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S. HRG. 112–132

THE VIOLENCE AGAINST WOMAN ACT: BUILDING ON 17 YEARS OF ACCOMPLISHMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 13, 2011

Serial No. J–112–33

Printed for the use of the Committee on the Judiciary

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THE VIOLENCE AGAINST WOMAN ACT: BUILDING ON 17 YEARS OF ACCOMPLISHMENTS

WEDNESDAY, JULY 13, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Whitehouse, Klobuchar, Franken, Blumenthal, and Grassley.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning, everyone. Today the Committee will consider once again the importance of the Violence Against Women Act. Since 1994 it has been the centerpiece of the Federal Government's commitment to combating domestic violence, sexual assault, and other violent crimes against women.

We worked in a bipartisan way to pass the Violence Against Women Act and its two subsequent reauthorizations. This law filled a void that had left too many victims of domestic and sexual violence without a way to ensure safety and justice and without the help they needed. And I was proud to work with then-Senator Biden and Senator Hatch to achieve this progress. I look forward to building on this legacy.

I saw the devastating effects of domestic and sexual violence early in my career as State's Attorney in Vermont for Chittenden County. I saw the violence and abuse reach the homes of people from all walks of life, and as we know, in all parts of the country every day, it does not make any difference the gender, the race, the culture, the age, the class, or the sexuality.

The Violence Against Women Act has helped to transform our criminal justice system. It has improved the response to the complex issues of domestic and dating violence, sexual assault, and stalking. It has provided legal remedies, social support, and coordinated community responses. With time, it has evolved to better address the needs of underserved populations and to include critical new programs focusing on prevention. Since the enactment of the Violence Against Women Act, the rate of domestic violence has declined, more victims have felt confident to come forward to report these crimes and to seek help, and States have come forward to enact complementary laws to combat these crimes.

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But despite this progress, our country still has a long way to go. Millions of women, men, children, and families continue to be traumatized by abuse. We know that one in four American women and one in seven men are the victims of domestic violence. One in 6 women and one in 33 men are victims of sexual assault, and 1.4 million individuals are stalked each year.

Now, as we look toward reauthorization of the Violence Against Women Act, we have to continue to ensure that the law evolves to fill unmet needs. We have to increase access to support services, especially in rural communities, something that, coming from one of the most rural States in this country, I have focused on. We also have to worry about it among older Americans. We have to look at our response to the high rates of violence experienced by Native American and immigrant women.

Programs to assist victims of domestic and sexual violence and to prevent these crimes are particularly important during difficult economic times. The economic pressures of a lost job or a home or a car can add a great deal of stress to already abusive relationships. The loss of these resources can make it harder for victims to escape a violent situation. And as victims' needs are growing, State budget cuts are resulting in fewer available services, including fewer emergency shelters, less transitional housing, less counseling, and less child care. A 2010 survey found that in just 1 day more than 70,000 adults and children were served by local domestic violence programs. At the same time more than 9,500 requests for services went unmet due to a lack of resources.

So I think the numbers illustrate the need to maintain and strengthen VAWA, the Violence Against Women Act. Its programs are very vital, including the STOP Formula Grant program, which provides resources to law enforcement agencies, prosecutors, the courts, and victim advocacy groups, and the Transitional Housing Assistance Grants. You know, in the midst of a mortgage and housing crisis, transitional housing is especially important because long-term housing options are becoming increasingly scarce.

We are going to welcome a distinguished panel of witnesses from around the country who can share important perspectives and personal experience. Of course, I know Dr. Van Buren, who is well known in Vermont for her work helping women to escape domestic violence through the organization Women Helping Battered Women. But we have a number of witnesses who will speak to this issue. As I said, it has not been a partisan issue. We have reached across party lines to do it, just as I found we did when I was a prosecutor.

With that, I will yield to Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I thank you very much for holding today's hearing. There is nothing you said about the need for the law that I would disagree with. I am going to raise some questions about administering the law and some things that we ought to look at that ought to be very carefully reviewed before we reauthorize it. But, obviously, I want the law to be reauthorized. These are the same questions I would raise when we reauthorize any legislation, par-

ticularly in these very difficult fiscal times that we are having now with the budget.

This law that we are reviewing today is an important law that has helped a countless number of victims across the country break the cycle of domestic violence and make an environment for people to move to very productive lives.

The law created vital programs to support efforts to help victims of domestic violence, sexual assault, and stalking. As an original cosponsor of the Senate version of the reauthorization, I remain deeply committed to ensuring Federal resources are provided to programs to prevent and end sexual assault and domestic violence. There is, however, an unfortunate reality, and that is the budget situation that I have talked about. We did not face this in 2000 or 2005 when I also worked for the reauthorization. During these economic times we simply cannot continue to allocate resources without verifying the resources are being used as efficiently as possible.

What this means is that as we in this Committee look to reauthorize the program, we need to take a hard look at every single taxpayer dollar being spent. We need to determine how those dollars are being used and if the stated purpose of the program is being met.

Back in 2001, Senator Sessions and I requested Government Accountability Office review of the grant programs under this bill. That review found that this act's files often lacked the documentation necessary to ensure that the required monitoring activities occurred. GAO found that "a substantial number of grant files did not contain progress and financial reports sufficient to cover the entire grant period." These are significant problems, and it appears that they continue to exist.

A review of individual grantee audits that were conducted in 1998 through the year 2010 by the Justice Department Inspector General indicates that the problems with the law's grantees' administration recordkeeping may actually be getting worse. During this time-frame the Inspector General conducted a review of 22 individual grantees that received funding from the program. Of those 22 grantees, 21 were found to have some violation of grant requirements.

In 2010, one grantee was found by the Inspector General to have questionable costs for 93 percent of the nearly $900,000 that they received in the grant. Another audit, this one from 2009, found that nearly $500,000 of a $680,000 grant was questioned because of inadequate support of expenditures. Another audit in 2005 questioned $1.2 million out of a $1.79 million grant.

So the list goes on. Simply put, in today's economic environment we cannot tolerate this level of malfeasance in the Federal grant programs.

So how do we fix the program? To start with, we need a legitimate, rigorous evaluation of the program, particularly the grantees, to ensure that these sorts of grantees are prohibited from getting funds. It also means requiring annual audits and evaluations. Unfortunately, as our witness from GAO will point out today, it is difficult to evaluate grantee performances because the data that is provided to the Justice Department is often difficult to evaluate. GAO notes that while the agencies are making progress to address

the gaps in data, these important issues need to be addressed by Congress.

Another issue that must be addressed during the reauthorization is immigration marriage fraud. Specifically, I am concerned about the reports that some of the procedures employed by Citizenship and Immigration Services actually help facilitate immigration marriage fraud, and some of it is further enhanced by provisions under this law. I am glad that we have a witness that is going to go into this.

As a past cosponsor of this legislation and its reauthorizations, I am saddened to hear about these examples of how a law that was designed to help victims may be used to continue to abuse victims of domestic violence. These are important issues that I will bring up during the reauthorization. We must do everything in our power to help victims of abuse and domestic violence, and that is why this bill must be reauthorized. However, we are well past the time where we can continue to reauthorize programs without giving them scrutiny, particularly in these fiscal times.

Thank you, and I have a longer statement I want to put in the record.

Chairman LEAHY. And all the statements of all the Senators will be placed in the record as though read.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman LEAHY. It is somewhat of a cliche to say our first witness needs no introduction, but Dr. Philip McGraw is the host of the syndicated daytime television show "Dr. Phil." On the show he has raised awareness of a wide range of social issues ranging from bullying and drugs to domestic violence and child abuse. I know my friend Senator Grassley has appeared on the show on adoption issues.

Senator GRASSLEY. Let me tell you, Senator Landrieu and I appreciated being on there because we work in the area of foster care, and his program probably got us more attention than two Senators could have got the attention of. Thank you, Dr. Phil.

Mr. MCGRAW. You are welcome.

Chairman LEAHY. In 2003, he created the Dr. Phil Foundation. It is a charity that funds projects that benefit disadvantaged children and families. Dr. McGraw has supported and volunteered for a number of other charitable efforts and causes, volunteering in New Orleans immediately after Katrina and in Haiti. Having been down there and seeing the devastating results of that earthquake, I appreciate that—both places. He received his undergraduate degree, master's degree, and doctorate in clinical philosophy from the University of North Texas.

Dr. McGraw, it is good to have you here. Please go ahead, sir.

STATEMENT OF PHILIP C. MCGRAW, PH.D., LOS ANGELES, CALIFORNIA

Mr. MCGRAW. Thank you. Chairman Leahy, Ranking Member Grassley, and esteemed members of the Senate Judiciary Committee, good morning. Thank you for inviting me to testify before you today about the Violence Against Women Act. This is an act that saves lives, and it saves children from the trauma of being ex-

posed to the violence that goes on in homes, and I am very pleased to say that the decline in reported acts of violence against women make it clear that this Act is working. So much has been accomplished. We now have coordinated efforts addressing domestic and sexual violence.

But it is the evolution of this Act that will keep it relevant; it is the evolution of this Act that will keep it effective. And as we are painfully aware, there are 2 million women a year that are victimized, meaning that as we sit here today, in the first hour of this hearing, if you do the math, 228 women are being victimized. They are being beaten, terrorized, and intimidated as we sit here in the first hour, all behind closed doors, all undoubtedly feeling very alone. And three of those women will be murdered today. So I am here today to join in being a voice for those who are disempowered and cannot find that voice yet deserve to live in peace.

Now, these numbers are alarming, but the reality, Senators, is worse, because this is one of the most underreported crimes in America. Tragically, untold numbers of victims never go to the police, they never go to hospitals, and many of them, because they are riddled with fear or shame, do not even tell members of their own families. So there is so much work to be done to open the dialog about this.

And, sadly, victims are getting younger and younger. Domestic violence is now the most common cause of injury to women ages 15 to 44. That is right--15. In fact, among teenage girls who are killed, nearly one-third are killed by a boyfriend or a former boyfriend. Now, the question is: Who is going to step forward to do something about this? And that is why I am such a fan of this Act.

In too many situations, violence against women, young and old, is almost treated as an "acceptable crime," and the ripple effects through our society are like a tsunami. Intimate violence is a wicked problem; it is many-sided. There are so many elements to it that it is difficult to wrap our heads around it, and it involves both victims and treatment, and it is less than perfect, frankly.

Here is something that really concerns me, Senators. More than 10 million children will witness their mothers, aunts, or sisters being threatened, intimidated, or beaten by intimate partners and family. And, predictably, these children do not do well in these toxic situations. They are often traumatized; they have a range of interpersonal problems. They have a higher incidence of emotional and behavioral problems, mental illness, alcohol and drug abuse, and poor academic achievement. Some become abusers themselves, and all of this puts a huge strain on currently underfunded and overly stretched resources. Victims are at risk for repeated and varied violence. It is a phenomenon called "polyvictimization." So this is a ripple effect that starts with the act of intimate violence, and then it spreads to other family members.

Now, I long ago resolved to never speak unless I felt I could add something to the silence. Last year, at the "Dr. Phil" show, we knew the time had come—to not just add to the silence, but to end it by placing the issue of domestic violence squarely in the center of our daily platform and thrust it into the national dialog. We did so by launching the End the Silence on Domestic Violence campaign, and we partnered with the National Network to End Domes-

tic Violence, and this is a passionate and proactive organization. And we partnered with our viewers to become "Silence Breakers" committed to bring about change.

We brought in experts from every walk of life, and in an unprecedented programming move, we committed and will continue to commit countless hours of programming to educate millions of women about the resources that are available. And we brought real people on the show, not statistics.

For example, Audrey Hanne—this is a woman—and I show this because I want people to know these are real folks. She told us that she silently suffered through years of emotional abuse from her husband. She says that finally when she tried to leave, her husband, turned violent. In a single crippling instant, beating her in the head, stabbing her, and then doused her with gasoline and setting her on fire, altering her face and her life forever. Now, he is currently charged with attempted murder and is incarcerated awaiting trial.

Sandra Tarris says she experienced excessive abuse over the course of 4 years that included black eyes, broken fingers, choking, and countless death threats. And she says two of these happened when she was 6 months pregnant. Her injuries were so bad that it cost her her left eye and a cracked skull. She tried to get away, but he tracked her down and held her hostage. It resulted in a felony assault plea agreement, and because of the abuse she has endured to her left eye and damage to her optic nerve, she will probably go blind in the other very soon. So fearful that he would find her again, she has moved 17 times, always looking for a place where she will feel safe.

This precious 3-year-old child was murdered by an abusive father in a custody fight. When he could no longer find a way to control his ex-wife, he took the life of the child, leaving a helpless mother.

Again, these are not statistics. These are our neighbors. They are lost in the dark, hoping someone will come for them and lead them to safety.

As Chairman Leahy said earlier, in today's economic times the needs are increasing, but the resources are drying up. A 2010 census by NNEDV found in a day, 70,600 adults and children were served by local domestic violence programs, but 9,500 weren't. And I worry about those 9,500, Senators, because it is during the time that they try to get away from their abuser that they are most at risk of being seriously injured or murdered.

Now, bottom line, we need more legislation like this, providing critical programs and support. We need better coordinated efforts among the courts. And, above all, we need to cut through the red tape when a woman is in crisis because red tape means red blood is spilled at home. We cannot have them bogged down.

We have to focus on the power of prevention through schools and at home. We have to create curriculums to teach the kids that it is never OK to put your hands on each other in anger and violence. And as husbands and fathers, we have to model this.

On a final personal note, this issue deeply hits home for me because I recently became a grandfather, and I am going to brag and show my granddaughter here—Avery Elizabeth. I came home one day after taping a show on domestic violence, and she crawled up

in my lap, and I said right then, "This is the first little girl that has been in our family. I want her to grow up in an environment where it is safe." I want her to grow up like all young girls should be able to do, knowing that they can have the peaceful existence in their own homes. And to do that, we have to have this Act. We have to have the Violence Against Women Act.

I pledge to you today that our campaign to End the Silence on Domestic Violence is just beginning. We want to make ourselves available to advocate for these victims, to partner with you guys in any and every way that we can.

We are honored to stand with you; we are ready and willing to do whatever it takes to contribute to a safer and more promising future for the women all across America. Our children and grandchildren deserve nothing less.

I thank you for inviting me to speak here today, and I thank you for shepherding and overseeing the Violence Against Women Act because it is very, very important legislation. Thank you.

[The prepared statement of Mr. McGraw appears as a submission for the record.]

Chairman LEAHY. Well, thank you, Dr. McGraw, and before the hearing began, you and I had a chance to discuss, among other things, our grandchildren, and I think we both agreed that is the best part of life.

Our next witness is from Iowa, so I would like to ask Senator Grassley to introduce him, and I thank him for being here.

Senator GRASSLEY. Thank you for that privilege, Mr. Chairman.

Michael Shaw is co-director of Domestic Violence & Sexual Assault Services at Waypoint Services for Women, Children & Families in Cedar Rapids, Iowa. He is a certified sexual assault and domestic violence counselor and an experienced trainer on a variety of sexual assault and domestic violence issues. Mr. Shaw is on the Board of Directors of the National Center for Domestic and Sexual Violence and the Iowa Coalition Against Sexual Assault. He received his bachelor's and master's degrees in social work from the University of Iowa.

Welcome, Mr. Shaw.

STATEMENT OF MICHAEL SHAW, CO-DIRECTOR, DOMESTIC VIOLENCE & SEXUAL ASSAULT SERVICES, WAYPOINT SERVICES FOR WOMEN, CHILDREN, AND FAMILIES, CEDAR RAPIDS, IOWA

Mr. SHAW. Thank you very much, Senator Grassley. Thank you for inviting me to speak to you today. My name is Michael Shaw. I am the co-director of Waypoint's Domestic Violence & Sexual Assault Program in the great State of Iowa, Cedar Rapids, Iowa. I have worked as an advocate or a volunteer supporting survivors of sexual violence since 1993. Before the passage of the Violence Against Women Act in 1994, there were gaping holes in our country's response to sexual violence. Reports such as "Rape in America: A Report to the Nation" in 1992 and "The Response to Rape: Detours on the Road to Equal Justice" in 1993, showed our governmental systems had essentially left survivors of rape to fend for themselves. VAWA, cosponsored by then-Senator Joe Biden and Senator Orrin Hatch, began to remedy these issues by strength-

ening systems of victim support and criminal accountability. I will briefly talk about the impact of VAWA for sexual assault survivors and reflect on what VAWA means to me personally.

VAWA saves lives. The first time I answered a rape crisis line in 1999, the caller said "I am going to kill myself." That was a scary first call, but I had excellent training to help me support her. I listened for close to an hour as she talked about wanting the pain of her rape to go away.

For more than 17 years, VAWA has supported the training of thousands of victim advocates, police officers, and medical professionals on the best ways to support rape survivors.

VAWA provides supportive services to help victims of sexual assault and their children stay safe and rebuild their lives.

Last year, we received a call on our crisis line from a mother—I will call her Janet—who had just found out her daughters had been sexually abused. What I will share about this story will sound like a life falling apart, but if you listen carefully, you will hear how she is laying the foundation to rebuild her life and the lives of her children.

On the first call, Janet did not know what to do. Her 9-year-old daughter had just told her that a man they trusted was touching her private area. The advocate listened and responded with compassion.

A couple of days later, Janet called back and said her 14-year-old daughter had just confirmed that the same person had sexually abused her. Once again an advocate listened and offered support.

A couple days later, Janet called back and disclosed that she had been a victim of sexual abuse. I took that call. Not only was she devastated by what her children were telling her, but now she was dealing with the trauma she had experienced. Janet had never told anyone about her own abuse.

While this may seem like a life falling apart, please note that Janet kept calling back. She had someone to talk to when she needed it most. We offered Janet a sounding board so that she could then give her children calm, reliable, non-judgmental support, which experience and research has shown is essential to healing for children, and we supported Janet as she talked about her own trauma. The VAWA-supported services helped a woman lay the foundation to heal from her own child sexual abuse and helped her support her children to do the same.

VAWA saves money. In its first 6 years alone, VAWA saved taxpayers at least $14 billion in net averted social cost. These social costs include medical and mental health care needs, missed hours of work, increased substance abuse, and difficulty achieving educational goals.

Rape is the most costly of all crimes to its victims, with total estimated costs at $127 billion a year.

Skilled advocates provide victims with emotional support and help them figure out their next steps. The VAWA-supported services are an investment in the lives of sexual assault victims.

Each subsequent reauthorization of VAWA has improved the scope of comprehensive services for victims. VAWA 2000 strengthened community protections for immigrant victims of sexual as-

sault by funding training to improve law enforcement's response to immigrant victims.

VAWA 2005 included the first Federal funding stream to support sexual assault survivors regardless of their involvement with other systems with the Sexual Assault Services Program. Rape Crisis Programs across the State of Iowa have used these dollars to improve and enhance services to sexual abuse survivors.

Finally, the Violence Against Women Act is more than just a law to me. VAWA is part of a collection of resources that indicates our country is progressing toward a goal of a society free of sexual violence. Believing that a violence-free world is possible is part of what sustains me as an advocate.

Frequently, when I tell people what I do, they respond "Wow, that must be depressing work," or they try to avoid eye contact because nobody really wants to talk about rape. Some days it is hard, but listening to survivors keeps me going. Long ago I made a commitment to listen to survivors as long as there were survivors needing support. Survivors' voices inform my administrative work and my prevention efforts. Victims' voices inform every decision I make as a co-director and, most importantly, they remind me to feel the work, to care about the work. They remind me that I am part of a movement.

In 2000, I heard Cassandra Thomas, then-Vice President at the Houston Area Women's Center, speak. She eloquently and passionately expressed what I was feeling as an advocate and the father of three children. She challenged us by saying:

"Some of you all are doing field work. I joined a movement, and the canvases look real different depending on whether you are movement people or field people."

"So now, will your canvas be a movement canvas—a canvas about social change, a canvas about destroying patriarchy that has set up a system of sexual violence? Or are you just going to do counseling groups? What is your canvas going to look like? Now do not get me wrong. I want more money for counselors. I want to have some groups. But I am not just doing social service. If that is what you are doing, let me just tell you something, your canvas is going to look way different, because I am about making sure my 5-year-old child never sits in a group, that my 5-year-old child never goes to a hospital for a rape kit. That is what I am about, and social service will not do that for me. I need movement, folks. A field just lays there."

Senators, I believe you, I, and VAWA are part of a movement, and we must do everything in our power to support survivors, hold perpetrators accountable, and move inexorably toward a world that is free of sexual violence for our children and their children. I strongly encourage you to continue building on the accomplishments of the last 17 years by swiftly reauthorizing an improved VAWA.

Thank you.

[The prepared statement of Mr. Shaw appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

We are in a few minutes going to have a couple roll call votes on the floor, but Senator Grassley and I have talked about it. We

are going to try to keep the hearing going, so if you suddenly see people jump up and leave, it is not because of something you said. It is because as you will see on the clock up on the wall behind you, when first one light goes on, that will mean a vote. When five white lights go on, that means drag yourself over there in a hurry.

Our next witness is from Vermont. Dr. Jane Van Buren is an old friend, and she is the executive director of Women Helping Battered Women in Burlington, Vermont. That is a nonprofit organization that provides services to victims and survivors of domestic violence and abuse. In a 1-year period between July of 2009 and July of 2010, Women Helping Battered Women provided help and services to more than 4,400 women and their children. In our small State, that is a great deal. Prior to joining Women Helping Battered Women, Dr. Van Buren was the founding director of the Vermont Alliance of Nonprofit Organizations. She is an adjunct professor at the University of Vermont, Johnson State College, and my own alma mater, St. Michael's College. She received her master's degree in public administration from Northeastern University and her doctorate in management from Case Western Reserve University.

We are delighted to have you leave the cool hills of Vermont to come down to the somewhat less cool atmosphere of Washington. Go ahead, please.

STATEMENT OF JANE A. VAN BUREN, PH.D., EXECUTIVE DIRECTOR, WOMEN HELPING BATTERED WOMEN, INC., BURLINGTON, VERMONT

Ms. VAN BUREN. Good morning. Thank you, Senator Leahy, Senator Grassley, and other distinguished members of the Committee. Thank you for the opportunity to talk about the importance of VAWA, in particular how my organization, Women Helping Battered Women, has used crucial VAWA funds to serve victims of domestic violence and their children successfully in the State of Vermont.

Women Helping Battered Women was founded in 1974 to provide emergency shelter to women fleeing abuse. From 1974 to 1994 our advocacy consisted of sheltering women and children, responding to hotline calls, and helping women secure relief from abuse orders. There was no money for paid staff, but volunteers kept the shelter doors open and answered the hotline calls. We were a valuable resource in the community, but our services did not go far enough. Victims with no money, no credit, no employment history, and no confidence in their ability to be self-sufficient or to keep their children safe, fed, and housed all too often ended up returning to their batterer. They lacked the resources to do anything else. Their choice too often came down to a life of violence or a life on the streets.

What VAWA has allowed us to do is provide women, men, and children with programming that is comprehensive and sustainable and which ultimately leads victims to independence and freedom from violence. This landmark legislation filled a void in Federal law that had left too many victims of domestic and sexual violence without the help they needed to restore their lives.

Over the past 17 years, Women Helping Battered Women has built a strong response to domestic violence in Chittenden County, Vermont. This includes support and counseling for children exposed to and affected by violence, transitional and emergency housing, legal advocacy and collaboration with law enforcement, employment and job readiness training, credit counseling and repair, crisis intervention, safety planning, and extensive public education and training.

I would like to tell you my own stories, one about Betsy and one about Rachel, two women that we have served.

Betsy has advanced multiple sclerosis and has been living on a limited income since she lost her ability to work. She called our hotline in crisis because her partner was threatening her life and controlling her finances. He used her credit cards without her knowledge, and the high payments were too much, forcing her to miss some payments and then forcing her to be financially dependent on her abuser for basic needs such as housing and food.

When Women Helping Battered Women first spoke with Betsy, we discussed her options for leaving her current situation and regaining her independence. Our shelter was full, so we accessed Vermont's Emergency Assistance Fund and housed Betsy in a local motel. Betsy was eligible for 28 days in a motel, during which time she was required by the State to conduct a housing and job search. This was a challenge given Betsy's financial and physical limitations, coupled with the high rental costs and low vacancy in Chittenden County. In addition, many landlords—most, in fact—require credit checks, security deposits, and first month's rent. The total amount due up front would be close to $1,500, an impossible amount for Betsy.

Luckily, Betsy was eligible for rental assistance from Women Helping Battered Women as part of our VAWA Transitional Housing Program. We helped Betsy find an accessible apartment and met with the landlord to clarify the details of her damaged credit score. Today Betsy is living in her new apartment and working closely with our THP staff to reduce her debt and repair her credit. Betsy has been independent and free from violence for the past 9 months.

My second story is about Rachel, who fled her batterer and came to our emergency shelter in Vermont from another State. When she arrived, her behavior was erratic because her husband had been keeping her from taking her medication for bipolar disorder. Without her medication, Rachel suffered prolonged depression and had stopped taking care of herself and her child, and eventually the State removed the child from her home. This chain of events spurred Rachel to flee, vowing to regain custody of her daughter.

In order for her to regain custody, Rachel needed to stabilize her mental health and her housing. Fortunately, a two-bedroom apartment had recently opened up at Sophie's Place, which is our 11-unit transitional housing apartment complex. There, Rachel was able to work with Sophie's Place staff to improve her resume and interview skills, work with our STOP-funded legal advocates on her child custody case, and maintain stable mental health. After 5 months, Rachel secured an excellent job at the local university and

was able to regain custody of her daughter. Today they are living safely and happily at Sophie's Place.

Stable housing makes it much easier for survivors of domestic abuse to successfully access our empowerment-based, economic justice advocacy services that are the hallmark of Women Helping Battered Women's work. Our service users have access to economic literacy training, credit counseling and repair, debt management, advanced housing advocacy including homeownership counseling, and employment and training opportunities. Survivors in transitional housing have the opportunity to develop individualized plans to help them maintain their housing or move from homelessness into permanent housing.

VAWA funds make all of this possible, and by maintaining the funding for transitional housing services and coordinated community response services through STOP, Congress has the unique opportunity to help victims regain strength and confidence and reduce their reliance on public programs by enabling the move to permanent housing and lifelong financial independence.

Thank you very much.

[The prepared statement of Ms. Van Buren appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Dr. Van Buren.

Our next witness is Julie Poner. Did I pronounce that correctly? Thank you. She is the mother of twins, currently living in Indianapolis, Indiana. She will speak about her own difficult ordeal, but she has worked to help combat international child abduction to prevent the misuse of current provisions of the law for green card fraud.

Ms. Poner, please go ahead.

STATEMENT OF JULIE PONER, INDIANAPOLIS, INDIANA

Ms. PONER. Thank you, Senator Leahy. Thank you, Senator Grassley.

In 1994 I married a man from the Czech Republic. We were married in Prague, and our children—twins, a boy and a girl—were born there. We moved 12 times in the 3 short years we were together between three countries and two continents with our young children in tow. Our moves were always explained to me as necessary for business, when in reality we were living life on the run, managing to stay one step ahead of the authorities. Sometimes we lived with furnishings and sometimes without. My children and I were often left alone for extended periods of time without the basic necessities such as food, a vehicle, and money.

In 1995 following a sudden and unexpected move to the U.S., we eventually settled in Massachusetts and filed for my husband's permanent residency status. Within days of receiving notice of our impending interview with INS, my husband reached around me for the coffee pot one morning and announced that we would be getting a divorce now. He instructed me to file for the divorce and continue to sponsor him for his green card. After filing for the divorce, my husband became abusive toward our children and threatened to take them back to the Czech Republic if I did not sponsor him for his green card.

As part of our divorce proceeding, our family court judge ordered me to attend my husband's immigration interview. While at the interview I was told by INS agents that I could face Federal prosecution for marriage fraud if I continued to sponsor my husband. They explained that he met no legal requirement to be in the country except through our marriage. I was strongly encouraged to withdraw my petition. I did, with the understanding that I was complying with our Federal Government and with Federal law.

Facing deportation for marriage fraud, a charge leveled by the Federal Government, my husband, a former professional hockey player, at 6 feet, 2 inches tall and over 200 pounds, self-petitioned as a battered and abused spouse. It was at this point that all communication I'd had with the two INS trial attorneys stopped, because once an immigrant files under this special circumstance they are protected by our Federal Government. Immigration officials are prohibited from entering into a discussion with the American named in the claim.

As a result, my children and I suffered unimaginable consequences. The family court judge failed to heed the testimony of a child abuse investigator for the DA's office. In order to protect my children from further abuse and the continued threat of abduction, I left the State. I was subsequently arrested by two FBI agents and a sheriff, fingerprinted, photographed, strip-searched, deloused, jailed, and held on a $500,000 bond. I was extradited back to the State of Massachusetts in handcuffs and shackles by two Massachusetts State troopers. My children were placed in foster care and for a 3-month period we were poked and prodded by various court-appointed experts to no finding before my children were returned to me.

During this time, in a case unrelated to ours, my ex-husband served a year on probation for assault and battery. After 2 additional years he agreed to allow us to legally leave the State of Massachusetts. He'd wiped me out. I had nothing more for him to take. My children and I were left with no home, no car, no money, no furnishings, no insurance of any kind, and with hundreds of thousands of dollars of his debt.

Today I have sole custody of my children. Over the years I have talked with countless men and women who have similar stories to tell, American citizens who have lost access to their children, their homes, their jobs, and in some cases their freedom because of false allegations of abuse. Currently there are no safeguards in place to prevent fraud or to prevent an immigrant from fabricating tales of spousal abuse. Through unfounded claims, immigrant spouses can bypass the 2-year marriage requirement enacted by the Immigration Marriage Fraud Amendments of 1986 that were actually established to prevent marriage fraud. No one from a local USCIS Service Center investigates or conducts a face-to-face interview with the immigrant. The only evidence considered is what is submitted by the self-petitioning immigrant, and the entire process is handled via paperwork in the Vermont Service Center. Because of confidentiality clauses and concerns for victims' safety from their alleged abuser, claims of battery and abuse go unchallenged. In cases of domestic violence, the immigrant is presumed to be the victim. It is also presumed that no one would ever lie about being

a victim and that an immigrant has nothing to gain by lying about domestic violence. The evidentiary standards of proof of abuse have been relaxed to further protect the alleged victim. For instance, if the American citizen spouse discovers infidelity or other fraudulent behavior on the part of the immigrant, and as a result withdraws his/her support for the joint petition, this can be considered emotional abuse.

We respectfully ask that you please consider amending VAWA and the Immigration and Nationality Act, requiring a local USCIS agent to conduct a proper and thorough investigation into these types of cases which would include access to interview both spouses in the process.

Thank you.

[The prepared statement of Ms. Poner appears as a submission for the record.]

[Applause.]

Chairman LEAHY. Thank you very much.

Incidentally, everybody here is a guest of the Senate, and whether it is somebody who is agreeing or disagreeing with any of our positions here, there will be no demonstrations of any sort. That is the rule that we always follow here. And I appreciate the guests who are here. I want this to be something where everybody who is here is able to observe the hearing. We are also simulcasting this, as I understand, on our website.

Our next witness is Eileen Larence. She is the Director of Homeland Security and Justice Issues at the U.S. Government Accountability Office. She manages the huge influx of Congressional requests regarding law enforcement and the Department of Justice. Ms. Larence holds a master's degree in public administration.

I appreciate you being here. Thank you very much.

STATEMENT OF EILEEN R. LARENCE, DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. LARENCE. Thank you. Chairman Leahy and Committee members, I am pleased to be here today to participate in your hearing on accomplishments achieved under the Violence Against Women Act.

As the other witnesses have also pointed out, Federal grant funds provided under the Act have meant that many victims of crimes such as domestic violence and sexual assault receive critical care and support, such as counseling, legal, and housing help. Making sure that scarce Federal dollars are doing all they can to provide these services is important, especially in these austere times.

In the 2006 updates to VAWA, Congress gave GAO a task: help the Congress obtain data to determine just how big a problem the Federal Government is trying to address and where the Congress may need to target funds to fill gaps and what mix of investments to make.

Specifically, the Congress asked GAO to determine how prevalent is domestic violence, sexual assault, dating violence, and stalking among women, men, youth, and children, and what federally sponsored services are these groups of victims receiving for these crimes.

In summary, GAO found that comprehensive data did not exist and could not be reconstructed to answer all of these questions. We found that data did not exist on how prevalent these crimes are nationwide among the four victim groups for several reasons:

First, little national research existed on some crimes such as stalking.

Second, it is too costly to design a new single research effort or survey to collect all of this data.

Third, existing research or surveys cover portions of these crimes, such as domestic violence, or certain segments of the population, such as adults over 18. But because the scope of these efforts varied in this way and they used different definitions of these crimes and victim groups, we could not combine results to develop a nationwide picture. Therefore, we determined that some important information gaps exist such as on the prevalence of youth dating violence and stalking. We recognize that perfect data may never be available, since victims may be reluctant to report these crimes, or affordable. However, stakeholders recognize that prevalence data helps to make informed policy and research decisions. Thus, we recommend that the Departments of Health and Human Services and Justice identify possible ways to fill gaps, either by revising existing research or surveys or designing new ones if agencies could fund them.

We also recommended that agencies develop common definitions where possible. In response, agencies have several new initiatives that will help to fill some but not all of these gaps. Agencies also have either developed or are updating some common definitions and using them in various research and survey efforts, although their use is not uniformly required.

We also found that looking across 11 grant programs providing services to victims, comprehensive data showing the services women, men, youth, and children receive by type of service did not exist. Such data can help to identify gaps and inform investment decisions. Agencies are collecting extensive data on the activities that grants fund, such as the numbers of individuals served, and for some programs data on victims' demographics to help account for program accomplishments. But agencies cannot distinguish the kinds of services men, women, youth, and children are receiving for all grant programs due to several reasons.

First, the statutes governing the grant programs do not require that data be collected this way.

Second, the statutes created grant programs for different purposes so that the data collected differ.

Agencies also expressed concerns that obtaining such data could inadvertently identify a victim, jeopardizing the person's safety. In addition, we found that the data recipients provide might not be uniform or consistent. For example, some recipients said they determined the victims race by visually observing the victim while others had the victim provide these data. However, both agencies say they have taken a number of steps to address the quality of data reported and have seen significant improvements.

Furthermore, agencies did not think some recipients would have the resources or access to technology and that some recipients who obtained funds from many different sources would be unduly bur-

dened if reporting is too prescriptive. Finally, Federal agencies stated that they would face costs changing their own data collection systems. Because of these concerns and potential cost, we did not recommend that Federal departments change existing recipient reporting. However, our findings may offer some observations moving forward.

Congress may want to work with agencies as they approach reauthorization and changing existing or creating new programs to determine: First, what do agencies already know about the impact of VAWA and what grant funds have accomplished? What other critical questions will Congress and agencies want to know, for example, 3 or 5 years out? And, therefore, what data will they need to collect now?

Agencies already spend a lot of money collecting a lot of data. Are they using it as best they can to help determine if the Government is making the right mix and level of investments, what difference these investments are making over time, and how to shape the future mix of investments?

Finally, what will it cost to collect new data to help answer these questions? And is the cost worth the benefits? This is especially important because we recognize that the tradeoff decision to spend less money on services and more on collecting data to assess results can be difficult, but also critical to addressing these somber crimes.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions.

[The prepared statement of Ms. Larence appears as a submission for the record.]

Chairman LEAHY. Well, thank you very much.

I would just make a couple points here on Ms. Poner's testimony. I can only imagine what a nightmare that must have been that you went through, and I have asked my staff t meet with you again after this hearing and get more details. We obviously need professionals who are trained to identify victims and make sure they are treated properly, and I know of the work the Vermont Service Center and the specialized VAWA unit there does, but if there is fraud in the system, we want to get rid of that because it harms bona fide applicants. And that is why I support as much transparency as we can, and I do want to follow up with you because we also handle immigration matters here in this Committee, and I want those to work the way they should and not to the detriment of people like yourself or your children.

Dr. Van Buren, you have gone over a number of things, talking about what we have done in the past. We know there are probably unmet needs today. If you were to point out one of the most significant unmet needs today, what would that be?

Ms. VAN BUREN. I would have to say it is housing, lack of affordable housing. There is just a low census of available housing in Chittenden County, and so, as I said in my testimony, it is really often if you cannot find housing you go back to your batterer, and that is not the situation we want to see.

Chairman LEAHY. Thank you for that, and I would note for those who are not familiar, Chittenden County is the greater Burlington area where we have nearly a quarter of our State's population in that one county. There are 13 other counties besides that, and

housing is very tight and very expensive there by Vermont standards.

Mr. Shaw, what needs are currently unmet for the victims of sexual assault?

Mr. SHAW. What we are addressing recently is the reduction in funding and resources available for us to support victims of violence. In 2010, a survey of the rape crisis centers found that 72 percent of the rape crisis centers experienced funding losses in the past year. Of those centers that experienced funding losses, 73 percent of the lost funds were State funds, 76 lost local funds, and 46 percent lost Federal funds. That type of funding reduction reduces our ability to be able to answer the crisis line, to be able to provide the best support to victims when they are needing our support.

Chairman LEAHY. And, Dr. McGraw, you talked before about your—actually a season-long program on domestic violence, and one of the things I have been impressed with, when you help survivors on your show, you partner with a number of local and national organizations and programs addressing domestic violence. You have had experience with a lot of that, and these victims come from all over the country. What kind of role do these organizations play in helping victims escape violence?

Mr. MCGRAW. Well, Senator, they are absolutely critical at both the national and the local level. In an unprecedented way, we have just spent countless hours of programming about this because we wanted to raise awareness. We wanted to teach women what violence is—sometimes they do not know when something has crossed the line—and then we want to point them to resources. And if we do not have organizations like NNEDV and the domestic violence hotline and then the local emergency shelters—look, this is a grassroots thing, and if a woman is in crisis and she does not have a safe place to go, then she is in the greatest jeopardy that she will ever be in her life.

So it is these organizations that they're in the trenches with these women and with these children. We can point them to the resources, but as you say, they are from all over the country. We cannot go home with them all. But these organizations do. They meet them in the middle of the night. They talk to them at 2 and 3 o'clock in the morning, and they keep them safe and secure from their abuser.

We've also had a real dialog with some of the organizations that do the research that informs this kind of legislation—NIMH, NSF. We need to increase funding to them so they can tell us what this legislation needs to deal with. As I said, this is what we call a wicked problem. It is more than just prevention. You have to have education, you have to have prevention, you have to have remediation. These women have anxiety, depression, PTSD, all sorts of things in the aftermath, as do the kids. So these organizations are the ones that really step up, and let me tell you, NNEDV, these guys are champions in this realm, and they do terrific, terrific work.

Chairman LEAHY. Thank you. I am going to go and vote. Senator Franken, were you going to go vote? And, Senator Whitehouse, have you voted?

Senator WHITEHOUSE. I have voted.

Chairman LEAHY. Then I am going to turn it over to Senator Whitehouse, and then I know Senator Grassley is on his—actually, I will turn it over to Senator Grassley first because he is back, and then go to you, Senator Whitehouse. Thanks, Chuck.

Senator GRASSLEY. I know this just confirms for all of you how chaotic Congress is.

[Laughter.]

Senator GRASSLEY [presiding.] Thank you very much, Mr. Chairman.

I am going to start, first of all, by thanking everybody for coming, and I have already highlighted my relationship with Dr. Phil, and thank you for coming and bringing attention to this issue, as you have so many other issues.

I am going to start with Ms. Larence. Your written testimony concludes, "As Congress considers moving forward on this bill, it should consider important issues such as obtaining data necessary to determine the prevalence of domestic violence and sexual assault." However, your testimony also notes that this data is lacking because grant recipients often do not have data collection systems to collect and maintain the information.

As we consider reauthorizing the legislation, what types of reforms should we be considering for the Department of Justice and Health and Human Services Department to ensure that grant recipients are collecting and reporting accurate data?

Ms. LARENCE. Thank you. Senator Grassley, we looked at two issues in our review. One was looking at how do we know how big the problem is. We fund a lot of research and surveys to try to obtain data on the prevalence of these crimes, especially by group—men, women, youth, and children. Do the agencies have an opportunity to use that data that they have collected to establish a baseline and track over time how these trends in crime are changing to help educate the Congress about the mix of services they might want to provide?

The second area we looked at is—do we have data on the types of services we are providing across these groups? And we found that trying to get that data is challenging to a number of the recipients. But we do collect a lot of data right now from the recipients, data on the number of services provided, the number of services they were not able to provide, the number of people that we hire, the number of training that we provide. But it is hard to put that data into context. What does all of that mean? Do we have some goal or target of change or progress that we are trying to make? Do we have indicators that we are tracking over time, again, to help us determine where best we should make these investments? And are we making them in areas that have demonstrated effectiveness?

Senator GRASSLEY. And so the latter point is what you say we need more information on? Is that right? Is it quantifiable?

Ms. LARENCE. I think we need to be careful and take into consideration the challenges that some recipients will have in providing this data, but I think we can look for opportunities. Can we get data in more detail to be able to make these investment decisions? But, also, do we have opportunities to use the data we already col-

lect in better ways to help us judge what return we are getting on our investments in these programs?

Senator GRASSLEY. Your testimony also outlines how there are 11 various authorizing statutes for grant programs that address domestic violence, and among other things that each of these different statutes requires different information. In any reauthorization, should Congress consider streamlining these data requirements to provide uniformity? And if so, what would be the benefits of similar data requirements?

Ms. LARENCE. We did talk to the departments who recognized that across the different statutory provisions there are differences in the requirements that Congress has imposed. Some have been very specific and prescriptive, and others have been fairly general. So I do think that efforts to try to reconcile the data requirements and evaluation requirements across the programs would help the agencies to be able to collect more consistent information that would allow us to leverage that, add it together, and get a better picture nationwide of what is happening.

Senator GRASSLEY. Ms. Poner, I thank you for coming and telling your story. It is very eye-opening, particularly as to how the best-of-intentioned laws can be abused. While I know you are not an expert on the topic of immigration, I understand that you have spoken with other individuals who have had similar experiences where this law was used fraudulently as a tool to manipulate access to green cards.

Two questions for you: Do you believe that Congress should include provisions strengthening the law to ensure that it is not abused simply to obtain U.S. citizenship or maybe even being here legally? And if you agree with that, what reforms would you suggest?

Ms. PONER. Yes, I do agree, and what we are simply suggesting is that a local USCIS agent be allowed to participate in the process with the Vermont Service Center in identifying who the true victim is in the process. That is all we are asking.

Senator GRASSLEY. Okay. And what else would you like to share with us about how you were impacted by the law? What do you think is most important for us to know about this law being abused?

Ms. PONER. Well, beyond what I shared with you personally, I can only tell you that I have spoken with countless men and women who have similar stories, but more importantly, the common experience with immigration officials and the process once an immigrant is able to file under VAWA, under that special circumstance, and at that point the American is eliminated from the process. And so in that way our stories are all the same.

Senator GRASSLEY. Okay. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Senator Grassley.

The first question I would like to ask has to do with the nexus between the experience of domestic violence and the state of our present economy. I am from Rhode Island, and from our shelters and victim support groups in Rhode Island, I am hearing anecdotal evidence that as economic stresses have increased on families, the caseload for women's shelters and for domestic violence groups has

spiked upwards at the same time that Government funding support for these organizations has been pinched by the very same economic downturn. I do not know if you have more information than just the anecdotal reports that I am hearing from Rhode Island, but I would like to hear your thoughts on that question, and then I will go on to another topic.

Mr. MCGRAW. Well, Senator, I would like to speak to that, if I could, because in the work we do on the show, we work with NNEDV, which is a national organization, and we have affiliates in every market in the country, and so we hear from every one of them. And there is a trickle-down effect here. As there is stress economically, financially, then there is anxiety and conflict and blame, and so that trickles down into distress within a marriage, which oftentimes turns violent. And we have had reports from various communities that since the economic downturn, their spikes have been as much as 400 percent up in terms of the calls that they are getting, the requests that they're reaching out for and the help that they are reaching out for.

The problem is if they do not have that help, then they either stay with the abuser or they go to a hotel where they are easy to find, and that is the separation assault. That is when people get killed. That is when they get seriously hurt.

So there is a definite trickle-down effect from the economic pressure to the marital stress that deteriorates into mental, emotional, and physical abuse, and it is not anecdotal. It is epidemic, and we deal with it every single day.

We drive our program content by what we get from our viewers, and the letters that we are getting number in the thousands and thousands and thousands of people that are caught up in this.

Senator WHITEHOUSE. Do other witnesses agree with Dr. Phil's observation?

Ms. VAN BUREN. If I could add, I agree completely, but what I would add is that at Women Helping Battered Women, we have seen an increase of people wanting emergency shelter, a 39-percent increase over the last 3 years. But what is significant from our point of view is not that that has increased, although that is significant, but that the depth of their need is much greater. We are spending a lot more time with each individual woman or individual victim. It is not just finding them emergency shelter. It is helping them with credit repair; it is helping them find a job; it is helping them gain back their self-sufficiency and their independence. That has become increasingly challenging over the past few years.

Senator WHITEHOUSE. So greater incidence and depth of need.

Ms. VAN BUREN. Much greater depth of need, yes.

Senator WHITEHOUSE. Okay. The other topic that I wanted to address is children who witness domestic violence. I have two questions about that. One, are you aware of particular best practices that you would highlight in terms of dealing with the problem of children who witness domestic violence? And the second related question is that I was the Attorney General in Rhode Island, we had a domestic violence unit. I was the U.S. Attorney. I have some history with this, and I had the experience that on, you know, fairly regular occasions we came across victims who had put up with a great deal of victimization well after they knew that something

was seriously wrong, and they were willing to take it on themselves because their feeling was that it was protecting their children, that it was for the sake of the family, that they did not want to be the ones who broke up the family unit. And that suggested to me a lack of communication with the victims about the effects that what the children were witnessing was really doing to them and it really was not in a child's interest to be kept in a household in which domestic violence is the way that the parents do business.

So if you could comment on children who witness in those two veins, both with respect to best practices and what kind of communications opportunity that provides to empower women to make a prompt decision to get away from the domestic violence and not be trapped in it by their mistaken sense that it is actually for the good of their children to put up with it.

Mr. SHAW. If you do not mind, I would like to speak to the first question, Senator, in terms of best practices and addressing child witnesses of domestic violence, and sexual violence as well. What we have identified as best practices is supporting moms in re-establishing their relationships with their children, because a significant part of the battering and the abusive behavior is undermining mom's relationships with the children. The children are—their relationships are being undermined, but also the children are being trained that this is a part of how families interact, moms and dads interact with each other. So supporting what we found as best practices, supporting moms and re-establishing their authority and their relationships with their children as the mom, as the important authority figure, somebody that cares for them. That is something that we have talked about a lot and actually developed some programming around that in our agency.

Mr. MCGRAW. If I could add to that, Senator, I have had many child and adult tell me, "Dr. Phil, I would rather be from a broken home than live in one." And I think what they are saying is exactly what has been said, that, look, children have needs, and all children have needs—needs for acceptance, needs for predictability, needs for security. When they go into a divorce situation, they go into a fragmented family, they have the same needs. They just become very exaggerated. They look for somebody that can run the business of the family. We are still going to get up in the morning, we are still going to get dressed. I am expected to do my homework, I am expected to do this. They are looking for somebody to run the business of the family. And we hear so often when these situations are happening, "Well, they should take those children away and put them in foster care." Well, as Senator Grassley knows—along with him I am very involved in the foster care system—this is a broken system. And to take a child from a biological parent and put it into foster care is a last-ditch effort of what we should do.

So we need to support these mothers and these fathers, and to do that we have got to get trained resources to the courts. I mean, you know from your role as Attorney General, we have a breakdown right now between family court and criminal court. You have abuse alleged in family court. This is a crime. This should be in the criminal court. They should at least talk to each other back and forth.

I spent a year of post-doctoral training to become a forensic psychologist. We need people to determine where the allegations are true, because every woman that says she is abused and battered is not. It is just simply not the case. And so sometimes they use it as a lever to get what they want. We need skilled evaluators that can determine where this child can get their needs met the best in terms of security, safety, predictability, and continuing in their life. And we need to be fiduciaries for the children—not political but fiduciaries for them. What is in their best interest? And most often it is staying with a biological parent. And in this situation it is often the wife, the mother.

Ms. VAN BUREN. Can I just add one quick thing about public schools? I think we also need to increase the amount of resources going into public schools to work with children to help them—you know, support groups in schools, identify those problems really early on, and school is one of the best places to do that.

Senator WHITEHOUSE. Thank you, Senator Grassley. I went well over my time, but since it was just the two of us, I figured that was all right.

Senator GRASSLEY. It is Okay.

Senator WHITEHOUSE. I appreciate your indulgence.

Senator GRASSLEY. I think I will take advantage before I go to cast the second vote to ask my second round of questions. I am going to direct this first question to Dr. Phil and to Ms. Larence.

In 2002, following a request from Senator Sessions and myself, the Government Accountability Office testified before our Committee here that grant files for discretionary grants awarded to the Justice Department often lacked documentation. The agency added that grant files did not consistently document monitoring activities. They did not contain progress and financial reports sufficient to cover the grant, that neither the Justice Department nor the GAO could determine the level of monitoring performed by grant managers. So there is a lack of accountability, and I gave you that figure about how the Inspector General revealed problems in 21 out of 22 grants.

Another audit we had in 2010 found $200,000 of improper expenditures. This money was spent on improper expenditures, et cetera.

Now, Dr. Phil, I know that you are not up on all these figures, and if I am asking you a question you do not feel confident to answer, you do not have to answer it. But I think everyone here would agree that domestic violence and sexual assault victims deserve the vital services that this law helps provide. This is why I cosponsored the last reauthorization in 2005 and going forward. So I would hope you would agree that given any current budget crisis that the Federal Government has, or even without a budget crisis, shouldn't we ensure that taxpayer dollars do not go to grant recipients who have been found to have violated the program's requirements?

Mr. MCGRAW. Well, we need to be careful that we are not penny-wise and pound-foolish on a couple of different levels. One is obviously we want this money to get to the street. We want it where the impact is on the recipient, the victim that needs the help, and

not caught up in bureaucracy, overhead, and red tape. That is where it is so frustrating. So that is very important.

But I think we also need to make sure that we understand that if we do not deal with this, if this Act is not reauthorized and properly monitored, the ripple effect is huge, Senator. When we talk about 2 million women that are victimized in this way and 10 million children that are impacted by it, those children are put back into the system very soon. All of a sudden they are at high risk for drugs and alcohol; they are at high risk for sub-performance academically; they are at high risk for mental illness. And right now, as I say, this is highly underreported, but it is still costing $5.6 billion just in terms of the victims. And if you roll out the 10 million kids that are impacted and what resources they are going to have to have moving forward, we need this Act. Clearly, it has to be administered properly, but we need this Act, because if this is allowed to go on, it is going to break the system going forward in terms of the fallout to the children that we have to administer to afterwards. You know, we want to help them anyway, but we certainly cannot afford to not protect them now. It would be penny-wise and pound-foolish.

Senator GRASSLEY. If my question implied that I think that this Act should not be reauthorized, I hope you did not read the question that way.

Mr. MCGRAW. No, I did not. In fact, I know you have already said that you intend to, with questions, support its reauthorization, and I know that.

Senator GRASSLEY. Okay. Ms. Larence, would you agree that as Congress considers reauthorization we need to take a strong look at rooting out waste and abuse in the grant program in order to ensure taxpayer dollars are going to the intended purposes and providing those services that Dr. Phil says are so very important?

Ms. LARENCE. Yes, of course, Senator Grassley. GAO has not done a more current review of OVW's grant management process since that earlier work, but we do know that in November of 2010 the Department of Justice Inspector General continued to identify DOJ's grant management among its top ten challenges managing the Department, and they continue to cite problems with the Office of Violence Against Women in terms of effectively closing out grants, spending money after the grants are closed out, and freeing up obligations that are available on expired grants. And so all of these things go to using the monies that the Congress has appropriated most effectively and efficiently to address these issues.

Senator GRASSLEY. And, Ms. Larence, you also heard me say that 21 out of 22 grant recipients in a study found that there was not enough justification of expenses. Wouldn't you agree that any recipient under this law and any grantee has a duty to ensure that all expenses are allowed under the program?

Ms. LARENCE. Yes, we do. In our prior work during 2006 and 2007, we visited 20 individual grantees and did work with them. In some cases, as Dr. Phil mentioned, you know, their tradeoff decisions they think they are making is, "Do we spend money on filling out the forms and collecting the data versus spending money on important services?" So sometimes that is a tradeoff decision that they are making. But, again, we agree with you that it is important

to make sure that we are using the money most effectively and efficiently and legally.

Senator GRASSLEY. Would you make recommendations along the lines that grantees found to have violated grant program requirements should be excluded from participation in favor of those who followed the rules?

Ms. LARENCE. That is probably beyond the scope of work that we have done, Senator.

Senator GRASSLEY. Okay. Mr. Shaw, thank you again for coming all the way from Iowa. It is always good to have people from our great State here. I just want to clarify a point that you make in your written testimony.

In your written testimony, you state that, "In its first 6 years alone, [the Act] saved taxpayers at least $14 billion in net averted social cost." What is the basis of your statement that $14 billion were saved? Is that contained in any report or some other source that you could direct us to? And if so, I would be interested in reading that report so we can determine if other savings can be achieved.

Mr. SHAW. Yes, it is based on a study that was done a few years ago. I have the information, and I can get that information to you in terms of that.

Senator GRASSLEY. Okay. Would you give it to my staff afterwards? Because I have to go vote.

Mr. SHAW. Yes.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chairman LEAHY. [presiding.] Thank you very much, and I have voted and Senator Franken has voted, and I yield to him.

Senator FRANKEN. Thank you, Mr. Chairman, for calling this very important hearing, and thank you to all the witnesses.

I have a question, Mr. Shaw. According to the Justice Department, in 2006 there were more than 26,000 victims of GPS stalking. That is in 2006, and this is by cell phones and mobile devices. And, of course, there are millions more Americans that have mobile devices now, like iPhones and Droids. Many stalkers—and we did a hearing on this in my Subcommittee that I am Chair of on Privacy and Technology. Many of these stalkers use what are known as "stalking apps" to track their victims, and these apps are specifically designed for stalking and are freely available to purchase online. And once they are installed on a victim's phone—and it is not hard, especially if it is a boyfriend or a husband who has access to the victim's phone. Once they are installed, a stalker can know his victim's location down to a few yards at any time.

The website of one of these stalking apps—here is a printout of the website—actually says, "Track every text, every call, every move they make using our easy cell phone spy software."

Mr. Chairman—which I guess is now me.

[Laughter.]

Senator FRANKEN. Without objection——

[Laughter.]

Senator FRANKEN.—I would like to add the printouts of this and three similar apps to the record. So ordered.

[Laughter.]

[The information referred to appears as a submission for the record.]

Senator FRANKEN. Mr. Shaw, I have a bill that I introduced with Senator Blumenthal called "The Location Privacy Protection Act" that would criminalize the worst of these apps. Do you think we need to do better protecting women from these stalking apps?

Mr. SHAW. Absolutely. I know it is difficult in this day and age to keep up with technology. It gets far ahead of us. And it is important for us to figure out ways to catch up. There are critical resources that are necessary for us to keep up with that technology that is moving ahead. That is in a lot of ways being couched as, you know, take care of your kids or make sure your kids are not doing——

Senator FRANKEN. And there is a legitimate use for tracking your kids.

Mr. SHAW. Right.

Senator FRANKEN. There are legitimate——

Mr. SHAW. Keep up with the kids. But what we also know is that perpetrators of violence, batterers, sex offenders, use those same tools to victimize women and the people that they are abusing. So it is critical and crucial that we provide resources to law enforcement to be able to respond. And it is critical that we provide the information to study what is going on, to really look at what is going on with our technology and——

Senator FRANKEN. And that we—I am proposing a law, a piece of legislation that would prosecute apps that knowingly sell things that are used in this manner and that would give—would signal somebody that they are being followed.

Mr. SHAW. Actually, that is an important part, to get to the distributors as well, because oftentimes we look at the back end of it, somebody that uses it, we hold them accountable for it, but also using our resources to get to the distributors to say it is not OK for you to be distributing this material and producing it this way.

Senator FRANKEN. Absolutely.

Ms. Van Buren, several months ago I visited an emergency shelter in southern Minnesota, and the community had space for nine—it had nine units for women and their kids. And from what the folks that ran the shelter said, it was always full, and that the distinction here between an emergency shelter and a transitional shelter was a little blurred. These women were using it to get away from their abuser and get their kids away from the abuser.

Can you talk about the distinction between emergency and transitional housing and why both are important?

Ms. VAN BUREN. Certainly. In our experience, at Women Helping Battered Women, emergency shelter is available for women for a 3-week period of time, and it is during that period of time that we helped them find their next step. And in our case it could be one of our transitional shelter apartments. We operate scattered-site apartments in the community as well as we manage a complex, an apartment building. And that moves women into a whole different funding stream when they move into our transitional housing. And women can come into Sophie's Place and stay for up to 2 years and really have much more intensive services, you know, everything from counseling to credit to employment to, you know, starting

their own business. All sorts of different opportunities for them are available over that 2-year period of time.

So that is the difference, that transitional housing really is a transition from crisis to permanent housing, and our emergency shelter is crisis housing. It is a place for them to flee in the middle of the night. It is where they can land safely. It is where they can get crisis support for their children and for themselves before they move into a more stable situation.

Senator FRANKEN. But if there is no place to transition to——

Ms. VAN BUREN. Well, that is the rub.

Senator FRANKEN. Yes. And I know I am out of time. We are going to have a second round, Mr. Chairman?

Chairman LEAHY. We are.

Senator FRANKEN. Okay. Thank you. I would love to do that. Thank you.

Chairman LEAHY. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

First of all, thank you all for being here and for giving us the very substantial, varied insights that you bring to this subject. And I strongly support, as you do, reauthorization and strengthening of the Violence Against Women Act, and as Attorney General of the State of Connecticut, I took a strong stand—in fact, started an organization called "Men Against Domestic Violence," which sought to enlist leaders of the community and business and law enforcement and news broadcasting and many other areas in providing models and leadership in this area, which focuses on my question.

Beyond the legal issues—and maybe I can begin with you, Dr. Phil—how do we better enlist men in this battle? How do we make them models for young people so that we break the cycle? As you know, more than 70 percent of all men who commit domestic violence see it or experience it in their own lives. How do we break that cycle?

Mr. MCGRAW. You know, I think we have to go at it two ways. I am working with some other professionals right now to put a program into the schools where we get to these young men before they get into relationship situations where the emotions run high enough that it pulls for an abuse breakdown. We have to get into the schools and teach these young men that it is never OK to put your hands on a woman in anger. No reason, no way, no how do you ever do that. But we have to go beyond just telling them what not to do. We have to teach them how to problem solve. We have to teach them how to communicate.

My experience has been that people turn to violence when they run out of socially acceptable ways to express themselves. We have to teach them where the boundaries are. We have to teach the young girls what constitutes the early-warning signs of an abusive relationship. What they think is just "Oh, they love me so much" can, in fact, be control, domination, turn into stalking, all sorts of things that are gateway behaviors to the physical violence. So we have to get into the schools and not just have a dialog on the first day or some assembly speech. It has to be a dialog that is ongoing.

And as far as once they are in the adult role, we have to teach the men where the boundaries are, because the most powerful role model in any child's life is the same-sex parent, and if you have

got a father that is verbally, mentally, emotionally, or physically abusive, that behavior will be mimicked, as you say. To do that, we have to teach these men, but there is no forum for that, which is why, you know, we use the "Dr. Phil" show to do that, but we do not have a lot of men watching during the day. So we are talking to the women, not to the men. And it is difficult to find a forum where you get an audience with them to teach them alternative ways to do it. Telling them not to do it is not enough. You have to say, "Here is what to do instead." And to do that we have got to have an audience, and to have an audience we have got to have a forum, and that is difficult.

Senator BLUMENTHAL. Right. Yes?

Mr. SHAW. I would also like to add to that. Talking about going directly into the schools or talking to schools and doing that kind of programming, the direct work with young men in particular, it is just as important to talk about and do programming around the culture of those students. So as well as talking to the students and talking to young people about what is going on in their lives and providing them with support and tools, it is talking to the community around them, whether it is talking to the teachers providing them with information, talking to community leaders, redefining what it means to be a man in a culture or redefining what positive and healthy relationships are in a culture so that when young men are making choices, they are not making choices in isolation. They are not thinking, "Well, he says it is OK to do this, so that means it is OK for me to do this," or, "I am assuming that it is OK because nobody is saying that I am doing something wrong." Changing the culture around them so that they believe that the teacher, the police officer, the people in their community are going to provide them with social sanctions for doing things to hurt people in their lives.

Senator BLUMENTHAL. Well, I think changing the culture is critical, but you do need—as Dr. Phil said, you need a forum. You need a megaphone. But even more than words is the power of an example, a model, you know, a sports figure who can talk about experience that will grip young people, and it is young people that have to be a major part of the audience here. So I look forward to working on many of these issues. My time, unfortunately, has expired, but I look forward to a second round of questioning if that is possible.

Chairman LEAHY. Thank you very much.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you, Chairman, for holding this hearing on such an important topic. I think some of you know that in my prior life I was a prosecutor for 8 years, and we had an award-winning domestic violence service center at Hennepin County, a one-stop place where people could go with their kids and get restraining orders, and the shelters were represented there, and it continues to be one of the best in the country. And that is one of the reasons, after seeing these victims, why I am so interested in making sure that we reauthorize the VAWA bill and that we do it in a good way and we are smart about any changes that we make.

I had a question first about cyber stalking. I have introduced a bill with Kay Bailey Hutchison to get at sort of that next level of

stalking, to update the law that we have, and I guess my first question is if any of you have worked on this stalking issue and if you have seen a greater use of the Internet in either some of the stalking cases or violence cases. Anyone?

Mr. SHAW. Well, we have not had the resources to study it to really get good data on it, but we have seen anecdotal evidence that the technology is being used to continue to perpetrate crimes on victims of violence and continue to stalk them.

Actually, as the manager of a shelter, a few years ago I was struck by the fact that online there was—while we were trying the best we could to keep our shelter as a confidential shelter that nobody knew where it was, online the address, the location, the GPS tracking systems could look down, if you just put the word "shelter" on the Internet in a Google search and looked on the map, you can end up looking directly into a shelter, looking at the addresses there. Even though it is not listed, that information is out there for people to access while using devices and technology to do that all the time.

Mr. MCGRAW. One of the biggest frustrations about this, Senator, we have had I cannot tell you how many letters and stories that we have dealt with in our End the Silence on Domestic Violence campaign where part of the abuse was that the texting and the e-mails—texting her at work 300, 400 times during the day; when she goes to the store, following her, stalking her. But the problem that we are running into is when you go to the authorities with it, they do not really know what to do with it. You know, they will say they have a cyber crimes division, but the truth is they do not really know what to do with it. Like, "What do we do?" So, "Turn your phone off, lady" is what they say, and so they are very frustrated that there is no real accountability for the person. And, you know, we see it in—we have an anti-bullying campaign. You know, the bullying used to take place on the playground. Now it follows the child home, and it is the same way in this situation. It can follow the woman to work or to her mother's house or wherever, where it is too difficult to unplug from it.

Senator KLOBUCHAR. Right. The other piece about this I think is just that you have laws that were so outdated, and that is why we are trying to update them, because it is very hard to make some of the cases on the cyber piece of it. And I would think also trying to use technology to our advantage so that they can, you know, cut off access to those numbers and those e-mails to certain people will be a piece of this as well.

One of the things I wanted to ask you, Dr. Van Buren, was: I know in your testimony that a 2010 study showed that more than 70,000 people were served by domestic violence programs in just one day, but, tragically, 9,500 requests for services went unmet. What happens in these circumstances, do you think, when they do not get any services, their needs are unmet?

Ms. VAN BUREN. First, we have to make sure you realize that is not just in Vermont.

Senator KLOBUCHAR. I do.

Ms. VAN BUREN. Okay. That would be a lot of people for Vermont.

Senator KLOBUCHAR. I know. I have been there.

[Laughter.]

Ms. VAN BUREN. What happens is that they do not—there are not alternatives. There are no options. What happens when someone calls us in crisis or even on the hotline and not necessarily in crisis is that we are able to offer them options. We are able to either bring them into our shelter, put them in a safe motel room, you know, provide them with services in the courts. And so if we are not able to serve them or if any of the other shelters or domestic and sexual violence organizations in the State of Vermont cannot serve them, they do not have any options. They stay with their batterer, they live on the streets. We have women who are living in their cars because there is no place else to go with their kids. Frequently homeless shelters will not accept victims of domestic violence who are in crisis.

So it is a tragic situation that is difficult, you know, because they really have limited options.

Senator KLOBUCHAR. Thank you.

Chairman LEAHY. Thank you very much.

Senator Franken.

Senator FRANKEN. Thank you again.

Dr. Van Buren, my last question was about going to a town in Minnesota, a city really, one emergency shelter, which also served kind of as a transition, full, nine units. And kids are there. And I want to kind of speak to the experience of the kids, and I want to, Dr. Phil—and, by the way, feel free to call me "Senator Al."

[Laughter.]

Senator FRANKEN. I want to thank you for the End Silence on Domestic Violence campaign that you are doing. It's a great service. Can both of you speak to what happens when a woman and her kids cannot be housed when a woman needs to work, needs to have someplace to live? What is the effect on the child if they have to move back in with the abuser? What does that do in the long run? And anyone can speak to that, actually.

Ms. VAN BUREN. Well, I will start, but I will let you talk about the whole psychological piece.

