NIWAP

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

H.R. 5331 112th Congress
The Violence Against Immigrant Women Act of 2012
Section-by-Section

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INTRODUCTION

On May 7th, 2012, Representative Jan Schakowsky introduced *The Violence Against Immigrant Women Act of 2012* in the 112th Congress, 2nd Session, HR 5331. HR 5331 is a bill that contains a myriad of legislative provisions that, if enacted as law, would dramatically improve legal protections for immigrant women and children who have been victims of domestic violence, child abuse, sexual assault, stalking, human trafficking, child abandonment, child neglect or a range of other violent crimes committed against them in the United States. HR 5331 was designed to include provisions that addressed a wide array of statutory reforms that benefit immigrant and other survivors to be potentially included in VAWA 2013. Some of the provisions contained in HR 5331 became law as part of the Violence Against Women Act of 2013, however, since VAWA 2013 became a narrower bill than originally envisioned, many of the statutory protections contained in HR 5331 were not enacted and should be included in future violence against women legislation.

This document contains a section-by-section analysis of the provisions contained in HR 5331. It describes each of the important legislative reforms contained in the bill, and explains why these reforms are urgently needed by immigrant survivors.

This section-by-section analysis is intended to be read alongside and as a supplement to our interlineated version of HR 5331. Our interlineated version of HR 5331 is marked up to illustrate which provisions are no longer needed because they have already been passed as law, and which provisions continue to be needed. In addition, this section-by-section is also intended to be read alongside a third document, entitled "Immigrant Victims Additional Statutory Amendments Needed," which discusses additional amendments that are needed in addition to those outlined in HR 5331. Both of these supplemental documents can be found at the following link: https://niwaplibrary.wcl.american.edu/2021-legislative-proposals-that-benefit-immigrant-survivors

Note to Future Drafters: In this document, we refer to both HR 5331 and to the Schakowsky bill, and we use these titles interchangeably. When we discuss the Schakowsky bill, we are referring to HR 5331, which was introduced to the 2012 Congress' 2nd session on May 7, 2012.

TITLE I- RULEMAKING

Section 101

Section 101: Rulemaking and Findings with Regard to Rulemaking
p.2 L 2 to p.3 L 7

Note to Future Drafters: This section should include language that will ensure that regulations governing the Battered Spouse Waiver be amended to bring the regulations in line with the statutory changes made in VAWA 1994 to require any credible evidence rules be used in all VAWA immigration cases, including the Battered Spouse Waiver.[1]

[1] *For a report on problems with battered spouse waiver adjudications see, https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017.*

This provision would require the promulgation of regulations by the Department of Homeland Security (DHS) to implement this Act and to require promulgation of regulations to implement all Violence Against Women Act and Trafficking Victim Protection Act provisions that have not been previously implemented by regulations protecting immigrant victims of violence and crime. This section also orders DHS to promulgate interim regulations to implement this Act that go into effect immediately while DHS undertakes the notice and comment process. The regulations issued implementing VAWA 1994, T and U visa regulations and the T and U lawful permanent residency adjustment rules were issued as interim regulations. This statutory language would assure that through interim regulations, victims benefit within 6 months from the statutory changes made in this Act and in all prior provisions contained in VAWA 2000 and VAWA 2005 for which regulations have to date not been implemented. Each VAWA since 2000 has included similar language to ensure that DHS actually implements the provisions enacted. This section includes findings of fact about the importance of rulemaking.

TITLE II – PROTECTIONS FOR VICTIMS

Note to Future Drafters: This bill expands the definition of "VAWA self-petitioner" in Section 301(d) to include additional categories of crime victims. The first new group of crime victims added includes Special Immigrant Juvenile Status (SIJS) children, defined in INA 101(a)(27)(J). However, the reference used by legislative counsel in this draft is 287(h) which also describes SIJS. The references to 287(h) in this bill should be changed to reference 101(a)(27)(J) for clarity. This bill also adds abused immigrant spouses of certain visa holders to the definition of VAWA self-petitioner. As a result, these two categories of victims are protected throughout the bill along with VAWA self-petitioners. In future drafting, to make sure that VAWA cancellation of removal (240A(b)(2)) and VAWA suspension of deportation (244(a)(3)) applicants receive equal protection whenever VAWA self-petitioners are protected, those two code sections should also be added in section 301(d) to the VAWA self-petition list.

Section 201

Section 201: Employment Authorization for Immigrant Victims
p.3 L 10 to p.5 L 19

For most immigrant victims of domestic violence, sexual assault and human trafficking, and for immigrant children eligible for Special Immigrant Juvenile Status (SIJS), delays in access to employment authorization jeopardizes their lives, health and safety. Although under current law DHS could provide early access to work authorization and protection from deportation by granting immigrant victims deferred action, DHS has seldom used this process on behalf of immigrant victims. VAWA self-petitioners abused by lawful permanent resident spouses and children can wait up to 1 ½ years to have their case adjudicated, at which point they receive deferred action and access to work authorization. Processing times for adjudications of U visa cases often take up to or over 4-6 years before victims receive waitlist approval, deferred action and work authorization. Research among immigrant victims of violence against women has found that the lack of access to employment

authorization creates significant hardship for immigrant crime victims and their children, whose vulnerability to ongoing abuse and harm is increased because victims are forced to find ways to feed, clothe and house themselves and their children without access to employment authorization until after their VAWA, T or U visa case is approved.

A survey conducted in September of 2011 found that 73.9% of VAWA self-petitioners currently wait longer than 6 months to receive work authorization. This delay leaves battered immigrants and their children and immigrant child abuse and elder abuse victims extremely vulnerable to the perpetrators of ongoing abuse, threats and coercion. The waits for work authorization among U Visa victims are even longer -- 93.9% of U visa crime victims wait more than 6 months to receive work authorization.[2] U visa victims are crime victim applicants who are helping police, prosecutors, and courts in our communities fight crime. U visa victims are being helpful in the detection, investigation, prosecution, conviction or sentencing of criminals. Without legal work authorization, these victims are extremely vulnerable to witness tampering, harassment, threats and coercion from the perpetrator. This is particularly true in domestic violence and employer perpetrated domestic violence, child abuse, and sexual assault cases where the victim is dependent upon the perpetrator for economic support.

DHS has been making prima facie determinations in cases of VAWA self-petitioners in domestic violence cases since 1996 and immigration judges have been able to make similar determinations since 1997.[3] The prima facie determination is an early screening of the case to determine its validity. DHS has been issuing prima facie determinations within 2-3 months of filing to victims with cases that DHS believes are valid.

This section requires that DHS process employment authorization requests from abused immigrants in VAWA, T and U visas, SIJ, and Section 107 work authorization cases, and issue employment authorization to victims in the same manner they do for asylees. This will assure that immigrant victims will be able to access work authorization within 180 days of filing or when their application is approved—whichever date occurs first. Knowing when immigrant victims will receive work authorizations will help victims and their victim advocates and victim witness specialists working at law enforcement and prosecution agencies develop and implement safety plans that may include shelter stays, protection orders and transitional housing to help sustain immigrant victims and their children during the 6 months they may have to wait to attain work authorization. This predictability is needed to sever the economic dependence many immigrant victims have on abusive domestic violence, employment based and human trafficking perpetrators and to help other crime victims attain safety and rebuild their lives following crime victimization.

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[2] Kristztina E. Szabo, et al., Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants, (2012) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12

[3] Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children (1997) https://niwaplibrary.wcl.american.edu/pubs/pb-gov-dojmemoprimafaciedeterminationverification; Field Guidance Re: Prima Facie Review of Form 1-360 when Filed by a Self-Petitioning Battered Spouse/Child (March 27, 1998) https://niwaplibrary.wcl.american.edu/pubs/form1360-filed-self-petitioning-spouse; Extension of Validity Period for Notices of Prima Facie Case Issued in Connection with a Form 1-360 Filed by a Self-petitioning Battered Spouse/Child (April 8, 2004) https://niwaplibrary.wcl.american.edu/pubs/extension-validity-period-primafacie; EOIR: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children (1997) https://niwaplibrary.wcl.american.edu/pubs/prima-facie-verification-requests

This section also includes a Sense of Congress and reports to Congress on employment authorization for immigrant victims.

Section 202

Section 202: Protections for Trafficking Victims

Section 202(a): Death of a Family Member

p.5 L 20 to p.10 L 10

This section makes several amendments to the Immigration and Nationality Act (INA) needed to ensure that the death of a crime victim—who is often the primary applicant in a VAWA, T or U visa case—does not cut off the crime victim's children from eligibility for VAWA's immigration protections. It would ensure that family members of T and U visa victims continue to qualify when the victim dies after the case has been filed, but before the T or U visa case has been adjudicated. This section also amends the Widow Penalty Amendment to ensure that victims obtaining protection through VAWA, T and U visas have the same access to these protections as immigrants who are not crime victims. This section extends these protections to eligible family members of VAWA self-petitioners, T visa or U visa victims, regardless of whether they reside in the United States or outside of the United States. Many VAWA, T and U visa victims have children living outside of the U.S. who are eligible to obtain legal immigration status through their parent's VAWA, T or U visa application. These children need the same protections whether or not the child resides in the U.S., in the case of their parent's death.

Additionally, VAWA 2000 provides that abused immigrant spouses may self-petition up to two years after divorce or death of the abuser. VAWA 2000 made amendments to accomplish this goal but did not include amendments to each of the INA sections needed to fully protect all VAWA self-petitioners. This section provides that immigrant spouses abused by lawful permanent residents may file self-petitions up to two years after divorce from the abusive spouse or the death of the abusive spouse. Similar protections are extended to abused stepchildren, who are eligible to self-petition up to two years from the date of their parents' divorce from their U.S. citizen or lawful permanent resident step-parent and removes any requirement that these abused children maintain an "ongoing relationship" with the abuser. Children whose parent-child relationship terminated between October 23, 1998 and the date of enactment of this Act will have two years from the date of enactment of this Act to self-petition. Immigrant children who are victims of incest or abuse will particularly benefit from these amendments. This section additionally allows self-petitioning abused children, including those over 21 years of age, to apply for protection as VAWA self-petitioners on behalf of their children, and if married, their immigrant spouse.

Section 202(b): Unaccompanied Alien Child Redefined

p.10 L 11 to p.11 L 4

Currently, some minors who should be transferred from DHS to ORR custody within 72 hours remain in DHS custody. The problem stems from DHS interpretations of who is an unaccompanied minor. Although unaccompanied minors should be transferred to ORR custody within 72 hours, DHS immigration enforcement officials retain custody of some minors who have parents in the U.S.,

regardless of whether the parent is abusive or is known or familiar to the minor. In these cases, DHS immigration enforcement officials do not consider the minor to be unaccompanied. In addition, DHS fails to reunite the minor with the minor's parent, as required by law. In some cases, the parent does not come forward to claim the minor because the parent is undocumented. This section clarifies that minors who cannot be reunited with a parent or guardian within 72 hours will be considered to be unaccompanied and immediately transferred to ORR custody. This section guarantees that all minors receive access to ORR programs and assistance.

Section 202(c): Expanding the Unaccompanied Child Definition
p.11 L 5 to L 17

Note to Future Drafters: The section title on the Schakowsky bill for Section 202(c) (which is "Providing Safe and Secure Placements for Children") is incorrect. The correct title for Section 202(c) is "Expanding the Unaccompanied Child Definition"

When unaccompanied children are placed in the care and custody of the Department of Health and Human Service's Office of Refugee Resettlement (ORR), ORR develops continuation of care plans that take into consideration a child's vulnerability and low risk factors for flight. Unaccompanied children who turn 18 years of age while in the custody of ORR, however, are frequently removed from the appropriate, constructive and healthy placements arranged and supervised by ORR, where they are thriving, and are placed in adult detention centers. These amendments require DHS to abide by ORR's continuation of care plans for minors who turn 18 years of age while in custody and provides that minors should be allowed to remain in healthy and age-appropriate placements and should not be transferred to DHS custody.

Section 202(d): Providing Safe and Secure Placements for Children
p.11 L 18 to p.12 L 21

The Trafficking Victims Protection Reauthorization Act (TVPRA) mandates that unaccompanied children's asylum claims will be adjudicated affirmatively by the DHS asylum office. Traditionally, children in deportation/removal proceedings filed asylum applications before the immigration court, which is an adversarial setting that is difficult and traumatic for unaccompanied children. DHS often takes the position that children who are reunited with a sponsor or a family member are no longer unaccompanied under TVPRA and that these children, as a result, are no longer eligible to have their asylum case adjudicated in a non-adversarial setting. Children who are fortunate enough to be released from ORR detention and secure placement in a home are subject to the trauma of having their asylum case litigated in immigration court in the same manner as the cases of adult asylum victims, and are denied adjudication of their asylum case in a non-adversarial setting.[4] These practices are extremely harmful to child asylum applicants. They create a disincentive to placing child asylum applicants in family settings, which accelerates the child's ability to heal from the trauma they suffered that was the basis of their asylum claim, and they lead to longer periods in government custody for children. The amendments made by this section ensure that all children who are identified as unaccompanied must

[4] Vulnerable But Not Broken: Psychosocial Challenges and Resilience Pathways Among Unaccompanied Children From Central America (2018) https://niwaplibrary.wcl.american.edu/pubs/vulnerable-but-not-broken

have their asylum cases adjudicated by DHS in a non-adversarial setting, even after the child has been released to a sponsor, guardian or parent.

This section also addresses confidentiality issues that arise for unaccompanied children filing for asylum by extending VAWA confidentiality protection under 8 U.S.C. 1367 and Health Insurance Portability and Accountability Act (HIPAA) protections to unaccompanied minor children. Both VAWA confidentiality and HIPAA protection will protect the records of children in DHS and ORR custody. This is particularly important and needed because currently, the information a child shares with HHS/ORR social workers, counselors, therapists, case managers and other HHS staff or HHS-funded professionals providing these essential professional services to immigrant children in ORR custody and placements, is not confidential. Information that would in all other contexts be protected by, for example, patient/therapist privilege, DHS requires that the professionals providing therapy to children share information revealed in therapy with DHS, including information that under state laws governing therapist/patient privilege would be confidential. Then DHS immigration enforcement officials use this information in immigration court or in adjudication of the child's immigration case to discredit the child. This runs contrary to state patient/therapist confidentiality protections and contrary to traditional therapy, psychologist, psychiatrist and social work practice designed to promote the best interest of the child. This practice has the effect of inhibiting children from sharing and inhibiting treatment providers from asking about critical information needed for providing child trauma survivors with appropriate care, treatment and services. The amendments made by this section ensure that the information a child shares with counselors, therapists and other mental health professional whose communications with the child would be privileged under state law remains confidential, including when the entity paying for the treatment is the federal government. This provision applies to all social services, counseling and therapy providers who have contractual relationships with ORR.

Section 202(e)(1): Eligibility for Special Immigrant Juvenile Status: Age and Court Jurisdiction
p.12 L 24 to p.13 L 13
[Passed in TVPRA 2008]

Section 202(e)(2): Eligibility for Special Immigrant Juveniles Status: Single Parents
p.13 L 14 to L 24

The TVPRA made a substantial change in Special Immigrant Juvenile Status (SIJS) eligibility. It replaced the statutory language that a child had to be "eligible . . . for long-term foster care" with the statutory language that "reunification with 1 or both of the immigrant's parents is not viable." This was an important improvement, as it extended SIJS protections to children who were abused, abandoned or neglected but who were not placed with the state in "long-term foster care." The change, however, has led to uncertainty regarding a child's continued eligibility for SIJS immigration relief if a child has returned to live with one parent who is the non-abusive parent. DHS has taken the position that children are SIJS eligible when they have been abused, abandoned or neglected by one parent. This section codifies that approach and removes any ambiguity, clarifying that a child is eligible for SIJS when they have been abused, abandoned, or neglected by one of their parents and they live with their other non-abusive parent.

Section 202(f): Counting of Trafficking Victims and Benefits for U Visa Holders and Families
p.14 L 1 to L 6

U.S. immigration laws create several immigration options for victims of human trafficking. Some whose trafficker is their U.S. citizen or lawful permanent resident spouse, parent or adult citizen child are eligible to file VAWA self-petitions. Others who have been trafficked and also abused, abandoned, or neglected by at least one of their parents would qualify for Special Immigrant Juvenile Status (SIJS). Many trafficking victims are first identified as crime victims who experience trafficking and other forms of criminal activity covered by the U visa program. Trafficked persons who pursue other forms of immigration relief they qualify for or are granted other than the T visa are not accounted for in the annual trafficking reports. Trafficking victims who are eligible for T visa status and also eligible for other forms of immigration relief may choose to pursue another form of immigration relief because it may, for example, allow faster access to lawful permanent residency. This section provides for the counting and reporting of all trafficked persons, regardless of the form of immigration relief granted.

Section 202(g): Passport Retention
p. 14 L 7 to L 21

Perpetrators of human trafficking, sexual assault and domestic violence often take the passports of their victims as one of the tools the perpetrator uses to maintain control over their victim. There are other limited circumstances when an employee may turn over their passport or other legal documents temporarily to their employer for a legitimate purpose. For example, the employer may be assisting them to obtain a visa. Abusive employers, spouses, traffickers and others will often retain a victim's passport or other documents for a significant period of time. During this time, victims have a difficult time seeking protection or assistance if they are abused and do not understand why their passport was taken. The proposed language restricts the amount of time that one person can hold onto another's passport and creates a statutory presumption that if one person withholds the passport of another person for more than 32 hours, the person withholding the passport has committed a federal crime, absent proof that in this specific circumstance the withholding was not for a harmful purpose and not part of a pattern of abuse.

