DHS to define ‘connection’ for purposes of this section using similar standards and analysis to those described in the two policy memoranda cited in section 903.”¹⁹⁵
 - *Section 920. Clarification of Access to Naturalization for Victims of Domestic Violence*
 -
 - “Section 920 provides that any alien who was subject to battery or extreme cruelty by a U.S. citizen spouse or parent may naturalize after 3 years as a permanent resident, regardless of whether the lawful permanent resident status was obtained on the basis of such battery or cruelty. This section prevents alien domestic violence victims from being forced by naturalization laws to remain in abusive marriages or to wait two additional years to file for naturalization. It allows victims the same access to 3-year naturalization they would have if their U.S. citizen spouse did not abuse them.”¹⁹⁶

¹⁹³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 121.

¹⁹⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

- *Section 921. Prohibition of Adverse Determinations of Admissibility or Deportability Based on Protected Information*
 - “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.”¹⁹⁷
 - “This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special ‘any credible evidence’ standard.”¹⁹⁸
 - “Section 921(a) and (b) provide that the Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.”¹⁹⁹
 - “Section 921(c) provides that this provision shall not apply to prevent information from being disclosed, in a manner that protects victim confidentiality and safety, to the chairs and Ranking Members of the House and Senate Judiciary Committees, including the Immigration Subcommittees, in the exercise of their

¹⁹⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

¹⁹⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

¹⁹⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

oversight authority.”²⁰⁰

- “Section 921(d) provides that in the case of an alien applying for relief as a special immigrant juvenile who has been abused, neglected, or abandoned, the government may not contact the alleged abuser.”²⁰¹
- “Section 921(e) provides that investigation and enforcement of these provisions shall be by the Office of Professional Responsibility of the Justice Department.”²⁰²
- “Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed. However, further proceedings can be brought if not in violation of section 384.”²⁰³
- “Section 921(f) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. DHS must certify that:”²⁰⁴
 - “(1) no enforcement action was taken leading to such proceedings against an alien at certain places including a domestic violence shelter, a rape crisis center, and a court- house if the alien is appearing in connection with a protection order or child custody case, or that
 - (2) such an enforcement action was taken, but that there was no violation of the aforementioned provisions. Persons who knowingly make a false certification shall be subject to penalties.”²⁰⁵
- *Section 922. Information for K Nonimmigrants About Legal Rights and Resources for Immigrant Victims of Domestic Violence*
 - “Section 922 contains provisions designed to allow K visa applicants to make informed decisions about their marriage to a U.S. citizen and have information about how to gain help if they experience battering or extreme cruelty at the hands of their U.S. citizen spouse or fiancé. This section provides that the Secretary of Home- land Security shall consult with non-governmental organizations with expertise on the legal rights of immigrant victims and the Departments of Justice and State to develop consistent and accurate materials, including an information pamphlet, on legal rights and resources for immigrant victims of domestic

²⁰⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 122.

²⁰¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

²⁰⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 123.

violence for dissemination to applicants for K visas. The following materials will be mailed to K visa applicants with an instruction packet regarding the visa process: the information pamphlet; a copy of the K visa application (including information about criminal convictions of the U.S. citizen sponsor for domestic violence, sexual assault and child abuse as provided for in section 916); and any information that DHS possesses about the petitioner who filed the K visa (e.g. from IBIS (the Interagency Border Inspection System), National Crime Information Center, or Federal and State domestic violence data- bases) regarding convictions for crime(s) of violence as defined in 18 U.S.C. sec. 16, any similar State conviction, or any domestic violence adjudication. Information from the pamphlet and regarding convictions will be orally transmitted by consular officers at the applicant’s interview. It is the intent of Congress that this section does not create an actionable ground for lawsuits against DHS or other any government agency. In implementing this section, consistent with and under the requirements of Section 900(c) of this Act, the Secretary of Homeland Security shall develop and put in use the information, materials and distribution mechanism described in section 922(a) through (e) not later than 180 days from enactment.”²⁰⁶

- *Section 923. Authorization of Appropriations*
 - “This section authorizes appropriations of such sums as may be necessary for the Department of Homeland Security’s specially trained unit to adjudicate applications, adjustments, and employment authorizations related to VAWA cases (primary or derivative) filed with DHS.”²⁰⁷

- *Section 931. Removing 2 Year Custody and Residence Requirement for Battered Adopted Children*
 - “Section 931 provides that an adopted alien qualifies as a child for immigration purposes, despite not having been in the legal custody of, or having resided with, the adopting parent for at least 2 years, if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household. This section, consistent with VAWA’s protective purpose, ensures that child abuse victims are not required to suffer abuse or risk losing immigration benefits they would otherwise receive if they had not been subjected to child abuse.”²⁰⁸

- *Section 932. Waiver of Certain Grounds of Inadmissibility for VAWA Petitioners*
 - “Section 932(a) provides that the Secretary of Homeland Security may waive the ground of inadmissibility for falsely claiming to be a U.S. citizen in the case of a VAWA petitioner who demonstrates a connection between the false claim and the alien’s being subjected to battery or extreme cruelty. As discussed in section 903,

²⁰⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²⁰⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²⁰⁸ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

the Committee encourages the Department of Homeland Security to define “connection” for purposes of this section using the standards and analysis described in the previously cited policy memoranda.”²⁰⁹

- “Section 932(b) provides that the public charge ground of inadmissibility shall not apply to a VAWA petitioner or a qualified alien described in the Personal Responsibility and Work Opportunity Reconciliation Act.”²¹⁰
- *Section 933. Employment Authorization for Battered Spouses of Certain Nonimmigrants*
 - “Section 933 provides that an alien spouse admitted under the A (foreign diplomats), E-3 (Australian professionals), G (international organizations), or H (temporary worker) visa programs accompanying or following to join a principal alien shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to extreme cruelty perpetrated by the principal alien. This section is intended to reduce domestic violence by giving victims tools to protect themselves and hold abusers accountable. Research has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser’s prosecution. With employment authorization, many abused spouses protected by this section will be able to attain work providing them the resources that will make them more able to safely act to stop the domestic violence. The specially trained CIS unit shall adjudicate these requests.”²¹¹
- *Section 934. Grounds for Hardship Waiver for Conditional Permanent Residence for Intended Spouses*
 - “Section 934 adds an additional ground for a hardship waiver of the 2-year conditional permanent resident joint petition requirement for an alien spouse of a citizen or permanent resident. Under this section such spouses may qualify for a waiver if, following the marriage ceremony, the alien has been battered or subject to extreme cruelty by their intended U.S. citizen spouse. This section allows battered immigrants who participated in a marriage ceremony and unknowingly married an abusive U.S. citizen or lawful permanent resident bigamist to avail themselves of an intended spouse hardship waiver and attain lawful permanent residency.”²¹²
- *Section 935. Cancellation of Removal*
 - “VAWA 2000 created several new waivers and exceptions to deportation and

²⁰⁹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹⁰ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹¹ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 124.