Mr. MCGRAW. Okay.

Ms. VAN BUREN. More than 50 percent of the people who come into our services have children with them, women have children, so we have a very large children's program that works with these kids in play groups, therapeutic play groups, both in our transitional housing center as well as in our shelter. We also continue to work with children after they have left our services, so it's an ongoing therapeutic play group for these kids.

I think any child who is in a situation where they are faced with homelessness, they are living in fear, they themselves are being either victims of abuse or witnessing abuse, you know, that is what we are working with right there at that point. You know, we are working with them when they are in crisis. And without that, I think we can defer to Dr. Phil's comments about the damage that that inflicts on them, which we will see on and on and on as they grow older.

Mr. MCGRAW. You know, the problem is really stark when you think about it. If you really put yourself in a woman's position, with children, and she is getting beaten and abused in the home,

so she goes out, if you have nowhere to go, what you do is you go back home. You go back to the abuser. You take your child, you put them back in harm's way, you put yourself in harm's way. And, you know, as I said, there is this phenomenon of separation assault. It is in those first 2, 3 weeks after you get away from the abuser, because abuse is about control and it is about dominance. And when you leave, there is a real frustration effect. And that is why you get so much more violence at that point. That is the critical time where, if these beds are not available, if these shelters are not available, that women and her children's very lives are in danger, to the point that we often have to say to women, "You simply cannot leave right now," because your first goal is to stay alive. And if you leave, you put your life in jeopardy if you do not have a safe, secure place to go, and by "secure," where they simply cannot find you. And going to your mom's house or your sister's house is the first place they are going to look.

We have to have funding for these emergency shelters and transitional housing until they can get in a situation where they stand on their own and can get geographically safe. It is life and death.

Senator FRANKEN. Because in the long term, these kids, when they—the choice, if we do not fund the shelters, if we do not fund the transition, these kids going back in the situation are witnessing this or are subject to it. And doesn't that continue the cycle of abuse generationally?

Mr. MCGRAW. When a child is exposed to this, Senator, it changes who they are. We write on the slate of who these children are every day, and this is not something like they scrape their knee, it will heal up in a while. This changes who they are. It causes them to define their relationships in this way. It causes them to fear intimacy. It causes them to blame themselves. Children have a unique ability to find a way that whatever is going wrong, it is their fault. They will figure a way to say, "If I did not need money for school pictures, if I did not make so much noise, if I did not fight with my sister, this would not be happening." They blame themselves for that, and it erodes their personality, it erodes their mental health and their mental fitness.

So the impact on these children is long, long reaching. As I said, they are at risk for drugs, they are at risk for alcohol, depression, anxiety, and post-traumatic stress disorder, to just name a few. And those are long-term chronic problems, and, by the way, they cost a lot of money to treat across a lifetime.

Senator FRANKEN. My time is up, but that is a point I would like to make for everyone. The cost/benefit analysis——

Mr. MCGRAW. It is huge.

Senator FRANKEN. Huge. If you just make sure that there are transitional shelters, there are shelters and transitional housing, the cost/benefits of that are enormous.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you. You know, I could not agree more with Senator Franken, and we have seen it in the State of Connecticut with the shelters that we have.

One point that maybe we have not emphasized enough in this conversation this morning is the courage and fortitude that it takes for many women to leave an abusive situation. As incredible as it may seem, having been involved in some of these cases, having talked to some of the women, having visited shelters, particularly Interval House in the State of Connecticut, our largest shelter, knowing of women who come with all of their possessions literally in a garbage bag and one or more children with them, even after years of abuse, it takes such an effort of courage and bravery to break a household.

So I wonder if perhaps you can comment a little bit on what kind of support we can provide in those shelters for women who take this great act of courage.

Ms. VAN BUREN. VAWA has done a tremendous amount to support what is going on in women's lives. Not only are we supporting them now as they go through the criminal system, the court system, which, you know, is long and complicated—and we have advocates who work with them every day to help them wind their way through that process while they are with us in shelter or transitional housing. VAWA can continue to support support groups that we run for women who are victims. They can get together and talk and, you know, have a trained facilitator help them with this, acknowledging their courage, helping them find the strength to continue. VAWA continues to support our ability to advocate for their children, to advocate for them with landlords, with employers, and the support that we have been able to offer since VAWA happened has been night and day from before and after.

You know, as in my testimony, I think we were receiving $50,000 in Federal money prior to VAWA. There just was no Federal support for the work that we were doing. And now with this Act it really does support the tremendous amount of services that these women require: economic justice services, housing, legal, children, all of those. So as you said earlier, it needs to be strengthened, and it needs to be passed again.

Mr. MCGRAW. Senator, if I could add, because I do not think the record would be complete without saying this, the help starts before the woman actually leaves, because there is a right way and a wrong way to leave an abusive relationship. And the wrong way is to confront the abuser. The wrong way is to just run out the front door. The right way to do this is very thoughtfully, with some planning, having an option of where to go. Planning ahead of time so you have an extra set of car keys, you have a little bit of money, however tight it may be, to get the documents for your children, birth certificates and, you know, things of that nature that you are going to need in order to function. And women do not think about this when they are in crisis. Nobody would—man, woman, otherwise.

What VAWA has allowed to happen is to have resources for information to let women plan to do this in a way that they minimize the very real danger of that separation period. But there is a right way and a wrong way to leave, and by educating them we save their lives because they do it right instead of putting themselves in harm's way.

Senator BLUMENTHAL. So that counseling and support really has to begin before they go to a——

Mr. MCGRAW. Most definitely.

Ms. VAN BUREN. And it happens most frequently—for us, anyway, it happens when they call our hotline. That is the gateway to all of our services and when we——

Mr. MCGRAW. Without the funding, there is not the hotline.

Senator BLUMENTHAL. Well, again, I look forward to working with you all. I apologize that I have been in and out because of the votes and other commitments, but I really appreciate your being here today, and thank you to the Chairman for having this very, very important hearing. Thank you.

Chairman LEAHY. Thank you. I am thinking we have three former prosecutors sitting here at the dais now, and that is one of the things that has kept us here.

I want to ask Dr. Van Buren—and I do not mean this as a totally parochial thing because every Senator has parts of their State that are rural. What are some of the most specific and unique needs in a rural setting under VAWA?

Ms. VAN BUREN. I think the most unique thing about rural living is the isolation. Many of our small towns in Vermont and in other rural parts of the country are miles away from anybody else. Women are isolated. What is happening is virtually invisible to the outside. You know, women can be abused and not allowed to leave. It is harder to get away with that in a more urban setting. So I would say, you know, rural needs, transportation is much more difficult, again, the isolation, having to travel long ways just to get services. Those are unique to a rural setting.

Chairman LEAHY. My wife and I do a lot of work with our National Guard and Guard families, and what we find, too, is some of our returning soldiers who may have physical or mental harm from the war, and in these rural towns, there is also a feeling, well, we do not talk about this. And I think that is something that has to be acknowledged.

I do not have further questions, but I think Senator Klobuchar does, and I will yield to her.

Senator KLOBUCHAR. I just have one. Maybe I am just trying to interest you, Dr. Phil, on this issue, but there has been a newfound emphasis, which I think is appropriate, by former Secretary Gates on sexual assault issues in the military, which I think is, when you think about domestic abuse back a few decades ago, or child abuse before that, is something that no one has been dealing with. And now as these things come out in the open, I think it is better for everyone and lives are saved. But in this case, there is this particular issue that the sexual assault records in the military are destroyed, in some branches of the service after one years, in some branches after 5 years. And there are some unique rules there. Some people come and report it and ask that it be private. Some people do not ask that it be private. That aside, the records can be kept, and we now have—I am leading a bill with Senators Collins, Murkowski, and McCaskill, and I have gotten all 17 women Senators on the bill, Democrats and Republicans. And there was just a defense markup recently that, unfortunately, still put a limit of 5 years. And we had a victim come forward in Minnesota

who, because the marines kept the records for 5 years, when this guy got out and raped two kids in California, they were able to locate her so she could come and testify because it was a similar situation, although her prosecution was not pursued because it was more of a date rape case.

And so I feel very strongly that the records do not have to go public, but records should be preserved, and I just see no reason why they would be destroying these records when everyone involved in these situations knows that you often see similar behaviors. And we are in no way saying that the vast majority of those in the military are engaging in this conduct. Of course they are not. But it hurts the entire military when people are hiding this conduct and we are not allowed to later prosecute people and use evidence to prosecute people.

So I just wondered if any of you knew about this situation and if you had any comments on it.

Mr. MCGRAW. Well, I did not know about it, but I do know that the best predictor of future behavior is past behavior, and the recidivism rate for sexual offenders is disturbingly high. So to fail to make that information available is shocking to me, that that would not be available to know that someone—because that person, unfortunately, is at much higher risk to repeat offend. So I cannot imagine that they are dumping that information.

Senator KLOBUCHAR. That is what is happening. Anyone else?

Mr. MCGRAW. You do have my interest.

Senator KLOBUCHAR. Thank you.

Mr. SHAW. What VAWA has done over the last several years is improve our coordinated response in the community in general for law enforcement, medical providers, and advocates to respond to sexual abuse survivors. I think it is important, just as important to improve that coordinated response within the military. What VAWA can do is provide the resources to have sexual assault nurse examiners providing services in the military, having providers or resources that allows the military to start coordinating that get to those legal and judicial consequences of not keeping information for more than 5 years, so that if there was more of a coordinated response, which VAWA can support, it is more likely that those types of issues would be addressed.

Senator KLOBUCHAR. Very good. Anyone else?

Ms. VAN BUREN. I really do not know very much about this except that in Chittenden County, in the Guard—and maybe Senator Leahy knows more about this, but the Guard have funded a coordinator position who is working with us pretty closely on issues of returning vets and military families. And I think the more that we can continue, as Michael said, with STOP funds, providing that coordinated community response and bringing the military into that and really, you know, talking about exactly what you brought up so that we all know that information and can start working actively on the local level to address that.

Senator KLOBUCHAR. I think this would be more information for prosecutions if they, you know, subpoena the records, they are able to get the records to support one. But the issue you are talking about I firmly believe is very important. Minnesota started the Beyond the Yellow Ribbon Program for the National Guard, and it is

now going across the country, where they bring in the troops and their families every 3 months to talk about any issues, and it has been an amazing change in the way people are willing to talk about marital issues and talk about their problems getting a job, problems getting health care, or other things. And I think it is really important because you cannot just plop someone back after serving in a very difficult situation day to day and then expect them to be calling the pizza place to order a pizza or their bank account and everyone is going to be just totally normal. So that is the idea there, and certainly it goes into domestic abuse issues. But I appreciate that as well.

But this is purely about trying to get evidence if someone goes out and commits a crime, and it turns out they have a record, but you cannot find out what it is.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you. Dr. McGraw, Mr. Shaw, Dr. Van Buren, Ms. Poner, and Ms. Larence, thank you all very, very much. This has been a worthwhile hearing. You will get transcripts of what you said. If you find something in there that you think you should have added, feel free. We will keep it open for that. This is not a "gotcha" hearing. We want to know what is best to do.

Thank you all very much.

[Whereupon, at 11:57 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

GAO
Accountability * Integrity * Reliability
United States Government Accountability Office
Washington, DC 20548

August 4, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

Subject: *Domestic Violence, Sexual Assault, Dating Violence, and Stalking: Responses to Questions for the Record*

Dear Chairman Leahy:

On July 13, 2011, I testified before your committee on issues related to the reauthorization of the Violence Against Women Act (VAWA).[1] A member of the committee requested that we provide additional comments to a number of post-hearing questions. The questions and our answers are provided in enclosure 1. The response is based on work associated with previously issued GAO products and also includes selected updates—conducted in July 2011—to the information provided in those products.

If you have any questions or need additional information, please contact me at 202-512-8777 or larencee@gao.gov.

Sincerely yours,

Eileen R. Larence
Director, Homeland Security and Justice Issues

Enclosure

cc: The Honorable Charles E. Grassley

[1] GAO, *Domestic Violence, Sexual Assault, Dating Violence, and Stalking: National Data Collection Efforts Underway to Address Some Information Gaps*, GAO-11-833T, (Washington, D.C.: July 13, 2011).

Enclosure 1

GAO Responses to Questions for the Record

Questions from Senator Coburn

1. **In your testimony, you conclude that there is a need for more complete information on the services provided to victims prior to moving forward with any reauthorization of VAWA. You also mention the efforts of several agencies, including DOJ and HHS, in collecting data and the challenges they face.**

   a. **What do you believe is the best method for collecting and evaluating the necessary data of prevalence and incidence of domestic violence, as well as assessing the services currently provided by both the federal and state governments?**

   In terms of data to determine the prevalence and incidence of domestic violence, our 2006 review addressed the extent to which data were available on the prevalence of four types of crimes—domestic violence, sexual assault, dating violence, and stalking—among four victim groups—men, women, youth, and children.[1] We reported that national data collection efforts completed at that time addressed certain aspects of these crimes among some segments of the population, but that information gaps remained, particularly related to teen dating violence and stalking.

   Since we issued our report, the Departments of Health and Human Services (HHS) and Justice (DOJ) have implemented other national data collection efforts that addressed the information gaps related to the prevalence of teen dating violence. Specifically, DOJ, in collaboration with HHS, initiated a national survey to collect data and measure incidence and prevalence rates for child victimization (ages 17 and younger). As a result, in 2009, DOJ released incidence and prevalence measures related to children's exposure to violence which included teen dating violence.

   In regards to the information gap related to the prevalence of stalking victims under the age of 18, neither DOJ nor HHS has taken action to fully address it. DOJ officials

[1] GAO, *Prevalence of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, GAO-07-148R (Washington, D.C.: Nov. 13, 2006).

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said that funding is not available to collect information on the prevalence of stalking victims under the age of 18. Moreover, while HHS has undertaken an effort to collect data on, among other things, men and women's experiences with stalking victimization including experiences over their lifespan, HHS is not planning to collect data from individuals under age 18. Therefore, even if this effort is completed and the results are available in October 2011, as planned, it will not fully address prevalence rates related to teen stalking.

During our work, we did not identify a "best method" for collecting and evaluating data on the prevalence and incidence of domestic violence, sexual assault, dating violence, and stalking among all segments of the population. However, DOJ and HHS are in the best position to look across the available data to establish a current baseline of the prevalence of these crimes and identify the most appropriate methods to track prevalence over time. The Departments could also then more definitively determine what data are missing and assess the extent to which they can obtain the data in a cost-effective manner. Having such trend data could help Congress and federal agencies determine the optimum mix of services that are needed to address prevalence among these four groups for each crime; set priorities among these services based on limited resources; help determine the impact the services are having on victims of these crimes; and use this information to make future adjustments to the services funded.

In terms of data available on the services provided, our 2007 review focused on the types of data certain federal grant recipients collected and reported to HHS and DOJ related to services provided to victims.[2] We also reported on challenges these federal departments and their recipients experienced in collecting and reporting data on the demographic characteristics of victims receiving services by type of service.[3] Our 2007 review found that recipients of the grant programs we assessed collect and report data on the types of services provided, the number of victims served, the percentage turned away, and in some cases, demographic information on the victims served. These data show the number of activities purchased through grant funding

[2] We did not review services provided through state funding.
[3] GAO, *Services Provided to Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, GAO-07-846R (Washington, D.C.: July 19, 2007).

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and provide Congress with some sense as to the sufficiency of funding by the percentage of victims that could not be assisted. These data do not necessarily show what impact these activities had on victims—the return on investment. In addition, we determined that data were not available on the extent to which the four victims groups received services by each type of service for all four crime categories. Such data could help inform the agencies and Congress on the mix of services provided and still needed among these groups of victims.

Nevertheless, we did not recommend that federal departments require their grant recipients to collect and report additional data on the demographic characteristics of victims receiving services by type of service in our July 2007 report because of the potential costs and difficulties associated with doing so, relative to the benefits that would be derived. For example, some recipients would not have the resources or access to technology to collect and report additional data. Furthermore, determining whether additional data were available to assess the effectiveness and impact of the services provided was outside the scope of our prior reviews. In some cases, the statutes authorizing the various grant programs under the Violence Against Women Act (VAWA) call on the agencies to evaluate the effectiveness of these programs. In discussions with HHS and DOJ officials, they said that it is important to be careful not to overburden grantees when considering additional data collection requirements beyond that which they are already reporting to measure effectiveness. Because of these challenges and potential costs, weighing the relative benefits of obtaining additional data with the relative costs of doing so would be an important consideration before any new reporting requirements are established to better assess the federal grant programs.

b. Does Congress need to act to get agencies and programs to collect domestic violence data consistently so that we can get an accurate, complete statistical picture of the problem?

As discussed above, since we issued our November 2006 and July 2007 reports, DOJ and HHS have taken action to address the gap related to the prevalence of teen dating violence, but not the gap on the prevalence of teen stalking. DOJ officials said that they are not planning to collect information to address the teen stalking gap due to a lack of funding. HHS is collecting information on adults' experiences with

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stalking victimization over their lifespan (i.e., retrospectively), but this effort will not fully address prevalence rates related to teen stalking since data are not being collected on stalking experiences from those individuals under the age of 18. In considering the reauthorization of VAWA, determining the importance of collecting data on the prevalence of teen stalking relative to other priorities Congress has established could assist in making funding decisions related to implementation of the act moving forward.

c. If Congress does not act, when can we expect consistent, reliable data on domestic violence that will enable us to make better-informed policy decisions?

In terms of consistent and reliable data on the prevalence and incidence of these crimes, as we stated above, since we issued our 2006 and 2007 reports, DOJ and HHS have taken action to address the gap regarding teen dating violence but are not planning to take action that will fully identify prevalence of stalking among teens. Because we have not conducted a comprehensive assessment of national data collection efforts since we issued our report in November 2006, we do not know whether other national data collection efforts have been implemented by agencies or organizations, other than DOJ and HHS, which may address the prevalence of teen stalking.

In terms of consistent and reliable data on services provided to victims, in July 2007, we reported that even if demographic data were available by type of service for all services, such data might not be uniform and reliable. This is because, among other factors, the authorizing statutes for these programs have different purposes and recipients of grants administered by HHS and DOJ use varying data collection practices. However, since we issued our report, officials from HHS's Administration for Children and Families (ACF) and DOJ's Office on Violence Against Women (OVW) told us that they modified their grant recipient forms to improve the quality of the recipient data collected and to reflect statutory changes to the program and reporting requirements. In addition, OVW officials stated that they have continued the amount of technical assistance provided to grantees on completing the forms correctly. Moreover, ACF officials stated that they adjusted the demographic categories on their forms to mirror OVW's efforts so data would be collected consistently across the government for these grant programs. As a result of these

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efforts, and others, officials from both agencies reported that the quality of the recipient data has improved resulting in fewer errors and more complete data. However, even with improvements in the quality of the recipient data, demographic data collected may still not be uniform if the data collection practices grant recipients were using when we conducted our 2007 review continue, and if, the statutes authorizing the grant programs included in our 2007 review continue to have different purposes and requirements for collecting data.

2. **In your research and based on prior reports on VAWA, do you believe there is any overlap or duplication among federal programs, and/or between federal and state programs in this area? Would it not be more productive and a better use of federal funds to consolidate VAWA programs with any other duplicative programs within the Office of Justice Programs (OJP) before merely reauthorizing the legislation as it is? Why?**

Our prior reviews did not address issues of potential overlap, duplication, and productivity gains through grant consolidation, but we have recently begun a study that will consider these issues. Specifically, the Statutory Pay-As-You-Go Act of 2010 (Pay As You Go Act) directs us to identify federal programs, agencies, offices, and initiatives—either within departments or governmentwide—that have duplicative goals and activities, and report annually on our findings.[4] To address this mandate, our work within DOJ will assess the objectives, recipients, and activities funded through grant programs administered by three components, including OVW. We will also assess the extent to which DOJ has the capacity to determine, by selected grant programs within these three components, whether grantees receive funds for similar purposes; and how DOJ assesses outcomes across its grant programs and the degree to which it uses results when making program design and grantee selection decisions. We anticipate reporting the results of our work in the spring of 2012.

3. **In your testimony, you also note the two GAO reports issued in 2006 and 2007 were the result of requirements in the 2005 VAWA reauthorization. Prior to another VAWA reauthorization, what type of research do you believe is necessary to properly evaluate the need, if any, for additional legislation?**

If Congress believes that it needs additional information on the effect VAWA funds are having in addressing domestic violence, sexual assault, dating violence, and stalking,

[4] Pub. L. No. 111-139, § 21, 124 Stat. 29 (2010), 31 U.S.C. § 712 Note.

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an assessment of performance measures for the VAWA grant programs could be helpful in deciding whether to revise these existing grant programs or create new ones under VAWA. Our prior work on performance measurement suggests that certain factors would likely need to be considered in conducting such an assessment including:[5]

- To what extent are the goals, objectives, and purpose of the grant programs clearly stated and in a way that can be measured?
- To what extent do agencies have data and measures to show the extent to which grant funds are meeting the goals, objectives, and purpose?
    - If data and measures are not available, how cost-effective would it be to create the measures and obtain the data to assess progress and results towards the goal?
    - If collecting these data are not cost-effective, are there interim measures that could provide the agencies and Congress with indicators of results achieved by the grant programs?
- What do available data indicate or demonstrate about the results achieved or effectiveness of the individual grant programs?
    - To what extent do these results indicate a need to revise the program or identify gaps that require considerations of new programs?
    - How can these programs be structured from the beginning so that agencies and recipients are positioned to be able to measure and demonstrate a return on investment?

This assessment could determine whether current measures and available data provide information on the effectiveness of VAWA-related grants and if any adjustments are needed to better assist Congress and federal agencies administering these grants in assessing the effect of VAWA funds.

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[5] See, for example, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, GAO/GGD-05-97 (Washington, D.C.: Sept. 9, 2005), *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143 (Washington, D.C.: Nov. 22, 2002), *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

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4. **Last month, the DOJ Office of the Inspector General testified before the House Oversight and Government Reform Committee regarding accountability in the federal grant process. The OIG stated grant management continues to be a top 10 management challenge for the DOJ, and specifically cited problems at the Office of Violence Against Women (OVW). The OIG noted funding calculation errors, conflicts of interest between peer reviewers and applicants, and even duplication of oversight functions between OVW and the Office of Justice Programs (OJP).**

   The GAO has also released reports since 2001 noting problems with the OVW grant process, particularly noting "the lack of good data from monitoring activities and impact evaluations, [which] leaves us with very little basis to assess program results."

   a. **It appears there are no evidence-based studies on VAWA spending, or whether VAWA is achieving its goals with the billions of federal dollars it has spent since its inception in 1994. Based on GAO evaluations of VAWA programs and/or OVW, has there been adequate cost-benefit analyses of VAWA programs?**

      Our 2006 and 2007 reviews did not include conducting a cost-benefit analysis of VAWA programs, determining the extent to which federal departments implementing VAWA may have conducted this type of analysis, or identifying and assessing existing evidence-based studies of VAWA-related programs' effectiveness. However, the ongoing work we are conducting in response to the Pay-As-You-Go Act will help determine how DOJ assesses outcomes across its grant programs, including VAWA-related grants, and the degree to which DOJ uses results when making program design and grantee selection decisions. This type of information could help inform Congress about the outcomes obtained through VAWA-related grants administered by DOJ and whether any adjustments are needed in the use of DOJ's grant assessments in making program design and grantee selection decisions.

      i. **If not, what would it take to be able to develop metrics to assess the effectiveness of VAWA in reducing domestic violence?**

         In the past, we have reported that being able to demonstrate a causal link between a reduction in crime and a multiyear federal program is a challenge and other factors that may have influenced the decline had to be considered

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in making such an evaluation.[6] Thus, being able to show the extent to which federal grant programs authorized under VAWA have caused reductions in domestic violence, sexual assault, dating violence, and stalking would be very complex and difficult. Many different factors can influence these crimes against women, including economic, psychological, and environmental factors. So determining which factors cause this violence and then the extent to which VAWA funds have addressed these factors could be challenging.

Moreover, in January 2008, we reported that program evaluation tools have proven to be successful means for federal agencies to improve program effectiveness, accountability, and service delivery; however, programs face many difficult issues in conducting these evaluations.[7] Such issues include, among others, (1) identifying program objectives and criteria for achieving these objectives, (2) determining how to measure these criteria once they have been identified, and (3) isolating the effects of a program from other influences on the target population. Thus, to be able to make this causal link for VAWA programs would require, among other things, that the primary root causes of domestic violence, sexual assault, dating violence, and stalking have been identified; that VAWA funds have been designated to further support the program goals for addressing these root causes; that the federal government has established measurable baseline levels of these crimes; that the government is tracking these levels over time; and that agencies can isolate the extent to which VAWA programs, versus other interventions, are having an impact on reducing these crimes, and can use these results to determine if investments need to be targeted in different ways.

In addition, a number of the VAWA grant programs are not necessarily focused solely on addressing the root causes of domestic violence, sexual assault, dating violence, and stalking, but are focused also on helping the crime victims, by providing shelter, medical, and other support, and on providing law enforcement and the judiciary with stronger enforcement tools

[6] GAO, *Community Policing Grants: COPS Grants Were a Modest Contributor to Declines in Crime in the 1990s*, GAO-06-104 (Washington, D.C.: Oct. 14, 2005).
[7] GAO, *Bilingual Voting Assistance: Selected Jurisdictions' Strategies for Identifying Needs and Providing Assistance*, GAO-08-182 (Washington, D.C.: Jan. 18, 2008).

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against perpetrators of this crime. As such, it is important that these programs have defined goals and objectives that they want to achieve and performance measures in place to determine if the goals and objectives are being achieved. In this way, federal agencies can be held accountable for and can demonstrate the results achieved with the grant funding, and, to the extent possible, the impacts of this funding. Currently, a number of the programs providing victim services, for example, report on the number of victims served but not necessarily on the impact these services have had on these victims. In updating our work for this hearing, we learned of some efforts by agencies to move in this direction. For example, officials with OVW explained that they are now beginning to track to what extent victims who use VAWA-funded transitional housing end up in permanent housing arrangements as an indicator of the type of impact the program is having, versus simply reporting the number of victims served. The extent to which VAWA programs have or could move towards measures that track impacts and outcomes, and, therefore, the effectiveness of grant funds in this way, the better information Congress will have in assessing the return on their investments in VAWA and the type of investment mix to make in the future.

b. In a 2002 report, GAO noted VAWA grants did not contain the required monitoring plans, did not include documentation of grantee site visits, did not contain progress and financial reports for all grants, and did not include proper closeout documents. As a result, OVW and BJA could not effectively oversee their grant managers. Later in 2002, GAO also testified before this committee that it could not yet determine if OVW had complied with GAO recommendations.

i. What is your experience with OVW's compliance with GAO recommendations? How long does it take for OVW to remedy problems identified by GAO?

As part of our 2006 and 2007 reviews, we did not make any recommendations specifically addressed to OVW. However, in work conducted during 2001 we made recommendations to OVW (at that time, OVW was known as the Violence Against Women Office, VAWO). [8] Specifically, in 2001, we recommended that OVW ensure its grants managers

[8] GAO, *Justice Discretionary Grants: Bryne Program and Violence Against Women Office Grant Monitoring Should Be Better Documented*, GAO-02-25 (Washington, D.C.: Nov. 28, 2001).

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were complying with monitoring requirements and documenting the results of monitoring. In our follow-up work to determine how OVW was responding to these recommendations, we learned that OVW took several actions, such as developing a monitoring guide. However, in 2006, we closed these recommendations as not implemented because it was not clear to what extent OVW had institutionalized these actions as part of its overall operations and we have not done more current work on this issue.

However, the amount of time taken to implement a recommendation can vary significantly depending on several factors. These factors include (1) the nature of the action to be taken, (2) the resources required to implement action to address the recommendation, and (3) the breadth of the action to be taken—that is, is the action confined to a single office or information technology system or does it require a more wide-scale effort? Thus, taking years to implement a particular recommendation does not necessarily indicate that an agency is not being appropriately responsive.

c. Do you agree with the DOJ OIG that grant management at DOJ, and specifically within OVW, continues to be a problem?

We have not recently assessed OVW's efforts in monitoring its grants and are therefore not in a position to comment on the effectiveness of its efforts. However, we routinely coordinate with the DOJ Inspector General to avoid duplication of effort and are aware that in its November 2010 memorandum on top management and performance challenges, it reported that OVW has continuing challenges in this area. Moreover, our ongoing work in response to the Pay-As-You Go Act may better position us to comment on grants management issues at OVW.

5. Violent crime generally has dropped in the past two decades. When it comes to the drop in violent crime against women, how much can be attributed to VAWA? If we don't know, how can we assess the effectiveness of this program that has spent over $4 billion so far?

As previously discussed, determining the extent to which VAWA funding has reduced violent crimes against women is a very complex and difficult undertaking. However,

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ensuring that grant programs have measures to assess their effect— to the extent that such measures do not currently exist—could help agencies administering those programs demonstrate their programs' effectiveness. Our ongoing work in response to the Pay-As-You-Go Act may better position us to comment on the extent to which performance measures OVW established related to VAWA grant programs help to assess the effectiveness of those programs.

6. Are there any systematic or structural changes that could make VAWA grants more effective or less costly?

Assessing systematic or structural changes that could make VAWA grants more effective or less costly was outside the scope of our 2006 and 2007 reviews. However, our ongoing work in response to the Pay-As-You-Go Act on potential duplication within DOJ grant programs may position us to determine whether any systematic or structural changes are needed to improve efficiencies and reduce costs. To date, however, we have not completed sufficient work to make such decisions.

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SUBMISSIONS FOR THE RECORD

WASHINGTON
LEGISLATIVE OFFICE

July 13, 2011

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Senate Judiciary Committee
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ROBERT REMAR
TREASURER

RE: ACLU Statement in Support of the Senate Hearing on the Violence Against Women Act

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the American Civil Liberties Union ("ACLU") and its more than half million members and activists and 53 affiliates nationwide, we applaud your leadership in convening a hearing on "The Violence Against Women Act: Building on Seventeen Years of Accomplishments." Such a hearing begins an important discussion that will culminate in a stronger, reauthorized Violence Against Women Act (VAWA). We write to express our support for the Committee's attention to this legislation and to highlight issues that require congressional review and action. We look forward to working with the Committee as it moves to improve the protections for and rights of survivors of domestic violence.

Congress has long recognized the destructive impact of domestic and sexual violence on the lives of women and their families. Through passage of VAWA of 1994 and its reauthorization in 2000 and 2005, Congress has taken important steps in providing legal remedies and services for survivors of intimate partner abuse, sexual assault, and stalking. These efforts are vital to ensuring that women and their children can lead lives free of abuse.

The ACLU has long been a leader in the battles to ensure women's full equality. We have taken an active role at the local, state, and national levels in advancing the rights of survivors of domestic violence, sexual assault, and stalking by engaging in litigation, legislative and administrative advocacy, and public education.

In the next reauthorization of VAWA we ask that Congress (1) expand the existing housing rights of survivors; (2) ensure that survivors do not experience employment or insurance discrimination because of the abuse they have experienced; (3) clarify that the Prison Rape Elimination Act (PREA) applies to immigration detention facilities; (4) and prohibit deportation of immigrants who are survivors of domestic violence and/or sexual assault in the United States.

A. Housing Protections in VAWA

In the last VAWA reauthorization, Congress specifically acknowledged the interconnections between housing and abuse. It recognized that domestic violence is a primary cause of homelessness, that 92% of homeless women have experienced severe physical or sexual abuse at some point in their lives, and that victims of violence have experienced discrimination by landlords and often return to abusive partners because they cannot find long-term housing. Our experience echoes these findings. The ACLU has represented a number of victims of violence who faced eviction because of the abuse perpetrated by their batterers.[1] For example:

- In 2001, the ACLU successfully represented Tiffani Alvera in a first of its kind lawsuit challenging a notice to quit issued by her subsidized housing provider in Oregon based on her husband's assault. Although Ms. Alvera had obtained a protection order barring her husband from the property and was cooperating in his criminal prosecution, her landlord nevertheless sought to evict her.

- In 2002, the ACLU of Michigan sued on behalf of Aaronica Warren, a single mother and then-VISTA volunteer who was living in public housing run by the Ypsilanti Housing Commission (YHC) in Michigan. After her ex-boyfriend forced his way into her apartment and assaulted her, YHC attempted to evict Ms. Warren and her son because of the violence that had occurred, even though Ms. Warren was the victim.

- In 2004, the ACLU represented Quinn Bouley, a Vermont resident who received a notice to quit her apartment after calling the police and reporting the domestic violence perpetrated by her husband, in a federal court action challenging her eviction.

- Also in 2004, the ACLU represented Laura K., a Michigan resident whose landlord locked her and her infant son out of her apartment at her batterer's request despite the order of protection she had barring him from coming near the home, thus rendering her homeless.

- In 2005, the ACLU represented Rubi Hernandez, who lived in California with her children in public housing operated by the Housing Authority of the City of Stanislaus. When her abusive estranged husband repeatedly physically attacked her, she sought an emergency transfer in an attempt to flee her husband. The housing authority initially refused the request, saying that although Ms. Hernandez had obtained a protective order and fled to a domestic violence shelter, she had not proven that she was in danger from her husband.

[1] Information about these cases can be found at www.aclu.org/fairhousingforwomen.

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- Also in 2005, the ACLU represented Tina J., a resident of public housing operated by the St. Louis Housing Authority in St. Louis, Missouri. When Ms. J.'s ex-boyfriend broke her windows on multiple occasions because she refused to let him into her home, the Housing Authority attempted to evict Ms. J., despite the fact that she had obtained a protective order against him and had consistently reported his unlawful behavior to the police and to the Housing Authority.

- In 2007, the ACLU sued on behalf of Tanica Lewis, a Michigan tenant of a property financed by the federal Low-Income Housing Tax Credit. Ms. Lewis had obtained a protective order against her ex-boyfriend, but when he broke into her apartment in violation of the order, her landlord blamed her for the actions of her "guest."

These stories demonstrate the unfortunate reality faced by many victims of domestic violence—landlords, including public housing authorities, all too often blame them for the abuse, re-victimizing them by threatening their housing.

VAWA 2005 took a multi-pronged approach to the problem. For the first time, the law barred public housing authorities and Section 8 owners and landlords from discriminating against housing applicants or tenants based on status as a victim of domestic violence, stalking, or dating violence. Public housing and voucher tenants could no longer be evicted based on the criminal activity perpetrated against them by their batterers. Furthermore, public housing authorities were given the ability to "bifurcate" a victim's lease, thereby removing an abuser from tenancy while permitting the rest of the family to remain, and the ability to permit a voucher holder to move with her voucher to another unit before her prior lease term was up if necessary to ensure the voucher holder's safety. In order to implement these protections, the law provided a mechanism by which a tenant could certify that she had been a victim of one of these crimes and ensured that this certification would be confidential.

VAWA required public housing authorities to provide notice of VAWA's protections to public housing and voucher tenants, as well as voucher owners and managers. Congress also obligated public housing authorities to describe the programs provided to child and adult victims of domestic violence, dating violence, sexual assault, and stalking in the Annual and Five-Year Plans public housing authorities are required to submit to the Department of Housing and Urban Development (HUD).

By including these vital protections in VAWA 2005, Congress took an important first step in addressing some of the worst housing discrimination faced by survivors. Had the law been in place years earlier, our clients Aaronica Warren, Rubi Hernandez, and Tina J. – all public housing residents – would have benefited. And since the law's enactment, the ACLU has consulted with attorneys, advocates, and survivors from across the country who have successfully invoked the law to stop evictions based on domestic violence. In a recent case litigated in New York City, a court dismissed the eviction of a Section 8 tenant who had been accused of committing a "nuisance" when she experienced domestic violence.[2] The court found that the evidence submitted by the tenant – her statement, three police reports, and a criminal

[2] *Metro North Owners v. Thorpe*, 2008 N.Y. Slip Op. 28522 (N.Y. Civ. Ct. Dec. 25, 2008).

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court order of protection – clearly established that she was a victim of domestic violence whose tenancy was protected by VAWA, despite her ex-partner's accusations against her. The law has served as an important shield for survivors facing homelessness because they have experienced abuse.

While VAWA 2005 created a vital baseline of housing rights for survivors of violence, our experience has taught us that there are many gaps that have yet to be addressed. We outline below some of the pressing issues that the next reauthorization should tackle.

- Currently, VAWA's anti-discrimination provisions apply only to residents of public and Section 8 housing. For that reason, our client Tanica Lewis, referenced earlier, could not rely on VAWA when she and her children were evicted from their home because of the property damage caused by her ex-boyfriend in 2006. In the few states that have passed laws prohibiting housing discrimination against survivors of violence, advocates have reported that they have been able to prevent evictions and keep victims and their families in their homes. Survivors across the U.S. should be able to access these same protections, regardless of what type of housing they have or in what state they live. ***At a minimum, the anti-discrimination provisions should be extended to cover other types of federally-funded housing, such as housing funded by the Low Income Housing Tax Credit, where Ms. Lewis lived, and USDA Rural Housing, where Tiffani Alvera lived.***

- While VAWA 2005 included victims of domestic violence, dating violence, and stalking in the list of protected victims, sexual assault survivors are not explicitly mentioned. However, sexual assault victims, much like victims of domestic violence, dating violence, and stalking, face evictions and subsidy terminations based on criminal acts committed against them. ***The statute should be expanded so as to cover these tenants.***

- VAWA 2005 did not provide an explicit mechanism for enforcing its housing protections. HUD's office of Fair Housing and Equal Opportunity (FHEO) currently does not accept or investigate complaints regarding violations of VAWA's housing provisions, unless they can be characterized as violations of the Fair Housing Act. As a result, when landlords or public housing authorities violate the law, victims do not have a federal administrative remedy. ***The law should explicitly provide a remedy to victims of domestic violence, dating violence, stalking, or sexual assault whose VAWA rights have been violated.***

B. <u>Employment and Insurance Discrimination</u>

Experiencing domestic or sexual violence is a direct cause of workplace problems for the vast majority of victims who work. Batterers often exercise control over victims by preventing them from going to work or harassing them on the job.[3] The work lives of survivors are also disrupted if they need to seek housing or medical or legal help in response to abuse. Three studies collected by the U.S. General Accounting Office found that between 24 and 52 percent of victims of domestic violence reported that they were either fired or had to quit their jobs as a

[3] Richard M. Tolman & Jody Raphael, A Review of Research on Welfare and Domestic Violence, 56 J. Soc. Issues 655, 664-70 (2000).

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result of abuse.[4] Up to 96% of domestic violence victims have experienced employment difficulties because of abusers and violence.[5]

These statistics represent a troubling reality: thousands of employees who are suffering from intimate partner abuse are at great risk of losing their jobs. Without work, they may find that they do not qualify for unemployment insurance or health insurance for reasons directly related to the abuse they have experienced. For example, an employee who leaves her job when her employer will not accommodate her safety needs may be deemed ineligible for unemployment benefits because she left her position "voluntarily." Health insurance companies frequently choose to deny, refuse to renew, or cancel a survivor's policy or benefits plan, particularly when originally issued in the name of the abuser.

Some states and localities have addressed the employment and insurance issues faced by survivors of violence. New York City, for example, amended its Human Rights Law in 2001 to prohibit employment discrimination against victims of domestic violence – the first jurisdiction in the country to do so.[6] The City extended these protections in 2003 to require employers to make reasonable accommodations – such as allowing time off from work or shifts in schedule – to employees who are experiencing domestic and sexual violence or stalking.

The ACLU relied on these provisions of the Human Rights Law when representing "Kathleen,"[7] a long-time employee of the New York City public schools. After her intimate partner assaulted her, Kathleen obtained an order of protection. She needed to take off several days of work in order to attend court proceedings and seek medical attention. When her employer reprimanded her for excessive absences, she disclosed her partner's violence and requested to be transferred to another school for safety reasons. Shortly after this conversation, she was fired. The same day, another woman at the school where Kathleen worked who had also experienced domestic violence was terminated under similar circumstances. Because she lost her job and was unable to find comparable employment, Kathleen was forced to move to substandard housing and send her son to live with a relative.

The ACLU brought suit against the New York City Department of Education on Kathleen's behalf, invoking the anti-discrimination mandate of the City Human Rights Law. Ultimately, the Department of Education agreed to settle the case and to void Kathleen's termination and pay her retroactive compensation and damages. It also agreed to undertake systemic changes, including amending its Equal Employment Opportunity policy to cover victims of domestic violence, sexual assault, and stalking as protected classes, acknowledging that reasonable accommodations must be offered to these survivors, and publicizing its new policies throughout the school system. Had the New York City Human Rights Law not existed, Kathleen could have been out of work with no recourse, as a result of the violent conduct of her partner. Had Kathleen lived almost anywhere else in the country, financial ruin likely would have been her fate.

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[4] U.S. Gen. Acct. Office, Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients 19 (1998).
[5] U.S. Dep't of Labor, Women's Bureau, Domestic Violence: A Workplace Issue 1 (1996).
[6] N.Y.C. Admin. Code § 8-107.1.
[7] A pseudonym has been used to protect "Kathleen"'s identity.

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Survivors need comprehensive federal legislation to address the obstacles to employment and economic security caused by violence. Members of Congress have previously introduced legislation that would bolster the financial independence of survivors by reducing the likelihood that violence will force survivors out of their jobs and by providing a safety net for those who do lose employment as a result of domestic violence, sexual assault, or stalking.

The ACLU urges Congress to include provisions in the next VAWA reauthorization that promote the employment opportunities of abuse survivors, including but not limited to provisions for emergency leave, unemployment insurance eligibility, reasonable employment accommodations, and protection from employment and insurance discrimination. This effort would transform the current state-by-state patchwork of laws and allow survivors across the U.S. to pursue both physical security and economic independence.

C. **Protecting survivors in immigration detention facilities through PREA**

The Prison Rape Elimination Act of 2003 (PREA), which set standards for preventing, detecting, and responding to sexual abuse in custody, was intended to protect every detainee from sexual abuse and assault. However, when the Department of Justice (DOJ) released its proposed PREA regulations – the National Standards to Prevent, Detect, and Respond to Prison Rape – in January 2011, it excluded immigration detention facilities from their purview.[8] DOJ claims that it lacks the authority to implement standards to address sexual abuse in Immigration and Customs Enforcement (ICE) facilities. However, this position is contrary to Congress's expressed intent in enacting PREA, necessitating a legislative clarification of PREA's central role in protecting immigrant detainees.

PREA's legislative history is, surprisingly, unaddressed by DOJ's proposed regulations. The House Judiciary Committee's PREA report makes clear that PREA was "intended to apply to all individuals detained in the United States in both civil and criminal detentions."[9] The late Senator Edward Kennedy, a lead cosponsor of PREA, called attention to immigration detainees in his remarks at the first hearing of the National Prison Rape Elimination Commission.[10] The two lead House PREA sponsors, Representatives Bobby Scott and Frank Wolf, reaffirmed PREA's intent in a bipartisan April 4, 2011 letter to Attorney General Holder, asking him to "publicly urge Secretary Napolitano to adopt the DOJ standards for immigration facilities, consistent with the intent of the law, which was passed when these facilities were under the authority of [DOJ]."

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[8] Department of Justice, Notice of proposed rulemaking re: National Standards To Prevent, Detect, and Respond to Prison Rape. 76 Fed. Reg. 6248, 6250 (Feb. 3, 2011).

[9] House of Representatives Committee on the Judiciary, Report on the Prison Rape Reduction Act of 2003, 108th Cong., 1st sess. (2003); H.R. Rep. No. 108-219, at 14, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf. A principal co-sponsor of the bill, Representative Bobby Scott, similarly expressed the common understanding that "[n]o detainee, regardless of whether he or she is being held on criminal charges or in civil detention, shall be excluded from any reports, nor be exempted from the protections provided for under any standards related to this legislation." *Id.*

[10] Senator Edward M. Kennedy, remarks during National Prison Rape Elimination Commission hearing, "The Cost of Victimization: Why Our Nation Must Confront Prison Rape," June 14, 2005.

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DOJ's regulations would create an arbitrary patchwork of PREA protection for immigration detainees.[11] Sexual abuse and assault is common to all detention facilities, and an individual's level and source of protection must not depend on such calculations.

1. The increased risk of sexual abuse in detention facilities

Sexual assault is a longstanding, recurring, and well-documented problem for immigration detainees in facilities across the nation. Immigration detention facilities incarcerate about 400,000 people annually, with an average daily population exceeding 33,000. A recent ACLU Freedom of Information Act (FOIA) request revealed that since January 2007 there have been 125 complaints of sexual abuse in immigration detention. Many more incidents have undoubtedly gone unreported by this particularly vulnerable community: Fear of deportation, lack of legal representation, and language and cultural barriers all make non-citizens in ICE custody less inclined to report abuse, allowing perpetrators to go free. The incidents that have been documented, however, demonstrate ICE's failure to self-police and the dire need for PREA's enforceable national sexual abuse standards to apply to every detainee, as intended.

ICE's handling of sexual abuse of female detainees at the T. Don Hutto Detention Center in Taylor, Texas, is a major example of the need for stronger protections. This abuse took place at a facility ICE promotes as a model of its detention reforms, under the auspices of a newly installed ICE Detention Services Manager. ICE's failure to prevent the Hutto abuse demonstrates how the agency's oversight regime is insufficient and how the ICE model of self-policing falls short.

In the spring of 2010, it came to light that a guard at Hutto had sexually assaulted women in immigration detention on a number of occasions, and was able to do so because the facility was in violation of ICE regulations. The guard was convicted in state court last year on charges involving five immigrant women victims, sentenced to one year imprisonment, and has now been indicted on federal charges concerning four more female victims. ICE not only failed to prevent these abuses from occurring, but was also uncooperative with non-governmental organizations in identifying all victims after the abuse came to light. Further, the agency refused to take steps to prevent further abuse, such as providing detainees "know your rights" information about sexual assault and abuse.

The Hutto violations are not isolated or unique but rather reflect long-standing failures throughout the ICE detention system. Other incidents since 2007 have occurred at Hutto; Port Isabel, Texas; Pearsall, Texas; and in Florida.[12] Human Rights Watch's comprehensive 2010 report examined "more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 alleged

[11] Coverage depends on whether more than half of inmates in a particular facility are criminal detainees, a proportion that could shift week-to-week. An immigration detainee who is protected by DOJ's standards when placed in a local jail with inmates from the criminal justice system would be left unprotected as soon as he or she is transferred to a majority-immigration facility.

[12] See Carol Lloyd, "Hanky-Panky or Sexual Assault?" Salon.com (May 31, 2007); "Ex-Fed Agent Pleads Guilty in Sex-Assault Case." Miami Herald (Apr. 3, 2008); Brian Collister, "More Sex Assault Allegations at Immigrant Detention Center." WOAI.com (Dec. 29, 2008); Mary Flood, "Ex-Prison Guard Admits to Fondling Immigrant Women." Houston Chronicle (Sept. 24, 2009).

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detainee victims," and concluded that "[t]his accumulation of reports indicates that the problem cannot be dismissed as a series of isolated incidents, and that there are systemic failures at issue. At the same time, the number of reported cases almost certainly does not come close to capturing the extent of the problem."[13]

Reporting sexual abuse in immigration detention has not led to protection or solutions. In Arizona, a transgender woman was intimidated, harassed, and sexually assaulted while in custody at the Eloy Detention Center. From the start of her detention, Tanya suffered discrimination, harassment, and humiliation because of her gender identity. As detailed in a new report by the ACLU of Arizona, *In Their Own Words: Enduring abuse in Arizona immigration detention centers*, "[a]fter reporting an incident involving detention center staff, she was sent to SHU for approximately ten days. Tanya was told they were investigating her case but was not provided documentation or interviewed about her placement in isolation. Tanya was also threatened by a male detainee who tried to force her to engage in oral sex. When she reported this to an officer, she was sent to SHU and does not think that the detainee who threatened her was disciplined in any way."[14] Tanya was placed in "protective custody" throughout her eight months of detention and it was while in this custody classification that the sexual assault by a detention officer took place. Shockingly, a second sexual assault was subsequently perpetrated on her by another detainee. While she has since been released, she still suffers from the emotional pain and humiliation she endured while at Eloy.

The number of violations that are reported, in spite of very difficult circumstances for victims, suggests that these are not isolated incidents, but rather a serious systematic failure that allows abuse to continue. ICE's lack of transparency and demonstrated unwillingness to address this serious problem leaves no question that the agency cannot be relied on to protect detainees in its custody. ***PREA must be clarified in order to stop assaults against all prisoners, including those in ICE custody: Congress should act to ensure that the Act applies to immigration detention facilities.***

D. Prohibiting the deportation of immigrant survivors of domestic violence and/or sexual assault in the United States.

VAWA created visas for victims of domestic violence to "strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of [crimes] while offering protection to victims."[15] These visas were supported by law enforcement officials in order to increase the probability of apprehension for violent criminals, reduce recidivism, and save police resources. Local law enforcement officials participate in the process by certifying to U.S. Citizenship and Immigration Services (USCIS) that victims cooperated in the investigation or prosecution of a crime. However, misguided immigration enforcement programs have created a climate of fear which thwarts the intent of VAWA and runs counter to the principle that we must

[13] Human Rights Watch, Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention. (Aug. 2010), 3, available at http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf
[14] This report, published in June 2011, is available at http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf. It includes additional case examples.
[15] Violence Against Women Act of 2000, *Pub. L.* No. 106-386, § 1513(a)(2)(A), 115 Stat. 1464, 1533, (2000), *available at* http://www.ovw.usdoj.gov/laws/vawo2000/stitle_b.htm#title5.

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ensure the safety of all women in our society, regardless of immigration status. In an indication of how severe the problem has become, Safe Horizon, the largest assistance agency for victims of domestic violence in New York City, reacted to the excesses of immigration programs such as ICE's Secure Communities fingerprinting mandate, whereby all persons arrested have biometric information compared to immigration databases, by cautioning domestic violence victims *against* contacting the police for fear of immigration consequences.

In countless domestic violence situations across the country, police policy or practice is to arrest everyone on the scene.[16] As a result, immigrant victims of domestic violence have been placed in deportation proceedings, and at least one has been deported. For an extended period, ICE refused to acknowledge that a problem even existed with domestic violence victims. On June 17, 2011 the agency presented wholly inadequate cosmetic fixes to counter growing media and public attention, including the refusal by the Governors of Illinois, New York, and Massachusetts to participate in Secure Communities.[17] ICE's promise to exercise its discretion not to deport crime victims and witnesses is cold comfort for those victims and witnesses who have already been deported, and does nothing to dispel the fear in immigrant communities that ICE lacks the expertise, field training, and factual omniscience to sort out complicated domestic violence scenarios such that innocent parties are not deported. It is up to Congress, therefore, to protect these immigrant victims by mandating in legislation that ICE treat domestic violence as a categorical bar to victim deportations, and not as an area in which the exercise of discretion *might* occur.

The following stories illustrate the problem and the inadequacy of leaving a solution to ICE's discretion:

- During a party, Veronica had a serious argument with her brother when he refused to let her leave a party with her daughter. Veronica called the police, who arrived and briefly questioned her before arresting her. They took her to jail, where they fingerprinted her and held her for 3 hours, releasing her upon discovering that she was legally in the country. Veronica reports that she would never call the police again.[18]

- Hun, a Japanese national, finally called 911 for assistance after being abused by her husband for years. When the police arrived, Hun could not speak English and defend herself when her husband accused her of instigating the fight. The police arrested Hun and turned her information over to ICE. While Hun was in ICE custody, her one-year-old daughter was placed in foster care.[19]

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[16] Statement of Angela Chan, Staff Attorney at the Asian Law Caucus, Bay Area Chapter of the American Constitution Society *Panel discussion: Secure Communities: Federal Immigration Enforcement, Cooperation, and Conflict* (Sept. 22, 2010).

[17] On June 1, 2011, for example, Governor Cuomo of New York suspended his state's participation, because Secure Communities was "compromising public safety by deterring witnesses to crime and others from working with law enforcement."

[18] ACLU OF NORTHERN CALIFORNIA, COSTS AND CONSEQUENCES: THE HIGH PRICE OF POLICING IMMIGRANT COMMUNITIES 9 (2011), *available at* http://www.aclunc.org/docs/criminal_justice/police_practices/costs_and_consequences.pdf.

[19] *Id.*

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- The 17-year-old sister of Maria Perez-Rivera from Lodi, California, called police after seeing Maria "with bruises and scratches on her face and body" caused by a repeat abuser. Never charged with a crime, but identified by Secure Communities, Maria was deported two days later. "She didn't want me to call the cops," her sister recalled. "But I don't regret making the call even though she's not here. She might have ended up in the hospital, or gotten killed." Maria's 2-year-old daughter Kimberly and her 3-month-old son Anthony were left in their grandmother's care, forcing her to quit her job. Internalizing the chilling effect spread throughout immigrant communities by such unthinking enforcement, Kimberly, the Sacramento Bee reported, "[e]very day . . . peeks around her apartment complex for her mom. If she hears police sirens, she runs inside."[20]

- Isaura Garcia, an immigrant in Los Angeles, endured three years of beatings from her boyfriend before courageously calling 911 in Los Angeles after the man kicked her and her one-year-old daughter out of their apartment and became abusive. Stunned that she was being handcuffed along with her assailant, Isaura fainted. At the hospital, a doctor found bruises on her body and identified her as a victim of domestic violence. Because of Secure Communities, however, Isaura was placed in deportation proceedings which were rescinded only after the ACLU of Southern California drew attention to her case. "I still don't understand why I was arrested, but had I realized I could be arrested after calling 911 for help and deported, I never would have called," she said. As reported in the *Los Angeles Times*, "[b]ecause police often arrest both parties in domestic disputes, her fingerprints were submitted to immigration officials; despite having no criminal record, she was flagged for deportation proceedings."[21]

- Norma from San Francisco is on electronic monitoring pending a deportation proceeding despite never being charged after a domestic violence incident when she was "found . . . sobbing, with a swollen lower lip." As the *Los Angeles Times* reported, "[m]ore than once, Norma recalls, she yearned to dial 911 when her partner hit her. But the undocumented mother of a U.S.-born toddler was too fearful of police and too broken of spirit to do so. In October, she finally worked up the courage to call police – and paid a steep price."[22]

Similar to the cases of sexual abuse in immigration detention facilities, these domestic violence stories represent only those that by chance and media coverage enter the public domain. Many anonymous victims of domestic violence have undoubtedly been deported because there is no statutory bar to ICE's acting on their cases. We urge Congress to step in where the agency is failing badly, hurting immigrant communities, and damaging public safety at large: immigrant survivors of domestic violence and/or sexual assault must be protected by law from deportation to ensure they are comfortable contacting authorities. Otherwise, we risk creating a divided society, one which Massachusetts State Representative Ryan Fattman described in remarks for which he later apologized: "Asked if he would be concerned that a woman without legal immigration status was raped and beaten as she walked down the street might be afraid to report

[20] Stephen Magagnini, *Deported Mexicans leave two small kids in Lodi*, Sacramento Bee (Nov. 2, 2010).
[21] Lee Romney & Paloma Esquivel, *Noncriminals swept up in federal deportation program*, L.A. TIMES (Apr. 25, 2011), *available at* http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425.
[22] *Id.*

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the crime to police, Mr. Fattman said he was not worried about those implications. 'My thought is that if someone is here illegally, they should be afraid to come forward,' Mr. Fattman said. 'If you do it the right way, you don't have to be concerned about these things.'"[23] These sentiments do not represent the values that have successfully made our nation welcoming to immigrants. ***We therefore urge Congress to prohibit deportation of immigrant survivors of domestic violence and/or sexual assault in the United States.***

E. Conclusion

The ACLU applauds the Chairman, Ranking Member and members of the Senate Judiciary Committee for their attention to and support of VAWA and we look forward to working with the Committee in the months ahead to advance a version of VAWA that includes the modifications described above.

Should you have any questions, please don't hesitate to contact Vania Leveille at (202) 715-0806 or vleveille@dcaclu.org or Joanne Lin at (202) 675-2317 or jlin@dcaclu.org.

Sincerely,

Laura W. Murphy
Director, Washington Legislative Office

Vania Leveille
Senior Legislative Counsel

Joanne Lin
Legislative Counsel

[23] John J. Monahan, "Immigrant Checks Urged." Worcester Telegram & Gazette (June 8, 2011).

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Written Testimony

of

David S Brannon

As a representative of

Voice of American Immigration Fraud Victims

Submitted in connection

with the Hearing before the

Senate Committee on the Judiciary

On

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

Wednesday, July 13, 2011

Dirksen Senate Office Building, Room 226

My name is David Brannon. I was born on August 28, 1964, and I reside in Walkersville, Maryland. I am currently the leader of a grassroots organization called Voice of American Immigration Fraud Victims.

Why Am I Involved?

In 2005, I met and became engaged to a woman from Russia. Elena moved to the US in November of 2005, with her daughter, and we were married in January of 2006. She received her conditional green card in August of 2006, and things started deteriorating between us around that same time. We began arguing more and more, usually about money or my son from a previous marriage. She seemed to have a way of pushing my buttons, trying to get me to react. There were times I sensed that she was trying to provoke me into hitting her, but I just dismissed the thoughts. Many times during an argument, she said she wanted to go back to Russia. Of course, I always told her that I didn't want this. I wanted her to stay and work through our problems. I attributed much of our trouble to cultural difference, language barriers(even though her English was excellent), and merging families. She had a daughter from a previous marriage. Both children were under 10.

We did go to a marriage counselor, and of course everything was my fault. She had a laundry list of everything I did wrong, what made her unhappy, and what I needed to do and change. She was unwilling to listen to me or to even consider that she had any role in our problems. Our counselor even told my wife that she needed to be less aggressive, and be willing to listen to my opinions and feelings. My wife totally ignored this. We had 5 sessions with the counselor, 3 together, and we each had an individual session. At the end of the fifth session, the counselor suggested we both seek individual counseling to address some personal issues she felt we needed to work on, and then come back for additional marriage counseling.

We never made it there. Less than a month later, in April of 2007, we had back to back nights of arguments, which in retrospect, were pretty stupid to have even argued over. I felt stronger than ever that she was trying to provoke me. Of course, I never hit her. That is not who I am. I told her that I could not live this way any longer. Maybe it was time that I gave into her requests to return to Russia. At this point, she told me that I would be sorry. That was really the last time we spoke.

The very next day, at 10pm on a Thursday night, I was presented with a temporary protection order by the county sheriff. I had to leave my house immediately. In this order, she accused me of beating her, abusing her physically and mentally, and threatening to kill her. None of the accusations were true. It is important to note that these alleged abuses and threats were never mentioned to the marriage counselor.

We were in court the next week, and of course the TPO was dismissed because there was no evidence of abuse. She had no pictures, no trips to the doctor or emergency room, no 911 calls, no neighbor complaints, no witnesses. The police had never been called to our home. I returned home to find she had packed all of her and her daughter's belongings, along with some of mine and my son's, and moved out.

Once I settled back in, I started to do some investigating. I signed into the family computer, looking for clues as to why she would accuse me of abuse. I checked her web browsing history and cookie history. This showed that she had been visiting dating sites the entire time she had been in the US. She had been especially active in the weeks leading up to getting the temporary restraining order. She was a member in at least two of these sites.

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My wife filed for divorce based on the alleged spousal abuse. During the divorce hearing a year later, she made all the same allegations of abuse, along with a few more. The judge dismissed all her allegations of abuse, and awarded the divorce to me, based on mutual separation. She was caught in multiple lies during the hearing and the judge did not find her to be credible.

The entire experience was physically, emotionally, and mentally draining. I spent thousands of dollars in legal fees, as well as thousands more in court ordered support for her. I lost a few friends, that chose to believe my wife, without even listening to what I had to say. I almost damaged the relationship with my son. I felt like an idiot.

Never in my wildest dreams did I think something like this could happen. In the beginning of our relationship, I was on the lookout for signs of a scam. I had read many stories of Americans being taken advantage of by immigrants pretending to be in love. When no red flags surfaced, I thought I had found true love. I was not even aware of the scam I had fallen victim to until it was too late. Somewhere along the path to divorce, I figured out why my wife had made the false allegations of abuse. It became clear to me why she took out a TPO. By making these allegations of abuse, along with supporting documentation of a TPO, she was able to self-petition to have the conditions removed from her green card based on the **Violence Against Women Act**.

When I discovered that the USCIS would not and could not hear my side of the story, as I was allowed to do in court, I was shocked. The USCIS was not allowed to consider any evidence I submitted: the court order that dismissed the TPO; the computer evidence of dating sites that showed she was never committed to our marriage; the official statements from two police jurisdictions which showed they had never dispatched to my home; the results of our divorce.

These experiences led me to others that had gone through similar situations. We formed Voice of American Immigration Fraud Victims out of a desire to change the current system, and to prevent others from experiencing the same pain we did.

Who Are Voice of American Immigration Fraud Victims

VOAIFV was formed in February 2008. We are a national organization whose members include American citizens and legal permanent residents (both men and women) that have been victimized by their immigrant spouses making false allegations of spousal abuse in order to file a **VAWA** based I-360 Self-Petition to remove the conditions on their green cards.

My group has been actively lobbying the House of Representatives and the Senate since June 2008. **VOAIFV** has a plan for the changes that must be included in the next reauthorization of the **Violence Against Women Act**. We are not advocating a repeal of **VAWA**, nor are we looking to take away an immigrant's ability to file a self-petition when confronted with an abusive relationship. We simply want to restore due process. We want to remove the incentive to make false allegations of abuse. We want to close the immigration loophole that **VAWA** has opened. We want to improve the integrity of the US immigration system. We want to help make our country safer from the threat of terrorism.

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Taking on VAWA Immigration Fraud

In 1986, after Congress discovered a 30% fraud rate for marriage-based immigration, the **Immigration Marriage Fraud Amendment (IMFA)** was passed to protect American citizens from marriage fraud and to protect the integrity of the US immigration system. The IMFA requires a two-year conditional status for foreign spouses before they become eligible for permanent residency. If the couple divorces within two years, the foreign spouse must depart the country. But **VAWA** immigration provisions enable foreign spouses to bypass the two-year marriage requirement by merely claiming to be a victim of abuse. This immigration loophole is well known to incoming immigrants, as well as immigration lawyers.

VAWA Facilitates Immigration Fraud

The immigration provisions of **VAWA** allow and encourage immigration fraud. **VAWA** makes it more likely that false claims of abuse will be made by a foreign spouse against a citizen spouse, whether it is a man or a woman, for the following reasons:

- By claiming to be a victim of domestic violence and starting the I-360 self-petition procedure, the immigrant gains an advantage in the immigration process
- Allows an immigrant to self-petition for a green card based on claims of domestic violence, without providing any hard proof of abuse
- Eliminates traditional standards of proof
- Requires only one-sided proof of abuse, such as a personal statement by the immigrant, or an *Ex Parte* Restraining Order which requires no evidence to receive
- Bans all evidence by the alleged abuser, even if it shows fraud or illegal behavior
- Labels a US citizen merely accused of abuse is classified as a "prohibited source"
- Assures the immigrant spouse that the citizen spouse cannot challenge the abuse claims
- Removes any responsibility from the self-petitioner for bringing false claims of abuse
- Centralizes a decision-making body for all self-petitions to the Vermont Service Center, staffed with **VAWA** trained personnel acting under **VAWA** instructions
- Adjudicators handling **VAWA** cases in the Vermont Service center receive sensitivity training, but not fraud training or interviewing techniques
- No interview is required to gauge the legitimacy of the marriage or the abuse claims
- The local immigration office, with trained investigators and fraud specialists, loses jurisdiction to investigate validity of the marriage or abuse claims
- **VAWA** provides NO safeguards to prevent or even deter an immigrant spouse from lying about spousal abuse
- **VAWA** automatically assumes the immigrant is the victim, not a criminal or defrauder
- **VAWA** immigration provisions do *not* protect U.S. citizens experiencing domestic violence at the hands of foreign spouses, regardless of credible evidence or the existence of restraining orders.
- Overrides deportation hearings when an immigrant claims to be a victim of spousal abuse
- Allows unlawful or illegal aliens, often with criminal backgrounds, to qualify for the self-petitioning process
- Provides free legal services to immigrants who merely claim abuse
- The immigrant is immediately eligible for public assistance (as opposed to a five-year wait in other circumstances)

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VAWA Based I-360 Self-Petition Statistics:

Fiscal Year	# I-360s Filed	Approved	Denied	Source
1995	0	0	0	(source 1)
1996	27	na	na	(source 1)
1997	2491	1210	406	(source 2)
1998	3331	1677	810	(source 2)
1999	3158	1921	595	(source 2)
2000	na	na	na	na
2001	na	na	na	na
2002	5922	4992	986	(source 3)
2003	6700	3900	1100	(source 3)
2004	7052	4745	1490	VSC
2005	7704	8404	2238	VSC
2006	9131	6238	1939	VSC
2007	8355	5872	2362	VSC
2008	9184	4256	2138	VSC
2009	8534	6258	1656	VSC
2010*	1329	1572	509	VSC

*FY 2010 began November 2009. Statistics go through December 2009

Source 1: AILA InfoNet (http://www.aila.org/content/default.aspx?bc=1016|6715|16871|17119|13775)
Source 2: CRS Report for Congress (http://www.immigrationfraudvictims.com/Immigration%20-%20Noncitizen%20Victims%20of%20Family%20Violence.pdf)
Source 3: National Immigration Project

From 2002 through the beginning of 2010, approximately 63,911 VAWA based I-360 self-petitions were filed with the Vermont Service Center in Vermont. Of those, 46,237 were approved or approximately 72%. 12,280 were denied or approximately 19%. The remaining 9% are pending.