Section 203

Sections 203: Expanded Immigrant Crime Victim Protections
p.15 L 3 to p.18 L 9

Section 203(a): Expanding Immigrant Crime Victim Protections to Include Dating Violence, Abuse, Endangerment, and Exploitation
p.15 L 3 to L 15

Notes to Future Drafters: It may be useful to add some additional text in section 203(a) of this bill to confirm that the term "domestic violence" is not intended to limit or replace the definition of "battering or extreme cruelty." The battering or extreme cruelty language is broader than most state domestic violence definitions and the federal VAWA definition of domestic violence, because it was designed to cover forms of emotional abuse that constitute

extreme cruelty, in addition to what is covered in state and federal law definitions of domestic violence. So the wording of this section may need to be revised to clarify that "domestic violence" as used in the INA includes:

- *Domestic violence as defined by 42 USC 13925;*
- *Battering or extreme cruelty as defined in 88 C.F.R. 204.2(c)(iv); and*
- *Domestic violence or family violence as defined by state law.*

This will help ensure that if the harm a victim experiences meets the criteria of either the VAWA definition or the U.S. Immigration law definition or the state law definition, then that victim would meet the eligibility criteria for a U Visa definition of domestic violence. This provision will also cover the other references to domestic violence that are included in the INA.

Additional Note to Future Drafters: The criminal activities being added to the U visa statue in this bill should be expanded to add "hate crimes" to the list of enumerated U visa criminal activities. In addition, it should be noted that this bill originally added "stalking," to the list of enumerated U visa criminal activities, but since the drafting of this bill, VAWA 2013 has accomplished this, so the addition of that specific crime is no longer necessary.

Additional Note to Future Drafters: In the Schakowsky bill, the name of this section is "In General." The name of this section should be updated to the more specific title above—"Expanding Immigrant Crime Victims Protections to Include Dating Violence, Abuse, Endangerment, and Exploitation."

There are several places in the Immigration and Nationality Act where it uses the term "domestic violence" instead of "battering or extreme cruelty." However, the INA has never provided a definition for the terms "domestic violence," "sexual assault," "dating violence," or "stalking." This section applies to those terms the definitions that apply in all other parts of the Violence Against Women Act, which generally include the definitions applied to those terms under state law, and, as a matter of federal law, expand upon those terms in certain ways. The goal of this section is not to amend in any way the definition of "battering or extreme cruelty" under immigration laws, but rather to provide a definition for the other terms when they are used in the INA. The goal is to ensure that when the term "domestic violence" is used in the INA it includes, but is not limited to, "battering or extreme cruelty" and includes the definitions of the term domestic violence that are included under state laws and under VAWA.

These provisions expand the list of U visa enumerated crimes to add important crimes of (1) dating violence and (2) abuse, endangerment, and exploitation of a person who is a child, elderly, or disabled. At the time the U visa was originally created, it was assumed that stalking, elder abuse and child abuse were included within the term "domestic violence" on the U visa list. Since that date, VAWA and state law definitions have evolved to include specific definitions of elder abuse, dating violence and stalking, each of which should be covered in the U visa list of criminal activities to be consistent with VAWA.[5] *(Note: As mentioned in the headnote, stalking*

[5] VAWA defines each of these terms as follows:

Elder abuse: The term "elder abuse" means any action against a person who is 50 years of age or older that constitutes the willful—

is now covered in the U visa list of criminal activities, but the other crimes listed in this amendment still are not covered.) Through technical assistance, we have learned of heart-wrenching child abuse cases in which the perpetrator was not a parent, and it was argued that therefore the abuse did not fall within the domestic violence definition under in the U visa statute.

Sections 203(b): Protection for Incapacitated Sons and Daughters of Victims

p.15 L16 to p.17 L12

This section allows incapacitated sons and daughters who are over 18 or 21-years of age to qualify to be included in and offered protection through their parent's VAWA self-petition, T visa or U visa case. This is a protection urgently needed for immigrant families in which children who are incapacitated have reached the age of adulthood but are unable to function in society on their own due to physical, mental, or developmental disabilities or incapacities such as Down's syndrome, Cerebral Palsy, Autism, etc. Allowing incapacitated adults who are dependent family members of immigrant crime victims who are applying for relief as VAWA self-petitioners or T and U visa crime victims, to obtain VAWA self-petition, T or U visa status along with their abused immigrant parent, promotes family unity and assures that incapacitated adults and their children under 21 can continue to be cared for by family members.

This provision also allows siblings of child victims who are receiving VAWA, T or U visa relief as siblings of a crime victim to include their own children in their applications for immigration relief.

Section 203(c): Protecting Parents of U.S. Citizen Child Crime Victims

p.17 L 13 to p.18 L 9

(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services with intent to cause physical harm, mental anguish, or mental illness.

Dating violence: The term "dating violence" means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B)where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

Stalking: The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

(Source: https://www.law.cornell.edu/uscode/text/34/12291)

This section conforms the statue to confirm what has been the correct interpretation of the U visa statute by DHS. As originally written, the U visa statute allowed parents of abused children to apply for U visa protection without regard to the immigration or citizenship status of the abused child or step-child. The proposed statue confirms the current administrative practice of allowing parents of U.S. citizen crime victims to apply for U visa status. This was the original intent of the Act and is consistent with the practice in T visa cases and VAWA self-petitions.

Section 203(d)(1)-(2): Requirements Applicable to U Visas: (1) Recapture of Unused U Visas & (2) Sunset Date
p.18 L 11 to p.19 L 8

Note to Future Drafters: We strongly recommend removing the U visa annual cap altogether. This approach will speed reduction of the backlog and will prevent U.S. Citizenship and Immigration Services (USCIS) from having to expend time conducting multiple adjudications of each victim's U visa cases. This will not only result in significant economic savings for DHS, but will improve the effectiveness of the U visa as a crime fighting and victim protection tool. The longer victims have to wait to receive their U visas, the more crime perpetrators can use the victim's lack of secure immigration protections as a tool to undermine the effectiveness of criminal investigations and prosecutions.[6]

Additional Note to Future Drafters: President Biden's immigration bill proposes raising the U visa annual cap to 30,000. We recommend removing the U visa annual cap altogether.[7] *However, if the proposal in Biden's bill is adopted, future drafters should consider recapturing unused visas from past years. This provision in the Schakowsky bill provides the language for recapturing unused visas.*

This provision allows DHS to recapture U visas that were not used during fiscal years 2001[8] through 2009[9]—years when, due to DHS failure to issue U visa-implementing regulations, no visas were issued. In light of the U visa's humanitarian and crime fighting purpose, unused U visas shall continue to

[6] Urgent Reforms Needed to the U Visa Program (November 2020), https://niwaplibrary.wcl.american.edu/pubs/u-visa-reforms-needed

[7] *See*, Leslye E. Orloff, Urgent Reform Needed in the U Visa Program, published in Niskanen Center Essay Series, Redefining Immigration Reform: How Immigration Supports American Ideals (November 2020), https://www.niskanencenter.org/redefining-immigration-reform-how-immigration-supports-american-ideals/

[8] Note to Future Drafters: It should be noted that this section of the Schakowsky bill proposed that DHS be allowed to recapture U visas that were not used during the fiscal years 2006 through 2011, whereas in our provision description, the years referenced are 2001 through 2009. The Schakowsky bill recommends the year 2006 as the starting year because that is the year when the regulations are issued. However, we recommend future drafters use the year 2001 as the starting year, because when VAWA 2000 created the U visa, it was signed into law on Oct. 28, 2000, which was during fiscal year 2001. This fiscal year 2001 was the first fiscal year in which visas could become available, and we recommend that the recapture of unused visas extend back to that date.

[9] Note to Future Drafters: Again, it should be noted that the Schakowsky bill proposed that DHS be allowed to recapture U visas that were not used during the fiscal years 2006 through 2011, whereas in the provision description, the years referenced are 2001 through 2009. The bill originally used 2011 as the end date to account for any potential visas that would be unused in 2010 or 2011, however, to our knowledge, and according to DHS data, there were no unused visas in 2010 or 2011, because the full allotment of visas was issued during both years. Because of this, the recapture of unused visas only needs to extend to the year 2009.

transfer from year to year in the future. This will create a finite pool of 80,000 visas that can be used to continue awarding U visas to cooperating witness victims in years in which the cap of 10,000 U visas per year is reached. If for example, in FY 2012 DHS hits the 2012 cap for U visas and receives applications from an additional 5,000 victims, DHS may issue 5,000 additional U visas in 2012 instead of requiring these 5,000 victims to wait until FY 2013 for their U visa awards. If 5,000 extra visas are issued from the finite pool, the remaining pool of visas that can be used in future years will be reduced to 75,000. This provision should be replaced with a statutory reform removing the U visa cap.

Section 203(d)(3): Age Determinations
p.19 L 9 to p.20 L 4
[Passed in VAWA 2013]

Section 203(d)(4): Petitioning Procedures for U Visas – Deleting Supervisor Requirement
p.20 L 5 to L 11

Obtaining U visa certifications has been a significant road block keeping many eligible immigrant crime victims from attaining U visa immigration protections they are eligible to receive. Although DHS issued U visa implementing regulations in 2007, too few police and sheriff's departments, prosecutor's offices, courts, adult and child protective services agencies, labor enforcement agencies and other government entities authorized to sign U visa certifications have U visa certification practices in place. When DHS issued the regulations implementing the U visa, the regulations added a non-statutory requirement that U visa certifications could only be signed by the head of the agency or a designee *that must be a supervisor.* By adding this non-statutory requirement, DHS significantly undermined the ability of immigrant crime victims to receive U visa certifications needed to file for U visa immigration relief, and has made the entire process more difficult and more bureaucratic. This has contributed to a larger number of agencies that do not certify U visa cases at all. This section keeps the requirement that the chief of the agency must designate agency staff members whom the chief authorizes to sign U visa certifications for the agency, but provides the federal, state or local agency the discretion to appoint any staff member that the chief deems to be the best person for that role in the agency, whether or not the persons designated to sign U visa certifications on behalf of the chief has any supervisory responsibilities.

Section 203(e): VOCA as U Visa Certifiers
P.20 L 12 to L 18

Note to Future Drafters: This section should also include a statutory amendment codifying the DHS approach to certifications confirming that an agency may sign certifications if they are any of the following:[10]

" Certifying agencies include all authorities responsible for the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

[10] DHS U and T Visa Law Enforcement Resource Guide Updated November 30, 2015, https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015

• Federal, State Local, Tribal, and Territorial law enforcement agencies;
• Federal, State, Local, Tribal, and Territorial prosecutor's offices;
• Federal, State, Local, Tribal, and Territorial Judges;
• Federal, State, and Local Child and Adult Protective Services;
• Equal Employment Opportunity Commission;
• Federal and State Departments of Labor; and
• Other Federal, State, Local, Tribal, or Territorial government agencies that have criminal, civil, or administrative investigative or prosecutorial authority."

We also recommend stating in the statute language that at all stages of a criminal, civil or administrative case detection, investigation, prosecution, conviction or sentencing, each certifying agency has continuing jurisdiction to certify. This language is needed to end the practice in some communities of prosecutors telling police that once the case is referred for prosecution, the police can no longer sign certifications.

The U visa list of certifying agencies was designed so that any state or federal government official, whose job involved determining whether a person has been a victim of crime, could be a U visa certifier. As the provision has been implemented, despite the fact that state government agencies charged with administering Victims of Crime Act (VOCA) funding are required to provide assistance only to persons who have been crime victims, the state VOCA office has not been included among U visa certifiers. This provision adds to the list of U visa certifying agencies, the state agency responsible for making payments out of VOCA funds directly to victims.

Section 204

Section 204: Battered Spouse and Family Member Protections and Nonimmigrants

Section 204(a): Exception from Foreign Residence Requirement for Educational Visitors

p.20 L 21 to p.21 L 12

Note to Future Drafters: This section should add Special Immigrant Juvenile Status (SIJS) children to the list of immigration statuses protected by this exception. Also check the drafting to be sure that this provision is written in a way that protects VAWA cancellation and suspension applicants. This bill accomplishes this by amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list. Alternatively, someone will need to check the statute to ensure that every time VAWA self-petitioner is mentioned in the statute, the section also lists the code section for VAWA cancellation and VAWA suspension.

Under current law, an immigrant who enters the country through an exchange visitor educational or training program is required to return to their home country for two years at the end of their program. Exchange visitors who have been victims of crime and who are otherwise eligible to apply for protection under VAWA, a U visa or a T visa often face life-threatening situations when required to comply with the two-year foreign residency requirement by returning to their home countries. This provision creates an exception to the two-year foreign residency requirement by allowing U visa, T visa, and VAWA victims who are eligible exchange visitors, to apply for these forms of immigration protection in order to

receive an exception from the foreign residency requirements, so that they and their dependent family members can receive VAWA, U visa, or T visa relief and safely remain in the U.S. This language passed the House and was bipartisan in VAWA 2005.

Section 204(b)-(e): Self-Petitioning, Exception from Requirement to Depart, Effective Date, Relief for Abused Fiancés

p.21 L 13 to p.24 L 20

This language passed the House and was bipartisan in VAWA 2005. This provision allows an immigrant fiancé who entered the U.S. intending to marry a United States citizen, to obtain protection under VAWA if the immigrant fiancé or the fiancé's child was battered or subjected to extreme cruelty by the U.S. citizen fiancé who brought the immigrant fiancé to the United States on a fiancé visa (K1-visa). The abused fiancé can obtain protection through an approved VAWA self-petition regardless of whether the U.S. citizen fiancé marries him or her within 90 days of the immigrant fiancé's entry into the United States. Currently, if the U.S. citizen fiancé fails to marry the immigrant fiancé or the marriage occurs more than 90 days after the immigrant fiancé entered the U.S., the immigrant victim of battery or extreme cruelty loses all access to VAWA protections.

Under this section, the fiancé can obtain protection under VAWA self-petitioning, VAWA cancellation and VAWA suspension. This provision also offers VAWA protection for the fiancé's children whom the U.S. citizen also sponsored for entry into the United States on a K2-visa, and for other family members whom the victim is eligible to protect through the VAWA self-petition. This section also allows a battered immigrant who receives protection under VAWA who entered as a K1 fiancé to apply for lawful permanent residency directly, without the additional burden of having to become a two-year conditional resident, and then to also seek a battered spouse waiver.

Section 204(f): Visa Waiver Entrants

p.24 L 21 to p.25 L 9

Note to Future Drafters: This exception needs to be extended to add Special Immigrant Juvenile Status (SIJS) to the list of immigration status applications for which visa waiver recipients can apply. This bill accomplishes this by amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list. There may also be clarifying language needed to confirm that both applicants for VAWA, T, U or SIJS and recipients applying for lawful permanent residency under any of these programs do not waive their rights to apply because they were part of the visa waiver program.

Under current law, immigrants from certain countries (e.g. Italy, England and France) are authorized to enter the United States as tourists without obtaining a U.S. visitor visa. This promotes travel and tourism between the U.S. and these designated countries. Immigrants from these designated countries can enter the U.S. freely and can remain in the U.S. for up to 90 days. Immigrants who enter the country under this program are known as visa waiver entrants. By entering the United States under the visa waiver program, immigrants as a matter of law waive almost all of their legal rights to defend against their removal in immigration court proceedings. In the removal proceedings, they are precluded from

obtaining relief from removal, unless they can obtain asylum or apply for permanent residence through a U.S. citizen spouse. The amendments made in this section allow visa waiver entrants in removal proceedings to apply for immigration relief as vulnerable or victimized immigrants. Specifically, it allows visa waiver entrants who are later placed in removal proceedings to seek VAWA adjustment of status to lawful permanent residency; VAWA cancellation of removal; or VAWA suspension of deportation. This language passed the House and was bipartisan in VAWA 2005. This section also adds protections for visa waiver entrants who are granted T visas or U visas to seek adjustment of status to lawful permanent residency in proceedings.

Section 204(g): Abused Derivatives Accessing VAWA Self-Petitioning

p.25 L 10 to L 20

Spouses of skilled workers are dependent on their spouses' work visa and on their employers' sponsorship of their lawful permanent residency application to obtain and retain legal immigration status in the United States. The abused spouse of the work visa holder's legal immigration status is dependent first on the abusive spouse's work visa, second on the employer's sponsorship of the abusive immigrant spouse's application for lawful permanent residency and later, dependent on DHS timeframes for processing the abuser work visa holder's application for lawful permanent residency based upon employer-sponsorship. When the work visa holder spouse is abusive, battered immigrant spouses become trapped in their abusive marriages due to the backlogs in processing applications for lawful permanent residency. These immigrant victims are forced to choose between leaving an abusive relationship—thereby risking removal from the U.S.—or staying in an abusive relationship until the abuser becomes a lawful permanent resident.

VAWA 2005 allowed abused spouses of certain work visa holders to obtain employment authorization so that they could separate from their abusers and support themselves and their children, while they filed for immigration protections which they were independently entitled to receive. They may be eligible for their own employment-based visa, for a U visa as a crime victim or for another form of immigration relief. If the victim stays in the relationship or separates and stays married to the abuser, when the abuser has an opportunity to become a lawful permanent resident though the abuser's work, the victim becomes eligible to self-petition under VAWA. If, on the other hand, the victim leaves the abuser, seeking safety for herself and her children, and the abuser cancels her lawful visa and divorces her, the victim loses that ability to self-petition. In this situation, when the abuser becomes a lawful permanent resident, the victim cannot self-petition.