²¹² H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

grounds of inadmissibility that might otherwise bar domestic violence victims from gaining immigration status. Due to a drafting error, immigration judges could not utilize many of these waivers and exceptions. Section 935(a) clarifies that immigration judges can utilize these waivers and exceptions to provide relief for VAWA applicants. This subsection shall apply retroactively as if included in VAWA 2000. Judges are expected to continue to exercise discretion, where appropriate, in determining ultimate eligibility for the waivers and exceptions, taking into account the ameliorative intent of these laws. This section also provides that an alien remains eligible for cancellation of removal as a battered alien if removable for failure to register or document fraud or for marriage fraud (if there was a connection between the marriage fraud and the battery or extreme cruelty; this Committee encourages the Department of Homeland Security to define “connection” for purposes of this section using standards and analysis similar to that described in the previously cited policy memoranda).”²¹³

- “Section 935(b) provides that the 4,000 annual limit on cancellations of removal does not apply to cancellations of removal of battered aliens.”²¹⁴

- *Section 936. Motions to Reopen*

- “Section 936 contains amendments that clarify the VAWA 2000 motions to reopen for abused aliens, enabling otherwise eligible VAWA applicants to pursue VAWA relief from removal, deportation or exclusion. This section provides that the limitation of one motion to reopen a removal proceeding shall not prevent the filing of one special VAWA motion to reopen. In addition, a VAWA petitioner can file a motion to reopen removal proceedings after the normal 90-day cut-off period, measured from the time of the final administrative order of removal. However, such battered aliens must be physically present in the U.S. at the time of filing the special motion. The filing of a special VAWA motion to reopen shall stay the removal of the alien pending final disposition of the motion, including exhaustion of all appeals, if the motion establishes a prima facie case for the relief. One VAWA 2005 post-enactment motion to reopen may be filed by a VAWA applicant. Aliens who filed and were denied special VAWA motions under VAWA 2000 may file one new motion under this Act.”²¹⁵

- *Section 937. Removal Proceedings*

- “Some abusers have prevented their victims from attending their removal proceedings. As a result, these battered victims are ordered deported in absentia. Under current law, the in absentia orders may be rescinded if the applicant files a motion to reopen and demonstrates that there were exceptional circumstances for failure to appear at the removal hearing. Section 937 provides that battery or

²¹³ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

²¹⁴ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

²¹⁵ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 125.

extreme cruelty of the alien (or a child or parent of the alien) shall qualify as exceptional circumstances justifying failure to appear at a removal proceeding.”²¹⁶

- *Section 938. Conforming Relief in Suspension of Deportation Parallel to the Relief Available in VAWA-2000 Cancellation for Bigamy*
 - “Section 938 provides that suspension of deportation for battered aliens, as it existed before 1996, shall apply in cases of battery perpetrated by a U.S. citizen or permanent resident whom the alien intended to marry, but whose marriage was not legitimate because of the citizen’s or permanent resident’s bigamy. VAWA 2000 offered protection to intended immigrant spouses who unknowingly married bigamists for purposes of VAWA self-petitioning and VAWA cancellation of removal. This section adds protection under VAWA suspension of deportation.”²¹⁷

VAWA 2005 FINAL BILL- LEGISLATIVE HISTORY IMMIGRATION PROTECTIONS: CONYER’S EXTENSION OF REMARKS²¹⁸

REP. CONYERS, MI

*Mr. Speaker, as ranking member of the Committee on the Judiciary of the House of Representatives and a co-author of the Violence Against Women Act of 2005, I take this opportunity to reemphasize the importance of certain parts of the legislative history of the provisions involving protections for battered immigrants. Additionally, I want to highlight and provide guidance on the reasoning behind and expectations about some of the provisions that are part of the final bill, the engrossed amendment agreed to by the Senate, which passed the Senate on December 16, 2005 and passed the House on December 17, 2005.*²¹⁹

*Since the section numbers changed between the version of VAWA 2005's Protection of Battered and Trafficked Immigrants provisions that passed the House September 28, 2005, and the version that we are considering today, I will provide a list at the end of my statement that cross references the section numbers in the final bill.*²²⁰

Section 801 enhances protection for immigrant victims of trafficking and certain immigrant crime victims by reuniting them with their children and family members living

²¹⁶ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 126.

²¹⁷ H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233, AT 126.

²¹⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605-E2609 (2005); John Conyer’s also published an article on the history and purpose of VAWA 2005’s immigration protections. See, John Conyers Jr. United States House of Representatives, *The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections for Immigrant Victims*, Violence Against Women, Volume 13, Number 5, May 2007, pp. 457-468 available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/violence-against-women-act-hearings-and-reports/vawa-related-hearings-2005/Conyers%20article.pdf/view>.

²¹⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

²²⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-unit-statistics/March 14 2006 Conyers extension of remarks VAWA 2005 CREC-2006-03-14-pt1-PgE353.pdf/view>.

abroad. In the context of trafficking cases and other immigration functions I wanted to clarify for the record that VAWA 2005 contains language in Sections 801, 803, 804, 813 and 832 that are designed to amend sections of the Immigration and Nationality Act (INA) to reflect the current delegation of authority and reassignment of immigration functions from the Department of Justice (DOJ) to the Department of Homeland Security (DHS). When DOJ and DHS are cited as having shared authority under this Act, that shared authority should be limited to instances in which DHS is making an immigration determination in a case in which DOJ has an active federal investigation or prosecution. In cases where the investigation or prosecution is being conducted by a state or local prosecutor, or by another federal government agency, DOJ involvement may not be appropriate or required.²²¹

Section 802 creates an exception to unlawful presence for victims of severe forms of trafficking who demonstrate that their trafficking experience was at least one central reason for their unlawful presence in the United States. For the purposes of this section (and similarly for sections 801, 805 and 812 of this Act), I understand that the term "at least one central reason" is intended to mean that the unlawful presence was caused by, or related to, the trafficking experience and its concurrent process of victimization. Just as this section provides a waiver of unlawful presence inadmissibility for T visa victims, I would hope that DHS will exercise its discretion determining good moral character so that T visa recipients are not barred from attaining adjustment of status from a T visa.²²²

Section 804 provides that aliens can qualify for T status if they respond to and cooperate with requests for evidence and information from law enforcement officials. I also want to emphasize that state and local law enforcement officials investigating or prosecuting trafficking-related crimes are permitted to file a request (and certification) asking DHS to grant continued presence to trafficking victims. This section changes references in the INA to conform to the transfer of immigration functions from the Department of Justice to the Department of Homeland Security by replacing references to the Attorney General with references to the Secretary of Homeland Security.²²³

I believe the expansions in protections for children contained in this Act are particularly important. Section 805 ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections. The application for adjustment of status to permanent residence of an alien who self-petitioned for permanent residence shall also serve as an adjustment application for any derivative children. Derivative children of self-petitioners will receive lawful permanent residency along with their self-petitioning parents. This section removes the requirement that abused adopted children must live with the abusive parent for two years and assures that child VAWA self-petitioners and derivative children have access to VAWA's aging out protections and can additionally access any Child Status Protection Act relief for which they qualify. It allows assures victims of child abuse and incest who were under 21 when abused have additional time until they turn 25 to file VAWA self-petitions. In this context, I understand that the term "at least one central reason" is intended to mean that the they delay in filing was caused by, or related to, the child abuse or incest and its concurrent process or

²²¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605 (2005).

²²² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2605-06 (2005).

²²³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

victimization.²²⁴

Section 811 defines a "VAWA petitioner" as an alien who has applied for classification or relief under a number of provisions of the INA. I want to emphasize the importance of the fact that the law assures that adjudication of all forms of immigration relief related to domestic violence, sexual assault, trafficking or victims of violent crime continue to be adjudicated by the specially trained VAWA unit.²²⁵

In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants ...", to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies." See 62 Fed. Reg. 16607-16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. (See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002)). This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases. Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of these applications.²²⁶

Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§202 or 203), and VAWA HRIFA petitions, 106 work authorization under section 814(c) of this Act), battered spouse waiver adjudications under 216(c)(4)(C), applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation. I also encourage DHS to promote consistency in VAWA adjudications by defining references to "domestic violence" in the INA as "battery or extreme cruelty," the domestic abuse definition codified in the Violence Against Women Act of 1994 ("VAWA 1994"), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and regulations implementing the battered spouse waiver.²²⁷

The Secretary of Homeland Security can remove the conditional status of an alien who became a permanent resident, as the spouse of a U.S. citizen or permanent resident without joint filing of a petition with the U.S. citizen or permanent resident spouse, upon the showing of hardship, battery, or certain other factors. Applications for such relief may be amended to change the ground or grounds for such relief without having to be resubmitted.²²⁸

VAWA 2000 allowed victims of domestic violence abused by U.S. citizen and lawful

²²⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²²⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

*permanent resident spouses to file VAWA self-petitions from outside of the U.S. if they had been abused in the U.S. or if their abuser was a member of the uniformed services or a government employee. Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, existing parole provisions should be used to ensure that approved VAWA petitioners, their derivative children and children of trafficking victims, can enter the U.S.*²²⁹

