

ALLIANCE FOR IMMIGRANT SURVIVORS

February 10, 2021

Congressman Jerrold Nadler
Chair, House Judiciary Committee
2132 Rayburn House Office Building
Washington, DC 20515

Congresswoman Zoe Lofgren
Chair, Subcommittee on Immigration and
Naturalization
House Judiciary Committee
1401 Longworth House Office Building
Washington, DC 20515

Congressman Jim Jordan,
Ranking Member,
House Judiciary Committee
2056 Rayburn House Office Building
Washington, DC 20515

Congressman Ken Buck
Ranking Member, Subcommittee on
Immigration and Naturalization
House Judiciary Committee
2455 Rayburn House Office Building
Washington, DC 20515

Re: *The Needs of Immigrant Survivors and Comprehensive Immigration Reform*

Dear Chairman Nadler, Ranking Member Jordan, Congresswoman Lofgren and Congressman Buck,

As Congress moves forward in addressing our nation's immigration laws, we urge members to support provisions that protect immigrant survivors of domestic violence, sexual assault, human trafficking, and exploitation. Abusive partners, opportunistic predators, and manipulative employers often exploit victims' lack of immigration status, or dependent immigration status, as a way to maintain power and control and to keep victims silent. Victims of violence should never be forced to have to choose between living with abuse and facing deportation.

Congress sought to address this through the enactment of immigration provisions in the Violence Against Women Act in 1994 (VAWA), creating the "self-petition," which allows certain victims of domestic violence to apply for status without having to rely on their abusive spouses or parents. Since the initial passage of VAWA, Congress has reaffirmed its commitment to protecting immigrant victims from abuse through the "U" crime-victim visa, created in VAWA 2000, for those victims able to assist in the investigation or prosecution of certain crimes, and the "T" visa for victims of trafficking. Congress went on to further expand and strengthen these immigration protections in VAWA 2005 and VAWA 2013.

Unfortunately, despite current protections in US immigration law intended to address abuse and exploitation, many obstacles to immigrant survivors' access to safety and justice still remain. Over the last few years, the purpose and intent of VAWA's protections for immigrant survivors have been deeply undermined by heightened and indiscriminate immigration enforcement, as well as severe processing delays. Indeed, many immigrant women have found, and continue to find themselves in abusive or exploitative situations due to their lack of immigration status. For example:

- **Increased risk of violence in the home.** Immigrant victims of domestic violence are frequently threatened with deportation by their abusers, increasing their reluctance to seek help from the authorities or services.¹
- **Increased vulnerability to losing their children.** Undocumented individuals face an ongoing threat of deportation and for many with U.S. citizen children, this could mean separation from their children, who would likely be forced to live in foster care or with an abuser.²
- **Increased exploitation in the workplace** is a reality for many undocumented individuals, who often face poor working conditions, sexual abuse and harassment, and wage theft because they cannot obtain work authorization.³

In order to decrease the vulnerability of undocumented immigrants in the U.S. to victimization and abuse, **first and foremost, legislative solutions must include an earned pathway to legal status, with the possibility of citizenship**, that will ultimately help prevent further abuse and exploitation.

Second, abused dependent spouses and children must be provided a route to protect their immigration status. If abused immigrants rely on a spouse or parent for their own legal status, they should be provided an opportunity to independently petition for legal status rather than having to choose between deportation and continued abuse. For example, Congress should ensure that **all new pathways to citizenship**, such as lawful temporary immigrant status, which provide status for spouses or children made dependent on the primary applicant, must **also include a self-petition protection** (or an “off-ramp”) **in the event of abuse or exploitation**, so that victims are not forced to choose to stay in abusive relationships awaiting the conclusion of the immigration process. Furthermore, **abused spouses and children of nonimmigrant visa holders** (those who are here for temporary work or education purposes) should be permitted to maintain their own non-immigrant status so that they need not remain in abusive relationships to maintain their immigration status.

Third, Congress should **reduce trauma** experienced by immigrant victims by eliminating the detention or removal of victims and witnesses, with very limited exceptions. Advocates around the country have reported that immigrant survivors have been placed in detention, and in removal proceedings,⁴ resulting in the deportation of victims otherwise eligible for status under VAWA or the TVPA. In addition, the **confidentiality protections for survivor-based**

¹ Edna Erez & Shannon Harper, *Intersectionality, Immigration and Domestic Violence*, in *The Handbook of Race, Ethnicity, Crime, and Justice*, 457 (Ramiro Martínez, Jr., Meghan E. Hollis, and Jacob I. Stowell eds., 2018)

² David Thronson, and Judge Frank Sullivan, *Family Courts and Immigration Status*, 63 *Juvenile and Family Court J.* 1, 2012, 1-18.