This provision allows dependent immigrant domestic violence victims who are spouses or step children of abusive work visa holders who become lawful permanent residents, to seek VAWA protections once their abusers obtain lawful permanent residence, if they can prove both a valid marriage to the employment-based visa holder and the abuse. This section allows such victims to separate from their abusers without losing eligibility for VAWA self-petition if and when the abuser becomes a lawful permanent resident. Additionally, this amendment allows the abused spouse of a visa holder to self-petition subsequent to divorce.

Section 205

Section 205: Battered Spouse and Family Member Protections

Section 205(a): Self-Petitioning for Abandoned Spouses

p.25 L 23 to p.26 L 10

This provision would change the definition of extreme cruelty to allow abandoned spouses to VAWA self-petition. In many marriages, particularly among people from countries that have a tradition of arranged marriage, women are brought to the United States with the expectation of a normal marriage. However, the U.S. Citizen or Lawful Permanent Resident spouse often feels culturally pressured to enter into a marriage not ultimately of their will, and sometimes the citizen or resident abandons the immigrant spouse as a result. Many community groups have seen this play out with a disproportionate number of women who arrive in the United States only to be abandoned by their spouses. They often come from societies that have no tolerance for divorce. As a result, divorced women are disowned and abandoned by their families, and they often fear or refuse to return to their home countries as a result, instead electing to live in the shadows in the United States. This provision would change the definition of extreme cruelty to allow abandoned spouses to VAWA self-petition. This provision would give abandoned spouses the same opportunity to legalize their immigration status as is given to battered spouses.

Sec 205(b): Improved Access to VAWA Self-Petitioning

Sections 205(b)(1) Abused Immigrant Spouses of U.S. Citizens
p.26 L 11 to p. 27 L 16
205(b)(2): Abused Immigrant Spouses of Lawful Permanent Residents
p. 27 L 17 to p. 28 L 22

This section improves access to VAWA self-petitioning in several ways. It removes the requirement that the battery or extreme cruelty happen during the marriage. In relationships in which abuse occurred in the relationship prior to or following the marriage, if the victim saw the pattern of the abuse reoccurring, she would have to stay in the relationship until the abuse she was experiencing after the marriage once again rose to the level of battery or extreme cruelty. The proposed change would allow the victim filing for a self-petition to present the entire history of abuse in their relationship, and would provide access to self-petitioning if the victim is or was married to a U.S. citizen or lawful permanent resident who battered her or subjected her to extreme cruelty.

The definition of abuse under immigration law is "battery or extreme cruelty" and there is no definition of "domestic violence" in immigration law. This amendment removes the ambiguous use of the term domestic violence and allows a victim to file within two years of his/her abuser's loss of status upon proof of battery or extreme cruelty, without requiring a connection with the loss of status.

In some cases, an abuser of an immigrant spouse will separate from the victim and seek a divorce in a country or jurisdiction, in a judicial proceeding that explicitly avoids providing the immigrant victim spouse actual notice of the divorce proceeding and the fact that the divorce has occurred. In such cases, the immigrant victim does not receive any actual notice of the divorce proceeding and may learn about

the divorce long after it has become final. The proposed amendment would give VAWA self-petitioners until two years after they received actual notice of the divorce to file a self-petition. This grants relief to the innocent, unknowing immigrant spouse, giving her the same access to VAWA self-petitioning that she would have had if she had been given notice of and been allowed to participate in the divorce proceeding. This prevents the victim from being cut off by her abuser's actions in obtaining a divorce without her knowledge, from VAWA self-petitioning; and from being forced to file instead for VAWA cancellation of removal, which requires a higher burden of proof and requires that the victim be placed in removal proceedings before an immigration judge.

The amendments made by these sections would broaden the time frame within which the abuser and the victim could have lived together. There have been some cases of VAWA self-petitioners who could prove they were in a good faith marriage with a U.S. citizen or lawful permanent resident abusive spouse, and they could prove that they suffered battery or extreme cruelty; however, their self-petition was denied because their residence with the abusive citizen or lawful permanent resident spouse occurred in large part before the marriage. In most of these cases, the abuse escalated so quickly after the marriage that the spouses never took up residence together as a married couple. These amendments would help those victims who could prove a valid marriage, abuse and residency, but could not prove residency during the marriage, to still be able to self-petition. When VAWA self-petitioning was crafted, the residency requirement was included to provide evidence of a valid marriage. However, it has become clear that the evidence of the battering or extreme cruelty itself when credibly proven provides strong evidence of the validity of the marriage. If a battered immigrant can prove a battering or extreme cruelty, good faith marriage and can prove residency with the abuser, they should be able to self-petition.

Section 205(c): Survival of Rights to Self-Petition
p.28 L 23 to p.29 L 2

Note to Future Drafters: The drafting of this section should delete the word "sole" in the first sentence of Section 204(h) and should add coverage for step-children to the protections. This would be accomplished by amending the first sentence of 204 (h) to read:

> *"The legal termination of a marriage may not be the basis for denial of an application or for revocation under section 205 of a petition filed under subsection (a)(1)(A)(iii) or (iv) or a petition filed under subsection (a)(1)(B)(ii) or (iii) pursuant to conditions described in subsections (a)(1)(A)(iii)(I) or (a)(1)(B)(ii)(I). Remarriage of an alien whose petition has been filed under section ….[remainder of the paragraph remains the same]*

The portion of this section that addresses child self-petitions offers similar much needed protection for step-children who are self-petitioners. This together with other provisions in this bill helps ensure that in order to self-petition, abused step-children do not have to remain in contact with or continue to have a relationship with their abusive current or former step-parent.

Currently abused spouses who have been divorced are precluded from any future marriage until their VAWA self-petition has been filed and approved. DHS processing times for VAWA self-petitions range from under 6 months to over two years. For some divorced spouses, part of their healing process following abuse includes meeting and becoming involved with a new partner in a healthy relationship

and wanting to marry that new partner. However, VAWA self-petitioners under current law are cut off from self-petitioning by remarriage. This section allows divorced battered immigrant spouses who have filed VAWA self-petitions to remarry without having to wait until after DHS approves their self-petition.

Section 205(d): Expansion of Protections – Use of parole to reunify victims with their family members
p.29 L 3 to p.31 L 2

Note to Future Drafters: The language of this section should be reviewed to ensure that it is consistent with and is not less protective than the recommendations on parole for family members of U visa applicants made by the USCIS Ombudsman and accepted by USCIS in 2016.[11]

Currently, although it may be possible for some VAWA self-petitioners and U visa victims living abroad to obtain humanitarian parole into the United States, paroling approved VAWA self-petitioners or U visa recipients and/or their children into the U.S. is not explicitly included in the parole statute. Under current law, the DHS is mandated to parole children of spousal abuse victims and parents of child abuse victims where the victim has been granted VAWA cancellation of removal or suspension of deportation. This provision would extend equivalent relief to VAWA petitioners and their derivatives. This provision would allow for the following groups of persons to be paroled into the United States for the period between the approval of the self-petition and final adjudication of the victim's application granting the victim lawful permanent residency: the derivatives of VAWA self-petitioners, VAWA self-petitioners living abroad and derivatives of VAWA self-petitioners living abroad. This amendment is necessary to protect VAWA petitioners and their family members from further victimization that can more readily be perpetrated against them because they are living abroad, and to ensure family reunification.

VAWA 2000 allowed domestic abuse victims to self-petition 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 for VAWA cancellation of removal grantees, this fix would assure that VAWA self-petitioners, their children included in the victims' VAWA self-petition and children of trafficking victims, can be paroled into the U.S. The DHS can parole into the U.S.:

- a VAWA self-petitioner whose petition was approved based on having been battered or subjected to extreme cruelty by a U.S. citizen spouse, parent or child and who is admissible and eligible for an immigrant visa;
- a VAWA self-petitioner whose petition was approved based on having been battered or subjected to extreme cruelty by a permanent resident spouse or parent, who is admissible and

[11] Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad, https://niwaplibrary.wcl.american.edu/pubs/cisomb-u-parole-recommendation; Response to Recommendations on Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad, https://niwaplibrary.wcl.american.edu/pubs/uscis-u-parole-signed; USCIS Accepts the Ombudsman's Recommendation to Adopt Parole Policy for U Visa Petitioners and Family Members; https://niwaplibrary.wcl.american.edu/pubs/waitlist-approved-us-and-family-member-parole.

who would be eligible for an immigrant visa but for the fact that an immigrant visa is not immediately available;
- The children of each of the above.

Section 205(e): Self-Petitioning by Children of Bigamy
p.31 L 3 to p.35 L 19

Currently, abused spouses who unwittingly enter into bigamous marriages with abusive United States citizens or legal permanent residents can VAWA self-petition. This provision would expand this form of self-petitioning to allow children of abused spouses (step-children), and abused children of an immigrant spouse who unwittingly entered into bigamous marriages with abusive spouses, to also self-petition. These children, but for the bigamy of the abuser, would be able to self-petition as step-children of an abusive U.S. citizen or lawful permanent resident step-parent.

Section 205(f): Protection for Children of VAWA Self-Petitioners
p.35 L 20 to p.36 L 9
[Passed VAWA 2013]

Section 205(g): Self-Petitioning Rights Under Section 203 of NACARA
p.36 L 10 to p.38 L 2

This language passed the House and was bipartisan in VAWA 2005. VAWA 2000 created special rules for motions to reopen for certain abused spouses and children (Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act, Nicaraguan Adjustment and Central American Relief Act [NACARA]). This amendment clarifies that abused persons can access relief, created for them in VAWA 2000, under the applicable laws listed above. This technical amendment is necessary because many abusive spouses themselves have failed to apply for relief under NACARA or failed to apply in time for their spouses and children to file the special motions to reopen (the deadline passed in 9/98). By failing to apply for relief in a timely manner for their children and spouses, abusers have continued to maintain control over family members by denying them the ability to seek immigration relief. This fix will permit those abused spouses and children of abusers to apply, even if the abuser has not yet applied. It also allows spouses and children to file a motion to reopen for such relief, notwithstanding the original 1998 deadline.

This amendment 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 issued pursuant to NACARA. Abused spouses and children are also allowed to file VAWA motions to reopen their removal or deportation orders.

Section 206

Section 206: Battered Spouse Waivers and Conditional Residents
p.38 L 3 to p.41 L 5

Sections 206(a)(2) and (3) and 206 (b): Grounds for Hardship Waiver for Conditional Permanent Residence for Intended Spouses; & Technical Corrections
p.38 L 16 – p.39 L 21
[Passed in VAWA 2013]

Section 206(a)(1), 206(c), and 206(d) : Grounds for Hardship Waiver for Conditional Permanent Residence for Intended Spouses; & Grounds for Relief; & Conforming Amendment
p.38 L 3 to L 15 and p. 39 L 3 to p. 40 L 8

Note to Future Drafters: Despite Congress explicitly stating in the legislative history of VAWA 2005 that battered spouse waiver adjudications should be conducted by the VAWA unit, which is responsible for adjudicating all other self-petitions, battered spouse waivers continue to be adjudicated at regional service centers and district offices across the country by adjudicators untrained in the dynamics of spouse abuse and family violence.[12] As a result, there are significant delays in adjudication and dramatic differences in the ways these cases are adjudicated between regional and district offices. The statute should include language that mandates that all battered spouse waivers, VAWA self-petitions, U visas and T visas be adjudicated by the specialized and specially trained VAWA Unit.

Section 206(c) - This language passed the House and was bipartisan in VAWA 2005. This section amends the law to permit abused spouses who have filed a waiver of the joint application and interview requirements to base their waiver application on any or all of the four waiver grounds and to amend their ground or grounds at any time during the adjudication process.

Section 206(a) - In some districts, immigration officials adjudicating applications for removal of conditions require applicants who file a waiver based on divorce and later qualify as a battered spouse to file a new, separate application for removal of conditions. This creates significant delays in the process of being granted full lawful permanent residency. Additionally, many battered spouses apply for a waiver of the joint filing requirement before they have a final termination of their marriage and struggle to find enough documentation to support the claim of battery or extreme cruelty. Once they have an interview appointment, their marriages have been terminated, and they are required to file a new application for removal of conditions based on the termination of marriage waiver ground. This provision allows a waiver applicant to amend the waiver ground(s) at any time until a final decision is reached.

[12] Moving Battered Spouse Waiver Adjudications to the VAWA Unit: A Call for Consistency and Safety National Survey Findings Highlights, https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017.

Section 206(d) - In VAWA 2005 battered spouse waivers applicants were included in the definition of VAWA self-petitioners in INA Section 101(a)(51). INA Section 237(a)(1)(H)(ii) authorized waivers for certain misrepresentation to VAWA self-petitioners. While the current statute should already include abused spouses applying for removals of conditions in these waivers, the proposed amendment ensures that an abused immigrant spouse will receive the protections of this waiver whether they proceed with removal of conditions based on divorce or battering or extreme cruelty. The amendments to this section ensure that an immigrant spouse subjected to battering or extreme cruelty can apply for any of the four waivers listed in 216(c)(4).[13] One of the goals of this section is to ensure that abused immigrant spouses have the same access to any waivers available under 216(c)(4) that all immigrant spouses could access, in addition to having access to the waiver that was specifically designed for battered spouses.

Section 206(e): Proof of Termination of the Marriage Due at Final Adjudication the Hardship Waiver

p.40 L 9 to L 15

This section allows conditional residents seeking a divorce-based waiver of the joint filing requirement to file the removal of conditions and waiver application once they have filed for divorce, but before it is finalized. The applicant must furnish the final divorce decree by the time their case is adjudicated.

Hardship waivers were created to allow immigrant spouses who married in good faith and who received conditional permanent residency to obtain full lawful permanent residency without the cooperation of the U.S. citizen spouse. When a marriage becomes abusive, victims can file either for a waiver of the joint filing requirement as a battered spouse or based on divorce. For some battered immigrant victims, it can be safer and less traumatic to obtain the hardship waiver based on divorce, than to proceed with the battered spouse waiver. Victims who have difficulty securing proof of battery or extreme cruelty may prefer to file for the waiver based on divorce. For years DHS accepted applications for divorce-based hardship waivers and only required proof of the finalized divorce when the case was actually adjudicated. Significant delays between waiver filing and final adjudication often provided sufficient time for the applicant to obtain a final divorce decree.

However, DHS now requires that a final divorce decree be included in the hardship waiver application. This keeps immigrant spouses from leaving their abusers, filing for divorce, and obtaining

[13] Section 216(c)(4) describes four different hardship waiver options that spouses who were granted conditional permanent residency can apply for when the immigrant spouse cannot meet the joint filing requirement due to one of the following four factors: (1) battering or extreme cruelty, (2) bigamy, (3) divorce or (4) extreme hardship. The goal of the proposed amendments is to ensure that battered immigrant spouses can apply for hardship waivers based on any of the grounds for which they qualify, including applying for waivers on multiple grounds (e.g. divorce *and* battering or extreme cruelty). Victims who apply for hardship waivers based on battering or extreme cruelty and divorce whose waiver is granted based on divorce would not lose VAWA self-petitioner status or VAWA confidentiality protections afforded to all VAWA self-petitioner spouses. Having filed a battered spouse waiver that was not denied on its merits would be sufficient for a victim to be protected by VAWA confidentiality and to be considered a VAWA self-petitioner. The fact that the victim gained full lawful permanent residency based on divorce would not cut the victim off from the protections that come with being a self-petitioner and having VAWA confidentiality protection.

the divorce-based hardship waiver rather than the battery or extreme cruelty waiver. One of the key goals behind VAWA has been to remove incentives in the immigration laws that increase harm to domestic violence victims and their children by encouraging victims to stay longer in abusive marriages, because the immigration laws penalize victims for leaving. It is particularly important to allow the flexibility restored by this amendment because conditional resident spouses must file a joint petition or an application for a waiver within a specified timeframe—no later than 90 days before the two year anniversary of receiving conditional permanent residency. Since it sometimes takes two or more years to receive an interview notice or reach adjudication, this amendment allows those who have started the process of filing for divorce to be able to later furnish a final divorce judgment, so long as the final divorce occurs in advance of the final adjudication on the waiver.

Section 206(f): Children of Conditional Residents
p. 40 L 16 to L 20

This section allows conditional residents to include their immigrant children who are not also conditional residents in the victim's application to remove conditions. The child will receive lawful permanent resident status when the conditional resident has his or her conditions removed. Some abused conditional residents immigrated to the U.S. and left behind their children. This provision expedites the family's reunification and in the case of battered immigrants, helps protect the child from abuse or retaliation from an abusive step-parent or former step-parent.

Section 207

Section 207: Asylum Protections for Victims of Violence Against Women

Section 207(a): Particular Social Group
p.41 L 8 to L 16

Note to Future Drafters: This section should be reviewed by gender based asylum experts to ensure that the proposed changes incorporate all of the changes that are needed in light of the changes to gender based asylum adjudications that have occurred since 2012. There should be a particular focus on ensuring that the language fully addresses gender based asylum eligibility for domestic violence victims.

This provision defines the phrase "particular social group" to provide protection to women and girls fleeing gender-related harm for purposes of asylum eligibility. Examples of gender-related harm include (but are not limited to): female genital mutilation, forced marriage, "honor" killings, domestic and sexual violence, and persecution based on sexual orientation. The phrase "particular social group" also encompasses vulnerable groups consistent with established Board of Immigration Appeals (BIA) precedent of over twenty years as articulated in *Matter of Acosta*.

Section 207(b): Supporting Evidence Accepted
p.41 L 17 to p.42 L 5

This provision provides that for purposes of asylum protection, a victim must have suffered persecution or fears persecution based on a protected ground (Race**,** Religion, Nationality**,** Membership

in a Particular Social Group**,** or Political Opinion). That protected ground must be a factor in the applicant's persecution or fear of persecution. This provision also helps asylum seekers prove the connection or "nexus" between the feared harm and the protected ground when the State, legal, or social norms tolerate the form of persecution that the asylum seekers experience, such as domestic violence or other gender-related harms. Additionally, this provision suggests the type of evidence that may be considered when determining whether persecution occurred on account of a protected ground.

