

## NOTES

### THE VIOLENCE AGAINST WOMEN ACT'S PROTECTION OF IMMIGRANT VICTIMS: PAST, PRESENT, AND PROPOSALS FOR THE FUTURE

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#### INTRODUCTION

Intimate partner violence (“IPV”),<sup>1</sup> defined to include “rape,

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1. The terms “domestic violence,” “domestic abuse,” and “battering” are synonymous with IPV. These terms will be used interchangeably throughout this Note. See NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003) [hereinafter COSTS OF IPV], available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

physical assault, and stalking<sup>2</sup> perpetrated by current and former dates, spouses, and cohabiting partners,<sup>3</sup> remains a critical and pervasive problem in U.S. society.<sup>4</sup> For immigrant women, the complex dynamics of IPV are further compounded by their undocumented status.<sup>5</sup> Immigrant women face many obstacles American women do not—including acculturation struggles, communication barriers, and lack of access to and mistrust of police, social services agencies, and the legal system—all of which render them a particularly vulnerable subclass of IPV victims.<sup>6</sup>

In 1994, Congress recognized “for the first time that crimes motivated by gender are important enough to deserve Federal civil rights protection”<sup>7</sup> through its enactment of the Violence Against Women Act (VAWA).<sup>8</sup> From its inception, VAWA acknowledged the unique plight of battered undocumented women and provided them with avenues to obtain relief.<sup>9</sup> Subsequent reauthorizations reaffirmed the continued need to legislate protection of these victims and firmly established Congress’s intent that VAWA function as the vehicle through which this need could be met.

2. For the purposes of this Note, “stalking” is defined broadly as “a course of conduct directed at a specific person involving repeated visual or physical proximity; nonconsensual communication; verbal, written, or implied threats; or a combination thereof that would cause fear in a reasonable person . . . .” PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. OF JUSTICE, CTRS. FOR DISEASE CONTROL & PREVENTION, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE 5 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

3. For a comprehensive catalogue of other terms associated with IPV, see LINDA E. SALTZMAN ET AL., NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS 11-14 (1999), available at [http://www.cdc.gov/ncipc/pub-res/ipv\\_surveillance/Intimate%20Partner%20Violence.pdf](http://www.cdc.gov/ncipc/pub-res/ipv_surveillance/Intimate%20Partner%20Violence.pdf). Unless otherwise indicated, this Note adopts those definitions.

4. According to recent data, “more than 1 in 3 women (35.6%) and more than 1 in 4 men (28.5%) in the United States have experienced [IPV] in their lifetime.” MICHELE C. BLACK ET AL., NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2011), available at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Executive\\_Summary-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Executive_Summary-a.pdf).

5. See NAWAL AMMAR ET AL., NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SOCIAL SCIENCE RESEARCH DOCUMENTS THE NEED FOR VAWA SELF-PETITIONS AND U-VISAS 15-16 (2012), available at [http://www.ncdsv.org/images/NIWAP\\_SocialScienceResearchDocumentsTheNeedFor%20VAWASelf-PetitionsAndU-Visas\\_12-6-2012.pdf](http://www.ncdsv.org/images/NIWAP_SocialScienceResearchDocumentsTheNeedFor%20VAWASelf-PetitionsAndU-Visas_12-6-2012.pdf).

6. See Deborah M. Weissman, *Addressing Domestic Violence in Immigrant Communities*, 65 POPULAR GOV’T 13, 14 (2000).

7. 136 CONG. REC. 31186 (1990).

8. Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

9. See Part II.C, *infra*.

This Note examines the evolution of VAWA, beginning with an overview of the incidence and severity of IPV in the United States generally<sup>10</sup> and then more narrowly framing the issue in the context of immigrant women<sup>11</sup> in Part I. Part II discusses the development of certain landmark U.S. immigration laws, the role these laws played and continue to play in perpetuating IPV in the immigrant community, and Congress's passage of VAWA to respond to the troubling obstacles established by a family-based immigration framework.<sup>12</sup> Part III provides a synopsis of the current state of VAWA, highlighting changes to key immigrant-relevant provisions and related issues that carry significant implications for battered undocumented victims.<sup>13</sup> Finally, in Part IV, this Note will advance proposals for VAWA's improvement and continued effectiveness.<sup>14</sup>

## I. INTIMATE PARTNER VIOLENCE IN CONTEXT

### A. *Intimate Partner Violence Generally*

Although IPV is inflicted by and against both men and women, this Note focuses on acts of domestic violence committed by men against women. Research indicates that not only are women “disproportionately affected by [IPV],”<sup>15</sup> they are also “much more likely than men to suffer physical, and probably psychological, injuries from IPV.”<sup>16</sup> Indeed, eighty-one percent of female IPV

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10. See Part I.A, *infra*.

11. See Part I.B, *infra*.

12. See Part II, *infra*.

13. See Part III, *infra*.

14. See Part IV, *infra*.

15. *National Intimate Partner and Sexual Violence Survey*, CTRS. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_FactSheet-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_FactSheet-a.pdf) (last visited Mar. 31, 2014); see also Shannan Catalano, *Intimate Partner Violence in the United States*, BUREAU OF JUST. STAT. (Dec. 19, 2007, 6:49:11 AM), <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipvus.pdf> (“Females are more likely than males to experience nonfatal intimate partner violence.”); TJADEN & THOENNES, *supra* note 2, at iii (reporting that “approximately 4.8 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually” compared to “approximately 2.9 million intimate partner physical assaults . . . committed against U.S. men annually”). *But see* PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE, CTRS. FOR DISEASE CONTROL & PREVENTION, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 25-31 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (analyzing the scope of IPV among American men and women and the notion that both sexes may be “equally victimized by their intimate partners”); Michael S. Kimmel, “*Gender Symmetry*” in *Domestic Violence: A Substantive and Methodological Research Review*, 8 VIOLENCE AGAINST WOMEN 1332 (2002) (critiquing existing sources of domestic violence data and arguing that domestic violence “is somewhat less than symmetrical but would include a significant percentage of women”).

16. COSTS OF IPV, *supra* note 1, at 3.

victims reported serious short-term and chronic consequences attributable to the abuse they experienced, including symptoms of post-traumatic stress disorder, compared to similar reports from thirty-five percent of male IPV victims.<sup>17</sup> Women who had been abused by an intimate partner also described experiencing other health issues, including but not limited to: recurrent headaches and pain, sleeplessness, asthma, diabetes, and poor psychological health<sup>18</sup> and were more apt to engage in behaviors that further threatened their health and well-being, such as drug and alcohol abuse.<sup>19</sup> The vast array of ailments, both physical and mental, that female IPV victims report experiencing may be related to the fact that IPV perpetrated against women often manifests itself in multiple forms, including rape, physical attacks, and stalking, while men overwhelmingly report experiencing physical violence exclusively.<sup>20</sup> Notably, when women do suffer physical violence at the hands of their intimate partners, they are assaulted more frequently than are men<sup>21</sup> and are also more likely to die as a result of the violence.<sup>22</sup> These and other findings have prompted some researchers to conclude “violence against women is predominantly male violence”<sup>23</sup>

17. See *National Intimate Partner and Sexual Violence Survey*, *supra* note 15.

18. See *id.*; see also *Domestic Violence Fact Sheet*, ATHEALTH.COM, <http://athealth.com/topics/domestic-violence-fact-sheet-2/> (last visited Mar. 31, 2014) (listing various health ailments that can develop as a result of chronic stress on the immune and endocrine systems caused by IPV).

19. See *Domestic Violence Fact Sheet*, *supra* note 18.

20. See *id.*; see also TJADEN & THOENNES, *supra* note 2, at iv (“Violence perpetrated against women by intimates is often accompanied by emotionally abusive and controlling behavior.”); BLACK ET AL., *supra* note 4, at 2 (“Among victims of [IPV], more than 1 in 3 women experienced multiple forms of rape, stalking, or physical violence; 92.1% of male victims experienced physical violence alone . . .”).

21. See TJADEN & THOENNES, *supra* note 2, at iv.

22. *Domestic Violence: Statistics and Facts*, SAFE HORIZON, <http://www.safehorizon.org/index/what-we-do-2/domestic-violence--abuse-53/domestic-violence-the-facts-195.html> (last visited Mar. 31, 2014); see also Margaret A. Zahn, *Intimate Partner Homicide: An Overview in* NAT’L INST. OF JUST. J. 2, 3 (Jolene Hernon & Dan Tompkins eds. 2003), available at <https://www.ncjrs.gov/pdffiles1/jr000250.pdf> (“Women are substantially more likely than men to be murdered by their intimate partners.”); JANICE ROEHL ET AL., INTIMATE PARTNER VIOLENCE RISK ASSESSMENT VALIDATION STUDY, FINAL REPORT 9 (2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf> (“[I]ntimate partner homicide is the largest category of murders of women, or femicide, accounting for approximately 30-40% of murders of women . . . .”); COSTS OF IPV, *supra* note 1, at 19 (asserting that IPV causes nearly 1,300 deaths among American women ages eighteen and older annually).