³ Eunice H. Cho, Giselle Hass, & Leticia M. Salcedo, *A New Understanding of Substantial Abuse: Evaluating Harm in U Visa Petitions for Immigrant Victims of Workplace Crime*, 29 *Georgetown Immigration L.J.* 1, 2014, 1-43.

⁴ See, e.g. Alexandra Villareal, *US deporting crime victims while they wait for special visa*, Associated Press (July 18, 2018), available at: <https://www.apnews.com/81e9280f78bb4f899d7ad2f64a0240a8>. (last accessed February 9, 2021)

protections should be strengthened to limit information-sharing with Immigration and Customs Enforcement, to encourage victims to come forward to seek immigration relief.

Fourth, Congress should ensure the availability of “U” crime victim visas. Congress envisioned the U visa as a powerful tool for law enforcement: to promote public safety by encouraging immigrant victims to come forward, report crimes, and cooperate with law enforcement in investigations and prosecutions. The annual **allotment of U visas should be eliminated, or at the very least raised to meet the need,**⁵ and the process should be more **flexible for those who face barriers in obtaining certification** from a law enforcement agency. The scope of these visas should be expanded to encompass **child abuse and elder abuse as qualifying crimes** to assist these vulnerable victims, as well as those subjected to **unfair labor practices**, promoting increased safety and connection to support for survivors.

Fifth, support survivor self-sufficiency and remove vulnerabilities to further victimization by making public supports available for immigrant survivors. Economic barriers prevent victims from leaving violent relationships and recovering from the abuse. Congress must **improve and protect survivor access to critical safety-net benefits**, including healthcare, food, housing, and economic supports, to help survivors and their children avoid having to face the choice of remaining with abusive partners or staying in exploitative jobs or becoming homeless, and allow them to obtain medical care to recover from the abuse, both physically and psychologically, so they may pursue better paths to safety and stability.

In addition, **grant employment authorization to applicants seeking victim-related protections who currently struggle to survive during the long pendency of their applications.** USCIS processing times are at crisis levels. A report by the American Immigration Lawyers Association (AILA) shows that average processing times continued to climb, and the average case processing time has now risen by 101 percent from FY14 through FY19.⁶ Processing times for survivor-based forms of immigration protections like VAWA self-petitions and U and T visas have skyrocketed, undermining the effectiveness of these critical benefits. VAWA self-petitions now take between 18 and 23 months to be adjudicated.⁷ USCIS’ posted processing times for T visa applications for victims of human trafficking are between 19 and 29 months,⁸ In the case of U visas, the delay is even more egregious, as there is nearly a five-year backlog in the adjudication process. Current processing times for I-918 U visa petitions show that adjudications can take between 58 and 58.5 months.⁹ This is the posted time for placing

⁵ See, https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2020_qtr4.pdf (As of the end of FY 2020, there were 161,708 applicants with pending U-visa petitions, and additional derivatives (e.g. victims’ children) languishing in limbo).

⁶ American Immigration Lawyers Association. “AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow” (February 26, 2020), available at <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>

⁷ See USCIS Processing Times at <https://egov.uscis.gov/processing-times> for processing times for I-360 VAWA self petitions adjudicated at the Vermont Service Center

⁸ *Id.* for processing times for I-914 Application for T Nonimmigrant Status processed at Vermont Service Center

⁹ See USCIS Processing Times at <https://egov.uscis.gov/processing-times/> for processing times for I-918 Petition for U Nonimmigrant Status adjudicated at the Vermont or Nebraska Service Centers

cases on the **U visa waitlist**, not the issuance of a full 4-year U visa. USCIS's own estimates show it could take between 5 and 10 years for applicants to obtain a U visa depending on when they filed.¹⁰ These egregious wait delays contribute to significant barriers for survivors including risks of violence, exploitation, manipulation, and trauma.