United States law has long recognized that persecutors may have mixed motives for harming their victims. Nonetheless, the REAL ID Act of 2005 raised the burden of proof that asylum seekers must meet to show that they fear persecution on account of one of the five protected grounds. The REAL ID Act requires that the asylum seeker demonstrate that harm on account of a protected ground is "at least one central reason" for the feared persecution. *See* INA §208(b)(1)(B)(i). In application, the REAL ID Act's "one central reason" language has resulted in frequent denials of protection in mixed motive cases, which often characterize gender-based asylum claims.

Section 207(c): Ensuring Access to Immigration Benefits for Victims Who are Asylum Applicants

p.42 L 6 to L 18

Note to Future Drafters: Need to add Special Immigrant Juvenile Status (SIJS) to the list of applicant victims exempted by this section. This bill accomplishes this by amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list.

This provision exempts applicants for VAWA self-petitions, VAWA cancellation or removal, VAWA suspension of deportation, T and U visas, SIJS, and victims who qualify for forms of immigration relief covered by VAWA confidentiality, from the restrictions placed upon individuals who file frivolous asylum applications.

Section 207(d): Spouses and Children of Asylum Applicants Under Adjustment Provisions

p.42 L 19 to p.43 L 20

This provision allows the dependent family members of an asylee who have also been granted asylum to apply for legal permanent residence, independent of the asylee. This severs dependence on the asylee spouse, a dependence that can foster abuse. When the marriage was terminated or ended due to battery or extreme cruelty, the asylee victim spouse should be able to attain lawful permanent residency without depending on their abusive spouse's assistance or knowledge of the application.

Section 207(e): Children of Refugee or Asylee Spouses and Children

p.43 L 21 to p.44 L 6

This modification allows an asylee's spouse or children to immigrate with their own children or spouse if the family member's children or spouse are following to join and are otherwise admissible. It

also provides for siblings and parents of asylees/refugees to be considered "derivative" family members eligible for relief when the depended upon applicant is under the age of 21 at the time the application is granted.
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Section 207(f): Elimination of Arbitrary Time Limits on Asylum Applications
p.44 L 7 to L 25

Immigrant victims of family violence, sexual assault in the workplace and human trafficking are extremely isolated by their crime perpetrators from information about their legal rights and options available to help them in the United States. Family violence and human trafficking victims can be victims of persecution abroad and crime perpetration in the U.S. When these victims also qualify for asylum, very often the victims' isolation combines with limited English proficiency to keep victims from learning they are eligible for asylum until after they have found their way to an advocate or attorney with expertise on violence against immigrant women issues. This section provides a mechanism for these asylum seekers to file their application despite having missed the one-year time limit. Under current law, many asylum seekers with genuine claims are denied protection because of the one-year time limit that was enacted in 1996. Although exceptions to the deadline are ostensibly available for extraordinary or changed circumstances that may prevent the timely filing of an application, these exceptions are not fairly or uniformly applied to applicants. This has led to unjust denial of asylum to those who have legitimate reasons (including but not limited to domestic violence) for applying after the one-year deadline. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) already amended the INA to exempt unaccompanied alien children from the one-year asylum filing deadline. Recognizing the devastating consequences of the one-year filing deadline, this section allows an application for asylum to be considered after the one year deadline has passed if the alien demonstrates, to the satisfaction of the Attorney General, the existence of changed circumstances that materially affect the applicant's ability to apply for or eligibility for asylum.

Section 207(g): Protections for Minors Seeking Asylum
p.45 L 1 to L 22

This section expands the protections created by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to all minors under the age of 18. Specifically, this section exempts minors from the safe third country bar to asylum and the one-year asylum deadline. Additionally, it provides adjudication of asylum applications in the first instance by the asylum office. These protections, which were previously provided only to unaccompanied minors in the TVPRA, are expanded in recognition that all child asylum seekers are vulnerable and in need of special treatment and protections.

Section 208: Protections from Removal for Victims

Note to Future Drafters: In addition to the much-needed changes included in this section of HR 5331, future drafters should consider the following additional protections: 1) Allow VAWA cancellation and suspension applicants, VAWA self-petitioners, U visa and T visa applicants, and SIJS applicants the ability to file motions in immigration court and have them heard by immigration judges without any requirements that the motions be joint motions with ICE counsel. 2) Bar issuance of notices to appear, and require that the immigration courts hold hearings regarding the dismissal or administrative closure of cases in which notices to appear were issued against victims who have filed or demonstrate to the judge that they are in the process of filing a VAWA cancellation, suspension, or self-petition, U visa, T visa, SIJS or Section 106 case—unless the applicant was a participant in Nazi persecution, democide, acts of torture or extrajudicial killings. (These are inadmissibility factors that are not waivable in U visa cases).

The statute should also state that when immigration judges decide to administratively close cases for victims under this law, those administrative closures are specifically authorized and are not to be counted along with other administrative closures and must be accounted for separately. The Department of Justice should be barred from issuing policies that could deter, discourage, or sanction immigration judges for administratively closing or dismissing the crime victims' cases addressed in this section.

Drafters should also consider offering VAWA cancellation of removal to U and T visa, SIJS and Section 106 eligible applicants and all self-petitioners that are defined by INA Section 101(a)(51).

Section 208(a) and (b): Expanding Exceptions for Unlawful Entry

p.45 L 24 to p.46 L 18

These provisions make exceptions available to the unlawful presence bars for re-entry to VAWA self-petitioners who can demonstrate a connection between unlawful presence, leaving the U.S., or reentry into the U.S. and one of the following: battery or extreme cruelty; humanitarian need; family unity; or public interest. This amendment expands VAWA self-petitioning waivers for unlawful entry to include the waivers that are available to U visa victims. These provisions also allow both immigration judges and the Secretary of Homeland Security to apply these exceptions.

Section 208(c): Exemption from Public Charge Ground

[Passed VAWA 2013]
p.46 L 19 to p.47 L 16

Note to Future Drafters: Note that the VAWA 2013 amendment did not include the conforming amendment of the effective date. As implemented, that appears to not be problematic, but someone should look into this to see if the conforming amendment would be useful or clarifying. P. 37 lines 7-9.

Section 208(d): Waiver for False Claims to United States Citizenship
p.47 L 17 to p.48 L 10

Note to Future Drafters: In order to ensure that the Waiver for False Claims to United States Citizenship extends to all VAWA self-petitioners, Special Immigrant Juvenile Status (SIJS) applicants, and Section 106 abused spouses of visa holders, this bill is amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list. In this way. all VAWA victims, victims protected by INA Section 106 and SIJS children are protected by this provision.

This section creates a waiver, similar to the one currently provided for U visa victims, for battered immigrant VAWA self-petitioners, VAWA cancellation, VAWA suspension, and special immigrant juvenile victims who would otherwise be inadmissible based on misrepresentations or false claims to U.S. citizenship. This provision also provides DHS with the discretion to find good moral character notwithstanding misrepresentations or false claims to citizenship made by VAWA self-petitioners, U visa applicants, special immigrant juveniles and other vulnerable populations.

Section 208(e): Waiver in the Case of Family Reunifications for Certain VAWA Self-Petitioners
p.48 L 11 to L 17

Note to Future Drafters: In order to ensure that the Waiver in the Case of Family Reunifications for Certain VAWA Self-Petitioners extends to all VAWA self-petitioners, Special Immigrant Juvenile Status (SIJS) applicants, and Section 106 abused spouses of visa holders, this bill is amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list. In this way all VAWA victims, victims protected by INA Section 106 and SIJS children are protected by this provision.

Immigrant family violence victims can be barred from obtaining protection as VAWA self-petitioners even when they have been abused by their U.S. citizen or lawful permanent resident spouses if they have been involved in helping bring family members or close family friends to the United States who were not their children. They could have their VAWA self-petitions denied for lack of good moral character, even if their actions were related to or in connection to the abuse. This provision allows DHS to waive the bar on finding good moral character in cases of VAWA self-petitioners who have engaged in smuggling when the waiver furthers humanitarian purposes, family unity or is in the public interest.

Section 208(f): Waiver Authorized for VAWA Self-Petitioners Previously Removed
p.48 L 18 to p.49 L 2

Note to Future Drafters: In order to ensure that the Waiver Authorized for VAWA Self-Petitioners Previously Removed extends to all VAWA self-petitioners, Special Immigrant Juvenile Status (SIJS) applicants, and Section 106 abused spouses of visa holders, this bill is amending in Section 301(d) the definition of VAWA self-petitioner to include SIJS children and Section 106 abused spouses of visa

holders. Future drafting needs to amend the definition of VAWA self-petitioner to add VAWA cancellation and suspension of deportation to that list. In this way all VAWA victims, victims protected by INA Section 106 and SIJS children are protected by this provision.

Under current law, people who reenter the U.S. after a removal order are subject to immediate removal through mechanism called "reinstatement of removal." In these cases removal occurs without any opportunity for an immigrant crime victim who has been abused, trafficked or a victim of a U visa listed criminal activity to file for immigration relief they are eligible for under the VAWA, T or U visa programs, and SIJS. This section exempts VAWA self-petitioners T and U visa holders, and SIJS from the reinstatement of removal provisions, thereby allowing them to pursue crime victim based immigration relief.

This waiver is important because under current law, a common situation is for a VAWA self-petitioner to live with an abuser who turns them in to DHS. Then, when DHS sends the victim mail regarding immigration court proceedings, the abuser who is still living with the victim takes the mail and hides it from them. As a result, the victim does not attend the proceedings, and the victim is ordered deported "in abstentia" having failed to appear at the immigration court hearing. Another common scenario are victims whose abusers trigger immigration enforcement actions against them to keep the victim from cooperating in a criminal investigation or prosecution of the perpetrator. In the immigration court case, the victim is unrepresented or is represented by counsel who are untrained in or do not have knowledge of the forms of VAWA, T and U visa crime victim related relief and SIJS protections that victims are qualified to receive. Because of situations like these, which are commonplace, a waiver is needed that allows for victims with prior deportation orders who are eligible for VAWA, T or U visa, and SIJS relief to apply rather than be deported before they get the chance to apply.

It is also worth noting that in VAWA 2005, there was a provision (Section 813(b), p.253) that sought to address this issue by granting the Secretary of Homeland Security, the Attorney General, and the Secretary of State discretion to consent to an immigrant's reapplication for admission after a previous order of removal, deportation, or exclusion. This Congressional resolution specifically articulated that officials should particularly consider exercising this authority in VAWA, T and U visa cases. However, this attempt to address the issue has not worked effectively to stop reinstatement of removal of VAWA, T and U visa eligible victims. DHS officials have thus far not acted in accordance or utilized their discretion to make exceptions for VAWA, T and U visa eligible victims. Since the language included in VAWA 2005 has been ineffectual, this statutory amendment is needed to stop reinstatement of removal of VAWA, T and U visa eligible victims.

Section 208(g): Conforming Relief in Suspension of Deportation Parallel to the Relief Available in VAWA–2000 Cancellation for Bigamy
p.49 L 3 to L 21

For purposes of VAWA self-petitioning and VAWA cancellation of removal, VAWA 2000 offered protection to intended immigrant spouses who unknowingly married bigamists. VAWA 2000 omitted parallel relief in the context of VAWA suspension of deportation. This proposal provides that VAWA suspension of deportation, 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. This section adds protection under VAWA

suspension of deportation and conforms suspension to self-petitioning and cancellation of removal. VAWA suspension of deportation, as it existed prior to 1996, is made available to spouses who unknowingly marry bigamists.

Section 208(h) and (i): Application of VAWA Motions to Reopen Rules to Crime Victims
p.49 L 22 to p.51 L 16

Note to Future Drafters: This bill is amending in Section 301(d) the definition of VAWA self-petitioner in 101(a)(51) to include Special Immigrant Juvenile Status (SIJS) children and Section 106 abused spouses of visa holders. Victims protected by INA Section 106 and SIJS children are protected by this provision. For SIJS children, the amendments to this section should also add "application for Special Immigrant Juvenile Status under INA Section 101(a)(27)(J)" to the list of applications that can accompany the motion to reopen in 249(c)(7)(iv)(II) or application for work authorization under INA Section 106. It is additionally recommended that this section be revised to delete INA Section 240(c)(7)(iv)(III), which requires that motions to reopen be filed by crime victims within one year of any final order of removal issued against the victim unless they can show extreme hardship to the victim's child or extraordinary circumstances. This requirement is not needed for the humanitarian relief-eligible victims who are or will be covered by this section and places an unnecessary hurdle that leaves otherwise eligible victims at risk of deportation.

Note also that the text of the amendment contained in Section 208(i) will need to be renumbered due to additional amendments to this section of the INA that have been implemented since 2012.

Special VAWA Motions allow victims to file Motions to reopen removal proceedings before an immigration judge without being required to obtain approval of the opposing party (DHS trial counsel). Victims file the motions directly with the immigration judge, serving a copy on DHS counsel. The special VAWA Motion to reopen rules require that the victim file a copy of the VAWA self-petition that has been or that will be filed with DHS. This allows the immigration judges to make a ruling on the Motion to reopen after reviewing the self-petition. This process also helps to ensure that the court and DHS counsel observe VAWA confidentiality protections in the case.

Section 208(h) extends the special VAWA Motion to Reopen rules to all VAWA cancellation of removal, VAWA suspension of deportation, VAWA self-petitioners including SIJS applicants, T visa, and U visa victims. These Motions to reopen will stay all orders of removal against the victim and agreement by ICE is not required. These amendments will give Special Immigrant Juvenile Status (SIJS) children the same protections as VAWA confidentiality-protected victims.

Section 208(i) precludes reinstatement against individuals protected by VAWA confidentiality. Under current law, people who reenter the U.S. after a removal order are subject to immediate removal through reinstatement of removal, even if they have been abused, sexually assaulted or trafficked. This section exempts VAWA self-petitioners and U and T Visa Victims, and Special Immigrant Juveniles (SIJS) children from the reinstatement of removal provisions, and allows them to pursue immigration relief. With these amendments, these victims will be exempt from reinstatement of prior removal orders, they will be given a permanent stay of removal while their case is pending, and they will be able to pursue the immigration relief created by Congress to help them.

Section 209

Section 209: Naturalization
p.51 L 17 to p.53 L 18

This section allows any lawful permanent resident who was subjected to battery or extreme cruelty by a U.S. citizen spouse or parent to apply for U.S. citizenship after three years of permanent residence, regardless of whether they obtained permanent resident status through VAWA or through a marriage-based petition filed by the abusive spouse or parent. In VAWA 2000, Congress included statutory language that was intended to offer access to Naturalization in three as opposed to five years to all spouses and children of abusive citizens. However, as the VAWA 2000 amendments were implemented, DHS narrowed the scope of these protections to only allow approved VAWA self-petitioners, who subsequently divorced their abusive spouses, to apply for U.S. citizenship three years after receiving permanent residence status. All abused spouses of U.S. citizens were not eligible for these important protections. Many abused spouses immigrate through family-based petitions filed by the abusive spouse, and not through VAWA self-petitions. Those abused spouses who did not obtain VAWA relief can currently file for naturalization three years after receiving permanent residence status, only if they remain married and are living in a union with the abusive spouse. If they are separated or divorced from the abusive spouse, they must wait five years to apply for U.S. citizenship. This section will ensure that all abused spouses, not only those who obtained VAWA relief, can file for U.S. citizenship three years after receiving permanent residence status, even if they have divorced the abusive U.S. citizen spouse. This section promotes consistency and does not force abused spouses to remain in abusive relationships. This section ensures that any credible evidence rules apply to VAWA Naturalization applications and that these applications are filed with the specialized VAWA Unit that adjudicates VAWA self-petitions.

Section 210

Section 210: General Provisions

Section 210(a): Expansion of Fee Waivers to Consular Fees and Any Fees in Removal Proceedings
p. 53 L 20 to p.54 L 2

Note to Future Drafters: Fees associated with waiver applications, which are required as part of the adjudication of VAWA and U visa cases, have become prohibitive for many victims. As fee waivers have gotten harder to attain, victims eligible for crime victim based immigration relief are deterred from filing for protection. Fees should not be a barrier to VAWA, T, U and Special Immigrant Juvenile Status (SIJS) immigration relief. Future amendments should consider eliminating all fees associated with VAWA, T visa, U visas and SIJS cases. Alternatively, the statute should set a maximum amount that can be charged for any fee related to these crime victim cases and state that any person earning less than 125% of the federal poverty level is entitled statutorily to a fee waiver. Future amendments should also extend bars on fees to eliminate costs for victims to replace documents that are taken, lost or destroyed where there is a connection between the destruction or loss of documents and battering or extreme cruelty, child abuse, neglect or abandonment, human trafficking or the perpetration of any U visa criminal activity. Also note that drafters should also consider eliminating all fees charged by DHS on

any case type or form type for all immigrant victims who have filed a VAWA, T or U visa, SIJS or Section 106 immigration case. This should include not charging fees for replacement of documents for these victims.[14]

DHS eliminated filing fees on VAWA self-petitions, U visa and T visa cases. However, other fees associated with adjudication of these cases still require fees that are either non-waivable or that allow only for a limited number of fee waivers, making fee waivers difficult or impossible for many survivors to obtain. Fees present hurdles to immigrant crime victim protection that can be insurmountable for many victims. As part of the Trafficking Victims Protection Act of 2008 (TVPRA), Congress required that DHS make waivers available for all fees associated with VAWA self-petitions, T visa and U visa applications—from filing through final adjudication of lawful permanent residency—for needy victims. The goal was to ensure that the ability to raise funds to pay mandatory fees was not a deterrent to crime victims accessing VAWA, T and U visa relief. The 2008 TVPRA amendments only addressed fees imposed by DHS in adjudicating issues that DHS has jurisdiction to decide. However, some immigrant victims find themselves in immigration proceedings before an immigration judge and the Board of Immigration Appeals, often because their trafficker, abusive spouse or crime perpetrator reported them to immigration enforcement authorities, in an effort to avoid criminal prosecution or to retaliate against or harass the immigrant victim.