*Section 812 provides that an alien who is a VAWA petitioner or is seeking cancellation of removal or VAWA suspension as a battered alien is not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if the battery or extreme cruelty, trafficking, or criminal activity provided at least one central reason related to the alien's failure to depart. In this context it is my understanding that the term "at least one central reason" is intended to mean that the failure to depart was caused by, or related to, the battering or extreme cruelty experience and its concurrent process of victimization.*²³⁰

*Section 813 is designed to address a number of problems for immigrant victims in removal proceedings. The definition of exceptional circumstances will now include battering or extreme cruelty. Important clarifications are made to assure that immigration judges can grant victims the domestic violence victim waivers we created in VAWA 2000. I particularly want to emphasize the importance of the protections from reinstatement of removal we create in this Act for immigrant victims. Under current law DHS has the discretionary authority to consent to the readmission of a previously removed alien (using the existing I-212 process). DHS should make use of its discretion in granting readmission to appropriately assist aliens with humanitarian cases including but not limited to, victims of domestic violence, sexual assault, victims of trafficking and crime victims who are cooperating in criminal investigations.*²³¹

*Under current law, victims of domestic abuse, sexual assault, stalking, or trafficking who have been ordered removed, including expedited removal, are subject to reinstatement of removal if they depart the U.S. and attempt to reenter the U.S. Once they are reinstated in removal proceedings, they cannot obtain VAWA, T, and U relief, even if they have a pending application for such relief. Recognizing these harsh consequences, Congress encourages DHS to make use of its discretionary authority to consent to the admission of such previously removed aliens (using the existing I-212 process).*²³²

Section 814 provides that an alien whose petition as a VAWA petitioner has been approved may be granted work authorization. U visa applicants are provided work authorization under existing law. I want to emphasize that this section gives DHS statutory authority to grant work authorization to approved VAWA self-petitioners without having to rely upon deferred action. I believe that one of the most important protections offered by this section toward prevention of domestic violence is that Section 814 of this bill provides that an alien spouse admitted under the A (foreign diplomats), E-3 (Australian investor), G (international organizations), or H (temporary worker) visa non-immigrant programs accompanying or following to join a principal alien shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to

²²⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

*extreme cruelty perpetrated by the principal alien. This section is intended to reduce domestic violence by giving victims tools to protect themselves and hold abusers accountable. Research has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser's prosecution. With employment authorization, many abused spouses protected by this section will be able to attain work providing them the resources that will make them more able to safely act to stop the domestic violence. The specially trained CIS unit shall adjudicate these requests.*²³³

*I believe that Section 817 of this Act contains some of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution. In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement offices to pursue removal actions against their victims.*²³⁴

*Immigration enforcement agents and government officials covered by this section must not initiate contact with abusers, call abusers as witnesses or rely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special "any credible evidence" standard. I believe that all investigation and enforcement of these provisions should be done by the Office of Professional Responsibility of the Justice Department. For consistency, these cases need to be centralized in one division and I believe that this office is best equipped to address these cases.*²³⁵

The current practice of granting deferred action to approved VAWA self-petitioners should continue. Aliens with deferred action status should not be removed or deported. Prima facie determinations and deferred action grants should not be revoked by immigration enforcement agents. The specially trained Citizenship and Immigration Services (CIS) unit should review such cases to determine whether or not to revoke a deferred action grant. Immigration enforcement officials at the Bureau of Immigration and Customs Enforcement do

²³³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606 (2005).

²³⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2606-07 (2005).

²³⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*not have authority to overrule a CIS grant of deferred action to an alien victim. Immigration enforcement officers should refer aliens they encounter who may qualify for relief under this Act to immigration benefits adjudicators handling VAWA cases at CIS.*²³⁶

*VAWA confidentiality protections in IIRAIRA are amended to conform with current practice extending these protections to the Department of Homeland Security in addition to the Department of Justice and to expand confidentiality protections to the Department of State. These protective provisions were designed to assure that the Secretary of Homeland Security, the Attorney General and the Secretary of State may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.*²³⁷

*This section provides that this provision shall not apply to prevent information from being disclosed (in a manner that protects victim confidentiality and safety) to the chairs and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees, in the exercise of their oversight authority. This section also gives the specially trained VAWA unit the discretion to refer victims to non-profit, non-governmental organizations to obtain a range of needed assistance and victim services. Referrals should be made to programs with expertise in providing assistance to immigrant victims of violence and can only be made after obtaining written consent from the immigrant victim. Nothing in this section shall be construed as affecting the ability of an applicant to designate a safe organization through which governmental agencies may communicate with the applicant.*²³⁸

*This section requires that the Department of Homeland Security and the Department of Justice provide guidance to their officers and employees who have access to information protected by Section 384 of IIRAIRA, including protecting victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information. Congress encourages the DHS's specially trained VAWA unit and CIS VAWA policy personnel: (1) to develop a training program that can be used to train DHS staff, trial attorneys, immigration judges, and other DOJ and DOS staff who regularly encounter alien victims of crimes, and (2) to craft and implement policies and protocols on appropriate handling by DHS, DOJ and DOS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.*²³⁹

Section 825 contains a number of amendments particularly important to me. Protecting victims of domestic violence from deportation and assuring that they can have their day in court before an immigration judge to file for VAWA related immigration relief is a central focus of all VAWA immigration protection I have been involved in developing since 1994. This section contains amendments that clarify the VAWA 2000 motions to reopen for abused aliens, enabling otherwise eligible VAWA applicants to pursue VAWA relief from removal, deportation or exclusion. This section provides that the limitation of one motion to reopen a removal

²³⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²³⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*proceeding shall not prevent the filing of one special VAWA motion to reopen. In addition, a VAWA petitioner can file a motion to reopen removal proceedings after the normal 90-day cutoff period, measured from the time of the final administrative order of removal. The filing of a special VAWA motion to reopen shall stay the removal of the alien pending final disposition of the motion, including exhaustion of all appeals, if the motion establishes a prima facie case for the relief. One VAWA 2005 post-enactment motion to reopen may be filed by a VAWA applicant. Aliens who filed and were denied special VAWA motions under VAWA 2000 may file one new motion under this Act.*²⁴⁰

*Additionally, I feel it is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection. Section 825(c) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. When any part of an enforcement action was taken leading to such proceedings against an alien at certain places, DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that such an enforcement action was taken but that DHS did not violate the requirements of Section 384 of IIRIRA. The list of locations includes: a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case. Persons who knowingly make a false certification shall be subject to penalties. Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed by immigration judges. However, further proceedings can be brought if not in violation of section 384.*²⁴¹

*I also want to highlight the important protections for all battered women and stalking victims contained in Section 827 of this bill. With respect to laws and regulations governing identification cards and drivers' licenses, DHS and the Social Security Administration shall give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking who are entitled to enroll in state address confidentiality programs, and whose addresses are entitled to be suppressed under State or Federal law (including VAWA confidentiality provisions), or suppressed by a court order.*²⁴²

*The REAL ID Act of 2005 imposed a new national requirement that all applicants for driver's licenses or state identification cards must furnish their physical residential address in order to obtain a federally valid license or identification card. This requirement jeopardizes those victims of domestic abuse, sexual assault, stalking, or trafficking who may be living in confidential battered women's shelters or fleeing their abuser, stalker, or trafficker. In recognition of the dangers of this requirement, this provision instructs DHS and the Social Security Administration to give special consideration to victims of domestic abuse, sexual assault, stalking, or trafficking by allowing certain victims to use an alternate safe address in lieu of their physical residential address.*²⁴³

I understand that a driver's license or identification card is necessary for victims to

²⁴⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

*board an airplane or train to flee danger. Many confidentiality programs are currently in place on both federal and state levels to ensure that the dual goals of economic security and victim safety are reached by allowing an individual to choose an alternate address on her driver's license. This will provide an exception for those victims who are entitled to enroll in state address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or suppressed by a court order, or who are protected from disclosure of information pursuant to 8 U.S.C. Section 1367, ensuring the continued protection and necessary mobility for these women and their families.*²⁴⁴

