

Legislative Reforms Needed For Immigrant Victims of Domestic Violence, Sexual Assault, Stalking and Immigrant Children Who Have Suffered Abuse, Abandonment or Neglect

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Introduction

This document is intended to be read together with and a supplement to *The Violence Against Immigrant Women Act of 2012* that was introduced by Representative Jan Schakowsky on May 7, 2012 in the 112th Congress, 2nd Session, HR 5331. HR 5331 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.³ The statutory changes discussed in this document are needed in addition to the provisions contained in HR 5331. The proposed changes address urgent issues that immigrant survivors face and need legislative solutions for, and they address emerging needs of immigrant survivors in 2021.

An interlineated version of HR 5331 and a detailed section-by-section description of the provisions in HR 5331 can be found at the following link: <https://niwaplibrary.wcl.american.edu/2021-legislative-proposals-that-benefit-immigrant-survivors>

This document contains the statutory language for the following list of changes needed:

1. Elimination of the U Visa Annual Cap
2. Expanded U Visa Criminal Activities (Hate Crimes, Dating Violence, Child and Elder Abuse) and Expanded Authorized U Visa Certifiers
3. Women Immigrant Safe Harbor (WISH) Act Providing Access to the Public Benefits Safety Net for Immigrant Victims of Crime and Abuse
4. Ensuring Law Enforcement Agencies Issue U-visa Certifications in Cases of Immigrant Victims –Byrne Grant Amendments
5. Expanded Access to Representation for Special Immigrant Juvenile Status Eligible Children
6. Guaranteed Access to Victims of Crime Act Compensation to All Victims Without Regard to Immigration Status
7. Stopping the Initiation of Immigration Enforcement, Detention, or Removal of VAWA, T and U Visa and Other Immigration Eligible Victims
8. Elimination of all Fees Related to Any Part of a VAWA, T or U Visa or Special Immigrant Juvenile Status (SIJS) case.

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³ U visas and T visas required that qualifying criminal activity must have committed in the United States. VAWA immigration relief (self-petitions, cancellation of removal and suspension of deportation) also remedies battering or extreme cruelty committed against spouses, children, stepchildren, and parents committed in the U.S. or committed by an abusive spouse or parent who was employed by the U.S. government and working abroad. Special Immigrant Juvenile Status provides immigration protection for children abused by one or both of their parents in the U.S., abroad or both.

The following sections provide a discussion of why each statutory change is needed followed by the statutory amendments that would be needed to accomplish each proposed change.

1) Elimination of the U Visa Annual Cap

Description:⁴ The U visa program helps “strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases ... while offering protection to victims ... [and helps] encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes.”⁵ With 96,713 approved U visa cases (2009-2018) and an approval average of 83.4%/year,⁶ law enforcement, prosecutors and courts that signed U visa certifications strengthened the access to justice for immigrant crime victims even in times of increased immigration enforcement and anti-immigrant sentiment.⁷ Congress recognized that perpetrators were “virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the [Department of Homeland Security]⁸ cannot offer them protection no matter how compelling their case.”⁹ U visas substantially increase justice system participation.¹⁰ U visa applicants (73.1%) often cooperate with law enforcement in their criminal cases,¹¹ 22% are willing to participate once their perpetrator is identified and located,¹² and 50.3% file police reports when they are victims of subsequent crimes.¹³ U visa victims played a key role helping secure convictions in their own and other criminal cases that end the ability of human traffickers, serial domestic violence perpetrators, child sexual predators, and terrorists to plague our communities.¹⁴

Despite the significant benefits of the U visa program for law enforcement, community safety, and for the safety and healing of immigrant victims and their children, significant backlogs in U visa case processing and waitlists of over a decade to receive the U visa itself are undermining the program’s effectiveness and are placing victims and our communities at greater risk from recidivist crime perpetrators.