23. TJADEN & THOENNES, *supra* note 15, at 46; see also STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 2 (Comm. Print 1992) (stating that, in 1991, nine of every ten murders with a female victim were committed by men); *The Facts on Domestic, Dating and Sexual Violence, FUTURES WITHOUT VIOLENCE* (2009), [http://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/DomesticV](http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/DomesticV)

and thus urge that prevention efforts and future studies focus on IPV against women.<sup>24</sup>

Since violence against women was deemed a serious public health issue in the 1970s,<sup>25</sup> researchers and other organizations have increasingly dedicated resources to address it<sup>26</sup>—not only because IPV has significant social and moral implications, but also because it is responsible for many economic costs.<sup>27</sup> According to a 2003 report funded by the Centers for Disease Control and Prevention, “the costs of intimate partner rape, physical assault, and stalking exceed \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health care services.”<sup>28</sup> The \$4.1 billion price tag reflects the total health care cost of the reported 555,000 IPV victimizations that require medical attention each year.<sup>29</sup> However, because each incident of IPV often requires multiple hospital and doctor visits, “the total number of medical service uses resulting from a single IPV victimization is greater than the total number of victimizations resulting in medical care.”<sup>30</sup> A single act of IPV is estimated to cost from \$294 to \$838, depending on the type and severity of the

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iolence.pdf (“[A]bout three-fourths of the persons who commit family violence are male.”).

24. See TJADEN & THOENNES, *supra* note 2, at iv. It should be further noted that IPV comprises the crux of violence against women generally: “64.0 percent of the women who reported being raped, physically assaulted, and/or stalked since age 18 were victimized by a current or former husband, cohabiting partner, boyfriend, or date.” TJADEN & THOENNES, *supra* note 15, at iv.

25. See GARRINE P. LANEY, CONG. RESEARCH SERV., RL30871, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 1 (2010).

26. See STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA III (Comm. Print 1992) (discussing the lack of understanding regarding the “magnitude and severity” of violence against women in the United States and then-Senator Biden’s initiative to shed light on this issue beginning in 1990).

27. See *generally* COSTS OF IPV, *supra* note 1 (highlighting the economic burdens caused by IPV and calling for increased resources for studies to “better understand the magnitude, causes, and risk factors of IPV” and for the development and dissemination of “effective primary prevention strategies” to relieve these burdens).

28. *Id.* at 2. Note that the data upon which these figures are based was collected in 1995. It has been suggested that, in 2003 dollars, the cost of IPV is over \$8.3 billion. *The Health Care Costs of Domestic and Sexual Violence*, FUTURES WITHOUT VIOLENCE (March 2010), [http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Health\\_Care\\_Costs\\_of\\_Domestic\\_and\\_Sexual\\_Violence.pdf](http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Health_Care_Costs_of_Domestic_and_Sexual_Violence.pdf). This amount, and other dollar amounts associated with this data, would be even greater today, with the cost of IPV totaling over \$10.5 billion in 2014 dollars. US INFLATION CALCULATOR, <http://www.usinflationcalculator.com/> (last visited Mar. 31, 2014).

29. Significantly, it is widely believed that many IPV incidents are never reported, thus rendering many statistics quite conservative. See COSTS OF IPV, *supra* note 1, at 46; see also *Domestic Violence: Statistics and Facts*, *supra* note 22.

30. COSTS OF IPV, *supra* note 1, at 15.

incident.<sup>31</sup> These figures include treatment for the significant and often devastating psychological effects of IPV—female IPV victims seek mental health care services more than 18.5 million times per year,<sup>32</sup> a rate twice as high as that of non-abused women.<sup>33</sup>

Unfortunately, the economic cost of IPV extends beyond medical bills. IPV victims and their families contend with lost personal earnings as a result of diminished productivity due to injury and other health limitations.<sup>34</sup> Moreover, these deficits are not felt in isolation—the lost productivity from paid work and household chores that the nation suffers as a whole is valued at an estimated \$858.6 million per year.<sup>35</sup> In terms of time, the United States loses “more than 13.5 million total days . . . from job and housework productivity, which is equivalent to 47,339 person-years” as a result of domestic violence.<sup>36</sup> Finally, in addition to the incalculable intangible loss of the lives of 1,252 women who are ultimately killed by IPV each year, \$892.7 million is lost in earnings that these women “would have otherwise contributed to society had they been able to live out their full life expectancies.”<sup>37</sup> In sum: “Violence against women affects everyday lives, imperils jobs, infects the workplace, and ruins leisure time and education opportunities.”<sup>38</sup>

Further magnifying the problem is the fact that these negative effects have the potential to impact subsequent generations, since the victims of IPV are not limited to the direct targets of the battering or other forms of abuse. Children exposed to IPV<sup>39</sup> experience high rates of abuse, neglect, and homelessness<sup>40</sup> and are more susceptible to

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31. *See id.* at 30, 47 (“The total medical and mental health care cost per victimization by an intimate partner was \$838 per rape, \$816 per physical assault, and \$294 per stalking.”); *see also supra* text accompanying note 28.

32. COSTS OF IPV, *supra* note 1, at 18.

33. *See The Health Care Costs of Domestic and Sexual Violence*, *supra* note 28.

34. *See* COSTS OF IPV, *supra* note 1, at 30-31, Appendix B; *see also* STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 7 (Comm. Print 1992) (describing an incident reported during the week of September 1, 1992: “[A] woman is harassed in her workplace by an ex-boyfriend, and she is worried that she will lose her job.”).

35. *See* COSTS OF IPV, *supra* note 1 at 31, 40; *see also supra* text accompanying note 28.

36. COSTS OF IPV, *supra* note 1, at 31.

37. *Id.* at 31; *see also supra* text accompanying note 28.

38. STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 7 (Comm. Print 1992).

39. More than three million children observe domestic violence in their homes annually. *Domestic Violence: Statistics and Facts*, *supra* note 22.

40. “In a single day in 2008, 16,458 children were living in a domestic violence shelter or transitional housing facility. Another 6,430 children sought services at a non-residential program.” *The Facts on Domestic, Dating and Sexual Violence*, *supra* note 23.

injury and chronic health problems.<sup>41</sup> This exposure greatly increases the likelihood that the cycle of violence will be repeated, as studies demonstrate that children may learn to mimic the violent behaviors they have witnessed in their homes in their own relationships.<sup>42</sup> In fact, since 1989, Surgeon Generals have repeatedly characterized family violence as the “single largest health threat to adult women” and their children.<sup>43</sup>

### *B. Intimate Partner Violence and Immigrant Victims*

Immigrant<sup>44</sup> women are more frequently abused than other categories of battered women in the United States.<sup>45</sup> The increased incidence and severity of IPV among immigrant women has been attributed to the “unique nature of their situation,” which is often exploited by their abusers.<sup>46</sup> Although both U.S. citizen and non-citizen current and former significant others inflict abuse upon their immigrant partners, domestic violence is often “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser.”<sup>47</sup> This is

41. See *Domestic Violence: Statistics and Facts*, *supra* note 22.

42. See STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 7-8 (Comm. Print 1992).

43. Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL’Y & L. 95, 97 (2001); see also STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 3 (Comm. Print 1992).

44. U.S. immigration law defines “immigrant” to mean “every alien except an alien who is within one of the . . . classes of nonimmigrant aliens,” with “alien” defined as “any person not a citizen or national of the United States.” Immigration and Nationality Act (INA) of 1952 § 101(a)(15), 8 U.S.C. § 1101(a)(15) (2006). Nonimmigrant aliens include those individuals with temporary permission to stay in the United States for a fixed period of time, such as exchange students and foreign diplomats. This Note adopts the aforementioned definitions and does not contemplate nonimmigrant aliens in its discussion.

45. See Katerina Shaw, *Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women*, 15 CARDOZO J.L. & GENDER 663, 665 (2009); see also Weissman, *supra* note 6 (“Disturbingly prevalent in the population at large, domestic violence assumes even more troubling dimensions in the growing immigrant communities across the United States.”).

46. Shaw, *supra* note 45, at 665. For a non-exhaustive list of ways in which abusers use their victims’ immigration status to effectuate and sustain IPV, see GISELLE AGUILAR HASS, NAWAL AMMAR & LESLYE ORLOFF, LEGAL MOMENTUM, BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES 4 (2006), available at [http://www.ncdsv.org/images/LM\\_BatteredImmigrantsAndUScitizenSpouses\\_4-24-2006.pdf](http://www.ncdsv.org/images/LM_BatteredImmigrantsAndUScitizenSpouses_4-24-2006.pdf).

47. H.R. REP. NO. 103-395, at 29 (1993); see also Radha Vishnuvajjala, Note, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 B.C. J. L. & SOC. JUST. 185, 189 (2012) (“Estimates show that nearly sixty percent of married immigrant women are in abusive

because spouses who are U.S. citizens or who have obtained the status of lawful permanent resident (LPR)<sup>48</sup> are considered “immediate family member[s]” who may sponsor immigrants seeking their own LPR status.<sup>49</sup> Obtaining LPR status is a “critical preliminary step” to procuring citizenship<sup>50</sup> and thus may become a powerful bargaining chip in the hands of those who have a role in the process.

Since many immigrant women and their children leave their origin countries to escape poverty, disease, and/or political persecution, the prospect of deportation carries significant implications and must be “avoided at all costs.”<sup>51</sup> Fear of exposure to immigration authorities considerably deters undocumented IPV victims from invoking the help of law enforcement officials to escape abuse.<sup>52</sup> By granting the abuser the ability to heavily influence or even outright control his victim’s immigration status, he is empowered with considerable leverage to coerce, dominate, and ensure his immigrant partner is rendered powerless to seek protective legal remedies.<sup>53</sup> Although all relationships rooted in a markedly unequal power structure are known to “perpetuate, facilitate and increase . . . domestic violence,” this dynamic, especially when coupled with additional obstacles that immigrants must contend with, leave battered undocumented women in particularly difficult situations.<sup>54</sup>

Bearing these facts in mind, it is not surprising that immigrant women typically stay in abusive relationships longer than American

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relationships.”).

48. “An LPR is a foreign national who is authorized to live and work in the United States on a permanent basis.” WILLIAM A. KANDEL, CONG. RESEARCH SERV., R42477, IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) 1 n.3 (2012).