*As Ranking Member' of the House Judiciary Committee, I have been particularly concerned about the significant delays that have occurred between the effective dates of VAWA 1994 and VAWA 2000 laws and the issuance of implementing regulations that are needed so that immigrant victims can receive the protections Congress has created for them. Section 828 requires that regulations implementing both this Act (including materials and dissemination under section 834) and the Act reauthorizing the Violence Against Women Act in 2000, ("VAWA 2000"), be issued within 180 days of this Act's enactment. In applying such regulations, in the case of petitions or applications affected by the changes made by the Acts, there shall be no requirement to submit an additional petition, application, or certification from a law enforcement agency with the date of the application for interim relief establishing the priority date of counting time towards adjustment of status. However, the Department of Homeland Security may request additional evidence be submitted when the documentation supporting an outstanding VAWA self-petition or justifying interim reliefs now insufficient. The Department of Homeland Security shall also craft and implement policies and protocols implementing VAWA confidentiality protections under Section 384 of IIRAIRA as amended by this Act.*²⁴⁵

*Lastly, I want to provide important background information about the reasoning behind The International Marriage Broker Regulation Act of 2005 (IMBRA) that is included in this VAWA 2000 legislation. The final IMBRA legislation combines provisions that created a significant role for the government in information collection and distribution to foreign fiancées and spouses with regulation of the International Marriage Broker Industry. IMBRA has been designed to address concerns about U.S. citizen abusers who use the K visa process to petition for aliens outside the United States and abuse them. This Act, establishes the first meaningful federal regulations on international marriage broker agencies (IMBs), companies in the business of matching mostly American male clients to foreign women who will join them in the United States as fiancés or spouses. There have been numerous cases of foreign women who were matched with American men, came to the U.S. live with their new spouses and were subjected to domestic violence, sexual assault or other forms of extreme cruelty. In some cases, the perpetrators have successfully used IMBs and the immigration system to bring in a series of fiancés or spouses who have all suffered from domestic violence from the American sponsor and client. This bill is designed to inform foreign spouses and fiancées entering the United States of the laws relating to such abusive crimes, and the availability of help. In addition, it seeks to prevent abusers from using the immigration system to find new victims.*²⁴⁶

Sections 832, 833 and 834 are designed to prevent further abuse by instituting measures

²⁴⁴ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607 (2005).

²⁴⁵ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2607-08 (2005).

²⁴⁶ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

*to distribute information that can help the K visa recipients learn about domestic violence protections available to them in the United States. These sections also provide them with specific information about their U.S. citizen petitioners' criminal conviction history. Additionally, this section limits the ability of abusive U.S. citizens to repeatedly petition for K visas for aliens outside the U.S.*²⁴⁷

*A consular officer may not approve a fiancée visa petition without verifying that the petitioner has not previously petitioned for two or more aliens applying for spousal or fiancée K visas. If the petitioner has had such a petition previously approved, the consular officer must verify that two years have elapsed since the filing of the previous petition. The Secretary of Homeland Security may grant waivers of the two-year waiting period or the limit on filing more than two petitions. The waivers included here were designed to give DHS the discretion to waive both the time and number limitations when K fiancé visa applications are filed by non-abusive U.S. citizens. Such waivers may be appropriate, for example, for non-abusive U.S. citizens who live abroad or were raised abroad and may be more likely to marry foreign spouses, or in cases of unusual circumstances, such as the sudden death of an alien approved for a prior K visa. Section 832(a) includes a domestic violence victim waiver modeled after the waiver created for immigrant victims of domestic violence by VAWA 2000 (INA Section 237(a)(7)). Waivers shall be granted when the U.S. citizen petitioner demonstrates that they have been' subjected to battering or extreme cruelty, that there was a connection between the criminal conviction and the abuse, including efforts to escape the abuse and that they were not the primary perpetrator of abuse in the relationship.*²⁴⁸

*Section 832(a)(2) of VAWA 2005 requires that U.S. citizen petitioners filing K visa applications for spouses they married abroad provide under oath the same criminal information required for K fiancé visa petitioners. This section also creates a database to track serial K applications. Upon approval of a second K visa for a spouse or fiancé the U.S. citizen petitioner will be entered into the multiple visa tracking database and will be notified that this petition and all future petitions will be entered into the database maintained by the Department of Homeland Security. Once two espousal or fiancé K visas have been approved, for each subsequent petition filed, DHS will notify both the citizen petitioner and foreign-born spouse about the number of previously filed petitions in the database for a 10-year period. All future K applications will trigger similar notice. The domestic violence pamphlet developed under Section 833 of this Act will be sent to the K beneficiary immigrant spouse along with the multiple filing data base information.*²⁴⁹

*Under this Act, IMBs are required to comply with mandatory collection of criminal background information on each U.S. client, including arrest and conviction information, information on any temporary or permanent protection order issued against the U.S. client, and information on where the person has lived, prior marriages and children they have under the age of 21. The IMB must also conduct a sex offender registry search on the U.S. client.*²⁵⁰

Conclusion

²⁴⁷ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁴⁸ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁴⁹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵⁰ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

I am once again honored to have played a role in reauthorizing the Violence Against Women Act and the protections it affords to immigrant women who suffer from battery and extreme cruelty in our Nation. We have made important changes and adjustments to current law that will ensure that the broad range of domestic violence victims have access to the immigration relief they need to escape from abuse and begin to rebuild their lives, and those of their children. I am particularly pleased that Congress was able to agree upon passage of the first legislation to provide fiancées and spouses applying for K visas from abroad the ability arm themselves with what can be lifesaving information and to truly regulate the international marriage broker industry. I offer my sincere appreciation to the chairman of the Judiciary Committee, F. JAMES SENSENBRENNER, who worked with me for the better part of this year on this bill in shared commitment to protect victims of domestic violence. In addition, I must thank Congressman RICK LARSEN of Washington for his leadership on protecting unsuspecting foreign women who become victims of abuse by sponsoring IMBRA and working with Chairman SENSENBRENNER and me on bringing IMBRA into this bill. I also offer special thanks to my Senate colleagues, Senator ARLEN SPECTER, Senator PATRICK LEAHY, Senator JOSEPH BIDEN and Senator TED KENNEDY for their hard cooperative work to ensure that the Violence Against Women Act of 2005 could be passed into law this year.²⁵¹

I worked closely with Chairman SENSENBRENNER to develop legislative history for the protections offered to immigrant victims contained in Protection of Battered and Trafficked Immigrants Title of the Violence Against Women Act of 2005. The Committee on the Judiciary of the House of Representatives Report to accompany H.R. 3402 that was published on September 22, 2005, provides important legislative history on this Title. Since section numbers have changed in the final bill, I include here cross reference list that will facilitate relating the sections of the final VAWA 2005 provisions we are voting on today with the legislative history sections that describe and support these provisions.²⁵²

TRACKING CHART – FINAL VAWA 2005 SECTION NUMBERS AND HOUSE COMMITTEE REPORT SECTION NUMBERS²⁵³

- 801 (Treatment of Spouse and Children of Victims)--901(a).
- 802 (Presence of Trafficking Victims)--903(b).
- 803 (Adjustment of Status for Trafficking Victims--903 & 903(a).
- 804 (Protection and Assistance to Trafficking Victims)--901(d).
- 805 (Protecting Victims of Child Abuse)
- 805 (a) and (b)--912(b) and (c).
- 805 (c)--912(d).
- 805(d)--931.
- 811 (VAWA Petitioner Definition and VAWA Unit)--911, 902, 914, 918.
- 812 (Exception to Voluntary Departure)--919.
- 813(a) (Exceptional Circumstances)--937.
- 813(b) (Discretion to Readmission Instead of Reinstatement of Removal)--915.

²⁵¹ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵² Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608 (2005).

²⁵³ Congressional Record, Extension of Remarks, 151 Cong. Rec. E2605 at p. E2608-09 (2005).