Further, since VAWA 2000, battered immigrant spouses and children have been able to self-petition from abroad. This particularly affects those abused by U.S. citizen spouses who are U.S. government employees working abroad. Immigrant victims applying for VAWA relief from abroad, and victims whose children are following to join them in the United States, including vulnerable children of trafficking victims, must apply for visas to enter the United States from the Department of State. This provision allows the Secretary of State and the Attorney General to grant fee waivers to vulnerable populations who are seeking immigration protections through the consular process, immigration court or the Board of Immigration Appeals.

Section 210(b): Review of Extreme Cruelty

p.54 L 3 to L 13

Note to Future Drafters: There is a typo that needs to be corrected in the Schakowsky bill on p.54 L 12. It reads "ot" instead of "to".

When VAWA suspension of deportation or cancellation of removal cases are denied based on the court's ruling that the evidence presented does not prove the facts as sufficient to support a finding of battering or extreme cruelty, the question of whether the court erred in this ruling is a question of law as applied to the facts of the case that should be reviewable on appeal to the Circuit Courts. However, there is a split in the Circuit Courts on the issue of whether

- "extreme cruelty," like "battery," is a question of law as applied to the facts of the case and is therefore reviewable on appeal by the Circuit Courts; or

[14] For draft language on fee waivers see, Leslye E. Orloff, Legislative Reforms Needed For Immigrant Victims of Domestic Violence, Sexual Assault, Stalking and Immigrant Children Who Have Suffered Abuse, Abandonment or Neglect (April 4, 2021), https://niwaplibrary.wcl.american.edu/pubs/immigrant-victims-statutory-proposals

- "extreme cruelty" is to be treated instead like "extreme hardship" and considered a discretionary factor in the immigration judge's opinion that is reviewable only by the BIA, and not reviewable by the federal Circuit Courts.

This split in the Circuits has resulted in many cases in which victims of domestic violence have been denied suspension of deportation or cancellation of removal—including in a 10th Circuit marital rape case. In such cases, the Circuit Courts and immigration judges whose rulings treat "extreme cruelty" as a discretionary determination rather than a factual determination reflect a lack of training on or understanding of the dynamics of domestic violence.

VAWA immigration regulations define "extreme cruelty" as a factual determination that consists of any of the following:

- psychological abuse that results or threatens to result in physical or mental injury
- acts of coercive control (e.g. forced prostitution, forceful detention, exploitation)
- other acts, threats, attempts, or threatened acts, that are part of an overall pattern of violence and coercive control (e.g., withholding medication, immigration related abuse, isolation, intimidation, economic abuse)
- threats or attempts to commit crimes (e.g. threats to kill, maim, sexual assault, kidnap)

The amendments contained in this provision amend VAWA cancellation of removal and VAWA suspension of deportation so that the "extreme cruelty" determination is a question of law applied to the facts of the case and is not a discretionary determination. These amendments also specifically provide for judicial review of extreme cruelty determinations in the federal Circuit Courts.

Section 210(c): Allowing Judicial Review in VAWA Cases

p.54 L 14 to p.55 L 3

As is the case with all domestic violence, sexual assault and human trafficking cases, judges who hear these cases need specialized training on the dynamics of these forms of victimization. Congress recognized the special need for the training of judges and court personnel on the dynamics of violence and coercive control in domestic violence and sexual assault cases, and has provided funding for state court judges through the Violence Against Women Act on these important issues since VAWA's inception in 1994. In VAWA 2005, after studying the benefits of judicial training on these issues, the effectiveness of specialized domestic violence courts, and the need for specialized procedures and court systems for domestic violence and sexual assault cases, Congress ensured that the funding for judicial education and implementation of specialized court practices would be a permanent goal of VAWA funding by allocating a specific stream of VAWA funding for courts.

The U.S. Department of Justice's Executive Office of Immigration Review houses both immigration judges who adjudicate immigration cases brought by DHS seeking removal of immigrants, and the Board of Immigration Appeals (BIA) that is charged with hearing appeals of immigration judge decisions. Since 1994, there have been three or four trainings of judges on VAWA, T and U visa cases, and not all of these trainings were mandatory for judges to attend. Further, 1996 immigration reforms in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) restricted when judicial review in the Federal Circuit Courts was to be available in immigration cases, and BIA implemented a

system to streamline the review of immigration cases so that many denials are issued by a single judge. The results in cases of battered immigrant spouses and immigrant victims of child abuse have been devastating, when both the single immigration judge and the single BIA judge who saw the cases did not understand the dynamics of domestic violence and child abuse, nor the state and federal law protections for victims of these crimes.

The Federal Circuit courts have split on the issue of whether the Federal Circuit courts technically have jurisdiction to review BIA denials of cases of immigrant victims. When the Circuits have decided they can review the case, victims of child abuse and domestic violence finally receive a review of their case from a panel of Federal Circuit Court Judges that carefully reviews their case, and in most cases, finds that neither the immigration judge or nor the BIA acted appropriately in denying the victims VAWA cancellation of removal or VAWA suspension of deportation cases. On the other hand, Federal Circuit courts that take the approach that under IIRAIRA they have no jurisdiction to review either the BIA or the immigration judges' decision, end up rubber-stamping rulings that include findings that rape and attempted rape were neither "battery" nor "extreme cruelty."

The amendments made by this section ensure judicial review in the Circuit courts of victims' applications of immigration relief under the following programs: VAWA self-petitions, U visas, T visas, VAWA cancellation of removal and VAWA suspension of deportation.

Section 210(d): VAWA Unit Adjudications

p.55 L 4 to L 14

Note to Future Drafters: It is recommended that when this statute is rewritten, that instead of referencing the "Violence Against Women Act Unit at the Vermont Service Center," that this statute simply reference the "Violence Against Women Act Unit" without specifying the location. This is because U Visa cases are currently being adjudicated by specialized VAWA Unit teams at the Vermont Service Center and the Nebraska Service Center and are no longer exclusively adjudicated in at the Vermont Service Center. It is important that only the specialized and trained VAWA Unit adjudicate the full range of violence against women and children related cases. (Future drafters should also confirm the current formal title of the VAWA Unit, as it may have changed.)

This provision requires the specially trained VAWA Unit to adjudicate all applications for individuals covered in the categories outlined below. Currently, the VAWA Unit adjudicates many of these applications, so there is uniformity in adjudication. However, the case types that are not adjudicated by the VAWA unit have a wide discrepancy among locations in timing of, approach to, and quality of adjudications. These statutory amendments require that applications under relief, adjustment of status, employment authorization, parole, deferred action, naturalization and all administrative determinations relating to such applications for each of the following types of cases must be adjudicated by the VAWA Unit:

- VAWA self-petitions
- T visas
- U visas
- Section 106 work authorizations
- Special immigrant juveniles
- Battered spouse waivers

This provision is needed because there are significant differences in adjudication times, consistency, understanding of domestic violence dynamics and outcomes for abused immigrant spouses who file Battered Spouse Waivers compared to VAWA self-petitions. INA Section 101(a)(51) defines VAWA self-petitions to include battered spouse waivers. Both case types are VAWA self-petitions and both remedies are available for abused spouses of U.S. citizens and lawful permanent residents. However, the VAWA self-petitions are adjudicated by the specially trained VAWA unit and the battered spouse waivers are adjudicated at USCIS regional services centers and district offices across the country.[15] Further, some VAWA self-petitioners are required to participate in interviews as part of their applications for lawful permanent residency. These interviews are conducted by untrained staff at USCIS offices across the country. Any needed interviews should be conducted virtually by VAWA unit staff. This will be both more efficient, because the same adjudicator familiar with the case conducts the interview, and more effective, because the interviews would be conducted by specially trained staff who understand domestic violence. This approach also promotes victim safety and confidentiality.

Section 211

Section 211: Technical Corrections
p.55 L 15 to p.58 L 9

Section 211(a): Correcting 237(a)(1)(H) Punctuation Correction
p.55 L 16 to L 21
Strike the period and replace with "or" to correct an error in VAWA 2000 drafting.

Section 211(b): Correcting 237(a)(7)(A)(i)(I) Domestic Violence Victim Waiver
p.55 L 22 to L 25
Changes "was acting ***is*** self-defense" to "was acting ***in*** self-defense".

Section 211(c): In General : Removing the Term Domestic Violence and Replacing with Battering or Extreme Cruelty
p.56 L 1 to L 23

Note to Future Drafters: In the Schakowsky bill, the name of this section is "In General." The name of this section should be updated to the more specific title above—"In General: Removing the Term Domestic Violence and Replacing with Battering or Extreme Cruelty."

The definition of abuse under immigration law is "battery or extreme cruelty" and there is no definition of "domestic violence" in immigration law. This amendment removes the ambiguous use of the term "domestic violence" and replaces it with "battery or extreme cruelty," which is the definition used in immigration law.

[15] *See,* Kavell Joseph, Amanda Davis and Leslye E. Orloff, Moving Battered Spouse Waiver Adjudications to the VAWA Unit: A Call for Consistency and Safety National Survey Findings Highlights (February 6, 2017) https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017

Section 211(e): Correction of Cross-Reference to Credible Evidence Provisions
p.57 L 4 to L 17

This section is a technical correction to fix an incorrect reference in the statute clarifying that VAWA's "any credible evidence standard," used when petitioning for permanent residence status, is found in INA "204(a)(1)(J)" instead of "204(a)(1)(H)".

Section 211(f): Miscellaneous Corrections to VAWA 2005
p.57 L 18 to p.58 L 9

This section provides technical corrections to inaccurate references regarding family preference categories. The amendments ensure that immediate relative children continue to be protected, and thus eligible for immigration benefits, by classifying them as immediate relatives after they turn 21.

TITLE III- VAWA CONFIDENTIATLITY

Section 301

Section 301: VAWA Confidentiality Improvements
p.58 L 10 to p.69 L 6

Note to Future Drafters: In a future draft, we recommend adding the following labels to the Schakowsky bill's suggested amendments:

- *INA Sec. 245B(a)(1) should be labeled as "Prohibited Source" (on p.59 L 9)*
- *INA Sec. 245B(a)(2) should be labeled as "Disclosure Prohibitions" (p.59 L 20)*

Perpetrators of domestic violence, workplace and other sexual assault, and human trafficking continue to report crime victims to DHS to trigger immigration enforcement actions against victims. This form of immigration-related abuse is very effective in silencing victims. It undermines 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. There continue to be incidents in which victims who have filed VAWA self-petitions, U visa and T visa applications are detained by DHS based upon "tips" provided by perpetrators. Currently, when DHS receives a "tip" from a family member, employer, co-worker or crime perpetrator that an undocumented individual is at a particular location, they can use a loophole in VAWA's confidentiality protections to pick up victims they should not be pursuing. After searching DHS databases to independently verify that the individual is subject to detention or removal, they move forward with removal against the victim without regard to the fact that the "tip" came from an abuser who is trying to get their victim detained and removed from the U.S.

There have been instances in which DHS officials knew the "tip" came from a source that could likely be a prohibited source (a perpetrator, a perpetrator's family member or someone working on the perpetrator's behalf), in which officials argue they complied with VAWA confidentiality because they

did not rely "solely" on the tip from the abuser, but relied on DHS databases to independently confirm the information regarding the victim's status provided by the perpetrator. This tactic is particularly effective in helping perpetrators who have knowledge that the victim may have had a prior removal order, that the perpetrator may have been involved in securing. One common example of this is when perpetrators turn their spouses in to DHS and then take the mail notice of the victim's hearing in immigration court and destroy or hide it. In these cases, the victim has been removed *in abstentia* and does not know about the removal order.

When these facts occur in cases involving immigrant victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other crimes, it is contrary to the purpose of VAWA confidentiality. The legislative history of VAWA 2005 sought to prevent DHS from relying on information provided by a crime perpetrator and the misuse of VAWA confidentiality-protected information. The bipartisan House committee report from VAWA 2005 states:

> "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.

The amendments to VAWA confidentiality proposed here make changes in statutory language that would hold DHS to the same standard that law enforcement officials are held under the "fruit of the poisonous tree" doctrine. These amendments further require that DHS officials search the computerized DHS red-flag system created on 12/1/10 to avoid enforcement actions against victims.

The changes in this section are designed to:

- Help DHS and other government officials more fully comply with VAWA confidentiality requirements;
- Cover the full range of crime victims and vulnerable immigrant children that are offered protection under the Violence Against Women Act and the Trafficking Victims Protection Act in VAWA confidentiality protections;
- Capture and cover a broader range of instances in which crime perpetrators have, in practice, been finding ways around VAWA confidentiality protections.

The amendments proposed are summarized in the following subsections of Section 301:

Section 301(a): VAWA Confidentiality Moved From IIRAIRA

p.58 L 13 to L 24

This section moves VAWA confidentiality from outside of the Immigration and Nationality Act (INA) to a section within the INA. VAWA Confidentiality becomes Section 245B of the INA. The

inserted text copies the original text and makes the changes to VAWA confidentiality protections discussed here. Making VAWA confidentiality part of the INA will promote better compliance with VAWA confidentiality's protections.

Section 301(b): Insertion of VAWA Confidentiality in the INA

p. 59 L 1 to p.66 L 17 (Note that since this section is adding VAWA confidentiality to the INA, the references in the section by section description of the amendments refer to the new proposed INA code sections, not the sections of this bill.)

Note #1 to Future Drafters: The title of the section needs to be changed to include victims of crime and abuse. Therefore, this could be accomplished by changing the title (found on p.59 L 5) from "Sec. 245B. Confidentiality of Certain Information Relating to Battered Aliens" to the new updated title of "Sec. 245B. Confidentiality of Certain Information Relating to Battered Aliens and Immigrant Victims of Crime and Abuse."

Note #2: Since the time that this bill was introduced in 2012, DHS has implemented new policies addressing VAWA confidentiality. There are suggested changes included in these headnotes to this section that discuss future legislative amendments needed in addition to the VAWA confidentiality amendments contained in this bill. We have highlighted in red below a few additional changes that are needed to ensure that the proposed statutory changes are consistent with, expand upon, and are not more restrictive than current VAWA confidentiality laws, policies, and regulations as of March 2021.

Note #3: Currently, the Schakowsky bill, HR 5331, discusses when VAWA confidentiality protection begins (Sec.245B(a) page 59 lines 7-17 must be read together with the definition of VAWA perpetrator (Sec 245B(g)(2) page 64 line 15 through page 66 line 17). These two sections read together mean that under this bill, VAWA confidentiality protections begin the moment the relationship exists and there is battering or extreme cruelty. Under current law, this is true for spouse abuse, child abuse, and family member-perpetrated elder abuse cases. In cases when the perpetrator is someone other than a spouse, parent, son or daughter, or a family member of a spouse, parent, son or daughter (as in other U visa cases and cases involving victims of human trafficking), VAWA confidentiality protections would start when the victim is in the process of applying for U visa or trafficking victim immigration protections (T visa or continued presence). This is consistent with current statutes and DHS policies. To accomplish this goal of clarifying when VAWA confidentiality protection begins, an additional amendment is needed to p. 59 lines 9-10 to read:

> *"(a) Prohibited Source. – Except as provided in subsection (c) of this section, enforcement officials may not --- (make an adverse determination using information furnished by a person about whom the enforcement official has received information about, knows, or should have reason to believe or a reasonable suspicion that the person is a VAWA perpetrator. Adverse determinations prohibited include but are not limited to –"*

With this language, the bill would amend the statute to specify that the nondisclosure provision begins to provide protection immediately when a government official either knows or should have 'reasonable suspicion' to believe that the person providing the information may be a VAWA perpetrator.