From 1996 to 2005, rates of household domestic violence in the U.S fell from 8,600,000 to 4,800,000, or approximately 44%. (U.S. Department of Justice, Bureau of Justice Statistics, National Crime Victimization Survey)

From 1996 to 2005, rates of I-360 self-petitions based on domestic violence increased from 27 to 7704, over 28,000%.

Impact of False Claims

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Most people fail to consider how false allegations of abuse impact society. There is always a cost involved, whether it is financial, emotional, or perceptual.

- Scarce social services resources are being diverted away from the true victims of domestic abuse
- These claims impose demands on limited law enforcement and criminal justice resources
- Widespread false allegations of abuse inevitably cast doubt on the validity of real victims' claims
- Current provisions allow an illegal immigrant to become legal by claiming abuse
- Immigrants who falsely claim abuse have more rights and protections than law-abiding citizens
- Honest American citizens have been subjected to jail time because of an allegation of abuse
- Honest American citizens are having their parental rights taken away based on an allegation of abuse
- Honest American citizens are losing jobs because of complications caused by allegations of abuse
- Honest Americans are being subjected to unfounded allegations of abuse that have led to emotional and financial ruin
- According to a report by SAVE, VAWA funded immigration fraud costs US taxpayers $210 million per year (http://www.saveservices.org/downloads/VAWA-Funded-Immigration-Fraud)
- The lack of resistance in obtaining a green card via VAWA based self-petitions creates opportunities for criminals and terrorists and puts Americans at risk (http://cis.org/marriagefraud)

Unintended Consequences

Perhaps the most ironic unintended consequence of the immigration provisions of **VAWA** are American women having **VAWA** used against them by their immigrant spouses. **VAWA** has opened the door for a woman's immigrant spouse to bypass the immigration laws of the U.S. and all immigration fraud safeguards applicable to other immigrants by merely claiming to be a victim of abuse. Was this really the intention that was envisioned when the immigration provisions were added to **VAWA**?

Unfortunately, the immigration provisions also create opportunities for criminals and terrorists and puts Americans at risk. Immigration fraud is a proven method used by criminals and terrorists to gain entry into the United States illegally to carry out their agendas, according to a government report obtained by the National Association of Chiefs of Police. Per a Center for Immigration Studies report: If small-time con artists and Third-World gold-diggers can obtain green cards with so little resistance, then surely terrorists can do (and have done) the same. Janice Kephart, former counsel to the 9/11 commission and now Director of National Security Policy at the Center for Immigration Studies, wrote a disturbing Center Paper called Immigration and Terrorism in which she outlined how numerous international terrorists, including members of Al-Qaeda, have used marriage fraud in order to prolong their stays in the United States. Many of the 911 hijackers were in the US on marriage fraud, as was the recent Time Square bomber. It is unnerving to receive requests for help through our web site from women that have married immigrant men from various contries in the Middle East, and to hear their stories that almost always end with "he has disappeared" or "I don't know where he is."

The Need For Reform

The most fundamental principle of the American criminal justice system is the right to due process. Under **VAWA** immigration provisions, an American citizen accused of partner abuse has no legal standing to refute the claims of the immigrant spouse with the U.S. government. Even though a citizen may be found innocent of spousal abuse in state court, the U.S. government considers him/her a spousal abuser. Safeguards need to be added so true abuse victims are protected without taking away the rights of an alleged abuser. Due process includes providing every American citizen the opportunity to refute a false allegation of spousal abuse, wherever that claim may be made. It is clear that the current system is flawed and needs significant reforms. Immigration provisions within **VAWA** are compromising the integrity of the U.S. immigration system.

Through discussions with victims of false allegations, lawyers and former DHS investigators, **VOAIF** has put together a proposal to reform the immigration provisions within **VAWA**. Included with my statement, are sections 204, 216, and 240A of the **Immigration and Nationality Act**. The changes that are needed in order to remove the incentive for making false allegations of abuse against the citizen spouse are in red font.

The basics of our proposal are recapped here:

- Allow all credible evidence to be presented by the citizen spouse
- Require that the Vermont Service Center be assisted in an investigation by a local USCIS Service Center.
- Require that the investigative officer at the local Service Center interview the immigrant spouse in regards to the marriage and abuse allegations.
- Require that the investigative officer at the local Service Center interview the citizen spouse in regards to the marriage and abuse allegations.

I have talked to or received emails from several hundred men and women over the last three years. I am sure that this is a small fraction of the people that are actually being victimized by these provisions. Most people do not investigate or try to figure out the whys and the hows. The overwhelming majority reaction is one of astonishment and disbelief when they turned to their US government for help, and were told, "Sorry, we can't help you." We need to change this.

Respectfully submitted,

David S Brannon
Voice of American Immigration Fraud Victims
www.immigrationfraudvictims.org

"All that is necessary for the triumph of evil is that good men do nothing." -- Edmund Burke

"It does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds." -- Samuel Adams

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Voice of American Immigration Fraud Victims

Proposed Changes To The

Immigration and Nationality Act

As It Pertains To The

Violence Against Women Act

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Sec. 204. [8 U.S.C. 1154]

(a) (1) (A) (i) 4a/ Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 201(b)(2)(A)(i) also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii) 4/ (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that–

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien–

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and--

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section

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201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(III) For purposes of subclause (I), the Attorney General must follow the guidelines set forth in section 240A(b)(2)(E) - Adjudication of VAWA Self-petitions

(iv) 5/ An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) , and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) 6/ An alien who--

(I) is the spouse, intended spouse, or child living abroad of a citizen who--

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

(vi) 6a/ For the purposes of any petition filed under clause (iii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser's citizenship status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.

(vii) 6ab/ An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 201(b)(2)(A)(i) if the alien--

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) ;

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(IV) resides, or has resided, with the citizen daughter or son; and

(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

(viii) 4a/ (I) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.

(B) (i) (I) Except as provided in subclause (II), any alien 7a/ lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

(I) 7a/ Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

(ii) 7/ (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 203(a)(2)(A) and if the alien demonstrates to the Attorney General that--

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien--

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and--

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(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(III) For purposes of subclause (I), the Attorney General must follow the guidelines set forth in section 240A(b)(2)(E) - Adjudication of VAWA Self-petitions

(iii) 8/ An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

(I) The Attorney General must follow the guidelines set forth in section 240A(b)(2)(E) - Adjudication of VAWA Self-petitions

(iv) 9/ An alien who–

(I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who-

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (ii) or (iii), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (ii) or (iii), as applicable.

(v) 9a/ (I) For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under subsections (a) and (c) of

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section 245 or obtain status as a lawful permanent resident based on an approved self-petition under clause (ii) or (iii).

(II) Upon the lawful permanent resident spouse or parent becoming or establishing the existence of United States citizenship through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii) or (iii) on behalf of an alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.

(C) 10/ Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii),(A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

(D) 10/ (i)(I) Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) 10a/ or section 204(a)(1)(B)(iii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A). No new petition shall be required to be filed.

(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) 10a/ a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

(IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii)or (B)(iii) in which the child is included as a derivative beneficiary.

10/ (iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.

10a/ (iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsections (a) and (c) of section 245 as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).

10a/ (v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) 10a/ as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through (iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual filing a petition under subparagraph (A)(iv) or (B)(iii) 10a/ .

(E) 10/ Any alien desiring to be classified under section 203(b)(1)(A) , or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(F) 10/ Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B) , 203(b)(1)(C) , 203(b)(2) , or 203(b)(3) may file a petition with the Attorney General for such classification.

(G) (i) 10/ (i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4) , or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(H) 10/ Any alien desiring to be classified under section 203(b)(5) may file a petition with the Attorney General for such classification.

(I) 10/ (i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(J) 10/ In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 10/ or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(K) 10ab/ Upon the approval of a petition as a VAWA self-petitioner, the alien --

(i) is eligible for work authorization; and

(ii) may be provided an 'employment authorized' endorsement or appropriate work permit incidental to such approval.

(L) 10ac/ Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child) which established the individual's (or individual's child) eligibility as a VAWA petitioner or for such nonimmigrant status.

(2) (A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless-

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term "spousal second preference petition" refers to a petition, seeking preference status under section 203(a)(2), for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

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Sec. 216. [8 U.S.C. 1186a]

(a) In general.-

(1) Conditional basis for status.-Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements.-

(A) At time of obtaining permanent residence.-At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) At time of required petition.-In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections (c)(1).

(C) Effect of failure to provide notice.-The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(b) Termination of Status if Finding that Qualifying Marriage Improper.-

(1) In general.-In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that-

(A) the qualifying marriage-

(i) was entered into for the purpose of procuring an alien's admission as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 1/ subsection (d) or (p) of section 214 with respect to the alien; the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

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(2) Hearing in removal proceeding.-Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of Timely Petition and Interview for Removal of Condition.-

(1) In general.-In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed-

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) Termination of permanent resident status for failure to file petition or have personal interview.-

(A) In general.-In the case of an alien with permanent resident status on a conditional basis under subsection (a), if-

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B), the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding.-In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview.-

(A) In general.-If-

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

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(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B), the Attorney General shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination.-If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) Termination if adverse determination.-If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) Hearing in removal proceeding.-Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

(4) Hardship waiver.-The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that-

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including

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information regarding the whereabouts of such spouse or child. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application, including credible evidence supplied by citizen or permanent resident spouse or parent. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(d) Details of Petition and Interview.-

(1) Contents of petition.-Each petition under subsection (c)(1)(A) shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process.-The facts are that-

(i) the qualifying marriage-

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 1/ subsection (d) or (p) of section 214 with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information.-The information is a statement of-

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a), and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition.-

(A) 90-day period before second anniversary.-Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

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(B) Date petitions for good cause.-Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal.-In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview.-The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of Period for Purposes of Naturalization.-For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of Certain Waivers.-In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 212 of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions.-In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)-

(A) as an immediate relative (described in section 201(b)) as the spouse of a citizen of the United States,

(B) under section 214(d) as the fiancee or fiancé of a citizen of the United States, or (C) under section 203(a)(2) as the spouse of an alien lawfully admitted for permanent residence, by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 203(d).

(2) The term "alien son or daughter" means an alien who obtains the status of an alien

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lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term "qualifying marriage" means the marriage described to in paragraph (1).

(4) The term "petitioning spouse" means the spouse of a qualifying marriage, other than the alien.

Sec. 240A. 1/ (a) Cancellation of Removal for Certain Permanent Residents.-The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien-

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.-

(1) IN GENERAL.-The Attorney General 2/ may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien-

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph (5) 2a/ 5/ ; and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) 2/ SPECIAL RULE FOR BATTERED SPOUSE OR CHILD-

(A) AUTHORITY- The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that-

(i) (I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident

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and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraphs (1)(G) or (2) through (4) of section 237(a), 5/, subject to paragraph (5) and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

(B) PHYSICAL PRESENCE- Notwithstanding subsection (d)(2), for purposes of subparagraph (A)(ii) 6/ or for purposes of section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall co unt toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in section 240A(b)(2)(B) and section 244(a)(3) (as in effect before the title II I-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) GOOD MORAL CHARACTER- Notwithstanding section 101(f), an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph 6/ (A)(iii) or section 244(a)(3)

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(as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) CREDIBLE EVIDENCE CONSIDERED- In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application, including credible evidence supplied by citizen or permanent resident spouse or parent. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(E) ADJUDICATION OF VAWA SELF PETITIONS – All I-360 and I-751 self petitions based upon domestic violence, abuse, extreme cruelty, battering shall be placed in a removal/cancellation of removal status.

(i) All I-360 or I-751 self petitions based upon domestic violence, abuse, extreme cruelty, battering shall be filed with the Vermont Service Center.

(ii)(I) Upon receipt, the file will be reviewed by an adjudicator to determine if the application meets the requirements of the self petition process. If the requirements are met, the file will be sent to the local USCIS service center which is geographically closest to where the alleged domestic violence occurred.

(aa)All documentation provided by the self petitioning alien, to include, but not limited to, police reports, medical reports, court documents, affidavits, photographs, will be included with the file.

(II) Upon receipt of the self petition file at the local USCIS Service Center, a trained investigative officer will be assigned to review the file. Investigations must be completed within 90 days.

(aa) After the file has been reviewed, an interview shall be conducted of the immigrant that has filed the self petition and any other witnesses the immigrant provides to USCIS. The interview shall be conducted by a trained officer of the local USCIS service center which is geographically closest to where the alleged domestic violence occurred. The interview will be conducted separate and apart from the US citizen or LPR spouse.

(bb) It shall be required that USCIS notify the United States citizen or lawful permanent resident (LPR) against whom the allegations of domestic violence, battery, extreme cruelty, etc have been made and who is the initial sponsoring person, that such allegations have been made, the nature of the allegations,

the date, place, and time of every hearing involving the alien, and will afford the US citizen or LPR the opportunity to testify at any removal hearing involving the alien.

(cc) An interview shall be conducted of the alleged abusive US citizen or LPR spouse any other witnesses the US citizen or LPR provides to USCIS. The interview shall be conducted by trained officers of the local USCIS service center which is geographically closest to where the alleged domestic violence occurred. The interview will be conducted separate and apart from the immigrant spouse.

(dd) If either the alien in question, any of his or her witnesses, or the US citizen or LPR, or any of their witnesses provide false testimony or counterfeit documents in connection the case, the matter shall be referred to the United States Attorney's Office that has jurisdiction where the crime was committed for consideration of prosecution pursuant and consistent with USDOJ guidelines and protocol.

(III) Upon conclusion of the local USCIS investigation, the investigative officer will return the self petition file to the Vermont Service Center adjudicator, along with all notes, statements, evidence, and any other relevant information collected during the interviews and investigation. The officer should also recommend one of the following courses of action:

(aa) approve the self petition due to overwhelming evidence, or

(bb) refer the self petition to an Administrative Law Judge for a hearing

(IV) The VSC adjudicator will move forward with the self petition based on the local service center recommendations.

(iii) When a self petition has been referred to an Administrative Law Judge, a hearing must be scheduled within 90 days. At the hearing, the Administrative Law Judge will make one of the following determinations:

(I)Petitioner was a victim of domestic violence;

(aa) A finding by clear and convincing evidence that the petitioner was a victim of domestic violence will qualify the petitioner for permanent residency status provided all the requirements of the Immigration and Nationality Act (INA) are met.

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(II) Insufficient evidence exists to conclude the petitioner was the victim of domestic abuse;

(aa) Absent clear and convincing evidence that the petitioner was a victim of domestic violence will result in removal

(III) The petitioner made false representations or otherwise engaged in fraud.

(aa) A finding by clear and convincing evidence that the petitioner engaged in fraud or entered into a sham marriage for the purpose of obtaining an immigration benefit will result in removal and denial of all current and future immigration petitions by the petitioner.

(bb) The case shall also be presented to the United States Attorney's where the crime was committed as a request for prosecution pursuant to Title 8 USC 1325(c), no later than 90 days after that determination has been made, regardless whether or not the alien files a timely appeal with the Board of Immigration Appeals.

(iv) Evidentiary Requirements

(I) Clear and convincing evidence is required for a finding that the petitioner was a victim of domestic violence or that the petitioner committed fraud.

(II)Temporary protective orders which require no evidence to obtain shall not be considered evidence for determining the petitioner was a victim of domestic abuse.

(III) Civil protective orders which are granted only on preponderance of the evidence shall not be considered evidence for determining the petitioner was a victim of domestic abuse.

(IV) Any and all evidence supplied by the US citizen or LPR will be considered and examined, and presented at any merits hearing. This evidence can be used to impeach the credibility of the alien and any witnesses the alien may call in his or her behalf.

(v) At the time an I-360 or I-751 self petition seeking VAWA relief is filed with USCIS, the underlying I-864 affidavit of support filed by the sponsoring party shall be considered automatically suspended. The US citizen or LPR who filed

the I-864 will no longer be contractually liable to the government of the United States or any political subdivision should the alien apply for, and receive, any means tested public assistance. If the alien is found by the administrative law judge to be a victim of physical violence by the US citizen or LPR the judge can order the I-864 reinstated, otherwise the I-864 will be withdrawn.

(vi) Under no circumstances, will an alien who is convicted of an aggravated felony (as defined in Section 101(A)(43) of the INA, or who is convicted of a crime involving moral turpitude be released from custody, pending final disposition of their application for COR.

(3) RECORDATION OF DATE. 3/ --With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

(4) 3a/ CHILDREN OF BATTERED ALIENS AND PARENTS OF BATTERED ALIEN CHILDREN-

(A) IN GENERAL- The Attorney General shall grant parole under section 212(d)(5) to any alien who is a--

(i) child of an alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) DURATION OF PAROLE- The grant of parole shall extend from the time of the grant of relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. 5a/ Failure by the alien granted relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.

(5) 5/ APPLICATION OF DOMESTIC VIOLENCE WAIVER AUTHORITY- The authority provided under section 237(a)(7) may apply under paragraphs (1)(B), (1)(C), and (2)(A)(iv) in a cancellation of removal and adjustment of status proceeding.

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(6) 7/ RELATIVES OF TRAFFICKING VICTIMS-

(A) IN GENERAL- Upon written request by a law enforcement official, the Secretary of Homeland Security may parole under section 212(d)(5) any alien who is a relative of an alien granted continued presence under section 107(c)(3)(A) of t he Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)), if the relative--

(i) was, on the date on which law enforcement applied for such continued presence--

(I) in the case of an alien granted continued presence who is under 21 years of age, the spouse, child, parent, or unmarried sibling under 18 years of age, of the alien; or

(II) in the case of an alien granted continued presence who is 21 years of age or older, the spouse or child of the alien; or

(ii) is a parent or sibling of the alien who the requesting law enforcement official, in consultation with the Secretary of Homeland Security, as appropriate, determines to be in present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement, irrespective of age.

(B) DURATION OF PAROLE-

(i) IN GENERAL- The Secretary may extend the parole granted under subparagraph (A) until the final adjudication of the application filed by the principal alien under section 101(a)(15)(T)(ii) .

(ii) OTHER LIMITS ON DURATION- If an application described in clause (i) is not filed, the parole granted under subparagraph (A) may extend until the later of--

(I) the date on which the principal alien's authority to remain in the United States under section 107(c)(3)(A) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)) is terminated; or

(II) the date on which a civil action filed by the principal alien under section 1595 of title 18, United States Code, is concluded.

(iii) DUE DILIGENCE- Failure by the principal alien to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) of subparagraph (A), or in pursuing the civil action described in clause (ii)(II) (as determined by the Secretary of Homeland Security in consultation with the Attorney General), may result in revocation of parole.

(C) OTHER LIMITATIONS- A relative may not be granted parole under this paragraph if--

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(i) the Secretary of Homeland Security or the Attorney General has reason to believe that the relative was knowingly complicit in the trafficking of an alien permitted to remain in the United States under section 107(c)(3)(A) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)); or

(ii) the relative is an alien described in paragraph (2) or (3) of section 212(a) or paragraph (2) or (4) of section 237(a).

(c) Aliens Ineligible for Relief.-The provisions of subsections (a) and (b)(1) shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e).

(3) An alien who-

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 212(e), and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 212(a)(3) or deportable under of section 237(a)(4).

(5) An alien who is described in section 241(b)(3)(B)(i).

(6) An alien whose removal has previously been canceled under this section or whose deportation was suspended under section 244(a) or who has been granted relief under section 212(c), as such sections were in effect before the date of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(d) Special Rules Relating to Continuous Residence or Physical Presence.-

(1) TERMINATION OF CONTINUOUS PERIOD.-- For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end 3b/(A) except in the case of an alien who applies for cancellation of removal under

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Dear Ms McMurray,

Dr. Phillip McGraw, aka "Dr. Phil," was the lead witness at last Wednesday's Senate VAWA hearing. His testimony featured this statement: "Domestic violence is now the most common cause of injury to women ages 15 to 44."

But the National Hospital Ambulatory Medical Care Survey says the leading cause of injuries to women is motor vehicle accidents. Domestic violence is ninth on the list, accounting for a grand total of 2.2% of all injuries to women. (You can see the complete listing here: http://www.responsibleopposing.com/facts/leadcaus.html)

Unfortunately, such wild distortions are commonplace. According to the SAVE report, "Most DV Educational Programs Lack Accuracy, Balance, and Truthfulness," 90% of DV educational and training programs fold, spindle, or otherwise mutilate the truth: http://www.saveservices.org/downloads/SAVE-DV-Educational-Programs

The solution? Accreditation. SAVE's Partner Violence Reduction Act features this requirement for federal grantees:

"Applicants must certify that all training, education, and public awareness training programs and activities, including each of its instructional manuals, curricula, handouts, and other informational content, are currently accredited by an independent Training, Education, and Public Awareness Accreditation Organization, as defined in Section 3(a)(29) of this Act; that the Training, Education, and Public Awareness Accreditation Organization is allowed to conduct audits of said training and education sessions; and that evidence of said accreditation is made publicly available on the organization's website."

Please urge Sen. Leahy to include the requirement for DV accreditation in the upcoming VAWA reauthorization. Please also include my note as public testimony for the July 13 hearing of the Senate Judiciary Committee.

Thank you for your time and attention.

Matt Campbell
Henrietta, NY

Hearing of the Senate Committee on the Judiciary on

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

July 13, 2011

Statement of Senator Christopher A. Coons

Mr. Chairman, nearly 17 years after its original passage, it's hard to imagine America without the Violence Against Women Act and the remarkable impact it has had on the safety of women across our country.

As a Delawarean, I am proud of my state's long tradition of support for the Violence Against Women Act. When then-Senator Biden first introduced VAWA in 1990, he was among the first in the Senate to recognize that domestic violence was a national issue that demanded a national response. By the time Congress passed VAWA in 1994, Joe Biden's leadership had helped to change the way all Americans view violence against women.

VAWA funding supports critical victims services throughout the country. As we will hear from the witnesses today, VAWA supports rape crisis centers and transitional housing programs for women at risk. VAWA supports women's safety on college campuses, in rural areas, and on tribal lands. VAWA programs target aid to vulnerable populations, such as children and youth, the elderly, and culturally- or linguistically-isolated groups. Domestic violence so often occurs in the home, where misplaced loyalties and stigma can render it so difficult to identify. Through the STOP program, VAWA trains and provides capacity for law enforcement to detect, stop and prosecute domestic violence. In my home state of Delaware, VAWA provided almost $5 million last year in critically needed funding to support community programs for victims of domestic violence.

And the evidence shows that VAWA is working: reports of rape are down since VAWA was passed, even as the percentages of rapes that are reported have risen. Domestic violence resulting in death is down more than 20 percent.

Without Congressional action, many of VAWA's programs will expire this year and as a human rights issue, we simply cannot allow that to happen. To those who claim that we cannot afford VAWA in these tough budgetary times, I would say that we cannot afford not to.

Mr. Chairman, thank you for calling this hearing and I look forward to working with you to reauthorize VAWA.

Prepared Statement of Ranking Member Chuck Grassley of Iowa
U.S. Senate Committee on the Judiciary
Hearing on "The Violence Against Women Act: Building on Seventeen Years of Accomplishments"
Wednesday, July 13, 2011

Mr. Chairman, thank you for holding today's hearing on the Violence Against Women Act (VAWA). This is an important law that has helped countless numbers of victims across the country break the cycle of domestic violence and move on to productive lives. The law created vital programs that support efforts to help victims of domestic violence, sexual assault, and stalking. Further, the law provides resources across the country to victim advocates, attorneys, counselors, law enforcement personnel, prosecutors, health care providers, emergency shelters, and many other services to help victims.

As an original cosponsor of the Senate version of the reauthorization, I remain deeply committed to ensuring federal resources are provided to programs to prevent and end sexual assault and domestic violence. There is, however, an unfortunate reality that we must face. We live in dramatically different times today than we did in 2000 or 2005 when VAWA was previously reauthorized.

Today, more than 14 million Americans are unemployed. That's a 9.2 percent unemployment rate. The unemployment numbers get worse each month and the national deficit keeps growing and growing. The federal government must drastically reduce its spending and bring the fiscal house in order. During these difficult economic times, we simply can't continue to allocate resources without verifying that the resources are being used as effectively and efficiently as possible. Now, that doesn't mean we do away with VAWA as a program. Instead, it means that as we in this committee look to reauthorize this program, we need to take a hard look at every single taxpayer dollar expended, determine how those dollars are being used, and determine if the stated purpose of the program is being met. The American taxpayers expect us to do this with every law and this hearing affords us that opportunity.

I have long advocated for reviewing grant management at the Department of Justice and determining if programs are meeting their expectations and complying with the law. Back in 2001, Senator Sessions and I requested the Government Accountability Office (GAO) to review all VAWA grant files at the Justice Department. That review found that VAWA files often lacked the documentation necessary to ensure that the required monitoring activities occurred. GAO found that a "substantial number of [VAWA] grant files did not contain progress and financial reports sufficient to cover the entire grant period." Ultimately, GAO concluded in the 2001 review that "because documentation about monitoring activities was not readily available, [DOJ] was not positioned to systematically determine staff compliance with monitoring requirements and assess overall performance." These are significant problems and unfortunately, it appears that they continue to persist a decade later.

A review of individual VAWA grantee audits that were conducted from 1998-2010 by the Department of Justice Inspector General indicates that the problem with VAWA grantees'

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administration and record keeping may actually be getting worse. During this timeframe, the Inspector General conducted a review of 22 individual grantees that received funding from VAWA programs. Of those 22 grantees, 21 were found to have some form of violation of grant requirements ranging from unauthorized and unallowable expenditures, to sloppy record keeping and failure to report in a timely manner. Some of these audits are downright appalling. In 2010, one grantee was found by the Inspector General to have questionable costs for 93 percent of the nearly $900,000 they received from the Justice Department. Another audit, this one from 2009, found that nearly $500,000 of a $680,000 grant was questioned because of inadequate support for expenditures. Another audit in 2005 questioned $1.2 million out of a $1.9 million grant. The list goes on and on for pages. Simply put, in today's economic environment, we cannot tolerate this level of malfeasance in federal grant programs. There are too many victims out there that do not have access to necessary services for the Justice Department to continue to provide funding to entities that play fast and loose with taxpayer dollars.

So, how do we fix this problem? To start, we need a legitimate, rigorous evaluation of the VAWA program to ensure that these sorts of grantees are prohibited from getting funds. That can be done by building effective anti-fraud measures into the legislation, such as debarring poor and underperforming grantees. It also means requiring annual audits and evaluations of program grantees. Unfortunately, as our witness from GAO will point out today, it is difficult to evaluate VAWA grantee performance because the data that is provided to Justice Department by grantees is often difficult to evaluate given varying definitions among different programs. GAO also notes that "information gaps" exist because the various authorizing statutes for different grants for victim's services have different purposes. Finally, GAO notes that the various grants administered by both the Department of Health and Human Services and the Department of Justice use varying data collection practices making uniformity of data difficult. Taken together, GAO notes that while the agencies are making progress to address the gaps in data, these important issues need to be addressed by Congress as we consider reauthorizing VAWA. Given the difficult financial situation that our nation faces, it is imperative that any reauthorization of VAWA include, at a minimum, new studies to determine how effective VAWA programs are, whether grantees are providing adequate services for the amount of funding they receive, and how we root out and cut down on fraud and abuse by VAWA grantees. This grant program accountability will help to ensure that services really go to those in need.

Another issue that must be addressed during the reauthorization process is immigration marriage fraud. Specifically, I'm concerned about the reports that some of the procedures employed by the United States Citizenship and Immigration Services actually help to facilitate immigration marriage fraud, and some of it is further enhanced by provisions under VAWA.

I'm glad we have a witness here today to tell her story about how provisions of VAWA were manipulated by her ex-husband to facilitate his access to a green card. As a past cosponsor of VAWA reauthorizations, I'm saddened to hear this example of how a law designed to help victims, may be used to continue to abuse victims of domestic violence.

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These are important issues that should be addressed as part of any reauthorization. We are well past the time where we can continue to reauthorize programs without giving them the scrutiny needed to ensure that the population we are trying to help, here victims of domestic violence, are getting the services they need. We also have a duty to ensure that those programs are actually working, are not subject to fraud, waste, or abuse, and that victims are not harmed by the programs themselves.

We must do everything in our power to help victims of abuse and domestic violence. At the same time, we face a new challenge of making sure we get it right and simply don't write another check on the taxpayer's dime without ensuring the program is meeting its goals.

I look forward to hearing the testimony from the witnesses and working with members of the Judiciary Committee on finding the right approach.

Thank you.

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WRITTEN STATEMENT OF MICHAEL W. CUTLER,
SENIOR SPECIAL AGENT, INS (RET.)
RE: THE HEARING HELD ON
July 13, 2011
BEFORE THE SENATE JUDICIARY COMMITTEE

"THE VIOLENCE AGAINST WOMEN ACT: BUILDING ON SEVENTEEN YEARS OF ACCOMPLISHMENTS"

I greatly appreciate this opportunity to provide my perspectives and concerns about immigration benefit fraud in general and specifically where VAWA is concerned.

Before we go further I believe it is extremely important to note that while VAWA is an acronym for Violence Against Women's Act, there are many instances where it is the male spouse who suffers from the violence. I would suggest that in this era of gender neutral titles that perhaps a more balanced name should be considered for this important program.

I would like to provide you with a bit of information about my background since I will be making observations and recommendations about VAWA and related areas of concern and to make certain that you know that my perspectives are not based on conjecture but rather are based on my observations and first hand experiences.

I was an employee of what had been the Immigration and Naturalization Service (INS) for approximately 30 years, having begun my career in October 1971 when I entered on duty as an Immigration Inspector assigned to John F. Kennedy International Airport in New York and remained in that position for approximately four years. During one of those four years I was detailed as an Examiner to a pilot program at what was then referred to as the I-130 Unit, so named because our mission was to adjudicate I-130 Petitions that were filed by United States citizens or resident aliens to accord their alien spouses Lawful Permanent Resident Alien status in the United States. In order to accomplish this important mission, my colleagues and I conducted interviews of the petitioning United States citizens and resident aliens and their alien spouses in an effort to determine whether they were living in a true marital arrangement or had entered into a sham marriage as a business arrangement for which the petitioning spouse would often be paid money or receive another tangible benefit and the beneficiary would ultimately acquire lawful immigrant status.

Initially the couples who had entered into fraud marriages were often easy to detect because they rarely rehearsed their answers so we might have the husband claim that they lived in a basement apartment of a private house, while

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his wife might claim that they lived on the fourth floor of an apartment house that had an elevator.

It did not take long for the word to spread throughout the immigrant community, that detailed interviews were being conducted and, as a consequence, more and more couples who engaged in marriage fraud came prepared to a greater or lesser degree with a knowledge of the basics as to where they lived and other such fundamental facts they hoped would successfully get them through the interview.

My colleagues and I at the I-130 Unit had to adapt to the challenges posed by those who had engaged in marriage fraud but who came prepared or the interviews. Hence our interviews had to become more focused and we had to become more skillful and creative interviewers. For example, I took to the practice of asking to see the house keys of the couple to see if their keys matched and if they could identify which key, for instance, opened the outer door of an apartment house and which key opened the locks on the apartment door. I came to appreciate how effective the "grapevine" was when one day I introduced myself to the husband of one couple and when I mentioned my name, he immediately reached into his pocket and threw his keys on my desk. I was surprised, as was his attorney, and I asked why he did this. He told me that he had heard "on the street" that if Michael Cutler was the guy doing the interview, that he would have to produce his keys.

When he heard my name, he immediately realized I would likely ask him to show me his keys. Incredibly I encountered some couples who had matching keys but it became clear that one of the members of the couple had other keys for the apartment where he or she really lived.

The point is that those intent on gaming the system are really paying attention. By arresting illegal aliens who had engaged in marriage fraud, and seeking their deportation from the United States if not their criminal prosecution, we found ultimately the number of fraud applications dropped significantly.

This is what deterrence is all about.

You cannot and should not expect people to take our laws seriously until and unless the law enforcement agencies that administer and enforce those laws demonstrate that these agencies take these laws seriously, themselves.

When individuals are able to commit a crime and are made to understand that there will be no consequences for their crimes, the crime rate climbs and, in the case of immigration fraud, the result is that aliens succeed in gaming the system and quickly the word spreads that aliens who are willing to pay for a citizen to enter into a bogus marriage for them will have nothing to fear. The likelihood that the fraud will be detected is all but nonexistent and, even in the highly unlikely event that the marriage is determined to be a sham, the alien and the citizen petitioner will not face consequences for their crimes.

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Today that vital mission is the responsibility of employees of USCIS who are now referred to as Adjudications Officers.

In August of 1975 I entered on Duty as an Criminal Investigator (Special Agent) where I spent the balance of my 30 year career with the INS. I rotated throughout the various squads within the Investigations Branch of the New York District Office of the INS and spent a number of years assigned to the Frauds Unit where I conducted field investigations into various aspects of fraud ranging from conducting investigations into suspected cases of marriage fraud, labor certification fraud, visa fraud to the identification and arrest of fraud document vendors.

When I was assigned to the Unified Intelligence Division of the New York Office of the Drug Enforcement Administration, one of my areas of concern and an area of concern for the DEA was the issue of immigration fraud- often where it concerned false identity documents, but it also was important to uncover immigration fraud that facilitated the entrance and embedding of aliens into the United States who were targeted for investigation by the DEA and other law enforcement agencies. This concern about fraud continued when I was promoted to the position of Senior Special Agent and assigned to the Organized Crime Drug Enforcement Task Force in New York.

I recall one particularly troubling case in which the target of a major narcotics trafficking organization being conducted by the FBI, and to which I was assigned to assist, was a naturalized citizen of the United States who had been born in Latin America. As I reviewed his immigration file, I was shocked to see that immediately under his Naturalization Certificate were a series of certified court documents indicating that he had been convicted, on several occasions, of felonies involving narcotics trafficking and related crimes and had served years in prison for those crimes for which he was convicted. As I recall, on at least one occasion his conviction for a drug-related felony was the result of a plea bargain. Clearly he was ineligible to have been granted United States citizenship and, in fact, should have been deported from the United States.

He had irrefutably lied on his application for United States citizenship indicating that he had never been arrested nor convicted of any crimes. That false statement should have resulted in his prosecution, but I was unable to get the Assistant United States Attorney in Newark, New Jersey, wherein the venue for the crime lay, to agree to indict this individual for that fraud. I was told that inasmuch as he had already been indicted for committing several drug-related crimes there was no reason to add naturalization fraud to the indictment.

Visa fraud and immigration benefit fraud have plagued the immigration system for many years. It has, in fact, been determined that visa fraud and immigration benefit fraud have played a major role in the ability of terrorists to enter the United States and successfully embed themselves in our country. Such fraud has also been an important factor in cases involving spies and transnational criminals

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enabling them to enter the United States and embed themselves in our country so that they could conduct their criminal and nefarious activities to the detriment of our nation.

The alien who successfully games the immigration system is not only committing a crime and getting away with it- such crimes may also have serious national security ramifications. In the case of fraud in filing petitions under the aegis of VAWA, a disturbing additional component exists- the potential that not only will an alien who is intent on violating the laws by committing fraud may succeed, but that even if the claim of spousal abuse is bogus, that a hapless United States citizen or resident alien may be harmed and hence become "collateral damage" as a result of that fraud. This is certainly not a "victimless crime."

As you know, when an I-130 Petition approved for an alien spouse, that spouse may be granted a conditional resident status for two years. This was made a requirement in an effort to combat immigration benefit fraud. After the two year period, the alien beneficiary and his (her) spouse are required to apply to have the conditional resident status converted to permanent resident status. There are a number of provisions by which the conditional resident alien may have his (her) conditional resident status made permanent where the petitioning spouse need not participate. Under the auspices of VAWA, the petitioning spouse is taken out of the picture- creating a potential incentive for an alien spouse who has mistreated the U.S. Citizen spouse to add "insult to injury" and claim to have, in fact, been the actual "victim" of abuse at the hands of the U.S. citizen.

This provides yet another clear reason why VAWA petitions must be carefully investigated.

It is important to note that when an alien, for whom a petition is filed with USCIS to accord that alien resident alien status, the fundamental purpose behind granting that alien lawful resident status is to serve the interests of the petitioning spouse so that the alien in question may join citizen in a marital relationship in the United States.

Indeed, an oft forgotten point is that our nation's immigration laws exist to protect our nation and our citizens from aliens whose in our country would be detrimental to our nation and/or our citizens.

This is why it is particularly disturbing when an alien for whom a petition is filed falsely alleges spousal abuse against the husband or wife who, in good faith, entered into that marriage and then filed a petition on behalf of that spouse.

If our government is to live up to its obligation of protecting the citizens and resident aliens of our nation, then it would certainly be only fair that all such allegations of spousal abuse be thoroughly investigated because of the grave harm such allegations can have to harm a petitioning United States citizen.

During my career with the INS and in the years since my career ended, I have heard leaders of the INS and of the current component agencies under DHS that

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administer and enforce the immigration laws, state that our government must be customer oriented or must consider the needs of the stakeholders. I could not agree more, however, while some of these administrators were of the belief that their customers were the aliens, including illegal aliens, I have always held that the "customers and stakeholders" are actually the citizens of our nation.

Protecting aliens from unscrupulous and abusive spouses is certainly a worthwhile goal. No one can possibly justify or defend anyone who would take advantage of an alien spouse and leverage the prospect of resident alien status to intimidate or abuse that alien, but often worthwhile goals suffer from "unintended consequences." It has, after all, been said that the road to hell is paved with good intentions.

We have seen other well-intentioned programs subverted by terrorists and criminals. Political asylum is an excellent example of such a program. In January 1993 Amil Kansi, a citizen of Pakistan who had been granted political asylum even though he lies on his application, stood outside CIA Headquarters in Langley, Virginia with an AK-47 and opened fire upon vehicles being driven into the CIA parking lot. He killed two CIA officers and wounded three others. He fled the United States, was ultimately bought back to stand trial and was found guilty at that trial. He was subsequently executed for his crimes, but those he killed remained dead and those injured still suffered the consequences of their injuries.

Other terror suspects have similarly committed political asylum fraud as have criminal aliens.

Unfortunately, there are those who will see in the kindness and generosity of our nation and our citizens, weakness.

Another such example can be found in the case of Samuel Abrahaley Fessahazion.

On March 30, 2010 the Department of Justice issued a press release, entitled, *"Eritrean Man Pleads Guilty to Alien Smuggling"* that can be found a this link:

http://www.justice.gov/opa/pr/2010/March/10-crm-343.html

Here are the three short paragraphs I have taken directly from the press release that "cut to the chase:"

WASHINGTON – Samuel Abrahaley Fessahazion, 23, an Eritrean national, has pleaded guilty to helping smuggle illegal aliens to the United States for private financial gain, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division, U.S. Attorney José Angel Moreno of the Southern District of Texas and U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton.

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Fessahazion, aka "Sami," aka "Sammy," aka "Alex" and aka "Alex Williams" pleaded guilty yesterday in Houston before U.S. District Court Judge Nancy A. Atlas to one count of conspiracy, and two counts of encouraging and inducing aliens to come to, enter or reside in the United States in violation of law for the purpose of private financial gain.

According to plea documents, from at least June 2007 until approximately January 2008, Fessahazion was the Guatemalan link of an alien smuggling network that spans East Africa, Central and South America. Specifically, according to the court documents, Fessahazion illegally entered the United States at McAllen, Texas, on March 20, 2008. He applied for asylum on Sept. 30, 2008, claiming in his application that he was traveling across Africa in 2007 and 2008, fleeing persecution in Eritrea. However, according to court documents, Fessahazion was actually in Guatemala during that period facilitating the smuggling of East African aliens to the United States. Fessahazion was granted asylum by the United States on Nov. 13, 2008.

Please give some thought to the statement that Mr. Fessahazion purportedly surreptitiously entered the United States by running our nation's southern border on March 20, 2008 and then applied for political asylum on September 30, 2008, more than six months after he allegedly ran the border. Incredibly, in under six weeks, his application for political asylum was approved! In his application for political asylum he claimed he was facing persecution on the other side of the planet yet USCIS rushed to provide him with political asylum in mere weeks! It is hard to imagine much if anything was done to truly investigate his claims. This "rush to judgement" rewarded Fessahazion with political asylum even though he completely falsified all of the significant relevant facts in his application for political asylum. Furthermore, by granting him political asylum, he had easy access to the borders of the United States which may well have facilitated his human trafficking crimes.

Incredibly, while the ICE-issued news release laid out all of the facts concerning Mr. Fessahazion's false statements in his political asylum application, there was no mention of any criminal charges being brought against him for committing the felony of defrauding the immigration benefits program.

On July 11, 2011, the New York Times ran an important news report entitled:

"Immigrants May Be Fed False Stories to Bolster Asylum Pleas"

Here is a link to that news report :

http://www.nytimes.com/2011/07/12/nyregion/immigrants-may-be-fed-false-stories-to-bolster-asylum-pleas.html?_r=1&nl=todaysheadlines&emc=tha2

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Here is an excerpt from the news article worth considering:

The man caught on the wiretap urged his immigrant client to fabricate a tragic past if he wanted asylum in the United States. To say that he was a victim of political repression in Albania. Or police brutality. Or even a blood feud.

"Maybe you had to leave because someone threatened to kill you," the man suggested. "Because of something that your father did to somebody else or something to do with the land. You understand? That can be a way to get asylum."

Often enough, it is. A shadowy industry dedicated to asylum fraud thrives in New York, where many of the country's asylum claims are filed. Immigrants peddle personal accounts ripped from international headlines, con artists prey on the newly arrived and nonlawyers offer misguided advice.

The revelation that the West African hotel housekeeper who accused Dominique Strauss-Kahn of sexual assault *apparently lied on her asylum application has focused new attention on the use of these schemes.*

I urge the senators of this committee to seek to do much more to make certain that immigration fraud in general become a focus of concern for a number of reasons, beginning with the potential threats that this poses to national security, a particularly worrisome issue in this perilous era. I would further ask that special attention is devoted to uncovering fraud in the VAWA program because of the unique nature of this program- not only are all of the other vulnerabilities that fraud exposes our nation to in play, but because of the pernicious nature of allegations of spousal abuse when no such abuse is involved.

You should also know that when aliens succeed in gaming the system, the word quickly spreads and so more aliens become emboldened to file more fraud-laden applications further eroding any remaining shreds of integrity in this beleaguered system, further enabling still more individuals to defraud the system forcing the overworked and understaffed adjudications officers to attempt to keep up with the avalanche of applications by working ever faster.

I have come to compare the plight of these USCIS Adjudications Officers with the plight of Lucille and her side kick, Ethel in that old television sitcom "I Love Lucy" when they get a job at a candy factory and they are given the job of wrapping morsels of candy that are delivered on the conveyor belt. At first they are able to do the job quite well and then the conveyor belt begins to pick up speed. No matter how fast they work, they cannot keep up. They begin eating some of the bonbons and then they try stuffing them down their clothes but to no avail as the

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candy on the belt hurtles at them at warp speed.

The image of the lunacy at the candy factory made for a classic bit of hilarious television humor. However, when applications for resident alien status and United States citizenship are flung on the desks of the hapless Adjudications Officers at USCIS in ever greater numbers and ever more quickly, there is no humor to be found. Certainly these USCIS employees cannot eat the applications or the relating immigration files- nor can they stuff them down their clothes.

Requiring that the adjudications process to be continually speeded up in an effort to keep up with the increasing numbers of applications creates a vicious cycle where quality control and integrity of the system become the casualties of this hobbled system. Ultimately the citizens of our nation may well become the real casualties as a significant component of national security falters and fails.

As Senator Grassley knows, just about five years ago the GAO conducted an investigation at his behest and the behest of Senator Sue Collins of Maine into allegations that Adjudications Officers at USCIS were forced to adjudicate 111,000 applications for various immigration benefits including 30,000 such applications for United States citizenship without having access to the relevant immigration files.

I want to take a moment to commend both Senator Grassley and Senator Collins for bringing that unacceptable situation to light. My concern is that similar shortcuts may still be an issue at USCIS and other components of the DHS that deal with immigration related issues and challenges.

I would strongly suggest that taking into account the vulnerability our nation faces where immigration benefit fraud is concerned, coupled with the added concerns about the harm fraud in the VAWA program might do to citizens of lawful immigrants of our nation, there are a number of questions that need to be asked (and answered) of the administration and the leadership of USCIS, to achieve effective oversight:

1. What measures have been implemented to seek to uncover fraud in VAWA and other benefit programs and how successful have these measures been? (How many special agents of ICE or other investigative personnel are assigned to specifically investigating VAWA cases and/or how many investigations are conducted each month? How many investigative hours are expended in this endeavor each month? Are actual interviews conducted in conjunction with VAWA petitions or other applications for immigration benefits?)

2. When it is determined that an alien filed a false claim against a spouse are criminal prosecutions generally sought? If so, how many such prosecutions were conducted last year? Other than seeking to prosecute an alien who is determined to have filed a false claim about spousal abuse are deportation (removal) proceedings also implemented? If so, how many such removal proceedings were

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implemented last year? How many such aliens were actually ordered removed? How many of those were physically deported from the United States?

3. How many United States citizens were criminally charged with spousal abuse last year as a result of, or in conjunction with, a VAWA petition being filed? Is a record kept of these prosecutions and included in the relevant aliens' immigration files?

4. If it is determined that a VAWA petition was fraudulent, is any routine procedure in place at USCIS, or have any instructions been provided to USCIS employees, to make certain that the United States citizen or resident alien who is accused of such spousal abuse provided with any exculpatory documentation that could be used by that citizen or resident alien in his (her) defense should criminal charges have been brought against that person? The point is that it is important to make certain that vulnerable aliens are not taken advantage of by unscrupulous United States citizen or resident alien spouses, but it is certainly no less important that the rights of U.S. citizens and resident aliens are also protected and safeguarded.

5. Is there anything in the job description or the critical elements of the evaluations of adjudications officers who process VAWA petitions that place emphasis on seeking to uncover fraud in these petitions or is the focus of their evaluations on how many applications they can process in a given day? There is an obvious inverse proportion between quantity of work and quality of work. It would certainly seem that in a string of GAO and OIG reports that the adjudications officers of USCIS are constantly under pressure to move the applications as quickly as possible, exacerbating the challenges to creating even a modicum of integrity to this critical process that impacts national security and can have a profound impact on the lives of so many people including United States citizen and resident alien spouses who file petitions for their aliens spouses and are then alleged to have abused those spouses. Is anything being done to address this serious problem?

Critical elements in an evaluation serve as the "marching orders" for employees who are being evaluated. It is all well and good for management at an agency to say that they are attempting to combat fraud, for example, however, the way employees are evaluated and the percentage of the resources are allocated to actually combat fraud will provide the sort of real insight that empty statements by bureaucrats will not.

6. Are Adjudications Officers of USCIS provided with training and ongoing

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counseling to make certain that they understand the real world impact that a finding of spousal abuse can have on the United States citizen who originally petitioned for the alien? This should not in any way, mean that Adjudications Officers should not approve such petitions when appropriate, only that they must understand that an approval of a VAWA petition must be fact-based and those facts must be substantiated by an investigation, because of the profound implications such findings will have. (If no such training or counseling is currently conducted, then modifications to the training syllabus must be made and serious thought should be given to providing in-service counseling for those who adjudicate these petitions.)

7. When Adjudications Officers are evaluated, where productivity is concerned, inasmuch as denying an application is far more time consuming and labor-intensive than simply approving an application or petition for an immigration benefit, is any accommodation made to not penalize the diligent adjudicator who, for appropriate cause, denies petitions or applications, thereby reducing the number of adjudications performed? (If this is not done, then the employees who want to get the best possible evaluations will be forced to approve applications that should not be approved to keep productivity levels high, thus contributing to the oft documented problem of high levels of immigration benefit fraud that plagues the system and may have severe national security implications. This is particularly worrisome, considering that the 9/11 Commission determined that visa fraud and immigration benefit fraud were tools often used by terrorists, including the terrorists to enable them to enter the United States and embed themselves within the United States once they were admitted.)

In closing, I want to point out that the raison d'être for our nation's military, law enforcement organizations on all levels, firefighters and all other similar governmental organizations is to protect our nation and our citizens.

Similarly, our nation's borders and immigration laws are supposed to protect our nation and our citizens. I would urge you to see the effective enforcement and administration of our nation's immigration laws as a major factor in the protection of our citizens from aliens whose presence in our country represents a threat to our well being and as an adjunct to the efforts of our military services to protect our nation.

Aliens who commit fraud should expect to face real world consequences and aliens who, in committing that fraud and, in so doing, do harm to citizens or resident aliens who attempted to help them acquire resident alien status and a legal, legitimate pathway to United States citizenship must especially be made accountable before the bar of justice, not only to punish those guilty of such a heinous crime, but as a way of deterring anyone who might contemplate exploiting such a strategy to game the immigration system and inflict such profound harm on our citizens.

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This would be an effective way of helping to attain the goal of truly having a government that is "of the people, by the people and for the people" as President Lincoln so eloquently called for in his Gettysburg Address.

EARL Fibish
Wednesday, July 20, 2011
Dr. Phil's perjury and other VAWA issues

Dear Ms. McMurray:

I am writing you regarding the upcoming reauthorization hearings for VAWA - the Violence Against Women Act. I would first like to point out that VAWA is flagrantly unconstitutional, as it denies Equal Protection to male victims of violence, and domestic violence. Constitutionality requires that VAWA be amended to be inclusive of male victims, especially in light of the fact that women batter men as often as the converse. For a detailed examination of the consistently-replicated equal-perpetration findings, please visit one of Professor Martin Fiebert's websites:

http://www.csulb.edu/~mfiebert/assault.htm

There is also the matter that Phil McGraw, perhaps better known as "Dr. Phil", perjured himself when he recently reported to the Senate Judiciary Committee that domestic violence was the leading cause of injury to women aged 15-44. McGraw's statement was blatantly false: motor vehicle accidents, accidental falls, and unspecified environmental and accidental causes account for 55.1% of injuries to women aged 15-44; domestic violence accounts for only 2.2% of injuries (per a 1996 report from the National Center for Health Statistics).

VAWA *must* be amended to become constitutional, and "Dr. Phil" should be indicted for perjury.

Thank you very much for hearing me out on these issues. Please consider my statements here as public testimony. Thank you very much

Sincerely,

Earl Fibish
Citrus Heights, CA

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United States Senate
Judiciary Committee
July 13, 2011

Judiciary Hearing on "The Violence Against Women Act: Building on Seventeen Years of Accomplishments"
Statement by Esta Soler, Founder and President, Futures Without Violence, formerly Family Violence Prevention Fund:

On behalf of Futures Without Violence, formerly Family Violence Prevention Fund, and a member of the National Task Force to End Domestic and Sexual Violence, I would like to thank the Committee for holding this hearing. For more than 30 years, our organization has worked to end violence against women and children. We would like to focus on a few program areas supported by the Violence Against Women Act (VAWA), including a few programs that were included the most recent reauthorization of VAWA in 2005 that have only recently begun to be implemented.

Assisting Employers to Respond to Violence Against Women:
The National Resource Center On Workplace Responses To Assist Victims Of Domestic And Sexual Violence (Resource Center) was created and authorized pursuant to the Violence Against Women Act of 2005, and is funded by OVW at $1 million per year for three years. The Resource Center initially was created by a partnership of six national organizations: Futures Without Violence (formerly Family Violence Prevention Fund), Legal Momentum, Pennsylvania Coalition Against Rape and National Sexual Violence Resource Center, Resource Sharing Project of the Iowa Coalition Against Sexual Assault, American Bar Association Commission on Domestic Violence, Corporate Alliance to End Partner Violence, and Victim Rights Law Center.

The Resource Center was formed in 2009 to address an emerging issue with significant economic, safety and human consequences - the intersection of intimate partner violence and workplace. The Centers for Disease Control and Prevention estimates that the annual cost of lost productivity due to domestic violence equals $727.8 million.[1] Several recent news stories have highlighted the ways in which workers are vulnerable to sexual assault in the workplace, and the difference that their employers' support can make in addressing these crimes. Nevertheless, a Bureau of Labor Statistics study found that only 13% of workplaces in the U.S. have a policy specifically addressing domestic or sexual violence in the workplace.[2]

The Resource Center helps employers and unions to assist victims, ensure the safety and productivity of their workplace, and minimize exposure to potential liability by providing information, resources, interactive tools, and technical assistance. Since its inception in October 2009, the partners have created and populated website to form a hub for research and resource materials and technical assistance requests for the Resource Center. The Resource Center's website, workplacerespond.org, was launched by the White House in October 2010. It has information and interactive tools that have never before been available, including a quiz to test knowledge about domestic and sexual violence, fact sheets, frequently asked questions with answers, a protection order guide, safety and security information, an interactive training module, and a customizable and downloadable workplace policy.

Over 9,300 people have taken the quiz and over 1,800 people have used the customizable workplace policy tool. Additionally, the partners (upon the request of OVW), drafted a model policy for the federal government for addressing

[1] Centers for Disease Control and Prevention, National Centers for Injury Prevention and Control. (2003). *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta, GA

[2] U.S. Department of Labor, Bureau of Labor Statistics (2006). *Survey of Workplace Violence Prevention, 2005*. Washington, D.C.

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the workplace effects of domestic and sexual violence and stalking. That policy was submitted to the Department of Justice for review in October 2010. In the last 18 months, the Resource Center has conducted seven workshops across the country for several hundred domestic and international businesses, advocates and service providers, law enforcement, judges and court personnel, health care providers, and unions on how to recognize, prevent and address the workplace effects of violence. Local domestic and sexual violence services programs can use the virtual resource center as a basis for partnering with local employers in workplace violence response and prevention activities.

We firmly believe that the best way to continue progress in dealing with the issue is for employers, unions and service providers to work together to address both prevention and response. Reauthorizing and continuing to fund the Resource Center will allow us to expand our reach to assist more types of workplaces (for instance, universities, retail stores, and small businesses), help them build relationships with local service providers, and provide training materials and programs on this issue. Employers will be better able to prevent and respond effectively to domestic and sexual violence, and increase safety, productivity and morale while decreasing turnover, retraining and other costs.

Youth and Prevention

In VAWA 2005, the Children Exposed to Violence and the Engaging Men and Youth program were created. We believe that working with men and youth to be leaders in changing attitudes about the acceptability of domestic and sexual violence and providing early intervention services to children who have witnessed violence are two of the most important strategies for breaking the often intergenerational cycle of violence. Importantly, evidence-based programs to accomplish these goals exist along with research on the impacts of leaving early exposure to violence and abuse unaddressed.

A recent nationwide study of children's exposure to violence found that each year more than 15 million children in the United States are exposed to violence in their homes. In fact, more than sixty percent of the children surveyed for this study were exposed to violence within the past year, either as victims or as witnesses, and by the time children are 17, one-third will have witnessed domestic violence.

Recent research shows that children react in different ways to exposure to violence. Some children show remarkable resilience; these children have protective forces in their lives—including closeness with a nonviolent, capable parent—that help mitigate the effects of exposure to violence. Other children do not fare as well. The effects on children of exposure to violence can include mental health problems, suicide, school failure, and later perpetration or victimization by this population as teens and adults. Early identification of exposure to violence and interventions that strengthen protective forces in children's lives are both critical to reducing these negative effects of violence.

Programs that provide services to both the child and the nonviolent parent get better outcomes than programs that serve only the child or parent. VAWA 2005 included the Children Exposed to Violence program to fund intervention services for children who witnessed this violence and to create partnerships with domestic violence programs and other community-based supports that can help mothers and children be safe together, the kinds of interventions deemed most effective.

The second critical strategy identified is working with men and boys, not as perpetrators, but as agents of social change. Programs that engage male leaders and older youth to influence younger men and boys have been documented to reduce harmful attitudes and behaviors. The last reauthorization of VAWA in 2005 recognized this and created a new program to help incentivize this work and fund efforts to organize and educate men about their role and responsibility in ending violence. The Engaging Men in Preventing Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program has now been funded for the last three years at $2.5 million to $3 million annually, however the on the ground work is only beginning. We strongly encourage the committee to maintain this program and clarify that it is meant to support work with men as influencers of youth and should include both education and awareness campaigns targeting men as leasers and role models as well as programs that support community-based teaching and organizing.

Judicial Training

Supported by technical assistance funding, the National Judicial Institute on Domestic Violence (NJIDV) is a dynamic partnership among Futures Without Violence, the U.S. Department of Justice Office on Violence Against Women (OVW), and the National Council of Juvenile and Family Court Judges. The NJIDV provides highly interactive, skills-based domestic violence workshops for judges and judicial officers in state and tribal courts nationwide.

Studies show that domestic violence cases represent a substantial and increasing proportion of all cases processed by state civil and criminal courts; in some states domestic relations cases are the fastest increasing segment of state civil court caseloads. State criminal, family and juvenile courts, as well as tribal courts, are on the front line in dealing with these increased numbers of domestic violence in both civil and criminal proceedings. The surging caseload has resulted in increased demand for community resources, expanding and constantly changing legislation, and a demand for increased collaboration to deal with the needs of victims, perpetrators, and their children, especially in areas with new and growing numbers of immigrant and/or ethnic minority populations. Keeping judicial officers up to date with emerging legal and social science research and law in this area is a critical issue in the face of the complex demands of domestic violence cases. Judges and court personnel also need opportunities to practice skills and decision making with their peers as they confront new and difficult courtroom situations and issues presented by domestic violence cases.

Over the past 13 years, the NJIDV has developed a continuum of judicial education to incorporate and address these issues. The portfolio of education programs currently includes: the Enhancing Judicial Skills (EJS) in Domestic Violence Cases Workshop, conducted 39 times, providing training for 2,100 state and tribal court judges; the Continuing Judicial Skills (CJS) in Domestic Violence Cases Program, conducted eight times, providing training for 333 state and tribal court judges; six Judicial Education Roundtables; and five Faculty Development and Technical Assistance programs for state and regional adaptation and replication of NJIDV programs. Most recently, the NJIDV developed a four-day Enhancing Judicial Skills in Elder Abuse Cases Workshop, which provides a hands-on, highly interactive workshop that will help new and experienced state court judges and judicial officers to improve their skills and ability to respond to cases involving violence against the elderly. This workshop has been held on five occasions and attended by 175 judges.

We know progress has been made as a result of the trainings, but we also know that there are still hundreds of courts across the country that are overburdened and seek guidance in responding sensitively and appropriately to cases involving domestic violence before them, and survivors who seek justice and safety. We strongly encourage the committee to maintain funding for this program so that we can continue to provide this crucial support to state and tribal court systems that are already overburdened and under-resourced.

Improving Delivery of Victim Services

For the past three years, the Institute for Leadership in Education Development (I-LED), an Office on Violence Against Women-funded program through technical assistance programming, has provided OVW grantees with educational workshops to enhance the training needs of their programs so that they can effectively deliver services to survivors.

In total the I-LED program has trained over 250 OVW grantees representing over 30 states since it began in May 2009. We believe the technical assistance and training provided by I-LED is critical to allowing OVW grantees to use grant funds efficiently and enhances the desperately-needed services they are able to provide in their communities, and strongly urge the committee to continue to provide funding for this program.

Future VAWA Needs

At a recent field hearing in June held in Providence, Rhode Island of the U.S. Senate Judiciary Committee Subcommittee on Crime and Terrorism, the witnesses testified about the need to prioritize teen dating violence prevention in the next VAWA reauthorization.

Similar to the impact of children exposed to violence, the impact of teen dating violence is widespread and the risk factors start early. Nearly one-third of youth will experience dating violence, and the negative health effects include higher rates of using drugs, engaging in unhealthy diet behaviors, risky sexual behaviors, and attempting or considering suicide.

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A working group of advocates from around the country and co-chaired by Futures Without Violence and Break the Cycle have come together with a common agenda for the reauthorization of VAWA. We support maintaining the programs that have been funded but include an increased focus on prevention, particularly the prevention of dating violence, one of the identified shortfalls of the previous VAWA.

As you know, VAWA currently includes a few programs that address services for teen dating violence as well as the prevention of domestic violence, dating violence, sexual assault and stalking. Three of these programs (Services for Youth Victims, Training for Schools, and Access to Justice for Youth) focus on providing services to teen victims, working with schools to help students who are victims and creating community-based responses that support advocacy and a more coordinated response to the needs of teens and youth. While all of these programs were created in the last VAWA reauthorization approved by Congress in 2005, unfortunately, we do not have much information to share on the results of the programs. Only in the last year has the Department of Justice actually released the funds and issued grants to begin implementing the work. We look forward to being able to document the work and measuring its effectiveness moving forward.

Specifically, we ask that the VAWA reauthorization bill continue to support the existing prevention programs (Children Exposed to Violence and Engaging Men and Youth) and increase the focus on teen dating violence by providing grants through the Office on Violence Against Women in consultation with the Department of Health and Human Services to local community partnerships to establish and operate programs targeting youth between the ages of 10 and 19. The teen dating violence prevention programming would:

- Create age and developmentally appropriate education programs targeting young people ages 10-19;
- Include education and mobilization for parents, teachers, coaches, mentors, faith-leaders and other "influencers" as role models and educators for young people;
- Work with middle schools, where little education is currently being provided, in addition to high schools, to integrate healthy relationship education and dating violence prevention programming;
- Link schools and youth-serving organizations with domestic and sexual violence agencies to ensure services are available if a young person is already being victimized.

Futures Without Violence looks forward to being a partner with the Committee in continuing to support these effective VAWA initiatives and increase the focus on prevention of violence and abuse, particularly among teens and children exposed to violence.

Written Statement of Donald Glassman, *resident of* New York, NY
submitted in connection with the Hearing held on
Wednesday, July 13, 2011
before the Senate Committee on the Judiciary, entitled
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

In October 2006, my wife, an immigrant from the Dominican Republic, who is bigger, stronger, and fifty pounds heavier than I, falsely accused me of forcible (later changed to non-forcible) rape, to win a fast-track Green Card under the Violence Against Women Act. She had been coached to do this by a cousin already residing in the United States. My life was destroyed as a result.

I was banned and terminated by Barnard College as soon as they learned of the accusations against me, which led to a wrongful verdict, in October 2007, that was overturned on grounds of ineffective assistance of counsel in July 2008—prior to my acquittal of all charges at the conclusion of my second trial, in February 2009.

By then—having been excluded from my profession for a year and a half, without even a job reference to show for my eight years of service to Barnard College, and unable to explain my termination without disqualifying myself instantly for every position I sought—I was unemployable in the profession to which I had dedicated a BA from Cornell University, two master's degrees, and sixteen years of full-time experience. As a result, my unemployment benefits having run out long ago, at age forty-one I am forced to subsist on part-time earnings as a tutor, paralegal, and interpreter, supplemented by Food Stamps and handouts from my mother. Health insurance is just a pipe dream.

My case demonstrates that any man accused of domestic abuse is instantly GUILTY until proven innocent—except that our justice system does not permit anyone to be proven innocent; therefore, he is just permanently GUILTY.

In addition to the protections it has afforded to genuinely abused women, the Violence Against Women Act and related statutes have destroyed families and damaged children by promoting false allegations as a tool to gain the upper hand in divorce, and, particularly in the case of immigrant women, to gain a fast-track Green Card—with no risk whatsoever to the false accuser. Thus, my wife could falsely accuse me to the police, the grand jury, and the trial jury—without the slightest fear of ever being charged with perjury or anything else.

On March 18, 2010, I filed a malicious prosecution lawsuit in the Southern District of New York against my former wife, who, abetted by the New York Police Department and the New York County District Attorney's Office, falsely and fraudulently accused me of non-forcible rape and battery in order to secure a fast-track Green Card pursuant to the Violence Against Women Act:

http://dockets.justia.com/docket/court-nysdce/case_no-1:2010cv02468/case_id-360416/

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To reiterate, honorable senators, although I was in the end acquitted of all charges, it came at the price of my job of eight years and with it my career of sixteen years as a librarian and archivist, for the sake of which I had earned a bachelor's and two master's degrees; my health and retirement benefits; my reputation; three days in prison, during which I was illegally strip-searched; and $110,000 in legal fees, which exceeded my family's life savings and mine.

Meanwhile, my accuser keeps her fast-track Green Card; and to add to the multiple counts of perjury she committed, last year she gave or sold my identity information to a gentleman who took out a phony New York State driver's license in my name and used that to obtain store credit, and then $3,640 in jewelry, from the Zales at 417 Fifth Avenue in New York. When I reported the identity theft and the grand larceny to my local police department—at the same station where I had been locked up after my instant arrest on the sole basis of my wife's false accusations—the detective who took my report told me that he lacked the time to pursue these crimes, but I should be grateful that I did not have to pay the bill for the stolen jewelry.

One of the pre-eminent law firms in New York,, Paul, Weiss, Rifkind, Wharton & Garrison, is defending my ex-wife *pro bono* against my malicious prosecution claim, which has cost me some $6,000 so far. She was referred to them by Sanctuary for Families, "the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims and their children. Each year, Sanctuary helps thousands of victims and their children build safe lives by offering a range of high quality services to meet their complex needs. These services include clinical, legal, shelter, children's and economic stability services."

What a disgrace that Sanctuary for Families and Paul, Weiss would offer untold thousands' worth of free services to someone who leveled transparently false rape allegations against her husband to gain a fast-track Green Card! But no surprise, given the windfall of benefits, private and public, that my accuser has reaped ever since she began to accuse me. And not to mention the criminal benefits she received by trafficking in my identity information.

I am absolutely positive, honorable senators, that if VAWA were less sweeping in the impunity it grants to accusers and the due process it denies to the accused, then the unpunished crimes of my ex-wife and the destruction of my own life and career would not have been possible in the United States of America, purportedly a nation where men and women are equal under the law, and the accused presumed innocent.