813(c) (*Domestic Violence Victim Waiver Clarification*)--935.
 814(a) (*VAWA HRIFA and VAWA Cuban Adjustment Improvements*)--936, 917.
 814(b) (*Work Authorization for VAWA Petitioners*)--915(a).
 814 (c) and (d) (*Work Authorization for Abused A, E-3, G, H Spouses*)--933.
 814(e) (*Limitation on Petitioning for Abuser*)--917(g).
 815, 823, 824 (*Clarification and Corrections Regarding VAWA NACARA VAWA HRIFA, VAWA Cuban Adjustment Applicants*)--917.
 816 (*VAWA Protection for Elder Abuse Victims*)--913.
 817 (*VAWA Confidentiality Protections*)--921, 915.
 821 (a) and (b) (*Duration of T and U Visa Status*)--901(b).
 821(c) (*Change of Status to T or U Visa Status*)--901(c).
 822 (*Technical Corrections*)--941.
 823 (*VAWA Cuban Adjustment Improvements*)--917(d).
 824 (*VAWA HRIFA Improvements*)--917(e).
 825 (*Deportation and Deportation Proceedings*)--936, 921(f).
 826 (*Protection of Abused Juveniles*)--921(d).
 827 (*Identification Documents for Domestic Violence and Crime Victims*)--None.
 828 (*Rulemaking*)--900.
 831, 832, 833, 834, *Subtitle D, International Marriage Broker Regulation*--916, 922

BATTERED SPOUSE WAIVER LEGISLATIVE HISTORY

Creation of the Battered Spouse Waiver²⁵⁴

- In 1986, Congress amended the Immigration and Nationality Act to “deter people from entering fraudulent marriages solely for the purpose of obtaining lawful permanent resident status” by adding the Immigration and Marriage Fraud Amendments (IMFA).²⁵⁵
 - The “Conditional Residence” provision proved problematic for battered immigrant women.²⁵⁶
- In 1990, as a result, Congress created the Battered Spouse Waiver (and two other waivers) to specifically address the dangers experienced by immigrant women, eliminating the “conditional residence” requirement.²⁵⁷

²⁵⁴ For a further details on the Battered Spouse Waiver’s legislative history, including hearing reports and testimony and implementation of the Battered Spouse Waiver see, Battered Spouse Waiver (BSW) Webinar and Training Materials (November 18, 2021) <https://niwaplibrary.wcl.american.edu/bsw-training-materials>.

²⁵⁵ Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at 8 U.S.C. § 1186a).^[17]

²⁵⁶ Immigrant women who are married to citizens or lawful permanent residents for less than two years at the time of the permanent residence interview with U.S. Citizenship and Immigration Services (CIS, formerly INS) are not automatically granted permanent residence; rather, they receive “conditional” residence for two years. Within ninety days before the end of the two-year period, both husband and wife must file a joint petition to have the condition removed, and both may be required to appear before a USCIS official for a personal interview. To control their victims, abusers could refuse to jointly file the petition or cooperate in the mandated USCIS personal interview. Victims had no alternative but to remain in abusive relationships or try to meet the stringent requirements for waivers under the 1986 IMFA. Otherwise, their immigration status would be jeopardized. In certain situations, the 1986 IMFA allowed waivers of the joint petition requirement. These waivers, however, did not address the circumstances of battered immigrants. Cecilia Olavarria and Moira F. Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, National Immigrant Women’s Advocacy Project (last updated July 2013), http://niwaplibrary.wcl.american.edu/immigration/battered-spouse-waiver/tools/3.5_Battered-Spouse-Waiver_2004-MANUAL-BB.pdf/view?searchterm=breaking%20barriers.

²⁵⁷ The three waivers include: the battered spouse waiver, the extreme hardship waiver, and the good faith/good cause waiver. The battered spouse waiver applies to victims who have been subjected to battery or extreme cruelty at the hands of his or her spouse, parent, or child; the extreme hardship waiver applies to victims who will face “extreme hardship” if forced to return to his or her home country; the good faith/good cause waiver “is used for immigrants who are unable to file the joint petition because they are no longer married to their spouses, even though the

- Approval of a battered spouse waiver eliminates the joint petition requirement for removal of conditional resident status and prevents the victim from being locked for two years in an abusive marriage.
 - The Battered Spouse Waiver, unlike the other two waivers, is available to women who have been ordered removed and deported from the United States, or who have failed to depart after their conditional resident status terminated.²⁵⁸
 - Requirements for a Battered Spouse Waiver Application include: proof that the marriage was entered into in good faith, the victim has been subjected to battery or extreme cruelty, and an affidavit discussing the waiver the victim hopes to pursue.²⁵⁹
- This provision would, in effect, create an avenue of relief for a spouse or child caught in a detrimental relationship. Under current law a damaging situation must be endured in order to maintain legal status in the United States. It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status.²⁶⁰

Battered Spouse Waiver Legislative History

The 1990 House Judiciary Committee report explicitly states that:

- “The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status.”²⁶¹

House members who crafted the Battered Spouse Waiver described the need for the legislation and its purpose as follows:

REP. SLAUGHTER, NY

marriage was entered into in good faith.” *Id.* at 3.

²⁵⁸ 8 C.F.R. § 216.5(e)(3)(ii).

²⁵⁹ Evidence indicating a good faith marriage includes: birth certificates of children born to the marriage, financial records showing joint ownership of assets, photographs from family holidays and events, lease or mortgage contracts, and affidavits from people who have known both spouses since the conditional residence was granted. To prove battery or extreme cruelty, an applicant should submit as many of the following documents as possible: official records documenting the abuse or effects of abuse on the victim or the victim’s child by school officials or social services representatives, medical records documenting the frequency and extent of the injuries, police records of calls or complaints, court records documenting arrests or protection orders, copies of custody orders or divorce records, and evaluations from mental health professionals. Finally, an applicant must submit an affidavit addressing the waiver he or she pursues, including information regarding the history of the relationship, the history of the domestic violence, (including descriptions of each specific incident of violence), the relationships between the batterer and the victim’s family as well as the victim and the batterer’s family, the factors making it difficult to leave the relationship, and the victim’s own feelings of fear and fear for his or her children. *See General Filing Instructions to INS Form I-751*, US Customs and Immigration Services, <http://www.uscis.gov/sites/default/files/files/form/i-751instr.pdf>.

²⁶⁰ Family Unity and Employment Opportunity Immigration Act of 1990, October 2, 1990, 136 Cong. Rec. H. 8629 (Vol. 136, No. 126, Pg. H8629).

²⁶¹ H.R. REP. NO. 101-723, p. 78

“What should not go unsaid or unnoticed...is that the bill we have before us contains a small but significant provision, which will literally free thousands of immigrant women from a nightmare of brutal physical abuse and mental cruelty. Immigrant women are some of the most vulnerable to domestic violence, yet their plight is not well enough known to effect real change. Not long ago, I heard the heart-wrenching story of an immigrant woman living in Rochester with her abusive American spouse. She was regularly beaten by her husband and subjected to unspeakable cruelties. She lived with two paralyzing fears-that of her husband's rage and that of being forced back to her native Haiti. The 1986 Marriage Fraud Act leaves this woman trapped in the abusive relationship for at least 2 years or face deportation to a country, which is no longer her home.

Responding to this woman's circumstances and those of thousands of alien spouses nationwide, I introduced legislation to amend the Marriage Fraud Act and provide immigrant spouses in a bona fide marriage, an escape from the beatings, the insults and the fear... The Immigration Marriage Fraud Amendments Act of 1986 [IMFA] mandates a 2-year period of conditional permanent residency for foreigners who marry American citizens or permanent residents. At the end of this 2-year period, the American spouse with the foreign spouse must file a joint petition to gain full permanent residency for the foreign spouse. Due to a lack of clarity in the IMFA, a battered foreign spouse may be forced to choose between remaining in an abusive relationship or facing possible deportation to a country that is no longer his or her home...Under the IMFA, if the resident spouse refuses to sign the joint petition, deportation proceedings can be initiated by the Immigration and Naturalization Service...

Where a foreign spouse could demonstrate that he or she entered into a marriage with a resident spouse in good faith and could establish through credible evidence that he or she was battered by the American spouse, the foreign spouse would be allowed to waive the joint petition requirement and file independently to have the conditionality of his or her permanent residence removed. This waiver would not force the foreign spouse to seek a divorce and would thus avoid the question of good cause which must be considered in the good cause/good faith waiver and it would make it clear to abused spouses that there was an escape from their situations.... [T]his additional waiver would not alter the spirit of the IMFA and the conditional permanent residence system established in 1986, it would be beneficial to a large number of persons trapped in abusive relationships...

