

To: Council on Combating Gender-Based Violence
U.S. Department of Homeland Security

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RE: Extending VAWA Confidentiality and 384 Protections to Special Immigrant Juvenile
Status Eligible Immigrant Children

Most foreign born children who suffer child abuse, child neglect, or child abandonment perpetrated against them in the United States by one or both of their parents are eligible for Special Immigrant Juvenile Status (SIJS). Although people commonly think SIJS children of having been abused abroad, eligibility includes children who suffer child abuse, neglect, or abandonment in the United States. It is not uncommon for the battered immigrant mother's child to also be abused by the child's domestic violence perpetrating father. As a result many immigrant children are eligible for Special Immigrant Juvenile classification who are victims of child abuse, child neglect, or child abandonment perpetrated against them by a parent in the U.S. Perpetrators of child abuse and neglect, like perpetrators of domestic violence, commonly report crime victims to DHS to trigger immigration enforcement actions against victims. This form of immigration-related abuse is very effective in silencing victims, thus undermining immigrant victims' willingness to call the police for help, to seek protection orders against abusers, and to cooperate with law enforcement and prosecutors in criminal investigations and prosecutions against the crime perpetrator.

SIJS children who were abused or neglected by their parents in the U.S. are at risk for suffering the same harms VAWA confidentiality sought to protect for spouses and children who are victims eligible for or who have filed VAWA self-petitions, U visa, and T visa applications. When perpetrators call ICE to report family members by providing "tips" to ICE enforcement officials, if the spouse or child abuse victim has not filed a case that has been assigned a "384" code in the Central Index System, ICE may try to institute an enforcement action against a victim and claim that they did not know the tip came from a perpetrator.

SIJS children who have been abused or neglected in the U.S. by a parent are at high risk of perpetrators retaliating against them in these same ways and should receive the same access to VAWA confidentiality protections as trafficking victims with continued presence and that INA Section 108 battered spouses receive. Extending Section 384 protection to SIJS applicant children would be a key step in implementing VAWA's amendments to SIJS that prohibits USCIS adjudicators from communicating about a child's SIJS or Adjustment of Status application with the child's parent who perpetrated the maltreatment. This approach effectively implements 8 U.S.C. 1367(a)(1)(A) that states that DHS may not:

(1) Make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by—

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(A) a spouse *or parent* who has battered the alien or subjected the alien to extreme cruelty.

In many SIJS cases, the applicant child will have suffered acts of battering or extreme cruelty which constitute abuse, neglect, or abandonment or similar maltreatment as defined by state law. It is important to note that 8 U.S.C. 1367 offers VAWA confidentiality protection starting at the point in time where there is a spousal or parent/child relationship and there is battering or extreme cruelty. No filing of any type of immigration case is required. Thus, many SIJS children should already receive VAWA confidentiality protection. However, as with VAWA self-petitioners and U and T visa applicants, it is difficult to enforce these protections until the victim has filed a VAWA confidentiality protected immigration case. Extending VAWA confidentiality protections to SIJS children will help close this loophole, gap, and avenue of harm that abusive parents of immigrant children can use to harm them.

Congress made clear in its passage of VAWA and the Trafficking Victims Protection Act (TVPA), and both Act's reauthorizations, that bi-partisan members were interested in protecting children as much as they were interested in helping and protecting immigrant domestic violence victims. In the VAWA 2005 legislative history of the VAWA confidentiality protections (8 U.S.C. 1367) Congress stated:

“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.”

Providing SIJS applicant children with VAWA confidentiality protection by entering all SIJS cases in the Central Index System as Section “384” protected cases would go a long way toward ensuring that immigrant child victims of parent perpetrated maltreatment get the same protections Congress sought to offer all children who suffered battering or extreme cruelty perpetrated by their parents.