Sixth, put forth policies that encourage immigrant survivors of violence to come forward without fear. The last administration's policy changes left immigrant survivors of violence more vulnerable to threats from abusers and more fearful that they would be deported and separated from their children and communities.¹¹ A 2019 survey of 565 victim advocates and attorneys across the United States who work with immigrant victims revealed that over $\frac{3}{4}$ of respondents had worked with victims who were concerned about calling the police or accessing the court system for a civil or criminal matter related to the harm they had experienced.¹² Other research shows that immigrant victims of domestic violence without legal status can be half as likely to call police as those with stable legal status.¹³ Local police cooperation with immigration enforcement will heighten a victims' fears that a call to 911 could lead to their deportation, and reduce community trust. Keeping immigrant victims and witnesses in the shadows also serves to undermine overall public safety, as data from communities where local law enforcement agency policies limit assisting federal immigration enforcement by holding individuals beyond their release date without a court order have statistically lower crime rates.¹⁴

Similarly, as Congress addresses immigration legislation, **reject overly-harsh penalties that expand** grounds of inadmissibility, ineligibility, or deportability for domestic violence or sexual assault, which serve to doubly punish non-citizens in disparate ways, especially when these provisions fail to provide the ability to examine the underlying circumstances, or provide adequate humanitarian waivers. Such crime related restrictions **can actually have a negative impact on victims** by creating a chilling effect on their help-seeking. Many immigrant victims will be discouraged from contacting law enforcement for help if they know their family members will be deported with no possible waiver (including individuals with Lawful Permanent Residency status), or if they themselves risk arrest and deportation. This decrease in crime reporting will lead to communities that are less safe and in which victims are more isolated.

¹⁰ USCIS. U visa Filing Trends (April 2020), available at https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf

¹¹ See, e.g. Jesse Paul, *Colorado advocates see rise in immigrant domestic violence victims reporting deportation threats by their abusers*, Colorado Sun (July 29, 2019), available at <https://coloradosun.com/2019/07/29/colorado-domestic-violence-immigration-threats/>? (last accessed February 9, 2021)

¹² Asian Pacific Institute on Gender-Based Violence, ASISTA, Casa de Esperanza, Tahirih Justice Center, et.al, *2019 Advocate and Legal Service Survey Regarding Immigrant Survivors* (2019), available at: <http://alturl.com/ta3i5>; Cory Englebrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, New York Times (June 3, 2018), available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html> (last accessed February 9, 2021)

¹³ Leslye Orloff, Mary Ann Dutton, Giselle Aguilar Hass, & Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L. J. 43, 60 (2003). Tragically, many abused immigrants do not have legal immigration status precisely because their abusive spouses have deliberately blocked or withheld that status as a tool of abuse.

¹⁴ Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (2017), available at: <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/> (accessed February 8, 2021)

Seventh, **immigration enforcement activities should not be permitted in locations where survivors of violence go to seek assistance**, such as courts, victim services organizations, hospitals, churches and shelters without exigent circumstances.

Eighth, **protections for asylum-seekers** should be strengthened to meet the unique needs of women and girls through critical reforms so that victims of persecution are not returned to face violence and torture and so that their cases are adjudicated fairly. Recent policies, such as the Migrant Protection Protocols, expansion of expedited removal, expanded family detention and “zero-tolerance” policies have severely harmed survivors fleeing persecution. In particular, **making it clear that those fleeing gender-based persecution can be eligible for asylum, and eliminating the asylum-filing deadline** particularly impacts survivors of domestic violence and sexual assault. Women fleeing gender-based persecution (like female genital cutting, forced marriage, or “honor” violence), often do not know that they could be eligible for asylum, let alone that there is a time limit to apply.

Supporting and strengthening the purpose and intent of immigration protections created in the Violence Against Women Act, the Trafficking Victims’ Protection Act, and our nation’s asylum laws through these recommended measures will help protect victims and help make our communities safer. We urge you to include provisions that will help strengthen the protections for survivors of sexual assault, domestic violence, and other gender-based violence in future immigration reform legislation. If you have any questions or concerns, please contact the co-chairs of the Alliance for Immigrant Survivors:

Grace Huang at the Asian Pacific Institute on Gender-Based Violence (ghuang@api-gbv.org),
Cecelia Friedman Levin (cecelia@asistahelp.org),
Archi Pyati at Tahirih Justice Center (ArchiP@tahirih.org) or
Rosie Hidalgo at Casa de Esperanza: National Latin@ Network for Healthy Families and Communities (rhidalgo@casadeesperanza.org).

Thank you for your leadership throughout this process, and we look forward to working with you on these important issues.

Sincerely,

THE ALLIANCE FOR IMMIGRANT SURVIVORS