Those in this situation are often advised to remain with the abuser until the 2 years of conditional permanent residence have ended because of the lack of clarity in the law. Abused spouses should be sent a clearer signal that there is an escape from their dilemma and that the abusing spouse does not have complete control over their lives... the House intends that when the citizen or resident spouse engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering of or cruelty to spouse or child is demonstrated. The House intends that the discretion given to the Attorney General to decide to deny waiver requests under this provision be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.... I am also concerned with

the situation in which the citizen or resident spouse abuses a child or alien child. It is the intent of the legislation, then, that the conditional resident spouse be able to protect the child without fearing that the citizen or resident spouse will refuse to cooperate in the joint petition, joint interview requirements for the alien spouse. In such a situation, the good faith or extreme hardship waiver will be granted to the alien spouse. The existence of a child of the marriage is evidence that the marriage was entered into in good faith. Both a child and the child's alien parent would suffer extreme hardship if the child were denied the protection and support of the alien spouse when the citizen or resident spouse abuses the child....The group that would be targeted by the clarifications I have proposed is one of the most vulnerable in American society today. The vast majority of abused foreign spouses are women. Most are new to American society and many do not speak English as a first language. This group is in particular need of statutory language that clearly protects them from abusive spouses taking advantage of the necessity of filing a joint petition at the end of the 2-year period.”²⁶²

“A "yes" vote on H.R. 4300 says "no" to the domestic violence which terrorizes thousands of immigrant spouses and their children. I urge all of my colleagues to support the bill, giving hope to battered spouses and children that they, too, might soon realize the American dream of living in freedom and safety.”²⁶³

REP. GILMAN, NY

“In particular, the marriage fraud provisions required our review and modification. The battered spouse or child waiver of the conditional residence requirement portion would allow the Attorney General to bestow permanent resident status if an alien can demonstrate that, while the marriage was entered into in good faith, evidence has shown that the spouse was battered by, or was the subject of extreme mental cruelty perpetrated by, his or her spouse or parent. This provision would, in effect, create an avenue of relief for a spouse or child caught in a detrimental relationship. Under current law a damaging situation must be endured in order to maintain legal status in the United States. It would seem unconscionable that any human being should be required by our laws to remain in a situation in which they are abused in order to remain in legal status.”²⁶⁴

- The 1990 House Judiciary Committee adopted Representative Slaughter’s view and clarified its intent by only denying legitimate requests for battered spouse waivers in “rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.”²⁶⁵
- The USCIS Adjudicator’s Field Manual further explains that:
 - “Persons who have been subjected to such treatment may have difficulty in discussing their experiences. While it is almost always necessary to discuss

²⁶² Congressional Record for the 101st Congress House of Representatives UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (House of Representatives - October 02, 1990) p. H8642.

²⁶³ 1410 CONG. REC. 27,085 (1990).

²⁶⁴ Family Unity and Employment Opportunity Immigration Act of 1990, October 2, 1990, 136 Cong. Rec. H. 8629 (Vol. 136, No. 126, p. H8629).

²⁶⁵ H.R. REP. NO. 101-723, p. 79.

the abusive events with the applicant, such discussions should be carried on in a professional manner which does not further abuse the applicant by forcing him or her to unnecessarily re-live abusive episodes....Police reports and hospital records can be key documents in establishing that battering or extreme cruelty existed.”²⁶⁶

- When signing the Immigration Act of 1990, President George H. W. Bush declared that:
 - “It is the most comprehensive reform of our immigration laws in 66 years. It also credits the special role of immigrants to America, and it will promote a more competitive economy, respect for the family unit, and swift punishment for drugs and crime. This bill is good for families, good for business, good for crime fighting, and good for America. We welcome both it and the generations of future Americans who it will bring in to strengthen our great country. And now I am honored and pleased to sign into law the Immigration Act of 1990.”²⁶⁷
- To prevent marriage fraud, the Immigration Marriage Fraud Amendments of 1986 require:
 - “[A] two-year conditional residence status for certain alien spouses, sons, and daughters of United States citizens or permanent resident aliens. The conditional basis of the alien spouse's permanent resident status may be removed after two years upon the filing of a joint petition by the conditional resident and the petitioning spouse. In addition, there are two waivers available under the IMFA for not filing the joint petition to remove the conditional status from the alien spouse's permanent residence. One is by establishing that extreme hardship would result if the alien is deported, the other is by establishing that the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause.
 - The independent waivers do not address the issue of battered spouses and children. The terms of the statute do not make it sufficiently clear that an abused spouse who has entered a marriage in good faith will be granted the waiver either on the basis of “extreme hardship” or termination of the marriage for “good cause”. In many cases there are obstacles that prevent a battered alien spouse from initiating a divorce, such as lack of resources to pay for a lawyer; ethnic or cultural prohibitions against divorce; fear of further physical violence; and the risk of deportation itself.

²⁶⁶ Adjudicator's Field Manual, Chapter 25 Petitions for Removal of Conditions on Conditional Residence, 25.1 Immigration Marriage Fraud Amendments of 1986, <https://niwaplibrary.wcl.american.edu/pubs/uscis-adjudicators-field-manual-ch-25>.

²⁶⁷ George Bush: Statement on Signing Immigration Act of 1990 (Nov. 29, 1990).

- In addition, many states have no-fault divorce laws which make it impossible for an alien spouse to establish that the marriage was terminated for good cause. INS allows a divorce obtained under a no-fault law to be used to support a waiver request. The alien, however, must establish that the no fault option was used either to expedite the divorce or for economic reasons. Often, aliens are denied the waiver because they cannot satisfy the “good cause” requirement under no-fault laws. Also, a U.S. citizen or permanent resident spouse need only file for a divorce first to obtain the advantage in situations where a waiver of the joint petition requirement is being sought, again preventing the alien spouse from applying for a good faith/good cause waiver.”²⁶⁸
- The Immigration Marriage Fraud Amendments of 1986 further state its enactment was necessary to protect battered immigrant spouses because:
 - “Present law does not ensure that a battered alien spouse or child will not be forced to remain in an abusive relationship for fear of deportation. Immigrant and family law attorneys, refugee service agencies, and battered women's advocates agree that current provisions of the IMFA do not go far enough in ensuring the safety and protecting the legal rights of immigrants in situations of domestic violence. The Committee believes that the creation of a battered spouse/child waiver and changes to the good faith/good cause waiver will clarify Congressional intent.
 - Section 302 of [Immigration and Nationality Act of 1990] amends section 5 of the Immigration Marriage Fraud Amendments of 1986, which prohibits the INS from approving any visa petition that is based on a marriage between an alien and a citizen if the marriage occurred while the alien was in deportation or exclusion proceedings, unless the alien spouse resides outside the U.S. for two years.
 - Deportation proceedings can often last many years, for reasons not under the alien's control. During the pendency of the process, it is not unusual for an alien defendant, who is frequently young and single, to meet someone, develop a relationship, get married, and even have children. Numerous examples of such marriages have been documented since the enactment of section 5. Yet, such a marriage, under the current statute, is presumptively regarded as non bona fide, with no opportunity for rebuttal.
 - Even if the marriage is indisputably bona fide, the current section 5 compels the alien spouse to reside outside the country for two years because there is no opportunity to establish the legitimacy of the marriage. Consequently, the American citizen spouse is either compelled to live apart from the alien spouse for two years, or the citizen spouse must abandon his/her own

²⁶⁸ H.R. REP. No. 101-723, p. 60 (1990); *see generally* ANDORRA BRUNO AND ALISON SISKIN, CONGRESSIONAL RESEARCH INSTITUTE: THE LIBRARY OF CONGRESS, IMMIGRATION: NONCITIZEN VICTIMS OF FAMILY VIOLENCE (2001) (useful summary of marriage fraud provisions and battered spouse or child waiver).

residence in the United States for the duration of the two year period. The American citizen spouse is forced, by the provisions of section 5 IMFA, to choose between abandoning his/her spouse or abandoning his/her country. Counsel for aliens subject to section 5 have contended that the provision contravenes the due process and equal protection guarantees of the Constitution.