By permanently eliminating the U visa statutory cap of 10,000 U visas per year, it will enable USCIS to eliminate the U visa 4-6-year adjudication backlog, the 142,000 case U visa waitlist,¹⁵ and any

⁴ This description is adapted from 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/>

⁵ Violence Against Women Act of 2000 Section 1513(a)(2)(A)

⁶ U.S. Citizenship and Immigration Services, U Visa Report – Technical Appendix 3 (2020). https://niwaplibrary.wcl.american.edu/pubs/technical_appendix_for_u Visa_report (The efficacy of the U visas program and the numbers of victims and criminal cases it helps is supported by the fact that between 2012 and 2018 67,730 U visas were approved at a rate of 83.4%); U.S. Citizenship and Immigration Services, Petition for U Nonimmigrant Status Visa - Service-wide Receipts, Approvals, and Denials, Fiscal Years: 2002 Through 2013 (2013), https://www.uscis.gov/sites/default/files/document/data/I914T-I918_visastatistics_2012-nov.pdf (USCIS started granting U visas in 2009, and issued 25,986 U visas 2009-2011.)

⁷ Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement (2018), <https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>

⁸ The Department of Homeland Security was created in 2002 and included all functions of the former Immigration and Naturalization Service.

⁹ Violence Against Women Act of 2000 Section 1502(a)(3)

¹⁰ Krisztina E. Szabo, et al., Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants, 29-30 NIWAP (2014), available at https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

¹¹ *Id.* at 30.

¹² U.S. Citizenship and Immigration Service, *Trends in U Visa Law Enforcement Certifications, Qualifying Crimes, and Evidence of Helpfulness* 12 (July 2020) https://niwaplibrary.wcl.american.edu/pubs/u Visa_lea-certs-report. Leslye Orloff, et al., *U Visa Victims and Lawful Permanent Residency* 4 (September 6, 2012) (29.5% of U visa victims were willing, but not asked to cooperate due to an inability to identify or locate the perpetrator). <https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12>

¹³ Szabo at 30.

¹⁴ Corrin Chow, et al., *Stories from the Field: The Crime Fighting Effectiveness of the U visa* (August 28, 2020) <https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>

¹⁵ U.S. Citizenship and Immigration Services, U Visa Report 4 (2020) <https://niwaplibrary.wcl.american.edu/pubs/u-visa-filing-trends> (USCIS backlog as of 2019).

future waitlist by dramatically reducing the number of times each case must be fully adjudicated; with cases adjudicated in the order received. This, combined with providing access to work authorization within 6 months of filing will ensure that the U visa program plays its Congressionally intended role of protecting victims and communities and fighting crime.

Proposed Bill Language:

NO NUMERICAL LIMITATIONS. -- Section 214(p) of the Immigration and Nationality Act (8 U.S.C. 1184(p)) is amended by striking all of section 214(p)(2) and replacing it with the following –

“There shall be no numerical limitations on the numbers of U visas that can be issued in any fiscal year.

2) Expanded U Visa Criminal Activities (Hate Crimes, Dating Violence, Child and Elder Abuse) and Expanded Authorized U Visa Certifiers

Description: This section adds three new criminal activities to the U visa list – hate crimes, dating violence and child and elder abuse, endangerment or exploitation. This change ensures that the U visa fully covers all family violence related crimes and all forms of elder and child abuse, exploitation and endangerment. It adds dating violence, which is the one crime covered by VAWA that is not explicitly listed as a U visa criminal activity. Finally, this section adds hate crimes to the list of criminal activities covered by the U visa. The second part of this section confirms in statute what has been USCIS policy—that any government agency that has civil, criminal, or administrative investigative authority is authorized to sign certifications.¹⁶ Although family courts are in all states considered civil courts, this amendment confirms and clarifies this. This provision also extends U visa certification authority to federal, state and local governmental agencies responsible for identifying and serving crime victims and would authorize state Victims of Crime Act (VOCA) officials to sign U visa certifications. VOCA is a key example of an agency that is charged under federal and state laws with identifying crime victims who are eligible for VOCA payments and services because of their victimization.

Proposed Bill Language:

- (a) U VISA CRIMINAL ACTIVITIES.**—Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)) is amended by inserting “dating violence; hate crimes; abuse, endangerment, or exploitation of a person who is a child, elderly, or disabled;” after “perjury;”.
- (b) U VISA CERTIFIERS.**—The first sentence of Section 214(p)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(p)(1) is amended
- (1) By deleting “authority investigating”; and
 - (2) By inserting “authority who has civil, criminal, family, or administrative law investigative or prosecutorial authority or who serves crime victims of”.