49. Weissman, *supra* note 6, at 13. Spousal sponsorship requires that the U.S. citizen or LPR husband completes and files an application on behalf of his immigrant wife and “attend[s] at least one marriage interview with the [Immigration and Naturalization Service (INS)].” *Id.* at 14.

50. *Id.* at 13.

51. *Id.*

52. See Vishnuvajjala, *supra* note 47, at 189-90 (noting that “fifty-five percent of all domestic violence victims report their abuse to law enforcement officials” as compared to just “fourteen percent [of] undocumented women”).

53. See *id.*; see also EDNA EREZ & NAWAL AMMAR, VIOLENCE AGAINST IMMIGRANT WOMEN AND SYSTEMIC RESPONSES: AN EXPLORATORY STUDY ch. 3, at 92 (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf> (describing the results of a survey of battered immigrant women in which seventy-five percent of the respondents reported that their abusers used immigration status “as a weapon” against them, including making “threats to call INS” and “to interfere with the naturalization process”).

54. HASS, AMMAR & ORLOFF, *supra* note 46, at 5-6.



women do.<sup>55</sup> Even if outsiders identify immigration-related abuse and attempt to intervene, the victim's dependence on her abuser's willingness to initiate a petition on her behalf and cooperate through its completion dissuades her from participating in his prosecution.<sup>56</sup> Further, immigrant women themselves hesitate to seek help from social, welfare, or legal agencies because they fear that divulging their partner's abuse will validate and "exacerbate . . . racism directed at their communit[ies]."<sup>57</sup> The prospect of subsequently being branded disloyal and shunned by members of her own community considerably discourages a battered immigrant woman from reporting abuse.<sup>58</sup> Language barriers,<sup>59</sup> assimilation difficulties, economic constraints, limited knowledge of and access to legal and social services, and lack of familial support further hinder the likelihood that immigrant women will escape IPV.<sup>60</sup> With a diminished likelihood of being held accountable for his behavior, the abuser is effectively given permission to continue—and perhaps escalate—the violence. Research does, in fact, indicate that battered immigrant women "sustain greater physical and psychological abuse

55. *See id.* at 2-3. The failure of battered immigrant women to leave their abusers can also be attributed to "traditional/cultural norms, concerns about the role of the woman as wife and mother, a woman's cultural or religious obligation to keep the family together, and concerns about not having value in the community as a single woman . . .". *Id.* at 6.

56. *See id.* at 3.

57. EREZ & AMMAR, *supra* note 53, at ch. 1.

58. *See id.*

59. Language barriers can prevent undocumented victims of domestic violence from obtaining effective assistance efficiently in a variety of ways. *See* Vishnuvajjala, *supra* note 47, at 193-96. For example, "English deficiencies often prevent victims from showing up for court dates because they cannot read the summons." Leslye E. Orloff, *Interviewing and Safety Planning for Immigrant Victims of Domestic Violence*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* ch. 2, at 5 (Kathleen Sullivan & Leslye Orloff eds., 2013), available at <http://niwaplibrary.wcl.american.edu/cultural-competency/Breaking-Barrriers-MANUAL-BB.pdf/view>. Additionally, "[w]omen who cannot communicate their needs to justice system officials . . . are subject to misunderstandings and undeserved judgments by officials as to the veracity of their claims or the seriousness of the abuse." EREZ & AMMAR, *supra* note 53, at ch. 4.

60. *See* Ctr. on Violence Against Women and Children, *Immigrant Domestic Violence*, RUTGERS SCH. OF SOC. WORK, [http://socialwork.rutgers.edu/Libraries/VAWC/Immigrant\\_DV\\_Power\\_Point.sflb.ashx](http://socialwork.rutgers.edu/Libraries/VAWC/Immigrant_DV_Power_Point.sflb.ashx) (last visited Mar. 31, 2014); *see also* Deanna Kwong, Note, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 BERKELEY WOMEN'S L.J. 137, 139-43 (2002) (arguing that "cultural and religious norms, economic considerations, language barriers, and overall limited access to information, services, and legal protection" render immigrant women particularly vulnerable to IPV); EREZ & AMMAR, *supra* note 53, at ch. 1 (identifying isolation, social disapproval of divorce, and reluctance to violate cultural and gender norms as impediments on battered immigrants' ability to leave their abusers).

than other battered women in the United States.”<sup>61</sup>

## II. THE DANGEROUS INTERSECTION OF INTIMATE PARTNER VIOLENCE AND IMMIGRATION LAW

*If you are an immigrant woman whose . . . American husband refuses to petition for you, you don't have a choice. You are under his thumb. You can't support yourself. You are in limbo. You came here marrying an American thinking you were going to be part of the American dream and you are not. You are part of the nightmare.*<sup>62</sup>

### A. *The Concepts of Coverture and Chastisement in Early Immigration Law*

Immigration laws enacted at the turn of the twentieth century were largely rooted in the primal English and American common-law doctrines of coverture and chastisement.<sup>63</sup> “Coverture established total power and control over a wife by a husband and chastisement allowed the punishment of a wife by a husband to force obedience to that power.”<sup>64</sup> Thus, failure to comply with a husband’s orders justified his discipline of the disobedient wife, even through the use of violence.<sup>65</sup> Coverture mandates that, legally, “the husband and wife are one, *and the one is the husband.*”<sup>66</sup> The total power granted to the husband under coverture included exclusive control over the children of the marriage, who were classified as marital property.<sup>67</sup>

The doctrines of coverture and chastisement are reflected in early spouse-based immigration laws, which established the husband’s ability to control his alien wife’s immigration status.<sup>68</sup> Until the 1990s, immigrant women could not petition for their legal status on their own: “The law required a husband to either file a petition for his wife or accompany her when she applied for immigration status.”<sup>69</sup> Notably, the law was not reciprocal; female U.S. citizens or LPRs could not petition for their immigrant husbands.<sup>70</sup>

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61. Shaw, *supra* note 45, at 665.

62. H.R. REP. NO. 112-480, pt. 1, at 233 (2012) (statement of Rep. Lofgren).

63. See Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture’s Diminishment, but Not Its Demise*, 24 N. ILL. U. L. REV. 153, 154 (2004).

64. *Id.*

65. See *id.* at 160.

66. *Id.* (emphasis added).

67. See *id.*

68. See *id.* at 154, 166.

69. Orloff & Kaguyutan, *supra* note 43, at 100.

70. See *id.* Additionally, until its repeal in 1921, a law required an American woman who married an immigrant man to forfeit her U.S. citizenship and acquire her new husband’s nationality instead. See Act of March 2, 1907, Pub. Law No. 193, § 3, 34 Stat. 1228 (1907) (repealed 1921).

Congress attempted to rectify this disparate treatment of men and women in 1952 when it passed the Immigration and Nationality Act (INA).<sup>71</sup> Although Congress's substitution of the word "spouse" for the word "husband" in the legislation can be viewed as a legitimate effort to effectuate gender neutrality, the influence of coverture in immigration law endured.<sup>72</sup> The continued vesting of the "power of sponsorship" in citizen or LPR spouses coupled with the reality that "the majority of immigrant spouses and domestic violence victims are women" effectively preserved the dangerous power differential that often resulted from the marriage of a citizen or LPR man and an undocumented woman.<sup>73</sup>

Congress intensified the vulnerability of battered immigrant women when it passed the Immigration Marriage Fraud Amendments (IMFA)<sup>74</sup> in 1986. This legislation—still in effect today—"introduced another step" for immigrants seeking LPR status through their spouses.<sup>75</sup> The IMFA requires an immigrant spouse to "fulfill a two-year conditional residency requirement" after her citizen or LPR spouse submits an initial petition on her behalf.<sup>76</sup> Although the IMFA was enacted in part to curb sham marriages between citizens or LPRs and foreigners,<sup>77</sup> the conditional residency requirement implicitly established a presumption that all marriages between parties falling into these categories were fraudulent, with the burden on the couple to prove otherwise.<sup>78</sup> To overcome this presumption, the couple is required to jointly petition for permanent residency before the end of the two-year period in which the

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71. Pub. L. 82-414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101-1537 (2006)). The INA is "the basis for current immigration law." Calvo, *supra* note 63, at 166.

72. See Orloff & Kaguyutan, *supra* note 43, at 101; see also Ashley Arcidiacono, *Silencing the Voices of Battered Women: How Arizona's New Anti-Immigration Law "SB1070" Prevents Undocumented Women from Seeking Relief Under the Violence Against Women Act*, 47 CAL. W. L. REV. 173, 178-79 (2010) (noting that the change in statutory language "failed to affect the practical application of the law").

73. Orloff & Kaguyutan, *supra* note 43, at 101; see also Shaw, *supra* note 45, at 668 (noting that immigrant women who divorced or abandoned their U.S. citizen or LPR husbands were "left with no status and became deportable").

74. Pub. L. No. 99-639, 100 Stat. 3537 (1986).

75. Weissman, *supra* note 6, at 14.

76. Shaw, *supra* note 45, at 668; see also KANDEL, *supra* note 48, at 2-3.

77. See KANDEL, *supra* note 48, at 2 (describing conditional residency as an "evaluation period" that allows U.S. immigration officers to determine whether a marriage between an immigrant and a citizen or resident is "bona fide"). For an analysis of the fraudulent use of marriage for immigration purposes, see DAVID SEMINARA, CTR. FOR IMMIGRATION STUDIES, HELLO, I LOVE YOU, WON'T YOU TELL ME YOUR NAME: INSIDE THE GREEN CARD MARRIAGE PHENOMENON (2008), available at <http://www.cis.org/sites/cis.org/files/articles/2008/back1408.pdf>.