This change would make the statute consistent with the approach taken by the DHS Implementation of Section 1367 Information Provisions—section VI(A)(1)(c).[16]

In addition, we want to amend the bill to specify that confidentiality protection only ends if the VAWA case has been denied based on its merits, and after its appeal. (This amendment would make the law consistent with current case law and policy.) This amendment is needed because there have been situations where a victim files a VAWA self-petition but simultaneously has an immigration case being processed through another means (i.e. because the batterer is also simultaneously filing a family based visa petition for the victim or the victim has a work visa that leads to a lawful permanent residency opportunity). In these situations, if the victim ends up gaining lawful permanent residency through a process other than the VAWA self-petition, under current DHS policies and case law, the victim continues to receive VAWA confidentiality protections. In other words, if a victim's case is denied simply because the victim no longer needs the relief—because the victim obtained legal residency through another avenue—then the case was not denied based on the merits of the case, and the victim will continue to be protected by VAWA confidentiality. This guarantee of continued VAWA confidentiality already is clarified and enforced by DHS policy, but needs to be made into law. Therefore, Sec. 245B(b) (P. 60 lines 8-12) should be rewritten to read as follows:

> *"(b) DURATION OF VAWA CONFIDENTIALITY PROTECTIONS. – Notwithstanding section 552 of title 5, United States Code, the protections offered by INA Sec. 245B remain in effect and shall not be terminated unless the immigrant filed for a form of relief listed in Section 245B(a)(2) and the application was denied on its merits and all opportunities for appeal of the denial have been exhausted."*

Note #4: This legislation is seeking to add Special Immigrant Juvenile Status (SIJS) to VAWA confidentiality's protections. In Sec. 245B(a)(2) [on p.59 L 20 to p.60 L 7)—which outlines all of the different categories of immigrants who are covered by VAWA confidentiality— future drafters will need to make the following amendments to accomplish this goal:

- *On p.60 line 5, future drafters need to replace "section 287(h)"—which was trying to refer to SIJS—with "section 101(a)(27)(J)", which is a clearer reference that provides VAWA confidentiality protections to Special Immigrant Juvenile Status (SIJS) applicants.*
- *In addition, "101(a)(27)(J)" should also be added to the list on p.63 L 25, so that SIJS applicants are included in the list of immigrants who are required to be informed about eligibility for immigration relief.*
- *Lastly, "101(a)(27)(J)" should also be added to the list on p.66 L 11, so that perpetrators who have battered SIJS applicants are explicitly included under the legal definition of "VAWA perpetrator."*

Note #5: To be consistent with current policy, under which VAWA confidentiality protections do not end unless the case is denied on its merits, the language used on p.59 lines 24 to 25 of the Schakowsky bill should be changed to read: "is the beneficiary of a pending or approved application for relief under—"

[16] DHS, "Implementation of Section 1367 Information Provisions." (November 7, 2013) https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001

Note #6: In the subsection that addresses exceptions to nondisclosure (starting on p.60 L 13), future drafters should add a provision explicitly addressing what is and is not discoverable in state and federal criminal, civil and family court cases. The section should confirm the positions taken under current policy and state and federal case law that information about the existence of, actions taken in, and information contained the case file of a VAWA confidentiality protected case are not discoverable in any federal or state criminal, civil or family court proceeding. The one exception would be limited to criminal cases, in which discovery would be limited to the U visa certification or T visa declaration signed by police or prosecution officials.

Descriptions of the amendments contained in the Schakowsky bill HR 5331 are listed below with a citation to the subpart of the new INA Section 245B that is being described:

- Deletes the word "solely". This language passed the House with bipartisan support in VAWA 2005. This paragraph deletes the word "solely," making VAWA confidentiality applicable to "information furnished by or derived from information provided by" a perpetrator. This is the bipartisan language that passed the House in VAWA 2005 and is described in the House legislative history of VAWA 2005. *New INA 245B(a)(1);*

- Creates a new term: "VAWA perpetrator." *New INA 245B(a)(1); New INA 245B(g)(2)*
  - These sections ensure that VAWA confidentiality protections apply in all family violence cases, including those in which the perpetrator is a family member who may not reside in the household of the victim. This change will be particularly helpful in child abuse and child sexual assault cases in which the perpetrator is an extended family member, and in family violence cases in which the perpetrator is an in-law.

- Defines more clearly the range of "admissibility and deportability" related actions that are prohibited by VAWA confidentiality to include admissibility, deportability, detention, adjudication of any application for immigration relief filed by an immigrant, and decisions whether or not to initiate an enforcement action against an immigrant. *New INA 245B(a)(1);*

- Expands the list of immigrants who receive VAWA confidentiality protection to include:

  - INA Section 106 spouses and children of certain visa holders applying for work authorization (making the statute consistent with current policy);

  - Special Immigrant Juvenile Status (SIJS) applicants and recipients;

  - All VAWA self-petitioners covered by INA 101(a)(51). *New INA 245B(a)(2)*

  As noted in the headnotes to this section, future drafting should ensure that the statute applies to pending and approved applications for each of the listed case types.

- Duration of VAWA Confidentiality Protection: Codifies case law and policies that extend VAWA confidentiality protections indefinitely to the protected applicant victim. With this amendment, VAWA confidentiality protection only ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted. *New INA 245B(b)*

- Amends VAWA confidentiality to ensure that VAWA confidentiality protections are not undermined should the Freedom of Information Act be construed in a manner that conflicts with VAWA confidentiality protections. Adding the language "Notwithstanding section 552 of title 5, United States Code" to the VAWA confidentiality law was recommended by the U.S. Department of Justice in VAWA 2005. DOJ recommended adding this language to ensure that abusers and crime perpetrators could not get around VAWA confidentiality protections using the Freedom of Information Act. This language passed the House and was bipartisan in VAWA 2005. *New INA 245B(b)*

- Note that *New INA 245B(c)* exceptions need to be amended to add the VAWA 2013 statutory changes, which will amend this section. What we are proposing below is the bill text, with the exception of the *italicized text*, which contains explanations of what is being proposed. (Note that VAWA 2013 language is i**n Bolded green**, and there is also one future amendment that would be needed in the Schakowsky bill that has not already been addressed by VAWA 2013, and that language is in **bolded purple**.) The *New INA 245B(a)(2)* needs to be amended to read as follows:
  - (1) IN THE SAME MANNER AS CENSUS INFORMATION. --The **Secretary of Homeland Security or the** Attorney General may provide, in the **Secretary's or the** Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.
  - (2) FOR LAW ENFORCEMENT PURPOSES. -- (2) The **Secretary of Homeland Security or the** Attorney General may provide in the discretion of **the Secretary or** the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose **in a manner that protects the confidentiality of such information.**
  - (3) FOR PURPOSES OF JUDICIAL REVIEW **OF A PROTECTED VICTIM'S IMMIGRATION CASE.** -- (3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of an immigration case described in subsection (a) of an alien protected by this section in a manner that protects the confidentiality of such information.
    - Explanation of changes in (3): The amendments in this section clarifies what case law has ruled codifying the U.S. District Court Opinion in *Hawke v. U.S* that the judicial exception only applies to judicial review of the victim's immigration cases and does not extend to any state or federal court proceedings that involves a judicial officer.
  - (4) IN ACCORDANCE WITH EXPLICIT WAIVER BY VICTIMS. -- (4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

- (5) FOR PURPOSES OF DETERMINING ELIGIBILITY FOR BENEFITS. -- (5) **The Secretary of Homeland Security and the Attorney General are** ~~**The Attorney General is**~~ authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(s)), in a manner that protections the confidentiality of such information.
    - *Explanation of changes in (5): The amendments made by this section requires benefits granting agencies to keep the information confidential.*

- (6) FOR PURPOSES OF CONGRESSIONAL OVERSIGHT. – *This section is unchanged since VAWA 2005*
- (7) FOR PURPOSES OF ASSISTING VICTIMS OBTAINING SERVICES. -- *This section is unchanged since VAWA 2005*
- (8) FOR PURPOSES OF NATIONAL SECURITY. -- **Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.**

- **Requirement to Provide Information About Eligibility for Immigration Relief --** This section requires that when DHS identifies that an individual is or may be a victim of domestic violence, sexual assault, human trafficking or other U visa listed criminal activity, DHS is required to provide that individual with information about immigration law protections for victims within 24 hours. Requiring provision of information is particularly important when DHS learns about the victim's undocumented status through a "tip" from the perpetrator (referred to in the bill as a VAWA perpetrator). DHS has developed informational brochures on crime victims related immigration benefits that can be distributed by DHS officials to crime victims they encounter.[17] These informational materials should also include referrals to the national domestic violence, sexual assault and human trafficking hotlines and to the National Directory of Immigrant Victim Service Providers. *New INA 245B(f)*

- **Creates the term "enforcement officer"** defining it to include DOJ, DHS and State Department officials, as well as any other state or federal government agency or officer. This ensures that all state, local or federal officials involved in the immigration process or

[17] Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers and Others https://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes; DHS Interactive Infographic on Protections for Immigrant Victims https://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims; Immigration Relief for Abused Children; Special Immigrant Juvenile Status https://niwaplibrary.wcl.american.edu/pubs/appendix-h-dhs-sijs-brochure; Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa https://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights.

immigration enforcement are covered by VAWA confidentiality, including but not limited to 287(g)[18] officers. *New INA 245B(g)(1)*

Section 301(c): VAWA Confidentiality in Removal Proceedings
p.66 L 18 to p.67 L 4

This section expands the physical locations at which immigration enforcement activities are prohibited under VAWA confidentiality (8 U.S.C. 1367) and INA Section 239 to include locations that are covered by Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP)'s policies that prohibit enforcement at sensitive locations.[19] These locations include schools, religious and faith-based organizations. This section also adds other locations that immigrant crime and domestic violence victims need to safely access (hospital, federally qualified health center, governmental and nongovernmental child, elder and adult protective services agency, and head start programs). Consistent with state protection order statutes and case law, the VAWA confidentiality locational prohibitions preclude enforcement actions within 500 yards of these protected locations.

Section 301(d): Expansion of Definition of VAWA Self-Petitioner
p.67 L 5 to L 15

Note to Future Drafters: This section expands the definition of "VAWA self-petitioner" to include additional categories of crime victims. The first new group of crime victims added includes Special Immigrant Juvenile Status (SIJS) children, defined in INA 101(a)(27)(J). However, the reference used by legislative counsel in this draft is 287(h), which was the VAWA 2005 protection for SIJS children, rather than the full SIJS definition in 101(a)(27)(J). The references in HR 5331 to 287(h) should be changed to reference 101(a)(27)(J) for clarity. (In this section, that reference is on p.67 line 15.) This bill also adds abused immigrant spouses of certain visa holders to the definition of VAWA self-petitioner. As a result, these two categories of victims are protected throughout the bill, along with VAWA self-petitioners. In future drafting, the simplest and most consistent way to make sure that all categories are covered is to add applicants and recipients of the following four forms of immigration relief to the definition of VAWA self-petitioner:

- *Special immigrant juvenile status children INA Sec. 101(a)(27)(J)*
- *Abused spouses who qualify for work authorization under INA Sec. 106*
- *VAWA cancellation of removal INA Sec. 240A(b)(2); and*
- *VAWA suspension of deportation INA Sec. 244(a)(3) (as in effect on March 31, 1997)*

These sections expand VAWA the definition of VAWA self-petitioner to include children applying for or who have been granted Special Immigrant Juvenile Status (SIJS) and spouses and children of

[18] INA Section 287(g) is a provision that allows DHS to create cooperation agreements under which local law enforcement officials enforce immigration laws.

[19] U.S. Customs and Border Protection, Sensitive Location FAQs https://niwaplibrary.wcl.american.edu/pubs/cbp-sensitive-location-faq; Immigration and Customs Enforcement, Enforcement Actions at or Focused on Sensitive Locations https://niwaplibrary.wcl.american.edu/pubs/ice-2011-sensitive-locations-policy.

certain work visa holders eligible to apply for work authorization because they have been battered or subjected to extreme cruelty by their visa holder spouse or parent described in §106 of the INA.

Section 301(e): Additional Requirements for Section 287(g) Agreements

p.67 L 16 to p.69 L 6

This section requires that state and local agencies that enter into agreements with the Department of Homeland Security (DHS) to cooperate in immigration enforcement activities under the INA Section 287(g),[20] Secure Communities or other programs, will be required to also play a role in implementing VAWA, T visa, U visa, Special Immigrant Juvenile Status (SIJS) and Section 106 immigration protections. Under the proposed changes, each agency will be required to designate one or more officials in the agency to be responsible for issuing U visa certifications and T visa endorsements. Agencies must publicize the designation of an official responsible for T and U visa certification in the community, put in place an actual practice of certifying U visa cases, and be subject to VAWA confidentiality rules and VAWA confidentiality penalties for non-compliance. DHS will be required to suspend cooperative agreements and information-sharing with local jurisdictions that do not comply with this provision within 60 days of enactment of this Act.

TITLE IV- VICTIM SERVICES AND TRAINING

Section 401

Section 401: Training

Section 401(a), (b), and (c): Training of Immigration Judges in the Executive Office of Immigration Review

p.69 L 9 to p.71 L 15

Note to Future Drafters: Section 401(a) and Section 401(c) need to add Special Immigrant Juvenile Status (SIJS) to the list of protected victims.

This section will require ongoing training for all Department of Homeland Security (DHS), Department of Justice (DOJ) and Department of State (DOS) personnel who come into contact with immigrant crime victims, their cases or their petitions for relief under VAWA, U visa or T visa certification. While some training has taken place in the past, particularly for VAWA Unit Adjudicators and immigration judges, this training does not occur on an annual basis and has not been mandatory for both staff and managers. Trainings for ICE have been periodic and limited. Some agencies, including Customs and Border Patrol and the State Department, have not had any training on the full range of immigration relief petitions available to immigrant victims.

[20] INA Section 287(g) is a provision that allows DHS to create cooperation agreements under which local law enforcement officials enforce immigration laws.

In addition, under this section, DHS, DOJ, and DOS will establish and publish protocol and procedures to create appropriate, ongoing training and to ensure that cases involving victims are properly handled. This section requires that subject matter experts from outside of DHS be involved in the training delivered under this section. DHS must implement this training and policies and protocols for handling cases involving immigrant victims within 180 days of enactment.

Section 401(d): Accredited Representative-Victim Client Privilege
p.72 L 13 to P.73 L 10

Note to Future Drafters: Check to see if the current terminology for Board of Immigration Appeals' (BIA) accredited representatives has changed and make any needed amendments.

This section creates a privilege, similar to the attorney-client privilege, for communications among the accredited representatives recognized by the BIA and the clients they serve in that capacity. In many communities, the Board of Immigration Appeals has authorized individual non-lawyer victim advocates working at recognized community-based organizations to represent clients in immigration matters before the DHS, Immigration Judges and/or the Board of Immigration Appeals. To assure victim safety, all VAWA confidentiality-protected communications between victims and their accredited representatives in their immigration cases need to have the same privilege and confidentiality protections as those given to the attorney-client relationship and the victim-advocate relationship under state and federal law. This section is designed to improve confidentiality protections for immigrant victims by extending both victim-advocate and an accredited representative-client privilege to cases in which immigrant victims are represented before DHS or immigration judges by Board of Immigration Appeals accredited representatives.

Section 402

Section 402: Services for Trafficking Victims

Section 402(a): Access to Victims' Services
p.73 L 12 to p.74 L 21

The section amends the Trafficking Victims Protection Act of 2000 (TVPA) to require that all potential trafficking victims be provided interpreters, information about their legal rights, referrals to victim and legal services agencies who can help them, and access to telephones through which they can communicate with victim and legal services providers. Immediate access to supportive services and legal assistance is crucial to stabilizing the lives of trafficking victims, preserving evidence for the criminal prosecution against the traffickers, and supporting the victim so that the victim can move from being enslaved to having the support they need to be a collaborative witness in the trafficking case. This information, along with referrals, must be provided to potential victims of human trafficking within 24 hours of their first encounter with government officials. This information must be provided by government officials and may also be provided by NGOs in cases where victims get early access to NGO based victim advocates.

This section also bars DHS from holding potential victims of human trafficking in jails and detention centers and assures that these provisions apply to federal and state law enforcement officials prosecuting human traffickers. Such detention prevents victims from building the trust with law enforcement needed to prosecute a trafficking case. These forms of detention of human trafficking victims also play into and reinforce human traffickers' threats in which they tell victims that if they try to leave or seek help they will be detained and deported by government officials. This section also adds a definition of "victim services" to the Trafficking Victims Protection Act.

Section 402(b): Conforming Amendments for Public and Assisted Housing

p.74 L 22 to p.76 L 2

Note to Future Drafters: The amendments in this section are designed to ensure that all qualified immigrants including VAWA self-petitioners, VAWA cancellation of removal applicants, and T visa applicants with bona fide determinations are able to access public and assisted housing. In addition, future drafters need to add applicants and recipients in U visa and Special Immigrant Juvenile Status (SIJS) cases to the list of immigrants eligible for public and assisted housing. Attached in Appendix A is proposed revised language for this section. The proposed language makes each of these categories of immigrants eligible and also resolves a problem with public housing regulations requiring that applicants have social security numbers. The issue is that VAWA self-petitioners who are legally eligible for public housing will not have immigration cases that have progressed to the point where victims receive social security numbers. The draft amendment in Attachment A provides that immigrant victims can only be required to provide a social security number when their immigration case progresses to the point where they have one, and that prior to that time, immigrant victims can provide their A-number as an alternative to the social security number. This statutory change will also be needed by several of the other crime victim related categories that are being made eligible for public and assisted housing, including SIJS children and U visa applicants.[21]

This section contains amendments to section 214 of the Housing and Community Development Act that requires all officials who administer public and assisted housing units to ensure that immigrant victims are given access to these important housing benefits. The 1996 federal welfare law provided access to public and assisted housing and other federal public benefits for "qualified" immigrants, including battered immigrants, VAWA self-petitioners and VAWA cancellation of removal applicants.

Section 402(c)(1-5): Improving Access to Benefits for Immigrant Victims

p. 76 L 3 to p.80 L 16

This provision requires the Secretary of the U.S. Department of Health and Human Services (HHS) to create a pamphlet on immigrant victims' legal rights to public benefits and how to access these benefits. The pamphlet will include information on qualified immigrants' federal public benefits, housing rights, access to post-secondary financial aid, grants and loans, as well as access to federal

[21] For updated draft language on amendments needed to Section 214 of the Housing Act see, Leslye E. Orloff, Legislative Reforms Needed For Immigrant Victims of Domestic Violence, Sexual Assault, Stalking and Immigrant Children Who Have Suffered Abuse, Abandonment or Neglect (April 4, 2021), https://niwaplibrary.wcl.american.edu/pubs/immigrant-victims-statutory-proposals

means tested public benefits. It will also include information on federal and state-funded housing programs that are available to all immigrants; the legal rights of immigrants to access programs, resources and services that are guaranteed under federal law; and resources through which victims can obtain referrals to advocacy and support services for immigrant victims of domestic violence, sexual assault, human trafficking, elder abuse or other crimes. This pamphlet will be translated into the top 15 languages of legal permanent residents in order to better serve limited English proficiency victims. The pamphlets will be distributed by HHS, Department of Agriculture, HUD, Department of Education and DHS to all of the agency grantees, the state agencies responsible for granting federal public benefits, and public housing authorities. The pamphlet will also be posted on the website of these federal government agencies, and agencies will assure distribution and posting of the information by state government agencies administering federally-funded programs. Finally, this pamphlet will be made available and distributed in all of the prescribed languages no later than 180 days after the date of the enactment of this Act.