3) Women Immigrant Safe Harbor (WISH) Act

¹⁶ DHS U and T Visa Law Enforcement Resource Guide (November 30, 2015) p. 6 <https://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>

Description: In 1996, Congress enacted welfare reform legislation that severely restricted many immigrants' access to safety-net benefits. That same year in 1996, Congress also granted limited access to public benefits to many VAWA self-petitioners and to all VAWA cancellation of removal and suspension of deportation applicants. However, under current law, most immigrant spouse and child abuse victims abused by their citizen or lawful permanent resident spouses, parents, and stepparents are forced to wait five years or more to become eligible to receive federal safety-net benefits including Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), Social Security Income (SSI), food stamps, and TANF-funded child care. In addition, immigrant victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other violent crimes who are applying for relief under the U visa or Special Immigrant Juvenile Status programs, or victims who are abused spouses of work visa holders (INA Section 106) either have no access to or very limited access to the public benefits safety net that victims of crime and abuse need to be able to participate in the detection, investigation, or prosecution of the crimes committed against them, to be able to safely report abuse without fear of deportation and to be able to turn to the family, criminal and civil justice systems for help.

Immigrant victims' ability to permanently escape violence is gravely dependent upon their access to economic resources. Immigrant victims of abuse and crime who qualify for VAWA, T visa, U visa, INA section 106 work authorization, or for Special Immigrant Juvenile Status (SIJS) are generally required to wait for over 6 months, and in some cases, up to 5 years, before they are granted legal work authorization, which provides them the means to support themselves and their children independent of their abusive spouse, parent, or employer or their human trafficker. Also, it is not until victims receive legal work authorization that they are eligible to obtain drivers' licenses in many states, which are so critical for transportation to and from work.

When immigrant victims are able to access the public benefits safety net, this provides them crucial economic resources that enable victims to leave abusive homes and work places sooner and helps survivors of sexual assault move to safer homes in new locations where they can heal. Without access to public benefits, many immigrant victims of domestic violence, child abuse, sexual assault and human trafficking are forced to continue living in abusive homes and working in abusive workplaces for the 6 months to 5 years it takes for victims to be granted legal work authorization. Survey data on battered immigrant women demonstrates that the three primary reasons a victim remains with her abuser are: lack of financial resources (67%), lack of shelter (35%), and lack of employment (32%).¹⁷

Research has found that once VAWA and U visa victims are granted work authorization, they are successful in improving their lives and the lives of their children, and they are able to attain economic security and thrive.¹⁸ However, since the majority of VAWA and U visa victims are victims of domestic violence and child abuse, there can be times when perpetrators' ongoing abuse and criminal actions impede victims' ability to work and victims once again need to be able to access public benefits. The immigrant restrictions on access to public benefits severely impede an

¹⁷ Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implication, 295-299, Georgetown Journal on Poverty Law & Policy Volume VII, Number 2, Summer 2000. <https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors>

¹⁸ See, Leslye E. Orloff, Haley Ilesha Magwood, Yasmin Campos-Mendez, Changing Lives; How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children (2021) <https://niwaplibrary.wcl.american.edu/mar-2021-ncjfcj> (Slide presentation pp 21-30) The full report will also be available from this web page.

immigrant victim's ability to escape violence, gain independence, and recover physically and emotionally from abuse.

The Women Immigrants Safe Harbor (WISH) Act would allow immigrant victims of domestic violence, sexual assault, trafficking, stalking, child abuse, neglect and abandonment and immigrant victims of other violent crimes to access safety-net benefits that would significantly increase their ability to secure safety and healing and to rebuild lives for themselves and their children. WISH does the following:

- Adds applicants and recipients of U visas, Special Immigrant Juvenile Status and work authorization under INA Section 106 to the list of immigrant victims of abuse and crime who are qualified immigrants for purposes of federal and state public benefits laws;
- Ensures that battered and crime victim immigrants are eligible for federal and state public benefits;
- Eliminates the 5-year bar and other restrictions on access to the following federal means-tested public benefits:
 - SSI
 - Food stamps
 - TANF
 - Social Security Block Grants
 - Medicaid; and
- Amends public housing laws to:
 - Correct a statutory drafting omission that failed to list VAWA self-petitioners as eligible immigrants for public and assisted housing, leading to delays and confusion as to their statutory eligibility that they have had since 1996;
 - Ensure that all qualified immigrants, including U visa victims, SIJS children and Section 106 battered immigrants are granted access to public and assisted housing; and
 - Address the problems that HUD's Social Security Number requirement imposed by HUD regulations has caused for immigrant victims eligible for safety net access to public and assisted housing whose immigration cases have not yet proceeded to the point where DHS has granted them access to work authorization, which is a prerequisite to a regular work authorized social security number. The WISH amendments either eliminate the social security requirement altogether for all survivors or allow battered immigrants to provide their immigration case file number instead of a social security number until such time as the victim receives work authorization and can file for and obtain a social security number.