Donald Glassman
mormlem@hotmail.com

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Written Statement of Gary W. Kinsey, resident of [redacted]
Submitted in connection with the Hearing held on
Wednesday, July 13, 2011
before the Senate Committee on the Judiciary on
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

In the winter of 2007 I began speaking with Irina Evstafyeva of Volgograd Russia, who was then residing in Folly Beach, South Carolina. She was here on a K-1 visa with an American citizen Michael Vitton who residing there, yet she contacted me at that time and was telling me tales of abuse that this man was subjecting her and her daughter to at the time. My advice to her, as she had not married him, was for her to return home. She claimed she was living in a single room with her daughters, as he was not only abusive to her, but was making sexual advances on her oldest daughter. I had no reason at that time to believe she was lying.

I continued speaking with Irina after she returned to Volgograd and set up a meeting with her in Kiev Ukraine where I was to be in February of 2008.

We had a courtship and I agreed to petition for a K1 visa for her. When she arrived in October of 2008 she was very happy and pleasant. There were times over the next 2 months that I was concerned that her only desire was to obtain a green card, as her oldest daughter who had married an American citizen told some of my friends who are Russian, that she intended to divorce her husband as soon as the 2 year period of the initial green card passed. Irina repeatedly told me that it did not matter about the country, all she wanted was to have a family. I fell for this line and on the 9th day of December 2008 we married.

The night of 9 December problems began, Irina became abusive toward me. I did not understand what was happening, she began to try to antagonize me and threaten me. Then she demanded a divorce. This was 11 hours into the marriage.

I spent the next month 'walking on egg shells' not sure what was happening or going on, totally confused. On the 7th of January I received a phone call from a friend who was married to a Ukrainian woman. He told me of stories of abuse and child molesting that Irina had told his wife. He said that it sounded just like the stories that Irina had told before about her ex fiancé Michael Vitton.

On Friday the 9th day of January I asked Irina indirect questions about the allegations to my friend's wife. She denied any knowledge of anyone saying her daughter or her had been abused. I did not believe her. Having gone for one month in fear of Irina, I told her that night we did need to divorce and she should return home to Russia. At 4 AM, only hours later she called the police and began to attack me trying to get me to fight with her. Rather than fight, I fled out the front door of the house. As I ran across the yard, the police arrived only to see her pursuing me.

The attack left me bruised, scratched and bleeding. The police administered first aid to me on the scene. The police report indicated that I was bruised and scratched, and she had no sign of any kind of an injury. During the interview with the police she made several allegations which the police report stated were unfounded, and it went on to say that she made several statements in an effort to have me incarcerated. The police assisted me in loading my personal items in my car, and I went to my home in Alabama. Before I left, I told the police I wanted her out of the house by Monday, or I would seek a

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restraining order. On Monday morning I requested a police standby at my home when I returned. I found that she had left, as had many of my personal possessions.

My friend suggested that I check the computer she had been using, and on this computer in the history I found links to websites describing how to 'frame' an unwitting spouse for a VAWA green card.

I filed immediately for an annulment or divorce. My attorney told me Florida judges rarely grant annulments. The basis was that I was in a fraudulent marriage entered into only for the purpose of a green card by Irina.

On the 4th day of February 2009, I was visited by Florida DCF and the Panama City police Department. They told me that Irina and her youngest daughter, 8 years old, had accused me of child molesting. The tales were graphic. However, they also told me that her daughter had later recanted. What they did not tell, and I later found in DCF reports, was that DCF had gotten a confession that Irina had in fact coached her daughter to tell these lies. A lie that could have put me in jail for 15 years had their stories not been inconsistent and constantly changing.

In July of 2009, I finally got my day in court to get the divorce. In testimony, since we had reports from the police, the Sheriff's Department, DCF and a police officer to testify and a copy of her I-360 receipt (Eac0913250274), she denied ever making any reports of abuse, any reports of violence and in fact stated that I was a good person. Her only complaint was that I would not allow her to conduct a massage parlor out of our home in order to make money. She claimed this was controlling. My attorney pointed out to her that my not allowing her to illegally operate a massage parlor from our home, unlicensed and uninsured would not be controlling. She also denied ever filing the VAWA petition and stated that perhaps 'Melissa' of the Salvation Army filed it.

The law for VAWA and the requirements of proof which can be virtually anything, as little as a letter from someone stating that she had told them she was in fear can qualify her for benefits. It is a very simple, very easy scam. And since I was the victim of the scam I have been told by many Russians who know me that all Russian K1 immigrants are aware of how to conduct this fraud, and it is the cheap, easy and guaranteed green card.

The true abuse victims are American citizens, citizens who are abused by immigrants with no intention of a real life with their spouse but intent only on a green card.

Irina Evstafyeva received her green card approval on July 10, 2011. She did require an attorney to obtain it, but I cannot tell you what her actual claim was, or evidence, because it is done solely on her word and that of any person she can get to write a letter, or any fabricated 'unchallenged' evidence. I can tell you, she had nothing from any government agency to indicate any abuse of any kind to her or her daughter.

This law must have fail safe and protections put in place to protect American citizens from unscrupulous intending immigrants, it MUST be amended. There is absolutely no protection whatever for the true victims of VAWA fraud. WE need, we must, have a change in the law to protect citizens, citizens who often lose property, liberty and I fear also life at the hands of these people.

Gary W. Kinsey
[redacted]

July 15, 2011

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United States Government Accountability Office

GAO

Testimony

Before the Committee on the Judiciary, U.S. Senate

For Release on Delivery
Expected at 10:00 a.m. EDT
Wednesday, July 13, 2011

DOMESTIC VIOLENCE, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

National Data Collection Efforts Underway to Address Some Information Gaps

Statement of Eileen R. Larence, Director
Homeland Security and Justice

U.S. Government Accountability Office
GAO 90 YEARS 1921-2011
ACCOUNTABILITY * INTEGRITY * RELIABILITY

GAO-11-833T

Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

I am pleased to be here today to discuss issues related to the reauthorization of the Violence Against Women Act (VAWA). In hearings conducted from 1990 through 1994, Congress noted that violence against women was a problem of national scope and that the majority of crimes associated with domestic violence, sexual assault, and stalking were perpetrated against women. These hearings culminated in the enactment of VAWA in 1994 to address these issues on a national level.[1] VAWA established grant programs within the Departments of Justice (DOJ) and Health and Human Services (HHS) for state, local, and Indian tribal governments and communities. These grants have various purposes, such as providing funding for direct services including emergency shelter, counseling, and legal services for victims of domestic violence, sexual assaults and stalking across all segments of the population. Recipients of funds from these grant programs include, among others, state agencies, tribes, shelters, rape crisis centers, organizations that provide legal services, and hotlines. In 2000, during the reauthorization of VAWA, language was added to the law to provide greater emphasis on dating violence.[2] The 2006 reauthorization of VAWA expanded existing grant programs and added new programs addressing, among other things, young victims.[3] In fiscal year 2011, Congress appropriated approximately $418 million for violence against women programs administered by DOJ and made an additional $133 million available for programs administered by HHS.

The 2006 reauthorization of VAWA required us to study and report on data indicating the prevalence of domestic violence, dating violence, sexual assault, and stalking among men, women, youth, and children, as well as services available to the victims.[4] Such data could be used to inform decisions regarding investments in grant programs. In response,

[1] Pub. L. No. 103-322, tit. IV, 108 Stat. 1796, 1902-55 (1994).

[2] Violence Against Women Act of 2000, Pub. L. No. 106-386, div. B, 114 Stat. 1464, 1491-1539.

[3] Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006).

[4] Pub. L. No. 109-162, § 119, 119 Stat. at 2989-90.

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we issued two reports in November 2006 and July 2007 on these issues, respectively.[5] My statement today is based on these reports and selected updates we conducted in July 2011 related to actions DOJ and HHS have taken since our prior reviews to improve the quality of recipient data.[6] My statement, as requested, highlights findings from those reports and discusses the extent to which (1) national data collection efforts report on the prevalence of men, women, youth, and children who are victims of domestic violence, sexual assault, dating violence, and stalking, and (2) the federal government has collected data to track the types of services provided to these categories of victims and any challenges federal departments report that they and their grant recipients face in collecting and reporting demographic characteristics of victims receiving such services by type of service.

For the reports, we conducted a literature search focusing on reporting systems and surveys from which results were issued or reported since 2001 to help identify national data collection efforts related to domestic violence, sexual assault, dating violence, and stalking.[7] We also obtained information from and interviewed officials at DOJ and HHS. Information obtained included reports the agencies' grant recipients are required to complete on the use of their grant funds, among other things. In addition, we met with 20 grant recipients that provided services, such as emergency shelter, legal advocacy, and rape crisis counseling, to victims within their communities as well as 3 grant recipients that provided services to victims throughout the United States. More detailed information on the scope and methodology from our previous work including our selection methodology for the 23 grant recipients, can be found within each specific report. For the updates, we met with DOJ and HHS officials and reviewed documents such as updated forms for grant recipients to report information on activities conducted. We conducted this

[5] GAO, *Services Provided to Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, GAO-07-846R (Washington, D.C.: July 19, 2007) and GAO, *Prevalence of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, GAO-07-148R (Washington, D.C.: Nov. 13, 2006).

[6] GAO-07-846R and GAO-07-148R.

[7] We selected 2001 as the first year of our review of reporting systems and surveys to enable us to review national data collection efforts conducted over a 5-year period, through 2005.

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work in accordance with generally accepted government auditing standards.

In summary, as we reported in November 2006, the amount of national research that has been conducted on the prevalence of domestic violence and sexual assault among men, women, youth, and children was limited, and less research had been conducted on the prevalence of dating violence and stalking. However, efforts underway by HHS and DOJ help address some of these information gaps. Data collected for the 11 grant programs we reviewed did not contain information on the extent to which men, women, youth, and children receive services by type of service for all services. Moreover, challenges exist for collecting such data, such as concerns about victims' confidentiality and safety, resource constraints, burdening recipients, and technological issues.

National Data Collection Efforts on the Prevalence of Domestic Violence and Sexual Assault Provided Limited Data, but Efforts Underway Help Address Some Information Gaps

In November 2006, we reported that since 2001, the amount of national research that has been conducted on the prevalence of domestic violence and sexual assault had been limited, and less research had been conducted on dating violence and stalking.[8] At that time, no single, comprehensive effort existed that provided nationwide statistics on the prevalence of these four categories of crime among men, women, youth, and children. Rather, various national efforts addressed certain subsets of these crime categories among some segments of the population and were not intended to provide comprehensive estimates. For example, HHS's Centers for Disease Control and Prevention's (CDC) National Violent Death Reporting System, which collects incident-based data from multiple sources, such as coroner/medical examiner reports, gathered information on violent deaths resulting from domestic violence and sexual assaults, among other crimes.[9] However, it did not gather information on deaths resulting from dating violence or stalking incidents.

In our November 2006 report, we noted that designing a single, comprehensive data collection effort to address these four categories of crime among all segments of the population independent of existing efforts would be costly, given the resources required to collect such data.

[8] GAO-07-148R.

[9] Incidence based data is data based on the number of separate times a crime is committed against individuals during a specific time period.

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Furthermore, it would be inefficient to duplicate some existing efforts that already collect data for certain aspects of these categories of crime. Specifically, in our November 2006 report, we identified 11 national efforts that had reported data on certain aspects of domestic violence, sexual assault, dating violence, and stalking. However, limited national data were available to estimate prevalence from these 11 efforts because they (1) largely focused on incidence rather than prevalence, (2) used varying definitions for the types of crimes and categories of victims covered, and (3) had varying scopes in terms of incidents and categories they addressed.

Focus on incidence. Four of the 11 national data collection efforts focused solely on incidence—the number of separate times a crime is committed against individuals during a specific time period—rather than prevalence—the unique number of individuals who were victimized during a specific time period. As a result, information gaps related to the prevalence of domestic violence, sexual assault, dating violence, and stalking, particularly in the areas of dating violence among victims age 12 and older and stalking among victims under age 18 existed at the time of our November 2006 report. Obtaining both incidence and prevalence data is important for determining which services to provide to the four differing categories of crime victims. HHS also noted that both types of data are important for determining the impact of violence and strategies to prevent it from occurring.

Although perfect data may never exist because of the sensitivity of these crimes and the likelihood that not all occurrences will be disclosed, agencies have taken initiatives since our report was issued to help address some of these gaps or have efforts underway. These initiatives are consistent with our recommendation that the Attorney General and Secretary of Health and Human Services determine the extent to which initiatives being planned or underway can be designed or modified to address existing information gaps. For example, DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP), in collaboration with CDC, sponsored a nationwide survey of the incidence and prevalence of children's (ages 17 and younger) exposure to violence across several major crime categories, including witnessing domestic violence and peer victimization (which includes teen dating violence). OJJDP released incidence and prevalence measures related to children's exposure to violence, including teen dating violence, in 2009. Thus, Congress, agency decision makers, practitioners, and researchers have more comprehensive information to assist them in making decisions on grants and other issues to help address teen dating violence. To address

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information gaps related to teen dating violence and stalking victims under the age of 18, in 2010, CDC began efforts on a teen dating violence prevention initiative known as "Dating Matters." One activity of this initiative is to identify community-level indicators that can be used to measure both teen dating violence and stalking in high-risk urban areas. CDC officials reported that they plan to begin implementing the first phase of "Dating Matters" in as many as four high-risk urban areas in September 2011 and expect that the results from this phase will be completed by 2016. Thus, it is too early to tell the extent to which this effort will fully address the information gap related to prevalence of stalking victims under the age of 18.

Varying definitions. The national data collection efforts we reviewed could not provide a basis for combining the results to compute valid and reliable nationwide prevalence estimates because the efforts used varying definitions related to the four categories of crime. For example, CDC's Youth Risk Behavior Surveillance System's definition of dating violence included the intentional physical harm inflicted upon a survey respondent by a boyfriend or girlfriend.[10] In contrast, the Victimization of Children and Youth Survey's definition did not address whether the physical harm was intentional.[11] To address the issue of varying definitions, we recommended that the Attorney General and the Secretary of Health and Human Services, to the extent possible, require the use of common definitions when conducting or providing grants for federal research. This would provide for leveraging individual collection efforts so that the results of such efforts could be readily combined to achieve nationwide prevalence estimates. HHS agreed with this recommendation. In commenting on our November 2006 draft report, DOJ expressed concern regarding the potential costs associated with implementing this and other recommendations we made and suggested that a cost-benefit analysis be conducted. We agreed that performing a cost-benefit analysis is a critical step, as acknowledged by our recommendation that DOJ and HHS incorporate alternatives for addressing information gaps deemed

[10] CDC's Youth Risk Behavior Surveillance System collects data through a nationally representative school based survey of students in grades 9-12 that monitors priority health risk behaviors that contribute to the leading causes of death, disability, and social problems among youth and adults in the United States.

[11] The Victimization of Children and Youth survey examined a large spectrum of violence, crime, and victimization experiences in a nationally representative sample of about 2,000 children and youth ages 2 to 17 years in the contiguous United States.

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cost-effective in future budget requests. HHS agreed with this recommendation and both HHS and DOJ have taken actions to address it by requesting or providing additional funding for initiatives to address information gaps, such as those on teen dating violence.

In response to our recommendation on common definitions, in August 2007, HHS reported that it continued to encourage, but not require, the use of uniform definitions of certain forms of domestic violence and sexual assault it established in 1999 and 2002, respectively. At the same time, DOJ reported that it consistently used uniform definitions of intimate partner violence in project solicitations, statements of work, and published reports. Since then, officials from CDC reported that in October 2010, the center convened a panel of 10 experts to revise and update its definitions of certain forms of domestic violence and sexual assault given advancements in this field of study. CDC is currently reviewing the results from the panel and plans to hold a second panel in 2012, consisting of practitioners, to review the first panel's results and to obtain consensus on the revised definitions. Moreover, HHS reported that it is also encouraging the use of uniform definitions by implementing the National Intimate Partner and Sexual Violence Survey. This initiative is using consistent definitions and methods to collect information on women and men's experiences with a range of intimate partner violence, sexual violence, and stalking victimization. Thus, by using consistent methods over time, HHS reported that it will have comparable data at the state and national level to inform intervention and prevention efforts and aid in the evaluation of these efforts. In addition, according to a program specialist from OJJDP, in 2007, OJJDP created common definitions for use in the National Survey of Children's Exposure to Violence to help collect data and measure incidence and prevalence rates for child victimization, including teen dating violence. While it is too early to tell the extent to which HHS's efforts will result in the wider use of common definitions to assist in the combination of data collection efforts, OJJDP efforts in developing common definitions have supported efforts to generate national incidence and prevalence rates for child victimization. A program specialist from OJJDP noted that OJJDP plans to focus on continuously improving the definitions.

Varying scope. The national data collection efforts we reviewed as part of our November 2006 report also could not provide a basis for combining the results to compute valid and reliable nationwide prevalence estimates because the efforts had varying scopes in terms of the incidents and categories of victims that were included. For example, in November 2006, we reported that CDC's Youth Risk Behavior Surveillance System

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excludes youth who are not in grades 9 through 12 and those who do not attend school; whereas the Victimization of Children and Youth Survey was addressed to youth ages 12 and older, or those who were at least in the sixth grade. National data collection efforts underway since our report was issued may help to overcome this challenge. For instance, in September 2010, HHS reported that CDC was working in collaboration with the National Institute of Justice to develop the National Intimate Partner and Sexual Violence Survey. Specifically, HHS reported that, through this system, it is collecting information on women's and men's experiences with a range of intimate partner violence, sexual violence, and stalking victimization. HHS reported that it is gathering experiences that occurred across a victim's lifespan (including experiences that occurred before the age of 18) and plans to generate incidence and prevalence estimates for intimate partner violence, sexual violence, dating violence, and stalking victimization at both the national and state levels.[12] The results are expected to be available in October 2011.

These agency initiatives may not fill all information gaps on the extent to which women, men, youth, and children are victims of the four predominant crimes VAWA addresses. However, the efforts provide Congress with additional information it can consider on the prevalence of these crimes as it makes future investment decisions when reauthorizing and funding VAWA moving forward.

[12] This survey is gathering information on a victim's experiences retrospectively, but is not being administered to individuals under age 18. Therefore, if this effort is completed as planned, it will not fully address prevalence rates related to teen dating violence and stalking. However, OJJDP's survey on children's exposure to violence provides prevalence rates on a national level related to teen dating violence and CDC's initiative on "Dating Matters" is to address prevalence rates related to stalking for individuals under age 18.

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Data Collected by Grant Programs Did Not Contain Information on the Extent to Which Victims Receive Services and Challenges Exist for Collecting Such Data

We reported in July 2007 that recipients of 11 grant programs we reviewed collected and reported data to the respective agencies on the types of services they provide, such as counseling; the total number of victims served; and in some cases, demographic information, such as the age of victims; however, data were not available on the extent to which men, women, youth, and children receive each type of service for all services.[13] This situation occurred primarily because the statutes governing the 11 grant programs do not require the collection of demographic data by type of service, although they do require reports on program effectiveness, including number of persons served and number of persons seeking services who could not be served.[14] Nevertheless, VAWA authorizes that a range of services can be provided to victims, and we determined that services were generally provided to men, women, youth, and children. The agencies administering these 11 grant programs—HHS and DOJ—collect some demographic data for certain services, such as emergency shelter under the Family Violence Prevention and Services Act and supervised visitation and exchange under VAWA. The quantity of information collected and reported varied greatly for the 11 programs and was extensive for some, such as those administered by DOJ's Office on Violence Against Women (OVW) under VAWA. The federal agencies use this information to help inform Congress about the known results and effectiveness of the grant programs. However, even if demographic data were available by type of service for all services, such data might not be uniform and reliable because, among other factors, (1) the authorizing statutes for these programs have different purposes and (2) recipients of grants administered by HHS and DOJ use varying data collection practices.

Authorizing statutes have different purposes. The authorizing statutes for the 11 grant programs we reviewed have different purposes; therefore the reporting requirements for the 11 grant programs must vary to be consistent with these statutes. However, if a grant program addresses a specific service, the demographic data collected are more likely to

[13] GAO-07-846R.

[14] As part of our work in 2007, we focused on 11 federal grant programs that were specifically designed to provide direct services to victims of domestic violence, sexual assault, dating violence, and stalking. There were three statutes authorizing these grant programs including the Violence Against Women Act, the Family Violence Prevention and Services Act, and the Victims of Crime Act of 1984, as amended. See Enclosure II of GAO-07-846R for additional details on these grant programs.

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address the extent to which men, women, youth, and children receive that specific service. For example, in commenting on our July 2007 report, officials from OVW stated that they could provide such demographic data for 3 of its 8 grant programs we reviewed—the Transitional Housing Assistance Grants Program, the Safe Havens: Supervised Visitation and Safe Exchange Grant Program, and the Legal Assistance for Victims Grant Program.

Recipients of grants administered by HHS and DOJ use varying data collection practices. For example, some recipients request that victims self-report data on the victim's race, whereas other recipients rely on visual observation of the victim to obtain these data. Since we issued our July 2007 report, officials from HHS's Administration for Children and Families (ACF) and OVW told us that they modified their grant recipient forms to improve the quality of the recipient data collected and to reflect statutory changes to the programs and reporting requirements. Moreover, ACF officials stated that they adjusted the demographic categories on their forms to mirror OVW's efforts so data would be collected consistently across the government for these grant programs. In addition, OVW officials stated that they have continued to provide technical assistance and training to grant recipients on completing their forms through a cooperative agreement with a university. As a result of these efforts, and others, officials from both agencies reported that the quality of the recipient data has improved resulting in fewer errors and more complete data.

As we reported in our July 2007 report, HHS and DOJ officials stated that they would face significant challenges in collecting and reporting data on the demographic characteristics of victims receiving services by type of service funded by the 11 grant programs included in our review. These challenges included concerns about victims' confidentiality and safety, resource constraints, overburdening recipients, and technological issues. For example, according to officials from ACF and OVW, requiring grant recipients to collect this level of detail may inadvertently disclose a victim's identity, thus jeopardizing the victim's safety. ACF officials also said that some of their grant recipients do not have the resources to devote to these data collection efforts, since their primary focus is on service delivery. In addition, ACF officials said that being too prescriptive in requiring demographic data could overburden some grant recipients that may report data to multiple funding entities, such as federal, state, and local entities and private foundations. Furthermore, HHS and DOJ reported that some grant recipients do not have sophisticated data collection systems in place to allow them to collect additional information.

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In our July 2007 report, we did not recommend that federal departments require their grant recipients to collect and report additional data on the demographic characteristics of victims receiving services by type of service because of the potential costs and difficulties associated with addressing the challenges HHS and DOJ officials identified, relative to the benefits that would be derived.[15]

In conclusion, there are important issues to consider in moving forward on the reauthorization of VAWA. Having better and more complete data on the prevalence of domestic violence, sexual assault, dating violence, and stalking as well as related services provided to victims of these crimes can without doubt better inform and shape the federal programs intended to meet the needs of these victims. One key challenge in doing this is weighing the relative benefits of obtaining these data with their relative costs because of the sensitive nature of the crimes, those directly affected, and the need for services and support.

Chairman Leahy, Ranking Member Grassley, and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contacts and Acknowledgements

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement include Debra B. Sebastian, Assistant Director; Aditi Archer, Frances Cook, and Lara Miklozek. Key contributors for the previous work that this testimony is based on are listed in each individual report.

[15] GAO-07-846R.

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Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Committee On The Judiciary,
"The Violence Against Women Act: Building On Seventeen Years Of Accomplishments"
July 13, 2011

Today this Committee considers once again the importance of the Violence Against Women Act, which since 1994 has been the centerpiece of the Federal Government's commitment to combating domestic violence, sexual assault, and other violent crimes against women.

We worked in a bipartisan way to pass the Violence Against Women Act and its two subsequent reauthorizations. This law filled a void that had left too many victims of domestic and sexual violence without a way to ensure safety and justice, and without the help they needed. I was proud to work with then-Senator Biden and Senator Hatch to achieve this progress, and I look forward to building on its legacy.

I saw the devastating effects of domestic and sexual violence early in my career as the Vermont State's Attorney for Chittenden County. Violence and abuse reach the homes of people from all walks of life and all parts of the country every day, regardless of gender, race, culture, age, class, or sexuality.

The Violence Against Women Act has helped to transform our criminal justice system, improving the response to the complex issues of domestic and dating violence, sexual assault, and stalking. It has provided legal remedies, social support, and coordinated community responses. With time, it has evolved to better address the needs of underserved populations and to include critical new programs focusing on prevention. Since the enactment of the Violence Against Women Act, the rate of domestic violence has declined, more victims have felt confident to come forward to report these crimes and to seek help, and states have come forward to enact complimentary laws to combat these crimes.

Despite this progress, however, our country still has a long way to go. Millions of women, men, children, and families continue to be traumatized by abuse. We know that 1.3 million women are victims of physical assault by a partner each year. One in six women and one in 33 men are victims of sexual assault. One in 12 women and one in 45 men have been stalked in their lifetime.

As we look toward reauthorization of VAWA, we must continue to ensure that the law evolves to fill unmet needs. We must increase access to support services, especially in rural communities and among older Americans. We must prioritize our response to the high rates of violence experienced by Native American and immigrant women.

Programs to assist victims of domestic and sexual violence, and to prevent these crimes, are particularly important during difficult economic times. The economic pressures of a lost job, home, or car can add stress to an already abusive relationship. The loss of these resources can make it harder for victims to escape a violent situation. And as victims' needs are growing, state budget cuts are resulting in fewer available services, including fewer emergency shelters, less transitional housing, less counseling, and less childcare. A 2010 survey by the National Network

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to End Domestic Violence found that in just one day, more than 70,600 adults and children were served by local domestic violence programs. At the same time more than 9,500 requests for services went unmet due to a lack of resources.

These numbers illustrate the importance of maintaining and strengthening the Violence Against Women Act. Its programs are more vital than ever, including the STOP Formula Grant program, which provides resources to law enforcement agencies, prosecutors, the courts, and victim advocacy groups to improve victim safety and to hold offenders accountable for their crimes against women. The Transitional Housing Assistance Grants program is also essential to provide safe havens to victims fleeing from domestic and dating violence, sexual assault and stalking. In the midst of a mortgage and housing crisis, transitional housing is especially important because long-term housing options are becoming increasingly scarce.

Today we welcome a distinguished panel of witnesses from around the country who can share important perspectives and personal experience. I want to welcome Jane Van Buren, who is well known in Vermont for her work helping women to escape domestic violence through the organization Women Helping Battered Women. She brings particular insight into the importance of transitional housing to those seeking to escape abuse and violence. I look forward to the contributions of all of today's witnesses.

The Violence Against Women Act and its reauthorizations have always been passed on a strong, bipartisan basis. We have come together based on our shared conviction that domestic violence, sexual assault, stalking, and dating violence are wrong and we should join together to help combat them. We have agreed across party lines that we must work together to confront these problems and help victims move on with their lives. I hope we can come together once again to reauthorize this vital legislation.

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The Women's Legal Defense
and Education Fund

Testimony of Legal Momentum re: Senate Judiciary Hearing:

The Violence Against Women Act: Building on Seventeen Years of Accomplishments
Held July 13, 2001

Submitted by:

Elizabeth Grayer, President
Lisalyn Jacobs, Vice-President
Leslye Orloff, Vice President

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Legal Momentum is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls.

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Introduction

Legal Momentum is the nation's oldest legal organization advocating for the rights of women and girls. Our Immigrant Women Program (IWP) is a national leader in understanding and addressing the unique challenges confronting immigrant women. We appreciate this opportunity to submit testimony for the record in conjunction with the Senate Judiciary hearing of July 13, 2011: *The Violence Against Women Act: Building on Seventeen Years of Accomplishments*. Our testimony will focus on the economic security needs of survivors, and respond to some of the issues raised in the testimony of Julie Poner.

Economic Security Needs of Survivors

A significant part of the hearing focused on the housing needs of survivors of sexual and domestic violence. Separate from, but inextricably bound up with the housing needs of survivors, is their need for economic security. When a survivor is ready to leave an abusive situation, she or he must have access to his/her own source of income, typically a job, or risk having to return to an abusive situation because he or she simply cannot afford to stay away. Knowing this, abusers may seek to destabilize the job security of survivors by repeated calls, or visits to the survivor's workplace, promising to provide childcare then reneging at the last minute, or engaging in acts of abuse.[1] In a recent multi-state study of survivors in domestic violence shelters reveals that assistance with jobs and job training issues is the third highest ranked need of survivors. Without access to the economic stability afforded by a steady job, many victims are forced to return to their abusers.[2] Thus, it is crucial to ensure that the coming VAWA reauthorization addresses this significant need.

The two biggest economic justice-related needs of survivors are knowledgeable employers and appropriate job protections.

Employer Education

One crucial step to bridging the needs of survivors in the workplace is employer education. A tremendous advance occurred during the last reauthorization with the creation of the National Resource Center on Domestic and Sexual Violence in the Workplace (Resource Center).[3] This vital tool for aiding employers wishing to understand not only what laws may apply to them, but also how they can aid employees and strengthen their workplaces came on-line last fall and has since served as a gateway for more than 12,000 information seekers. It is vital that the Resource Center be reauthorized, and that additional crucial economic justice provisions be enacted.

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[1] Lyon, E. (2002). Welfare and Domestic Violence Against Women: Lessons from Research. Available on VAWnet.

[2] Lyon, E., Lane, S., & Menard, A. (2009). Meeting Survivors' Needs: A Multi-State Study of Domestic Violence Shelter Experiences.. Prepared for the National Institute of Justice by the UConn School of Social Work and the National Resource Center on Domestic Violence. Taken in order, the five highest ranked needs of survivors were: 1) Safety for myself (86%); 2) finding affordable housing (84%); 3) Job or job training (57%); 4) Budgeting or handling money (54%); and 5)Education/school for themselves (48%).

3 The url for the Resource Center is www.workplacesrespond.org.

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Employer education takes many forms. Earlier this year, the world of international finance was rocked when, in the space of two weeks, sexual assault allegations were leveled against two prominent persons from that world: 1) Dominique Strauss-Kahn, then head of the International Monetary Fund, and 2) Mahmoud Abdel-Salam Omar, former head of an Egyptian bank.[4] One unintended consequence of these allegations has been to cause employers to recognize the need to proactively address personnel safety issues in the workplace, including appropriate responses to employees who may have been sexually assaulted.

Job Protection, Leave and Unemployment Insurance

It is important to insure that employees who may have experienced an incident of domestic or sexual violence in the workplace receive timely medical assistance. But equally important is continued workplace support, including providing employees with time off if they need to recover from injuries, or attend court proceedings, or other accommodations such as a different worksite or working hours. Sadly, as reflected in some of the stories included in our testimony, employees who have been victimized once by an incident of workplace abuse are sometimes further victimized when an employer subsequently terminates them because they have taken out a protection order, because they have taken leave, or for other reasons. Statutes to protect employees who need to take time off to attend court, do safety planning or recover from violence vary, and are not in force nationwide[5]. The need for such protections does not vary, however, and providing baseline protections for survivors should be among the goals for VAWA reauthorization.

Along with job protection statutes, leave and unemployment insurance are also indispensable tools that enable survivors to both attend to the aftermath of the violence and in most cases, return to work quickly and productively. Leave is a crucial need for many survivors whether they need to go to court, to get counseling, or to do safety planning. As is the case with the job protection provisions described above, state statutes that provide leave vary significantly according to the size of employer, and the reasons leave can be used. Existing federal laws similarly fail to fully respond to the needs of victims.[6] Finally, access to leave means little, however, if one can be fired for using it.

In the unusual instance where a worker needs to leave a job because of violence against themselves or an immediate family member, unemployment insurance should be consistently available. In general, unemployment insurance (UI) has been long available to many survivors of domestic violence, and the passage of the Recovery Act made UI even more broadly available.[7] Unfortunately, even with the improvements wrought by the Recovery Act, the availability of unemployment insurance for survivors is still very uneven. Additionally, it is not

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[4] Ali Baker & Steven Erlanger, I.M.F. Chief, Apprehended at Airport, Is Accused of Sexual Attack, N.Y. TIMES, May 15, 2011; NYPD: Another financial figure accused of hotel sexual assault, CNN ONLINE, May 31, 2011, available at www.cnn.com/2011/CRIME/05/31/new.york.sexual.assault.arrest

[5] *See* Legal Momentum State Law Guide: Employment Rights for Victims of Domestic or Sexual Violence. Available at http://www.legalmomentum.org/assets/pdfs/employment-rights.pdf

[6] *See* Lisalyn R. Jacobs and Maya Raghu, *The Need for a Uniform Federal Response to the Workplace Impact of Interpersonal Violence*, Georgetown J. of Gender and the Law (2010) at 607.

7 *See* Legal Momentum ARRA: Extending the Unemployment Insurance Safety Net to Victims of Domestic Violence. Available at http://www.legalmomentum.org/assets/pdfs/arra-extending-unemployment.pdf

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as widely available to survivors of stalking and sexual assault as it is to survivors of domestic violence who are covered in 35 states, the District of Columbia and the U.S, Virgin Islands. As indicated above, and borne out in the stories of survivors that follow, the needs of survivors, though they vary from story to story, fall into broad categories: 1) job protection; 2) leave or other accommodations; 3) unemployment insurance. To be fully responsive to the economic needs and concerns of survivors, VAWA must respond comprehensively to these issues.

Survivor Stories

The key to addressing the economic needs of survivors is understanding that they need the same supports wherever they work, and that they constitute a significant part of the U.S. workforce. According to a CDC study, 26.4% of women and 15.9% of men have experienced at least one incident of intimate partner violence in their lifetimes.[8] Moreover, a recent study found that between 56 and 88 percent of surveyed women experienced on-the-job harassment, including stalking, by their abusive partner.[9] As such, the response required is a comprehensive one. Only federal response can transcend the uneven state-level attention these issues have received to date.

The stories that appear below encompass every state represented on the Senate Judiciary Committee. In each of these stories, a better outcome might have been possible for the survivor if they had access job-protected access to leave, or as appropriate, to unemployment insurance. We have similar stories from nearly every state. Those involved are male and female, corporate employees and state employees, white collar and blue collar, but their needs are the same. In the 21st century when so many businesses are national in scope, these survivors and all survivors deserve a comprehensive set of protections. We hope that the Congress will take the next step toward that goal in the coming VAWA reauthorization.

Alabama

Penny Rollins was held hostage and assaulted by her husband, John Rollins, where she worked at 1st American Storage. He eventually released her and turned himself into the police.[10]

Arizona

Lorel Stevens worked an Arizona recruiting company. One Saturday afternoon and in view of her supervisor, her husband assaulted her in the company parking lot, punching, kicking and verbally abusing her. Her employer provided counseling, referrals and other support. Her husband was arrested and sentenced to a year of probation and counseling.[11]

California

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8 Ctr. for Disease Control and Prevention, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence, Morbidity and Mortality Weekly Rpt.*, Feb. 8, 2008.

9 TK Logan, et al. Partner Stalking and Implications for Women's Employment. J. INTERPERS. VIOLENCE 22(3): 268-291 (2007).

10 *See* http://www.fox10tv.com/dpp/news/local_wala_Mobile_Shooting_Suspect_Behind_Bars_20090513 (May, 2009)

11 *See* http://abcnews.go.com/WNT/Business/story?id=1299331; http://www.eastvalleytribune.com/article_248ac00b-c32e-52bc-ac4a-0ca125ec37cc.html

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Dawnna Denize Wright was shot and killed by her ex-boyfriend after he showed up at her workplace with a bouquet of roses. She was three months pregnant with her fourth child. Roger Jerone McDowell pleaded guilty to first-degree murder and was sentenced to 75 years to life in prison.[12]

Connecticut

Identity not released. A Hartford woman was kidnapped and assaulted by her ex-boyfriend who showed up at the restaurant where she worked and forced her into his car. David Mercado and the victim had broken up six months prior to the kidnapping. [13]

Delaware

Elizabeth Ware- 31 years old stabbed while on the school bus she drove as she was about to start her route. Her ex-boyfriend, Jerome Ross was charged with first degree murder. [14]

Illinois

A waitress from Elmhurst was stalked for seven years by William J. Foster before he was convicted on a felony stalking charge and sentenced for 33 months in prison. He had previously been arrested and convicted more than a dozen times of criminal trespass, stalking and disorderly conduct, all stemming from his apparent infatuation with the server, who never had a relationship with him.[15]

Iowa

Legal Momentum represented Antonette Greer was after she was fired from her job as a dish washer in a restaurant when she obtained an order of protection against her abusive boyfriend, who was also a co-worker. An Iowa District Court ruled that Greer could sue her employer for wrongful discharge in violation of public policy.[16]

Minnesota

Farrah Mohammed, 17 years old, died after being stabbed 16 times by her ex-boyfriend as she left her job at the Mall of America. Her ex-boyfriend, Sadiq Hussein was convicted of second degree murder.[17]

New York

Legal Momentum filed a case on behalf of a victim of domestic violence who was fired from her job after she missed two days of work to seek medical attention and meet with a prosecutor after she was attacked by her boyfriend. Because the laws of New York City, and the penal law of New York afford job protection to victims of violence, and prevent firing someone for meeting with a prosecutor, this case was ultimately settled. [18]

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[12] *See* http://www.10news.com/news/18869494/detail.html (June, 2007)

[13] *See* http://articles.courant.com/2010-03-02/news/hc-web-domestic-arrest-0302mar02_1_assaulted-first-degree-kidnapping-police (February, 2010)

[14] *See* **http://dsp.delaware.gov/pio/Whitmarsh/050207Homicide.htm** (May, 2007)

[15] See http://articles.chicagotribune.com/2010-10-14/news/ct-met-1015-stalker-sentenced-20101014_1_mental-health-diamond-ring-elmhurst

16 Synopsis available on Legal Momentum website at: **https://www.quickbase.com/db/bdy472as8?a=dr&r=k2&rl=ib9**

[17] See http://www.mcbw.org/files/u1/Femicide_1999_1_.pdf (May, 1999)

18 Synopsis available on Legal Momentum website at: https://www.quickbase.com/db/bdy472as8?a=dr&r=ns&rl=icn

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Oklahoma

Carrie Tudor was shot to death in her office at Lowrance Electronics by her ex-husband Cory Dean Baker. Tudor had applied for an order of protection earlier that day but it had not yet been served. Baker shot himself after murdering Tudor.[19]

Rhode Island

Victim not identified. A woman who had gotten a protection order and feared that her life was in danger was stalked at her workplace. The repeat domestic violence offender was arrested and charged with a third offense of violating a protective order, domestic disorderly conduct and vandalism and held on felony charges.[20]

South Carolina

Victim not identified. A woman was stabbed several times, while working at Walmart, by her boyfriend. Police had been called to the couple's residence to handle a domestic dispute earlier that day. The boyfriend has been charged with attempted murder and possession of a weapon during a violent crime.[21]

Texas

Victim not identified. Alvaro Hernandez, 20, was arrested on April 13, 2011, charged in connection with an attempted sexual assault of his colleague at their workplace in Waco, TX. The victim reported that in December 2010, Hernandez forced her into a closet and attempted to sexually assault her. After pleading with him to stop, he finally did.[22]

Utah

A 50 year old female county employee was granted a civil stalking injunction against Georg Adams, Duchesne County's fire and emergency management director, who had become "increasingly aggressive" and stalked her at work. This injunction was the third time the county had disciplined Adams for charges that he had harassed the woman who sought the injunction.[23]

Vermont

During her May 2010 testimony before the Senate Judiciary Committee, Auburn Watersong, Economic Justice Specialist for the Vermont Network Against Domestic and Sexual Violence related the following story: "One domestic violence victim in Vermont reached out for help after being fired from her job. She had been battered to the point that she required hospitalization; she returned to work after three days in the hospital and then needed to take one more day off for a court appearance. Upon returning to her job, she learned

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19 See http://www.tulsapeople.com/Tulsa-People/September-2009/A-domestic-disturbance/ (February, 2005)

20 Story related to Legal Momentum on July 19, 2011 by Deborah DeBare, Executive Director, RI Coalition Against Domestic Violence.

21 *See* http://www.wistv.com/Global/story.asp?S=13260004 (October, 2010)

22 *See* http://www.kwtx.com/ourtown/headlines/Waco__20-Year-Old_Man_Charged_In_Attempted_Workplace_Sexual_Assault_119790729.html (April, 2011).

23 *See* http://findarticles.com/p/articles/mi_qn4188/is_20070417/ai_n19012871/ (April, 2007)

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that she had been fired for her absence." [24]

Wisconsin

Yvette Marchan was fired from her job when her abusive ex-husband repeatedly telephoned her place of employment to harass her. Marchan later obtained new employment with the City of Milwaukee and instructed the payroll department of the city not to divulge that information because she was hiding from an abusive ex-spouse. A payroll employee nevertheless disclosed her address to her ex-husband, which led to continued harassment of Marchan because her ex-husband was able to locate her.[25]

Immigrant Survivors of Violence

During the July 13th hearing, Ms. Poner's testimony was a powerful reminder that despite the safeguards built into the immigration system, there are U.S. citizens who are abused by their foreign-born spouses. However, we are concerned that any proposed change designed to provide better protection against fraud be crafted in a manner that will not endanger battered immigrants abused by their U.S. citizen and lawful permanent resident spouses or parents. We urge the Congress to address this concern by improving checks for fraud, while preserving the confidentiality crucial for battered and trafficked immigrant women to safely free themselves from violence.

Congress has recognized that the specially trained Vermont Service Center is in the best position to "effectively identify eligible cases and deny fraudulent cases."[26] The Center was based upon successful models for handling domestic violence cases in the criminal justice system, an approach that has encouraged consistency in adjudication, development of supervisory expertise, and enhanced possibilities for fraud detection. Additionally, VAWA already provides for the appropriate level of involvement for immigration enforcement officers in the field who encounter VAWA cases. Officials "may ask the specially trained CIS unit to review a case and determine whether or not to revoke" certain grants of lawful status. Officials may also ask the Vermont Service Center employees for assistance in complying with VAWA confidentiality provisions that prohibit the reliance on information provided by abusers.

The Congress has also recognized that confidentiality for immigrant victim applicants is paramount. During the last reauthorization of VAWA, Representatives James Sensenbrenner and John Conyers authored a bipartisan statement clarifying that the House Judiciary Committee sought to "ensure that immigration enforcement agents and government officials covered by [VAWA Confidentiality] do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers."[27]

We respectfully submit that Congressmen Sensenbrenner and Conyers struck the appropriate balance during the last VAWA reauthorization. Therefore, we request that as this Congress

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24 *See* http://judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da15cccaf0&wit_id=e655f9e2809e5476862f735da15cccaf0-2-0

25 *See* http://www.wisfoic.org/caselaw/Weiss.html

26 Conyers article

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considers appropriate changes that the confidentiality provisions which are essential to the ability of a immigrant survivor to escape abuse not be weakened or compromised.

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JUST DETENTION
INTERNATIONAL
RAPE IS NOT PART OF THE PENALTY

Prepared for the United States Senate Judiciary Committee
Hearing on the Violence Against Women Act (VAWA)

July 13, 2011

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Just Detention International would like to thank Chairman Leahy and members of the Senate Judiciary Committee for holding this hearing, entitled "The Violence Against Women Act: Building on Seventeen Years of Accomplishments." For your consideration, the following submission explains why it is imperative to apply the Prison Rape Elimination Act (PREA) of 2003 and its associated regulations (to be enacted pursuant to 42 U.S.C. § 15607) to Department of Homeland Security (DHS) detention facilities through the 2011 Violence Against Women Act Reauthorization (2011 VAWA Reauthorization). Specifically, this will protect women and other immigrants from sexual abuse while they are in the custody of Immigration and Customs Enforcement (ICE).

Just Detention International (JDI) is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI is the only U.S.-based organization exclusively dedicated to ending this type of violence. Specifically, JDI works to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse. All of JDI's efforts are guided by the expertise of men, women, and children who have endured sexual violence behind bars and who have been brave enough to share their experiences.

I. Introduction

In 2003, the United States Congress unanimously passed PREA and President Bush signed it into law to "establish a zero tolerance standard for the incidence of prison rape in prisons in the United States" and "make the prevention of prison rape a top priority in each prison system."[1] PREA defines "prison" as "any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government."[2] PREA charges the Attorney General with "adopting national standards for the detection, prevention, reduction, and punishment of prison rape" through the publication of the standards as a final rule.[3]

In his proposed final rule, the Attorney General has left a regrettable gap in the implementation of PREA by excluding ICE detention facilities from the regulations' (and therefore, the law's) scope. Such a narrow reading of PREA's mandate leaves tens of thousands of women annually held in immigration detention facilities vulnerable to significant and preventable sexual abuse.

Such abuse runs counter not only to PREA but also to VAWA's mandate to prevent sexual assault and provide resources for victims of this form of assault. Therefore, JDI is calling for the incorporation of specific language (attached at Appendix A) into the 2011 VAWA

[1] 42 U.S.C §15602 (1-2).
[2] 42 U.S.C. § 15609 (7) (*emphasis added*).
[3] 42 U.S.C. § 15607 (a)(1).

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Reauthorization process. This language will require the Department of Homeland Security and private operators of immigration detention facilities to comply fully with PREA and the national standards created to implement it.

II. Sexual Abuse in U.S. Immigration Detention

The Department of Justice has determined that sexual abuse in detention is a pervasive problem. The DOJ found that an estimated 200,000 prison and jail inmates and more than 17,000 juvenile detainees were sexually abused in U.S. facilities in 2008 alone.[4] These shocking numbers only begin to illustrate the problem. Survivors of abuse are often assaulted relentlessly by a perpetrator and marked as fair game for attacks by other detainees and facility staff. In the aftermath of an assault, incarcerated survivors experience the same emotional pain as other victims, which is oftentimes exacerbated by prior trauma and their inability to control their daily surroundings. To compound the problem, few detainees have access to adequate – much less expert – medical and mental health services. In addition to the physical injuries that are often inflicted during an assault, prisoner rape survivors are at grave risk of contracting HIV and other sexually transmitted infections through sexual assault.[5]

Esmeralda Soto's experiences are unfortunately typical of those of sexual abuse survivors in immigration detention:

> *"On December 19, 2003, a few days after being transferred to the San Pedro detention center, I was taken to see my lawyer. Because she was with another client at the time, I was placed in a locked holding cell. While I waited in the cell an immigration officer came in with his pants unzipped and told me that "I was going to suck him off." He checked the hall to make sure nobody was around, then re-entered the cell and forced me to perform oral sex. Once he was done, he put his finger to his mouth and ordered me not to tell anyone. He had ejaculated in my mouth, on my red detention uniform, and on the floor.*
>
> *... To this day, the thought of what that immigration officer did to me makes me nauseous and fills me with fear, disgust and anger. It is difficult to comprehend how a federal employee who was supposed to maintain a secure environment for me while I was detained could abuse his authority in such a flagrant and appalling manner. In the holding room by myself, I had not felt unsafe because I knew my lawyer was in the next*

[4] U.S. Department of Justice, PREA Notice of Proposed Rulemaking, 76 FED. REG. 6249 (Feb. 3, 2011).

[5] HIV and other sexually transmitted infections are significantly more prevalent in corrections settings than in the general population. *See, e.g.*, Laura Maruschak, Bureau of Justice Statistics, HIV in Prisons, 2007-08 3 (2010). (estimating HIV rate in U.S. prisons to be 2.4 times the rate in society); Scott A. Allen et al., *Hepatitis C Among Offenders—Correctional Challenge and Public Health Opportunity*, 67 Fed. Probation 22 (Sept. 2003) (finding that Hepatitis C rates were 8 to 20 times higher in prisons than on the outside, with 12 to 35 percent of prison cases involving chronic infection); *see also* Centers for Disease Control & Prevention, U.S. Dep't Health & Hum. Svcs., Sexually Transmitted Disease Surveillance 2007 89 (2008), *available at* http://www.cdc.gov/std/stats07/Surv2007-SpecialFocusProfiles.pdf (last accessed July 12, 2011).

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room and there was an officer patrolling in the hallway. Little did I know that the person I needed to fear was an officer who was supposed to keep me safe, and that he would feel so confident that he could get away with raping me that he would do it with my legal counsel so close by.

After the assault, I was returned to the cell with the other transgender women. I immediately began to notice an air of hostility from the immigrations officers in the unit. They treated me as if I was a liar and blamed me for the dismissal of their coworker. I repeatedly asked to see a counselor because I needed to vent what I was feeling. I literally felt like I was going to explode. The officers continuously ignored or humiliated me, and looked upon me with what I felt was pure hatred. Meanwhile, the memory of the assault was killing me inside. I lost my appetite and could hardly stomach any food. I quit sleeping altogether and I slipped further and further into depression. Finally when I threatened to commit suicide, one of the other transgender detainees in the cell pleaded with an officer and convinced him that I desperately needed help.

Because there are no mental health providers at the San Pedro facility I was taken to the El Centro Detention Facility near San Diego, CA. Unfortunately, I was still not given counseling, or any lasting relief. The psychologist simply gave me three tranquilizers and sent me back to San Pedro. Eventually, the nurse at San Pedro did manage to prescribe me anti-depressants, and I was given sleeping aids.

Due to the negative attitudes that officials at the facility had taken toward me, my biggest fear at this point was that my application for asylum would be denied and I'd be deported back to Mexico. I felt a constant pressure to retract my complaint against the officer, but I really did not want to give in. I wanted to remain strong and show that I was not going to let myself be taken advantage of. ... I was eventually able to see a judge in my case and she granted me "withholding of removal." Today I live in Santa Ana, CA and am still struggling to let go of the horrible experiences I had at the San Pedro Service Processing Center."[6]

Immigration detainees tend to be among the most vulnerable to sexual abuse. Unlike criminal defendants, immigration detainees are civilly confined and have no right to an attorney. This lack of legal assistance makes it unlikely that survivors of sexual abuse in immigration detention have access to someone who is able to explain their rights and to advocate on their behalf.[7] In addition, after being traumatized by a sexual assault, non-citizen detainees often have difficulty speaking out due to cultural isolation, past abuse by authority figures, language barriers, and limited literacy.

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[6] Elimination of Prison Rape: Immigration Facilities and Personnel/Staffing/ Labor Relations, Hearing before the National Prison Rape Elimination Commission (Dec. 13, 2006) (testimony of Mayra Soto). Since testifying before the Commission, Ms. Soto has changed her first name.

[7] Clay McCaslin, "*My Jailor is My Judge:" Kestutis Zadvydas and the Indefinite Imprisonment of Permanent Resident Aliens by the INS*, 75 TUL. L. REV. 193, 224 (2000).

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Moreover, immigration detainees are unique in that they are held by the very entity seeking to determine their legal status. Corrections departments that run prisons and jails play no role in prosecuting and sentencing a criminal defendant. ICE, however, has complete control over a detainee's initial determination of legal status, detention, and possible removal from the country. As a result, fearing the possibility of retaliatory removal, immigration detainees tend to be even less likely to challenge the conditions of their confinement than people held in criminal justice facilities.

Immigration detainees generally come from marginalized populations which are at greatest risk for sexual abuse. In particular, lesbian, gay, bisexual, and transgender (LGBT) individuals, youth, and detainees living with mental illness or disabilities are disproportionately targeted for sexual abuse.

The problem of sexual abuse in immigration detention has received increasing attention in recent years. In 2010, a transportation officer at the T. Don Hutto Detention Center in Texas (a Corrections Corporation of America (CCA) facility contracted exclusively with ICE) admitted to sexually assaulting numerous women detainees while transporting them to local airport and bus stations after they had been released on bond.[8] Moreover, the National Prison Rape Elimination Commission,[9] Human Rights Watch,[10] and the Women's Refugee Commission[11] have all recently documented widespread sexual abuse in immigration detention facilities.

III. The Exclusion of ICE Facilities from the Prison Rape Elimination Act

In excluding immigration detention facilities from the scope of the PREA standards, the Attorney General asserted that the terms "prison" and "jail" do not encompass facilities used primarily for the civil detention of aliens pending removal from the U.S. As made clear in Section I above, this interpretation runs counter to PREA's plain language. Excluding immigration detention from PREA's protections and mandates contradicts the law's explicit intent. In accordance with the law's definition of "prison," the legislative history of PREA recognized the law's application to both criminal and civil detainees.[12] And, Senator Edward Kennedy, a lead co-sponsor of PREA,

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[8] Tricia Rosetty, *Former T. Don Hutto worker sentenced*, TAYLOR DAILY PRESS, Nov. 10, 2010.
[9] NATIONAL PRISON RAPE ELIMINATION COMMISSION, FINAL REPORT, 174-88 (2009).
[10] HUMAN RIGHTS WATCH, DETAINED AND AT RISK: SEXUAL ABUSE AND HARASSMENT IN UNITED STATES IMMIGRATION DETENTION (Aug. 2010), *available at* http://www.hrw.org/en/reports/2010/08/25/detained-and-risk, (last accessed July 12, 2011).
[11] WOMEN'S REFUGEE COMMISSION, HALFWAY HOME: UNACCOMPANIED CHILDREN IN IMMIGRATION CUSTODY (Feb. 2009), *available at* http://www.rcusa.org/uploads/pdfs/Halfway%20Home%20WRC,%202-4-09.pdf (last accessed July 12, 2011).
[12] U.S. House Committee on the Judiciary, *Report on the Prison Rape Reduction Act of 2003*, 108th Cong., 1st sess., 2003, H. Rept. 108-219, at 14, 115, *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf (last accessed July 12, 2011).

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explicitly noted his satisfaction that the law would protect immigration detainees, in his remarks at the first hearing of the National Prison Rape Elimination Commission.[13]

Consistent with this history, federal entities charged with implementing PREA – in particular the National Prison Rape Elimination Commission and the Bureau of Justice Statistics – have included civil detention in their mandate. The Commission held a public hearing that focused on immigration detention, convened an expert working group on immigration detention, included a section on immigration detention in its final report, and proposed supplemental standards for facilities housing immigration detainees in its recommended adult prison and jail standards.[14] The Bureau of Justice Statistics similarly included facilities run by Immigration and Customs Enforcement (ICE) in its collection of statistics on prisoner rape mandated by PREA. Beyond the urgent need for the standards in immigration detention facilities, where sexual abuse is rife, the DOJ's problematic assertion that these facilities are beyond the scope of PREA will likely preclude further collection of vital data from these neglected facilities.

IV. Inclusion of PREA in 2011 VAWA Reauthorization Act

The Violence Against Women Act has, from the beginning, had strong, specific provisions addressing the specific needs of immigrant women. Through past reauthorization acts, these provisions have been modified to meet new or pressing needs. Sexual abuse of immigrant women in our nation's immigration detention facilities is not a new issue but it is certainly a pressing one.

Failure to require ICE facilities and ICE contracted facilities to adhere to PREA and its regulations violates the basic spirit of the law. It also perpetuates the very type of violence that VAWA addresses. Further, the exclusion of immigration detention facilities from PREA's mandates undermines the Administration's own efforts to reform the immigration detention system.[15] Notably, in response to sexual abuse perpetrated by the transportation officer at Hutto Detention Center, ICE requested a "PREA audit" of its CCA-contracted facilities. To assess

[13] *The Cost of Victimization: Why Our Nation Must Confront Prison Rape, Hearing of the National Prison Rape Elimination Commission* (June 14, 2005) (testimony of Senator Edward M. Kennedy), *available on-line at* http://cybercemetery.unt.edu/archive/nprec/20090820160727/http:/nprec.us/docs/SenatorEdwardKennedyRemarks_Vol_1.pdf (last accessed July 12, 2011).

[14] NATIONAL PRISON RAPE ELIMINATION COMMISSION, "STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE, AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS: SUPPLEMENTAL STANDARDS FOR FACILITIES WITH IMMIGRATION DETAINEES, pp. 59-72 (June 2009), *available at* http://www.wcl.american.edu/nic/documents/NPREC_PrisonsJailsStandards.pdf?rd=1 (last accessed July 12, 2011).

[15] *See, e.g.*, Dr. Dora Schriro, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* 22 (2009), *available at* http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf (last accessed July 12, 2011) ("The system must make better use of sound practices such as … practices that comply with the Prisoner [sic] Rape Elimination Act."); Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. TIMES, Aug. 5, 2009 (quoting Assistant Secretary for ICE John Morton as seeking to work toward a "truly civil detention system" that would demonstrate greater respect for the dignity of individuals held in the agency's custody).

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these facilities' PREA readiness, the recommended standards were a key tool relied upon by the monitor who conducted those audits.[16]

If immigration facilities are excluded from the PREA standards, an immigration detainee in a local jail would be protected by PREA but would lose that protection if transferred to an ICE facility. It is inconceivable that Congress intended PREA protection for detainees to be a matter of luck, depending on the facility that happens to confine them.

Inclusion of the attached language in the 2011 VAWA Reauthorization Act will ensure that the promulgation of standards to protect detainees from sexual abuse is consistent with all other aspects of PREA implementation – where the Congressional intent to include immigration detention within the coverage of PREA has been clear throughout. JDI therefore calls upon the Senate Judiciary Committee to amend VAWA to require that the DHS and operators of immigration detention facilities comply fully with PREA in order to ensure that all detainees are protected from sexual abuse – no matter where they are detained.

[16] This audit was conducted in the fall of 2010, and therefore the Department's proposed standards were not yet available. The auditors relied on the Commission's recommendations.

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Violence Against Women Act Reauthorization:
Proposed Provisions Applying PREA to ICE Detention

Physical and Sexual Abuse-

(1) INTENT OF CONGRESS ~~GENERAL~~ No detainee, whether in a detention facility or short-term detention facility, shall be subject to degrading or inhumane treatment such as physical abuse, sexual abuse, including harassment, or arbitrary punishment. Federal penal code sections apply

(2) PRISON RAPE ELIMINATION ACT APPLICATION -- The operators of detention facilities and DHS shall comply fully with the Prison Rape Elimination Act of 2003, including the regulations enacted pursuant to 42 U.S.C. § 15607, and effectuate that Act's intent in immigration detention by taking measures — [PREA applies to DHS and they need to issue regulations within 180 days. Regulations by rule shall include:]

(A) to prevent sexual abuse and sexual assaults of detainees, with the least restrictive impact on detainee conditions of confinement that is consistent with the classification, housing, and access to services that would otherwise be available:

(B) to provide medical and mental health treatment, consistent with nationally-accepted professional standards, to victims of sexual abuse and sexual assaults in a manner that is easily accessible and sensitive to the needs of the culturally-diverse detainee population;

(C) to provide training to all employees and contractors, including medical and mental health practitioners and investigators, regarding the prevention, detection, and treatment of sexual abuse and sexual assaults in a culturally diverse population and the unique dynamics of sexual abuse in detention;

(D) to enter into memoranda of understanding or other agreements with local organizations or, if local organizations near a detention facility are unavailable, national organizations that provide access to external victim advocates, pro bono legal services, and confidential emotional support services for immigrant victims of crime, for the provision of regular visitation and emergency assistance;

(E) to distribute to every detainee a copy of the ICE Detainee Handbook with the agency's policies related to sexual abuse, including information about how to report an incident or threat of sexual abuse, detainee rights related to sexual abuse, the types of immigration relief available for victims of crime, and ICE's zero-tolerance policy toward sexual abuse;

(F) to provide all detainees with cost-free access to telephones with preprogrammed numbers to a hotline equipped to address immediate safety concerns, the Joint Intake Center, the DHS's Office for Civil Rights and Civil Liberties and the DHS Office of Inspector General;

(G) to ensure that all detainee complaints of sexual abuse or sexual assault are fully and independently investigated, and comply with

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the Department of Justice's Sexual Assault Nurse Examiner (SANE) Development and Operation Guide, regardless of the location or custody status of the victim and regardless of the employment status of any implicated staff member, contractor, or volunteer;

(H) to ensure effective law enforcement by not removing from the country detainees who report sexual abuse or sexual assault before an investigation of that complaint is complete, except at the detainee victim's written request, and by ensuring that detainee victims are not otherwise retaliated against, including by being placed in housing not consistent with their classification level;

(I) to prioritize the release or placement in alternatives to detention of eligible detainees who are victims or witnesses to sexual abuse or sexual assault;

(J) to ensure that female officers are responsible for and at all times present during the transfer and transport of female detainees who are in DHS custody, and that transgender detainees in men's facilities have the option of transport by female officers.

Testimony of

MICHAEL J. MAXWELL

on

Checking Terrorism at the Border

before

The Subcommittee on International Terrorism and Nonproliferation

Committee on International Relations

U.S. HOUSE OF REPRESENTATIVES

Thursday, April 6, 2006

Good morning Chairman Royce, Ranking Member Sherman, and distinguished Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss immigration-related national security vulnerabilities facing the United States.

My name is Michael Maxwell and, until February 17 of this year, I was Director of the Office of Security and Investigations (OSI) at US Citizenship and Immigration Services (USCIS). I would like to begin by expressing my thanks to the men and women of OSI who stayed the course from day one, despite extraordinary pressure to take the easier path, and who remained loyal to the ideals of national security, integrity, and sacrifice. You would be hard-pressed to find a more dedicated group of professionals in either the public or the private sector, and I am proud to have served with them.

The USCIS Office of Security and Investigations

U.S. Citizenship and Immigration Services (USCIS) is the component of the Department of Homeland Security (DHS) that processes all applications for immigration status and documents—known as "immigration benefits"—including lawful permanent residence (the beneficiaries of which are issued "green cards"), U.S. citizenship, employment authorization, extensions of temporary permission to be in the United States, and asylum, that are filed by aliens who are already present in the United States. USCIS also processes the petitions filed by

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U.S. citizens, lawful permanent residents, and employers who seek to bring an alien to the United States, either permanently or on a temporary basis.

The Office of Security and Investigations was created by former USCIS Director Eduardo Aguirre to handle all the security needs of the agency, including:

The physical security of the more than 200 USCIS facilities worldwide;

Information security and the handling and designation of sensitive and classified documents;

Operations security, for both domestic and international operations;

Resolution of all USCIS employee background investigations;

Protective services for the Director of USCIS and visiting dignitaries; and

Internal affairs, among other duties.[1]

OSI's mandate from Director Aguirre was to "regain the public trust in the immigration service" by identifying, reporting, and resolving any security vulnerabilities that would permit the successful manipulation of the immigration system by either external or internal agents.

Between May and December of 2004, with the support of Director Aguirre, I began to recruit top-notch security experts, mostly from other Federal agencies. By September of 2004, OSI had in place a small team of professionals who would plan and successfully execute the first ever naturalization ceremonies to be conducted in a war zone overseas for members of the United States Armed Forces.[2] Following an agency-wide initiative I led in early 2005 to

[1] See Attachment 1: Statement of Mission and Jurisdiction of OSI.
[2] See Attachment 2: Meritorious Civilian Service Award.

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evaluate the few existing USCIS security systems and resources, Director Aguirre authorized, in writing, the immediate hiring of 45 new personnel for OSI, including 23 criminal investigators to investigate allegations of employee corruption and wrongdoing.[3] By May of 2005, I had been authorized a staffing level of 130 full-time employees and contract workers.[4] My only option for bringing staff on board, however, was to transfer them laterally from other DHS components, because the Human Capital Office of Administration refused to post any new vacancy announcements, apparently because they did not approve of a law enforcement component within USCIS.

In August of 2005, not long after the departure of Director Aguirre, my staffing matrix was effectively cut from 130 to fewer than 50 personnel worldwide. USCIS Senior Leadership, as represented on the Senior Review Board (SRB),[5] which must approve all significant expenditures, as well as the Human Capital Office of Administration, blatantly disregarded the written orders of former Director Aguirre and unilaterally decided that OSI should not be adequately staffed.[6]

In fact, with the approval of Acting Deputy Director Robert Divine, originally appointed by President Bush as Chief Counsel and the highest-ranking political appointee at USCIS following the departure of Aguirre's Deputy Director, Michael Petrucelli, OSI's authorized staffing level was set so low that, not only were we unable to open investigations

[3] See Attachment 3: Memorandum from Maxwell to Aguirre, 03/09/05.
[4] See Attachment 4: OSI Staffing Matrix as of 08/05.
[5] See Attachment 5: Members of the SRB as of 01/19/06.
[6] See Attachment 6: SRB overrules Director's orders.

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into new allegations of employee corruption with clear national security implications, our ongoing national security investigations involving allegations of espionage and links to terrorism were jeopardized. OSI staff consisted primarily of:

Six criminal investigators—one or two of whom were detailed to the DHS Office of Internal Security at any given time because of their expertise in national security investigations—to handle a backlog of 2,771 internal affairs complaints, including 528 that were criminal on their face and ranged from bribery and extortion to espionage and undue foreign influence;

Six personnel security specialists to handle a backlog of 11,000 employee background investigations that had developed before OSI was created, plus the background investigations of all the new employees being hired to help eliminate the application backlog;

Nine physical security specialists to secure over 200 USCIS facilities worldwide; and

One supervisory security specialist to ensure the continuity of operations (COOP) in the event of an attack or other crisis that impacts USCIS personnel or processes.

The same senior leaders who absolutely refused to allow OSI to obtain the necessary resources to fulfill its mission also refused, time and time again, to act when confronted with major national security vulnerabilities my team and I identified in the immigration process. Each of the security breaches described below was brought immediately to the attention of top-level officials at USCIS. These breaches compromise virtually every part of the immigration system, leaving vulnerabilities that have been and likely *are being* exploited by

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enemies of the United States. Despite the fact that each identified threat has significant national security implications, USCIS leadership consistently failed—or refused—to correct them. Instead, top officials chose to cover them up, to dismiss them, and/or to target the employees who identified them, even when the solution was both obvious and feasible.