78. See Shaw, *supra* note 45, at 668.

immigrant spouse was first granted conditional resident status.<sup>79</sup> In some cases, converting conditional resident status to permanent resident status requires the couple to participate in a joint interview with an INS officer.<sup>80</sup> If the joint petition is not filed within the statutorily required window, the alien's legal conditional status is terminated and removal proceedings can begin.<sup>81</sup> Because this system mandates the active participation and cooperation of an immigrant's citizen or LPR spouse over at least a two-year period in order for the immigrant to successfully obtain LPR status, as originally enacted, the IMFA subjected many battered immigrant women to a Sophie's choice: remain at the mercy of their husbands in exchange for gaining the right to permanently live and work in the United States or attempt to escape the abuse, forfeit the prospect of acquiring LPR status, and risk deportation, which was likely to inflict further hardship.<sup>82</sup> To make matters worse, the existence of children whose own LPR status depended on that of their undocumented mother further enhanced the control of abusers, since termination of the undocumented mother's immigration status terminated her children's status as well.<sup>83</sup>

Either way, "by extending the petitioning spouse's involvement in further petitions and interviews, an abusive spouse was legally provided with the opportunity to continue the battering."<sup>84</sup> Although the IMFA provided for waiver of the joint petitioning process,<sup>85</sup> the INS rarely found waiver provisions applicable to immigrant IPV victims in the early years following the IMFA's enactment.<sup>86</sup>

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79. See Orloff & Kaguyutan, *supra* note 43, at 102.

80. See *id.*; see also KANDEL, *supra* note 48, at 2 n.7 (asserting that such interviews are a "critical mechanism by which [U.S. Citizenship and Immigration Services] confirms information in the application and evaluates the legitimacy of the marriage for the purpose of granting LPR status").

81. See KANDEL, *supra* note 48, at 3.

82. See Orloff & Kaguyutan, *supra* note 43, at 102 (identifying the absence of a provision requiring the citizen or resident spouse to stay in the marriage for the two-year conditional residency period and follow through with filing the joint petition after the expiration of the conditional residency period as a failure of the IFMA).

83. See *id.*

84. Linda Kelly, *Republican Mothers, Bastards' Fathers and Good Victims: Discarding Citizens and Equal Protection Through the Failures of Legal Images*, 51 HASTINGS L.J. 557, 576 (2000); see also Michelle J. Anderson, Note, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1401-02 (describing the experiences of two female conditional residents whose husbands used their citizenship as a means of controlling and humiliating them).

85. If the INS found that an immigrant spouse satisfied the criteria for "extreme hardship" or "good faith," it could elect to waive the joint petition process. 8 U.S.C. § 1186a(c)(4) (2006).

86. The "extreme hardship" and "good faith" exceptions were applied very narrowly. Orloff & Kaguyutan, *supra* note 43, at 102. Further, even where battered immigrant women were successful in triggering the application of these exceptions,

*B. Congressional Recognition of the Perpetuation of Intimate Partner Violence Through U.S. Immigration Law*

In the early 1990s, Congress initiated a movement to better understand the societal and legal issue of violence against women.<sup>87</sup> The emergence of numerous reports and a voluminous congressional record<sup>88</sup> on IPV prompted recognition of the problems created and exacerbated by “placing control of an alien spouse’s ability to gain permanent legal status in the hands of the citizen or [LPR]” and subsequent calls for federal avenues to assist battered immigrant women.<sup>89</sup> The first response to these concerns was the “battered spouse waiver,” which was passed as part of the Immigration Act of 1990 (“1990 Act”).<sup>90</sup> Although the waiver loosened the stringent criteria for exclusion from the joint petitioning process that previously had to be met under the IMFA,<sup>91</sup> the waiver’s reach was limited in that it offered relief only to those battered immigrant spouses who had already acquired conditional residency as the result of her husband’s initial petition on her behalf.<sup>92</sup> Undocumented spouses whose husbands declined to file for conditional residency altogether or had started the process but failed to complete it were unaided by the new legislation.<sup>93</sup> Additionally, though Congress

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INS officials often exercised their discretion to deny self-petitioning requests. *See id.* at 103. Possible explanations for this include: lack of understanding regarding “the dynamics of domestic violence,” absent or inadequate training on identifying and responding to domestic violence, and reliance upon the “erroneous belief that deportation would bring an end to the domestic violence.” *Id.* at 103-04.

87. This movement was spearheaded by then-Senator Joseph R. Biden, who held “a series of hearings . . . on the topics of rape, domestic violence, and existing legal protections” and eventually introduced the Violence Against Women Act in 1992. STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA III (Comm. Print 1992).

88. Committee hearings conducted between 1990 and 1994 consisted of “testimony from a variety of experts, including state attorneys general; federal and state law enforcement officials; prosecutors; business and labor representatives; physicians; legal scholars; and victims of domestic violence, sexual assault, and stalking.” FaithTrust Institute, *History of VAWA*, NAT’L CTR. ON DOMESTIC & SEXUAL VIOLENCE, <http://www.ncdsv.org/images/historyofvawa.pdf> (last visited Mar. 31, 2014).

89. Calvo, *supra* note 63, at 165. *See also* H.R. REP. NO. 103-395, at 26 (1993) (noting that the structure of existing immigration law fostered IPV and “trapped and isolated” immigrant women in violent households).

90. Immigration Act of 1990, § 701, Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended at 8 U.S.C. § 1186a(e)(4) (1994)).

91. The battered spouse waiver provided exemption from the joint petitioning process upon an immigrant’s demonstration that her citizen or resident husband subjected to her to “extreme cruelty.” The waiver also removed the IFMA’s requirement that an immigrant show “good cause” for terminating a marriage and the initiator of divorce proceedings. *See* Orloff & Kaguyutan, *supra* note 43, at 105-06.

92. *See id.* at 106; *see also* Shaw, *supra* note 45, at 669.

93. *See* Shaw, *supra* note 45, at 669.

intended for the exemptions provided in the waiver to be invoked broadly, the legislation continued to impose evidentiary burdens that were often insurmountable for immigrant victims, significantly undermining the 1990 Act's overall usefulness.<sup>94</sup>

Perhaps most problematic was the failure of the 1990 Act to reject immigration policy's reliance upon spousal control in general. At its core, the battered spouse waiver preserved "the coverture-based control of the earlier immigration legislation" and "failed to address . . . the consequence of citizens or residents using immigration law to entrap their spouses in abuse."<sup>95</sup> Subsequent legislation continued to favor the provision of remedies to the abused rather than the affirmative adoption of domestic violence prevention measures and the empowerment of undocumented women to advocate for their own immigration status. Ironically, those who suffered the most severe and frequent abuse were in the best position to obtain relief under some legislative measures of the late twentieth century, as spouses were required "to show that they were abused to the extent of being 'victims.'"<sup>96</sup> Failure to meet the requisite level of victimhood not only left many with no recourse but also suggested Congress's tacit approval of less visible—but just as damaging and dangerous—forms of abuse.<sup>97</sup> While Congress's early attempts to rectify the perpetuation of IPV through immigration law reflected noble intent, these efforts simultaneously signaled it was not yet ready to completely eradicate immigration policy of coverture's influence.<sup>98</sup> To some extent, this influence is still detectable in immigration laws today.

### C. Landmark Legislation: VAWA Through 2011

Congress's passage of the Violence Against Women Act of 1994 ("VAWA 1994") was the first measure to explicitly "provide a federal role" in the prosecution of acts of domestic violence and the protection of victims of these crimes.<sup>99</sup> From the outset of VAWA's

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94. For example, a battered woman seeking application of the waiver "based on extreme cruelty" was often required to provide "evidence from a licensed mental health professional." *Id.* at 107-08. Considering the financial, economic, and cultural burdens that hinder battered immigrants from accessing health services and other forms of help, this requirement rendered the battered spouse waiver effectively out of reach.

95. Calvo, *supra* note 63, at 167.

96. *Id.* at 168.

97. See Kelly, *supra* note 84, at 580 (arguing that a "stereotypical image of a battered woman" must be presented to avoid denial of a self-petition residency application).

98. See Anderson, *supra* note 84, at 1416-22 (arguing that "although Congress attempted to alleviate the suffering of abused immigrant women through the Immigration Act of 1990, the legislation was flawed and incomplete").

99. See John Conyers Jr., *The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections to Immigrant Victims*, 13 VIOLENCE

enactment, Congress sought to end abusers' continued use of immigration status as a "key tool of control."<sup>100</sup> By incorporating provisions that allowed undocumented victims to petition for legal status for themselves and their children without their batterer's knowledge and cooperation, VAWA reflected congressional intent to ameliorate immigrant victims' dependency on their abusers.<sup>101</sup>

Under the original VAWA, an undocumented battered woman could seek relief—provided she met certain eligibility requirements—in two ways: through self-petition or, if deportation proceedings had already begun, through the "cancellation of removal" (formerly known as "suspension of deportation") process.<sup>102</sup> To file a self-petition, which conceptually replaced the initial petition sponsored by the U.S. citizen or LPR on the immigrant's behalf, the applicant must show that: (1) she entered into marriage in good faith; (2) her abuser was a U.S. citizen or LPR who she resided with in the United States and subjected her or her children to extreme cruelty; (3) she possessed good moral character;<sup>103</sup> and (4) her deportation would result in extreme hardship to herself or her children.<sup>104</sup> Initiation of cancellation of removal proceedings required demonstration of similar elements, plus a showing of "three years of continuous physical presence in the United States."<sup>105</sup>

Despite the progress signaled by these breakthrough provisions, VAWA 1994 contained many deficiencies and implementation setbacks. Some of these deficiencies involved *who* the legislation allowed to self-petition. For example, those whose spouses lost LPR

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AGAINST WOMEN 457, 458 (2007). VAWA has been described as a "comprehensive effort to . . . expand the federal presence in domestic violence matters" by providing for "various forms of relief, including funding for women's shelters, a national domestic abuse hotline, rape education and prevention programs [and] training for federal and state judges . . .". Weissman, *supra* note 6, at 15.