Proposed Bill Language:

WOMEN IMMIGRANT SAFE HARBOR ACT (WISH)

SEC. 1. STATUS AS QUALIFIED ALIEN FOR ALL VAWA SELF-PETITIONERS, NONIMMIGRANT "U" APPLICANTS AND VISA HOLDERS, AND SPECIAL IMMIGRANT JUVENILE STATUS CHILDREN

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

(1) by inserting “AND CERTAIN IMMIGRANT CRIME VICTIMS” after “TREATMENT OF CERTAIN BATTERED ALIENS”;

(2) by striking sections (c)(1)(B)(i) and (ii) in their entirety and replacing these sections with the following:

“(i) status as a VAWA self-petitioner;

(ii) work authorization under section 106 of the Immigration and Nationality Act;”

(3) by striking “or” at the end of paragraph (3)(B);

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

(5) by adding at the end the following:

(5) an alien who has been granted nonimmigrant status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status; or

(6) a child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J)).

(b) EFFECTIVE DATE.—The amendments made by this section apply to applications for public benefits and to public benefits provided on or after the date of the enactment of this Act without regard to whether regulations to carry out such amendments are implemented.

SEC. 2. ELIGIBILITY FOR SAFETY NET BENEFITS OF ALIENS SUFFERING FROM DOMESTIC ABUSE.

(a) EXEMPTION FROM SSI AND FOOD STAMPS BAN.—Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding at the end the following new subparagraph:

“(M) BATTERED AND CRIME VICTIM ALIENS.—With respect to eligibility for a specified Federal program (as defined in paragraph (3)), paragraph (1) shall not apply to an alien who—

“(i) is described in section 431(c);

“(ii) is described in section 431(b) and also is described in section 431(c), other than paragraphs (1)(B), (2)(B), and (3)(B) of such section; or

“(iii) is described in clause (i) or (ii) and was lawfully admitted as a permanent resident.”.

(b) EXEMPTION FROM TANF, SOCIAL SERVICE BLOCK GRANT, AND MEDICAID BAN.—Section 402(b)(2) of such Act (8 U.S.C. 1612(b)(2)) is amended by inserting after subparagraph (F) the following new subparagraph:

“(G) BATTERED AND CRIME VICTIM ALIENS.—An alien who—

“(i) is described in section 431(c);

“(ii) is described in section 431(b) and also is described in section 431(c), other than paragraphs (1)(B), (2)(B), and (3)(B) of such section; or

“(iii) is described in clause (i) or (ii) and was lawfully admitted as a permanent resident.”.

(c) EXEMPTION FROM 5-YEAR BAN FOR SAFETY NET PUBLIC BENEFITS.—Section 403(b) of such Act (8 U.S.C. 1613(b)) is amended by adding at the end the following new paragraph:

“(3) BATTERED AND CRIME VICTIM ALIENS.— An alien who—

“(A) is described in section 431(c);

“(B) is described in section 431(b) and also is described in section 431(c), other than paragraphs (1)(B), (2)(B), and (3)(B) of such section; or

“(C) is described in subparagraph (A) or (B) and was lawfully admitted as a permanent resident.”.

(d) EFFECTIVE DATE.—The amendments made by this section apply to applications for public benefits and public benefits provided on or after the date of the enactment of this Act without regard to whether regulations to carry out such amendments are implemented, as required under section 205(b).