As a former police chief and national security specialist, I do not make these charges lightly. Over the past eight months, I have provided, through my attorney, thousands of pages of unclassified documents, including most of those attached to this statement, to Members of this Subcommittee and other Members of Congress. More recently, I have provided the same documents to the FBI, the GAO, and the DHS Office of Inspector General. On three separate occasions, I offered to provide Director Gonzalez a full set of these documents, but on each occasion, he declined my offer.

These documents, and others of which I have personal knowledge but am not at liberty to release or to discuss in an open forum, prove not only the existence of the national security vulnerabilities I will discuss today, but also the fact that senior government officials are aware of the vulnerabilities and have chosen to ignore them. More troubling is the fact that these same officials actually ordered me to ignore national security vulnerabilities I identified, even though my job was to address them. When I refused these orders, I was subjected to retaliation—some of which was as blatant as revoking my eligibility for Administratively Uncontrollable Overtime (AUO), which totaled 25 percent of my salary, on the very day that I

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was scheduled to brief the Immigration Reform Caucus;[7] and some of which was more nefarious, like the challenge to my authority to authorize access to Sensitive Compartmented Information (SCI), in a move that I have no doubt would have led to the revocation of my own Top Secret/SCI clearance, had I not resigned when I did.

Internal Affairs

Mr. Chairman, written allegations set forth by USCIS employees, interviews conducted as recently as yesterday with USCIS line employees and high level managers, internal USCIS communications, and external investigative documents prepared by independent third agencies, compiled and delivered to this Congress over the last eight months, make clear that the integrity of the United States immigration system has been corrupted and the system is incapable of ensuring the security of our Homeland.

As the office responsible for internal affairs, OSI received 2,771 complaints about employees between August 2004 and October 2005. Over 1800 of these were originally declined for investigation by the DHS Office of the Inspector General and referred to OSI. Most of the remaining complaints were delivered to OSI by the ICE Office of Professional Responsibility once they gave up jurisdiction over USCIS complaints. The majority of all complaints received by OSI are service complaints (e.g., an alien complaining that he did not

[7] See Attachment 7: Eligibility for AUO revoked.

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receive his immigration status in a timely way) or administrative issues (e.g., allegations of nepotism).

However, almost 20 percent of them—528 of the 2,771—allege criminal activities. Alleged crimes include bribery, harboring illegal aliens, money laundering, structuring, sale of documents, marriage fraud, extortion, undue foreign influence, and making false statements, among other things. Also included among these complaints are national security cases; for example, allegations of USCIS employees providing material support to known terrorists or being influenced by foreign intelligence services.[8] Complaints with clear national security implications represent a small share of the total, but in cases such as these, even one is too many.

OSI is required to refer such cases to the FBI when they reach a certain threshold, since the Bureau has primary jurisdiction over all terrorism and counterintelligence investigations. In virtually all the cases we refer to the FBI, though, OSI is an active investigative partner. In fact, OSI agents have led or facilitated remote and sometimes classified national security operations; we have led national security interviews; we have participated in national security polygraph interviews; and we have developed behavioral analyses as investigative tools.

OSI also details its agents to the DHS-Headquarters Office of Security when the latter lacks sufficient resources to investigate these types of national security allegations, as we have criminal investigators with training and experience in both counterterrorism and

[8] See Attachment 8: Weekly Internal Affairs Report, 02/17/06.

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counterintelligence operations. In fact, one of our investigators is currently detailed to the DHS Office of Security.[9] For operational security reasons, these investigations had to be compartmentalized from all USCIS management except the Director, Deputy Director, or Chief of Staff. At times, we reported directly to Admiral Loy, when he was Deputy Secretary, and later to Deputy Secretary Jackson.

As you would expect, we always prioritize complaints that appear to implicate national security. One of the most frustrating parts of my job, though, was the fact that we simply did not have the resources to open investigations into even the relatively small number of national security cases. While I cannot discuss on-going investigations in this open forum, I can tell you about some of the allegations OSI did not have the resources to investigate.

As you know, the USCIS employees who process applications for immigration status and documents are supposed to ensure that the applicant is not a terrorist or criminal. The database they use to do this is the Treasury Enforcement Communications System, or TECS. TECS is essentially a gateway into the criminal and terrorist databases of some two dozen law enforcement and intelligence agencies, including the FBI, the Drug Enforcement Administration, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), which controls access to TECS, the intelligence community, and others. USCIS employees are granted different levels of access to TECS depending on how in-depth of a background investigation they have undergone. Those who have undergone a full

[9] See Attachment 9: Email regarding detail to Office of Security.

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background investigation are likely to be granted access to Level 3 TECS records, which include terrorist watch-lists, information about on-going national security and criminal investigations, and full criminal histories. Due to the sensitivity of the data, USCIS employees are required to log in and out of the system so their access can be tracked.

OSI has seen far too many allegations recently where it appears that an employee or a contract worker may have entered TECS—or permitted someone else to enter TECS—in order to provide information to someone else. In fact, OSI recently got its first criminal conviction in a case involving a USCIS employee who accessed TECS in order to warn the target of a DEA investigation about the investigation.

More alarming, however, is an allegation that has not yet been investigated in which a Chinese-born U.S. citizen who works for USCIS permitted a family member to access TECS, print records from it, and then leave the building with those records. We do not know what records this person accessed or why, and yet this allegation is not being investigated because OSI's criminal investigators are already stretched to their limits.

Consider for a moment the potential repercussions of these types of investigations. One USCIS employee, co-opted by a foreign intelligence entity, with the ability to grant the immigration status of their choosing, to the person or persons of their choosing, at the time and location of their choosing. This threat represents a clear and ongoing danger to national security. The possibilities are even worse when you consider the nexus that this subcommittee

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knows to exist between countries with highly capable intelligence services and state sponsors of terrorism.

It may seem farfetched to think that a USCIS employee would be co-opted by a foreign intelligence agency. The fact is, however, that the new Director of USCIS, Dr. Emilio Gonzalez, in early 2006 at an open and unclassified session of a senior leadership meeting of almost two dozen senior managers mentioned two foreign intelligence operatives who work on behalf of USCIS at an interest section abroad and who are assisting aliens into the United States as we speak.

Restricted TECS Access

While there obviously is a problem at USCIS with unauthorized access to the TECS database, ironically, there also is a problem with insufficient access for USCIS employees who are deciding applications. The records accessible through TECS are grouped into four categories:

- Level 1 records are those from the user's own agency (i.e., Level 1 USCIS users would have access only to USCIS records);
- Level 2 records include all Level 1 records plus a sizeable share of the criminal records from the other law enforcement agencies (i.e., Level 2 USCIS users would have access to USCIS records, plus certain records from CBP, the FBI, the DEA, and so on);

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- Level 3 records include Level 1 and 2 records, plus national security records, terrorist watch-lists, threats to public safety, and information about on-going investigations;
- Level 4 records include records from the three other levels, plus case notes, grand jury testimony, and other highly sensitive data that are provided only on a need-to-know basis.

Clearly, USCIS employees need access to the Level 3 records in order to properly vet applicants for immigration status and/or documents and ensure that known terrorists and others who present a threat to national security or public safety are not able to game the immigration system. On the other hand, because of the sensitive nature of some of these records, including on-going national security cases, it is important that access to Level 3 records be restricted to employees who themselves have been thoroughly vetted.

Thus, when DHS was created in January 2003, CBP, as the manager of TECS, entered into an agreement with USCIS that requires employees to undergo full background investigations (BIs) before they may be granted Level 3 TECS access. The agreement included a two-year grandfather period during which legacy Immigration and Naturalization Service (INS) personnel who had had access to Level 3 TECS records at the INS would continue to have access so that USCIS would have time to complete BIs on new employees and upgrade those on legacy employees when necessary.

USCIS leadership, however, decided not to spend the money to require full BIs on new personnel or to upgrade the BIs on legacy personnel. Thus, when the grandfather period

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ended in January 2005, CBP began restricting access by USCIS employees with only limited BIs, so that these employees can access only Level 1 (USCIS) records or, in some cases, Level 2 (USCIS plus limited criminal histories) records through TECS. They cannot access the national security, public safety, or terrorist records they need to process applications.

Other than a few sporadic meetings among USCIS senior staff and, once in a while, with some CBP officials, to talk about how many employees might have restricted access, USCIS leadership largely ignored the problem during the first nine months of 2005, despite complaints from the field and warnings from within Headquarters. Backlog elimination was the top priority of the agency, so employees were pressured to keep pumping out the applications, regardless of whether they had the ability to determine if an applicant was a known terrorist or presented some other threat to national security or public safety.

In early October 2005, the problem drew congressional and media attention. The Public Affairs office assured reporters that employees have access to all the records they need, while Acting Deputy Director (ADD) Robert Divine, Chief of Staff (CoS) Tom Paar, and Don Crocetti, the director of the Fraud Detection and National Security (FDNS) office, were frantically trying to figure out the difference between Level 2 and Level 3 TECS records in order to determine what critical information employees were missing.

During a late-night meeting in the second week of October, Crocetti acknowledged that Level 2 access leaves employees completely blind to sensitive national security, public safety, and terrorist records, along with information about on-going investigations. Deputy Director

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of Domestic Operations Janis Sposato told the group that 80 percent of all applications are processed through TECS at Level 3 as part of an automated background check system. She noted that some unknown portion of the remaining 20 percent are processed by the more than 1,700 employees with only Level 2 or below access, so critical national security indicators may have been missed. ADD Robert Divine's response to this information was, "I guess we've finally reached that point: Is immigration a right or a privilege?" In the ensuing debate, Divine and Acting General Counsel Dea Carpenter insisted that immigration to the United States is a right, not a privilege.

USCIS employees processed 7.5 million applications in FY 2005, so 1.5 million applications (20 percent) did not go through the automated background check system. If 1,700 out of 4,000 employees (43 percent) do not have Level 3 TECS access, then, not taking into account that those without Level 3 access may be able to process cases faster because they have to resolve fewer "hits" from TECS searches, those 1,700 employees processed some 645,000 applications. Furthermore, each application generally involves more than one individual and so requires more than one TECS search.

At the conclusion of that late-night meeting, ADD Divine ordered Crocetti to lead the negotiations with CBP to resolve the TECS issue. Since then, Crocetti, sometimes accompanied by Divine and CoS Paar, has been meeting with CBP officials to convince them to extend the grandfather period and restore access to those employees who have been cut off and to waive in (without full background investigations) contract workers hired to eliminate the

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immigration application backlog. Granting contract workers who have not been vetted access to national security records would itself result in a significant security breach, since it could put sensitive national security information in the wrong hands and has already been shown to be a criminally negligent policy on the part of USCIS.

An increasing number of USCIS employees have had their access to TECS restricted since the grandfather period expired over one year ago, in January 2005. To date, not one employee with a deficient background investigation has been scheduled for an upgrade and no agreement to restore access has been reached with CBP.

To make matters worse, the ADD and the CoS have actively ensured that USCIS does not have the personnel it will need to upgrade employees' background investigations. OSI is responsible for processing background investigations on employees (the Office of Personnel Management (OPM) does the actual investigation and then sends it to OSI to resolve any inconsistencies and make a final determination on granting clearance).

Shortly after OSI was created, in the fall of 2004, we inherited a backlog of 11,000 pending BIs on USCIS employees that INS and then ICE had failed to finalize. In light of the fact that we have had a total of six personnel security specialists to process BIs over the past year, it is astonishing that we have managed to reduce the backlog to about 7,000. Because of the hiring frenzy driven by backlog elimination, however, OPM currently is sending OSI new BIs at a rate of 3.5 for every one that OSI clears.

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I presented at least eight proposals over the last year to increase the number of personnel security specialists to address this backlog, but all were denied by the Senior Review Board. CoS Paar approved 15 additional positions for OSI in mid-November 2005, but Human Capital refused to post the vacancies until after I resigned, and they have continued to delay the process so that none of the positions has yet been filled. Even if those five positions eventually are filled, that will be a total of 11 people to handle the 7,000 backlogged BIs, plus the BIs for new employees hired to eliminate the backlog, plus up to 5,000 upgraded BIs on current employees whose access to TECS has been or could soon be restricted. The Chief of Staff and Deputy Director have been warned in writing on numerous occasions of this point of failure and both ignored the warnings. When the new Director of USCIS, Emilio Gonzalez, became aware of this situation, his immediate response was to order me to hire 17 personnel security specialists—above my authorized staff level—just to address the TECS access issue. ***The very next day, however, CoS Paar overturned the Director's order and prohibited me from hiring any additional staff.***

Irresponsible Policies

Information from various sources indicates that criminals and, potentially, terrorists are being granted immigration status and/or documents or being permitted to remain in the United States illegally through a variety of irresponsible policy decisions by USCIS leadership, the consequences of which they are well aware:

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1) **Background Checks on Aliens**—USCIS Operation Instruction 105.10 instructs employees that "if no response is received to an FBI or CIA G-325 [name check] request within 40 days of the date of mailing [the request card] the application or petition shall be processed on the assumption that the results of the request are negative."[10] This policy flies in the face of the legal eligibility requirements for immigration status and of repeated public assurances by USCIS leadership that employees always wait for background check results before deciding any application for immigration status and/or documents. This Operation Instruction is listed on the USCIS website as current policy.

Since resigning from the agency, I have been told by USCIS employees, and had it confirmed by managers, that, not only are they instructed to move forward in processing applications before they receive background check results, but also that some have been instructed by supervisors, including legal counsel, to ignore wants and warrants on applicants because addressing them properly—i.e., looking into the reason for the want or warrant to determine if it may statutorily bar the applicant from the status or document for which he has applied—slows down processing times.

Moreover, I was told as recently as three weeks ago that USCIS District Offices and Service Centers are holding competitions and offering a variety of rewards, including cash bonuses, time off, movie tickets, and gift certificates, to employees

[10] See Attachment 10: Operation Instruction 105.10.

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and/or teams of employees with the fastest processing times. The quality of processing is not a factor; only the quantity of closed applications matters, and it is important to note that it takes a lot less time to approve an application than to deny one, since denials require written justifications and, often, appeals.

2) **Fingerprint Checks on Applicants for U.S. Citizenship**—OSI was notified that employees were not following DHS regulations that prohibit a naturalization exam from being scheduled before the fingerprint check results are returned by the FBI. This is a critical problem because there is a statutory 120-day window after the naturalization exam during which a final decision on the application for citizenship must be made. If a decision is not made during that window, for whatever reason, the alien may petition a court for a Writ of Mandamus, which orders USCIS to decide the application immediately. When I approached ADD Divine about this issue, he indicated that he was aware of the problem. He said that, as Chief Counsel, he had discussed this issue numerous times with USCIS senior staff, including then-Director of Domestic Operations Bill Yates. ***Divine said he had concluded that since the fingerprint results come back before the 120-day window closes in 80 percent of cases, the other 20 percent represent an "acceptable risk."***

Senior USCIS leadership at Headquarters meets every week for what are called "WIC" meetings. A detailed memo prepared for each of these meetings and distributed

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widely throughout the Federal government lists the activities that each unit within USCIS is involved in for the coming weeks and summarizes past activities. The WIC memo for the week of March 13, 2006 includes an item regarding "American-Arab Anti-Discrimination Committee (ACD) '120 Day Cases' in District Court," which says that the Department of Justice (DOJ) sees the current USCIS practice of scheduling the naturalization interview before receiving fingerprint results as a violation of regulations. It concludes that, while DOJ "understands the Congressional and Presidential mandates on processing times and backlog reduction that [US]CIS labors with," DOJ fervently wishes that USCIS would stop violating its own rules, since the practice is tough to defend in court.[11]

3) **Employment Authorization Documents**—A USCIS regulation (8 C.F.R. 274a.13) states that, if an application for adjustment to lawful permanent resident (LPR) status is not decided within 90 days, the applicant is entitled to file an I-765 application for an employment authorization document (EAD). This policy has led to large-scale fraud. The current processing times for an application for LPR status range from just under 6 months (the Nebraska and the Texas Service Centers each have one form of application for LPR status that is currently being processed within 6 months) to 60 months at the four service centers and from six months to 33 months at the larger district offices, so virtually all applicants—

[11] See Attachment 11: Memorandum for WIC Members, March 13, 2006, p. 4.

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whether they are eligible or not and whether they are lawfully present in the United States or not—are able to obtain a legitimate EAD (applications for which both the service centers and district offices have only short processing times).

Under this policy, illegal aliens can simply file a fraudulent application, wait 90 days, and then ask for an EAD. Once they have the EAD, they can apply for a legitimate social security number and, even under the REAL ID Act, they can legally obtain a driver's license because they have an application for LPR status pending. With a social security number and a driver's license, they can get a job. According to the Government Accountability Office (GAO), an estimated 23,000 aliens were granted EADs on the basis of fraudulent applications for LPR status between 2000 and 2004. ***When asked by the GAO to comment on the fraud resulting from this policy, USCIS leadership indicated that fairness to legitimate applicants outweighs the need to close security loopholes.***[12]

To make this situation worse, information I have just received in the past few days suggests two additional problems with the processing of I-765s, the application form for an EAD. First, it appears that the Texas Service Center has developed an "auto-adjudication" system that can process I-765s from start to finish without any human involvement at all. In other words, there is no point in the process when a

[12] "Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud," Government Accountability Office, GAO-06-259, March 2006, pp. 22, 27.

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USCIS employee actually examines the supporting documentation to look for signs of fraud. Instead, the I-765 application is processed automatically when the underlying application for LPR status has been sitting on the shelf for 90 days.[13]

The second issue, identified during the same review that uncovered the "auto-adjudication" system, is just as troubling. Staff at the National Benefits Center in Lee's Summit, Missouri, acknowledged that there is a way to bypass the normal application process and manually insert any number of applications into the computer system (CLAIMS3) so that the standard application screening process is circumvented. Independent investigators are currently attempting to determine how many applications have been improperly processed in this way and by whom.[14]

4) **Fingerprint Check Waivers**—A memo to Regional Directors from Michael Pearson, then head of Field Operations, sets out USCIS policy on the granting of waivers of the FBI fingerprint check requirement for aliens who "are unable to provide fingerprints," because of, among other things, "psychiatric conditions." The policy states:

> *The determination regarding the fingerprinting of applicants or petitioners who have accessible fingers but on whose behalf a claim is made that they cannot be fingerprinted for physiological reasons can be far less*

[13] Attachment 12: National Benefits Center documents (sensitive; for Members only).
[14] Ibid.

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> *certain. Unless the ASC manager is certain of the bona fides of the inability of the person to be fingerprinted, the ASC manager should request that reasonable documentation be submitted by a Psychiatrist, a licensed Clinical Psychologist or a medical practitioner who has had long-term responsibility for the care of the applicant/petitioner* [emphasis added].

In my 16 years in law enforcement, I have never heard of someone being exempt from fingerprinting due to a psychiatric condition. Moreover, I cannot fathom circumstances under which an ASC manager would be sufficiently qualified to determine the bona fides of the request for a waiver. At the very least, this policy should affirmatively require proof from a licensed professional, rather than just suggesting it if the manager cannot decide for himself.

5) **Refugee/Asylee Travel Documents**—As of late September 2005, USCIS employees handling applications for refugee/asylee travel documents were not comparing the photograph of the applicant for the travel documents with the original photograph submitted by the refugee or asylee and stored in the Image Storage and Retrieval System (ISRS). Thus, an illegal alien who can obtain biographical information about a legitimate refugee or asylee (from a corrupt immigration attorney, for example) can submit an application for travel documents using the real refugee/asylee's name and other biographical

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information, provide his own photograph, and be issued travel documents with his picture, but the name of an alien with legitimate USCIS records. The illegal alien can then obtain other documents based on the stolen identity established by the travel documents.

When USCIS leadership was made aware of this fraud scheme, a Domestic Operations representative responded by acknowledging that this "is a known vulnerability" they have been looking at "for the past year or so."[15] This same individual clarified for ADD Divine that recent assurances Divine gave to Secretary Chertoff concerned verifying the identity of applicants related to I-90 adjudications, not refugee/asylee travel documents. Ironically in light of the issue in the paragraph below, ADD Divine noted that this issue "has particular poignancy as [USCIS] face[s] a flood of filings by Katrina victims seeking to replace documents." All parties acknowledged implicitly that requiring employees to compare the applicant's photo with the photo of the refugee/asylee that is stored in the Image Storage and Retrieval System (ISRS) would end fraud of this type.

USCIS Director Gonzalez contends that the *Standard Operating Procedures (SOP)* do, in fact, require such a comparison, so the problem is solved. Interestingly, the *Adjudicator's Handbook* does not have such a requirement, but the bottom line is that the comparisons are not being done, regardless of what the *SOP* says. Employees have told

[15] See Attachment 13: Email exchange regarding Cameroon national.

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me recently that, rather than actually changing the *SOP*, supervisors simply send out emails ordering employees to change the way they perform certain tasks, so as to speed up the work.

6) **Green Card Replacement**—In mid-December 2005, the ICE Office of Intelligence sent a memo to the USCIS Fraud Detection and National Security unit about a fraud scheme that ICE had uncovered that is similar to the one above.[16] This scheme involved the I-90 application for a replacement/renewal green card (for lawful permanent residents)—the same application about which ADD Divine had reassured Sec. Chertoff. In this scheme, illegal aliens steal the identity of a lawful permanent resident. Each illegal alien then uses the LPR's name and Alien Registration Number to file an I-90 application for a replacement Permanent Resident Card ("green card") with the illegal alien's photo, fingerprints, and signature. Incredibly, USCIS actually captures the illegal aliens' photos, fingerprints, and signatures in the Image Storage and Retrieval System (ISRS), but employees fail to compare any of them with the photo, fingerprints or signature of the original applicant. ICE identified this as a vulnerability with "severe national security implications."

7) **Mandatory-Detention Aliens**—A policy memo sent to Regional and Service Center Directors by the now-retired head of Domestic Operations, ***Bill Yates,***

[16] See Attachment 14: ICE memo and report (the latter is LES for Members only).

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instructs Service Centers NOT to serve a Notice to Appear (NTA), which initiates removal proceedings, on aliens who appear to be subject to mandatory detention under section 236(c) of the Immigration and Nationality Act (INA).[17] Instead, employees are instructed to decide the application, prepare and sign an NTA (unless they exercise prosecutorial discretion and decide to allow the convicted criminal to continue living in the United States illegally), and place a memorandum in the file explaining that they are handing the case over to ICE. Section 236(c) of the Immigration and Nationality Act requires that removable aliens who have been convicted of certain serious crimes be detained pending their removal (i.e., "mandatory-detention aliens"). Service Center employees and senior leadership at Headquarters confirm that this memo represents current USCIS policy.

The memo presents two separate issues: (1) whether this policy results in aliens who are subject to mandatory detention based on criminal convictions being allowed to remain free in American communities; and (2) the applicability and scope of prosecutorial discretion.

(1) ***There is evidence that criminal aliens are being allowed to remain at large in U.S. communities as a result of this policy.*** Part of the problem is that ICE officials (at least in some parts of the country) apparently have decided that

[17] See Attachment 15: Yates memo on NTAs.

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ICE should be paid by USCIS each time it does its job and serves an NTA. A search for a missing alien file (A-file) that was being sought by an agent on the Joint Terrorism Task Force (JTTF) in the USCIS Philadelphia District Office recently resulted in the discovery of a stash of some 2,500 A-files of aliens whose applications for status and/or documents had been denied, but whose cases had not been turned over to ICE to issue NTAs because USCIS personnel at that office decided to hide the files rather than pay ICE to serve all those NTAs. According to the agent who found them, a majority of the files were for aliens from countries of interest.[18] That means that aliens from special interest countries who do not qualify for legal status for whatever reason are still in the United States illegally, and there has been no effort to remove them from the country.

(2) The memo on prosecutorial discretion to which the Yates memo refers was issued by then-INS Commissioner Doris Meissner in response, according to the memo, to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That law included several provisions aimed at getting criminal aliens off the streets and out of the country, including section 236(c) of the INA. Meissner asserts that immigration officers may appropriately exercise prosecutorial discretion "even when an alien is removable based on his or her criminal history

[18] See Attachment 16: Update on Philadelphia A-files.

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and when the alien—if served with an NTA—would be subject to mandatory detention." However, she reserves prosecutorial discretion to law enforcement entities, which USCIS absolutely refuses to be. As a self-avowed non-law enforcement agency, perhaps USCIS would be better off simply obeying the law.

National Security Indicators

As of August 2005, some 1,400 immigration applications, most for U.S. citizenship, that had generated national security hits on IBIS were sitting in limbo at USCIS headquarters because the employees trying to process them were unable to obtain the national security information that caused them to be flagged. If a government agency (e.g., FBI, CIA, DEA, ATF) has national security information about an alien, or when an agency has an ongoing investigation that involves an alien, the USCIS employee who runs a name check in TECS will see only a statement indicating that the particular agency has national security information regarding the alien. (This is assuming that the employee has Level 3 TECS access; without such access, the employee may get no indication at all that national security information exists.) Employees are not permitted to deny an application "just" because there is national security information or a record with another law enforcement agency. Instead, the employee must request, acquire, and assess the information to see if it makes the alien statutorily ineligible for the immigration status or document being sought, or inadmissible or deportable.

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However, whether or not an employee can get the national security information, in order to assess it, depends on at least two things:

The level of background investigation the employee has undergone, which determines the types of information he or she is lawfully permitted to access; and

The nature of the national security information, which determines the willingness or ability of the agency with the information to share it with non-law enforcement personnel (all USCIS employees, including those in the Fraud Detection and National Security unit, are non-law enforcement except for the 1811 criminal investigators and some of the 0080 security specialists who work in OSI).

The more sensitive the national security information, the less likely that the non-law enforcement employee will be able to get it. This is the genesis of the so-called "FOCUS" cases—employees see that there is national security information on the alien, but they are unable to obtain the information to assess it. The bulk of FOCUS cases are applications for naturalization because naturalization regulations require USCIS to make a final decision within 120 days of interviewing the applicant. Once that 120-day window closes, the applicant can petition a court for a writ of mandamus, and the court will order USCIS to issue a decision. USCIS set up a group of employees, the FOCUS group, to review these applications and issue the final decisions. However, as non-law enforcement personnel, they may have no better access to the relevant information than the original employee who sent the application to Headquarters in the first place. (In fact, some FOCUS employees do not even have access to

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Level 3 TECS records.[19]) OSI, whose law enforcement personnel have the security clearances and the contacts necessary to obtain the pertinent information, offered to assist employees with these applications. Rather than utilizing OSI, however, USCIS leadership instructed the FOCUS group members to contact FDNS—the official USCIS liaison with outside law enforcement and intelligence agencies—when they need additional information about any of these cases. Since FDNS lacks law enforcement personnel, it, too, has been unable to obtain the necessary information from these outside agencies in some cases.

In documented instances, FDNS has instructed FOCUS employees to grant a benefit, even though neither FDNS nor the FOCUS employee knew why the alien generated a national security indicator.[20] Despite the fact that my staff was willing and able to assist in obtaining the national security information that was otherwise unavailable to USCIS, I was ordered directly by Acting Deputy Director Divine to remove myself and my staff from any involvement with the FOCUS cases and to cease any communication with the FBI and the intelligence community. I was told repeatedly that FDNS was the official liaison and so I was to have no further contact with any law enforcement or intelligence agencies or participate in any information sharing, either within USCIS or outside USCIS. I have been told that my successor is working under the same constraints.

The result is that FOCUS employees are faced with a choice between approving an application for U.S. citizenship with limited information about what raised a national security

[19] See Attachment 17: O'Reilly email.
[20] See Attachments 18 and 19: FOCUS emails.

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flag versus denying the application, perhaps wrongly, or asking someone at OSI to violate the direct order of the Acting Deputy Director and the Chief of Staff in order to share critical information with them.

In a November 2005 report on Alien Security Checks by DHS-OIG, USCIS told the IG investigator that "FDNS has resolved all national-security related IBIS hits since March 2005. FDNS's Background Check Analysis Unit reviews, tracks, analyzes, and resolves all name-vetted hits related to national security" [emphasis added]. Technically, this statement is true, but only because the former head of Domestic Operations redefined the word "resolution." In a memo dated March 29, 2005, Bill Yates says in a footnote:

> *"Resolution is accomplished when all available information from the agency that posted the lookout(s) is obtained. A resolution is not always a finite product. Law enforcement agencies may refuse to give details surrounding an investigation; they may also request that an adjudication be placed in abeyance during an ongoing investigation, as there is often a concern that either an approval or a denial may jeopardize the investigation itself" [emphasis added].*

In other words, USCIS employees can "resolve" a national security hit simply by asking why the alien is flagged, regardless of whether the employee is actually able to obtain the data necessary to decide the application appropriately. One of the first lessons employees are taught is that they must grant the benefit unless they can find a statutory reason to deny it. ***Without the national security information from the law enforcement agency, the employee***

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must grant the benefit unless there is another ground on which to deny it, even where the applicant may present a serious threat to national security.

Mr. Chairman and Members of the Subcommittee, as you can see, USCIS is operating an immigration system designed not to aggressively deter or detect fraud, but first and foremost to approve applications. Ours is a system that rewards criminals and facilitates the movement of terrorists.

On no less then 8 occasions in the past year, the DHS Inspector General and the GAO have reported critical, systemic failures in the immigration system. They have raised the national security red flag with regard to cyber attack, terrorist attack, criminal fraud, and penetration by foreign intelligence agents posing as temporary workers. All while the bad guys are patiently working within the framework of our legal immigration system, often with the explicit help of USCIS.

Currently, the USCIS Headquarters Asylum Division has backlog of almost 1000 asylum cases that it has not reported to you as Members of Congress, to the Inspector General, or to the American people. This backlog includes two kinds of asylum claimants:

Individuals who claim that they have been falsely accused by their home government of terrorist activity; and

Individuals who have provided material support to a terrorist or a terrorist organization.

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These asylum claimants, most of whom fall into the second category, are in the United States right now. Some have been awaiting a decision since late 2004 on whether the Secretary of Homeland Security, after consulting with the Secretary of State and the Attorney General, will grant them a waiver of inadmissibility for providing material support to terrorists. It is no wonder DHS does not want to report this backlog.

But there is more. The USCIS Headquarters Fraud Detection National Security unit also has an unreported backlog.[21] As of September 24, 2005, this backlog included 13,815 immigration applications that had resulted in an IBIS "hit" involving national security, public safety, wants/warrants, Interpol, or absconders. FDNS had a separate backlog of 26,000 immigration applications that resulted in some other kind of IBIS "hit."

In late March 2005, FDNS began requiring that all national security-related IBIS hits be sent to Headquarters for resolution. During the 6 months between April 2005 and the end of September, FDNS HQ received 2,000 national security hits and reached "final resolution" on 650, leaving 1,350 pending by the beginning of October.

This backlog of national security cases is particularly disturbing when put in the context of USCIS's definition of how to "resolve" a national security case. One has to wonder how many of them were "resolved" simply by asking for the national security information and then granting the application when the agency with the information refused to share it. We have proof of at least one case where that would have happened, had OSI not stepped in and

[21] See Attachment 20: USCIS response to press.

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provided the national security information.[22] The USCIS General Counsel's office points out another such case, except that they expect to grant the application for citizenship despite the national security hit because the national security information "is unavailable to USCIS at this time."[23]

Perhaps the following finding from the GAO sheds light on the truth:

> *Verifying any applicant-submitted evidence in pursuit of its fraud-prevention objectives represents a resource commitment for USCIS and a potential trade-off with its production and customer service- related objectives. In fiscal year 2004, USCIS had a backlog of several million applications and has developed a plan to eliminate it by the end of fiscal year 2006. In June 2004, USCIS reported that it would have to increase monthly production by about 20 percent to achieve its legislatively mandated goal of adjudicating all applications within 6 months or less by the end of fiscal year 2006. It would be impossible for USCIS to verify all of the key information or interview all individuals related to the millions of applications it adjudicates each year approximately 7.5 million applications in fiscal year 2005 without seriously compromising its service-related objectives."*[24]

USCIS leadership has been warned repeatedly of national security vulnerabilities in the asylum, refugee, citizenship, information technology, and green card renewal systems by me

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[22] See Attachment 18: FOCUS email

[23] See Attachment 11: Memorandum for WIC Members, March 13, 2006, p. 4, 3rd item.

[24] "Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud," Government Accountability Office, GAO-06-259, March 2006, p. 26..

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personally, by the GAO, by the Inspector General, and no doubt, by others. Time and again, they have ignored warnings of systemic weaknesses wide open to exploitation by criminals, terrorists, and foreign agents. When faced with irrefutable proof of vulnerabilities, they attempted to balance national security and customer service and explained to me that immigration was a right not a privilege. They have knowingly misled Congress, the Inspector General's Office, the GAO, and perhaps most disheartening, the American people. They are attempting to simply reboot the immigration system, in the hope that whatever system conflict there is will just resolve itself. In this case, however, if you just reinstall the same software, with the same software engineers, and without the necessary safeguards in place to catch viruses or deter hackers, the system simply replicates itself and bogs down all over again, until one day there is a catastrophic failure. This root conflict is not going to go away without immediate and enormous change. The immigration process itself is flawed and is being exploited internally and externally by criminals, terrorists, and foreign intelligence agencies.

In closing Mr. Chairman, I sit before this committee, having lost my career, my passion for service to the government, my faith that someone, somewhere would do the right thing within DHS. I know there are more good men and women in the agency who would like nothing more than to do their part in fixing this broken system. I have now been able to present some of the information I have gathered to the FBI, the GAO, the Inspector General, and to you. Thankfully, senior leadership can no longer retaliate against me, for I am no longer employed by DHS. Based on the response I have seen thus far, I am hopeful that

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enough people will come forward that, with your help, we will finally be able to force serious change on an agency that has needed it desperately for decades.

Chairman Royce, Ranking Member Sherman, and Members of the Committee, thank you all for your support. I would be happy to answer any questions you may have at this time.

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Dr. Phil Testimony for the Violence Against Women Act

Hearing for the Violence Against Women Act: Building on Seventeen Years of Accomplishments

Written Testimony by Dr. Phillip C. McGraw, Ph.D.

Wednesday, July 13, 2011

Chairman Leahy, Ranking Member Grassley and esteemed members of the Senate Judiciary Committee, good morning and thank you for allowing me to testify before you on behalf of my viewers – and your constituents – who are victims of domestic violence.

I am also honored to speak to you today about the Violence Against Women Act, which for 17 years has been the centerpiece of the Federal Government's commitment to combating domestic violence and other violent crimes against women.

As you may know, since I brag about her endlessly on the show, I have a one-year-old granddaughter named Avery (pic. 1) who is the apple of my eye. Avery makes this legislation very personal for me, just as I'm sure the women in your lives make this equally personal for you. This precious child should not grow up in a world that looks the other way or fails to react if an intimate partner were to commit acts of violence against her. This epidemic of violence can not be allowed to remain hidden in the shame often associated with being beaten and often causes the victims to suffer in silence.

I want Avery to have only the best options for a healthy and productive life when she starts dating, which, if I have my way, will be around her 40th birthday.

In all seriousness, I want to know that Avery and every other girl of her generation will always have the Violence Against Women Act to protect them as they grow up that they will never lack for the services and resources to keep them safe.

VAWA is working. Since the enactment of this landmark piece of legislation, the rates of non-fatal and fatal domestic violence have declined, and more victims have felt confident to come forward to report these crimes and to seek help. We now have a

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coordinated approach to addressing domestic and sexual violence, one that encourages many who care about this topic to sit down and work together to determine the best way to eliminate this scourge from our society.

None of us have to be told, but our brethren perhaps need to be reminded that there is still so much work to do. The statistics are still simply overwhelming. One out of every four women is a victim of domestic violence, one out of six is a victim of sexual violence and women experience two million injuries from intimate partner violence each year. Of the women who are sexually assaulted in this country, more than half are victimized by current or former husbands or boyfriends. And most of the women who are murdered in the United Stated are murdered by current or former husbands and boyfriends. In the first hour of this hearing 228 women are being beaten, terrorized and intimidated, all behind closed doors, all undoubtedly feeling very alone. Three of those women will be murdered today. There is more work to do.

We should also remember that all those statistics don't come close to telling the full story. Domestic violence remains perhaps the most under-reported phenomenon in American life. Tragically, there are still an untold number of victims who never go to the police or to hospitals, and many of them don't even tell members of their own families what's happened.

Sadly, victims are getting younger and younger. According to an article published in the Mayo Clinic Proceedings, domestic violence is the leading cause of injury to women ages 15 to 44. That's right 15. More than ever before, teenage girls are victims of harassment, including what is being called "textual harassment," in which they are stalked and humiliated through the internet and cell phones. In some cases, the textual harassment leads to physical harassment and worse. Among teenage girls who are killed, nearly one-third are now killed by a boyfriend or former boyfriend.

Clearly, in many parts of our society, it seems as though violence against women, young and old, is almost an "accepted crime." And there is one other thing we often forget. If we look at just the reported cases of domestic violence, and let me reiterate these are only the reported cases, then we know that more than 10 million children are witnessing their mothers, aunts, or sisters being threatened, intimidated, and beaten. The perpetrators are not strangers to these children – they are their fathers, uncles, or even

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their brothers. And let me tell you the obvious – kids in those kinds of toxic situations do not do well. They have a higher incidence of emotional and behavioral problems, including higher rates of mental illness, increased alcohol and drug abuse, and poor academic achievement. Some of them, as they get older, turn into abusers themselves. All of which is destined to put a huge strain on an already underfunded and overly stretched system and set of resources.

This past year on the Dr. Phil show, we knew the time had come to up the ante and to place the issue of domestic violence squarely in the center of our daily platform. We partnered with the National Network to End Domestic Violence to launch the "End the Silence on Domestic Violence" campaign.

We brought in many experts from academia to leaders of Congress to the directors of women's shelters. We provided women of all ages with information so that they could identify coercive and controlling behaviors in intimate relationships that often lead to abuse. We strived to give them tools and resources they could use in case they got into an abusive relationship and needed to get out safely.

Most importantly, in show after show during countless hours of programming, we introduced our viewers to very intelligent and capable women who told their stories about what it's like to spend years silently enduring harrowing abuse. They talked openly, with broken hearts, about how they didn't really understand what danger they were in until it was too late. Some of them genuinely believed they could keep their husbands' or boyfriends' anger at bay, even if it meant leading a life of fear and isolation. But they learned, like so many other women have, that they were not dealing with a basic anger management issues, or a domestic dispute. They were purposefully and deliberatively being hurt, demeaned, intimidated and terrorized by someone who had promised to love them, and they felt too trapped to escape.

For example, Audrey (last name withheld to protect the individual) (pic. 2) told us that she suffered in silence through years of emotional abuse from her husband. When she says that she decided to leave, her husband turned violent and, in a single crippling instant, he raped her, beat her in the head with a hammer and stabbed her. As she lay helpless, with nothing left to fight back he poured gasoline all over her body and set her on fire (pic. 3). He is currently charged with attempted murder and incarcerated awaiting

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trial. (The previous sentence has been added from a previous submitted text.) Only the external scars are visible. Audrey is a courageous woman who came on the show to tell a cautionary tale.

Sandra (last name withheld to protect the individual) (pic. 4), says she experienced excess abuse over the course of four years that included black eyes, broken fingers, choking and countless death threats from her ex-boyfriend. (The descriptive information in the previous sentence has been added from a previous submitted text.) She was attacked twice by her boyfriend when she was six months pregnant, was left with a cracked skull and the permanent loss of her left eye (pic. 5). She tried to get away from him, but she says he tracked her down and held her hostage resulting in a felony assault plea agreement. (The latter portion of the preceding sentence has been added from a previous submitted text.) He tracked her down and attacked her again. Due to the damage to her optic nerve, her doctors anticipate she will, in time, be completely blind. She and her son have moved and hidden 17 times. Her question: "Dr. Phil, what can I do? Where do I turn?" WHERE INDEED!

Tisha, did leave her husband after he abused her and she went so far as to file a restraining order on him. But in a decision that she says will always haunt her, she decided he could see their three-year-old daughter, Teigan (pic. 6). She didn't believe that he would ever shift his violent behavior from her onto their innocent child. Yet on Father's Day 2009, during a visitation, he murdered three-year-old Teigan as his way of getting revenge, and then he turned the gun on himself and committed suicide.

Lastly, 18-year-old Samantha (pic 7), talked about how she always made excuses for her boyfriend Aaron, who she says physically and mentally abused her during their 11-month relationship. After finally leaving, she says she lived in fear from his constant harassment, stalking and texting, saying he texted her so often she has had to change numbers. Samantha says he showed up at her house, banging on their door demanding to see her. She was so sure he might kill her that she refuses to go anywhere without her mother.

Luckily, we were able to intervene and get help for Samantha. But with every show we did this year on domestic violence, we found ourselves inundated with calls, letters and emails from girls and women who were desperate to find someone, or some

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place, to help them. Today, in these hard economic times, resources are drying up. State budget cuts are resulting in fewer available services, including emergency shelters, transitional housing, counseling, and childcare. A 2010 census by the National Network to End Domestic Violence found that in just one day, more than 70,600 adults and children were served by local domestic violence programs. Yet due to a lack of resources, more than 9,500 requests for services went unmet. Nine-thousand-five-hundred women scared, alone and with no where to go. The "inn" was full so to speak.

I worry a lot about those 9,500 women because I know what kind of danger they are in. Of all the statistics I've given you today, here's the one that could be the most shocking: an estimated 70 percent of injuries and murders in domestic violence cases happen to women after they leave their homes. It's called separation assault. Because they have no safe haven to protect them when they make the decision to get out, their lives are in serious jeopardy. There is a right way and a wrong way to leave when the time is right and we need to teach women what that way is.

And that, in a single sentence, is why the Violence Against Women Act is so critically important. Over the last seventeen years, its cost-effective programs have helped so many survivors of abusive relationships rebuild their shattered lives. They have been able to find emergency shelters so that they and their children can sleep safely.

What's more, as a result of the Act, victims of domestic abuse can dial 911 and receive effective services from trained police officers. They can seek solid protection orders from trained judges. And they can get access to resources like counseling, financial literacy education, gainful employment, longer term housing options, and legal assistance.

What I especially love about the Act is that it encourages everyone who cares about this issue to work together. It gives victims, police officers, judges, victim advocates, educators, medical professionals, and, yes, even talk show hosts and esteemed members of the Senate the chance sit down together to determine the best course to take to eliminate this epidemic from our society.

But again, as much as we have accomplished since the passage of the Act, there is always more we can do. I believe, for instance, that we must start working with schools to create curriculums so that young men in America know, without a shadow of a doubt,

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that domestic abuse is never OK and that there are ways to resolve conflict without resorting to physical violence. At the same time, we have to start teaching girls how to recognize early warning signs that they are in abusive relationships. To that end, I am currently working with professionals to develop evidence-based treatment programs geared toward high school kids.

We also must continue pushing for legislation so that we make sure that domestic abuse is taken out of the family courts and put into the criminal justice system, or at a minimum create a conduit of shared information from one court to the other. Red tape can lead to red blood being spilled. We must do a better job training more police officers about incidents of domestic and sexual violence, we need more training to prosecutors so that they can hold batterers accountable, and we must put teeth into the laws so those who go after women know they will be put behind bars and required to get *real* training and therapy and not some "fill the square" anger management training that fails to address the core issues.

It is imperative we find a way to get more money for the Transitional Housing Assistance Grants program. On my show, I always tell victims that they can be safe and they can leave, but that is only true if there are programs available to help them. As long-time housing options become increasingly scarce in our mortgage and housing crisis, transitional housing is especially needed for those who are fleeing from domestic and dating violence, sexual assault and stalking.

Mr. Chairman and members of the committee, I want to thank you for the way you watch over and protect the Violence Against Women's Act. On a personal note, this issue deeply hits home for me. Over the years, I've known many women who have been victims of senseless violence and attacks, including my wife Robin's sister. I also want to pledge to you today that our campaign to "End the Silence on Domestic Violence" is just beginning. I will continue to use the Dr. Phil platform to let the victims of violence know they are not alone. We will continue to provide information, education and resources that not only gives hope, but a plan of action. Thousands of our viewers have signed up to become what we call the Silence Breakers, a group of dedicated people willing to give their time and resources to help. Whatever we can do to help you, we stand willing, ready

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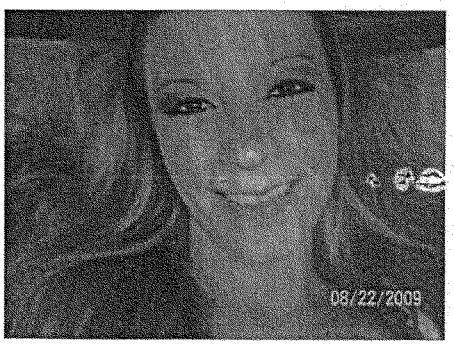
and able. We are ready to make some noise and join with you to continue to make a difference.

Visuals to be used in conjunction with Dr. Phil McGraw's Testimony on Wednesday, July 13 at 10:00 am:

Avery (Pic 1):

Audrey Before (Pic 2):



Audrey After (Pic 3):

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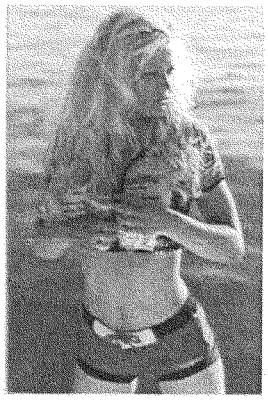
Sandra Before (Pic 4):



Sandra After (Pic 5):

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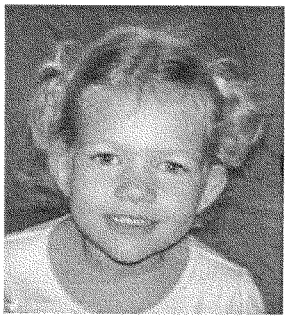
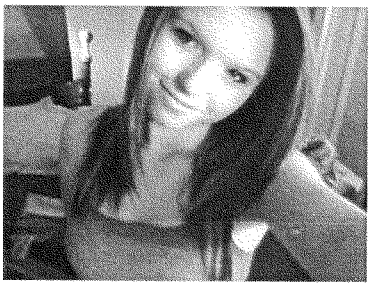
Teigan (Pic 6):



Samantha (Pic 7):



SENATE JUDICIARY COMMITTEE
"THE VIOLENCE AGAINST WOMEN ACT: BUILDING ON SEVENTEEN YEARS OF ACCOMPLISHMENTS"
July 13, 2011

Written Statement of the National Congress of American Indians Task Force on Violence Against Women

Since the establishment of the National Congress of American Indians (NCAI) Task Force on Violence Against Women ("the Task Force") in 2003, enhancing the safety of Indian women has been one of the highest priorities of NCAI. Over the last eight years, NCAI has provided updates and briefing sessions during each of its national conferences (which occur three times each year) to review emerging issues, inform membership, and establish action plans to engage our national organization in efforts to create the necessary changes essential to the safety of Indian women.

While the comments offered by the Task Force draw directly from eight years of experience, active members of the Task Force have been engaged in the movement for the safety of Native women since the late 1980s. It is these dedicated tribal leaders and advocates that provide the continuity that is the strength of this social movement calling for an end to violence against Indian women.

Although some specifics have changed over this period of time, the fundamental barriers that prevent Indian tribes from safeguarding the lives of Indian women have not. Provided below are longstanding tribal leader concerns followed by an Appendix that contains specific language offered to address these concerns and enhance the safety of Indian women through the VAWA 2011 reauthorization. We hope that the Senate Judiciary Committee will carefully consider these concerns and our proposed solutions. There is an urgent need to address these barriers—American Indian women fleeing violence can wait no longer.

TRIBAL PRIORITIES FOR THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

- **Restore tribal criminal jurisdiction over all persons.** Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that, and rejected decades of precedent in the process, when it stripped Indian nations of their authority to prosecute non-Indians that commit crimes on tribal lands. This decision—and the jurisdictional gap it created—has had grave consequences for Indian women in that it has frequently left them without criminal recourse when their perpetrators are non-Indians. Congress should restore optional, concurrent tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, and related crimes that are committed within the exterior boundaries of the reservation.

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During the recent Department of Justice's (DOJ) tribal consultation in Milwaukee, tribal leaders provided numerous examples of the broad impact and negative consequences this gap continues to have upon tribal communities. Domestic violence is a pattern of abuse occurring over time that frequently escalates in severity and frequency. It is essential that the pattern be recognized early so that the ongoing—and often daily—misdemeanor level violent acts can be addressed before they increase in severity. Unfortunately, the current jurisdictional scheme has created a situation in which federal and state justice officials are inadequately responding to this pattern of domestic violence, while tribes often lack the authority and/or resources to respond at all. The NCAI Task Force recommends that Congress support Indian tribes in their efforts to respond to perpetrators of domestic and dating violence against Indian women by restoring concurrent criminal authority of all federally recognized Indian tribes over all persons committing such offenses on tribal lands.

The NCAI Task Force also urges that any jurisdictional fix restoring criminal jurisdiction of Indian tribes over non-Indians be inclusive of tribes located within PL 280 states or those similarly situated. Moreover, Congress should address the unique circumstances of land claims settlement tribes (e.g., tribes located in Maine) when contemplating any potential jurisdictional fix in the upcoming VAWA reauthorization. These tribes should have an equal opportunity to exercise concurrent jurisdiction over non-Indian perpetrators who commit acts of violence against their women and disrupt tribal communities.

The Task Force does not believe that the restoration of tribal criminal jurisdiction over non-Indian perpetrators of violence against women should be contingent on new sources of federal funding to pay for it. That being said, we recognize that expanded tribal jurisdictional authority will inevitably put additional financial strains on tribal governments. Any proposed jurisdictional fix will undoubtedly require tribes to provide added due process protections for defendants, which will come at great cost. As such, the Task Force recommends increasing the resources available to those tribes who opt to exercise criminal jurisdiction over non-Indians by either creating new funding streams for tribal justice systems or increasing appropriations for existing ones.

In keeping with the policy of tribal self-determination and maximum tribal control over the internal matters and governance of a tribe, the Task Force feels strongly that the specific elements of criminal offenses subject to tribal jurisdiction under the proposal outlined above should be defined by tribal law, not federal law. As sovereigns, tribes must be given the opportunity to define their own criminal offenses according to their own respective cultures and beliefs, and in line with their codes of justice. All persons entering reservation lands shall be required to abide by the laws of the tribe, as established by the tribe.

- **Clarify tribal civil jurisdiction over non-Indians.** The *Martinez v. Martinez* decision handed down by the U.S. District Court for the Western District of Washington in 2008 muddied the waters when it held that an Indian tribe lacked authority to enter a protection order for a non-member Indian against a non-Indian

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residing on non-Indian fee land within the reservation. As such, the Task Force urges Congress to pass new legislation that would clarify that every tribe has full civil jurisdiction to issue and enforce protection orders involving all persons, Indian and non-Indian alike.

- **Create new federal offenses to combat violence against women.** At DOJ's recent tribal consultation in Milwaukee, tribal leaders and representatives told gut-wrenching stories about the violence against women that occurs in their communities. One story involved a domestic violence episode that resulted in a shattered eye socket and attempted strangulation, yet, the perpetrator was not held accountable. These incidents occur far too often in tribal communities and the federal government needs to be doing more to live up to its trust responsibility to safeguard the lives of Native women. That is why the Task Force supports creation of a new, freestanding statute that would: 1) provide a five-year offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and 2) provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. This new statute should be analogous to 18 U.S.C. 117 in that it should apply to crimes committed throughout Indian country and within Public Law 280 jurisdictions and those similarly situated, regardless of the Indian or non-Indian status of the defendant or the victim.

  While the ideal scenario would be for tribes to be able to prosecute such heinous crimes that occur on tribal lands, the reality is that the limitations placed on tribal sentencing authority by the Indian Civil Rights Act (ICRA) makes it impossible for tribes to adequately punish offenders for this level of offenses.

- **Create services program for Native women.** Given the inadequate law enforcement response to violence against Native women, Native victims often find themselves going days, weeks, months, and even years without justice. This population of victims "waiting to be served" can no longer be ignored. NCAI recommends that Congress create an "above the cap" reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside, that would fund tribal government programs and non-profit, non-governmental tribal organizations that provide services to Native women victimized by domestic and/or sexual violence within the jurisdictional boundaries of an Indian reservation or Alaska Native Village. During the recent Milwaukee tribal consultation, tribal leaders and representatives provided vivid portrayals of Indian victims in need of help being forced to hide from their abusers under boats, in smokehouses where fish is cured, in abandoned cars, etc. Consultation participants provided numerous examples of women trying to escape violent situations and/or the threat of such violence. The current crisis calls for provision of desperately needed life-saving services created by tribal providers specifically for Native victims. The epidemic of violence against Native women necessitates far more than the inadequate services currently available to them.

- **Establish comprehensive funding streams to support sexual assault services for Native women.** In 2005, Congress created the Sexual Assault Services Program (SASP) to provide services to victims of sexual assault. Unfortunately, the statute currently contains ambiguous language that has denied access to SASP funds to tribal

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sexual assault service providers. Congress should amend SASP: 1) to increase support for culturally appropriate services designed for Native women by tribal providers; and 2) clarify that tribal service providers outside of and within the jurisdiction of an Indian tribe are eligible to apply to state entities administering SASP formula funding from USDOJ.

- **Amend definition of "rural".** American Indian tribes were considered eligible entities as under the OVW Rural Grant Program until the 2005 amendments to the definitions of "rural area" and "rural community." The program was redesigned in a manner that bases eligibility upon the number of state counties served. Under the current definition, many tribes that once relied upon this critical source of funding are no longer eligible. Congress should amend the definition of "rural" to once again be inclusive of all American Indian and Alaska Native tribes. The NCAI Task Force recommends that the definition of rural be amended by adding "and Indian tribes" to the current definition of rural.

- **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** In 1953, in violation of the federal trust responsibility and without consultation with Indian nations, the United States Congress passed Public Law 83-280 (PL 280), which delegates certain federal criminal jurisdiction over Indians on Indian lands to some states. While this delegation of authority did not alter the jurisdictional authority of Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Indian women. It has resulted in drastically decreased federal funding and support for tribal justice programs within PL 280 states. The NCAI Task Force recommends that Congress create a national training and education initiative to increase the response of violence against Indian women by tribes located in PL 280 states or similarly situated jurisdictions. Specifically, the proposed initiative should include: conducting an annual training conference to enhance the response of tribal governments to domestic and sexual violence; offering regional trainings for Indian tribes to strategize on ways to overcome barriers created by PL 280; mandating that all technical assistance provided to Indian tribes that share concurrent jurisdiction with the state(s) in which they reside be relevant and specifically designed to strengthen tribal law enforcement response, prosecution, courts, health, and advocacy services for Native women within that unique jurisdictional scheme.

- **Increase support for Tribal Domestic and Sexual Assault Coalitions.** The training and assistance that tribal coalitions provide to Indian tribes and tribal communities is essential to enhancing the safety of Native women. Several individuals testified on the importance of these services at the recent DOJ tribal consultation in Milwaukee. Currently, funding for tribal coalitions are eligible for discretionary funding, but this funding is wholly inadequate and unstable when compared to their state and territorial counterparts, which receive formula funding on an annual basis. The Task Force supports stabilizing tribal coalition funding to prevent further funding cutbacks and/or closures of tribal coalitions. Specifically, the Task Force urges Congress to support not only increases in current funding to allow growth in areas where currently no tribal coalitions exist, but also to support the

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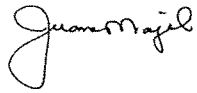
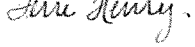
overall paradigm shift from a competitive tribal coalition grant program to an annual formula award.

Thank you for the opportunity to submit these comments, and please review our recommended language for the upcoming VAWA reauthorization in Appendix I. The NCAI Task Force on Violence Against Women looks forward to a continued partnership on these issues moving forward. Together, we can reverse the current pattern of violence against Native women and the institutionalized barriers that obstruct their safety. Please feel free to contact us with questions or concerns via NCAI Staff Attorney, Katy Jackman, at kjackman@ncai.org.

Sincerely,



Juana Majel Dixon
1st Vice President, NCAI
Co-Chair, NCAI Task Force on Violence Against Women



Terri Henry
Councilwoman, Eastern Band of Cherokee Indians
Co-Chair, NCAI Task Force on Violence Against Women

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APPENDIX I

Recommended language for Reauthorization of VAWA Title IX. Safety for Indian Women.
(Proposed changes/additions to current Title IX language are italicized and highlighted).

Findings—Section 901
In Section 901, the NCAI Task Force recommends broadening the findings to acknowledge the current lack of federal accountability to prosecute crimes of violence against Indian women. While we recognize and commend the Obama Administration's dedication and commitment to increasing the safety of Native women, the current jurisdictional scheme nonetheless has resulted in a flawed system in which the federal government has consistently failed to deliver justice to Native women and tribes often lack authority to fill in the gaps.

SEC. 901. FINDINGS.
Congress finds that—
(1) 1 out of every 3 Indian (including Alaska Native) women are raped in their lifetimes;
(2) Indian women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women, and 1 per 1,000 among Asian women;
(3) Indian women experience the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women;
(4) during the period 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34, and 75 percent were killed by family members or acquaintances;
(5) In fiscal years 2005 through 2009, U.S. Attorneys' Offices declined to prosecute 50 percent of the Indian country matters referred to them; 67 percent of those declined were sexual abuse and related matters;
(6) Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and
(7) the unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.

Consultation—Section 903
In recent years, government-to-government consultation between tribal nations and the United States has proven extremely helpful in identifying tribal concerns about the safety of American Indian and Alaska Native women (Indian women). The proposed amendments to Section 903 would lengthen the notice period required to be provided to tribes as to the date and location of the consultation. This advance notice would provide tribal leaders with more time to make the arrangements necessary to attend, including securing formal approval to attend on behalf of the tribe, making travel arrangements, and preparing polished written statements. The proposed changes would also require the Secretary of the Interior to participate in the annual OVW consultation, in addition to the Secretary of Health and Human Services and the Attorney General. The Attorney General would also be required, for the first time, to submit an annual report to assist Congress in systematically assessing the recommendations made by federally recognized tribes and the actions taken by the federal government to address those recommendations.

SEC. 903. CONSULTATION.
(a) IN GENERAL.—The Attorney General shall conduct annual consultations with Indian tribal governments concerning the Federal administration of tribal funds and programs established under

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this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902) and the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).
(b) RECOMMENDATIONS.—During consultations under subsection (a), the Secretary of the Department of Health and Human Services, the Secretary of the Department of Interior, and the Attorney General shall solicit recommendations from Indian tribes concerning—
(1) administering tribal funds and programs;
(2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, ~~and~~ stalking~~,~~ *and sex trafficking;*
(3) strengthening the Federal response to such violent crimes.
(c) The Attorney General shall submit an annual report to Congress on the annual consultation mandated by subsection (a) that contains—
(1) the recommendations made under subsection (b) by Indian tribes;
(2) actions taken within the past year to respond to current or prior recommendations made under subsection (b); and
(3) plans to continue working in coordination and collaboration with Indian tribes and the Departments of Health and Human Services and Interior to address the recommendations made under subsection (b).
(d) NOTICE.—The Attorney General shall notify tribal leaders of the date, time, and location of the consultation mandated by subsection (a) no less than 120 days prior to the consultation.

Analysis and Research—Section 904
Section 904 was enacted to address the lack of research on violence against Indian women and to develop a more detailed understanding of this violence and its effect on Indian women across the social spectrum and throughout their lifetimes. The proposed amendment to the baseline study mandated by sec. 904 would correct the inadvertent exclusion of Alaska Native villages in the study, ensure a timely process by requiring both a progress and a final report, and authorize adequate appropriations to fund this very important research.

In order to fully understand the impact of current efforts to end violence against Indian women and to develop strategic approaches to curtail future violence, it has become clear that more research is needed on sex offenders. Current research does not distinguish sex offenders by race, making it difficult—if not impossible—to know exactly how many non-Indian sex offenders may fall into the jurisdictional void of Indian country or if non-Indian sex offenders may be intentionally operating within Indian country knowing: 1)that tribes lack criminal jurisdiction over them, and 2) that federal criminal enforcement is rare for such crimes. The proposed amendments would complement the baseline study by authorizing additional research on sex offenders.

Specifically, the proposed amendments would direct the Attorney General, acting through the National Institute of Justice, in consultation with the Director of the Office on Violence Against Women, to conduct a national study on sex offenders who have committed offenses against Indian women within federal jurisdiction, including research and analysis on (i) whether the offender has committed sex offenses or related crimes on prior occasions; (ii) the type(s) of sex offenses in which the offender has engaged; (iii) the location where the sex offense occurred; (iv) whether the offender was under the influence of alcohol or drugs when the sex offense occurred; (v) whether the offender utilized alcohol or drugs to facilitate the sex offense; (vi) whether the offender utilized a weapon at any time during the commission of the sex offense; (vii) the sex, race, Indian status, and age of the

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victim(s); (viii) the sex, race, Indian status, and age of the offender; (ix) the existence of court order restraining offender's conduct at time that offense was committed; and (x) the final sentence imposed.

The proposed amendments would require a final report that documents the results of the study to be submitted to the Senate Committee on Indian Affairs, the Senate Committee on the Judiciary, and the House Committee on the Judiciary. Such a report would provide accountability and ensure a timely process for completion. The new language also recognizes the significance and cost of the research by authorizing adequate funding.

SEC. 904. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST INDIAN WOMEN.

(a) NATIONAL BASELINE STUDY.—

(1) IN GENERAL.—The National Institute of Justice, in consultation with the Office on Violence Against Women, shall conduct a national baseline study to examine violence against Indian women in Indian country *and Alaska Native Villages.*

(2) SCOPE.—

(A) IN GENERAL.—The study shall examine violence committed against Indian women, including—

(i) domestic violence;

(ii) dating violence;

(iii) sexual assault;

(iv) stalking; and

(v) murder.

(B) EVALUATION.—The study shall evaluate the effectiveness of Federal, State, tribal, and local responses to the violations described in subparagraph (A) committed against Indian women.

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(C) RECOMMENDATIONS.—The study shall propose recommendations to improve the effectiveness of Federal, State, tribal, and local responses to the violation described in subparagraph (A) committed against Indian women.

(3) TASK FORCE.—

(A) IN GENERAL.—The Attorney General, acting through the Director of the Office on Violence Against Women, shall establish a task force to assist in the development and implementation of the study under paragraph (1) and guide implementation of the recommendation in paragraph (2)(C).

(B) MEMBERS.—The Director shall appoint to the task force representatives from—

(i) national tribal domestic violence and sexual assault nonprofit organizations;

(ii) tribal governments; and

(iii) the national tribal organizations.

(4) REPORTS.—

(A) Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that describes the study.

(B) Not later than 4 years after the date of enactment of this Act, the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a final report of the study that presents the findings mandated under subsection (2)(A).

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(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years *2012 through 2014*, to remain available until expended.
(b) INJURY STUDY.—
(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Indian Health Service and the Centers for Disease Control and Prevention, shall conduct a study to obtain a national projection of—
(A) the incidence of injuries and homicides resulting from domestic violence, dating violence, sexual assault, or stalking committed against American Indian and Alaska Native women; and
(B) the cost of providing health care for the injuries described in subparagraph (A).
(2) REPORT.—Not later than *3* years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that describes the findings made in the study and recommends health care strategies for reducing the incidence and cost of the injuries described in paragraph (1).
(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000 for each of fiscal years *2012 through 2014*, to remain available until expended.
(c) RESEARCH ON SEX OFFENDERS.—
(1) IN GENERAL.—The Attorney General shall conduct—
(A) a national study of sex offenders charged and convicted of federal sex offense crimes that occurred on tribal lands which shall include, but is not limited to, research and analysis of—

(i) whether the offender has committed sex offenses or related crimes on prior occasions;
(ii) the type(s) of sex offenses in which the offender has engaged;
(iii) the location where the sex offense occurred;
(iv) whether the offender was under the influence of alcohol or drugs when the sex offense occurred;
(v) whether the offender utilized alcohol or drugs to facilitate the sex offense;
(vi) whether the offender utilized a weapon at any time during the commission of the sex offense;
(vii) the sex, race, Indian status, and age of the victim(s);
(viii) the sex, race, Indian status, and age of the offender;
(ix) the existence of court order restraining offender's conduct at time that offense was committed; and,
(x) the final sentence imposed upon the offender.

(2) REPORT.—Not later than four years after the date of enactment of this Act, the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that documents the results of the study under this section.
(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000 for each of fiscal years 2012 through 2017, to remain available until expended.

Tracking Violence Against Indian Women—Section 905
The ability to access federal criminal databases enables tribes to protect their communities, and Section 905 is a tremendous step forward in creating safety for Indian women. Section 905(a) of VAWA 2005 requires the Attorney General to permit tribal law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into and obtain information from federal criminal information databases. Section 233 of the recently enacted Tribal

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Law and Order Act expands this authority to all crimes. The implementation of these laws, however, has proven more complicated than originally thought.

The National Crime Information Center (NCIC) is a centralized database of criminal information housed at the Criminal Justice Information Services (CJIS) center in Clarksburg, West Virginia. The NCIC interfaces with various local, state, tribal, federal, and international criminal justice systems.[1] It contains a vast amount of criminal justice information about stolen properties, fugitives, criminal records, and missing persons, and has been labeled by Congress as "the single most important avenue of cooperation among law enforcement agencies."[2]

When participating agencies submit information to the NCIC, that information is stored in a CJIS databank, where it is subsequently made available to respond to queries made by other participating agencies.[3] However, gaining access as a participating agency can be problematic. A law enforcement agency must first possess an Originating Agency Identifier (ORI) number assigned by the FBI. To obtain an ORI, the agency's access must be authorized under Title 28, United States Code, Section 534, and the agency must meet several criteria set forth in the federal regulations.[4]

In addition to meeting these federal requirements, tribal law enforcement authorities also have to meet the requirements set forth by the state within which the agency is located. As such, even tribes issued an ORI number for meeting the FBI's criteria may be denied access at the state level, and thus, denied access entirely.