- Section 302 of [Immigration and Nationality Act of 1990] addresses the problem of irrebuttability by permitting couples to overcome the bar on filing and approval of a visa petition when the marriage is demonstrated to be bona fide.”²⁶⁹
- The marriage fraud provision of the Immigration and Nationality Act of 1990 also authorizes the Attorney General to protect battered immigrant spouses. It:
 - “[A]llows the Attorney General to remove the conditional basis of an alien's permanent residence status if (1) the alien spouse can demonstrate that the marriage was entered into in good faith and that after the marriage the alien spouse was battered by or was subjected to extreme mental cruelty by the U.S. citizen or permanent resident spouse; 2) or the alien child can demonstrate that the alien was battered by or subjected to extreme mental cruelty by the U.S. citizen or permanent resident parent.
 - The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status. It is the Committee's intent that the Attorney General will grant the waiver when battering or cruelty to the spouse or child is demonstrated. Evidence to support a battered spouse/child waiver can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies. The Committee notes that the discretion given to the Attorney General to decide to deny waiver requests under this provision is to be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.
 - In addition, the phrase “by the alien spouse for good cause” is removed from current INA Section 216(c)(4)(B), allowing aliens to file for removal of conditional basis even if they were not the moving party in terminating a marriage. The change will allow the alien to file independently for a waiver if the marriage was entered into in good faith and the marriage has been terminated or termination proceedings have commenced.”²⁷⁰

²⁶⁹ H.R. REP. No. 101-723, p. 60-61 (1990).

²⁷⁰ H.R. REP. No. 101-723, p. 81 (1990).

- During the 1992 Judiciary House Committee hearing, Rep. Slaughter, NY responded to Rep. Mazzoli, KY about concerns over the 1992 amendments to the Immigrations and Naturalization Act:
 - “Mr. Mazzoli:...[Immigration and Naturalization Service] will testify later this morning about having serious concerns about your bill on two grounds really. One is that they believe that the current system is working OK, citing as a statement of fact that they’ve received no complaints from persons who felt that the professional evaluation prevented their receiving a waiver–
 - Ms. Slaughter: From battered spouses?
 - Mr. Mazzoli: That’s the statement that’s made by [Immigration and Naturalization Service].
 - Ms. Slaughter: That wouldn’t surprise me at all, Mr. Chairman.
 - Mr. Mazzoli: OK
 - Ms. Slaughter: The battered spouse is very likely to go to complain to–
 - Mr. Mazzoli: Because you said in your statement the fact that these are maybe from countries where that’s not permitted so that you would not think it’s unusual that [Immigration and Naturalization Service] would have no complaints from these people?
 - Ms. Slaughter: Not at all.
 - Mr. Mazzoli: But you would also be pretty clear that there would be several thousands, as you sort of said in the last sentence of your statement, that there are that many battered immigrant spouses?
 - Ms. Slaughter: Well, the domestic violence in this country, as you know is increasing. Three out of our battered spouses who apply for help are turned away. Of those numbers, very few of them are the immigrant spouses. These are people who are usually brought to the attention of shelters by churches, social workers, or from these schools. As we pointed out in our testimony, in the past evidence from these types of sources that has usually been sufficient for the INS to believe that abuse has taken place.
 - Mr. Mazzoli: It’s interesting, the data that the staff at least has provided me here, coming from [Immigration and Naturalization Service]–these are [Immigration and Naturalization Service] data that gives, starting in 1988 through 1992, applications for spousal waivers. They really number in the several thousand For example, in 1989, 7,951; 1990, 7,004; 1991, 6,593 almost 6,600; and so far this year, almost 2,000. The data are certainly there.
 - The other reason [Immigration and Naturalization Service] would say that they have reservations about–
 - Ms. Slaughter: Those are under, I assume, the present regulations of having a mental professional certify?
 - Mr. Mazzoli: If these are the applications–
 - Ms. Slaughter [continuing]: If these are the numbers–

- Mr. Mazzoli [continuing]: Now whether they're going to be denied because they don't have that supporting data, I don't know; we'll find out.
- Ms. Slaughter: All right. I'd like to know that.
- Mr. Mazzoli: It would be very useful.
 - Another reason, Louise, that they have serious reservations about your bill and it is also brought up by the FAIR group later this morning, regarding the questions of fraud, and the standards of proof. If you move to the credible evidence from something like a verified statement of a licensed worker in this field, you open up potentially to fraud. So let me just ask that question, since it will be brought up today. How do you deal with that problem?
- Ms. Slaughter: Well, I think that the Marriage Fraud Act dealt with that problem. All we're trying to do is say that within that act, which obviously had the support of the Congress of the United States—none of us are trying to bring in citizens fraudulently—but under that act, we did not believe that Congress intended that that 2-year waiting period be a time of horror for persons who were living in unspeakable conditions and had absolutely no recourse. It was that person, male or female, that we are trying to speak up, believing that the law does not permit that kind of control and abuse.
 - Certainly I would imagine that the numbers of people who have applied—and I have not seen those, and I would like to have some supporting documentation—probably reflect, without too much stretch of imagination, the kind of domestic violence that's taking place in this country today. But American women don't have to go through the process of going to the U.S. Government and pleading for their lives."²⁷¹
- Rep. McCollum, FL then expressed his overall support for the 1992 amendments to the Immigrations and Naturalization Act brought by Rep. Slaughter, NY, while also questioning “credible evidence”:
 - Mr. McCollum: Louise, I certainly support the concept that you've go there, and I'm, as you know, the original author of the Marriage Fraud Act.
 - Ms. Slaughter: Yes, indeed.
 - Mr. McCollum: We have recognized for some time that the battered spouse situation is important to address. The read question involved in this is how far we can go in these terms and how loose they are. And I guess the issue is what is 'credible evidence?' And, I'm curious (a) what you think it is and (b) is there any way to better restrict or define it than just leaving it like it is and what you've proposed?

²⁷¹ *Immigration and Naturalization Housekeeping Amendments Act of 1992: Hearing Before the Subcomm. On Int'l L., Immigr., and Refugees of the H. Comm. on the Judiciary*, 102nd Cong. 44-45 (1992) (statements between Romano L. Mazzoli, Representative for Kentucky and Louise Slaughter, Representative for New York), <https://niwaplibrary.wcl.american.edu/pubs/nowldef-testimony-bsw-1992>,

- Ms. Slaughter: We certainly want to do that, but it seems to me that the [Immigration and Naturalization Service] itself, as we pointed out before the Marriage Fraud Act, often accepted as credible evidence uncorroborated statements. But we feel that adequate evidence has always been in this country evidence that has been given by people who are working in the field, by teachers at school. We take that for child abuse. We don't require that every child that claims that he has been abused go to a medical professional, a licensed medical professional, as the statement goes, to try to prove that case. The same kind of evidence that should apply for abuse for any other person in this country should certainly not be disallowed for someone because they are not an American citizen.
- Mr. McCollum: Well, at one time we are considering other language that would not be as broad as credible evidence. "Included but not limited to reports and affidavits from police, medical personnel, psychologists, school officials, or social service agencies," was the language being used; so I wanted to make that point to you.
 - Would language somewhat similar to this if not that language, to further refine 'credible fear' be acceptable to you, and if it isn't, what problems do you have or what can you do to give us some better guidance?
- Ms. Slaughter: Well, I think I'd like to work with you on that, if I may, because one of the important points that I wanted to make a while ago, and I maybe didn't make it strongly enough, is that we think that evidence from battered shelters or evidence of bruising, pictures of the spouse brought into the shelter, certainly ought to be also corroborating evidence. But battered women shelters are run by people who basically are volunteers; some of them are professionals, but they don't have on staff license mental professionals.
- Mr. McCollum: No, I understand why you want to get away from that
- Ms. Slaughter: Yes.
- Mr. McCollum: And I understand that completely. My concern, and I think probably some of my colleagues would share it, is simply in making the door too wide. Without any further refinement, a court should interpret 'credible evidence' to mean just about anything. The real concern is not what INS's discretion will be or the Attorney General's. It's that if a court goes in and reviews it, they could interpret the language you put into the statute such that, well, if the spouse herself comes in there and says, 'I was beaten up,' and maybe she has her neighbor friend say that, and that's it. Maybe that is sufficient, but it seems to me that at some point that's awfully easy to have fraud. The question is: How can we put it in there so that there can be some other credible evidence. They don't have to go to a mental health professional, but it seems to me you ought to at least have somebody—school officials, social workers, somebody—