SECTION 3: PERMISSIBLE USE OF ASSISTED HOUSING BY ABUSED AND CRIME VICTIM NON-CITIZENS

Section 214 of the Housing and Community Development Act of 1980 (42. U.S.C. 1436a) is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking “; or” and inserting a semicolon;

(B) by striking the period at the end of paragraph (7) and inserting a semicolon;

(C) by inserting after paragraph (7), the following new paragraphs:

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

“(9) an individual who has a pending or approved application for status as a VAWA self-petitioner;”;

“(10) an individual who has been granted nonimmigrant status under section 101(a)(15)(U) of the Immigration and Nationality Act or who has a pending application for such nonimmigrant status;

“(11) an individual who has been granted immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act or who has a pending application for such immigrant status;

“(12) an individual who has been granted work authorization under section 106 of the Immigration and Nationality Act or who has a pending application for such work authorization; “or”;

(2) in subsection (c)—

(A) in paragraph (1)(A), by striking “paragraphs (1) through (6)” and inserting “paragraphs (1) through (12)”;

(B) in paragraph (2)(A), by inserting “(other than a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 13 (8 U.S.C. 1641(c))), or an individual who has a pending or approved application for status as a VAWA self-petitioner; an individual who has been granted nonimmigrant status under section 101(a)(15)(U) of the Immigration and Nationality Act or who has a pending application for such nonimmigrant status, or an individual who has been granted immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act or who has a pending application for such immigrant status;” after “any alien”; and

(3) subsection (d)(1) – insert at the end the following new paragraph –

(C) SOCIAL SECURITY NUMBERS –(Option 1) Individuals described in subsection (a) of Section 214 of the Housing and Community Development Act of 1980 (42. U.S.C. 1436a)

(i) Who have not been issued a work authorized Social Security Number --

(I) Cannot be required to provide a Social Security Number to apply for or to receive financial assistance under this section;

(II) May be required to provide their immigration case file number if one has been issued.

(ii) Who have been issued a work authorized Social Security Number shall submit that Social Security Number at the later of the following:

(I) The next scheduled reexamination or recertification of family composition or income; or

(II) Six (6) months from date of issuance to submit their Social Security Number

(C) SOCIAL SECURITY NUMBERS – (Option 2) There shall be no requirement that applicants for or participants receiving Section 214 housing are required to provide Social Security Numbers.

(b) EFFECTIVE DATE.—The amendments made by this section apply to applications for public benefits and public benefits provided on or after the date of the enactment of this Act without regard to whether regulations to carry out such amendments are implemented.

4) Ensuring Law Enforcement Agencies Issue U-visa Certifications in Cases of Immigrant Victims –Byrne Grant Amendments

Description: Byrne Grants --This section requires that Byrne grantees develop and implement policies, procedures and training for law enforcement officials on the certification of T visas and U visas. These policies, procedures and trainings must be developed in consultation with DOJ, OVV and nonprofit victim services programs. These grantees must show a history of issuing T visa and U visa certification, have protocols and policies in place that will result in T and U visa certification, and certify that they will implement these practices within 6 months of receipt of funding. This section also requires that all Byrne grantees comply with language access laws and ensure that their officers are not violating, facilitating, or encouraging the violation of VAWA confidentiality. Examples of VAWA confidentiality violations that state or local law enforcement officials could be involved in include calling immigration enforcement officials to report persons whom the law enforcement knows or has reason to suspect is a crime victim, and officers violating VAWA confidentiality if they are acting as immigration enforcement officials under any MOU or agreement with Immigration and Customs enforcement. Additionally, this section requires that agencies report to DOJ as part of their grant reporting on Byrne grants received about the numbers of U and T visa certification requests received and the numbers of U and T certifications issued during the reporting period and trainings provided staff on U visas, T visas, language access and VAWA confidentiality requirements.

Proposed Bill Language:

BYRNE GRANTS. – Section 34 U.S.C. 10153(a) (Section 503 of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (Public Law 100-690), subpart I or part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968) is amended by adding at the end the following new subparagraph –

(7) A certification, made in a form acceptable to the Attorney General and executed by the chief executive officer of the applicant (or by another officer of the applicant, if qualified under regulations promulgated by the Attorney General), that—

(A)

(i) The applicant has a demonstrated history of issuing certifications for noncitizen victims applying for relief under sections 101(a)(15)(U) or 101(a)15(T) of the Immigration and Nationality Act;

(ii) The applicant has protocols or policies in place that result in issuance of certifications for noncitizen victims applying for relief under sections 101(a)(15)(U) or 101(a)15(T) of the Immigration and Nationality Act; or

(iii) The applicant certifies that not later than 6 months after the date of receipt of funding under this subsection, the agency will implement practices, protocols, or policies that result in issuance of certifications for noncitizen victims applying for relief under sections 101(a)(15)(U) or 101(a)15(T) of the Immigration and Nationality Act;

(iv) The applicant is compliant with Title VI of the Civil Rights Act of 1964 and Executive Order 13166; and

(v) The applicant does not violate, facilitate or encourage the violation of VAWA confidentiality as defined in section 8 U.S.C. 1367).