Finally, even if tribes do obtain an ORI number and meet the state criteria, they often have neither the infrastructure nor the funding to maintain their own control access terminal. These terminals are expensive to maintain and tribes are required to have personnel to staff them at all times. In short, many tribal law enforcement agencies have neither the resources nor the technical expertise necessary to run these systems on their own.

Denial of full access to these basic criminal information databases prevents tribal law enforcement officers from fulfilling the most routine duties, like searching for prior orders of protection or running fingerprint scans, placing them and the communities they serve in grave danger.

Because implementation of Section 905(a) has proven more complicated than originally thought, the proposed amendments allow the Attorney General to fund 5 pilot projects to provide selected tribes

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[1] *Applying Security Practices to Justice Information Sharing*, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, at 3-21 (2004) *available at*: http://it.ojp.gov/documents/asp/ApplyingSecurityPractices.pdf.

[2] National Crime Information Center (NCIC) – FBI Information Systems, *available at* http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm; National Law Enforcement Cooperation Act of 1990, Pub. L. No. 101-647 §612, 104 Stat. 4823 (1990) (codified at 28 U.S.C. §534 note).

[3] *Applying Security Practices to Justice Information Sharing*, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, at 3-24 (2004) *available at*: http://it.ojp.gov/documents/asp/ApplyingSecurityPractices.pdf.

[4] The regulations require that the agency be a governmental agency and meet the definition of a criminal justice agency as contained in the Department of Justice Regulations on Criminal Justice Information Systems. 28 C.F.R. Part 20, Subpart A (2008). "Criminal justice agency" is defined as "(1) courts; and (2) a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice." 28 C.F.R. § 20.3(g) (2008). "State and Federal Inspector General offices are [also] included" in the regulatory definition. *Id.*

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direct access to enter information into federal criminal information databases and to obtain information from said databases, instead of having to go through state or local terminals to enter/obtain information. These pilot projects will allow for a concrete examination of the implementation process, as the Department of Justice and tribes are forced to examine the flaws in the current system and improve it moving forward.

Additionally, the proposed amendments to Section 905 seek to facilitate implementation of the national tribal sex offender registry first authorized in 2005. Since five years have passed since the initial authorization of creation of a national tribal sex offender registry, new language would establish a timeline by which the Attorney General would be required to contract with interested tribes, tribal organizations, or tribal nonprofit organizations to develop and maintain the registry. There has been speculation about the usefulness of such a national registry given the separate registration and notification requirements imposed by the Adam Walsh Child Safety and Protection Act of 2006 (AWA). However, because PL 280 tribes are prohibited from opting in as Sex Offender Registration and Notification Act (SORNA) jurisdictions under the AWA, creation of the national tribal sex offender registry is still of vital importance to these tribes, and it will remain so unless and until the AWA is amended. Under the proposed amendments, the Attorney General would also be required to consult with tribes on the process for establishing and managing the national tribal registry. Finally, the Attorney General would have to submit a progress report to Congress within two years of enactment of the legislation. This reporting requirement increases safety for Indian women by enhancing Congress' ability to monitor creation and management of a national tribal sex offender registry.

SEC. 905. TRACKING OF VIOLENCE AGAINST INDIAN WOMEN.
(a) ACCESS TO FEDERAL CRIMINAL INFORMATION DATABASES.— Section 534 of title 28, United States Code, is amended—
(1) by redesignating subsection (d) as subsection (e); and
(2) by inserting after subsection (c) the following:
H. R. 3402—121
"(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information databases and to obtain information from the databases.".
(b) TRIBAL REGISTRY.—
(1) ESTABLISHMENT.—*Within 1 year of the date of enactment of this Act, the* Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain—
(A) a national tribal sex offender registry; and
(B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions.
(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2012 through 2017, to remain available until expended.
(3) CONSULTATION.—The Attorney General shall consult with Indian Tribes on the process for establishing and managing the national tribal registry mandated under subsection (b).
(4) REPORTS.—
(A) Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the

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Judiciary of the House of Representatives a report that describes the actions taken to implement subsection (b), including—

(i) details about the contract, including the contractor, the services to be provided, and the timeframe for completion;

(ii) information provided to tribes regarding the national tribal registry; and

(iii) any other information regarding the establishment of the national tribal registry.

(B) The Attorney General shall submit an annual report to Indian Tribes at the annual consultation mandated by Section 903(a) regarding the progress on establishment of the national tribal registry mandated under subsection (b).

(c) PILOT PROJECTS.—

(1) IN GENERAL.—To implement Section 905(a), the Attorney General shall fund five pilot projects to provide selected Indian Tribes direct access to enter information into Federal criminal information databases and to obtain information from the databases.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2012 through 2017, to remain available until expended.

Grants to Indian Tribal Governments—Section 906

As the most impoverished group in the United States, tribes often lack the resources to adequately address violence against Indian women. Combine that with the fact that tribes face the highest rates of violence against women in the nation and you're left with a situation in which tribal programs are acutely underfunded and are often unable to cover budget gaps. The proposed amendments to Section 906 clarify the importance of timely disbursement of funds to tribal programs to ensure that essential services are not delayed or terminated. Further, the proposed amendments seek to ensure that tribal programs receive the technical assistance they need once they have access to funds.

SEC. 906. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended by adding at the end the following:

''SEC. 2007. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

''(a) GRANTS.—The Attorney General may make grants to Indian tribal governments and tribal organizations to—

''(1) develop and enhance effective governmental strategies to curtail violent crimes against and increase the safety of Indian women consistent with tribal law and custom;

''(2) increase tribal capacity to respond to domestic violence, dating violence, sexual assault, ~~and~~ stalking, *and sex trafficking* crimes against Indian women;

''(3) strengthen tribal justice interventions including tribal law enforcement, prosecution, courts, probation, correctional facilities;

''(4) enhance services to Indian women victimized by domestic violence, dating violence, sexual assault, ~~and~~ stalking, *and trafficked for the purposes of sexually exploitation;*

''(5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, *sexual assault*, dating violence, ~~and~~ stalking and *sex trafficking* ~~programs~~ and to address the needs of children exposed to domestic violence;

''(6) provide programs for supervised visitation and safe visitation exchange of children in situations involving domestic violence, sexual assault, or stalking committed by one parent
against the other with appropriate security measures, policies, and procedures to protect the safety of victims and their children;
and

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''(7) provide transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking, including rental or utilities payments assistance and assistance with related expenses such as security deposits and other costs incidental to relocation to transitional housing, and support services to enable a victim of domestic violence, dating violence, sexual assault, or stalking to locate and secure permanent housing and integrate into a community.
''(b) COLLABORATION.—All applicants under this section shall demonstrate their proposal was developed in consultation with a nonprofit, nongovernmental Indian victim services program, including sexual assault and domestic violence victim services providers
located in the tribal or local community, or a nonprofit tribal domestic violence and sexual assault coalition to the extent that they exist. ~~In the absence of such a demonstration,~~ *If such programs or organizations do not exist in the tribal community the* applicant may meet the requirement of this subsection through consultation with women in the community to be served.
''(c) DISBURSEMENT OF FUNDS.—Grants made under this section shall be disbursed to grantees within 90 days of congressional authorization of appropriation to carry out this section''.
''(d) TECHNICAL ASSISTANCE.—
(1) IN GENERAL.—Not later than 6 months after the date of receipt of funding for this program, the Director of the Office on Violence Against Women shall set aside and disperse not less than 8 percent of the total amount of the funds made available under this section for the purpose of entering into cooperative agreements with qualified tribal organizations to provide technical assistance and training to Indian tribes to address violence against Indian women. Such training and technical assistance shall be specifically designed to address the unique legal and jurisdictional status, geographic circumstances, and governmental systems of the Indian tribes receiving funds under this section.
(2) QUALIFIED TRIBAL ORGANIZATION.—For purposes of paragraph (1), a qualified tribal organization is a tribal organization with demonstrated experience in providing training and technical experience to Indian tribes in addressing violence against Indian women.
(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to grants made on or after October 1, 2012.''.

Tribal Deputy at OVW—Section 907
With 565 tribes to serve, it is imperative that the OVW Tribal Unit be adequately staffed— especially given the complicated nature of criminal authority in Indian country, the severity of the crimes committed against Indian women, and the epidemic rates of violence against Indian women. The proposed amendments to Sec. 907 would ensure that the tribal unit is appropriately staffed and the Tribal Deputy has the resources necessary to perform her statutory obligations. The creation of a new Policy Advisor within the tribal unit will provide expertise in the unique government-to-government relationship the United States has with tribes. A new Grants Administrator position would supervise the grant managers and oversee the administration of grants in a timely and efficient manner.

SEC. 907. TRIBAL DEPUTY IN THE OFFICE ON VIOLENCE AGAINST WOMEN.
Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.), as amended by section 906, is amended by adding at the end the following:
''SEC. 2008. TRIBAL DEPUTY.
''(a) ESTABLISHMENT.—There is established in the Office on Violence Against Women a Deputy Director for Tribal Affairs.
''(b) DUTIES.—

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''(1) IN GENERAL.—The Deputy Director shall under the guidance and authority of the Director of the Office on Violence Against Women—
''(A) oversee grants to and contracts with Indian tribes, tribal courts, tribal organizations, or tribal nonprofit organizations;
''(B) ensure that, if a grant under this Act or a contract pursuant to such a grant is made to an organization to perform services that benefit more than 1 Indian tribe, the approval of each Indian tribe to be benefitted shall be a prerequisite to the making of the grant or letting of the contract;
''(C) coordinate development of Federal policy, protocols, and guidelines on matters relating to violence against Indian women;
''(D) advise the Director of the Office on Violence Against Women concerning policies, legislation, implementation of laws, and other issues relating to violence against Indian women;
''(E) represent the Office on Violence Against Women in the annual consultations under section 903;
''(F) provide technical assistance, coordination, and support to other offices and bureaus in the Department of Justice to develop policy and to enforce Federal laws relating to violence against Indian women, including through litigation of civil and criminal actions relating to those laws;
''(G) maintain a liaison with the judicial branches of Federal, State, and tribal governments on matters relating to violence against Indian women;
''(H) support enforcement of tribal protection orders and implementation of full faith and credit educational projects and comity agreements between Indian tribes and States; and
''(I) ensure that adequate tribal technical assistance is made available to Indian tribes, tribal courts, tribal organizations, and tribal nonprofit organizations for all programs relating to violence against Indian women.
''(c) AUTHORITY.—
''(1) IN GENERAL.—The Deputy Director shall ensure that a portion of the tribal set-aside funds from any grant awarded under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902), or the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491), *or the Violence Against Women Act of 2005 (xxx)* is used to enhance the capacity of Indian tribes to address the safety of Indian women.
''(2) ACCOUNTABILITY.—The Deputy Director shall ensure that some portion of the tribal set-aside funds from any grant made under this part is used to hold offenders accountable through—
''(A) enhancement of the response of Indian tribes to crimes of domestic violence, dating violence, sexual assault, and stalking against Indian women, including legal services for victims and Indian-specific offender programs;
''(B) development and maintenance of tribal domestic violence shelters or programs for battered Indian women, including sexual assault services, that are based upon the unique circumstances of the Indian women to be served;
''(C) development of tribal educational awareness programs and materials;
''(D) support for customary tribal activities to strengthen the intolerance of an Indian tribe to violence against Indian women; and
''(E) development, implementation, and maintenance of tribal electronic databases for tribal protection order registries; and
''(F) development and implementation of tribal codes, protocols, and policies to enhance the response to domestic violence, sexual assault, dating violence, and stalking against Indian women.
''(d) PERSONNEL.—The Attorney General shall provide to the Office on Violence Against Women such personnel as is necessary to help the Tribal Deputy fulfill the duties set forth by subsection (b), including at least—
''(1) one Policy Advisor with substantial experience in federal Indian law or in assisting Indian tribes in enhancing their response to violence against Indian women; and

"(2) not less than five Grants Program Managers.".

Enhanced Criminal Law Resources and Domestic Assault by an Habitual Offender—Sections 908 and 909

Sections 908 and 909 treat domestic violence, sexual assault, dating violence, and stalking as serious infractions and enhance penalties for violent crimes committed with a gun or in circumstances where the offender has two or more previous convictions for domestic violence. Because domestic and sexual violence often escalate over time in intensity and frequency, these sections were intended to deter these crimes and, ideally, end the violence before it increased. In adopting these sections, Congress did not intend for courts to look into the underlying misdemeanor convictions, but only to apply the enhanced penalties if the perpetrator used a gun or had several prior convictions.

Unfortunately, these provisions, especially Section 908, appear to have been under-used due to confusion on the part of law enforcement and judicial personnel about their existence and operation. The proposed amendments would enhance training for all tribal law enforcement and judicial personnel to ensure coordination among law enforcement and judicial personnel and facilitate better implementation of both sections.

SEC. 908. ENHANCED CRIMINAL LAW RESOURCES.

(a) FIREARMS POSSESSION PROHIBITIONS.—Section 921(33)(A)(i) of title 18, United States Code, is amended to read: ''(i) is a misdemeanor under Federal, State, or Tribal law; and''.

(b) LAW ENFORCEMENT AUTHORITY.—Section 4(3) of the Indian Law Enforcement Reform Act (25 U.S.C. 2803(3) is amended—

(1) in subparagraph (A), by striking ''or'';

(2) in subparagraph (B), by striking the semicolon and inserting '', or''; and

(3) by adding at the end the following:

''(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime;''.

(c) TRAINING PROGRAMS.—

(1) IN GENERAL.— The Attorney General, in coordination with the Secretary of the Interior, shall ensure, through the establishment of a new training program or by supplementing existing training programs, that all tribal law enforcement and judicial personnel have access to training on how to enforce subsection (a).

(2) POLICIES AND PROTOCOL.—Within one year of enactment of this Act, the Attorney General, in coordination with the Secretary of Interior and in consultation with Indian Tribes, shall develop standardized policies and protocol for the enforcement of subsection (a).

SEC. 909. DOMESTIC ASSAULT BY AN HABITUAL OFFENDER.

Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

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"§ 117. Domestic assault by an habitual offender
"(a) IN GENERAL.—Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal
court proceedings for offenses that would be, if subject to Federal
jurisdiction—
"(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or
"(2) an offense under chapter 110A, shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.
"(b) DOMESTIC ASSAULT DEFINED.—In this section, the term 'domestic assault' means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.".

Restoring Tribal Jurisdiction over Non-Indians—Section 910
There are 565 tribes in the United States, including more than 200 Alaska Native villages, that retain sovereign authority over their lands and peoples. Each Tribe is responsible for the safety of its citizens, which includes protection of Indian women from violence. However, the ability of tribes to ensure the safety of and provide a meaningful remedy to women in Indian country and Alaska Native villages is undermined by the limitations that the United States has placed on the inherent jurisdictional authority of tribal governments.

Federal law prohibits tribes from prosecuting non-Indian offenders committing crimes against Indians on Indian lands. This limitation on tribal court authority is particularly devastating to Indian omen, who suffer from violence at a rate two and a half times greater than that of any other population in the United States. One in three Indian women will be raped in her lifetime; four in five will be victims of a violent assault. Even more startling is the statistic that non-Indian offenders commit an estimated 88% of all violent crimes against Indian women.[5]

Congress is acutely aware of the epidemic of violence against Indian women and enacted Title IX of the Violence Against Women Act, which specifically addresses Safety for Indian Women, in response to this national crisis in 2005.[6] In Title IX, Congress made specific findings that "Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women."[7] These findings highlight a systemic contradiction of federal Indian law that prevents tribes from responding to violence committed against Indian women: Tribal governments are directly responsible for holding perpetrators of violence in Indian country accountable, yet they do not have jurisdictional authority to do so when the offender is non-Indian.

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[5] Patricia Tjaden & Nancy Thoenne, U.S. Dep't of Justice, Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 22 (2000). *See also* Lawrence A. Greenfield & Steven K. Smith, U.S. Dep't of Justice, American Indians and Crime 8 (1999) (noting that among American Indian victims, "75% of the intimate victimizations and 25% of the family victimizations involved an offender of a different race," a much higher percentage than among victims of all races as a whole.).
[6] P.L. No. 109-162 § 901 (2006).
[7] *Id.*

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It is important to highlight that this was not always the case. Until 1978, tribes retained all sovereign powers not expressly abrogated by Congress. Like all other local governments in the United States, tribal governments exercised criminal jurisdiction over all persons within their territories. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that. In *Oliphant*, the Supreme Court rejected decades of precedent and ruled that tribes have no criminal jurisdiction over non-Indians and may not prosecute or punish non-Indians that commit crimes on tribal lands.[8] As a result, tribal governments must rely on federal officials (or state officials in some circumstances, namely in states under PL 280 jurisdiction)[9] to investigate and prosecute crimes committed by non-Indians against Indians and against tribal property.

For a variety of reasons, the United States does not prosecute many of the crimes committed by non-Indians against Indians in Indian country. According to a recent GAO study, from 2005 through 2009, U.S. attorneys failed to prosecute 52% of all violent criminal cases, 67% of sexual abuse cases, and 46% of assault cases occurring on Indian lands.[10] Similarly, in 2008, the Justice Department acknowledged that it prosecuted 24 misdemeanor reservation crimes in 2006, and only 21 misdemeanors reservation crimes in 2008. Low prosecution rates have encouraged non-Indian perpetrators to target Indian reservations. Testimony provided before the Senate Committee on Indian Affairs has reported that serial rapists prey on women in Indian country because they know they will not be prosecuted. If the United States does not prosecute a non-Indian, the offender goes free, as he is not subject to prosecution by a tribal or state court. Unpunished, offenders often reoffend and commit more heinous crimes.

It has been more than 30 years since the *Oliphant* decision, and one of its most tragic results has been to shield non-Indian perpetrators from criminal accountability at the expense of the safety of Indian women. The proposed sec. 910 would restore safety in tribal communities by recognizing tribal authority over non-Indians who commit a finite set of domestic and sexual violence related crimes against Indians, however, it would not repeal, abrogate, or supercede existing federal law in any way. The provisions of the Indian Civil Rights Act safeguarding the rights of the accused would apply to this limited restoration of criminal jurisdiction over non-Indians, and, state courts would retain jurisdiction over crimes committed by non-Indians against non-Indians and victimless crimes.

SEC. 910. TRIBAL JURISDICTION OVER DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING.—
(a) IN GENERAL.—Congress hereby affirms that the inherent sovereign authority of a federally recognized Indian tribe includes the authority to enforce and adjudicate any crime of domestic violence, dating violence, sexual assault, or stalking, as defined by tribal law, committed by or against any Indian person on land under the jurisdiction of the tribe.
(b) Any person prosecuted in a tribal court pursuant to this subsection shall have all of the rights guaranteed under the Indian Civil Rights Act, as amended, and shall have the right to expedited habeas corpus review in federal district court to ensure that all tribal court proceedings are consistent with this subsection.

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[8] Oliphant v. Suquamish, 435 U.S. 191 (1978).
[9] P.L. 280, § 7, 67 Stat. 588, 590 (1953). In P.L. 280 states, the state government has exclusive criminal jurisdiction over non-Indians and felony jurisdiction over Indians, jurisdiction which is normally exercised by the federal government over crimes on Indian lands.
[10] United States Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters 3 (December 13, 2010).

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(c) IMPACT ON CURRENT LAW.—This statute in no way repeals, abrogates, or supersedes any of the following statutes:

(1) The Indian General Crimes Act (18 U.S.C. 1152);

(2) The Indian Major Crimes Act (18 U.S.C. 1153);

(3) Public Law 83-280 (18 U.S.C. 1162 and 25 U.S.C. 1321); or

(4) Any other provision of federal law.

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NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

National Law Center on Homelessness & Poverty
Sargent Shriver National Center on Poverty Law
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"
Submitted to the United States Senate Judiciary Committee
July 13, 2011

Mr. Chairman and Members of the Committee:

We thank you for the opportunity to present the views of the National Law Center on Homelessness & Poverty and the Sargent Shriver National Center on Poverty Law concerning the past accomplishments and ongoing significance of the Violence Against Women Act.

The National Law Center on Homelessness & Poverty ("Law Center") was established in 1989 to serve as the legal arm of the nationwide movement to prevent and end homelessness in the U.S. Based in Washington, D.C., the Law Center focuses on addressing not just the symptoms, but also the causes, of homelessness through impact litigation, policy advocacy, and public education. The Law Center works on systemic, nationwide and local level reform in conjunction with thousands of local level advocacy and service provider groups across the country.

The Sargent Shriver National Center on Poverty Law provides leadership in efforts to increase justice and opportunity for low-income people and to ensure that they have an effective voice and representation in public decisions that affect them. The Shriver Center advocates policies and laws in several areas, including healthcare, housing, economic opportunity and security, and domestic violence, to create fair processes and bring about systemic change. Through advocacy, litigation and communications, it has made important differences for people in the United States, and especially those who are marginalized. The Center publishes *Clearinghouse Review: Journal of Poverty Law and Policy*, which has thousands of readers across the country, and specializes in communications through various media, providing research and advocacy examples crafted by and for the public interest advocacy community.

Background

Violence against women is a leading cause of homelessness nationwide. About 20% of homeless women report domestic violence or abuse as a reason for their homelessness, and 24% of U.S. cities surveyed in 2008 reported that domestic violence was a primary cause of homelessness.[1] Domestic violence survivors, particularly those with limited resources, often have to choose

[1] See Jana L. Jasinski, et al., U.S. Dept. of Justice National Institute of Justice, The Experience of Violence in the Lives of Homeless Women: A Research Report 2, 65 (2005) and The United States Conference of Mayors - Hunger and Homelessness Survey (December 2010).

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between living with their abusers and becoming homeless. Statistics also show that domestic violence survivors are discriminated against in finding new housing, and that a lack of affordable housing and housing assistance further limits the options available to these individuals.[2]

Ensuring safe and affordable housing is essential for survivors of domestic violence and for preventing and ending homelessness. Subsidized housing programs like public and Section 8 housing are critical to addressing the problem. Public housing consists of units that are subsidized by the U.S. Department of Housing and Urban Development (HUD) and administered for low-income families by a local Public Housing Authority (PHA) or other entity designated by HUD. Section 8 housing programs help low-income people rent apartments and homes in the private market by having PHAs or HUD directly pay private landlords on behalf of tenants.[3] These programs have the potential to offer much-needed assistance to victims of domestic violence, but too often those administering them have failed to understand and to address the unique problems such victims confront.

At the urging of advocacy groups to address issues facing victims in public and Section 8 housing, the U.S. Congress included important new housing provisions in the reauthorization of the Violence Against Women Act (VAWA), in January 2006. These provisions protect victims of domestic violence, dating violence and stalking from being denied access to or being evicted from public or Section 8 housing; ensure that housing benefits of survivors are not terminated as a result of the violence against them; protect a victim's right to confidentiality; allow for bifurcation of leases, permit victims to move to a new jurisdiction with their voucher, and create certain planning requirements for PHAs.

Successes and Challenges

We remain grateful to the members of this Committee and their predecessors for acknowledging and responding to the severity of this crisis in housing security for victims of domestic violence. The housing provisions enacted in 2006 have served as a much-needed resource for vulnerable tenants and should lay a vital foundation for added protections.

A number of improvements, however, remain necessary. Following the introduction of these protections, the Law Center launched a nationwide survey of service providers (e.g. legal and social services agencies, emergency shelters, resource centers) on VAWA implementation and enforcement. Its results provide insight into the current state of VAWA implementation and the barriers victims face to maintain safe housing:

- Denial of Housing: About 36% of service providers reported that victims were denied housing for reasons directly or indirectly related to domestic violence, dating violence, or stalking.

[2] For more information on these statistics, visit the Law Center's wiki website at http://wiki.nlchp.org.

[3] There are two forms of Section 8 housing assistance. The Housing Choice Voucher Program is a tenant-based program in which the PHA issues an eligible family a voucher for a rent subsidy, and the family then selects their housing. If the family moves, they may use the voucher for rental assistance at another unit. Under the project-based Section 8 program, HUD enters into a contract with the owner to subsidize specified units for a specific term. As the rental assistance is tied to the unit, a family who moves from the project-based unit will lose their housing assistance.

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• Eviction and Termination: More than 41% of providers reported that victims had been served with a notice to quit or eviction papers for reasons related to domestic violence, dating violence, or stalking.

• Notification of Rights: PHAs and landlords are required under VAWA to notify tenants about the VAWA law and the protections afforded under it. Over 60% of providers expressed uncertainty as to whether and how victims were notified of their VAWA rights.

These deficiencies are rooted in both a lack of guidance for housing providers on how best to comply with VAWA and an absence of enforcement mechanisms to deter violations. In most jurisdictions, for example, HUD's offices of Fair Housing and Equal Opportunity (FHEO) do not accept or investigate complaints regarding violations of VAWA's housing provisions. As a result, victims who have been denied, terminated, or evicted from housing do not have a federal administrative remedy for VAWA violations.

Further guidance is also necessary to address the needs of tenants seeking to relocate due to safety concerns. Currently, VAWA neither requires providers to offer emergency transfers nor provides a specific mechanism for effectuating them. Besides forcing survivors to choose between personal safety and housing security, this oversight has left housing providers uncertain as to how they can help such tenants relocate without violating other obligations under federal law.

Finally, VAWA's existing housing provisions apply only to a handful of federally subsidized housing programs, most notably public housing and Section 8 properties. In the absence of comparable protections, tenants in other HUD programs continue to face evictions and denials of housing based on acts of violence committed against them.

Recommendations

With reauthorization on the horizon, we look forward to working with the Committee to advance our joint goal of steering survivors of violence towards safety and self-sufficiency. To this end, we recommend the following:

• Congress should authorize remedies for tenants whose statutory rights have been violated, including directing HUD to hear and investigate complaints involving VAWA violations and discrimination based on an individual's status as a victim of domestic violence, stalking, or sexual assault. Additionally, a Victim Rights Director position should be created within HUD to ensure implementation and enforcement of statutory rights.

• To accommodate victims who are not currently protected, VAWA's substantive provisions should be extended to other federally subsidized housing programs.

• VAWA should be amended to permit tenants and household members who are experiencing violence, and who reasonably believe that they are under an imminent threat

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of future harm if they remain in the dwelling unit or those who have been sexually assaulted on the premises within the last 90 days, to request emergency relocation assistance.

- VAWA should be amended to extend its protections to victims of sexual assault who apply for or live in federally subsidized housing programs.

We urge the Committee to consider these recommendations as it embarks upon the reauthorization process. For additional information, please contact either Jeremy Rosen, at jrosen@nlchp.org, or Kate Walz, at katewalz@povertylaw.org.

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Sue Else, President, National Network to End Domestic Violence
Testimony for the Judiciary Committee
United States Senate
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"
Submitted on July 20, 2011

Introduction

Chairman Leahy, Ranking Member Grassley and distinguished members of the Judiciary Committee, my name is Sue Else and I am the President of the National Network to End Domestic Violence (NNEDV). I thank you for this opportunity to submit testimony on the importance of continuing our national investment in the life- and cost-saving programs and laws that constitute the Violence Against Women Act (VAWA).

NNEDV, which is the leading national voice on domestic violence, represents the 56 state and territorial domestic violence and dual domestic violence-sexual assault coalitions, their 2,000 member domestic violence and sexual assault programs, and the millions of victims they serve. NNEDV was formed over 15 years ago when statewide domestic violence coalitions and advocates came together to address a gap in the national response to domestic and sexual violence. As the national organization representing coalitions and local programs across the country, NNEDV worked closely with Congress to secure the initial passage of VAWA in 1994 and its subsequent reauthorizations. With a network of victim advocacy and service systems as its membership, NNEDV enjoys a unique and direct connection to victims and victim service providers, as well as key state and local stakeholders with whom they work on a daily basis. NNEDV gathers information from the field about the successes of VAWA and areas for improvement and uses this information to inform its advocacy and recommendations for enhancements to include in VAWA's upcoming reauthorization. On behalf of all of those organizations and individuals, I thank you for the opportunity to submit testimony in support of VAWA's swift reauthorization.

The Violence Against Women Act (VAWA)

VAWA is a landmark piece of legislation that is our federal government's primary tool to address the devastating crimes of domestic violence, dating violence, sexual assault and stalking. VAWA has transformed our nation's response to these crimes, and has provided safety to millions of victims, held millions of perpetrators accountable for their crimes and saved our society money in averted social costs. Congress now has the opportunity to reinvest in VAWA, to build upon its successes and to continue our progress toward our common goal of ending domestic and sexual violence.

Need for Services and Improved Responses for Victims of Domestic and Sexual Violence

The crimes of domestic and sexual violence are pervasive, insidious and life-threatening. Every day in the United States, an average of three women are killed by a current or former intimate partner.[1] Approximately one-third of all female murder victims are killed by an intimate partner.[2] In the United States in 2005 alone, 1,181 women were murdered by a current or former intimate partner.[3] Studies have found that nearly one in four women are beaten or raped by a partner during adulthood,[4] and each year 2.3

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million people are raped and/or physically assaulted by a current or former spouse or partner.[5] One in six women and one in 33 men have experienced an attempted or completed rape.[6]

The cycle of domestic and sexual violence is perpetuated as children are exposed to violence. Approximately 15.5 million children are exposed to domestic violence every year.[7] One study found that men exposed to physical abuse, sexual abuse and adult domestic violence as children were almost 4 times more likely than other men to have perpetrated domestic violence as adults.[8] In addition to the terrible costs domestic and sexual violence have on the lives of individual victims and their families, these crimes cost taxpayers and communities. In fact, the cost of intimate partner violence exceeds $5.8 billion each year, $4.1 billion of which is for direct medical and mental health care services.[9] Research shows that intimate partner violence costs a health plan $19.3 million each year for every 100,000 women between the ages of 18 and 64 enrolled.[10] The average cost per adult sexual assault is approximately $87,000.[11] Domestic violence costs U.S. employers an estimated $3 to $13 billion annually.[12] Between one-quarter and one-half of domestic violence victims report that they lost a job, at least in part, due to domestic violence.[13]

The well-established research demonstrating the scope of the problem is further supported by the overwhelming demand for services. According to the National Domestic Violence Census, on just one day in 2010, over 70,000 adults and children found safety in our nation's domestic violence shelters and programs.[14] On the same day, however, over 9,000 requests for services went unmet because programs simply did not have the resources to meet the needs of victims.[15] In 2010, 7,985 victims were served by programs in Vermont, but an additional 244 were turned away from shelter due to lack of space and funding.[16] In Iowa in 2010, many programs had to forgo important supplemental services for victims such as legal assistance and prevention programs, and nine programs statewide had to close their doors.[17] A 2010 survey revealed that 25% of rape crisis centers have a waiting list for crisis services.[18] VAWA effectively addresses these crimes and has made tremendous strides to meet the overwhelming demand for services.

The Impact of the Violence Against Women Act: Increased Safety for Victims, Accountability for Perpetrators and Cost-Efficacy for Society

In response to the terrible crimes of domestic violence, sexual assault, dating violence and stalking, Congress authorized the landmark Violence Against Women Act in 1994 and reauthorized it in 2000 and 2005. VAWA creates and supports comprehensive, cost-effective responses to these devastating crimes. VAWA has unquestionably improved the national response to domestic violence, dating violence, sexual assault and stalking. VAWA laws and its authorized grant programs (administered by the Departments of Justice and Health and Human Services), have enhanced federal, tribal, state and local responses to domestic violence, dating violence, sexual assault and stalking. In fact, since VAWA passed in 1994, states have passed more than 660 laws to combat these heinous crimes. Due to the overwhelming success of VAWA-supported programs, more and more victims are coming forward for help each year and more victims report domestic violence to the police: reporting rates by women have increased by 27% to 51%, and reporting rates by men have increased by 37%.[19] Since VAWA's passage, the rate of non-fatal intimate partner violence against women has decreased by 63%.[20] Remarkably, the number of individuals killed by an intimate partner has decreased by 24% for women and 48% for men.[21]

In addition to saving and rebuilding lives, VAWA saved taxpayers $14.8 billion in net averted social costs in its first six years alone.[22] A recently released study from one state (Kentucky) builds on these earlier findings, demonstrating both the lifesaving and cost-effective nature of VAWA-supported programs. The

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study found that protection orders are very effective tools in reducing violence against victims and saving money in net averted costs. The study also found that threats and physical abuse dropped dramatically during the six months after a survivor obtained a protection order. In fact, the number of threats of physical harm or murder decreased nearly 50%. Moderate physical abuse decreased 61% and severe physical abuse decreased nearly 50%. In addition, the study found that society saves $30.75 for each victim who obtains a protection order. Specifically, protection orders saved Kentucky at least $85 million over a single year.[23] Many VAWA-supported programs help victims obtain protection orders and this study clearly supports the need for continued authorization and investment in these programs.

VAWA Programs and Laws: Building Upon Their Successes

The VAWA statute codifies laws that keep victims safe and authorizes grant programs that help states and local communities improve their responses to victims. VAWA was the first piece of federal legislation to specifically name domestic violence as a crime. This sent an important message to state and local jurisdictions that domestic violence is not a private matter and must be addressed by the criminal justice system. VAWA also includes strong confidentiality and landmark housing protections for victims. The core VAWA grant programs support community efforts to hold perpetrators accountable and meet the needs of victims. These programs have distinct purposes and each addresses the crimes through unique and effective ways. VAWA grant programs complement each other and must be maintained and improved in VAWA's reauthorization.

Services, Training, Officers Prosecution (STOP) – STOP is the cornerstone program authorized in VAWA. STOP's formula grants are given to each state and territory to improve our justice system's response to domestic violence, dating violence, sexual assault and stalking. A crucial component of STOP is the emphasis on developing highly effective coordinated community responses to these crimes. The coordinated community responses bring together key stakeholders, including police, prosecutors, courts and victim advocates, to develop a systematic response to the four crimes covered in VAWA. Victims benefit from a streamlined approach to crime and a coordinated delivery of services. The coordinated responses also help to hold perpetrators accountable by improving the training and procedures used by the criminal and judicial systems.

Because of the breadth and successful implementation of STOP, the criminal justice system and victims in thousands of jurisdictions around the country have experienced the positive impact of VAWA. According to a 2009 report, STOP programs helped hundreds of thousands of victims find safety and held thousands of perpetrators accountable for their actions in just one year. Thanks to STOP-supported programs, in 2008, 461,734 victims received advocacy, crisis intervention, hotline call services, counseling and support, victim-witness notification, shelter and civil legal assistance.[24] Additionally, prosecutors filed 123,223 new charges of domestic violence, sexual assault and stalking, and probation officers supervised 4,907 offenders.[25] STOP programs also made it possible for over 263,000 professionals and volunteers to receive training to more effectively serve victims and increase offender accountability.[26]

Many states and jurisdictions have implemented STOP-funded strategies that have led to a direct reduction in domestic violence homicides.[27] In some states, STOP allows programs to reach the most vulnerable communities, including victims who are deaf or hard of hearing, have mobility issues, or are impacted by mental health conditions.[28] According to the Seeds of Hope program in Iowa, "With the STOP funding we are able to be a part of the Black Hawk County Domestic Abuse Response Team (DART). This has allowed us to work closely with officers from local police departments and with the county attorney's office. By working as a team we are able to reach more victims and provide victims with more information…We

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can provide [victims] with information about the criminal justice process, no contact orders, victim services, and so much more."[29]

As a central part of our nation's response to domestic and sexual violence, the STOP program should be reauthorized with VAWA.

Transitional Housing Assistance – This program is an essential component in the effort to enhance victim safety and long-term stability. Victims of domestic and sexual violence often struggle to find permanent housing after fleeing dangerous situations. Many flee in the middle of the night with nothing but the clothes on their backs. Long-term housing options are becoming increasingly scarce, and victims are staying longer in emergency domestic violence shelters. As a result, shelters are frequently full and must turn families away. On just one day in 2010, 5,275 adults and 8,501 children were housed in domestic violence transitional housing programs.[30] On the same day, however, 5,686 requests for emergency shelter or transitional housing were denied due to a lack of capacity.[31] In Utah, 99% of all unmet requests on that one day were for shelter or transitional housing.[32] The extreme dearth of affordable housing produces a situation where many victims of domestic violence must return to their abusers because they cannot find long-term housing,[33] while others are forced into homelessness.[34] The choice between homeless and further violence is completely untenable.

The VAWA Transitional Housing program provides an essential continuum between emergency shelter and independent living. In 2009, Transitional Housing programs provided services to nearly 8,600 victims and over 105,000 children across the country.[35] Of the 957 victims who exited a transitional housing program in 2009, 709 moved into permanent housing of their choice, and upon exiting from their transitional housing programs 643 out of 957 victims (approximately 67%) reported feeling that they were safer and at a lower risk for experiencing future violence.[36] This effective program helps meet the critical need victims have for safe and affordable housing after they leave emergency shelter and enables victims to work towards safety, self-sufficiency and permanent, stable housing.

Civil Legal Assistance for Victims (LAV) – To overcome the damage caused by the perpetrators of violence in their lives, most victims need specific civil legal remedies including civil protection orders, child support, child custody, economic issues and housing assistance. Research indicates that the practical nature of legal services gives victims long-term alternatives to their abusive relationships.[37] A 2010 study also demonstrated that an increase in the number of legal services available is associated with a decrease in intimate partner homicide.[38] However, because the retainers or hourly fees for private legal representation are beyond the means of most victims of domestic violence, dating violence, sexual assault and stalking, 70% of all victims are without legal representation.[39] The Civil Legal Assistance for Victims Program is the only federal program designed to meet the unique legal needs of domestic and sexual violence victims. In addition to providing civil legal representation dedicated for victims of domestic and sexual violence, LAV programs provide training to improve the delivery of legal services; support for victims navigating the justice system; education for law students on how to serve victims of domestic and sexual violence; improvements to pro bono civil legal assistance; and collaborations between domestic and sexual violence victim service providers and legal assistance programs. The LAV Program supports essential efforts to meet the multifaceted civil legal needs of victims of domestic violence and sexual assault and allows more victims to escape violence and rebuild their lives.

Sexual Assault Victim Services Program (SASP) – This program addresses the needs of sexual assault victims by allowing states, tribes and territories to provide critically needed direct services to victims and

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training and technical assistance to various organizations including law enforcement, courts and social services. When advocates are present in the legal and medical proceedings following rape, victims fare better in both the short and long-term periods, experiencing less psychological distress, physical health struggles, self-blame, guilt and depression. Rape survivors with advocates were 59% more likely to have police reports taken than survivors without advocates, whose reports were only taken 41% of the time.[40] Despite the positive outcomes associated with services, there continues to be a dearth of sexual assault services available.

Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (GTEAP) – GTEAP helps communities develop and sustain a seamless and comprehensive criminal justice response to domestic violence, enhancing victims' safety and holding perpetrators accountable. Without responsive law enforcement and prosecution, crimes such as domestic violence, dating violence, sexual assault and stalking may be overlooked. In fact, batterers who are not apprehended are more likely to become repeat offenders, and suspects who flee are less likely to be arrested unless law enforcement has sufficient specialized, trained staff.[41] Training law enforcement officers on the dynamics of domestic and sexual violence improves officers' interactions with victims and enhances victims' participation with the justice system.[42] In 2009, programs supported by GTEAP provided services to over 120,800 victims of domestic violence, dating violence, sexual assault and stalking to help them become and remain free from violence.[43] Additionally, because of GTEAP programs, in 2009, 19,295 offenders received 108,295 face-to-face or telephone monitoring contacts.[44]

A number of states are using GTEAP to support homicide reduction programs, including implementation of lethality assessment screening tools and protocols. These programs help identify victims who are at high risk of serious violence or homicide and immediately connect them with appropriate services. Maryland's Lethality Assessment Program resulted in a remarkable 41% decrease in domestic violence homicides over a three-year period.[45] Vermont, Minnesota, Delaware and Oklahoma have also implemented this model.[46] Another example of GTEAP's ability to effect significant change is Delaware's GTEAP program, "Encouraging the Front Line" (EFL). EFL is the collaborative effort of three small municipal police agencies to work in partnership with the state domestic violence coalition and a local domestic violence program to address issues related to accuracy and effectiveness in domestic violence arrests. As a result of the EFL project, over 90% of patrol and supervisory officers received domestic violence training, which resulted in agency-wide understanding that only good arrests, which meet probable cause standards, serve to keep victims and society safe and hold offenders accountable. The EFL project has resulted in higher arrest rates for these three small municipalities. Chief Tjaden explained the importance of the state domestic violence coalition in this program, saying, "If it had not been for the Delaware Coalition this grant would not have been initiated. Our municipality would not have had the time to focus this level of attention to an issue that we recognize as important, but we just didn't have the time to evaluate all of the numbers and lead the charge like the coalition did."

Services for Rural Victims – Services for Rural Victims addresses the unique needs of victims in rural areas. A 2007 study found that victims in rural areas "experienced more severe violence and fear" than their urban counterparts.[47] In addition to the elevated level of violence, victims of domestic and sexual violence in rural and remote communities face significant obstacles in their efforts to escape abusive relationships and dangerous situations. For example, large geographic areas, challenging topography, and harsh weather conditions make travel difficult for victims, and the nearest emergency shelter or crisis center may be more than 100 miles away. Gaps in 911 emergency systems and under-funded or under-staffed

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law enforcement can hamper the criminal justice response, and lack of public transportation, child care and social and legal services make it very difficult for victims to come forward and seek help.

The Services for Rural Victims program allows communities to develop rural outreach services; creates domestic violence and sexual assault task forces; enhances coordination between law enforcement, prosecutors and victim services; and encourages better enforcement of laws against domestic violence and sexual assault.

Remaining VAWA Programs – In order to end domestic violence, dating violence, sexual assault and stalking, continued authorization and investment is needed for the VAWA youth and prevention programs and the Grants to Reduce Violent Crimes Against Women on Campus. We also support the continued authorization and investment in programs addressing the needs of tribal, elder, and disabled victims as well as court training and all other VAWA-authorized programs. Continued authorization and investment in all VAWA programs is needed to allow programs to continue their lifesaving work.

Recommendations for VAWA's Reauthorization

Over the last seventeen years we have seen the tremendous benefits of VAWA. We are beginning to see a reduction in homicides and the incidence of these heinous crimes. Thanks to VAWA, programs across the country are able to assist victims and their children in finding immediate safety and support, as well as longer-term assistance to help them rebuild their lives. VAWA saves money, and more importantly, it saves lives. While there have been significant improvements to our nations' response to these crimes, we have identified areas for improvement. VAWA's reauthorization should build upon its successes and continue progress towards ending domestic violence, dating violence, sexual assault and stalking. We urge Congress to reauthorize VAWA with strengthened provisions to enhance the successes of current programs and laws to meet the full range of victims' needs and hold perpetrators accountable.

Reauthorizing Grant Programs and Enhancing Protections

The grant programs outlined above should be maintained to continue to meet the needs of victims and to hold perpetrators accountable. Each grant program works in concert with the others to build a comprehensive and holistic response to domestic and sexual violence. The field of domestic and sexual violence advocacy and service providers has identified areas for improvement in the grant programs to enhance victim safety and to streamline grant administration. We hope to work with the Senate Judiciary Committee to outline these specific recommendations to improve the very successful grant programs.

In addition to the grant programs, we strongly support recommendations to enhance and expand VAWA's protections. One distinct priority for victims is to build upon the landmark housing protections for victims receiving housing or rental assistance in federal public and assisted housing. These protections were created to ensure that victims can access the criminal justice system without jeopardizing their current or future housing. To fully realize the potential of housing protections for victims, however, advocates recommend that HUD develops an enhanced system for implementation and enforcement of VAWA housing protections, expand protections to include sexual assault victims and increase portability and transfer options for victims of domestic violence, sexual assault, dating violence and stalking in the covered federal housing programs.

VAWA's reauthorization should also include provisions to address domestic and sexual violence experienced by members of the U.S. military and their families. These individuals and families have very unique needs, and we recommend enhancing services and support to meet their specific needs. We also

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recommend additional research, data collection and evaluation to establish the prevalence of domestic violence, dating violence, sexual assault and stalking experienced by military personnel and their families.

Additionally, VAWA's reauthorization should enhance the existing grant program language to ensure that state domestic violence and sexual assault coalitions play a key role in developing state plans and coordinate responses to ensure that the needs of victims are addressed and considered at all stages of the planning process. NNEDV also supports additional improvements to increase the availability of legal services for victims, address economic security for victims, strengthen tribal law enforcement response and advocacy services for Native victims, and streamline and enhance youth services and prevention programs to end the culture of domestic violence, dating violence, sexual assault and stalking.

Conclusion

An increasingly efficient, comprehensive and lifesaving response to victims, created and sustained by VAWA, has begun to make our country a safer place for families, victims and communities. VAWA's reauthorization is an opportunity for Congress to demonstrate its ongoing commitment to keeping victims and their children safe from violence and to holding perpetrators accountable. VAWA's reauthorization should improve upon the accomplishments of these vital programs and protections and strengthen our nation's response to these pervasive crimes. We urge Congress to support the introduction and passage of a VAWA reauthorization bill that builds upon its successes and includes key improvements to ensure the continuation of these vital programs and laws.

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On the Preservation of Confidentiality for Battered and Trafficked Immigrant Women in the Violence Against Women Act

Testimony Submitted to Supplement the Record

Hearing Before the Senate Committee on the Judiciary

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

July 20, 2011

Testimony of Leslye E. Orloff[1]

Submitted for the National Network to End Violence Against Immigrant Women

The National Network to End Violence Against Immigrant Women (National Network), co-chaired by Legal Momentum, Futures Without Violence (formerly the Family Violence Prevention Fund) and ASISTA, appreciates the opportunity to submit additional testimony for the record on the relief for immigrant victims of violence against women in the Violence Against Women Act of 2011. The National Network greatly appreciates the work that many Senators and many members of Judiciary Committee have done in support of legislation that has offered immigration protections for immigrant victims of domestic violence, sexual assault and human trafficking, most notably the Violence Against Women Acts of 1994, 2000 and 2005. These protections have allowed tens of thousands of immigrant victims to escape ongoing and escalating abuse and exploitation by batterers, sexual assault perpetrators, traffickers and other criminals. The Violence Against Women Act of 2011 can improve upon those successes by addressing concerns raised about fraudulent applications without jeopardizing the protections provided to immigrant victims.

We recognize the fact that there are U.S. citizens, like Ms. Poner, who are victimized by their foreign-born spouses. The Network has worked hard to assure that all victims of domestic violence, both citizens and non-citizens, have access to assistance available through the civil and criminal justice systems and the full range of victim's services. This includes access to protection orders, custody determinations that consider domestic violence as a factor that affects the best interests of the child, and criminal

[1] Prepared with the assistance of Karin Dryhurst, J.D. Candidate, 2013, N.Y.U. School of Law.

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prosecution of their abusers. Our goal is that all victims without regard to their citizenship or immigration status can obtain protection from ongoing abuse, custody of their children, and the safety and economic security they need to rebuild their lives following abuse.

We also understand that some abusive foreign-born spouses, particularly those in removal proceedings or with fraud investigations initiated against them, may try to file for VAWA immigration protections by falsely claiming that they are battered immigrants. When VAWA was first implemented, VAWA self-petitions were adjudicated by local District offices of the Immigration and Naturalization Service. The results were widely differing adjudications and little or no expertise to detect fraud. The VAWA Unit at the Vermont Service Center was formed in 1997 and began operations. It took well into fiscal year 1998 before all VAWA cases were transferred from local District offices to the VAWA Unit. The VAWA's Unit expertise in adjudicating VAWA self-petition cases and detecting fraudulent cases has grown significantly since the Unit's inception in 1998. Some of the cases of U.S. citizen victims whose abusive foreign-born spouses' VAWA self-petitions were wrongly approved may have been filed before or in the early years after the establishment of the VAWA Unit. Over the past 14 years VAWA Unit officers have received significant training demonstrating a higher degree of staff seniority and a lower rate of staff turnover than other adjudication units in the Vermont Service Center.[2]

While we support efforts to improve adjudications at the VAWA Unit, we believe that law reforms be based on an accurate assessment of the VAWA Unit's operations in recent years. We are concerned that any attempt to provide better protection against fraud be crafted in a manner that will not endanger the battered immigrants abused by their U.S. citizen and lawful permanent resident spouses or parents. Congress should improve checks for fraud while preserving confidentiality safeguards and the expertise of the specially trained VAWA Unit.

Congress has repeatedly recognized that United States immigration laws inadvertently deter immigrant women from taking action to protect herself and her

[2] Department of Homeland Security, "Report on the Operation of the Violence Against Women Act Unit at the USCIS Vermont Service Center, Report to Congress October 22, 2010.

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children from abuse. The House of Representatives Committee on the Judiciary found that domestic abuse can be "terribly exacerbated in marriages where one spouse is not a citizen and the non-citizens' legal status depends on his or her marriage to the abuser".[3] Research studies indicate that intimate partner violence can rise to almost three times the national average when U.S. citizens are married to foreign-born women.[4] Abusers of immigrant domestic violence victims routinely use immigration status against their wives and children. Sixty-five percent of the battered immigrant women surveyed report that their abuser had used some form of a threat of deportation as a form of abuse.[5]

Congress addressed these dynamics in its creation of immigration protections for immigrant victims of violence, from the self-petition process created in VAWA 1994[6] to the immigration relief created for immigrant victims of crimes like sexual assault and trafficking in VAWA 2000. These immigration protections weaken the power of crime perpetrators who hold immigration status over the heads of their victims.

Congress also recognized the importance of victim confidentiality in VAWA 1994, and again in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, VAWA 2000, and VAWA 2005. Representative Pat Schroeder, who introduced the amendment that would ultimately become the VAWA Confidentiality provisions, called confidentiality a "matter of life and death."[7]

VAWA Confidentiality protections are particularly important for the significant number of battered immigrant spouses who file for VAWA immigration protection while continuing to reside with their abusers. These victims are able to separate from their abusers only after they have received the protection from deportation and work authorization provided by an approved self-petition. There can be waiting periods of more than a year between the date of filing and approval. Without the ability to work during that period, many victims are forced by economic dependence to remain with their abusers until their VAWA self-petition is finally adjudicated. The specially trained

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[3] H. Comm. on the Judiciary, Violence Against Women Act of 1994, H. Rep. No. 103-395, at 26 (1994).
[4] Giselle Hass, Nawal Ammar, & Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses* Legal Momentum (2006) http://www.legalmomentum.org/assets/pdfs/wwwbatteredimmsanduscspouses.pdf.
[5] Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study*, National Institute of Justice Report (2003).
[6] Violence Against Women Act of 1994, Pub. L. No. 103-322 (1994).
[7] *See* Full Committee Mark Up: Hearing on H.R. 2202 Before the House Judiciary Committee, 104th Cong. (Sept. 19, 1995).

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VAWA Unit enables DHS to assure compliance with VAWA Confidentiality provisions in each step of the process, including receipt, adjudication of the self-petition, application for work authorization, and adjudication of lawful permanent residency eligibility. Confidentiality at each step allows victims to achieve the security and economic independence necessary to safely leave an abusive relationship. Many victims cannot leave their abusers in safety until they have obtained lawful immigration status and with it the ability to work to support themselves and their children. As Congress found, "[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave."[8] Research among battered immigrant women shows that two-thirds of women who remain with their abusers do so because of lack of financial resources.[9] Congress recognized in VAWA 2005 that "financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser's prosecution."[10] Immigrant victims who qualify for VAWA immigration protection must wait six months and sometimes more than a year before they receive legal work authorization.[11] Due to difficulties in accessing limited shelter or transitional housing assistance, as well as isolation from family members and social support systems, an immigrant victim often has no choice but to remain with an abuser in the meantime. Confidentiality is indispensable to the safety of a victim financially dependent on her abuser. If an abuser is notified that his or her spouse has filed a VAWA self-petition, this puts him on notice that she is trying to leave the abusive relationship and can further endanger her life and safety and that of her children. Studies show the level of violence in

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[8] H. Comm. on the Judiciary, Report on Violence Against Women Act, accompanying H. Rep. No. 103-395, at 40 (1993).

[9] 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 (2001).

[10] H. Comm. on the Judiciary, Violence Against Women Reauthorization Act of 2005, H.R. Rep. No. 109-233, at 125, 109th Cong., (Sept. 22, 2005).

[11] Maia Ingram, Deborah Jean McClelland, Jessica Martin, Montserrat F. Caballero, Maria Theresa Mayorga, & Katie Gillespie, Experiences of Immigrant Women Who Self-Petition Under the Violence Against Women Act, Volume 16, 858 Violence Against Women (2010), available at: http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-violence-against-immigrant-women-in-the u.s/Experiences%20of%20Immigrant%20Women%20Taskforce%20article-08-10.pdf/view?searchterm=caball.

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abusive relationships increases when a victim attempts to leave[12] and particularly when the victim seeks help from the legal system to stop domestic abuse.[13]

Representatives James Sensenbrenner and John Conyers, in a bipartisan statement in 2005, clarified that the House Judiciary Committee sought to "ensure that immigration enforcement agents and government officials covered by [VAWA Confidentiality] do not initiate contact with abusers, call abusers as witnesses or [rely] on information furnished by or derived from abusers."[14]

To accomplish this goal, VAWA 2005 required DHS and the Department of Justice to issue guidance and train officers and employees in the requirements of VAWA Confidentiality. Congress added this training requirement to address VAWA Confidentiality violations, which were committed most often by immigration enforcement officers, district office personnel, and DHS trial attorneys.[15] Abusers have used the Department of Homeland Security to obtain information about the existence of a VAWA immigration petition in order to interfere with and undermine their victims' immigration cases.[16] For this reason, VAWA Confidentiality provisions include a prohibition on the reliance solely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking.[17] Abusers must not be allowed to interfere with or undermine the immigration cases of their victims. The safety of immigrant victims turns on stopping domestic violence perpetrators from being able to obtain information contained in or about a VAWA petition.

The importance of VAWA Confidentiality is underscored by the true story of Hiroko, whose name has been changed to protect her safety.

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[12] Mary Ann Dutton & Giselle Aguilar Hass, *Expert Testimony Concerning Battering*, American Bar Association, Domestic Violence & Immigration: Applying The Immigration Provisions Of The Violence Against Women Act, Appendix C. (Bette Garlow, et al., eds. 2000) available at: http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-violence-against-immigrant-women-in-the-u.s/RSRCH_JS_Espert_Testimony.pdf/view?searchterm=expert testimony.
[13] *Id.*
[14] H. Comm. on the Judiciary, Department of Justice Appropriations Act, Fiscal Years 2006 through 2009, H.R. Rep. No. 109-233, at 122 (2005).
[15] *Id.* at 118-122.
[16] *Id.*
[17] *Id.*

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The first time Hiroko's husband hit her was in December 2005. The first time she called the police, he had attacked her, thrown her against the wall, slapped her, and choked her. In January 2008, while she was breastfeeding their son, Andrew attacked her from behind. He grabbed her hair and hit her head against the wall twice, causing her to drop their son. She decided to report him to the police, worried that next time, it might be even worse. The police issued an Emergency Protective Order and arrested Andrew. His mother bailed him out of jail, and he returned to the house the following day to taunt her and blame her for calling the police. The abuse continued the next day, but when his mother begged Hiroko not to report him to the police, she decided not to. Her personal savings were completely drained after supporting Andrew and their son. She paid for food for the baby with nutrition assistance and accepted meals and money from friends. That February, Hiroko went to the hospital with severe back pain and trouble breathing. Andrew threatened to divorce her and have her deported. Following another abusive episode in March, a police officer refused to arrest Andrew. Afterward, Andrew called Hiroko a stupid Japanese woman. When she accused him of lying to the police, he said "Yes, I'm a liar, but I can do this because I speak English." Hiroko later applied for a VAWA petition secretly, fearing that if Andrew found out that she was trying to leave, he would become even more violent and try to take away the child. Without VAWA Confidentiality, immigration officers could risk an abuser like Andrew learning about the petition and committing more violence against his victim or interfering with her VAWA immigration case.

Congress should continue to continue to ensure that the specially trained VAWA Unit at the Vermont Service Center receives ongoing training, has experienced supervisors, facilitate communication between adjudicators so important for fraud detection and consistency of adjudications and implement policies and practices that keep rotation in and out of the VAWA Unit to maintain and build upon and maintain a high level of VAWA Unit staff expertise. One of the primary reasons the National Network supported the creation of the VAWA Unit was that the model of a specialized unit has

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been proven as a best practice in civil and criminal courts, prosecutors' offices and police departments. The model has enabled fair adjudication in a manner that does a better job of ferreting out fraud and approving legitimate cases filed by domestic violence victims. This approach that has encouraged consistency in adjudication, development of supervisory expertise, and fraud detection. These successful programs have found that the nature of domestic violence requires specialized training in order to fairly adjudicate the merits of domestic violence cases while protecting victim safety. These experts can learn to recognize the tactics used by perpetrators to undermine their victims' immigration cases or to file fraudulent immigration cases for themselves. Because of the centralization of adjudications in the VAWA Unit, the Unit is better able to detect patterns of fraud occurring in a particular city or in cases filed by a particular lawyer.

The VAWA Unit at the Vermont Service Center does not approve every VAWA case filed. On the contrary, the VAWA Unit's denial rate on VAWA self-petitioning cases is higher than virtually any other case type adjudicated by the Citizenship and Immigration Services of DHS. In fact, DHS has denied about twenty to thirty percent of VAWA self-petitions. The VAWA Unit also routinely seeks additional evidence from applicants. On average, for every four applications approved each month, five applications have been sent back[18] to the petitioner requesting additional evidence of eligibility.

Congress has recognized that the specially trained VAWA Unit is in the best position to "effectively identify eligible cases and deny fraudulent cases."[19] Citizenship and Immigration Services has explained that it is "mindful that each petition deserves meticulous review by an adjudicator."[20] A centralized office encourages the training and development of a team of experts on domestic violence who understand the nature of domestic violence and the impact on its victims. Expert officers who handle VAWA cases daily provide the best defense against fraudulent applications. These officers can share information with each other and identify patterns among both valid applications and

[18] The VAWA Unit issues either requests for further information or notices of intent to deny.
[19] John Conyers, The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections to Immigrant Victims, 13.5 Violence Against Women 457-68 (2007).
[20] U.S. Citizenship & Immigration Svcs., Dep't of Homeland Sec., Report on the Operations of the Violence Against Women Act Unit at the USCIS Vermont Service Center (Oct. 22, 2010).

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fraudulent ones.[21] In addition, the VAWA Unit has the appropriate tools to investigate applications. Officers can obtain information from court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or DOJ personnel.[22] Officials may also rely on information in the public record and government databases.[23] VAWA Unit employees also receive training on and gain expertise in the full range of confidentiality requirements and how VAWA Confidentiality affects immigration adjudications.

There are close to 70 adjudicators in the VAWA Unit who have received specialized training in domestic violence issues and fraud detection. As was the case when the VAWA regulations were issued in 1996, most of the 20,000 field officers around the country have not received training in either domestic violence issues or fraud detection; therefore, decentralizing the adjudication of VAWA petitions would serve neither the goals of fair adjudication or fraud detection well. It is important for immigrant victims with legitimate cases that the system for adjudicating VAWA cases be able to effectively sort the fraudulent cases from the legitimate ones.

Further, there have been instances in which local immigration officials adjudicating VAWA lawful permanent residency applications or battered spouse waivers place requirements on victims that are not required by statute. Untrained officers have found that violence has occurred but have decided that the victim has not suffered enough abuse. VAWA immigration relief follows the approach adopted by all state protection order statutes: the victim is granted relief if the adjudicator finds that she has been battered or subjected to extreme cruelty without regard to the quantity of the violence. In one case, an adjudicator insisted on "jointly-held accounts" and "comingling of funds" to prove a valid marriage. Such a requirement shows a misunderstanding of the dynamics of abusive relationships, in which abusers often withhold access to money from their victims in order to ensure the victims' complete economic dependence on the abuser. The adjudicator also dismissed love letters written by the abuser as evidence of a valid

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[21] Office of Policy and Planning, U.S. Immigration and Naturalization Service, Strategic Plan Toward INS 2000, at 17 (1994).
[22] H. Comm. on the Judiciary, Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, H.R. Rep. No. 109-233, at 122 (2005).
[23] *Id.*

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marriage because the victim mailed and did not have copies of the letters she had written to him.

VAWA already provides for the appropriate level of involvement for immigration enforcement officers in the field who encounter VAWA cases. Officials "may ask the specially trained CIS unit to review a case and determine whether or not to revoke" certain grants of lawful status. Officials may also ask the VAWA Unit employees for assistance in complying with VAWA Confidentiality provisions that prohibit the reliance on information provided by abusers. The Office of Field Operations has instructed field offices to return self-petitions that warrant review to the VAWA Unit with a memorandum of explanation in order to ensure consistency.[24] The VAWA Unit Supervisor is required in cases where the self-petition is affirmed to write a memorandum to the field office explaining the reasons why the petition was not revoked.[25] The statute also provides for Congressional oversight, authorizing the chairperson and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees, to access information from the VAWA Unit.

VAWA IV presents an opportunity to once again improve the assistance that the Violence Against Women Act provides to *all* victims of domestic violence, sexual assault, stalking and dating violence. VAWA was one of the first pieces of legislation in the United States to inclusively address the needs of all victims without regard to the victim's race, ethnicity, economic status, educational background, gender, religion, geographic location, immigration or citizenship status. All battered women and their children need to receive protection of our laws and to have access to the full range of services needed to rebuild their lives following crime victimization. In this spirit we strongly believe that as further improvements are made to VAWA, each proposed amendment should be crafted in a manner that helps all victims. Amendments need to be carefully drafted so as to do no harm. VAWA should be as it has been historically, a piece of bi-partisan legislation that promotes solutions that curb domestic violence in all communities and against all victims without favoring one group of victims over another.

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[24] Johnny N. Williams, Immigration and Naturalization Svc., Mem. for Regional Directors: Revocation of VAWA-Based Self-Petitions (I-360s) (Aug. 5, 2002).
[25] *Id.*

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As improvements in VAWA confidentiality develop in VAWA IV, we urge Congress to continue upon this historically consistent path. The safety of immigrant victims of violence against women depends on VAWA Confidentiality and the expertise of the specially trained VAWA Unit. It is possible to craft solutions that improve the ability of the VAWA Unit to detect fraud that do not endanger immigrant victims. We look forward to assisting Congress in developing amendments that meet the dual goals of improving fraud detection and maintain the ability of immigrant victims abused by the U.S. citizen and lawful permanent resident spouses and parents to obtain VAWA self-petitioning protections without returning to pre-VAWA confidentiality conditions in which abusers were able to use information about the case to stalk the victim and retaliate against her. Any solution to enhancing fraud protections must maintain VAWA confidentiality's crucial protections that allow immigrant victims to escape abuse without fear of deportation and with economic security.

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Testimony of Terry O'Neill, Esq., President
National Organization for Women

A Hearing before the Senate Committee on the Judiciary
July 13, 2011

The Violence Against Women Act -
Building on Seventeen Years of Accomplishment

NEEDED IMPROVEMENTS TO VIOLENCE AGAINST WOMEN PROGRAMS

Chairman Leahy, Ranking Member Grassley and Committee members - My name is Terry O'Neill and I am president of the National Organization for Women which represents hundreds of thousands of members and contributing supporters with chapters in each state and the District of Columbia. I thank you for this opportunity to comment on the Violence Against Women Act (VAWA) -- the groundbreaking 1994 legislation that the National Organization for Women considers one of the most important initiatives for women ever undertaken. VAWA has unquestionably saved thousands of lives, prevented untold injury and anguish and served to educate a generation about the tragic consequences of family violence. The U.S. law and its many proven effective programs is a model for anti-violence efforts around the world. The National Organization for Women frequently hosts international visitors concerned about women's rights and the most often-asked question is what can be done about domestic violence? What are we doing in the United States to stop battering? Proudly, we can point to the Violence Against Women Act and we have the leadership of the U.S. Senate as well as Vice President Joe Biden to thank for that.

Continued federal, state and local funding for anti-violence programs are more crucial than ever as we see demand for services rising each year. The National Network to End Domestic Violence's (NNEDV) annual one-day census of services documented that in 2010, there were 9,541 unmet requests for services on a single day with many programs reporting a critical shortage of funds and staff. Translating that number to a year 'round estimate means that as many as 3.5 million clients in need may have been turned away. Thirty-eight percent of the 1,746 responding programs in the NNEDV survey reported insufficient funding to meet needed programs and services; 29 percent reported not enough staff, one-quarter reported no available beds or funding for hotels and so forth. The economic recession has meant a cutback in funds at state and local levels while private donations have fallen off. These shortages should not continue unaddressed.

Our work to effectively prevent violence and assist survivors must be taken to a higher level -- as the committee recognizes -- and much more remains to be accomplished in building upon VAWA's early successes. Most recently, the National Organization for Women, along with a coalition of women's rights and human rights organizations, academics, attorneys and service providers assisted the United Nations Special Rapporteur on Violence Against Women, the Honorable Rashida Manjoo, Esq., in

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conducting an information-gathering mission in the United States. Ms. Manjoo held meetings and conducted interviews in Washington, D.C., North Carolina, Florida, California, Minnesota and New York. With the help of the coalition members and the University of Virginia School of Law's Human Rights Law Clinic, the Special Rapporteur examined violence against women in custodial settings and in the military, as well as violence against women who face multiple, intersecting forms of discrimination -- particularly Native American, immigrant, and African American Women. Her report, released June 1, 2011 at the U.N. Human Rights Council, 17th Session, in Geneva, describes what Ms. Manjoo learned about problems encountered by survivors, service providers and advocates and makes specific recommendations for reforms. The full report is found at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_AEV.pdf

But what I would like to call to the attention of Committee members are the Special Rapporteur's Conclusions and Recommendations and am incorporating her written comments verbatim here. The National Organization for Women endorses Ms. Manjoo's recommendations; in fact, we have advocated for many of the recommended improvements in recent years.

Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo. Mission to the United States of America.

The government has taken positive legislative and policy initiatives to reduce the prevalence of violence against women, including the enactment and subsequent reauthorizations of the Violence against Women Act, and the establishment of dedicated offices on violence against women at the highest level of the Executive. The government has also allocated substantial resources which are beneficial to advocates and service providers, particularly at the grassroots level.

Nevertheless, the lack of substantive protective legislation at federal and state levels, and the inadequate implementation of current laws, policies and programs, has resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with particularly detrimental effects on poor, minority, and immigrant women.

It is clear that multiple forms of discrimination against certain groups of women not only makes them more vulnerable, but also exacerbates the negative consequences that violence has upon them. Thus the implementation of current policy and programmatic initiatives must address the persistent structural challenges which are often both the causes and consequences of violence against women.

In light of the information received, the Special Rapporteur would like to make

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the following recommendations to the Government:

A. Remedies for victims of domestic violence, sexual assault and stalking

(a) Explore more uniform remedies for victims of domestic violence, sexual assault and stalking. Expanding federal causes of action under VAWA, where possible, would mitigate current discrimination, and increase uniformity and accountability at the state and local levels.

(b) Review and more effectively address the disproportionate impact that violence has on poor, minority, and immigrant women.

(c) Re-evaluate existing mechanisms at federal, state, local and tribal levels for protecting victims and punishing offenders, given that calls for help often do not result in either arrests or successful prosecutions.

(d) Establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce.

(e) Initiate local and national dialogues with relevant stakeholders to consider the effectiveness, in theory and application, of expedited proceedings, mandatory arrest policies, mandatory prosecution policies, and batterer's programs. This dialogue is necessary in light of the skepticism regarding the state's response to domestic violence, and also the de facto disparate impact of such measures.

(f) Initiate more public education campaigns that condemn all forms of violence, both public and private.

(g) Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual's suitability for gun ownership. Background checks for licensed individuals should be revisited periodically to determine continued suitability. States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes. Gun dealers should be penalized for illegally selling guns and also for failure to report stolen guns which are subsequently used to commit crimes.

(h) Ensure effective implementation, regulation, monitoring and evaluation of VAWA's housing provisions, including making available more affordable, secure housing options for those fleeing domestic violence. Federal and state housing policies should not discriminate against victims of domestic violence, sexual assault, and stalking - by excluding them as applicants or evicting them based on their histories of abuse.

(i) Reform Federal and State labor laws to prohibit discrimination against survivors of domestic violence, sexual assault, and stalking; and provide for emergency leave when employees need time off to address safety, health, housing, and legal concerns.

(j) All courts should order safe and appropriate parenting arrangements, including considering any history of domestic violence, prior orders of protection and domestic violence criminal convictions when determining custody, visitations and mediation issues. Furthermore, "failure to protect"

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statutes should not be used to unjustly remove children from non-offending caregivers.

B. Military violence

(a) Ensure the effective implementation of a no-tolerance policy for rape, sexual assault and sexual harassments in the military, ensure adequate investigation of all allegations by an independent authority and allow victims to bring claims against the military when damages arise out of negligent or wrongful acts.

(b) Ensure the effective implementation of training for all SAPRO employees, including Victim Advocates, SARC's, investigators and health professionals. Furthermore, the role and authority of the SARC's should be strengthened beyond their current advisory role.

(c) Enable more female-only and service specific in-patient PTSD and MST programs within the VA, to ensure victims a safe place to privately seek assistance without threats of further harassing behavior. Furthermore, mandatory and routine training on the specific issues facing women veterans should be instituted for all VA staff. The VA should also extend evidentiary relief to victims claiming in-service sexual assault and accept their testimony as main proof to support a diagnosis of PTSD.

C. Violence against women in detention

(a) Adopt international legal standards and norms for the protection of prisoners and detainees through the implementation of laws, policies and programmes at the Federal, State and local levels.

(b) Explore and address the root causes, including the multiple and intersectional challenges, which lead to the increasing number of immigrant and African-American women in prisons and detention facilities.

(c) Consider alternatives to incarceration, particularly for women detainees who are primary care-givers of their children, given the non-violent nature of many of the crimes for which women are incarcerated, and also in light of laws relating to loss of parental rights.

(d) Consider amendments to the ASFA with a view to ensure that women in custodial settings do not easily or arbitrarily lose their parental rights. States should be encouraged to take a balanced approach when assessing the interest of the child's welfare and the parental rights of incarcerated or detained mothers.

(e) Ensure that sentencing policies reflect an understanding of women's levels of culpability and control with drug offenses. Review laws that hold women responsible for their association with people involved in drug activities, and which punish them for activities of drug operations they may have little or no knowledge.

(f) Emulate current programs to equip inmates with marketable skills for reintegration into society in all federal and state prisons, and ensure access to all women prisoners, regardless of their immigration status.

(g) Adopt policies at the federal and state level to ensure that women in

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prisons receive the highest attainable level of physical and mental health care. In particular, women's prisons should provide comprehensive reproductive health services and gender-sensitive mental health and drug treatment programs. Women should not be punished, through administrative segregation or otherwise, for behavior associated with their mental illness. Adequate independent oversight processes should be instituted to improve minimum standards of health services and to ensure that costs do not prohibit inmates from accessing health care.

(h) Adopt legislation banning the use of restraints on pregnant women, including during labor or delivery, unless there are overwhelming security concerns that cannot be handled by any other method.

(i) Enact laws criminalizing sexual abuse and other misconduct towards prisoners, covering not only guards and correctional officers, but also all individuals who work in prisons including volunteers and government contractors. The National Standards to Prevent, Detect, and Respond to Prison Rape should reflect the substantive issues indicated in the NPREC report of 2009. As articulated in the NPREC's finding number five, victim's health and safety should remain the focus, reporting procedures should be improved and responsive, and accountability should be the norm rather than the exception. Compliance with these laws should be monitored through an independent mechanism through which prisoners can file grievances directly. Furthermore, prosecutors should receive specialized training on sexual abuse cases, to enable more responsive prosecutions in prison contexts.

(j) Strengthen institutional oversight to ensure a comprehensive approach in preventing and responding to rape and sexual abuse in prisons, including through more accessible and transparent grievance procedures.

k) Amend the Prison Litigation Reform Act to ensure women prisoners and detainees equal protection before the law, thereby addressing the numerous complaints noted above.

(l) Eliminate cross-gender searches and provide for supervision in private spaces within all women's prisons, in line with international standards regarding the treatment of prisoners. The National Standards should include NPREC recommendations that cross-gender pat searching be done only in the case of an emergency and not on a routine basis. Unnecessarily invasive and degrading strip search procedures should also be eliminated.

(m) Improve and adopt national standards to transform the country's immigration detention system into a truly civil model, thus avoiding the custody of immigrant detainees with convicted individuals. These standards should be made legally binding in all detention facilities, including those run by state, local, or private contractors.

(n) Locate immigration detention facilities closer to urban centers where legal services and family members are more accessible.

D. Violence against Native-American women

(a) Prioritize public safety on Indian land by fully implementing and funding the Violence against Women and Tribal Law and Order Acts.

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(b) Assist tribal authorities in their efforts to respond to violence against women, including by allowing these law enforcement agencies to access federal criminal databases and by establishing, in consultation and cooperation with Indian nations, a national reporting system to investigate and prosecute cases of missing and murdered Native-American women.
(c) Establish federal and state accountability for the investigation and prosecution of violent crimes against Native-American women. The government should also ensure that state authorities recognize and effectively enforce tribal court protection orders.
(d) Increase resource allocation to Indian tribes and tribal non-profit organizations providing services to women to develop comprehensive services for survivors of sexual and domestic violence.
(e) Consider restoring, in consultation with Native-American tribes, tribal authority to enforce tribal law over all perpetrators, both native and non-native, who commit acts of sexual and domestic violence within their jurisdiction.

# # #

I thank the Committee for the opportunity to present this information to you.

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Testimony of Julie Poner

Submitted in connection with

Hearing before the

Senate Committee on the Judiciary

On

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

Wednesday, July 13, 2011

Dirksen Senate Office Building, Room 226

In 1994 I married a man from the Czech Republic. We were married in Prague and our children, twins a boy and a girl were born there. We moved twelve times in the three short years we were together between three countries and two continents with our young children in tow. Our moves were always explained to me as necessary for business, when in reality we were living life on the run, managing to stay one step ahead of the authorities. Sometimes we lived with furnishings and sometimes without. My children and I were often left alone for extended periods of time without the basic necessities such as food, a vehicle, and money. In 1995 following a sudden and unexpected move to the U.S., we eventually settled in Massachusetts and filed for my husband's permanent residency status. Within days of receiving notice of our impending interview with INS, my husband reached around me for the coffee pot one morning and announced that we would be getting a divorce now. He instructed me to file for the divorce and continue to sponsor him for his green card. After filing for the divorce, my husband became abusive toward our children and threatened to take them back to the Czech Republic if I did not sponsor him for his green card. As part of the divorce proceeding, our family court judge ordered me to attend my husband's immigration interview. While at the interview I was told by INS agents that I could face federal prosecution for marriage fraud if I continued to sponsor my husband. They explained that he met no legal requirement to be in the country except through our marriage. I was strongly encouraged to withdraw my petition. I did, with the understanding that I was complying with our government and with federal law.

Facing deportation for marriage fraud, a charge leveled by the federal government, my husband, a former professional hockey player, at 6'2" tall and over 200 lbs., self petitioned as a battered and abused spouse. It was at this point that all communication I'd had with

the 2 INS trial attorneys stopped, because once an immigrant files under this special circumstance they are protected by our federal government. Immigration officials are prohibited from entering into a discussion with the American named in the claim.

As a result, my children and I suffered unimaginable consequences. The family court judge failed to heed the testimony of a child abuse investigator for the D.A.'s office. In order to protect my children from further abuse and the continued threat of abduction, I left the state. I was subsequently arrested by 2 FBI agents and a sheriff, finger printed, photographed, strip searched, deloused, jailed and held on a $500,000 bond. I was extradited back to the state of Massachusetts in hand cuffs and shackles by two Massachusetts state troopers. My children were placed in foster care and for a three month period we were poked and prodded by various court appointed experts to no finding before my children were returned to me. During this time, in a case unrelated to ours, my ex-husband served a year on probation for assault and battery. After 2 additional years he agreed to allow us to legally leave the state of Massachusetts. He'd wiped me out. I had nothing more for him to take. My children and I were left with no home, no car, no money, no furnishings, no insurance of any kind, and with hundreds of thousands of dollars of his debt.

Today I have sole custody of my children.

Over the years I've talked with countless men and women who have similar stories to tell, American citizens who have lost access to their children, their homes, their jobs, and in some cases their freedom because of false allegations of abuse.

Currently there are no safeguards in place to prevent fraud or to prevent an immigrant from fabricating tales of spousal abuse. Through unfounded claims, immigrant spouses can bypass the two year marriage requirement enacted by the Immigration Marriage Fraud Amendments of 1986 that were actually established to prevent marriage fraud. No one from a local USCIS Service Center investigates or conducts a face to face interview with the immigrant. The only evidence considered is what is submitted by the self petitioning immigrant. The entire process is handled via paperwork in the Vermont Service Center.

Because of confidentiality clauses and concerns for victims' safety from their alleged abuser, claims of battery and abuse go unchallenged. In cases of domestic violence, the immigrant is presumed to be the victim. It is also presumed that no one would ever lie about being a victim and that an immigrant has nothing to gain by lying about domestic violence. The evidentiary standards of proof of abuse have been relaxed to further protect the alleged victim. For instance, if the American citizen spouse discovers infidelity or other fraudulent behavior on the part of the immigrant, and as a result withdraws his/her support for the joint petition, this can be considered emotional abuse.

We respectfully ask that you please consider amending VAWA and the Immigration and Nationality Act, requiring a local USCIS agent to conduct a proper and thorough investigation into these types of cases which would include access to interview both spouses in the process.

Statement of Julie Poner

Submitted in connection with

Hearing before the

Senate Committee on the Judiciary

On

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

Wednesday, July 13, 2011

Dirksen Senate Office Building, Room 226

In my testimony, I recounted an overview of my personal experience in immigration proceedings and the resulting consequences my children and I suffered in family court, illustrating a clear disconnect between the two. The interviewing INS agents did not involve themselves in our divorce proceeding, except to raise question with the family court judge for ordering me to attend my husband's immigration interview, and our family court judge did not inquire about our immigration status, except to order me to attend my husband's INS interview in the midst of our divorce.

To further complicate matters, the disconnect within what was then INS, but where it still exists today in USCIS, allowed my husband to essentially dodge deportation for marriage fraud by simply self-petitioning as a battered and abused spouse through the filing of the I-360, circumventing immigration law through this allowed, deferred action, and sending his file to a VAWA case worker at The Vermont Service Center. The INS agents and immigration trial attorneys could not contact the VAWA case worker, and the VAWA case worker suddenly became the central decision making authority over what is ultimately an immigration application with a red flag.

In the absence of an investigation to determine who the victim is, the very law that was intended to protect my children and me, instead served as my husband's welcome mat into our country.

Given this most precious commodity bestowed upon an immigrant shy of citizenship, my husband had been approved and awarded by our federal government for manipulating its own system. The immigration system that had been explained to me by our interviewing agent failed my children and me and left us vulnerable to my husband's wrath for interrupting his path to permanent residency. My children and I weren't afforded the same sort of protection and privilege that my husband was.

I hadn't anticipated, not only the lack of help in family court but to the extent that we were actually denied help in family court. My 3 year olds and I went without heat during a Cape Cod winter when court ordered maintenance went unpaid and unpunished. We had no court ordered child support and subsequently little food. The judge denied requested attachments to our bank accounts allowing my husband sole access while I was the guarantor on our loans. Finally the judge ordered me to relinquish my vehicle to my husband to off set *our* debt leaving me without transportation in a remote area. The red welts on my children went unaddressed, and the threats of international abduction were met with a promise by the court to go to Prague and get them should they be taken.

I couldn't imagine that was happening to my children and me was how it was supposed to work. And I couldn't imagine that the circumstances we faced were intended by my government and the best our country could do. I checked the flag pole outside the court house to be certain the American flag was flying. I became a quick study on the misuse of VAWA in marriage for green card fraud, the action that precipitated all other events, and the prevention of international child abduction. I was punished for being an advocate for my children by a judge whose job it was to err on the side of caution when dealing with children.

I am aware of what has been written about our case, much of it untrue. I never had any concerns beyond the marks left on my toddlers following visits with their Dad, and his inappropriate language and handling of them. A child psychologist who was seeing the children was concerned about disclosures they made and asked for the opportunity to continue her evaluation. A child

abuse investigator for the Cape and Island's D.A.'s office agreed. At this point it was out of my hands. It is the psychologist's obligation to report concern to the court and in doing so the press labeled me an accuser of sexual abuse by my children's father. If I'd ever thought this to be true, it would have remained a private, family matter to further protect my children. Instead of the MA papers running stories about the misuse of VAWA in marriage for green card fraud and the prevention of international child abduction, The Boston Globe chose to identify my young, innocent children by name and accompany the incendiary article about the most horrible of all abuses, with a photo of them.

The MA judge continued to rule on our case even after IN asserted its jurisdiction. In an ex-parte order, he released to my ex-husband a $5,000 bond I'd been required to post prior to legally leaving the state, gave him temporary custody of our children and issued a writ of habeas corpus for me. Following this court action, he relieved my husband of all child support obligation, retroactive to the date of his last payment. The IN judge reasserted jurisdiction and I was awarded sole custody of our children.

This is clearly not a victimless crime. Our immigration laws were enacted to protect America and American citizens. In a shared humanitarian concern for exploitation, and in order to maintain the integrity of VAWA, please consider mandating due process and enforcing the current penalties, United States Code: Title 18, Section 1001, for making false claims of abuse. Immigrants should know that as John Adams stated, "We are a nation of laws..."

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July 6, 2011

The Honorable Chuck Grassley
United States Senator
5 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley,

I am pleased and honored to testify before the Senate Judiciary Committee today. I am a 27-year veteran of immigration enforcement, with 27 years of experience as an enforcement agent of the former US Immigration and Naturalization Service and its successor agency, US Immigration and Customs Enforcement. I hold a Bachelor of Arts, cum laude, from Long Island University in Criminal Justice, and attended Thomas M. Cooley Law School in Lansing, Michigan, for two years. I am an honorably discharged veteran of both the United States Naval Reserve and United States Coast Guard Reserve.

In August of 2008, I retired from the United States Department of Homeland Security, Immigration and Customs Enforcement as a Senior Deportation Officer. In January of 2009, I formed CSI Consulting and Investigations LLC, in an effort to assist US citizens who believed they had been defrauded by foreign nationals into marrying them in order to obtain permanent residence in the United States.

Since forming my private consulting firm, I have testified as an expert witness in the areas of immigration fraud, immigration marriage fraud, VAWA fraud, U Visa Fraud, and other immigration related issues, in the states of New York, Colorado, Nebraska, Indiana, Florida, Arizona, Massachusetts, and California. I have had in excess of 100 clients seeking consulting assistance, providing technical assistance to their attorneys, and assisting the attorneys in criminal cases, civil restraining order cases, and matrimonial cases.

This country is facing an epidemic of immigration fraud, primarily dealing with immigration marriage fraud or sham marriages, and fraudulent domestic violence claims under the VAWA provisions of the Immigration and Nationality Act.

Sadly, USCIS is doing little, if anything, to address this issue. To my knowledge, there have been absolutely no criminal prosecutions for making fraudulent domestic violence complaints in furtherance of seeking an immigration benefit, since VAWA was introduced in 1994 and codified under the INA in 1996.

I would like to adressss the impact the Violence Against Women Act (VAWA) has had on US Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and the immigration process in particular, as well as the issue of immigration marriage fraud which this statute has had an impact on.

First and foremost, please understand that I do not condone domestic violence, regardless of the circumstances and regardless as to who initiates domestic assaults. My concern regarding this issue is the substantial potential for fraud in an already fraud prone system that this law has already brought.

During the course of my 27-year career with the former INS and its successor, ICE, I investigated in excess of one hundred cases of suspected marriage fraud. Many of these cases involved aliens who were in removal or deportation proceedings and who married a US citizen with the hopes of avoiding removal from the United States. Some of these cases involved US citizens who, in what can only be described as "misguided compassion", agreed to enter into a sham marriage solely for the purpose to allow the alien to obtain permanent residence in this country. However, the majority of these cases involved a more pernicious form of marriage fraud, in which the alien deliberately, knowingly, intentionally, and maliciously induced an American citizen to marry them, claiming that they loved the American citizen, only to abandon their US citizen "spouse" the moment they secured permanent residence in this country.

Recent statistical estimates provided by USCIS and ICE within the Department of Homeland Security, places the number of certain types of visa fraud, which includes immediate relative visa petitions based upon marriages to US citizens, at 33%. This information was provided to the House of Representatives Subcommittee on International Terrorism and Nonproliferation Committee on International Relations on April 6, 2006, and again on July 27, 2006 before the Subcommittee on Immigration and Border Security and Claims Committee on the Judiciary by Michael J. Maxwell, the former head of the Office of Security and Integrity (OSI) of the Bureau of Citizenship and Immigration Services.

On July 27, 2006, in his testimony before Congress, Mr. Maxwell quoted former Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, Julie Myers as follows: "At an April 5, 2006, press conference to announce the creation of task forces to combat immigration and document fraud, Assistant Secretary for Immigration and Customs Enforcement (ICE) Julie Myers pointed out that terrorists have used legal immigration channels like asylum to embed in American society. She noted

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that "each year tens of thousands of applications for immigration benefits are denied because of fraud, and those are just the ones we find. "

In his testimony before the House Subcommittee on Immigration and Border Security and Claims Committee on the Judiciary Mr. Maxwell stated the following: "Recent USCIS immigration fraud assessments indicate that the incidence of fraud in some visa categories is as high as 33 percent." This information came from a GAO report dated March of 2006.

I am appending Mr. Maxwell's testimonial records to my testimony for your review.

As Mr. Maxwell stated in his July 27, 2006 testimony before the House, USCIS is at its breaking point. They lack the resources and funding to adequately investigate and root out fraud. The formation of the Fraud Detection and National Security unit within USCIS is an important first step. The reality though is that FDNS units throughout the country are understaffed and overwhelmed.

To add to this issue, it is well known that the United States Attorneys' offices throughout the United States do not routinely prosecute single scheme marriage fraud. The reason is simple. There are simply too many cases to prosecute. If they did routinely prosecuted single scheme marriage fraud cases, they would be doing nothing else. No national security and/or terrorist cases, bank robbery cases, kidnapping cases, drug cases, home mortgage fraud cases, counterfeiting case, etc. would be prosecuted for they would simply be overwhelmed with the amount of marriage fraud cases being presented.

Furthermore, these prosecutions are complicated due to the necessity to show the intent of at least one of the parties, if not both. It's complicated enough to prove a fraud scheme in a conventional marital relationship. Making it easier to perpetrate the fraud by removing any vestiges of documentary requirements would make the criminal prosecution of such cases next to impossible. Therefore, the criminal prosecution and penalty provisions in S 424 modifying Title 8 USC 1325(c) are meaningless.

Mr. Chairman, members of the committee, I respectfully ask that you enact changes in the current Immigration and Nationality Act as it relates to claims of domestic violence under VAWA. I would respectfully submit that a very reasonable, and Constitutional, modification that could be enacted, would be to treat any claims of domestic violence as a reason to place the alien in removal proceedings where they can apply for Cancellation of Removal under VAWA, before an immigration judge. I would urge that the US citizen who is alleged to be the abuser, be afforded an opportunity to testify before the immigration court, and that the burden of proof be set at a sufficiently high enough level so as to ensure that the Constitutional rights of the accused US citizen be protected, that

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they be afforded the opportunity to confront their accuser, that evidence be required above and beyond the uncorroborated testimony of the alleged victim.

I have attached an article I wrote in 2009, entitled Fraud and Abuse in the Violence Against Women Act in Immigration Related Matters, which was the basis of the defense in the matter of The People of the State of New York v. Donald Glassman. In that case, Mr. Glassman was accused of Rape in the 3rd Degree by his Dominican born wife of two months, without any physical evidence to corroborate her claims. She was able to abandon the marital relationship, and remain in the United States, obtaining her residency through the VAWA provisions of the INA. Mr. Glassman lost his job as a librarian at Barnard College, lost his rent controlled apartment, and his life savings. It was a two year, three month and eleven day nightmare for Mr. Glassman, who vehemently denied the accusations, and who was ultimately vindicated at trial, with a finding of not guilty.

Since starting my private consulting practice in January of 2009, I have had in excess of five hundred individuals, both men and women, seek me out and ask for my assistance in defending themselves against fabricated and false allegations of domestic violence made against them by their foreign born spouses.

The level of fraud is now epidemic, with the latest case involving the head of the International Monetary Fund, Dominique Strauss-Kahn, in which his accuser is now the proud applicant for a U Visa (victim of crime visa). The Manhattan DA's office is doubting the maid's credibility because she stood to benefit by making such allegations.

I could go on, citing case after case, but I believe others are testifying who are actual victims of this fraud. I implore you to please, revisit the VAWA provisions of the Immigration and Nationality Act and institute safeguards that will protect not only the few aliens who are truly victimized, but also the US citizens who are also victimized by cruel, heartless foreign nationals who game the system simply to gain access to this country.

I wish to take this opportunity to thank the committee and Senator Sessions for allowing me to testify today and would be more than willing to personally appear before this committee to offer live testimony and answer any questions the committee may have.

Sincerely,

John N. Sampson

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Fraud and Abuse in the Violence Against Women Act in Immigration Related Matters

OR

How Aliens Seeking the American Dream Create the American Nightmare for Citizens

Written by John N. Sampson

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In order to understand how frauds are committed in connection with the filing of self petitions by aliens who allege domestic violence against their US citizen husbands or wives, one has to understand basic immigration law and how one would normally go about obtaining an immigrant visa or permanent resident status through marriage to a US citizen.

In 1952, Congress passed major immigration legislation which became the Immigration and Nationality Act of 1952 (INA). The relevant passages of that law relate to the immigrant visa provisions that apply to foreign national or alien spouses of United States citizens.

There are three kinds of people in the United States as defined by the INA. Citizens, nationals (they have almost all of the same rights as a citizen except they can't hold public office, cannot vote in elections, and other restrictions apply. They are defined in Section 101(a)(22) of the INA as either a "citizen" or a person who though is not a citizen of the United States, owes permanent allegiance to the United States.), and aliens (all others other than Citizens or Nationals).

A person can become a citizen of the United States under four possible scenarios. Birth in the United States, Puerto Rico, the American Virgin Islands; by transmission in which a child is born in a foreign country to either one or two U.S. citizen parents and acquires citizenship at the time of their birth providing that the provisions of Section 301(g) of the INA are met; by Naturalization in which a permanent resident alien applies to become a U.S. citizen, and lastly by derivation in which a child (under the age of 18) derives their citizenship when both of their permanent resident alien parents naturalize.

Section 201(b)(2)(a)(i), of the Immigration and Nationality Act, as amended, allows for the immigration without numerical limitation (or quotas) of spouses, children, and parents of a citizen of the United States. In the case of the parent or parents of a United States citizen, the U.S. citizen child must be at least 21 years of age in order to petition for their parent(s).

That means that unlike most other means by which to immigrate to the United States, there is no annual cap or limit placed on those who immigrate to the U.S. because they are the spouse, child, or parent of a United States citizen. For example, a person who wishes to immigrate to the U.S. based upon a special work skill, must wait his or her "turn" based upon how many people have applied for the same kind of visa before them. The spouse or child of a U.S. citizen does not have to "wait in line" for the visa is immediately available without regard to the yearly numerical limitations placed on other immigrant visas.

Section 204(a) of the INA sets forth the statutory provisions by which a US citizen can petition for an alien relative that is either their spouse, child, or parent. That section of

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law also provides for the ability for an alien to self petition for themselves and their children, should they allege that they are the victim of domestic violence or abuse.

The regulations that relate to these statutory provisions can be found in Title 8 Code of Federal Regulations, Section 204.2. These regulations set forth the procedures in which a US Citizen can petition for their alien spouse, children, and/or parents. In those regulations, requirements are set in which interviews must be conducted by USCIS to determine the bona fides of the marital relationship, what proof is needed to establish that the relationship is bona fide and not a sham for the purposes of obtaining an immigration benefit, namely permanent residence.

Section 204.2(c) of Title 8 Code of Federal Regulations, sets forth the procedures and requirements to file Form I-360, Self Petition under the provisions of the Violence Against Women Act (VAWA). It states:

"(c) *Self-petition by spouse of abusive citizen or lawful permanent resident*—(1) *Eligibility*—(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is that parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

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(G) Is a person whose deportation
would result in extreme hardship to
himself, herself, or his or her child; and
(H) Entered into the marriage to the
citizen or lawful permanent resident in
good faith.
(ii) *Legal status of the marriage.* The
self-petitioning spouse must be legally
married to the abuser when the petition
is properly filed with the Service.
A spousal self-petition must be denied
if the marriage to the abuser legally
ended through annulment, death, or divorce
before that time. After the selfpetition
has been properly filed, the
legal termination of the marriage will
have no effect on the decision made on
the self-petition. The self-petitioner's
remarriage, however, will be a basis for
the denial of a pending self-petition.
(iii) *Citizenship or immigration status
of the abuser.* The abusive spouse must
be a citizen of the United States or a
lawful permanent resident of the
United States when the petition is filed
and when it is approved. Changes in the
abuser's citizenship or lawful permanent
resident status after the approval
will have no effect on the self-petition.
A self-petition approved on the basis of
a relationship to an abusive lawful permanent
resident spouse will not be
automatically upgraded to immediate
relative status. The self-petitioner
would not be precluded, however, from
filing a new self-petition for immediate
relative classification after the abuser's
naturalization, provided the self-petitioner
continues to meet the self-petitiong
requirements.
(iv) *Eligibility for immigrant classification.*
A self-petitioner is required to
comply with the provisions of section
204(c) of the Act, section 204(g) of the

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Act, and section 204(a)(2) of the Act.
(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.
(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.
(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good

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moral character under section 101(f) of
the Act. A person who was subjected to
abuse in the form of forced prostitution
or who can establish that he or she was
forced to engage in other behavior that
could render the person excludable
under section 212(a) of the Act would
not be precluded from being found to be
a person of good moral character, provided
the person has not been convicted
for the commission of the offense
or offenses in a court of law. A
self-petitioner will also be found to
lack good moral character, unless he or
she establishes extenuating circumstances,
if he or she willfully failed
or refused to support dependents; or
committed unlawful acts that adversely
reflect upon his or her moral
character, or was convicted or imprisoned
for such acts, although the acts
do not require an automatic finding of
lack of good moral character. A self-petitioner's
claim of good moral character
will be evaluated on a case-bycase
basis, taking into account the provisions
of section 101(f) of the Act and
the standards of the average citizen in
the community. If the results of record
checks conducted prior to the issuance
of an immigrant visa or approval of an
application for adjustment of status
disclose that the self-petitioner is no
longer a person of good moral character
or that he or she has not been a
person of good moral character in the
past, a pending self-petition will be denied
or the approval of a self-petition
will be revoked.
(viii) *Extreme hardship.* The Service
will consider all credible evidence of
extreme hardship submitted with a
self-petition, including evidence of
hardship arising from circumstances

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surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

(2) *Evidence for a spousal self-petition*—

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination

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of all prior marriages, if any,
of both the self-petitioner and the
abuser. If the self-petition is based on a
claim that the self-petitioner's child
was battered or subjected to extreme
cruelty committed by the citizen or
lawful permanent resident spouse, the
self-petition should also be accompanied
by the child's birth certificate
or other evidence showing the relationship
between the self-petitioner and
the abused child.
(iii) *Residence.* One or more documents
may be submitted showing that
the self-petitioner and the abuser have
resided together in the United States.
One or more documents may also be
submitted showing that the self-petitioner
is residing in the United States
when the self-petition is filed. Employment
records, utility receipts, school
records, hospital or medical records,
birth certificates of children born in
the United States, deeds, mortgages,
rental records, insurance policies, affidavits
or any other type of relevant
credible evidence of residency may be
submitted.
(iv) *Abuse.* Evidence of abuse may include,
but is not limited to, reports and
affidavits from police, judges and other
court officials, medical personnel,
school officials, clergy, social workers,
and other social service agency personnel.
Persons who have obtained an
order of protection against the abuser
or have taken other legal steps to end
the abuse are strongly encouraged to
submit copies of the relating legal documents.
Evidence that the abuse victim
sought safe-haven in a battered
women's shelter or similar refuge may
be relevant, as may a combination of
documents such as a photograph of the

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visibly injured self-petitioner supported
by affidavits. Other forms of
credible relevant evidence will also be
considered. Documentary proof of nonqualifying
abuses may only be used to
establish a pattern of abuse and violence
and to support a claim that
qualifying abuse also occurred.
(v) *Good moral character.* Primary evidence
of the self-petitioner's good
moral character is the self-petitioner's
affidavit. The affidavit should be accompanied
by a local police clearance
or a state-issued criminal background
check from each locality or state in
the United States in which the self-petitioner
has resided for six or more
months during the 3-year period immediately
preceding the filing of the selfpetition.
Self-petitioners who lived
outside the United States during this
time should submit a police clearance,
criminal background check, or similar
report issued by the appropriate authority
in each foreign country in
which he or she resided for six or more
months during the 3-year period immediately
preceding the filing of the selfpetition.
If police clearances, criminal
background checks, or similar reports
are not available for some or all locations,
the self-petitioner may include
an explanation and submit other evidence
with his or her affidavit. The
Service will consider other credible
evidence of good moral character, such
as affidavits from responsible persons
who can knowledgeably attest to the
self-petitioner's good moral character.
(vi) *Extreme hardship.* Evidence of extreme
hardship may include affidavits,
birth certificates of children, medical
reports, protection orders and other
court documents, police reports, and

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other relevant credible evidence.
(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.
(3) *Decision on and disposition of the petition*—(i) *Petition approved.* If the self-petitioning spouse will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the selfpetitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.
(ii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.
(4) *Derivative beneficiaries.* A child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition, if the child has not been classified as an immigrant based on his or her own self-petition. A derivative child who had been included in a parent's

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self-petition may later file a self-petition,
provided the child meets the selfpetitioning
requirements. A child who
has been classified as an immigrant
based on a petition filed by the abuser
or another relative may also be derivatively
included in a parent's self-petition.
The derivative child must be unmarried,
less than 21 years old, and
otherwise qualify as the self-petitioner's
child under section 101(b)(1)(F)
of the Act until he or she becomes a
lawful permanent resident based on the
derivative classification.
(5) *Name change.* If the self-petitioner's
current name is different than
the name shown on the documents, evidence
of the name change (such as the
petitioner's marriage certificate, legal
document showing name change, or
other similar evidence) must accompany
the self-petition.
(6) *Prima facie determination.* (i) Upon
receipt of a self-petition under paragraph
(c)(1) of this section, the Service
shall make a determination as to
whether the petition and the supporting
documentation establish a
"prima facie case" for purposes of 8
U.S.C. 1641, as amended by section 501
of Public Law 104–208.
(ii) For purposes of paragraph (c)(6)(i)
of this section, a prima facie case is established
only if the petitioner submits
a completed Form I–360 and other evidence
supporting all of the elements
required of a self-petitioner in paragraph
(c)(1) of this section. A finding of
prima facie eligibility does not relieve
the petitioner of the burden of providing
additional evidence in support
of the petition and does not establish
eligibility for the underlying petition.
(iii) If the Service determines that a

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petitioner has made a "prima facie case," the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.
(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—
(A) Shall not be considered evidence in support of the petition;
(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,
(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section"

If you wade through 8 CFR 204.2(c), you will find that acts that would make an alien inadmissible to the US under ordinary circumstances, are waived when one files a self petition pursuant to Section 204(a)(1)(A)(iii) of the INA. Furthermore, there is no interview conducted by USCIS to determine the bona fides of the marriage. In short, by filing an I-360 self petition and alleging domestic violence, assault, rape, extreme mental cruelty or abuse, an alien can avoid the potential pitfalls of pursuing an immigrant visa by conventional means through marriage to a U.S. citizen, if the underlying marriage was entered into by the alien under false pretenses. It is a means by which an alien can avoid detection by USCIS for entering into a sham marriage in order to get a green card.

Lest anyone think that there are no consequences for entering into a sham or fraudulent marriage, all one has to do is refer to Section 275(c) of the INA as well as Sections 204(c) and 204(g) of the INA to see that there are severe penalties and consequences should it be established that an alien entered into a marriage of convenience or fraudulent marriage. The penalties are both administrative and criminal. Section 275(c) makes it a felony to enter into a fraudulent marriage in order to get an immigrant visa, punishable by up to five years in federal prison and up to a $250,000.00 fine, or both.

Section 204(c) of the Act prohibits the granting of any petition on behalf of an alien who has been found to have entered into a fraudulent marriage in order to obtain permanent residence. There are no exceptions, there are no waivers for such a finding and the consequences that attach themselves to such a finding.

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Section 204(g) of the Act essentially states that if an alien is in removal or deportation proceedings and then marries a U.S. citizen, there is a rebuttable presumption that the marriage was entered into by the alien to avoid deportation and to obtain an immigration benefit, namely permanent residence. Since the presumption is rebuttable, the statutes sets forth the burden of proof an alien must meet in order to successfully rebut such a presumption.

To further complicate matters, Congress, in 1986, enacted the Immigration Marriage Fraud Amendments of 1986 which is the subject of an excellent article written by Vonnell C. Tingel of the University of Louisville. Tingel puts forth in clear and concise language the problems that the former Immigration and Naturalization Service (INS) and its successor, USCIS, faced with regards to sham marriages being entered into by aliens in order to circumvent the numerical limitations of other forms of immigrant visas and how Congress enacted legislation to "fix the problem".

The website that explains this whole phenomenon is:

www.http://discuss.ilw.com/eve/forums/a/tpc/f/902603441/m/28910060611

However, the introduction of this treatise explains the issue in absolute clarity:

"The Immigration Marriage Fraud Amendments of 1986 (the Amendments) were passed by Congress to deter immigration-related marriage fraud. *Because long waiting periods exist before entry for all other immigrant categories, the avenue of marrying an American citizen was found to be the simplest and quickest way of immigrating to this country."* [emphasis added]

Tingle further states:

"A sham or fraudulent marriage under immigration law is a marriage contracted for the sole purpose of evading the numerical restrictions that otherwise limit immigration into the United States. In Lutwak v. United States the Supreme Court stated that "Congress did not intend to provide aliens with an easy means of circumventing the quota system by fake marriages in which neither of the parties ever intended to enter into the marital relationship . . . . "

Service statistics show that between 1978 and 1984 the number of immigrants acquiring status as spouses of United States citizens increased 43 as compared to a total immigration drop of 9.6. The Service estimated that 30 of these spousal relationships were fraudulent. Furthermore, Congress was made aware of the problem by the Service's discovery of numerous marriage fraud rings around the country and national media attention.

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There are generally two types of sham marriages. One is the collusive or "contract'" marriage whereby a citizen agrees to marry an alien solely to enable the alien to achieve permanent resident status. There is usually a fee involved for the citizen and an understanding that the marriage will be dissolved soon after the permanent resident status is obtained by the alien. The more blatant cases of this type of fraud have involved marriage "rings'" whereby citizen "spouses'" are supplied along with bogus documents. The second type of sham marriage is a unilateral or "one-sided'" marriage whereby the alien deludes a citizen into the marriage, and upon receipt of derivative status the alien abandons the citizen spouse."

The procedure for the processing of marriage based immigrant visas and applications for adjustment of status are outlined in the Tingel treatise:

"Under the Act the process for obtaining permanent resident status for the alien spouse begins when the citizen spouse petitions the Service for such classification after the marriage. Simultaneously with this petition, the alien spouse applies for adjustment of status to that of permanent resident, and the Service is given the discretion to grant such status.

The petition is accompanied by proof of the marriage and, if applicable, proof of dissolution of any prior marriages. Along with the petition, the Service usually conducts a separate interview with each spouse, essentially in an effort to uncover any sham marriages, and subsequent investigation if the Service determines it is needed.

The Service is aided by a statutory presumption that any marriage entered into within two years before the petition is assumed to be fraudulent. Based upon the petition and the interview, the Service officer makes an initial determination whether the facts in the petition are true and approves or disapproves permanent resident status for the alien spouse.

If the petition is approved, the alien spouse is granted the permanent resident status and obtains the coveted "green card.'" In three years the alien spouse would be eligible for naturalization as a United States citizen, in contrast to a five year wait by other immigrants. If the Service officer refuses the petition on the ground that the marriage was fraudulent, the alien spouse may be subject to deportation.

However, if the marriage is a sham marriage and this fact is not discovered at the time of the initial petition and interview, there is usually no subsequent investigation of the marriage to uncover the fraud unless either one of the spouses or another party reports this fact to the Service. Since most of these

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marriages are fairly recent, there is often little or no marital lifestyle to evaluate for clues as to whether the marriage is a sham or not. Furthermore, there is evidence that insufficient manpower has also hampered the Service in uncovering sham marriages at this threshold level."

What the aforementioned legislation did was to create another immigrant visa classification of Conditional Resident (or CR). What that meant was that an alien who married a U.S. citizen was admitted for a period of two years as a Conditional Resident and was required to file a joint petition with their U.S. citizen spouse, Form I-751, to remove the conditions of their residency. This required yet another interview with the former INS and the current USCIS. It gave INS and USCIS the opportunity to conduct a second interview of marriage based visa applicants to see if the marriage was valid or fraudulent. Failure to file this joint petition would result in the revocation of resident status and the initiation of deportation proceedings against the alien.

For a while, INS was able to effectively reduce the number of sham marriages because instead of having only one interview to determine if a marriage was bona fide or a sham, they now had two interviews spaced two years or more apart. This created a major problem for those aliens who merely wanted to enter into a marriage to get their "green card", for now they had to wait two years, and ostensibly remain married to their sponsoring U.S. citizen "spouse" for that period of time.

Another fact that plays a part in this whole scheme is the processing time one must endure from the time they file their paperwork with INS or USCIS and the time they have their interview. Depending on where one lives, it now may take from 12 months to 36 months before an interview is scheduled for a conventional marriage based immigrant visa or adjustment of status application. Consequently, an alien who is defrauding their U.S. citizen spouse into believing they married them for love, now has to live with that U.S. citizen for a year or more before they have their interview with USCIS. Not a pleasant prospect for a person who only wants to get a "green card" and has no feelings or attraction for their U.S. citizen "spouse".

In 1994, Congress enacted the Violence Against Women Act (VAWA), in an effort to address the serious problem of domestic violence, stalking, and other forms of domestic abuse. The provisions of VAWA found themselves contained in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996.

The provisions of Section 204(a)(1)(A)(iii)(I) of the INA codify VAWA into the INA. And what is notable are the regulations enacted to enable the statute which eliminate all the procedural safeguards that had been enacted in 1986 under the Immigration Marriage Fraud Amendments. Gone is the necessity of having an interview to determine if the underlying marriage was valid in the first place. Gone is virtually every ground of inadmissibility and/or deportability to include convictions for aggravated felonies.

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In short, by alleging that they are the "victim" of domestic violence, abuse, or extreme cruelty, an alien who initially has entered into a sham marriage in which they have fraudulently induced an unsuspecting U.S. citizen into marrying them, and by filing false accusations of domestic violence, assault, sexual assault, and/or rape, can obtain their permanent residence in the United States and do so without having to submit to the procedural safeguards and vetting process that everyone else has to go through.

The VAWA provisions of the Immigration and Nationality Act, and the regulations implementing the law make it simple for someone to allege domestic violence against an unsuspecting and emotionally vulnerable U.S. citizen and obtain an immigrant visa or permanent residence to the United States without the need to go through the bothersome, lengthy, and difficult, not to mention intrusive, vetting and application process that one normally would go through in a marriage based immigration visa application. The funds the federal government gives to states and local jurisdictions to "aggressively enforce" the provisions of the VAWA have resulted in police departments, sheriffs departments, and prosecutors throughout the country arresting and prosecuting thousands of American citizens for a variety of domestic violence related crimes based upon the uncorroborated complaints of foreign national victims with little or no thought that perhaps the "victim" is in fact the true abuser and the American citizen is the true victim.

And the ever increasing numbers of domestic violence related arrests act as a self fulfilling prophecy, justifying even more arrests. The attitude is "There have been so many domestic violence related arrests that it proves there is an epidemic of domestic violence being perpetrated against women by men in the United States.

It's an open invitation to fraud and abuse that no one can resist. And the result is thousands of American citizens are being charged with a variety of crimes under the domestic violence umbrella thereby creating trauma, upheaval, in the lives of the unsuspecting American citizen's life. Their reputations are impugned if not destroyed, their property stolen from them by their alien spouse, bank accounts are emptied, and they are emotionally and financially bankrupted by a system endorsed and encouraged by their own government. And to add insult to injury, there is virtually nothing the American citizen can say or do to stop it from happening. They have no voice by which their government can hear their complaints. They have been systematically stripped of their Constitutional rights to equal protection and due process, all in the name of stamping out violence against women.

I have heard the following line time and time again coming from American citizens I have interviewed while working for Immigration and Customs Enforcement: "My own government, which is supposed to serve and protect me, has turned its back on me and has assisted a foreign national in destroying me". "Who do I turn to for help?"

Who, indeed?

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Senate Judiciary Committee
Hearing On

The Violence Against Women Act:
Building on Seventeen Years of Accomplishments

Michael Shaw
Co-Director, Domestic Violence & Sexual Assault Services
Waypoint Services for Women, Children and Families
Cedar Rapids, Iowa

July 13, 2011

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The Violence Against Women Act: Building on Seventeen Years of Accomplishments

Thank you for inviting me to speak to you today. I've worked as an advocate or volunteer supporting survivors of sexual violence since 1993. Before the passage of the Violence Against Women Act in 1994, there were gaping holes in our country's response to sexual violence. Reports such as "Rape in America: A Report to the Nation" in 1992 and "The Response to Rape: Detours on the Road to Equal Justice" in 1993, showed our governmental systems had essentially left survivors of rape to fend for themselves. VAWA, co-sponsored by then Senator, Joe Biden and Sen. Orrin Hatch, began to remedy these issues by strengthening systems of victim support and criminal accountability. I'll briefly talk about the impact of VAWA for sexual assault survivors and reflect on what VAWA means to me personally.

1. VAWA saves lives.

   The first time I answered a rape crisis line in 1999 the caller said "I'm going to kill myself." That was a scary first call – but I had excellent training to help me support her. I listened for close to an hour as she talked about wanting the pain of her rape to go away.

   For more than 17 years, VAWA has supported the training of thousands of victim advocates, police officers, and medical professionals on the best ways to support rape survivors.

2. VAWA provides supportive services to help victims of sexual assault and their children stay safe and rebuild their lives.

   Last year, we received a call on our crisis line from a mother, I'll call her Janet, who had just found out her daughters had been sexually abused. What I will share about this story will sound like a life falling apart, but if you listen carefully you will hear how she is laying the foundation to rebuild her life and the lives of her children.

   On the first call, Janet didn't know what to do. Her 9 year old daughter had just told her that a man they trusted was touching her private area. The advocate listened and responded with compassion.

   A couple of days later Janet called back and said her 14 year old daughter had just confirmed that the same person had sexually abused her. Once again an advocate listened and offered support.

   A couple days later Janet called back and disclosed that she had been a victim of sexual abuse. I took that call. Not only was she devastated by what her children were telling her, but now she was dealing with the trauma she had experienced. Janet had never told anyone about her own abuse.

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While this may seem like a life falling apart, please note that Janet kept calling back. She had someone to talk to when she needed it most. We offered Janet a sounding board so that she could then give her children calm, reliable, non-judgmental support, which experience and research has shown is essential to healing for children, and we supported Janet as she talked about her own trauma.

The VAWA supported services helped a woman lay the foundation to heal from her own child sexual abuse, and helped her support her children to do the same.

3. VAWA saves money.

In its first six years alone, VAWA saved taxpayers at least $14 Billion in net averted social cost. These social costs include medical and mental health care needs, missed hours of work, increased substance abuse, and difficulty achieving educational goals.

Rape is the most costly of all crimes to its victims, with total estimated costs at $127 billion a year.

Skilled advocates provide victims with emotional support and help them figure out their next steps. The VAWA supported services are an investment in the lives of sexual assault victims.

4. Each subsequent reauthorization of VAWA has improved the scope of comprehensive services for victims.

VAWA 2000 strengthened community protections for immigrant victims of sexual assault by funding training to improve law enforcement's response to immigrant victims.

VAWA 2005 included the first federal funding stream to support sexual assault survivors regardless of their involvement with other systems with the Sexual Assault Services Program. Rape Crisis Programs across the State of Iowa have used these dollars to improve and enhance services to sexual abuse survivors.

Finally, the Violence Against Women Act is more than just a law to me. VAWA is part of a collection of resources that indicates our country is progressing toward a goal of a society free of sexual violence. Believing that a violence free world is possible is part of what sustains me as an advocate.

Frequently, when I tell people what I do, they respond "Wow, that must be depressing work." or they try to avoid eye contact because no one really wants to talk about rape. Some days it is hard, but listening to survivors keeps me going. Long ago I made a commitment to listen to survivors as long as there were survivors needing support. Survivors' voices inform my administrative work and my prevention efforts. Victim's voices inform every decision I make as

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a Co-Director and most importantly they remind me to feel the work, to care about the work. They remind me that I am part of a movement.

In 2000, I heard Cassandra Thomas, then Vice President at the Houston Area Women's Center, speak. She eloquently and passionately expressed what I was feeling as an Advocate and the father of three children. She challenged us by saying:

> *"Some of you all are doing field work. I joined a movement, and the canvases look real different depending on whether you are Movement People or Field People"*
>
> *"So now, will your canvas be a Movement Canvas – a canvas about social change, a canvas about destroying patriarchy that has set up a system of sexual violence, or are you just going to do counseling groups? What is your canvas going to look like? Now don't get me wrong. I want more money for counselors. I want to have some groups. But, I'm not just doing social service. If that is what you're doing, let me just tell you something, your canvas is going to look way different, because I'm about making sure my 5 year old child never sits in a group, that my 5 year old child never goes to a hospital for a rape kit. That's what I'm about, and social service won't do that for me. I need movement, folks. A Field just lays there.*

Senators I believe you, I, and VAWA are all part of a movement and we must do everything in our power to support survivors, hold perpetrators accountable, and move inexorably towards a world that is free of sexual violence for our children and their children. I strongly encourage you to continue building on the accomplishments of the last 17 years by swiftly reauthorizing an improved VAWA.

Thank you.

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Written Statement of Alex J. Slania, resident of [redacted]
Submitted in connection with the Hearing held on
Wednesday, July 13, 2011
before the Senate Committee on the Judiciary on
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments

I met Kateryna Tsygankova in Odessa, Ukraine, February of 2005, during a trip to the Black Sea. She portrayed herself as an English translator and accountant at that time. After a year of travel, telephone calls, and correspondence I invited her to come to the United States by securing a marriage visa with the intention if all went well we would marry. We married the following year in the United States. After the marriage she became increasingly abusive to me and my children. She would hit me in front of my children for any reason if she was angry. One example was that she demanded a $7000 fur coat immediately. It was not a holiday or her birthday, but demanded things like this constantly. When I said I would present it at Christmas, she struck me in the face in front of my daughter, and called me selfish. Throughout the year and a half we were married this behavior was normal. I took her on several trips including Las Vegas, Las Angeles, Maui, Hawaii, and New York to name the major trips. My friends always commented about that I was so doting to her, buying flowers weekly, cards, clothes and other presents. After all I was in love with her. But the person she became after the marriage was totally different then during our courtship. Whatever she wanted, I would get or try to get for her, worrying that she was just having difficulty settling in to a new life. She did not have to work but stated that she wanted to, so I agreed to this. I never met any of her friends at work, she would say I would not want to meet them; they were just old divorced ladies. She kept me separated from this side of her life.

She started receiving packages through the USPS about 3 months after we were married. I happened to see the contents one time. There were clothes and magazines, but I also saw 4 bottles of pills with no labels (prescription bottles). She told me that her mother was sending her medicine she could only get in Ukraine for nerves. I never looked at the address label to see where it had come from, but I now believe she was getting illegal drugs.

The rest of my family witnessed this behavior and was concerned, but did not say anything to me at the time. In the fall of 2006 my mother said to me that her hitting me was not right. This was the first time that I realized what was happening to me and that it was also affecting my children. The last time she hit me was during her tirade that she needed a new BMW. I had 2 cars and we really did not need another car. When I finally said no, she scratched my face and left the house. She did not come home for 3 days, and when she came back she said that she would give me one more chance and had no explanation where she had been.

A month later my daughter was using the family computer in our living room. We all had our own accounts on this PC. My daughter was copying her jpeg files and found to her surprise, there were several photos of Kateryna naked and stripping in a club. She was with men and women in sexual compromising positions. After my daughter showed me this, I checked email and phone bills. I gave Kateryna a cell phone under my account but never checked the bills before, I just paid the bill. She said she was calling her mother every day, so the large bills were really not a surprise at that time. When I started checking the histories, she had made hundreds of calls and text messages to the Ukraine, New York City, and New Jersey to numbers I did not know. Kateryna told me before we were married that she did not know anyone in the United States. I had a private investigator research the US numbers and they were registered to I believe Russian or Ukrainian men and women. There was also a number of a man that lived 5 miles away from me she was calling late at night after I was asleep. One other number was listed to a lawyer that was from the same city in Ukraine that Kateryna was from who later represented her. I found a Ukrainian detective agency on the internet and they researched her. They

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stated that she most definitely was a stripper and probably a prostitute. She had worked at several clubs in Odessa. They had checked through their contacts in the Ukrainian on her passport and found out that she had secured a new passport before getting her USA visa. She had also traveled to Germany, Lebanon, Cyprus, and Jordan.

I confronted her with this information. To my surprise she did not deny anything, she actually threatened my life and my families "health." Kateryna stated that if I told anyone, including USCIS, her friends in New York would be very angry. According to her they were involved in shipping cars and "other things" back to the Ukraine. To put an immediate end to this I said I would not tell anyone, I just wanted a divorce. I would pay for her to leave, apartment, and airfare, whatever she wanted. The next day I had to leave on a overnight trip for work to Boca Raton, Florida. I came back early the day after and Kateryna had used my truck to remove all expensive things from my house and had moved out.

I immediately filed for divorce. A few days later I received an ex parte order from the county I was residing in (Summit) and was told I had to leave my house and turn in the keys. I told the Sheriff that she had already moved out. She was using a few addresses including the one of the man she was talking to late at night. The Sheriff stated because of this I did not have to leave. I then received a summons from the next county over that I was being charged with domestic violence and Kateryna was seeking a civil protection order against me for 5 years.

I immediately got a lawyer involved; he postponed the hearing until the next month instead of the next day. We gathered over 20 witnesses on my behalf. In her statement she said the women at her work were hiding her from me because I had abused her from the beginning. I had never met these women and I NEVER abused her. This was why she did not want me to meet them; she was lying to them so that they would help her. When we showed up for the court all of my witnesses came, but Kateryna only had her lawyer, and a counselor from a battered women's shelter. Instead of a lengthy court trial Kateryna's lawyer made a deal saying that if I agreed to a civil protection order for one year, they would not prosecute me on domestic violence. I wanted to let the court decide, but my lawyer said that if the court believes that there was any violence, I would lose, even if her allegations were lies. He told me to agree, it was a gift. I did not know at the time that she needed the CPO for USCIS and VAWA. Since I did not know this I agreed. I had filed for divorce first, Kateryna's lawyer first tried to change the proceedings to another county. When this was denied, her lawyer then said Kateryna would sign an uncontested divorce if I agreed to the same. My lawyer was ecstatic. He told me to agree and I would be done, all I had left to do was to pay the $60,000 dollars in credit card bills that I spent on her. The US government paid for her legal bills and she did not have to pay me back for anything

After all this was completed, I went to the USCIS and ICE and gave them all the evidence I had collected. I gave them a written statement of all that had transpired and the names, phone numbers, phone bills, and investigator reports. I never heard anything again about this. When I started to reach out to others that had similar incidents with foreign men and women I found out about the VAWA law and that any information I had entered would be removed since she had a protection order and I was the "abuser".

I learned my lesson about the dangers of marrying a foreigner and I now try to help others and direct them to the webpage for the victims of marriage fraud by foreigners. Most of these people are too embarrassed to do anything, they had much worse situations then I did and could not bear anymore accusations. I am sorry I helped this kind of person into my beloved country, I am responsible for this.

Thank you for your attention to my story

Alex J Slania, [redacted]

Testimony for Senate Judiciary Committee

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

July 13, 2011

Natasha Spivack

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301-530-7759
http://www.encount.com

My name is Natasha Spivack. I immigrated from the former Soviet Union with my husband and two children in 1985. Shortly after that my husband was killed in a car accident. This tragedy changed my life personally and professionally. In the process of the search for a role model for my children in a new country I discovered my ability to match people. Since I am a Russian living in America I started matching Russian women with American men and as a result Encounters International came into existence in 1993.

I have brought together hundreds of happy couples and enjoyed doing that until 2002, when I was falsely accused and served with a Federal law suit by Nataliya Fox through her pro bono lawyers from Arnold&Porter and Tahiri Justice Center.

It all started in October 1998, when Nataliya came to my office in tears, asking to help her stay in the USA a little longer. She came from the Ukraine as Jeff's fiancée on a 90 day fiancée (K-1) visa. Her relationship with Jeff did not work and after a couple of weeks he bought her a return ticket to the Ukraine. So, Nataliya was tearfully pleading for me to introduce her to someone else and I thought of Jim Fox, whose fiancée Elena had just left him for the Ukraine. After a short courtship Jim and Nataliya got married.

However, Nataliya was faced with a dilemma. She wished to obtain her resident status based on her marriage to Jim, but her fiancée visa came from Jeff. The US immigration laws have no provision that would allow foreign nationals to switch fiancées upon their arrival to the United States.

Like many foreign spouses Nataliya was reluctant to return to the Ukraine.
Instead, she decided to circumvent the INS regulations by essentially impersonating Jim's original fiancée Elena before the INS. She submitted Elena's visa approval letter as her own. The immigration official noted the discrepancy between the names of Elena Rybak on the approval letter and Nataliya Derkach on the Adjustment of Status application. "They got my name wrong" explained Nataliya. Without delay, the immigration officer crossed Elena's name and hand wrote Nataliya's name instead on Elena's document. Later that evening Nayaliya

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boasted to her friends including myself, about how dumb the US Immigration officials are and how easily she was able to deceive the Department into believing she was Elena.

At the end of a two year period of living under the false identity with many challenges like having to explain her different Alien Registration Numbers to the officials in the Social Security and the Motor Vehicle Administrations Nataliya faced the ultimate challenge. She expected an immigration interview and had to show that her finger prints match Elena's finger prints on file in the immigration office before the decision on her permanent Green Card is made.

Under normal circumstances, in the absence of the VAWA immigration loophole Nataliya would have been caught red handed for her ongoing document fraud at the time of the interview and eventually deported. However, VAWA provides legal immunity to any person who claims abuse regardless of prior criminal activities. So, Nataliya alleged that her husband Jim attempted to murder her as the basis of her battered spouse claim. Needless to say, that when the matter came to Court, and the judge heard the testimony, all the charges against Jim were dismissed. In fact, judge ordered the Expungement of all of the records of Jim's arrest and unsubstantiated charges.

It matters nothing for the VAWA advocates, who have their own opinion that "the international matchmaking organization industry tends to attract a subculture of men, who are predators, looking for subservient and vulnerable women for which they can abuse" (quote from Arnold and Porter's Federal Court Claim against Jim Fox and Encounters International, working pro bono on behalf of Nataliya Fox.) As one of these "international matchmaking organizations" Encounters International and I personally were charged for not informing Nataliya that all American men are abusive, for keeping Nataliya in the "abusive" relationship and not informing her that she could use the VAWA loophole and forward her marriage fraud to a higher level of getting her citizenship.

Natalia's highly publicized case of "abuse", resulted in her receiving US citizenship together with $130,000 in cash from Jim Fox and over half a million dollars in judgments from Encounters International and me personally. It sent a perverse message to the underground world of illegal immigrants attempting to do the same. It also hurt the real victims of abuse because the epidemic of false allegations inevitably cast doubt on the validity of real victims' claims. Needless to say, that all the costs are passed on to American taxpayers.

Having been victimized, eaten alive and bled to death by the three year litigation, Encounters International and myself personally are working hard to educate vulnerable American men about the danger of VAWA's immigration loophole, that encourages false accusations of abuse in exchange for the Green Card. I've helped many innocent men escape false allegations and saved their reputation. But many more fell victims of VAWA.

It is time to close VAWA's immigration loophole!

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Why Victims Want the Partner Violence Reduction Act

The proposed Partner Violence Reduction Act was released on July 11. The Partner Violence Reduction Act (PVRA) will strengthen and amend the Violence Against Women Act, which is up for reauthorization this year.

The PVRA is designed to help *all* victims:

1. Victims of Physical Violence

Abuse shelters in Washington DC currently have a 3-month wait-period. But when a victim needs to flee a dangerous situation, sitting around for months simply is not an option.

The cause of the problem can be traced back to expanding definitions and lack of requirements for proof of abuse. The DoJ Office of Violence Against Women now defines domestic violence in amazingly broad and amorphous terms:

> "a pattern of abusive behavior in any relationship that is used by one partner to *gain or maintain power and control* over another intimate partner."

The PVRA limits the definition of domestic violence to "felony or misdemeanor crimes of violence," so victims of physical violence don't have to take a number and wait their turn.

2. Victims of False Allegations

According to a recent national telephone survey, 11% of persons have been falsely accused of domestic violence, child abuse, or sexual assault.[1]

Every false accusation robs true victims of desperately needed services and protections. And such claims can have devastating personal effects on the falsely accused.

The PVRA distinguishes between an allegation and an adjudicated offense, and assures that "equal treatment under the law" is more than a hallow promise for the accused.

3. Victims of Harmful and Discriminatory Policies

According to a Harvard University study, mandatory arrest laws increase partner homicides by nearly 60% – that translates into over 600 persons killed each year. But every year, VAWA spends $26 million to states to enforce such harmful policies.

Likewise, many VAWA-funded programs engage in openly discriminatory practices. A Department of Justice Memorandum Opinion prohibits such illegal policies,[2] but discrimination continues to be widespread to this day.

Other Benefits

The Partner Violence Reduction Act also reinvigorates constitutional protections, fosters partner reconciliation when feasible, requires accreditation of educational programs to assure the accuracy of information, and improves program accountability.

The upcoming renewal of the Violence Against Women Act offers a historic opportunity to ensure our promises to victims are kept.

SAVE Stop Abusive and Violent Environments

SAVE: Stop Abusive and Violent Environments
P.O. Box 1221, Rockville, MD 20849
www.saveservices.org/pvra

[1] http://www.saveservices.org/false-allegations-awareness-month/survey-results/
[2] http://www.justice.gov/olc/2010/vawa-opinion-04272010.pdf

RenewAmerica

July 12, 2011

Violence Against Women Act: do the rights of men matter?

Carey Roberts

By Carey Roberts

It's been some 17 years since our nation declared war on domestic violence and enacted the Violence Against Women Act. It seemed like a good idea at the time. After all, who could be unmoved by tales of women trapped in lethal relationships, enduring ritual beatings at the hands of an overbearing mate?

But unnoticed to most, the Violence Against Women Act was soon hijacked by a radical ideology, a belief system that ascribed all partner violence to a single root cause — patriarchy. Soon the war on domestic violence became transmogrified into an unrelenting fusillade trained squarely on the male of the species.

It began with a propaganda-like effort to promote the view that women are incapable of engaging in physical violence. Or if they did lash out, it was only done as an act of self-defense.

So when University of Delaware researcher Suzanne Steinmetz published her watershed book, *The Battered Husband Syndrome*, the Gender Guerillas mounted a whispering campaign and called in a bomb threat to her daughter's wedding.

Having cleared the intellectual nit-pickers out of the picture, it was time to commence the real work of undertaking an extreme make-over of our nation's domestic violence laws.

First to go was the Fourth Amendment requirement for the existence of "probable cause" for arrest. This standard, drafted long ago by a group of dead white males, was replaced by VAWA's mandatory arrest provisions. Over the years, millions of dollars has been channeled to states to arrest a man based solely on an allegation.

Next to go was the 14th Amendment's guarantee of "equal protection of the laws." VAWA's Legal Assistance for Victims foots the legal bills of accusers, but not of the accused. Equal protection, *out the window!*

But legal formalities were allowing too many putative batterers to go free. So why not pull off the biggest civil rights heist in American history — let's transfer most cases out of the criminal courts and treat them as a civil matter? *Genius move!*

In civil court, you can dodge the Sixth Amendment's dictum that the accused must enjoy the right to "be confronted with the witnesses against him," since temporary restraining orders are routinely issued on an *ex parte* basis without the accused being informed of the charge.

Plus, the preponderance of evidence standard made it child's play to strip the accused of his home, children, assets, and reputation. Remember, the real goal is to overthrow the patriarchy, not to curb domestic violence.

Another fly in the ointment arises because in most cases, a woman who files a criminal charge later recants the allegation or refuses to cooperate with the prosecution.

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The solution? "Evidence-based" prosecution in which the DA files the case, even absent the star witness. Again, no need to allow burdensome probable-cause requirements to get in the way.

Another sticky wicket: Research shows half of all partner abuse is mutual — she slaps him, he shoves her, and off to the races we go! Mutual violence is a *verboten* phrase among the true believers, of course, because it challenges the unassailable notion that women are incapable of abuse. (*"Repeat after me..."*)

The solution? Promulgate so-called "predominant aggressor" policies that say when both persons are mixing it up, the police should arrest the male since he's the bigger and stronger of the two — even if the woman threw the first punch!

We're still not done. Next we broaden definitions so practically anything falls within the ambit of domestic violence. The Department of Justice's Office of Violence Against Women now defines domestic violence as "a pattern of abusive behavior in any relationship that is used by one partner to *gain or maintain power and control* over another intimate partner."

Did your spouse ever hand you a Honey-Do list? Was she attempting to exert power and control over you? *You betcha, you were a victim of domestic violence!*

But some vestiges of due process still remain, so we need to re-educate judges into correct thinking about these matters. We explain the judge's role has evolved from being a minister of justice to ensuring that abusers be "held accountable."

We then repeat the catechism that men are "overwhelmingly" the perpetrators of partner abuse, and it's ridiculous to even suggest that a woman could inflict harm on a bigger, stronger man. (Under no circumstances will you mention the name of Crystal Mangum, the disgraced Duke rape accuser who is currently awaiting trial for the fatal knifing of her boyfriend.)

As a result of all this legalistic gerrymandering, the problem is not just that our domestic violence system has eliminated the presumption of innocence. It's that even when a person is found innocent, he's still treated as if he was guilty.

No wonder these men sometimes snap.

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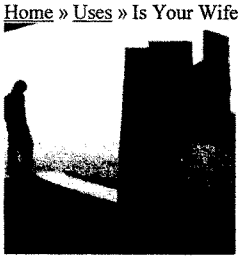

So you think your wife or girlfriend is cheating on you?