100. H.R. REP. NO. 112-480, pt. 1, at 230 (2012).

101. See CASA DE ESPERANZA AND MUJERES LATINAS EN ACCI N, LATINA PORTRAIT: THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT AND LATINAS 14 (2012), available at [http://www.ncdsv.org/images/MLA-NLN\\_LatinaPortraitTheReauthorizationOfTheVAWAandLatinas\\_2012.pdf](http://www.ncdsv.org/images/MLA-NLN_LatinaPortraitTheReauthorizationOfTheVAWAandLatinas_2012.pdf); see also Arcidiacono, *supra* note 72, at 180 (stating that allowing undocumented battered women married to violent U.S. citizen or LPR spouses to self-petition for immigration status was "Congress's primary intent in enacting VAWA").

102. Arcidiacono, *supra* note 72, at 181; see also Weissman, *supra* note 6, at 15.

103. Although the INS has not specifically defined "good moral character," it is generally held that a criminal conviction precludes satisfaction of the character requirement. A petitioner can also fail to demonstrate good moral character for a variety of other reasons, such as fabricating information in legal documents. 8 U.S.C. § 1101(f); see also KANDEL, *supra* note 48, at 3 n.19.

104. Arcidiacono, *supra* note 72, at 181. It should be noted that parents petitioning on behalf of their children must meet additional evidentiary requirements. See KANDEL, *supra* note 48, at 3.

105. Arcidiacono, *supra* note 72, at 181.

status as a result of criminal activity, including prosecution for domestic violence crimes, were excluded from self-petitioning eligibility.<sup>106</sup> This paradoxical bar deterred immigrant victims from reporting abuse and reinforced commonly held feelings of fear and skepticism of law enforcement and the criminal justice system.<sup>107</sup> The ineligibility of women who divorced their batterers prior to filing a self-petition had a similar chilling effect on the likelihood that victims would take action to escape abuse.<sup>108</sup> In both situations, loss of the ability to self-petition meant that victims had to either rely on their abusers' sponsorship or wait for deportation proceedings to be initiated against them to utilize the cancellation of removal process.

Many other undocumented battered women generally struggled to meet VAWA's eligibility requirements. As was the case with the 1990 battered spouse waiver, VAWA's accessibility to immigrant women was curtailed by its imposition of strict prerequisites to obtaining relief. Proving "extreme hardship" was complex and difficult<sup>109</sup> and the "good moral character" requirement's tendency to disqualify women convicted of crimes failed to take into account that many of these convictions were the result of retaliatory countercharges brought by the batterer or stemmed from acts of self-defense perpetrated against his abuse.<sup>110</sup>

Congress's 2000 reauthorization of VAWA<sup>111</sup> ("VAWA 2000") addressed several of these issues. First, it removed its predecessor's strict evidentiary requirement of showing extreme hardship.<sup>112</sup>

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106. *See id.*

107. *See* Kwong, *supra* note 60, at 142-43; *see also* Margaret Mendelson, *The Legal Production of Identities: A Narrative Analysis of Conversations with Battered Undocumented Women*, 19 BERKELEY WOMEN'S L.J. 138, 179-181 (describing the experiences of undocumented victims who did not "see law enforcement as supportive or protective, but rather as adversarial and threatening").

108. *See* Arcidiacono, *supra* note 72, at 181.

109. Meeting this element required the petitioner to show that the domestic violence caused her "or her children [to] have ongoing needs for counseling, medical care, legal protection, child support, enforceable custody orders, or other assistance . . . requiring access to U.S. courts" and that these needs were "not likely to be met in her home country." Weissman, *supra* note 6, at 16. The difficulty of obtaining documentation, such as "reports and affidavits from medical personnel, social workers, and police" to support this was not considered in VAWA 1994. *Id.*

110. *See* Shaw, *supra* note 45, at 671; *see also* Zelda B. Harris, *The Predicament of the Immigrant Victim/Defendant: "VAWA Diversion" and Other Considerations in Support of Battered Women*, 14 HASTINGS WOMEN'S L.J. 1, 13-14 (2003) (recounting the story of "Rosa," who was charged with multiple misdemeanor crimes after scratching her batterer's face in response to his efforts to prevent her from leaving their home to escape escalating abuse).

111. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, codified at 8 U.S.C. §§ 1501-13 [hereinafter VAWA 2000].

112. *See* NAT'L COAL. AGAINST DOMESTIC VIOLENCE, Comparison of VAWA 1994, VAWA 2000 and VAWA 2005 Reauthorization Bill (Jan. 1, 2006),



Second—and perhaps most notably—it created the U visa,<sup>113</sup> which confers temporary “nonimmigrant U status” to victims of certain qualifying crimes<sup>114</sup> who are willing to aid law enforcement in the investigation and prosecution of these crimes.<sup>115</sup> Although obtaining a U visa does not lead to automatic LPR status, it provides four years of temporary residency in the United States and the opportunity to become a permanent resident after three years if the recipient meets certain criteria.<sup>116</sup>

The U visa was a critical development in expanding protection to immigrant women who had suffered abuse by their U.S. citizen or LPR boyfriends or fiancés, but could not meet the marriage requirement to take advantage of the self-petition and cancellation of removal provisions of VAWA 1994.<sup>117</sup> It also provided a vehicle through which law enforcement could identify and prosecute perpetrators of crimes who were previously able to capitalize on the undocumented status of their victims to avoid criminal liability.<sup>118</sup> By quelling undocumented victims’ fear of automatic deportation as an unintended consequence of reporting crime, the U visa functioned as a valuable tool for improving the safety of both direct victims of violence and of the broader community, while expanding VAWA’s reach to a greater number of victims—“regardless of their marital status or the immigration status of the perpetrator.”<sup>119</sup>

The VAWA 2005 reauthorization<sup>120</sup> (“VAWA 2005”) continued

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[http://www.ncadv.org/files/VAWA\\_94\\_00\\_05.pdf](http://www.ncadv.org/files/VAWA_94_00_05.pdf).

113. VAWA 2000 at § 1513(a)(2)(A).

114. For a full listing of U visa qualifying crimes, see *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last updated Jan. 9, 2014).

115. Shaw, *supra* note 45, at 672. Congress overwhelming favored the creation of the U visa program, passing it by a vote of 371-1. See H.R. REP. NO. 112-480, pt. 1, at 231 (2012).

116. A U visa holder “who remains in the country may be permitted to adjust his or her status to that of an LPR if the immigrant did not unreasonably refuse to assist law enforcement and if doing so ‘is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.’” *Id.* (quoting INA § 245(m); 8 U.S.C. § 1255(m)).

117. See Arcidiacono, *supra* note 72, at 182; Conyers, *supra* note 99, at 458.

118. See Orloff & Kaguyutan, *supra* note 43, at 163 (“Congress recognized with the U-visa that it is virtually impossible for state and federal law enforcement, other government enforcement agency officials, and the justice system in general to punish and hold perpetrators of crimes against noncitizens accountable if abusers and other criminals can avoid prosecution by having their victims deported.”).

119. CASA DE ESPERANZA AND MUJERES LATINAS EN ACCIN, *supra* note 101, at 15.

120. Violence Against Women Act and Dep’t of Justice Reauthorization Act of 2005 (“VAWA 2005”), Pub. L. No. 109-162, § 3, 119 Stat. 2960, 2964 (2006).

this pattern of modest expansions upon existing protections<sup>121</sup> and provided funding for various programs through 2011. Notably, it strengthened confidentiality provisions to ensure that abusers could not use the self-petition system “to obtain information about their victims, including the existence of a VAWA immigration petition, interfer[e] with or undermin[e] their victims’ immigration cases, [or] encourag[e] immigration officers to pursue removal actions against their victims.”<sup>122</sup> It also added entirely new provisions,<sup>123</sup> including those intended to address growing concerns regarding immigration fraud.<sup>124</sup> These amendments and additions reinforced one of VAWA’s central aims: incentivizing abuse reporting to facilitate breaking the domestic violence cycle.

### III. VAWA TODAY: RELUCTANT REAUTHORIZATION

Since its enactment, VAWA had been sustained by bipartisan endorsement in Congress, broad public support, and little controversy.<sup>125</sup> However, against a deeply polarized and rancorous political backdrop, the legislation expired on October 1, 2011 after both the Senate and the House of Representatives passed their own versions of an updated bill, but ultimately failed to agree regarding certain key provisions.<sup>126</sup> On February 28, 2013, the yearlong partisan battle over VAWA’s reauthorization ended when the House passed S. 47: Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”).<sup>127</sup> President Barack Obama signed the bill into law

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121. Notably, VAWA 2005 extended “aging out” provisions that allowed children to obtain legal status through their abused parent even after they turned twenty-one years old, as long as the parent’s self-petition was filed when the child was a minor. See KANDEL, *supra* note 48, at 30, n.164.

122. H.R. REP. NO. 112-480, pt. 1, at 230-31 (2012) (quoting H.R. REP. NO. 109-233, at 120 (2005)).

123. Among the new provisions included in VAWA 2005 were a number of measures directed toward international marriage brokers that are beyond the scope of this Note. For a comprehensive analysis of the international marriage broker industry and VAWA’s role in human trafficking, see Kirsten M. Lindee, *Love, Honor, or Control: Domestic Violence, Trafficking, and the Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551 (2007); Holli B. Newsome, *Mail Dominance: A Critical Look at the International Marriage Broker Regulation Act and its Sufficiency in Curtailing Mail-Order Bride Domestic Abuse*, 29 CAMPBELL L. REV. 291 (2007).