Ms. Slaughter: There was an intent that this would not be verified by someone else other than complaining spouse. But I have to say this: It seems to me that because these are mostly women, there's the same sort of underlying attitude which is present in legislation of the United States that we often promulgate—that women don't know what they're talking about, and somebody else is going to have to verify it for them. We pass legislation like that; the gag rule is an example."²⁷²

VAWA CONFIDENTIALITY AND THE CREATION OF THE SPECIALIZED VAWA UNIT ADJUDICATING VAWA, U VISA, T VISA AND OTHER CRIME VICTIM'S CASES

VAWA Confidentiality²⁷³

LEGISLATIVE HISTORY OF VAWA CONFIDENTIALITY

Violence Against Women Act Confidentiality protections were developed to interrupt efforts of perpetrators of domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes against immigrants from triggering immigration enforcement actions against victims,²⁷⁴ learning about or obtaining information from victims' VAWA confidentiality protected case files,²⁷⁵ and interfering in adjudication of crime victim and abuse based immigration cases filed by victims.²⁷⁶ VAWA Confidentiality was enacted in 1996 and improved in VAWA 2000, VAWA 2005 and VAWA 2013. The following explains the legislative history of the important provisions of VAWA confidentiality designed to enhance the safety of immigrant victims and their children.

- VAWA Confidentiality was passed and enacted into law in 1996 through Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act. Regarding VAWA Confidentiality, the 1996 House Judiciary Committee report addresses the limitations of the Attorney General's authority by explaining that the Senate's
 - “[A]mendment section 331 recedes to House section 364, with modifications. This section provides that the Attorney General shall not make an adverse determination of admissibility or deportability against an alien or an alien's child, using information furnished solely by, certain individuals who have battered or subjected to extreme cruelty that alien or that alien's child, unless the alien has been convicted of a crime identified in redesignated section 237(a)(2). Neither shall the Attorney General permit use by, or disclosure to any person (other than an officer of the Department of Justice for official and certain other designated purposes) of any information that relates to

²⁷² *Immigration and Naturalization Housekeeping Amendments Act of 1992: Hearing Before the Subcomm. On Int'l L., Immigr., and Refugees of the H. Comm. on the Judiciary*, 102nd Cong. 45-46 (1992) (statements between Ira William McCollum Jr., Representative for Florida and Louise Slaughter, Representative for New York), <https://niwaplibrary.wcl.american.edu/pubs/nowldef-testimony-bsw-1992>.

²⁷³ For more detailed information on VAWA confidentiality see, Alina Husain and Leslye Orloff, VAWA Confidentiality: Statutes, Legislative History and Implementing Policy (April 4, 2018) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

²⁷⁴ Alina Husain, Daliana Gomez Garcia, & Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (June 7, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

²⁷⁵ Rafaela Rodrigues, Limayli Huguet, & Leslye E. Orloff, *Quick Reference Guide for Judges: VAWA Confidentiality and Discovery-Related Case Law*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (Oct. 25, 2022), <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-discovery-cases-judicial>.

²⁷⁶ *Demaj v. Sakaj*, No. 3:09 CV 255 JGM, 2012 WL 476168 (D.Conn. Feb. 14, 2012).

an alien who is the beneficiary of an application for relief (which has not been denied) under section 204(a)(1) (A) and (B) (self-petition for immigrant visa by alien who has been battered or subject to extreme cruelty), section 216(c)(4)(C) (hardship waiver allowing removal of conditional permanent resident status based on qualifying marriage because alien spouse or child has been subject to battery or extreme cruelty), or section 244(a)(3) (suspension of deportation for alien spouse or child who has been subject to battery or extreme cruelty). Civil penalties are established for willful violations.”²⁷⁷

Creation of the Specialized VAWA Unit

In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created “to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants”, to “[engender] uniformity in the adjudication of all applications of this type” and to “[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.” This specially trained VAWA unit assures consistency of VAWA adjudications, and can effectively identify eligible cases and deny fraudulent cases. Maintaining a specially trained unit with consistent and stable staffing and management is critically important to the effective adjudication of these applications.²⁷⁸

REP. CONYERS, MI

- *“Consistent with these procedures, I recommend that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§202 or 203), and VAWA HRIFA petitions, 106 work authorization under section 814(c) of this Act), battered spouse waiver adjudications under 216(c)(4)(C), applications for parole of VAWA petitioners and their children and applications for children of victims who have received VAWA cancellation.”*
- House Judiciary Report on the Department of Justice Appropriations Authorization Act, Fiscal Years 2006-2009 (H.R. 3402, § 921)

In creating VAWA’s confidentiality provisions Congress was explicit about its intent.

- “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include

²⁷⁷ H.R. REP. NO. 104-828, p. 231, at § 384 (1996).

²⁷⁸ See 62 Fed. Reg. 16607-16608 (1997); USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.”²⁷⁹

- “This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA.”²⁸⁰
- In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special “any credible evidence” standard.”²⁸¹
- “[T]he Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government data bases can be relied upon, even if government officials first became aware of it through an abuser.”²⁸²

REP. CONYERS, MI

- *“I believe that...this Act contains some of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution....Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special “any credible evidence” standard. I believe that all investigation and enforcement of these provisions should be done by the Office of Professional Responsibility of the Justice Department. For consistency, these cases need to be centralized in one division and I believe that this office is best equipped to address these cases. VAWA confidentiality protections in IIRIRA are amended to conform with*

²⁷⁹ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸⁰ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸¹ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

²⁸² DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptsr-3402-09-22-2005/>.

current practice extending these protections to the Department of Homeland Security in addition to the Department of Justice and to expand confidentiality protections to the Department of State. These protective provisions were designed to assure that the Secretary of Homeland Security, the Attorney General and the Secretary of State may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government databases can be relied upon, even if government officials first became aware of it through an abuser.”²⁸³ To appropriately implement VAWA Confidentiality, the Department of Homeland states that it “developed and required...all of its officers receive training”²⁸⁴ and that the DHS 2013 All DHS Directive requires that:

- “All DHS employees who, through the course of their work may come into contact with victim applicants or have access to information covered by 8 U.S.C. 1367 complete the VAWA: Confidentiality and Immigration Relief training, which is currently on Component's Learning Management Systems (LMS). The VAWA Training was developed by FLETC in collaboration with subject-matter experts from several DHS Components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, the Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training.
- Since 2007, ICE has also VAWA confidentiality policies in place. “The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) which became effective on January 5, 2006, expanded various protections for aliens seeking immigration benefits as crime victims and amended various sections of the Immigration and Nationality Act (INA). As a result, operational units of U.S. Immigration and Customs Enforcement (ICE) will be required to follow new procedures when taking certain actions in cases involving aliens eligible to apply for VAWA benefits or T or U nonimmigrant status. This interim guidance explains how VAWA 2005 affects the current operating procedures of the Office of Investigations (OI) and the Office of Detention and Removal Operations (DRO).
- For purposes of this interim guidance, if an officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or I or U nonimmigrant status, the requirements of 8 U.S.C. § 1367...must be followed along with standard operating procedure.”²⁸⁵

²⁸³ H.R. Rep. No. 103-x at E2605-08 (2005).

²⁸⁴ DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, 3 (Nov. 7, 2013) <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

²⁸⁵ DEP'T OF HOMELAND SECURITY, MEMORANDUM FOR ALL OPLA CHIEF COUNSEL: VAWA 2005 AMENDMENTS TO THE IMMIGRATION LAWS, 24 (Feb. 1, 2007), <http://niwaplibrary.wcl.american.edu/pubs/iceopla-va-wa-confidentiality-2007-foia/>.