(B) The applicant will include in each of its grant reports on funds received under this subsection to the U.S. Department of Justice data on

(i) The numbers of U visa certification requests received;

(ii) The numbers of U visa certifications issued;

(iii) The numbers of T visa declaration requests received;

(iv) The numbers of T visa declarations issued; and

(v) The numbers of agency staff who received training on

(I) U visa certification

(II) T visa declarations;

(III) VAWA confidentiality (8 U.S.C. 1367); and

(IV) Language access best practices for law enforcement.

5) Expanded Access to Representation for Special Immigrant Juvenile Status Eligible Children

Section Description Under current law, Legal Services Corporation (LSC) funded attorneys can represent Special Immigrant Juvenile Status (SIJS) eligible children who have been battered or subjected to extreme cruelty, sexually assaulted or trafficked, but they cannot assist SIJS eligible children who have suffered neglect, abandonment or similar harms from which children are protected under state law. Children who qualify for SIJS need the help of lawyers in both family court and before U.S. Citizenship and Immigration Services (USCIS) in order to file for SIJS. This provision allows LSC funded agencies to use any funds they receive, including LSC funds, to represent the full range of children who qualify for SIJS immigration relief. SIJS is the only form of immigration relief that Congress created or amended as part of the Violence Against Women Act or the Trafficking Victims Protection Act for

which all immigrants eligible for the relief are not eligible for representation by LSC funded agencies. By adding SIJS eligible children to the list of immigrants LSC funded agencies can represent under LSC's anti-abuse protections, greater numbers of abused children will receive the high-quality legal representation that they need.

This section also ensures that Office of Violence Against Women (OVW) funded grantees can use grant funds in cases of youth victims to represent the youth's parent, guardian, family member, next friend or other custodian bringing a family court case on the youth victim's behalf or that benefits the youth, without regard to whether the adult filing such case benefiting the youth victim was also a victim of domestic violence, sexual assault, stalking or dating violence. This amendment is needed to fix a funding limitation problem, which is that currently, OVW funds can only be used in specific cases where a youth needs family court assistance and when the person filing the family court action was a victim of one of the VAWA covered crimes. One of the impacts of this is that immigrant youth victims eligible for SIJS can only be represented by OVW funded attorneys when the adult bringing the family court case on the youth's behalf is also abused. The end result of this policy is to cut off immigrant youth victims of dating violence, sexual assault, or stalking from legal representation in family court cases that are a required prerequisite to filing SIJS immigration cases for immigrant victim youth.

Proposed Bill Language:

ENSURING CRIME VICTIM ACCESS TO LEGAL SERVICES.

(a) REPRESENTATION BY LEGAL SERVICES CORPORATION FUNDED AGENCIES.— Section 502 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119; 111 Stat. 2510) is amended—

(1) in subsection (a)(2)(C)—

(A) in clause (i),

(I) insert “or 101(27)(J)” after “under section 101(a)(15)(U)”; and

(II) insert “(8 U.S.C. § 1101(a)(27)(J))” after “(8 U.S.C. 1101(a)(15)(U))”; and

(B) in clause (ii),

(I) insert “or 101(27)(J)” after “under section 101(a)(15)(U)”; and

(II) insert “(8 U.S.C. § 1101(a)(27)(J))” after “(8 U.S.C. 1101(a)(15)(U))”.

(4) in subsection (b)(2)— insert “child abuse, abandonment or neglect or a similar bases found under state law,” after “sexual assault or trafficking,”.

(b) REPRESENTATION BY OFFICE ON VIOLENCE AGAINST WOMEN FUNDED AGENCIES.— The Legal Assistance for Victims grant program 34 U.S.C. 20121(a) is amended by adding at the end the following: “In cases involving youth victims of domestic violence, dating violence, stalking or sexual assault, legal assistance for victim grant funds and any other Office on Violence Against Women grant funds may be used to represent the youth's parent or other caregiver seeking family court relief benefiting the youth victim without regard to whether the person filing the family court case was also a victim of such crimes.”