124. Under these provisions, a VAWA self-petitioner or U visa holder was prohibited from later petitioning for immigrant status or admission on behalf of her abuser. CASA DE ESPERANZA AND MUJERES LATINAS EN ACCI N, *supra* note 101, at 17.

125. *Id.* at 238.

126. See Jim Abrams, *Democrats Try Again to Extend Anti-Violence Against Women bill*, CAPITAL, Jan. 24, 2013, at A2.

127. Ashley Parker, *House Renews Violence Against Women Measure*, N.Y. TIMES, March 1, 2013, at A13.

on March 7, 2013.<sup>128</sup> The following discussion highlights the new legislation's most relevant provisions concerning undocumented victims in the context of U visas and self-petitions<sup>129</sup> and provides insight into controversial proposals spawned during the congressional debates from which such provisions were framed.

*A. The U Visa: Expansions in Scope, Not in Quantity*

For the most part, VAWA 2013 maintains the U visa system as established in VAWA 2000, with three notable changes. First, the new legislation explicitly adds “stalking” to the list of crimes that trigger U visa eligibility,<sup>130</sup> reflecting congressional endorsement of a broad definition of IPV that encompasses a range of destructive behavior, physically violent and otherwise,<sup>131</sup> and Congress's intent to further expand the U visa's ability to empower battered immigrant women to hold their abusers liable for their criminal acts. Second, VAWA 2013 extends age-out protections previously available only to children of self-petitioners to children of U visa applicants.<sup>132</sup> This extension preserves the eligibility of children seeking derivative visas through their qualifying parent even if they turn twenty-one years old during the pendency of the parent's application.<sup>133</sup> Rooted in longstanding public policy favoring maintenance of the family unit,<sup>134</sup> this provision logically expands the reach of the U visa to bring it into harmony with that of the self-petition. Finally, VAWA 2013 requires the Secretary of Homeland Security to prepare annual reports to Congress detailing the outcomes and processing times for

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128. Josh Lederman, *Obama Signs Violence Against Women Act*, Huffington Post (May 7, 2013, 5:12 AM) [http://www.huffingtonpost.com/2013/03/07/obama-violence-against-women-act\\_n\\_2830158.html](http://www.huffingtonpost.com/2013/03/07/obama-violence-against-women-act_n_2830158.html).

129. Additional VAWA 2013 provisions affecting battered immigrants not addressed in this Note include those relating to the International Marriage Broker Regulation Act (IMBA), Pub. Law No. 109-162 (2006), 119 Stat. 2960, introduced in VAWA 2005, and the Prison Rape Elimination Act (PREA). See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat 55.

130. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat 55.

131. See *supra* note 2 and accompanying text.

132. S. 47 at § 805(a).

133. *Id.* U.S. Citizenship and Immigration Services has issued interim regulations regarding age-out protection for derivative U visa applications. See U.S. DEP'T OF HOMELAND SECURITY, CITIZENSHIP AND IMMIGRATION SERVICES, PM-602-0077, POLICY MEMORANDUM (2012), *available at* <http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/U-Visa-Age-Out-Interim-PM.pdf>.

134. Nat'l Task Force to End Sexual and Domestic Violence Against Women, *Important Protections for Immigrant Victims in the Violence Against Women Reauthorization Act of 2013—S. 47*, MIL MUJERES, <http://www.milmujeres.org/VAWA> (last visited March 10, 2013) [hereinafter Nat'l Task Force].

U visa petitions.<sup>135</sup> All of these amendments were included in both the House and Senate reauthorization bills and thus were not major topics of congressional squabble during the nearly seventeen-month limbo that followed VAWA's October expiration.

One provision that was the subject of serious debate—and was ultimately left on Congress's cutting room floor—involved the number of U visas available for issuance in a given fiscal year. When the U visa program was established in VAWA 2000, immigration law capped the number of available U visas at 10,000 per year.<sup>136</sup> S. 1925, the House-rejected bipartisan bill introduced by Sens. Patrick Leahy and Mike Crapo, raised the annual cap on U visas from 10,000 to 15,000 for the next five years.<sup>137</sup> However, because the provision imposed application fees for certain visas,<sup>138</sup> House Republicans “blue-slipped” the bill, i.e., refused to consider it, because it violated the traditional interpretation of the U.S. Constitution's Origination Clause<sup>139</sup> that revenue-raising bills generate in the House.<sup>140</sup> The fees were included to allay concerns that the increase in available U visas “could cost taxpayers over \$100,000 in public benefits and other expenses.”<sup>141</sup> Ultimately, the language authorizing the U visa increase was stricken from the bill to avoid further delay and the bill was reintroduced as S.47.

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135. S. 47 at § 804.

136. H.R. REP. NO. 112-480, pt. 1, at 231.

137. A bill to reauthorize the Violence Against Women Act of 1994, S. 1925, 112th Cong. § 805(a) (2012) (as passed by Senate, April 26, 2012).

138. *Id.* at § 810.

139. “All Bills for Raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.” U.S. CONST. art. 1, § 7, cl. 1.

140. See John Gramlich, *Obstacle Emerges on Violence Bill*, CONG. Q. (May 18, 2012), <http://public.cq.com/docs/news/news-000004088503.html>. Interestingly, the House has helped the Senate overcome many blue-slip problems in the past, including as recently as April 2012 in the drafting of a transportation bill. See *id.* (explaining that the House could have passed a revenue measure and sent it to the Senate as a “vehicle in which to insert the language of the Senate-passed . . . bill”); see also *Where There's A Will, There's A Way*, U.S. SENATE DEMOCRATS (July 25, 2012 3:38 PM), <http://democrats.senate.gov/2012/07/25/where-theres-a-will-theres-a-way/>. In response to the blue-slipping of S. 1925, Senate Majority Leader Harry Reid accused House Republicans of “looking for any excuse to kill or stall this worthy legislation” and dismissed procedural concerns as “hyper-technical” and a “fig leaf.” *Reid: Republican Obstruction, Infighting Threaten More Bipartisan Legislation*, U.S. SENATOR FOR NEV. HARRY REID (May 21, 2012), [http://www.reid.senate.gov/press\\_releases/reid-republican-obstruction-infighting-threaten-more-bipartisan-legislation](http://www.reid.senate.gov/press_releases/reid-republican-obstruction-infighting-threaten-more-bipartisan-legislation). But see Gramlich, *supra* (“[An aid for House Speaker John A.] Boehner . . . said . . . [t]he sponsors of the Senate measure knew . . . there [was] a constitutional issue, but included it anyway’ . . . adding that ‘the Senate [was] engaged in partisan gamesmanship.’”).

141. H.R. REP. NO. 112-480, pt. 1, at 240.

*B. The Self-Petition: Quarrels Over Confidentiality*

Like its predecessor reauthorizations, VAWA 2013 reaffirms the core of the self-petition process while modestly expanding pre-existing protections. One such expansion, termed the “widow and widower’s fix,”<sup>142</sup> allows the surviving minor children of a self-petitioner to retain derivative eligibility for LPR status where the qualifying parent passes away after filing her application.<sup>143</sup> As is the case with the protections extended to children through the U visa, this coverage expansion is consistent with Congress’s recognition—dating back to 1990—of “the prominent role children play” in IPV narratives and subsequent efforts to ameliorate the degree to which these children are rendered “indirect victims of the violence” through VAWA legislation.<sup>144</sup> Procedurally, VAWA 2013 also requires that information regarding the number, outcomes, and processing times of self-petition applications are included in annual reports from the Secretary of Homeland Security to Congress.<sup>145</sup> This provision can reasonably be viewed as a means to promote transparency and accountability, as concerns about VAWA as a tool to effectuate immigration benefit fraud<sup>146</sup> have grown in tandem with the increase in VAWA petition volume.<sup>147</sup> Again, neither of the aforementioned provisions caused meaningful disagreement during S.47’s markup.

The most controversial discussion relating to the self-petition process involved confidentiality provisions to prevent the disclosure of information about VAWA relief requests.<sup>148</sup> Congress first created these provisions in amendments to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)<sup>149</sup> and extended these protections in both the 2000 and 2005 VAWA reauthorizations.<sup>150</sup> In conjunction with the adoption of confidentiality provisions, Congress also imposed a prohibition on

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142. Nat’l Task Force, *supra* note 134, at 1.

143. S. 47 at § 803.

144. STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA 7 (Comm. Print 1992).

145. S. 47 at § 802.

146. Immigration benefit fraud “encompasses the willful misrepresentation of a material fact to qualify for a status or benefit under immigration law in the absence of lawful eligibility for that benefit.” RUTH ELLEN WASEM, CONG. RESEARCH SERV., RL34007, IMMIGRATION FRAUD: POLICIES, INVESTIGATIONS, AND ISSUES, 2 (2007).

147. See KANDEL, *supra* note 48, at 4-5 (nothing that “between 1997 and 2011, the number of [VAWA] petitions increased almost fourfold, from 2,491 to 9,209”).

148. See H.R. REP. NO. 112-480, pt. 1, at 231 (2012).

149. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 384; codified at 8 U.S.C. § 1367 (1996).