Section 403

Section 403: Encouraging Custody Determinations and VAWA Confidentiality Protections in State Courts

p.80 L 17 to p.81 L 12

Note to Future Drafters: This section should be amended to add (1) T visa certifications and (2) Special Immigrant Juvenile Status (SIJS) findings to the list of required training and policies. In the section description below, the red text indicates the text that would need to be added to the section-by-section description once these changes have been made to the law.

This section encourages courts to learn about VAWA immigration relief, VAWA confidentiality and the importance of awarding custody in protection order cases. This section requires that judges and state court staff be trained in the following areas, which have been added as authorized purpose areas in the Courts Grant Program: VAWA confidentiality, language access for protection order and family court proceedings, U visa and T visa certification by judges, and issuance of SIJS findings in cases involving child abuse, neglect or abandonment by a parent.

This section also adds to the Court Training and Improvements Grant Program, a requirement that conditions grant eligibility on an applicant's written certification that the grantee encourages judges to promote the goals of VAWA. Specifically, the applicant's training and internal policies, practices and rules must encourage judges to:

- include child custody awards to the non-abusive parent in all protection order cases;
- deny requests for discovery of VAWA confidentiality-protected information;
- not consider immigration status of either party as a factor in custody determinations made in protection order, divorce, custody, child abuse or neglect or termination of parental rights proceedings;
- sign U visa and T visa certifications;
- issue SIJS findings; and
- distribute information about VAWA immigration relief and VAWA confidentiality to litigants in family court cases and to victims in domestic violence-related criminal cases.

Research has found that concerns about maintaining custody of children is one of the most highly-ranked reasons for which battered women delay or decline to leave abusive relationships. In order to address this concern, all state protection order statutes contain remedies that authorize courts in protection order proceedings to make custody awards when issuing protection orders. Additionally, during the 1980s and 1990s, states added to their child custody laws requirements that discourage courts from awarding custody to abusive parents. In 1993, Congress passed House Congressional Resolution 172:

> "Expressing the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."

Despite these laws, courts across the country continue to issue protection orders that do not address issues of custody or describe how visitation is to occur in a manner that considers the safety of the victim and her children. The failure to include custody determinations in protection orders undermines the effectiveness of protection orders for victims with children. When the victim and the abuser have children in common and the protection order is silent on custody and visitation, the victim is forced to negotiate custody and visitation directly with her abuser. When parties are separated and the protection order includes a "stay away and no contact" order, the abuser uses custody and visitation of children to circumvent the protection orders' prohibitions and to exert ongoing coercive control over the victim. Custody awards in protection order cases are temporary orders that last for the duration of time that the protection order remains in effect. To obtain a permanent custody award, the parties will be required to eventually pursue a family court custody award in a divorce or custody case. However, with custody awards in place as part of the protection order, victims have the immediate protection they need. They will be better able to care for their children and pursue permanent custody orders at a later period of time, once the victim has had the time and support that are necessary for the victim to heal. This approach, in many cases, can lead to settlement of future proceedings in family court, because the custody and visitation orders already issued in the protection order case are working effectively for victims.

Among immigrant victims of domestic violence, while research has found that threats to take children and fear of losing custody and contact with children is one of the two most reported reasons immigrant victims stay in abusive relationships, the other reason is fear of deportation. When immigrant victims find the courage to turn to the justice system for help, they encounter a system in which court staff, judges and law enforcement are unaware that for more than a decade and a half, U.S. immigration laws have offered immigration relief to spouses, children and other immigrant victims of family violence. State family courts need to be familiar with the forms of immigration relief available to immigrant victims of domestic violence, sexual assault and human trafficking. Courts play an important role in educating victims who come to court in violence against women cases, about these life-saving legal remedies offered by VAWA, the T and U visas, SIJS and VAWA Confidentiality. Additionally, VAWA 2000 made state court judges in family law and criminal law cases U visa certifiers. For all of these reasons, this section is needed to encourage courts to learn and understand more about VAWA immigration relief, VAWA confidentiality, and the importance of awarding custody in protection order cases.

Section 404: Improving Language Access to Services Provided Under the Violence Against Women's Act of 1994 for Persons with Limited English Proficiency

Section 404(a): Goals

p.81 L 13 to p.82 L 17

Note to Future Drafters: In the American Recovery and Reinvestment Act of 2009, an attempt was made to create enforcement mechanisms to ensure compliance with language access regulations. These efforts are described in this Notice on Civil Rights Obligations Applicable to the Distribution of Funds under the American Recovery and Reinvestment Act of 2009,[22] as well as in a memorandum[23] by former Acting Assistant Attorney General Loretta King. The amendments described below aim to go even farther to strengthen enforcement provisions for language access compliance and to make those provisions more akin to the Americans with Disabilities Act (ADA) enforcement provisions. Future drafters and legislative counsel should review the language below as it would be enacted to determine whether monetary penalties for violation could be among the sanctions imposed on violators. Future drafters should also consider adding language to ensure that violations of this section would be treated equal to violations of the Civil Rights Act of 1968 based on race, and to ensure that with these amendments, persons denied language access have the same access to relief as victims of violations of the ADA.

Limited English proficient victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, elder abuse and other crimes covered by the U visa continue to have very limited language access to government-funded services. Such services include police, prosecutors, courts, public benefits agencies and other government-funded services, many of which are designed to offer life-saving services to crime victims and the community at large. Current language access laws lack sufficient enforcement mechanisms to secure language access for immigrant victims. The amendments in this section are designed to:

- improve access to programs, activities and services for victims of violence and other individuals who, as a result of national origin, are limited in their English proficiency;
- ensure that the programs, activities and services for victims of violence that are normally provided in English are accessible to victims and other individuals with limited English proficiency and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations;
- make violation of language access rights for limited English proficient individuals by government entities actionable in suits brought by individuals or by the DOJ for injunctive relief, when there has been a violation of the protections against discrimination based on national origin protected by the Civil Rights Act of 1964; and

[22] "Notice on Civil Rights Obligations Applicable to the Distribution of Funds under the American Recovery and Reinvestment Act of 2009." Available at: https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/RecoveryActNotice09.pdf

[23] "Prepared Remarks of Acting Assistant Attorney General Loretta King." April 20, 2009. Available at: https://www.lep.gov/sites/lep/files/resources/Kingremarks4_20_09.pdf

- provide the right of limited English proficient individuals to a private right of action to enforce through injunctive relief Title VI language access protections including disparate impact protections.

Section 404(b): Definition
p.82 L 18 to p.83 L 7

This section provides a statutory definition of "limited English proficient" (LEP) that is consistent with the definition set forth in the DOJ LEP Guidance, 67 Fed. Reg. 41455, 41459 (June 18, 2002). The provision allows for enforcement of this section under Title VI of the Civil Rights Act of 1964 and for the enforcement by the Attorney General against federal, state or local governmental entities or any employee or group of employees of such entity, if there is a pattern or practice of denying access to programs, activities or services to VAWA victims based on LEP. Injunctive relief may be available.

Section 404(c): Enforcement with Regard to Government Entities
p.83 L 8 to p.90 L 5

This amendment establishes enforcement mechanisms similar to those available in the Americans with Disabilities Act (ADA) ensuring that all limited English proficient (LEP) persons are provided the same language access rights as the Deaf and Hard of Hearing community. The amendments make by HR 5331 codify and build upon language access regulations and policies issued by the federal government that would apply to all government entities, and creates guidelines for their implementation.

The provision establishes that when a federal, state, or local government entity denies a person access to programs, activities, or services on the basis of their limited English proficiency, that the "person aggrieved" may file a civil action for preventive relief, and that the court may—under the court's discretion—choose to appoint an attorney for the complainant, and the civil action can thus proceed without the complainant having to pay any costs. Furthermore, this provision states that in the event that the lawsuit is won by the complainant, the United States government would be liable for any costs of the complainant's attorney's fees.

This amendment also states that it constitutes discrimination in violation of this statute if the aggrieved person demonstrates that the "covered entity" (i.e. the government entity, the grantee, or other covered entity) has a policy or practice that impacts people differently on the basis of race, color, or national origin—which would include their limited English proficiency, as per title IV of the Civil Rights Act of 1964—and if the covered entity fails to prove that the policy or practice in question is necessary to achieve the nondiscriminatory goals of the program or activity in question. It would also constitute discrimination if the complainant can demonstrate that a less discriminatory policy exists and if the covered entity refuses to adopt that alternative policy or practice.

This amendment also empowers the Attorney General to bring a civil action in the appropriate district court if discrimination based on limited English proficiency is occurring.

Finally, this amendment establishes jurisdiction for proceedings related to this section within the U.S. district courts. It also allows for the Attorney General to request a three-judge court to hear and

determine the case if the case is considered to be "of general public importance." If the three-judge panel is not requested, then this provision mandates that the case be expedited, and if the three-judge panel is requested, then the provision mandates that the hearing must occur at the "earliest practicable date," so as to ensure a timely response.

Section 404(d): Enforcement with Regard to Governmental and Non-Governmental Entities
p.90 L6 to p.92 L 19

This section requires that all federal grantees must provide a copy of the agency's language access plan to the Federal awarding agency. The statute also spells out the minimum requirements of what must be addressed in the agency's language access plan. Finally, the statute sets out the types of language access violations that can lead to revocation of funding received from the federal government and provides an opportunity before funding is revoked for the recipient agency to remedy the problem that led to initiation of a revocation investigation.

Section 404(e): Nondiscrimination
p.92 L 20 to p.93 L 3

Note to Future Drafters: Look at the antidiscrimination provisions that were included in VAWA 2013 to make sure that the list in this section expands upon and does not omit any entities protected against discrimination under current VAWA protections.

This section elaborates upon nondiscrimination regulations by mandating that all relief and assistance activities offered to victims of violence must be carried out equitably, and must not discriminate on the grounds of race, ethnicity, religion, nationality, sex, age, disability, English proficiency, immigration status, or economic status.

Section 404(f): Interpreters for Court Proceedings Under This Section
p.93 L 4 to L 15

Note to Future Drafters: This section should be updated to be consistent with and offer the same or more protections for language access to state courts in family, civil, and criminal court proceedings for litigants, children, parents and witnesses who are LEP as is required in the State Courts Letter issued by the U.S. Department of Justice in August of 2010.[24]

This section mandates that courts must provide a foreign language interpreter for any civil action suits regarding violations of language access rights for limited English proficient individuals by government entities. It also provides a conforming amendment to ensure consistency across this provision and the Court Interpreters Act of 1978, 28 U.S.C. 1827.

[24] DOJ Letter to State Courts on Language Access (August 16, 2010)
https://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter

TITLE V – ACCESS TO SERVICES

Section 501

Section 501: Ensuring Issuance of U and T Visa Certifications and Access to Services
p.93 L 17 to p.101 L 9

There is a great need for law enforcement officials in police departments, sheriffs' offices, and prosecutors' agencies in communities across the country to be issuing U visa and T visa certifications. Despite the issuance of DHS regulations in 2002, 2007, and 2016 that explicitly encourage law enforcement and prosecution officials to issue U and T visa certifications, departments in some jurisdictions are not doing so. Problems range from police officials who remain unaware of U visa protections and the important role police officials can play in issuing certifications; to prosecutors' offices that will only certify after the prosecution has been completed; to jurisdictions that refuse to assist immigrants in any way; or departments that have issued policies and protocols that severely restrict when and if the department will ever issue certifications. The Violence Against Women Act of 1994, and its subsequent reauthorizations, have successfully used grant conditions as an effective means to spur change in policies and practices of state and local government agencies or officials that are harmful to victims of violence against women. Although this legislation seeks to treat U visa certification like T visa certification by making it no longer mandatory and making it just an optional part of the evidence that victims can present to prove crime victimization and helpfulness, victims will continue to need and greatly benefit from certification.

This section amends STOP Grants and Arrest Grants to require, as a condition of receipt of federal funding, that law enforcement and prosecution agencies receiving funding have established practices of issuing U and T visa certifications or have protocols and policies in place that encourage and actually result in U and T visa certifications. Agencies will have 6 months to implement these practices, policies or procedures after receipt of the federal funding.

Section 501(a): Grant Conditions
p.93 L 19 to p.96 L 7

Note to Future Drafters: Most of the amendments made in this section were passed into law by VAWA 2013, and are applicable to all VAWA grants. There are a few provisions in HR 5331 that still need to be added in future legislation to VAWA. The changes that the Schakowsky bill incorporates that have not already been passed into law include the following:

- *"Alienage status" and "age" need to be added to VAWA's nondiscrimination provision (p.93 L 24 – p.94 L 5). (Both are included in VAWA's underserved population definition).*
- *Three sections are included in HR 5331 that should be added to VAWA:*
  - *"Anti-Discrimination Protections" (p. 95 Lines 5-9) – Applies the Omnibus Crime Control and Safe Streets Act anti-discrimination enforcement protections to VAWA grant recipients. (Future drafters will need to compare the Schakowsky bill with the VAWA 2013 language to determine what additional protections are added by this section and decide if the amendment needs to be redrafted to add only the needed additional*

protections, being careful not to limit or cut back on VAWA protections from 2013 that may be stronger);

- *"Compliance with Title VI of the Civil Rights Act of 1994" (p.95 L 16-25) – Mandates compliance with Title VI language access laws to avoid discrimination against limited English proficient (LEP) survivors;*
- *"Content of Applications" (p.96 L 1-7) – Requires that the budgets of all VAWA grant applications include a line item addressing language access.*

Section 501(b): STOP Grants
p.96 L 8 to p.98 L 4

Note to Future Drafters: There is a typo on p.97 L 13-14 that needs to be corrected. The sentence reads "within 6 month" instead of "within 6 months".

This provision creates an authorized purpose for STOP grantees to develop and implement policies, procedures, protocols and training for courts, prosecutors' offices and law enforcement agencies on VAWA confidentiality and U and T visa certification. It also sets a grant competition priority for agencies that have protocols, policies and practices that encourage each of the following:

- That their agency complies with the language access requirements of Title VI;
- That their agency does not violate or encourage violation of VAWA confidentiality protections; and
- That their agency is issuing U and T visa certifications.

Section 501(c): Grants to Encourage Arrest Policies
p.98 L 5 to p.100 L 2

Note to Future Drafters: The title of this section and the text will need to reflect the change in program name from "Grants to Encourage Arrest Policies" to "Improving Criminal Justice Response (ICJR)".

This provision creates an authorized purpose for ICJR grantees to develop and implement policies, procedures, protocols and training for prosecutors' offices and law enforcement agencies on VAWA confidentiality, U and T visa certification and language access. There is also a grant funding priority for applicants who have implemented or are willing to implement within 6 months of receiving funding protocols, policies or practices that ensure each of the following:

- That their agency complies with Title VI language access requirements;
- That their agency does not violate or encourage violation of VAEA confidentiality; and
- That their agency is issuing U and T visa certifications

Section 501(d): Transitional Housing Assistance Grants
p.100 L 3 to L 20

Note to Future Drafters: This provision in HR 5331, in part, sought to address the problem of immigrant victims being turned away from access to transitional housing. However, in 2016, HUD, HHS, and DOJ jointly issued a policy[25] to all their grantees that addressed immigrant access to shelter and transitional housing. This joint policy helped to largely resolve this issue. Future drafters should consider including language in VAWA that makes the requirements of the joint letter statutory and permanent. In making these amendments, language should be added to the statute that was included in HR 5331 mandating that VAWA's "any credible evidence" rules apply to all applications grantees receive requesting access to emergency shelter and transitional housing programs. Future drafters will need to compare the joint policy with the language of HR 5331 to ensure that:

(1) the statutory language mirrors the current policy;
(2) that the statute addresses all three agencies (HUD, HHS, and DOJ), (Expanding beyond OVW grantees to include all federally-funded transitional housing programs covered by the tri-agency letter); and
(3) that the statute does not restrict or lessen the current policy in any way.

The goal of this section is to ensure that all immigrant and limited English proficient (LEP) victims have access to transitional housing and are able to prove eligibility using the VAWA evidence rules of any credible evidence. This section confirms that transitional housing is available to all victims without regard to victims' immigration status. Programs administering transitional housing programs will be required under this section to accept "any credible evidence" of eligibility for the program. This will help ensure that immigrant victims are able to prove their ability to become self-sufficient using any credible evidence, and programs will be precluded from turning away victims who do not have any particular piece of evidence. The narrow type of proof of a victim's ability to become self-sufficient that some programs have been willing to accept, has resulted in discrimination in access to transitional housing based upon the immigration status of the victim.

Section 501(e): Campus Grants Available for Victims with Limited English Proficiency
p.100 L 21 to p.101 L 9

The purpose of this section is to expand access to campus grants under VAWA for those with limited English proficiency (LEP). Language access to counseling services and translation of materials and documents is encouraged. Often victims who may be capable of participating in classes in English, may not be fluent enough to discuss the details of a sexual assault or dating violence in English. These LEP victims need access to language access services. Additionally, the section includes requirements for grant reports by campus grantees that accurately capture the campus population of foreign-born immigrant students.