6) Guaranteed Access to Victims of Crime Act Compensation to All Victims Without Regard to Immigration Status

Description: Currently, immigrant crime victims are eligible to apply for and be granted crime victims compensation when the immigrant is a victim of a crime occurring in the state and when they meet all other VAWA compensation eligibility requirements in all states except Alabama. These amendments will require Alabama to offer access to VAWA funded victim compensation to all victims of crime perpetrated in the state without regard to the immigration status of the victim and will bar all states from placing immigrant restrictions on victim compensation.

Proposed Bill Language:

ENSURING IMMIGRANT ACCESS TO CRIME VICTIM COMPENSATION.—42 U.S.C. Section 10602(b)(4) is amended by inserting “and to victims who are immigrants” after “who are nonresidents of the State”.

7) Stopping the Initiation of Immigration Enforcement, Detention, or Removal of VAWA, T and U Visa and Other Immigration Eligible Victims¹⁹

Description: While ICE has issued recent interim enforcement priorities, and had previously stated that the 2011 Victim/Witness Prosecutorial Discretion Memo remains in effect, advocates around the country are reporting that survivors continue to face removal and ICE trial attorneys take the position that, for example, victims can return to the United States when their U visas are issued. As recently as March 2021, advocates have reported ICE opposing a U visa applicant’s motion to continue and thereby delay removal proceedings to await adjudication of a U visa application, asserting that the individual did not have a prima facie approvable application, in spite of evidence of a pattern of domestic violence victimization (and failing to defer to USCIS), as well as opposition due to the lack of an immediately available visa. Given 5 year wait times for U visa applications to be reviewed, and 2 year wait times for T visas and VAWA self-petitions to be adjudicated, victims should be afforded protection from detention or removal while their cases are pending.

This request builds on language in the FY 21 report, which stated, “The Committee recognizes the value of the U visa program in protecting victims of violent crime and promoting public safety by enabling criminal investigations. The Committee reminds ICE of the report on U Visas required by House Report 116–180 and looks forward to receiving this overdue report as soon as possible. Further, ICE is directed to provide an updated report on this subject within 90 days of the date of enactment of this Act.”

NIWAP’s amendments are aimed at ensuring that ICE Enforcement and Removal Operations (ERO) and ICE Office of the Principal Legal Advisor (OPLA) would be unable to do anything related to moving the immigration proceedings towards obtaining, reinstating or initiating a removal proceeding against a victim who has filed a listed immigration case. These actions would be barred. However, ICE OPLA would not be barred from spending funds to take steps in immigration court to seek dismissal of a case, or to agree to or recommend administrative closure of a case. ICE OPLA could also still participate in proceedings for stays of removal needed for victims with prior orders, including victims

¹⁹ This amendment is based on proposals made by Then Alliance for Immigrant Survivors that would be very effective at preventing immigration enforcement, detention and removal of immigrant survivors to be included in appropriations legislation. (NIWAP’s additional proposed language is in italics) **Point person:** Grace Huang, Asian Pacific Institute on Gender Based Violence, ghuang@api-gbv.org

subject to reinstatement of removal. The language of these amendments should also preclude reinstatement of removal.

Proposed Appropriations Bill Language:²⁰

None of the funds, resources or fees made available to the Secretary of Homeland Security shall be used for the detention, *initiation or prosecution of immigration proceedings*, removal, or *reinstatement of removal* of individuals who have a pending application under section 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), or 244(a)(3) (as in effect on March 31, 1997) of the Immigration and Nationality Act; or are VAWA self-petitioners, as defined in section 101(a)(51), with a pending application for relief under a provision referred to in one of subparagraphs (A) through (G) of such section, or INA section 101(a)(27)(J), until there is a final denial of the alien's application for status after the exhaustion of administrative and judicial review.

8) Eliminating All Fees Related to VAWA, T and U Visa, Section 106, and Special Immigrant Juvenile Status Cases

Description: Although since 2007 there have been no filing fees applicable to VAWA self-petitions, U visas, T visas, and Special Immigrant Juvenile Status applications, there are a range of fees for forms required as part of these applications for many immigrant crime victims. Each of these forms of humanitarian immigration relief were designed to help immigrant victims of crime, domestic violence, child abuse and human trafficking come forward and seek immigration relief, which helps both the victim and our communities fight crime. However, many victims are deterred from applying or must delay obtaining work authorization or lawful permanent residency while they save up the funds or seek help obtaining the funds needed to pay immigration fees. Although historically fee waivers were available for some of these form-related costs, access to fee waivers has not been consistently available over the years and seeking fee waivers delays access to important protections, including work authorizations that are key to victims' ability to successfully flee abusive homes, workplaces and traffickers and to rebuild their lives without economic dependence on their abusers.