150. See Leslye E. Orloff, *VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT 1, 2 (2010).

immigration agents' reliance on information obtained solely from a batterer (and, in some situations, his family members) to take adverse actions against an undocumented victim, including initiating deportation proceedings and determining VAWA relief requests.<sup>151</sup> This prohibition requires that any evidence furnished by an abusive spouse be corroborated before it can be used to influence decisions regarding the victim.<sup>152</sup> Recognizing that the initiation of an immigration petition places victims at a "significantly heightened risk of further abuse" and that fear considerably deters immigrant victims for reporting abusive incidents, Congress wanted to prevent "abusers from 'interfering with or undermining their victims' immigration cases."<sup>153</sup>

Although VAWA 2013 does not alter the confidentiality provisions established by its ancestor reauthorizations, it is notable that these provisions were at issue for the first time since their implementation during the most recent VAWA reauthorization negotiations.<sup>154</sup> Under Section 801, entitled "Fraud Prevention Initiatives," H.R. 4970 would have authorized immigration agents to interview the abusive spouse of a self-petitioner during the adjudication of the self-petitioner's application if the spouse consented to the interview.<sup>155</sup> H.R. 4970 proponents maintained that this change was "absolutely essential" to address "falsified claims of domestic abuse by self-petitioners."<sup>156</sup> Interestingly, while H.R. 4970 proposed a "clear and convincing evidence" standard that self-petition applicants have to meet for approval of their applications, an immigration agent could consider "any credible evidence"<sup>157</sup> provided by a "U.S. citizen or permanent resident accused of . . . abuse" in determining the outcome of a self-petitioner's application.<sup>158</sup>

#### IV. PROPOSALS FOR VAWA'S FUTURE

Although the ultimate passage of VAWA 2013 may be viewed as an indication of Congress's continued commitment to combating IPV and providing protections to IPV victims as a whole, it appears that the expansion of protections involving battered immigrants will face building resistance in future reauthorization negotiations. As

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151. IIRIRA § 384 (a)(1); 8 U.S.C. § 1367(a)(1); *see also* H.R. REP. NO. 112-480, pt. 1, at 234; Orloff, *supra* note 150, at 15-16.

152. *See* H.R. REP. NO. 112-480, pt. 1, at 234.

153. H.R. REP. NO. 112-480, pt. 1, at 234.

154. *See id.* at 232 (noting that Republican-controlled Congresses had enacted the confidentiality provisions and extended and renewed them by nearly unanimous votes in both Chambers).

155. *See* H.R. 4970 § 801(b)(1).

156. H.R. REP. NO. 112-480, pt. 1, at 54.

157. H.R. 4970 § 801(a).

158. H.R. REP. NO. 112-480, pt. 1, at 85-86.

detailed in Part III, while VAWA 2013 does contain some notable coverage expansions for immigrant victims and their children, they are generally modest and, for the first time, were enacted against a landscape of considerable political discord.<sup>159</sup> Given the unprecedented delay in VAWA's most recent reauthorization, it is clear that the broad bipartisan support that birthed VAWA in 1994 has significantly eroded.<sup>160</sup> Accordingly, it is increasingly important "to take into account recommendations from the field" to gain a sense of VAWA's effectiveness—independent of the cloud of political rhetoric that has recently overshadowed objective evaluation. Based on this input from the field, the following discussion advances two proposals for a more effective VAWA: a modest increase in the current annual U visa allotment and maintenance of existing confidentiality provisions relevant to the self-petition process.

#### A. *Increasing the U Visa Cap*

The current 10,000 U visa cap should be increased to allow the issuance of more U visas not only to accommodate the growing number of undocumented victims who seek this form of relief, but to respond to the needs of law enforcement who consider the U visa an "invaluable tool that . . . makes it easier to pursue prosecution of criminals"<sup>161</sup> that may otherwise . . . "fl[y] under the radar."<sup>162</sup> In light of evidence of the U visa's positive effects on individual lives<sup>163</sup> and public safety at large,<sup>164</sup> VAWA 2013's failure to authorize an increase in the current cap frustrates Congress's dual legislative purposes in establishing the protective measure<sup>165</sup> and represents a break in the trend set by prior reauthorizations of modest and systematic enlargements of the U visa program.

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159. See CASA DE ESPERANZA AND MUJERES LATINAS EN ACCI N, *supra* note 101, at 20.

160. See *supra* note 140 and accompanying text.

161. H.R. REP. NO. 112-480, pt. 1, at 238 (quoting Letter from Chuck Canterbury, National President, National Fraternal Order of Police, to Sen. Patrick Leahy, at 1 (Feb. 1, 2012)).

162. *Id.* at 239.

163. See Hass et al., *U-Visa Legal Advocacy: Overview of Effective Policies and Practices* 9, available at <http://iwp.legalmomentum.org/reference/additional-materials/iwp-training-powerpoints/november-12-15-2012-atlanta-ga/plenary/OVW-U-visa-Practice-Policy-Brief.pdf>.

164. In a letter to Sen. Patrick Leahy in favor of a U visa cap increase, Chuck Canterbury, National President of the National Fraternal Order of Police, wrote on behalf of the organization's 330,000 members: "[T]he expansion of the U visa will provide incalculable benefits to our citizens and our communities at a negligible cost." H.R. REP. NO. 112-480, pt. 1, at 238.

165. See Jamie R. Abrams, *The Dual Purposes of the U Visa Thwarted in a Legislative Duel*, 29 ST. LOUIS U. PUB. L. REV. 373, 378-80 (2010) (describing the complexities present in IPV narratives that Congress took into account in legislating U visa provisions).

Considering the history of the U visa's implementation, the absence of a cap increase in VAWA 2013 becomes even more perplexing. It is important to note that use of the term "increase" in reference to S. 1925's authorization of the issuance of "up to 5,000 additional visas . . . until the end of the fiscal year"<sup>166</sup> is itself misleading. Although the U visa system was established in 2000, no U visas were actually issued until fiscal year 2009, as a result of administrative delay in promulgating regulations.<sup>167</sup> Recognizing both substantial law enforcement support of the U visa and the current cap's inability to accommodate the number of victims seeking the U visa as an avenue of relief, Section 805(a) of S. 1925 proposed a "recapture" of visas that were authorized in previous years but never issued due to the absence of regulations.<sup>168</sup> This proposal did not, however, alter the *total* number of U visas authorized by Congress since the U visa's inception. In fact, Section 805(a)'s reach was quite conservative, as it applied only to U visas authorized between 2006 and 2011, thus leaving a six-year period of unused visas unaddressed.<sup>169</sup>

Ultimately, without *any* change to the current cap, VAWA 2013 leaves "tens of thousands of visas that were originally authorized in October 2000, but were not issued due to bureaucratic delay" unused, notwithstanding demonstrated need.<sup>170</sup> Last year, the Department of Homeland Security reached the annual 10,000 U visa limit well before the end of the 2012 fiscal year, marking the third consecutive—and earliest—year the cap had been reached.<sup>171</sup> As stated by the Federal Law Enforcement Officers Association: "By limiting the number of U-visas law enforcement can request, Congress is effectively amputating the long arm of the law."<sup>172</sup>

In addition to hindering law enforcement efforts, failure to raise the U visa cap in response to applicants' increasing demand creates an especially dangerous situation for IPV victims. Under the current system, those who apply for U visas after the cap has been reached are forced to wait until new U visas become available in the next

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166. S. 1925 at § 805(a)(2).

167. *See id.* at 384-89. Notably, the delay spurred a class action lawsuit against the Secretary of the Department of Homeland Security and Citizenship and Immigration Services, in which advocacy organizations representing undocumented immigrants eligible for U visas alleging constitutional and statutory violations in the defendants' failure "to implement the U visa program in a timely manner." *Id.* at 388; *see also* Catholic Charities CYO v. Chertoff, 622 F. Supp. 2d 865 (N.D. Cal. 2008).

168. H.R. REP. NO. 112-480, pt. 1, at 240.

169. S. 1925 at § 805(a)(2).

170. H.R. REP. NO. 112-480, at 240.

171. Editorial, *U Visas Hit a Ceiling*, N.Y. TIMES, Sept. 4, 2012, at A26.

172. H.R. REP. NO. 112-480, pt. 1, at 232.



fiscal year.<sup>173</sup> In 2012, this arrangement resulted in a six-week gap period between the satisfaction of the 10,000 U visa allotment in 2012 and the trigger of a new cap in 2013.<sup>174</sup> Although six weeks in the course of a lifetime may seem insignificant to most, those facing severe violence often grapple with survival on a daily basis. The “sit-and-wait” approach that results from insufficient U visa allocation provides perpetrators the opportunity to use physical violence and other coercive tactics to convince victims not to testify at best and the opportunity to continue—and potentially escalate—the abuse of their victims in the worst-case scenario. Indeed, this approach is dissonant with research that indicates the most dangerous time for IPV victims is when they take steps to extricate themselves from the abusive relationship.<sup>175</sup> Filing for a U visa is a manifestation of a victim’s intent to begin separating herself from her batterer; however, when there are not enough U visas to go around, the victim is arguably left in a worse situation than she was before filing her application.

The exclusion of the U visa cap increase in VAWA 2013 was widely acknowledged as a strategic political response to overcome the House blue-slip problem.<sup>176</sup> While this explanation is certainly plausible given the deep divisions permeating today’s political landscape, it also is likely that the move was a placation of critics’ assertions that the U visa program is a driving force of immigration benefit fraud.<sup>177</sup> These assertions, however, are largely without merit<sup>178</sup> and should not be invoked to gain political leverage at the

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173. See *USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Aug. 21, 2012), <http://www.uscis.gov/news/uscis-reaches-milestone-third-straight-year-10000-u-visas-approved-fiscal-year-2012>.

174. See Mark Shurtleff & Doug Gansler, *Weakening Violence Against Women Act Betrays Immigrant Victims*, POLITICO (Sept. 11, 2012, 9:20 PM), <http://www.politico.com/news/stories/0912/81048.html>.