[25] Joint Letter from HUD, HHS, and DOJ on Immigrant Access to Shelter and Transitional Housing. Aug. 5, 2016. Available at http://niwaplibrary.wcl.american.edu/wp-content/uploads/Joint-Letter-from-HUD-HHS-ad-DOJ-on-Immigrant-Access-to-Shelter-and-Transitional-Housing-Aug-2016.pdf

Section 502

Section 502: VAWA Unit Adjudications
p. 101 L 10 to p.103 L 9

Note to Future Drafters: Similar to what was noted in Section 210(d), it is recommended that when this statute is rewritten, that instead of referencing the "Violence Against Women Act Unit at the Vermont Service Center," that this statute simply reference the "Violence Against Women Act Unit" without specifying the location. This is because U Visa cases continue to be exclusively assigned to the VAWA Unit but adjudicators are now located in two different Regional service centers—in Vermont and Nebraska. What is most important is that all of the listed case types must be reviewed and adjudicated solely by the specialized and trained VAWA Unit. (Future drafters should also confirm the exact correct name of the VAWA Unit, as it may have changed.)

Additional Note to Future Drafters: On p.101 line 21 of the Schakowsky bill, the phrase "fax-back benefits authorizations" should be replaced with "benefits eligibility confirmation." Future drafters should also check to confirm that this is the correct terminology, however, it is recommended that the words "verification" and "authorization" not be used, since that language could be wrongly interpreted as imposing a verification requirement that does not exist in law, regulation or policy.

This provision requires the transfer of all VAWA confidentiality and VAWA-related cases to the VAWA Unit at the Vermont Service Center. Currently, the VAWA Unit adjudicates many of these applications, so there is uniformity in adjudication. VAWA related case types, including Battered Spouse Waivers that are not adjudicated by the VAWA Unit, result in wide discrepancies on the length of time it takes to adjudicate a case, requirements for interviews, and outcomes in the cases.[26] Applications for immigration relief, adjustment of status to lawful permanent residency, employment authorization, parole, deferred action, naturalization and all administrative determinations relating to such applications for each of the following types of cases would be transferred to the VAWA Unit:

- VAWA self-petitions
- T visas
- U visas
- Section 106 work authorizations
- Special immigrant juveniles
- Battered spouse waivers

This section also authorizes appropriations for VAW Unit Adjudications.

Section 503

Section 503: Victims of Crime Act Improvements
p.103 L 10 to p.106 L 8

[26] See, Kavell Joseph, Amanda Davis and Leslye E. Orloff, Moving Battered Spouse Waiver Adjudications to the VAWA Unit: A Call for Consistency and Safety National Survey Findings Highlights (February 6, 2017) https://niwaplibrary.wcl.american.edu/pubs/battered-spouse-waiver-report-2-6-2017

Note to Future Drafters: It is important to ensure that VOCA assistance is open to all victims of domestic violence, sexual assault, stalking, dating violence, child abuse, elder abuse, human trafficking, and all U visa covered crimes without regard to the victim's immigration status. Future drafters will need to make sure that the nondiscrimination provisions of both VOCA and VAWA prohibit discrimination on the basis of alienage status and limited English proficiency. VAWA 2013 already included domestic violence, dating violence, sexual assault and stalking. However, elder abuse still needs to be added, as may human trafficking.

Additional Note to Future Drafters: Although the extent to which VAWA covers child abuse is limited (e.g. to rural grants, and for dating violence, sexual assault, and stalking victims over age 11) it is important that amendments be made to both VAWA and VOCA to ensure that children who have suffered abuse, abandonment or neglect who would be eligible for Special Immigrant Juvenile Status (SIJS) protection under U.S. immigration laws have access to assistance through both VOCA and VAWA funding.

This provision expands the basis for receiving Victims of Crime Act (VOCA) funding by ensuring that immigrant crime victims receive the full range of services offered to crime victims in each state. Under current law, states can opt out of providing VOCA funding to victims based upon the victims' immigration status. Only one state has denied access to VOCA funding to crime victims who are non-citizens (Alabama). Access to VOCA funding provides life-saving support, improves safety, provides some bridge to economic survival and offers urgently-needed health care and mental health care for survivors of rape, sexual assault, domestic violence and other violent crimes. This VOCA funding for crime victims provides critical support that helps many crime victims report crimes and cooperate in the prosecution of perpetrators. Without access to this funding, immigrant victims of domestic violence, sexual assault, dating violence, stalking, child abuse, human trafficking and other crimes covered by the U visa, are very vulnerable to coercion, threats and further violence from the crime perpetrator, particularly if the perpetrator is a family member or employer whom the victim depends upon economically. This section ensures that all crime victims will be able to access VOCA funds in the same manner and to the same extent as citizens. This section does the following:

- Ensures that non-citizens have access to VOCA compensation. *503(a)*
- Replaces "spousal abuse" with all VAWA covered crimes: "domestic violence, dating violence, stalking, elder abuse." *503(b)(1)(A)*
- Ensures coverage of all victims included in VAWA's underserved population definition which covers alienage status. *503(b)(1)(B)*
- Bars discrimination based on alienage status or limited English proficiency. *503(b)(1)(C)&(D)*
- Applies the flexible cooperation requirements from the U visa program to cooperation requirements for VOCA. *503(b)(2)*
    - This section applies the U visa standard for determining whether crime victim cooperation with law enforcement is sufficient to receive VOCA funding. Victims can receive VOCA funding so long as they did not unreasonably refuse to help in the either the detection, investigation, prosecution, conviction or sentencing of the perpetrator of

the criminal activity. This allows crime victims to receive assistance so long as they did not unreasonably refuse to offer help, assistance or cooperation to law enforcement or prosecution officials. In evaluating whether a victim's lack of cooperation or helpfulness was not unreasonable in U visa cases, the regulations require examination of the following factors:

- C.F.R. 245.24(a)(5): This rule provides that the determination of whether an alien's refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant.

These amendments will be particularly helpful to victims who cannot emotionally sustain cooperation in a rape trial or cannot safely testify against their spouse, abusive employer or trafficker.

- Expands services and assistance to immigrant, limited English proficient (LEP) and underserved victims. *503(b)(3) & (4)*
  - These sections expand the range of services available with VOCA funds to assist crime victims, to ensure that immigrant, LEP, and underserved victims, and all crime victims can receive a fuller range of services and the assistance they need. This section adds legal services to the types of victim-assistance programs that can receive VOCA funding. This section adds language statutorily confirming that all crime victims are to have access to VOCA funding, including those who are limited English proficient and are immigrants. VOCA is also amended to improve language access to both victim services and the full range of justice system cases (civil, family, criminal, and immigration). Section (4) (p.105 line 21) additionally clarifies that crime victim assistance under VOCA is available for services and assistance relating to prevention of, obtaining relief from, escaping, ameliorating the effects of, or offering future protection against victimization. This language is based upon the description of victimization eligibility in the Legal Services Corporation regulations for anti-abuse legal representation for immigrant survivors. 45 C.F.R. 1626.4(b)(2).

Section 504

Section 504: Research on Violence Against Women

p.106 L 9 to p.108 L 24

The amendments to Section 504 are designed to more fully incorporate immigrant victims, limited English proficiency (LEP) victims, and victims of domestic violence, sexual assault, dating violence, stalking and elder abuse, in research funded and sponsored by the National Institute of Justice, the

Center for Disease Control and Population, the National Institutes of Health and other federal agencies sponsoring research that is relevant to increasing understanding of, knowledge about, and evidence based best practices for serving victims of these crimes—especially including research on the needs of immigrant, LEP and underserved victims. Underserved populations are traditionally overlooked in critical research

Section 504(a): Expanding Federally Funded Research on Violence Against Women
p.106 L 10 to p.107 L 3

Note to Future Drafters: "Human trafficking" needs to be added to the list of crimes for which Federal research funding is authorized. Also, consider adding "child abuse." These crimes would be added to Section 504(a)(1) (p.106 L 13-15).

Additional Note to Future Drafters: In the Schakowsky bill, the name of this section is "In General." The name of this section should be updated to the more specific title above—"Expanding Federally Funded Research on Violence Against Women."

This section lists the forms of crime victimization on which research is authorized. This section also describes the range of research authorized to study interventions, impact, prevention and effectiveness of victim services, civil and criminal justice system response, health care, mental health care, immigration relief, legal services and other interventions. This includes studies of dynamics, outcomes for victims, and victims' access to services and protections, including the needs of underserved, immigrant and limited English proficient (LEP) victims.

Section 504(b): Application [to the following grant programs]:
p. 107 L 4 to p.108 L 24

Note to Future Drafters: It appears that the list of grant programs in this section should include the National Institute on Alcohol Abuse and Alcoholism, but it does not. We recommend this institute be added in a new sub-section, Section 504(b)(13).

This section explicitly lists the research grant programs to which research on violence against women including immigrant, limited English proficient (LEP) and underserved populations are added as an authorized purpose area.

These research programs are:

- **Section 504(b)(1): National Institute of Justice**
  p.107 L 6 to L 8
- **Section 504(b)(2): Center for Disease Control and Prevention; Study by National Center for Injury Prevention and Control**
  p.107 L 9 to L 13
- **Section 504(b)(3): Interpersonal violence within families and among acquaintances**
  p.107 L 14 to L 16

- **Section 504(b)(4): Agency for Health Care Research and Quality**
  p.107 L 17 to L 22
- **Section 504(b)(5): Research on Health Disparities**
  p.107 L 23 to L 25
- **Section 504(b)(6): Substance Abuse and Mental Health Services Administration- Office for Substance Abuse Prevention**
  p.108 L 1 to L 5
- **Section 504(b)(7): Center for Mental Health Services**
  p.108 L 6 to L 8
- **Section 504(b)(8): National Institute of Drug Abuse**
  p.108 L 9 to L 11
- **Section 504(b)(9) National Drug Abuse Research Centers**
  p.108 L12 to L 14
- **Section 504(b)(10): National Institute of Mental Health**
  p.108 L 15 to L 17
- **Section 504(b)(11): Office of Research on Women's Health**
  p.108 L 18 to L 20
- **Section 504(b)(12): Office of Research on Women's Health - Advisory Committee**
  p.108 L 21 to L 24

TITLE VI- MARRIAGE VISA PROTECTIONS

Section 601

Section 601: Protections for a Fiancée or Fiancé of a Citizen
p.109 L 3 to p.113 L 8
[Passed in Section 807 of VAWA 2013]

Section 602

Section 602: Regulation of International Marriage Brokers
p.113 L 9 to p.122 L 9

Note: For this section, almost all of the provisions proposed in the Schakowsky bill passed in VAWA 2013. A few parts of the Schakowsky bill protections were not included in VAWA 2013. Those provisions are summarized here:

- p.116 L 13 to 14. This provision would ensure that the International Marriage Broker Regulation Act (IMBRA) collects and reports information on all protection orders, including those ordered in civil and criminal court cases. This would be accomplished by making the technical correction of replacing "permanent civil protection order" with "final protection order." Since each state has its own protection order laws, to be most inclusive of the variation in laws from state to state, the term "final protection order" should be used, as that term is broader and more consistent with all state statutes.

- p.116 L 16 to 18. This provision would expand the crimes covered by IMBRA's data collection and reporting to include endangerment, abuse, neglect or exploitation of elders.

TITLE VII – SEXUAL ABUSE IN PRISONS

Section 701

Section 701: Sexual Abuse in Custodial Settings

p.123 L 12 to p.126 L 2

Note to Future Drafters: In considering these amendments in future legislation, drafters should review the recommendations of the ICE Advisory Committee on Family Residential Centers (2016). The report issues by the Advisory Committee have a lot of useful information about detention standards and prevention of and response to rape in detention facilities.[27]

The Prison Rape Elimination Act of 2003 (PREA) required the Attorney General to adopt national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in federal facilities. This section makes clear that immigration detention is subject to the provisions of PREA, including the promulgation of regulations concerning binding national standards addressing sexual violence in detention. PREA was initially drafted (under the name Prison Rape Reduction Act) in early 2001, when the Immigration and Naturalization Service and all of its immigration detention facilities were housed within the Department of Justice (DOJ). When the Homeland Security Act of 2002 was enacted, adult immigration authority was transferred to the Department of Homeland Security (DHS), and the authority for detaining unaccompanied minors was transferred to the Department of Health and Human Services (HHS). This section fulfills the congressional intent of PREA by extending its requirements for national standards to DHS and HHS.

The 2011 proposed DOJ rule on PREA excluded immigration detention from its proposed PREA standards. This section requires DHS to promulgate regulations consistent with PREA to address sexual violence in immigration detention. DHS is required to assume responsibility for detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of civil immigration detainees. DHS must issue regulations under this section that apply to all detention facilities, both those that DHS own, runs and operates, and all facilities under contract with DHS. Additionally, this section requires the Department of Health and Human Services (HHS) to adopt national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of unaccompanied alien children. Such standards shall apply to facilities operated by the HHS and to facilities operated under contract with the Department. Finally, this section encourages both DHS and HHS to follow recommendations of the National Prison Rape Elimination Commission regarding supplemental standards for facilities housing immigration detainees to account

[27] Report of the Advisory Committee on Family Residential Centers- Full Report (2016) https://niwaplibrary.wcl.american.edu/pubs/acfrc-report-final-102016; Recommendations Only https://niwaplibrary.wcl.american.edu/pubs/acfrc-report-rec-102016

for their unique vulnerabilities. The Report to Congress section of this bill includes specific reporting addressing compliance and implementation of these PREA amendments.

TITLE VIII – DATA COLLECTION

Section 801

Section 801: Annual Report on Immigration Applications Made by Victims of Abuse

Section 801(a)(6) – (10): Annual DHS Reporting Requirements

p.127 L 14 to p.130 L 3

Note to Future Drafters: In the Schakowsky bill, the name of this section is "In General." The name of this section should be updated to the more specific title above—"Annual DHS Reporting Requirements."

VAWA 2103 included a report to Congress by DHS on implementation by DHS of the Violence Against Women Act immigration protections. However, many of the detailed reporting requirements that were included in HR 5331 were not included VAWA 2013. DHS needs to be required to provide more information to Congress on its how it is providing immigration relief and protection from deportation under VAWA confidentiality and other laws to immigrant crime victims. What should be included in future legislation and required in each year's annual DHS reports to Congress is a report on the following:

- (6) Numbers of adjudicators and managers working in the VAWA Unit, the length of time served on the unit, and the years of experience each has on domestic violence, sexual assault, human trafficking and crime victimization

- (7) Description of the training VAWA Unit adjudicators and managers received that year on immigrant crime victims and VAWA confidentiality issues

- (8) Description of the training ICE and CBP staff—including ICE trial attorneys—received both mandatorily and optionally on a range of topics important to their ability to identify and work with crime victims eligible for immigration relief

- (9) The number of VAWA confidentiality complaints filed and the outcome of the complaint investigations

- (10) The degree of PREA compliance by DHS

- (11) The number of reports alleging sexual abuse in each DHS detention facility

Section 801(b): Reporting Requirements for Legal Services Corporation

p. 130 L 4 to p. 131 L4

Note to Future Drafters: With the amendments made in 2014 to 45 CFR Part 1626 (entitled "Restrictions on Legal Assistance to Aliens"), this statutory change is no longer needed. Its purpose has been achieved by Legal Services Corporation regulations.

Section 801(c) and (d): Study and Report
p.131 L 5 to p.133 L 20

This section (801(c)) would require the Comptroller of the United States to study a range of issues of importance for immigrant victims, including:

- The extent to which immigrants eligible for VAWA, T or U visa relief or VAWA confidentiality protection are receiving Notices to Appear in immigration court proceedings;

- The annual number of VAWA confidentiality protected immigrant victims who receive notices to appear, have pending case in immigration court, have orders of removal issued against them, have been issued immigration detainers or who have been placed in detention;

- The extent to which the DOJ, DHS, state and local law enforcement collaborating with DHS have implemented training and protocols that:
    - Screen for victimization and eligibility for VAWA confidentiality covered forms of immigration relief,
    - Provide potential victims with information about victim related immigration remedies available,
    - Result in T and U visa certifications, and
    - Ensure that victims are not subject to immigration and criminal enforcements or detention as a consequence of the perpetrator's actions.

- The number and percent of 287(g)[28] jurisdictions that have policies in place that result in the issuance of T and U visa certifications and compliance with VAWA confidentiality;

- The number of federal, state and local law enforcement agencies that are signing U visa certifications and T visa declarations

Section 801(d) requires that the Comptroller General must submit the report to the Committee on the Judiciary of the Senate and to the Committee on the Judiciary of the House of Representatives no later than 2 years after the date of enactment of this Act.

Section 802

Section 802: Data Collection and Reporting
p.134 L 6 to p.135 L 23

[28] INA Section 287(g) is a provision that allows DHS to create cooperation agreements under which local law enforcement officials enforce immigration laws.

This section requires an annual report to Congress from DHS that includes data on the following:

- The number of primary applicants and family members included in their application by state who have applied for, been granted or been denied a visa or petition, adjustment of status, work authorization, parole, naturalization or other immigraiton benefit through a VAWA self-petition, U visa or T visa;

- The number of requests for further evidence by case type;

- The mean and median time in which it takes to adjudicate application for relief, lawful permanent residency requests for VAWA, U and T visa cases;

- The mean and median time between receipt of applications for VAWA, T and U visas and receipt of work authorization;

- Number of victims granted continued presence;

- Any efforts to reduce adjudication and processing time in ways that ensure safe and competent processing of VAWA, T and U visa cases.