The House of Representatives issued a report on FY 21, that directed USCIS to refrain from imposing fees upon any individual filing humanitarian petitions. This includes but is not limited to protections under the Violence Against Women Act (VAWA), Special Immigrant Juvenile status, INA Section 106, and a T or U visa programs. There must be a bar on all fees in VAWA, T and U visa and SIJS cases including, but not limited to, the following for all persons applying for or with pending or approved applications for any of these forms of humanitarian relief:

- Form I-212 Permission to reapply for admission to the U.S. after deportation or removal
 - Needed for immigrant victims with prior removal orders who are eligible for VAWA, T, U or SIJS immigration relief
- Form I-485 Adjust status and become a permanent resident while in the U.S.
- Form I- 765 Employment authorization
 - Victims often need to file multiple applications for employment authorization as they await approval of their VAWA, T, U or SIJS case and lawful permanent residency. .

²⁰ Note: Future legislative drafters will need to identify the best way to place this proposed bill language within the Immigration and Nationality Act (INA).

- Form I-192 Advance permission to enter as a nonimmigrant (inadmissibility waivers)
 - VAWA, T, U and SIJS cases were designed to offer immigration relief both for immigrants who are lawfully present in the U.S. who become crime victims and for undocumented immigrant victims. Many applicants for these crime victim and abuse related applications will be undocumented immigrants who, as part of their VAWA, T, U or SIJS applications or their applications for lawful permanent residency, will need to file inadmissibility waivers.
- Form I-193 waiver of passport or visa requirement to enter the U.S.
 - Domestic violence and child abuse perpetrators, abusive employers, and human traffickers commonly take and/or destroy their victims' passports and immigration documentation as a tool to exert power and control over their victims. As a result, some immigrant victims applying for VAWA, T, U or SIJS immigration relief will need to file for waivers of passport or visa requirements.
- Form N-400 naturalization to become a U.S. citizen
 - VAWA, T, U and SIJS applications include a path to lawful permanent residency and eventually citizenship. As recipients of humanitarian protection in the U.S., immigrant crime victims who receive these forms of immigration relief should also not have to pay fees associated with naturalization. This is important because all immigrant victims of crime and abuse who qualify for these forms of immigration relief will be trauma survivors and many (particularly in domestic violence and child abuse cases) may have ongoing contact with their abusers that can interfere with the victim's ability to achieve ongoing safety, and to heal and thrive. In human trafficking cases, traffickers can threaten and find victims years after they have escaped their traffickers. Eliminating fees on naturalization will ensure that all immigrant crime victims will have an accessible path to citizenship at whatever stage of healing following trauma they may be in and without regard to the ongoing victimization that their perpetrators continue to or try to inflict.

Proposed Bill Language:

ELIMINATION OF ALL FILING FEES FOR IMMIGRANT VICTIMS OF CRIME AND ABUSE.—
Section 286 of the Immigration and Nationality Act is amended by adding at the end the following new section:

(w) Bar on Payment of Application Fees by Persons Applying For or Who Have Been Granted Immigration Relief Based on Crime Victimization or Abuse.—

- (1) No fees may be charged by the U.S. Department of Homeland Security, the U.S. Department of State or the U.S. Department of Justice for the processing of any application, any required or discretionary form, any application for work authorization, for lawful permanent residency or naturalization, or for any motions or court costs to victims of crime or abuse, and any family members included in their applications or following to join persons filing, with pending applications for, or who have been granted relief under any of the following sections —
- (A) VAWA self-petitioner applicants and recipients as defined in section 101(a)(51) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(51));
 - (B) Applicants for relief under INA section 106 (8 U.S.C. 1105a);

- (C) T visa applicants and recipients under INA Section 101(a)(15)(T) (8 U.S.C. 1101(a)(15)(T));
- (D) Continued presence applicants and recipients as defined by section 107 of the Trafficking Victims Protection Act (22 U.S.C. 7105);
- (E) U visa applicants and recipients under INA Section 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)); and
- (F) Special Immigrant Juvenile Status applicants and recipients under INA section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)).