175. See Legal Momentum, *supra* note 49, at 2 (noting that the abuser may view the victim’s decision to seek help “as a threat to his sense of control,” prompting more violent behavior).

176. See Cristina Costantini, *The Problem With the ‘Victim Visa,’* ABC NEWS UNIVISION 2 (Jan. 31, 2013) [http://abcnews.go.com/ABC\\_Univision/visas-problem-victim-visa/story?id=18357347](http://abcnews.go.com/ABC_Univision/visas-problem-victim-visa/story?id=18357347) (stating that Sen. Leahy “finally caved to Republican pressure, and nixed the provision that would increase the number of U visas”).

177. See *Weaknesses in the U Visa Program*, FED’N FOR AM. IMMIGR. REF., [http://www.fairus.org/DocServer/U\\_Visa\\_Policy\\_Statement.pdf](http://www.fairus.org/DocServer/U_Visa_Policy_Statement.pdf) (last updated March 21, 2012) (arguing that breadth of the U visa program renders it “subject to fraud”); see also HOUSE OF REPRESENTATIVES COMM. ON THE JUDICIARY, 112TH CONG., *Full Committee Markup of H.R. 4970, the Violence Against Women Reauthorization Act of 2012*, at 79 (2012) (statement of Rep. Smith) (“The U visa program is already subject to fraud and abuse.”).

178. During a September 2011 “search of press reports and legal proceedings related to immigration benefit fraud using the U visa,” the Congressional Research Service “was only able to locate one press report of systematic immigration benefit fraud.” KANDEL, *supra* note 48, at 11.

cost of a program that has garnered bipartisan congressional and community support since its inception. According to September 2011 Congressional Research Service report, “[m]embers of [the U.S. Citizenship and Immigration Services] Fraud Detection and National Security Directorate recently [reported] that they had not seen cases of benefit fraud using the U visa.”<sup>179</sup> Despite the absence of evidence to support their position, opponents of the cap boost argued that “[i]ncreasing the cap will simply lead to further expansion of a program that is running out of control.”<sup>180</sup> This argument, however, ignores both the robust antifraud measures that are already built into the U visa system<sup>181</sup> and the reality that undocumented victims likely do not possess the high level of skill in both legal procedure and deceptiveness required to successfully commit immigration fraud.<sup>182</sup> In fact, “immigrant battered women are . . . reluctant to report . . . violence due to the lack of understanding of their legal rights and their undocumented immigration status . . . . Immigrant women frequently lack the knowledge and understanding of the various social and legal systems that can help them.”<sup>183</sup>

*B. Retain Self-Petition Confidentiality Requirements*

Although H.R. 4970’s “any credible evidence” provision<sup>184</sup> ultimately failed to garner enough congressional support for inclusion in VAWA 2013, the inherent problems with this proposal must be addressed in the interest of safeguarding future VAWA reauthorizations in the likely event this provision is reasserted. The authorization of immigration authority to consider evidence submitted by the U.S. citizen or foreign national accused of domestic violence coupled with the imposition of a heightened standard of evidence self-petitioners must meet for approval of their applications<sup>185</sup> produces a practically insurmountable barrier that would seriously undermine VAWA’s core purpose.

Section 801 of H.R. 4970 would erode confidentiality provisions that have long assuaged the fear that so often prevents undocumented victims from seeking relief.<sup>186</sup> At best, it represents a

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179. See KANDEL, *supra* note 48, at 11 n.66.

180. HOUSE OF REPRESENTATIVES COMM. ON THE JUDICIARY, 112TH CONG., *supra* note 176, at 79.

181. Antifraud measures include: adjudication of all VAWA petitions in a centralized location by specially trained adjudicators and reference of potentially fraudulent cases for further investigation by additional immigration authorities. See H.R. REP. NO. 112-480, pt. 1, at 243.

182. See KANDEL, *supra* note 48, at 11.

183. AMMAR ET AL., *supra* note 5, at 19.

184. H.R. 4970 at § 801.

185. H.R. REP. NO. 1120-480 at 233-34.

186. See Annie-Rose Strasser, *House GOP Would Let Domestic Abusers Know Their*

fundamental misunderstanding of the unique—and thoroughly documented—vulnerability of battered immigrant women.<sup>187</sup> At worst, by implicitly discounting the crippling fear of deportation that batterers so often capitalize upon to keep their victims in the cycle of domestic violence,<sup>188</sup> section 801 both resurrects and signals tacit approval of the dangerous power differential embedded in early coverture-rooted immigration laws that the VAWA self-petition process was specifically enacted to counteract.<sup>189</sup>

Allowing batterers to participate in the self-petition process undercuts Congress's original intent in establishing the self-petition in four distinct, albeit related, ways. First, it is in direct conflict with Congress's goal of reducing the victim's dependence on her batterer for lawful immigration status<sup>190</sup> by preserving "[t]he very tool that . . . abusive spouses are already using to facilitate abuse—namely, control over their [victim's] immigration status and the threat of deportation and permanent separation from the United States."<sup>191</sup> Second, it runs counter to an extensive discussion in VAWA 2005's legislative history asserting the importance of confidentiality provisions.<sup>192</sup> Third, it disregards the implicit importance that Congress attached to confidentiality provisions through its decision to impose sanctions for violations of these provisions.<sup>193</sup> Finally, it alerts abusers that their victims have taken a concrete step to extricate themselves from their abuser's complete control. As previously discussed, this exacerbates an already dangerous situation for the victim and results in a significant chilling effect in IPV reporting.<sup>194</sup>

Opposition to the continued inclusion of confidentiality provisions in VAWA's most recent reauthorization is largely based on

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*Victims Called For Help*, THINK PROGRESS (May 4, 2012, 4:50 PM) <http://thinkprogress.org/justice/2012/05/04/478442/house-gop-would-let-domestic-abusers-know-their-victims-called-for-help/> ("Undocumented victims already fear calling the police because they risk deportation in doing so. This portion of the bill adds on another level of fear by alerting their abusers they've sought help.").

187. See *supra* Part I.A.

188. See, e.g., AMMAR ET AL., *supra* note 5, at 15-16.

189. See *supra* Part III.A.-B.

190. See *supra* notes 91-92 and accompanying text.

191. H.R. REP. NO. 112-480, pt. 1, at 234; see also AMMAR ET AL., *supra* note 5, at 4 ("Practitioners continue to report instances in which the perpetrator attempts to discredit a victim in order to have her deported or deny her access to legal immigration status.").

192. See Orloff, *supra* note 150, at 9-10.

193. See *id.* at 11.

194. See *supra* note 186 and accompanying text; see also AMMAR ET AL., *supra* note 5, at 23 ("[S]evering the abuser's coercive control and cutting off the ability of the perpetrator to harass, threaten, and tamper with the victim is essential . . . for victim safety.").

the same concerns about fraud that sustained opposition to raising the U visa cap. Critics argue that VAWA's self-petition system is unnecessarily generous, enabling applicants to perpetrate immigration fraud both with the cooperation of the U.S. citizen or LPR spouse and without by fabricating claims of abuse.<sup>195</sup> However, although the potential for immigration fraud cannot be wholly discredited, cries of "countless" instances of the successful perpetration of fraud through the self-petition system<sup>196</sup> are largely anecdotal<sup>197</sup> and have yet to be confirmed by independent research. Until then, provisions such as those proposed in section 801 of H.R. 4970 threaten "to unduly delay, if not outright deny, protection to bona fide victims of domestic violence."<sup>198</sup>

#### CONCLUSION

The passage of VAWA in 1994 and its subsequent reauthorizations speaks to the commitment of lawmakers to combat the pervasive and devastating problem of IPV in the United States. Undoubtedly, this legislation was and continues to be an important means to achieve this end, with each reenactment of the law reinforcing this country's collective condemnation of IPV against women and children. However, the significance of VAWA's recent lapse before its reenactment and the political battle over the extent and form of the law's protections that caused and followed that lapse cannot be ignored.<sup>199</sup> The evolution of VAWA from a bipartisan effort to a political talking point raises concerns about the overall potential of the legislation to endure and expand in the future—a potential that was previously unquestioned—as well as the more focused ability of the legislation to protect immigrants, one of the most vulnerable classes of IPV victims.

The immigration provisions of VAWA provide a legal way for undocumented victims to break the cycle of violence in which they often find themselves trapped and allow law enforcement to bring perpetrators to justice. Without provisions that ensure confidentiality and allay immigrant IPV victims' fears of deportation,

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195. See KANDEL, *supra* note 48, at 8.

196. HOUSE OF REPRESENTATIVES COMM. ON THE JUDICIARY, 112TH CONG., *Full Committee Markup of H.R. 4970, the Violence Against Women Reauthorization Act of 2012*, at 161-62 (2012) (statement of Rep. Smith).

197. See *The Violence Against Women Act: Building on Seventeen Years of Accomplishments*: Hearing Before the Sen. Comm. on the Judiciary, 112th Cong. (2012) (testimony of Julie Poner), available at <http://www.judiciary.senate.gov/pdf/11-07-13%20Poner%20Testimony.pdf>.

198. H.R. REP. NO. 112-480, pt. 1, at 234-35.

199. "When I see how quickly it got done . . . it makes me feel optimistic," President Obama sarcastically remarked during the signing of the 2013 bill. Lederman, *supra* note 128.

undocumented battered women will remain uniquely susceptible to and disproportionately affected by IPV and the dangers associated with it. Although Congress has taken notable legislative steps toward addressing the particular obstacles afflicting battered immigrant women in the last two decades, the benefits and protections offered to these victims through VAWA can and should continue to be preserved and appropriately expanded.