We are not going to talk about the right or wrongs of unfaithfulness, as that's a subject between you and your conscience. What IS important is that you can PROVE that your wife is cheating on you, so you can decide what you need to do about it.

Its tough for a man to catch a cheating wife

It takes a lot more to make a woman cheat on her partner, so when it does happen, men don't see it coming. Even worse is that a woman's natural superiority in communication skills and intuitive sensitivity means that you as a man are no match for her ability to cover up and lie about what she is really doing. Women instinctively understand every gesture, every smell, every small nuance of voice or facial expression and will instantly know what you are thinking and therefore throw you off the trail of her unfaithfulness. What man has has not been amazed at a woman's ability to spot a hair on the bathroom floor immediately to identify if it is her own or not!

Lets face it, men don't stand a chance of catching a cheating wife by intuition, so what's that answer for us men?

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Go to the source dude,read her mobile or cell phone

- The cheating wife's mobile phone is her Number 1 method of carrying on a affair. If you could remotely read her mobile, her superior sixth sense will be useless
- A committed woman is unlikely to give a man her phone number. Use SPYPHONE to see if there is a number there that you don't know, call it and pray is not a smoldering baritone that answers
- Cheating wives will make last minute liaisons or "lunch meetings" by sending SMS, or making a phone call. An SMS that says "need 2 c u so much" needs very little explanation!
- A cheating wife will frequently have to lie about where she is to cover up. With location tracking you can follow her alleged footsteps later to verify if she really is " with my girlfriends shopping" or if she was in a Holiday Inn on the other side of town

SPYPHONE evens up the odds for men and lets you

- REVEAL your cheating wife SMS even if she deletes it
- Call her and ask her where she is, and then confirm the location later (network dependant)
- Track her movements throughout the day in the form of Cell ID or Cell name if supported
- Know what number she is calling or receiving, even if the phone is set to silent mode
- Listen to her surroundings or tap her actual phone call

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What's New

- UPDATE – iPhone Gold version 4.10 to 4.15
- UPDATE – Spyphone Multimedia version 1.2 to 1.3
- UPDATE – Android Gold version 2.00 to 2.02
- UPDATE – Blackberry Gold version 1.06 to 4.03
- UPDATE – iPhone Gold version 1.06 to 4.10

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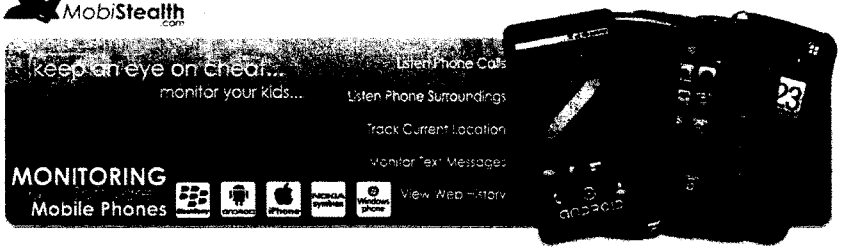

Catch Cheating Spouse with MobiStealth Cell Phone Spy Software

Mobistealth Spy Software for iPhone, Android and BlackBerry phones is extremely important to catch a cheating spouse. When you begin to notice signs of a cheating spouse, the best way to catch that cheat is to spy on his/her cell phone using spy software. Such software is required because the cell phone has become the modern day keeper of secrets and its uses are as versatile and diverse as their makes and models. So Mobistealth spy phone software is a must have spy app to expose all the secrets.

Signs of a Cheating Spouse

- Out of the house at irregular and different times than normal!
- New underwear and clothes: taking extra care about what they look like.
- Showering and bathing as soon as they step into the house.
- Secret cell phone behavior: taking and making calls in private etc.
- Lack of interest in intimacy!

So, once you begin to spot signs like those listed, then you more than likely have a cheating spouse on your hands and your best way of catching that cheat red handed is to monitor cell phone.

Mobistealth is Ultimate Spy Phone Software for Android, Blackberry and iPhone

You can set it up in less than a minute on the mobile phone you intend to monitor and then login to Stealth Club to view exactly what happens on the phone - all text messages, all phone calls, all websites visited plus more! The best part of mobistealth smartphone spy software is that you can view all this data from anywhere in the world in real time! It works in complete stealth mode - which means it can silently work in the background and record all activities on the phone. So Mobistealth Spy Software is your best bet to catch a cheating spouse.

Features of Mobistealth Smartphone Spy Software

Mobistealth offers a wide spectrum of features for monitoring the cell phone activity. Following are the details of all the supported features

Voice

Call Recording

Mobistealth spy mobile phone software enables you to record all calls made from/to specific numbers. The recorded calls will be uploaded secretly to your stealth club account, which can later be listened to at any time.

Call History

Find out the details of incoming and outgoing calls. You will find out when and who (based on the name stored in the mobile phones address book) is being called.

Call Duration

Along with call history you can also view the exact call duration of each call. This feature can be really helpful to find out the numbers which are frequently being called and have the longest call duration.

Spy Call/Live Listening to Surroundings

Smartphone Spy software will enable you to make a Spy Call. Now you can listen to surroundings of target phone holder immediately .

On Demand Surround Recording

Smartphone Spy software will enable you to remotely record all conversations in the surrounding of the phone. You just need to send a secret SMS and recording will automatically start. The whole recording will be uploaded secretly to your stealth club account.

Order Now

Latest Updates

Mobistealth Launches Lite version for Windows Mobile Phones

MEDIA COVERAGE

essentially the same.

more details

PC WORLD If your mission is to spy on someone who uses a BlackBerry or an Android phone, a service called MobiStealth (left, $80 for three months) promises to enable you to monitor...

more details

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Location

Location History

Now you can monitor the movement. The location information is updated automatically at a predefined interval. The location history can then be viewed by logging on to your stealth club account.

On Demand Location Information

This feature is offered only by Mobistealth blackberry and android spying software. You can get current location of target phone by sending the secret SMS at any time. The current location will be reported immediately through SMS reply.

Alternative Location Retrieval Method

This feature enables you to get location of nearest mobile tower when GPS is off or unavailable due to cloud cover or person being inside room. So now you can count on mobistealth to report location in all circumstances.

Order Now !

Data

Email Logging

View all the details of emails sent and received using blackberry spy software.

Web History

View the web browsing history.

Bookmarks

See all the saved bookmarks to any websites.

Picture Logging

Mobistealth android and blacberry spy app will upload all the pictures on phone to your stealth club account.

Video Logging

Any videos made through the cell phone camera will be uploaded to your stealth club account by android spy software.

Contact Details

View the details of all the contacts saved on the phone using Mobistealth cell spy software. This will enable you to find out the details of any masked contacts.

Text Message / SMS Logging

Android Spy software will enable you to read all incoming and outgoing SMS (Text) messages sent and received from mobile phone. Yes, this includes full SMS contents. You will be able to read everything even if it is deleted from the phone.

Order Now !

Security

SIM Change Notification (Only Applicable to GSM Phones)

This is a unique feature offered by Android Spy phone software. As soon as SIM is changed, a notification with new number will be sent through SMS to a predefined number. The notification number can be set any number of times through Mobistealth website.

Encrypted Communication

All communication between the phone and MobiStealth website is secured using the industry standard encryption methods.

Phone Wipe

Incase if you have sensitive data on your phone which cannot be risked and phone is stolen or lost and you want to protect your privacy. You just need Android Spying Software as it will enable you to wipe all data on phone through secret SMS.

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Announcements

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F Secure seem to think that its ok for them to interfere with legitimate, legal and accountable software. Who appointed them judge, jury and executioner anyway, and why wont they answer our emails, so we have to ask who is the real malware? Here is how to remove FSecure malware from your device. Please don't believe the fsecure fear mongers who simply wish you to buy their products.

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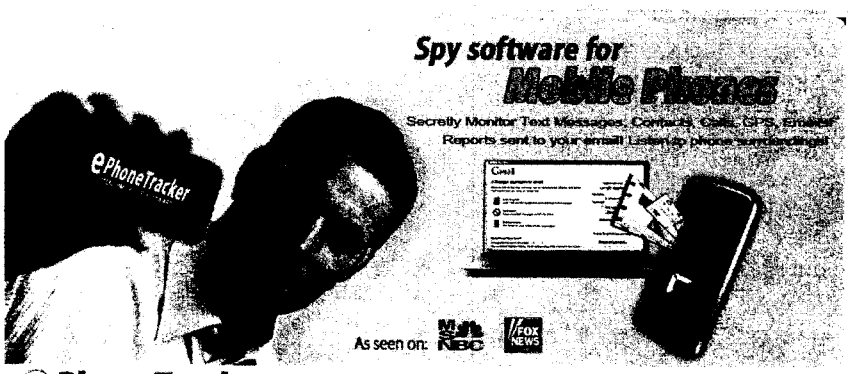
Seems like some other companies copying our systems. Cool! Imitation is the sincerest form of flattery, and we thank them for their compliments ;-). We were the first of our kind and still remain the #1 and best spyphone's money can buy. From our features, ease of use, top notch support, FlexiKEY licensing system, location tracking, affordability and sheer number of devices supported, FlexiSPY is the best spyphone you can buy

Please delete your data regularly

Customers, please remember to download and delete your data regularly. You can download into PDF, RTF or CSV formats, so it also looks pretty!

It is the responsibility of the user of FlexiSPY to ascertain, and obey, all applicable laws in their country in regard to the use of FlexiSPY for "sneaky purposes". If you are in doubt, consult your local attorney before using FlexiSPY. By downloading and installing FlexiSPY, you represent that FlexiSPY will be used in only a lawful manner. | Logging other people's SMS messages & other phone activity or installing FlexiSPY on another person's phone without their knowledge can be considered as an illegal activity in your country. | FlexiSPY assumes no liability and is not responsible for any misuse or damage caused by our FlexiSPY. It's final user's responsibility to obey all laws in their country. By purchasing & downloading FlexiSPY, you hereby agree to the above.



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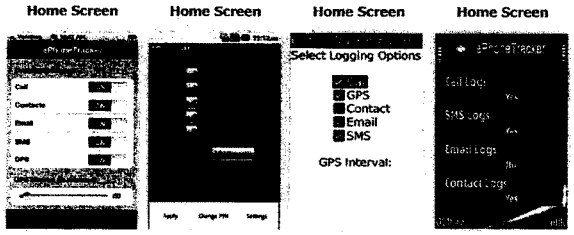

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-- Samantha
Actual Customer

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64% of parents look at the contents of their child's cell phone and 62% of parents have taken away their child's phone as punishment.

Parenting Statistic

70% of married women and 54% of married men never know about their spouse's affair.

Marriage Statistic

50% of businesses experience annoyance among employees because there are no guidelines for company cell phones in place.

Labor Statistic

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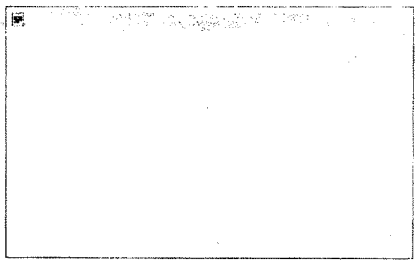

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THE PUBLIC TESTIMONY ON FALSE ALLEGATIONS OF DOMESTIC VIOLENCE AND THE MORAL HAZARDS AND PERVERTED JUSTICE OF (VAWA) THE VIOLENCE AGAINST WOMEN ACT

BY CARL STARLING, JR.
A US CITIZEN of PRINCE GEORGE'S COUNTY MARYLAND
SUBMITTED JULY 19, 2011

Before:

THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
224 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510

SENATOR PATRICK LEAHY, CHAIRMAN
SENATOR CHUCK GRASSLEY, RANKING MEMBER

Chairman Leahy, Ranking Member Grassley, Honorable Members of the Committee, Ladies and gentlemen,

FIRST, I want to congratulate your efforts on what is very important work: Violence Against Women. Five years ago, you may recall the nationally publicized case of Yvette Cade, a woman that was set on fire by her husband and burned over 60% of her body.

A few months later, in that same Maryland court jurisdiction, a female friend of mine felt she was having trouble in her marriage. She wanted out of her marriage. She reported to police and I quote from EXCERPTS of her WRITTEN STATEMENT TO POLICE of a violent and severe beating. She described events being: **"Touched inappropriately... Hit in the face with a closed fist... slapped... slapping me... pushed... slammed into the bathroom wall... thrown into the bathtub... lifted up from the floor while simultaneously choking me with two** THE

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hands the whole time... thrown to the floor and HER HEAD BANGED into the floor 8 or 9 times."

The hearings and trials lasted 10 months. In a jury trial, her husband was found NOT GUILTY. Can you believe it, NOT GUILTY! MY FRIENDs husband was found NOT GUILTY because there was no evidence of a severe beating, no evidence of violence. At trial, MY FEMALE FRIEND could not produce ANY EVIDENCE of FACIAL TRAUMA, FACIAL BRUISING or FACIAL injury of any kind consistent with, or possibly RESULTING from any of the ALLEGATIONS. She testified ALONE. NO POLICE OFFICERS, NO DOCTORs, NO DNA, NO OTHER PERSON testified to the ALLEGED abuse or to any PRIOR abuse, BECAUSE THERE WAS NONE. SHE claimed there were BRUISES. Bruises that no POLICE saw; that NO DOCTOR saw; even though she had been seen and examined by both.

The husband had a different story. He said his wife had **attacked him**. He said his wife lied and made false accusations of a severe and violent beating. The husband said he called the police and they ordered his wife to leave the home. Police saw no one was hurt, no probable cause, and no one was arrested on the scene. The husband immediately filed charges. Twelve hours later, his wife filed charges. Then, she escorted police back to the residence. She opened the door, ID'd her husband and he was arrested. The husband had never been charged, arrested or

trouble with the law before. The husband had never been abusive and has always worked in public service and is very well known in his community as a former radio announcer at several Washington and Baltimore radio stations. Presently, he is a federal employee and maintains a security clearance for his employment. If guilty, he could have lost his job, his home and eligibility for any future work in the federal government. Legal fees and divorce cost him over $150 thousand dollars.

Ladies and gentlemen, I am the HUSBAND. THE FEMALE friend was my WIFE. The excerpts are testimony of public judicial record from case number CJ062021 in Prince George's Circuit court. This was no fling with someone I didn't know. We had a history of over twenty years. We were married for six years. My former spouse, HELENA TYLER-STARLING, had also worked in federal service. She served as PRESS SECRETARY for CONGRESSMAN EARL HILLIARD until 2003 when the congressman lost re-election. Out of a job, I encouraged her to finish her degree and she began a legal studies program at Maryland University, University College. This is where she learned about VAWA and how to set-up her husband by ATTACKING him, then claiming he was an ABUSIVE HUSBAND, induce divorce and get out of her marriage. The problem for her was that the HUSBAND did not REACT VIOLENTLY as she thought and wanted. Most marriages do not withstand an arrest by the other spouse,

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regardless of true or false allegations.

By way of PROTECTIVE ORDER, VAWA enables, lures and encourages WOMEN to initiate acts of violence, arrest their intimate male partner, then the FEMALE may enter into or continue her secret trysts or relationships and commit LEGALIZED ADULTERY under STATE SANCTION and STATE PROTECTION. The accused male is then compelled by the court to provide financial support and living expenses to his FEMALE FALSE ACCUSER.

My former spouse was an attractive woman. In public she was very friendly, intelligent, very well dressed, very likeable and had many friends. But, privately and at home, she was like Kacey Anderson; a convincing and manipulative liar. She was insecure, wanting to control the relationship and my associations, extremely jealous of any woman in my life, including family or friends. She was possessive, angry, self centered, narcissistic and had an explosive, uncontrollable temper. From day to day, I would not know what would set her off. To her, yelling, screaming, throwing things, breaking things, constantly checking the CALLER ID and rifling my clothes for OTHER WOMEN's phone numbers was normal. Mood swings and bouts of crying were also how she manipulated family and friends trying to convince them that her husband was abusive.

MY FORMER SPOUSE was also A SERIAL VICTIM. SHE told me she had charged a

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BOYFRIEND with STALKING in her home state of ALABAMA because he broke off the relationship and refused to marry her. SHE told me she HATED MEN because her FATHER abandoned her and her mother. From a young girl, SHE would not see her FATHER again until his death in 2005; more than 20 years later. She told me she hated men because her mother had been abused in her three marriages. You see, I didn't understand that my wife, at the time, NEEDED PSYCHOLOGICAL and EMOTIONAL THERAPY. She may have been DEPRESSED, or might have been BI-POLAR or that her behaviors were consistent with BORDERLINE PERSONALITY DISORDER, until I saw a 1981 movie, MOMMIE DEAREST...

By EXAMPLE, My FORMER SPOUSE filed a PROTECTIVE ORDER claiming she was so AFRAID and in FEAR of her LIFE, court records state that she stayed with a neighbor... A neighbor that lived about 150 feet, directly across the street.

In charging my wife at the time, the problem was COUNSELING or TREATMENT were never ORDERED for her. Or even the couple. JUST ME... AND, ONLY IF I PLEADED GUILTY. I chose divorce because I couldn't afford a second incident. Remember, she had done this before. Only after a diagnosis of PTSD (Post Traumatic Stress Disorder) was I aware that I WAS NOT MARRIED TO A LOVING PERSON and I WAS NOT IN A HEALTHY

relationship and I DESERVED BETTER.

I found out about VAWA because my FORMER SPOUSE left a copy of the MARYLAND statutes on the kitchen table on the day incident. This was pre-meditated. .A PLAN. I'm here today to ask that each of you as individuals think not only about Violence against Women, but VIOLENCE CAUSED BY WOMEN. Some women are abusing laws that were designed to shield Women from abuse. Instead they are using these laws as a weapon to punish and destroy lives and break up families.. .to get child support, spousal support, to induce divorce and other benefits creating FATHER-less homes and girls that are not well adjusted blaming their FATHERs and MEN for all of their life's problems. Maybe you'll understand better when it's your SON, your FATHER, or your BROTHER or HUSBAND that is falsely accused of domestic violence.

If you remember nothing else from my statement, NEVER FORGET what happened at DUKE UNIVERSITY, or the false LATINO rape abduction of RUN-A-BRIDE story of Jennifer Wilbanks or the false BLACK MAN that drowned Susan Smith's children. These women were prosecuted, but this is just the tip of the iceberg. MOST false accusation cases, like mine, are not prosecuted and FALSE ACCUSING WOMEN go free or ARE REWARDED for their ABUSE AND VIOLENCE only to a ABUSE again and ABUSE of the LEGAL PROCESS creating a new

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class of victims. MEN falsely accused of DOMESTIC VIOLENCE and victimized TWICE; once by the judicial system, AND once by the FEMALE ACCUSER. In the end we all pay a price of social injustice in criminalizing innocent males and ABUSE of LAW and PUBLIC POLICY with no consequence or restitution.

Teri Stoddard, S.A.V.E.
Wednesday, July 20, 2011 05:31 AM
Subject: Testimony for VAWA hearing

We need to do what we can to protect the children first.....They have needs being neglected. Mr moms hands were tied by the wrongful judge.

We are not fighters at all. We try impossibly hard to get along. We have 4 vulnerable confused grandchildren involved in the the very sad system and situation fending for themselves.

Dr Phil has admitted women too do abuse. I have heard him on his show at least once. Many enotes had been sent to Dr Phil.

The WA state Family Court Judge did learn of these issues and more---

- **Father falsely arrested** -wk end stay (PD said he was arrested because it was her people who called 911 from Cali)
- Mr mom father was **proved not domestic violence**
- False cry wolf done by troubled mom **(several false cries in several counties/states)**
- Children's 2 counselors testified-----No more counseling ordered
- **CPS superv, s/worker and detective lied. They all lost their jobs**-yet the kids flounder today.

The children need and want mental health counseling. If you know anyone who will help with that please do let me know. It is so wrong the children are not able to have a safe real voice. If their needs are further ignored???

Our grandchildren matter now and so many other victims.

Thanks again,
K M
WA state

Teri C. Stoddard, Program Director
Stop Abusive and Violent Environments
P.O. Box 1221
Rockville, MD 20849
301-801-0608
SAVE is a non-partisan 501(c)3 victim-advocacy organization
working for evidence-based solutions to domestic violence.

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Written Statement of Mark Kenneth Shull, LTC USA (Ret), resident of [redacted]
Submitted in connection with the Hearing held on
Wednesday, July 13, 2011
before the Senate Committee on the Judiciary on
"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

To Senator Leahy and members of the Senate Committee on the Judiciary: Thank you for the opportunity to submit this written statement. I am a retired military officer with 25 years military service, a very high level security clearance, and no police record. I am a father of two sons.

I am now a victim of marriage fraud, false allegations, and a tarnished reputation. In June 2010 my Russian fiancé, Galina, and her teenage son arrived in America for the first time on K-1 and K-2 visas. On 2 July 2010 Galina and I were married. Five months later Galina abandoned our marriage, in a sequence of events made possible by current US policies and the way the Violence Against Women Act is being administered.

Shortly after our marriage, Galina acted as though she was not committed to our marriage. She displayed knowledge of how to avoid her marriage to her American husband, and still be able to stay in America. On 16 December, she called 911 and said I had threatened her and her son with a firearm. The police arrived, and after a two hour investigation they concluded in their report that, "Mrs. Shull and the boy appeared vague and untruthful when questioned about details regarding the firearm. I detected feeling of contempt toward Mr. Shull, not fear". The police report continues, "Mrs. Shull told me she was concerned that she couldn't get her passport and a (police/911 call) report so she could stay in the United States". Galina knew the first step was to get a police report to substantiate her next step.

After spending the following two weeks with neighbors, Galina and Andrey went to a VAWA funded shelter for "battered" women somewhere in Portland, Oregon. I have never known their whereabouts since then. Apparently all Galina needed to get into the shelter was the police report, despite the fact that report showed Galina and Andrey to be untruthful. I was never contacted by anyone to ask my side of the story. Galina claimed she was abused and that is all that was required of the shelter to provide her with food, shelter and an attorney, all at US tax payer expense. She is fraudulently taking resources away from US citizens who really do need these services.

In January Galina had me served with a restraining order that completely stopped all communication between the two of us. The restraining order also required that my firearms be given up, and that I have no access to firearms. The restraining order was issued based on Galina's false affidavit.

On 7 March in Multnomah county court, a hearing on the restraining order was held. The judge ordered the restraining order sustained, despite a total lack of factual evidence from Galina and her attorney. In the hearing my witnesses were the county Sheriff who did the investigation the night Galina called 911, one of my sons, and the neighbor Galina and Andrey stayed with after they left our home. All my witnesses testified that Galina and Andrey had nothing to fear from me, that Galina is in fact not afraid of me, that I loved Galina very much and wanted a lasting marriage, and that I am not known for

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violence and that my conduct and reputation does not reflect the type of person who would threaten his wife and stepson with a firearm. Galina got on the stand and swore an oath to tell the truth, yet her testimony was one of false allegations and lies. She perjured herself again and again. Galina knew she needed the restraining order to use as a basis to show that she needed to "escape" from the marriage to be safe. While Galina was on the stand, my attorney asked her, "Mrs. Shull, have you submitted an I-360 (Battered spouse) form to USCIS"? Galina replied, "yes".

Galina knew that in order to have a chance for the I-360 to be approved, and have a chance to stay in America without honoring our marriage, she needed the 911 call police report, she needed a restraining order, she needed to allege that she was afraid of me, and she knew that a shelter would be available to support her and her son until the I-360 was approved and her green card was issued.

Although, I would like to discuss this case with USCIS and the individuals who will adjudicate the I-360, due to current VAWA regulations and USCIS procedures, USCIS has not, and will not be authorized to hear my side of the story. This fact is widely known worldwide by people who want to immigrate to the United States. It is also well known that the K-1 Fiancée visa and marriage to an American spouse is the fastest way to get here. This causes a condition whereby cold hearted individuals can betray good Americans and merely use them and their money to get a green card, with no intention of honoring their marriage.

The personal cost is huge. What has happened to me is very expensive financially. The restraining order is an impediment to finding employment. The emotional cost is even greater, for me, my family, my neighbors and my community.

American security is also at risk. It is not just the fact that that US law is being used and manipulated, and that goods and services are being granted to undeserving and untruthful aliens. The same process that Galina used could be used by foreign intelligence organizations to get their personnel into America to conduct long term operations contrary to the security of the United States.

The VAWA act must be modified to preclude its misuse by unscrupulous foreign individuals as well as foreign governments. The procedures used by USCIS in adjudicating the I-360 form must include USCIS communication with the American spouse.

Thank you for your time in this matter.

Sincerely,

Mark K. Shull

LTC USA (Ret)

[redacted]

Testimony of

David R. Thomas M.S.
July 13, 2011

David R. Thomas, Program Administrator Domestic Violence Education, Division of Public Safety Leadership, Johns Hopkins University
Testimony before the Committee of the Judiciary
United States Senate

Testifying in regards to the importance of the Violence Against Women Act to Law Enforcement

Chairman Leahy, Ranking Member Sessions, and distinguished members of the Committee, thank you for the opportunity to discuss the success of the Violence Against Women Act to Law Enforcement and the importance of reauthorizing in 2011. For over a decade, The Division of Public Safety Leadership has been preparing public safety professionals to make a difference in the organizations and communities they serve. The Division's core purpose is developing public safety leaders through teaching, scholarship, and community outreach. Our goal is to address society's critical public safety challenges by being the premier academic institution for public safety professionals and organizations. The public safety issue that I was brought on board to address in 2002 was violence against women crimes. VAWA funding has provided critical support to our efforts to provide technical assistance, training, policy, and curriculum development at the state, local, and national levels. In addition, it has positively impacted our work to bring law enforcement leaders enrolled in our programs, both present and future, up to speed on these issues.

I am a former law enforcement officer with the Montgomery County Department of Police located in Montgomery County, Maryland. I retired in December of 2000 after 15 years of service. My final assignment in the department was with the Domestic Violence Unit (DVU), which I helped found (1997, first in the state of Maryland). In addition to helping founding the DVU, I was responsible for the department's curriculum development for domestic violence training, as well as policy development on domestic violence related issues. Upon retirement I was honored to have been the 2nd highest decorated officer in the history of the department.

When I entered law enforcement in 1986 the standard operating procedure for responding to domestic's was to go in, separate the "combatants", perhaps get someone to leave for the night, and get back into service ASAP. This was done without so much as taking a report.

If there was a question of whether or not to make an arrest the burden was put upon the shoulders of the victim, whereas if the crime had been the robbing of a bank we never asked the bank manager whether or not they wanted the robber arrested.

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In 1990 I responded to a home that I had been to a number of times, and following our standard operating procedure I handled the call quickly and went back in service without so much as taking a report. But something about this call was different; something that I couldn't articulate kept telling me this victim was in grave danger. Less than 3 weeks later we were called there again, but this time as circumstances unfolded this same victim's estranged husband shot her to death in front myself and 3 other uniformed officers. We sought cover and returned fire as he stumbled back into the house and subsequently committed suicide.

This was a tragic day not only for the victim and the perpetrator, it was tragic for their two school age children; for numerous relatives; for shocked neighbors; and last but not least for four officers who witnessed the carnage.

As one of those officers I was devastated not only by the senseless loss of life, but also by the lack of our ability to prevent such a tragedy. I was frustrated by the knowledge that we had responded to this residence numerous times and yet our response was more about getting in and out and not effectively addressing the problem at hand, just making it go away for the moment. I was haunted by the fact that when we got there this last time both the ongoing victim and the ongoing perpetrator were alive and well, and within 5 short minutes both were dead.

With the passing of the Violence Against Women Act in 1994, a sea of change began. At the time I was a full time instructor at our training academy teaching Criminal Law, Firearms, Street Survival, Defensive Tactics, and Physical Training.

The Violence Against Women Act was responsible for an infusion of funding for domestic violence response, education, and training and I was lucky to be pegged as a Domestic Violence Instructor not only for my agency but throughout the state of MD as well.

Since that tragic day in 1990 it was clear that incumbent in responding effectively was providing officers the proper training and tools for handling these types of calls for service. This meant breaking from the failed way we had been handling this category of service to our citizens. It meant providing officers the facts and circumstance that they would need to look for and to listen for, and the subsequent actions they need to take.

In the beginning there was a great deal of push back by veteran officers who despite the grizzly facts, believed they had been doing it correctly for years. These individuals fought transformation and saw the changes as unnecessary and overbearing.

As the infusion of VAWA funding drove the research and provided much needed factual data, the walls of resistance slowly but surely began to crumble. Officers were thus presented with

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this information and reminded that the constitution does not stop at the door step; that it exists in the home just as it does on the streets. This was a perspective that many hadn't considered but, like it or not, had to agree with.
The training reminded them, as it continues to do today, of their duty to uphold the law against any and all criminals. This may seem obvious, but for whatever reason these types of crime weren't then seen the criminal act(s) that they represent, even to this day. Here the goal is to ensure that when the average cop hears the term "domestic violence" it automatically resonates as criminal activity just as the terms "armed robbery", "car jacking", and "drug dealing" do.

Due to the historic atmosphere within the police culture and society at large, changing the types of circumstances being considered "private family matters" would need certain convincing to achieve buy in. We knew some things would be harder to sell than others when it comes to getting law enforcement officers to change their ways for a more just outcome; but at the same time we knew the right thing had to be done.

The challenge then, as it remains today, was about getting individuals to walk in the shoes of those they swore to protect and serve, and to see things in clear perspective.

One thing taught in police academies throughout this country from day one is that their #1 job everyday is to go home safe. If you then look at the fact that 25% of officers killed feloniously by a firearm last year died intervening in domestics there's an immediate realization that lethality assessment is about the safety of everyone involved; for if we can see and read the signs, we can better predict the storm.

Over the years law enforcement officers across the country charged with training their fellow officials in this innovative way of policing have taken on the challenge utilizing numerous methods to achieve a paradigm shift. As I began to understand the culture of my profession as well what makes us tick; to whom we as officers look up to; and what gives one credibility, I shaped my own game plan.

So, I became the lead instructor for Defensive Tactics and Physical Training, I became a Special Weapons & Tactics (SWAT) officer and a Hostage Negotiator. I completed in and won gold medals at the International Police Olympics and the Toughest Cop Alive Competition. It was with all of this on my "Credibility Resume" that I took on the challenge of changing hearts, minds, and behaviors with respect to responding to violence against women crimes, and I am proud to say that it worked. I am proud to say that I have had more officers than I can accurately count approach me privately and say, "You know Dave, when you first began training us on this stuff I thought it was a bunch of BS, but since you were saying it I figured I would give it a chance." They would go on to add, "then I went out there on the street and started seeing for myself that most of what you said is true, these perpetrators are criminals, when they break the

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law it's our responsibility to lock them up, it's about not only the safety of women and children, it's about the safety of everyone involved."

Slowly but surely things began to change. As the funding continued trainings were added and updated; innovative policies were implemented; and officers began to receive more adequate training. As a result, effective on-scene self defense and/or predominant aggressor determinations began to be routinely made. On-scene arrests increased as did calls for service; which is a positive because citizens began to realize that now when we come out we'll do something about the violence. ***One of the big positives to be noted is a corresponding decrease in recidivism with the aforementioned increase for calls for service***. In addition, felonious assaults began to decline as did domestic violence related homicides. The decrease in recidivism rates along with corresponding increase in misdemeanor arrest is seen as a tremendously positive sign coupled with decreases in both intimate partner felonies and homicides.

As we moved forward, nol pros rates, or cases in which Prosecutors dropped cases due to a lack of evidence, went from a high of 55-60% down to 3%. These changes occurred, and continue to occur due to an ongoing effort to educate, update, analyze, fine tune and adjust our response to best serve the communities in which we operate. All under funding from VAWA.

In Maryland these efforts have included the implementation of the Lethality Assessment Protocol throughout the state in which local service providers collaborate and work hand in hand with local law enforcement to prevent domestic violence related homicides. Our average count of DV homicides was 69 for the past 25 years, since statistics of this type had been kept. This was a statistic that I was painfully aware since that tragic day in 1990 when the victim I mentioned earlier was slain before my eyes. It was clear that something needed to be done. Thus the Maryland Network Against Domestic Violence formed a committee, of which I am a proud member, of community stakeholders which included researchers, law enforcement, prosecutors, health care providers, and advocates to look at how we could impact this pressing issue.

One of the alarming things that I and my fellow developmental committee members came to realize was that in a large number of the homicide case victims in Maryland, as well as throughout the country, who never sought and/or were never offered victims' services. Thus one of the major goals of the program was to better connect victims to services in an attempt to get them out of harm's way. That being said, an important aspect of the protocol was to ensure that responding officers conduct an abbreviated lethality assessment and depending on the outcome, proactively connect victims to local service providers.

The program began in 2007 with 5 out of 115 law enforcement agencies participating, and the results speak for themselves. For over the past 5 years, as the degree of participation statewide has increased with 106 law enforcement agencies participating to date, Maryland has seen a

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corresponding double digit decrease in the domestic violence intimate partner homicide rate, from:

- ✓ 56 in 2007-2008;
- ✓ 45 in 2008-2009;
- ✓ 33 in 2009-2010; &
- ✓ 27 in 2010-2011.

As you can see, these numbers are pretty dynamic, especially at a time when other areas of the country are reporting increases in their domestic violence homicide rate.

This would not have been possible without VAWA funding. Over this span of time victims who had never had the benefit of services were connected to them. At the same time, officers were provided the information of what to look for, and what to listen for in these cases. Officer were trained to read the signs that could provide guidance and safety; information that I yearned for when tragedy struck some 21 years ago, information that could have saved lives. The protocol's continued success in Maryland, as well as it's replication across the country is a reality with ongoing funding. Although seeds have been planted in 13 other states to implement like programs, this falls far short of what should and could be done in every state and every community across the country.

This is but one of the numerous advances we have achieved and continue to work towards in effectively responding to domestic violence. Although the numerous gains and movement forward in some areas of the country is impressive, it's just not enough. We all have felonies as well as homicides that could be prevented. Our efforts must continue, and our dedication must remain steadfast. These efforts must stay put until every community enjoys the benefits of known best practices; for many of the ground breaking gains remain accessible to too few.

We have come a long way but; as long as these crimes remain the most under-reported; as long as in excess of 15.5 million children are annually exposed to DV; as long as we are becoming increasingly aware of elder abuse, sexual assault, stalking, and dating violence; and, as long as the domestic violence related homicide rate remains (although it has been reduced) a significant issue throughout our communities, our work is far from being done.

We need to continue to work every day to combat stalking, sexual assault, dating violence, and domestic violence. The change we have seen must be viewed as the effective beginnings of a long voyage whose safe and proper course must be maintained. We have seen a great deal of progress; yet there is much more to be done to ensure that no one ends up an intimate partner homicide statistic. To ensure that victims, and their children, can lead safe and productive lives. Thank you for your work to end violence against women – peace can be achieved by stakeholders' stepping up to the plate and working towards a common goal: justice.

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On Behalf Of Teri Stoddard, S.A.V.E.
Subject: VAWA hearing testimony submission
July 13, 2011

TO WHOM IT MAY CONCERN

My name is Michael A. Thompson, of Winston-Salem, North Carolina, and the following statement is a summary of the **False Accusation of Domestic Violence against me on August 23, 2008**. I had never been accused of anything except minor traffic violations before my live-in girlfriend accused me of Domestic Violence at my Townhome residence at 1220 Collegian Terrace early on that Saturday morning. My ex-girlfriend was "Bipolar" and was known in the community where we lived as emotionally explosive, and had a violent past history of which I was unaware before we started our relationship.

She literally exploded with undue anger perhaps a dozen times during verbal arguments with me over the course of nine months. She was pretty bad about throwing things in the house and had physically struck me on several different occasions. I had done nothing physically to her to warrant such a reaction. I have never struck a woman, period. Our arguments mainly centered on the way she spent far too much money, and her irritation with the lack of space in my small Townhouse, and the difficulty I had in following her continual housekeeping instructions. She always seemed in a bad mood when waking in the morning, until she took some sort of behavior-moderating medicine pills at breakfast.

I had never been in a relationship in which one person used harsh language against another, let alone one in which one person hit another. I was definitely confused about what to do, since she continually said she was unable to find suitable employment and had to drive to Virginia often to tend to an aging father. I couldn't simply ask her to leave under those circumstances. Our relationship had started well at first, and I kept hoping it would improve. She would occasionally admit she was difficult to live with, and asked me to sign a statement she prepared saying that I would not ask her to leave my house until she was financially stable again. She had lost her health insurance because of non-payment, and her prospects for the kind of work she wanted appeared bleak. She took tests for rheumatoid arthritis because of fear of contracting the same illness that crippled her favorite aunt.

She was very depressed and started frequent arguments and engaged in prolonged bouts of yelling about the difficulties of her life. I asked her several times to clarify the things that upset her, and she wrote a note, which I have, in her handwriting, saying that she had lost her grandmother, lost her job, was stressed because of moving from her Condo into my Townhome and then from one room in my Townhome to another, that she had been accused of a crime [She had been charged with fraudulently accepting unemployment benefits], had no money, had an "abusive / unloving manipulative boyfriend"

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[referring apparently to the many arguments I'd had with her], that her aunt had died, and her condominium neighbors were uncooperative and unhelpful.

The atmosphere in August 2008 was so stressful in the Townhome that I called a friend of mine, a university professor, and confessed to him that she had hit me several times in the past and needed a place to stay in his house for a while until she had composed herself. I had no other place to go that I knew of. She was especially verbally abusive the he night of Friday, August 22nd, to both me and her parents over the phone. She was preparing a trip to her parent's home to help care for her father again and was angry about that and also angry that I had refused some more furniture she had recently acquired. She decided to load the furniture in her pick-up truck and transport it to her parent's house for their use. She began yelling that I was slowing her down, although I had worked very hard to help her with all of this.

Early on the morning of Saturday August 23rd she told me again that she was contemplating suicide, for reasons that were not clear to me at all. She had indicated the same thing to another student who previously stayed in my house. I strongly objected to this and did not remain in her bed but moved to another room to continue sleeping. **She knocked loudly on my bedroom door, and as I opened it she began continually and aggressively yelling about everything troubling her. I called her mother and begged for help and was told that she was basically beyond help, which was not helpful at all. She then began throwing her resume papers and legal documents on the floor in the hallway, tearing her CDs into shards one by one (which could, I shuddered, be used to cut wrists), straddling her strewn-out paperwork on the floor, yelling that nothing mattered anyway, grabbed the wireless phone from my hand as I called her Condo friend for help, and threw the phone against a wall. She then threw the wireless phone in her own bedroom against another wall.**

At that point I held her arms together in the attempt to prevent her from destroying more of her property and mine, and tried to find the key to her room so that she couldn't lock herself in and really tear things up or even commit suicide before I could obtain help from someone, somewhere. I kept thinking about calling friends or acquaintances, but also about police. Keep in mind that all of this happened very quickly, and was something that I was unprepared for. Then she walked into my smaller bedroom and tried to lock herself in. I stopped her and we tussled while I tried to get her out before she threw the wireless phone in that room as well.

After I got her out of the room she bit my arm deeply and I simply sat on the floor in shock as she went back in my room and called 911 from her cell phone and said her boyfriend was hitting her. I then walked downstairs, dressed, and waited for the police, and opened the door immediately when

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they knocked loudly on the front door. I was relieved that they had come, but was also naturally fearful of the circumstances. I indicated that the worst I had done was tapping her face twice with my right hand while holding both her arms together with my left hand and asking her to stop angrily yelling and throwing things. They saw no evidence whatever that she had been abused, but noted that I was clearly bitten on the arm, for which I have documented evidence from my doctor. One of the three police officers present angrily said to her to quit yelling at them and clearly indicated that they didn't know "who to take downtown" and asked me if I wanted to press charges against her, which I sincerely wish I had seriously considered.

Later when I returned to the house to pack and leave to my friend's home a different set of police officers came to the house and I was handcuffed and taken to the local county jail for 2 ½ days. The angry discussion my girlfriend had had with this first set of officers had evidently been unsatisfactory to her and she had then drove downtown to a police station and pressed false charges there, instead. At the hearing a couple of weeks later I was declared innocent of the charge of restricting a 911 call, and the judge only suggested that I volunteer for Duluth Model counseling for 26 weeks.

Everything I did to my ex-girlfriend was part of a non-malicious attempt to restrain her from harming her own property and mine, from yelling uncontrollably, and from following through on her multiple statements to me that she was thinking about committing suicide.

Dr. Jane A. Van Buren, Executive Director
Women Helping Battered Women, Inc.
Testimony prepared for the Committee on the Judiciary
United States Senate
The Violence Against Women Act: Building on Seventeen Years of Accomplishments
Wednesday, July 13, 2011

Senator Leahy, Senator Grassley and distinguished members of the Committee. My name is Jane Van Buren and I am the Executive Director of Women Helping Battered Women in Burlington, Vermont. Thank you for the opportunity to talk about the importance of the Violence Against Women Act, in particular how my organization has used crucial VAWA funds to serve victims of domestic violence and their children successfully in Vermont.

In 1994 when VAWA was passed, WHBW served approximately 3,200 individuals and received roughly $50,000 in federal grant money. Today we directly serve approximately 4,500 individuals and receive $485,000 in federal grant dollars. What VAWA has allowed us to do is provide women, men and children with programming that is increasingly comprehensive and sustainable and which ultimately leads victims to independence and freedom from violence. This landmark legislation filled a void in federal law that had left too many victims of domestic and sexual violence without the help they needed to restore their lives.

Women Helping Battered Women was founded in 1974 to provide emergency shelter to women fleeing abuse. From 1974 to 1994 our advocacy consisted of sheltering women and children, responding to hotline calls and helping women secure relief from abuse orders. There was no money for paid staff but volunteers kept the shelter doors open and answered the hotline calls. We were a valuable, if underfunded resource in the community but our services did not go far enough. Victims with no money, no credit, no employment history and no confidence in their ability to be self-sufficient and to keep their children fed and housed all too often ended up returning to their batterer. They lacked the resources to do anything else. Their choice too often came down to a life of violence or a life living on the streets.

Furthermore, national and state policy did not recognize the seriousness of domestic and sexual violence and the impact that systemic abuse and violence against women has on civil society. That all began to change when Congress passed the Violence Against Women Act. Propelled in part by VAWA, our Nation has made remarkable progress in recognizing that domestic violence, sexual assault, stalking, and dating violence are crimes, and in providing legal remedies, social support and coordinated community responses. Since enactment of

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VAWA, the rates of domestic violence including domestic violence homicide have declined, more victims have felt confident to come forward to report these crimes and to seek help, and states have passed more than 600 laws to combat these crimes. Despite this progress, however, our country still has a long way to go. Millions of women, men, children, and families continue to be traumatized by abuse. We know that one in four American women and one in seven men are victims of domestic violence. One in six women and one in 33 men are victims of sexual assault, and 1.4 million individuals are stalked each year.

Over the past seventeen years, based on demonstrated need and with the support of VAWA, Women Helping Battered Women has built a strong response to domestic violence in Chittenden County, Vermont. We provide comprehensive services for those affected by domestic violence who are seeking immediate and long-term help to escape abusive situations and improve their lives. This includes support and counseling for children exposed to and affected by violence, transitional and short-term emergency housing, legal advocacy and collaboration with law enforcement, employment and job readiness training, credit counseling and repair, crisis intervention, safety planning and extensive public education and training.

VAWA programs are necessary in order for us to continue in our efforts to address these critical and on-going needs. Women Helping Battered Women receives money from The STOP (Services, Training, Officers, Prosecutors) Formula Grant program, which is one of the most comprehensive and effective means of reducing domestic and sexual violence. STOP grants provide resources to law enforcement agencies, prosecutors, the courts, and victim advocacy groups such as WHBW to improve victim safety and to hold offenders accountable for their crimes against women. We also receive funds through The Transitional Housing Assistance Grants program which has enabled us to develop an innovative housing program in Burlington in collaboration with the Burlington Housing Authority. The Transitional Housing Assistance Program is essential to our ability to provide safe havens and related services to victims fleeing domestic and dating violence, sexual assault and stalking. In the midst of a mortgage and housing crisis, transitional housing is especially important because long-term housing options are becoming increasingly scarce.

Dr. Jane A. Van Buren, Executive Director
Women Helping Battered Women, Inc.
Testimony prepared for the Committee on the Judiciary
United States Senate
The Violence Against Women Act: Building on Seventeen Years of Accomplishments
Wednesday, July 13, 2011

Women Helping Battered Women, like so many other service providers across the country seeks to initiate social change and build healthy, violence-free communities by providing vital comprehensive support services to all victims and survivors of domestic violence, as well as their children. This becomes simultaneously more challenging and more important during difficult economic times. The safety net VAWA has provided survivors over the years is now a lifeline for many. The economic pressures of a lost job, home, or car can add stress to an already abusive relationship. The loss of these resources can make it harder for victims to escape a violent situation. And just as victims' needs are growing, state budget cuts are resulting in fewer available services, including emergency shelters, transitional housing, counseling, and childcare. A 2010 census by the National Network to End Domestic Violence found that in just one day, more than 70,600 adults and children were served by local domestic violence programs. Yet due to a lack of resources, more than 9,500 requests for services went unmet, including 19 in Vermont.

Despite this we see success and I would like to end with a story about Women Helping Battered Women's housing program and two survivors: Betsy and Rachel.

Domestic violence has long been recognized as a leading contributing factor for homelessness and Women Helping Battered Women has seen an enormous growth in the number of homeless victims of domestic violence seeking emergency shelter. Last year alone we saw a 17% increase, from 158 adults seeking shelter to 186. This increase follows a trend that has been occurring over several years. The past three years have seen a 39% increase in the number of adults seeking emergency shelter as a result of domestic violence.

As a result of the trauma that they have endured, the need for homeless reduction strategies is even more pronounced for survivors of domestic violence, especially given the economic abuse and resulting poverty that places victims of domestic violence alongside other "hard to house" populations. Given that the WHBW shelter and other shelters throughout the state are almost always operating at capacity, many in this hard to house population rely on emergency assistance from the State of Vermont to fund stays in hotel rooms, often utilizing the entirety of the benefit for which they are eligible.

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Betsy has been living on a limited income since she lost the ability to work as a result of her advancing multiple sclerosis. After raising her son in rural Vermont Betsy chose to move to Burlington to access increased supportive services. After her move, Betsy developed a relationship with her neighbor, and eventually they moved in together. Everything was fine at first, but soon Betsy's partner started controlling her finances, taking advantage of her increasing immobility. He would leave for days on end, and threatened her that she was being watched and that if she left the house or contacted anyone he would find her. He also used Betsy's credit cards without her knowledge, charging huge sums that Betsy was then responsible for. He knew that Betsy would be concerned with maintaining her credit and would pay the high credit card debt, which would then force her into financial dependence on him for basic needs such as housing and food.

When WHBW first spoke with Betsy we let her know that she had some options for leaving her current situation and regaining independence. Our emergency shelter was full, which meant that we were able to access Vermont's Emergency Assistance Fund through the Department of Children and Families Economic Services Division and house Betsy in a local hotel. Betsy was eligible for 28 days in a hotel, at a cost of $68 per night to the state, during which time she would be required by the state to conduct a housing and job search. Given Betsy's extremely limited income, physical limitations and current debt situation, coupled with the high rental rates and low vacancy in Chittenden County, Vermont, we knew it would be a challenge for Betsy to find safe and sustainable housing in 28 days. In addition to this, most landlords require credit checks, and apartments require security deposits and first month's rent. The total amount due up front would be close to $1500 for even the smallest apartment, an amount Betsy couldn't even fathom coming up with.

Betsy was eligible for rental assistance from WHBW, as part of our VAWA Transitional Housing Program. We worked with Betsy to find an accessible apartment and worked with the landlord to clarify the details of her damaged credit score. Betsy is currently living independently in her new apartment, working to reduce her debt and repair her credit. Betsy has been

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independent and free from violence for the past 9 months and is well on her way to a safe and sustainable housing and a life free from violence.

A modest 2-bedroom apartment in Vermont now costs $920 a month on average, which requires an hourly wage of $17.70 or an annual income of $36,800. At least 46% of Vermont's occupations have median wages below this threshold. Fortunately, transitional housing programs funded by VAWA offer a strong model in assisting domestic violence survivors in their move toward financial independence. As indicated, the major barriers to success for victims of domestic violence in Chittenden County are a lack of affordable housing, and a lack of flexible resources to meet emergency needs to prevent homelessness. Transitional housing program funds through VAWA help reduce these barriers and strengthen supportive services.

Rachel came to WHBW's emergency shelter in Vermont from another state, fleeing an abusive relationship with threats such as: "I will kill you if you leave" and "you will live to regret even thinking about leaving". When Rachel arrived her behavior was erratic and she let our staff know that her husband had been keeping her from taking her medication for her bi-polar disorder. Without her medication, Rachel had fallen into a prolonged depression and had stopped taking care of herself and the household and eventually her child. The State removed the child from the home. This chain of events spurred Rachel to flee, vowing to regain custody of her daughter even if it meant placing herself in extreme personal danger.

In order for her to regain custody Rachel needed to stabilize her mental health and her housing. Fortunately, a two-bedroom apartment had recently opened up at Sophie's Place, WHBW's transitional housing apartment complex. After the initial settling in period, Rachel worked with Sophie's Place staff to gain employment and work on her custody case while maintaining stable mental health. After 5 months of stable housing and stable mental health, Rachel secured an excellent job at a university, and was able to regain custody of her daughter. Today they are living safely and happily at Sophie's Place. Rachel plans to move out of Sophie's Place in six months, creating an open apartment for someone else in need.

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Although Sophie's Place has realized substantial success, it is limited to 11 units. In our first two years of operation, WHBW has had to turn away at least 80 applicants simply because of a lack of availability. Therefore, to increase the availability of transitional housing, WHBW has been able to access additional recovery act transitional housing program funds through VAWA and funds from the Vermont Agency of Human Services to support private rental assistance in the community for victims of abuse. Now, in addition to Sophie's Place, WHBW works closely with survivors in "scattered – site housing" to identify and address their financial goals and develop a positive rental history. Additionally, WHBW works to ensure that any barriers to receiving a Section 8 voucher (unpaid utility bills, unpaid debt to a housing authority etc.) are addressed. After a year of demonstrated rental success in the community, BHA will issue a tenant based Section 8 voucher to these survivors as well thereby ensuring sustainability, and substantially decrease the risk that the survivor will return to homelessness.

Stable housing makes it much easier for survivors of domestic abuse to successfully access WHBW's empowerment-based, survivor-centered case work and the economic justice advocacy services that are the hallmark of our work. Survivors in transitional housing have access to economic literacy training, credit counseling and repair, debt management, advanced housing advocacy including homeownership counseling, and employment and training opportunities. Survivors have the opportunity to develop individualized plans to help them maintain their housing or move from homelessness into permanent housing. Transitional housing program funds make all of this possible and by reauthorizing VAWA and maintaining the funding for transitional housing services and coordinated community response services through STOP, Congress has the unique opportunity to help victims secure housing, life-long financial independence and, thus, reduce their reliance on public programs.

Thank you.

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Voice of American Immigration Fraud Victims

Stories of Female Victims

Of The Immigration Provisions

Of The Violence Against Women Act

To whom it may concern,

My name is Afifeh Naoum Bardos and I met Robert Bardos, an amateur boxer, on December 27, 2006. Afraid that he would be placed in deportation proceedings, he pressured to me to marry him. All of our mutual friends assured me that he was a great guy and was of good character, so I decided to trust him. After we married, I began to realize that he conned me into getting him a green card. When we went to our first interview with Donald Meyer, he told me that he was suspicious of the marriage, but we were granted our I-130 petition anyway. Meyer has since retired and I have not been able to get through to anyone else at ICE.

As soon as we married, I noticed that he began going out with his Hungarian friends but would insist that I stay home. Every time I questioned about where he was going or who he was associating with, he turned aggressive. This aggression turned to violence in April of 2007. I requested to go with him to the immigration office and he struck me with a shoe, kicked me, and tried to gouge out my eye. I called the police and to file a report, but his friend showed up and told him to flee the scene. When Robert returned, I told him that I was going to file for divorce. Later in the month, I tried to make a stand against him and tell him I was not happy in the relationship. He laughed and he was going to destroy me. I threatened to call the police then he ripped the phone off the wall and broke my cell phone.

That night, I finally asserted myself into his Hungarian circle of friends and that's when I realized that they have an organized racket of finding American spouses for each other to marry for the purposes of gaining citizenship. Whenever someone in the group finds a potential spouse for someone else, the matchmaker gets paid a commission. I soon discovered the fraud he attempted against his first wife, Brenda Tudden. I have a running list of people who are involved in the marriage fraud, including his mistress.

I was diagnosed with depression and I suffered from intermittent moments of vertigo, causing me to miss work. My absence eventually led to my termination. In 2008, my husband started to keep all of the money he earned for himself and gambled it all away, bringing us to bankruptcy in August.

March 22nd of 2010 was the last time he hit me. I called the Safe Place and Rape Crises Center in Sarasota and they told me to get my husband's name off of everything we co-owned. I later filed a police report and scheduled a court date. During our hearing, our judge forced did not hear our cases and made us settle for a permanent restraining order. He is still involved with his Hungarian marriage fraud brokers and he has had made plans to purchase a firearm. I will gladly assist in any investigation that takes place. Thank you for your time.

Sincerely,

Afifeh Naoum Bardos

Afifeh Naoum Bardos

To Whom It May Concern,

I am writing this letter to share my personal story regarding marriage fraud. I met my husband online in 2002 and we began talking every day by phone and e-mail. I traveled to meet him in his native Cameroon in 2004. When we met in person, all of my feelings that had been developing for him were reinforced and we got married in October 30, 2004.

After we were married in Cameroon, I came back to the U.S. while he remained in Cameroon, but we continued to speak on a daily basis. He came to the U.S. in March of 2006 and immediately when I picked him up at the airport, I could tell that something was not right. He was not happy to see me, and the car ride from Boston, MA to my home in Derry, NH was filled with silence.

Despite his odd behavior, I helped support him financially. I was also sending upwards of $3,000 a year back to Cameroon because he told me that his family was helping to support three children that they had found abandoned and had taken into their home. In reality, the children that my money was supporting were my husband's biological children that he had with his wife that he was still married to.

Our marriage remained unpleasant, and in September of 2008 my husband got physical with me during an argument. We argued all the time and because he was not working, my personal finances were being drained while trying to support him as well as his family back in Cameroon.

In September of 2009 my husband disappeared without any warning. I contacted the Washington D.C. Immigration Customs Enforcement ("I.C.E.") office shortly after in November 2009. I was assigned a local I.C.E. agent in the Manchester, NH office and was told that my case was one of marriage fraud. In other words, my husband married me in order to get U.S. citizenship, and use my financial resources to support his family back home in Cameroon. After I did not receive any follow-up communication regarding an investigation or any other information or assistance from the local I.C.E. office, I contacted my senator's office in January of 2010. I was told that there was little that could be done for me because they receive stories similar to mine on a regular basis.

My story is particularly frustrating because I moved to the U.S. from Quebec, Canada in 1979 and attained my status as a U.S. citizen in 1990. I followed the proper legal protocol in order to get my citizenship. It is truly a shame that thousands of foreign citizens abuse our system and manipulate our laws to get their U.S. citizenship while countless others wait years upon years to gain their status as an American citizen the honest and legal way. Action needs to be taken to fix this growing problem that affects citizens throughout the U.S., and the time for action is none other but now.

Respectfully,

Rejeanne M. Bitote

Rejeanne M. Bitote

To Whom It May Concern,

My name is Fatima Bukhari and I am writing this letter to share my personal experience with marriage fraud. I married Syed Umar Kazmi in Pakistan in March of 2009. I returned to the United States in April of 2009, while he remained in Pakistan and filed an I-130 with him as the beneficiary. We received the approval notice in August of 2009. Right away he became extremely verbally abusive toward me. I chalked his behavior up to frustration, thinking that he was just tired of being away from me. In November of 2009, I returned to Pakistan to spend time with him and prepare for additional ceremonies. I saw an awful side of Syed during that time. He became physically abusive and even raped me a couple times. I returned to the U.S. on Dec 23, 2009 and hoped that when Syed arrived in the U.S. his behavior would change for the better.

Syed arrived in Atlanta, Georgia on January 28, 2010 on a CR-1 visa. His behavior did not change at all and he continued to be physically abusive. On February 2, 2010 he revealed that he had only married me for the green card and as soon as he had it he would leave me. My parents and I wanted to give the marriage one last chance, so we asked him if there was someone in his family who could make him reconsider not only his decision to leave me once he had his green card, but also make him reconsider his behavior with me. He recommended his uncle in Houston, Texas. I also requested that we start attending marriage counseling but he was vehemently opposed to that proposition. On February 13, 2010 we flew to Houston, Texas. However, the attempts at reviving our marriage continued to be unsuccessful.

I contacted U.S. Immigration and I.C.E. about him and then filed for annulment in Pakistan on March 15, 2010. Our annulment was finalized on April 5th. After the annulment, he started harassing me through e-mails, claiming that he had left his belongings at my house and that I needed to return them or he would file suit against me. I asked him to cease contacting me and filed for a divorce in the state of Georgia.

He showed up at my doorstep on May 13, 2010 and I called the police on him. On May 14, 2010 he sent me emails threatening to kill me and my parents if I did not have his immigration restored. He has not yet received his green card and his visa expires on July 12, 2010. I acquired a temporary protective order against him, but he continued to send harassing e-mails. The police also issued a warrant in his name for misdemeanor stalking.

What truly bothers me is not only the fact that he used me to get into the U.S., but that he abused me in the process. I live in constant fear of my life and I genuinely feel as though he will remain in the U.S. even after his visa expires.

It is time for lawmakers to address the issue of marriage fraud, specifically as it pertains to immigration as it is a rapidly growing problem in our country. The rights of American citizens should not be inferior to those of foreign citizens who seek to attain U.S. citizenship in a fraudulent and manipulative manner.

Respectfully,

F. Bukhari 06/17/2010

Fatima Bukhari

To Whom It May Concern,

My name is Tiffany Claus and I am a lifelong resident of Maryland. I am 29 years old and a mother of two children. I am writing this letter because last summer while traveling for work in Las Vegas, NV, I became a victim of marriage fraud.

My job requires me to travel internationally, and I get most of my business through the internet. In March of 2009, a Canadian man named Marc McLay, contacted me through the popular social networking site "Facebook" to ask if I could do an appearance in Las Vegas in June of 2009. Originally, he wanted me to host several poker events that he was coordinating. He needed me to do several appearances, which required an extended stay. Mark insisted on accommodating me at his condo in Las Vegas to help me save money, but when he became aware of how much money I made, he started asking me to pay for things such as gas, groceries, various bills, and eventually his monthly rent. He became very controlling and monitored all of my contact with my family back home, which was minimal at best.

When I first met Marc, he was charming and seemed genuinely interested in me. He had a 9-year old son named Tristan, who I became very close with. Soon after I began living with him, Marc began to put pressure on me to marry him. In more than one instance, Marc would take out his anger and frustration on Tristan, knowing that I was in earshot of the physical abuse. Marc used drugs, specifically marijuana, and alcohol to control Tristan and regularly allowed Tristan to use marijuana as a reward for remaining silent about the abusive nature of the relationship with his father. On one occasion, Marc took his anger out on me by putting his hands around my neck and trying to strangle me. I felt as though I needed to acquiesce to Marc's marriage demands or else the abuse that Tristan and I were experiencing would only get worse.

Marc and I were married on July 4th, 2009. After we were married, I found out that he came to the U.S. with Tristan, whom he claimed custodial rights to because Tristan's mother had given him custody. However, Marc had a criminal record in Canada, so this seems highly unlikely.

When Marc finally allowed me to return home to Maryland on July 5th, 2009 to see my family I called the U.S. Immigration and Customs Enforcement office to report Marc as well as Child Protective Services on Tristan's behalf. I learned that prior to our marriage; Marc had been living in the U.S. illegally on an expired visa. Marc expected me to return to Las Vegas after two days because he still needed my signature on various immigration forms to obtain his green card, and when I did not return he began threatening me and trying to fraudulently obtain my signature through a variety of methods. When he realized that I was not going to give him my signature, he told me that he planned on telling Immigration that I had abandoned him so that his legal status as a U.S. citizen could be finalized.

Marc admitted himself to a hospital in Las Vegas for stomach pains that he was allegedly experiencing from emotional abuse that I subjected him to. I became aware of this when the hospital contacted me attempting to collect on the $30,000 bill that Marc had accumulated. During my correspondence with the hospital, they told me that they were not able to find anything wrong with Marc despite performing various medical tests.

This has been a very difficult experience, and I believe that action must be taken on this issue, not just for my own sake, but for all other American citizens who have fallen victim to this type of marriage fraud. I very much appreciate your time regarding this matter, and sincerely look forward to realizing substantive change on this issue.

Respectfully,

Tiffany Claus

6-14-10

To Whom It May Concern,

I am writing this letter to share with you my story about marriage fraud as it relates to immigration. I met my ex-husband, Nikolaos Konstantopoulos, in July of 1992. We were both working on a cruise ship, and our relationship became serious almost immediately. He was in possession of a tourist visa at the time we met. After vacationing together in California for two months in 1993, we returned to the cruise ship and worked until January 21, 1994. Nikolaos and I were married 3 days after his arrival in the US on January 24, 1994.

I have worked for the State of Oregon for 22 years, and currently serve as the financial manager for the Department of State Lands. My ex-husband worked as a carpenter and built furniture. For several years, he did not pay taxes on any of his yearly income. Despite this income, Nikolaos expected me to pay all of the bills and I served as the main financial supporter during our marriage. A daughter, Iris, was born in September of 1997.

He did not want to file an I-130 for him to obtain a conditional green card until nearly three years after our marriage, on December 11, 1997. He stated on these documents that he had no prior wife and had no other children, which I now know to be false. We did not sit down and meet with an immigrations officer for an in-person meeting regarding our I-130 application until September 10th, 1998. Despite the fact that an I-130 is to be filed within 90 days of marriage, we were not asked any questions about why we had not filed for an I-130 for almost four years.

My husband was also physically and verbally abusive throughout most of our relationship, but since we were not separated for individual interviews with the immigration officer, I was not able to convey this information. His physical abuse became so serious that I was awarded three separate protective orders in September of 2000, July of 2003, and October 2007. He not only was physically abusive to me but also to our daughter throughout most of her young life. In addition, I found and returned items to his employer that he had stolen from them during his employment.

I also received an enormous surprise on August 12th, 2007 when he told me that he had been married to a woman in Greece when he married me and had two children with her. In September 2007, I contacted I.C.E. and eventually C.I.S. In December 2007, I submitted the appropriate documentation to withdraw my petition to have the conditions on his green card lifted. Nikolaos remained married to his wife in Greece until October of 1998. In February of 2010, I was granted an annulment of my marriage due to this fact.

Almost as frustrating and heartbreaking as the fact that Nikolaos used me as a pawn in order to gain legal status to live and work in the U.S. is the response that I received from U.S. Immigration offices that I contacted. I was told that, despite the fact that the basis of his presence in this country was illegitimate and fraudulent, no action to deport Nikolas would be taken because "he had been here so long and he has done nothing wrong". Our country's laws regarding immigration and marriage fraud contain numerous loopholes and these loopholes seem even larger if the laws we do have on the books are not adequately enforced.

Respectfully,

Pamela Konstant

To Whom It May Concern,

I am writing this letter to share my personal experience relating to marriage fraud. I met my husband, a citizen of the U.K., in late May 2007 after exchanging daily correspondence through a dating website for about 2 months. At the time, he was residing in the U.S. through a visa waiver program. When we met in person, the feelings I had begun to develop for him were reinforced, and I had no reservations about welcoming him into my life as well as the life of my two teenage sons.

After our initial meeting, he showed what I believed to be a genuine interest in continuing our relationship and becoming more serious and committed. He told me that he had an advanced accounting degree and had been employed by several well-known financial institutions in the U.K. Our relationship seemed to have gained meaningful substance and we were married on January 19, 2008. It was not until after we were married that I found out that he had lied to me about his employment background in the U.K., and the fact that he had a personal history of both mental illness and alcohol abuse.

My husband brought very little into our marriage in terms of financial contribution, as he was employed as an inventory checker at Home Depot from August 2008 until August 2009. Consequently, I was the household's primary breadwinner. I did not have a problem with this until he became very hostile when I began to ask if he would be willing to contribute more significantly toward the welfare of the household. He was also very resentful of the fact that I supported my two sons financially, because he felt that the money I earned should be kept between him and I exclusively.

When I arrived home on the morning of December, 22nd 2010, I found his keys on the table, his closet emptied out and all of his immigration paperwork missing. Immediately, I hired a private investigator that specializes in the field of immigration marriage fraud as well as an immigration attorney. After extensive research, both concluded that it seems very likely that my husband married me in order to obtain unconditional U.S. citizenship.

At this time, I am not sure whether my husband plans to file a joint petition, forging my signature or file an I-360 self-petition pursuant to the provisions of VAWA. I have taken all of the steps at my disposal that could potentially prevent the success of his attempted marriage fraud, but as the law stands, I will be helpless if he does, in fact, file an I-360 self-petition in order to have the conditions on his green card lifted.

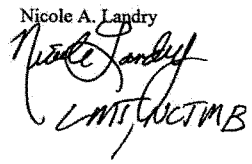
As I have become increasingly involved with VAWA reform as it pertains to marriage fraud and immigration, I am astounded by how vulnerable U.S. citizens are and how impervious the claims of foreign citizens seeking to commit marriage fraud are. I implore you to take initiative in order

to remedy this flagrant and inexcusable violation of due process that we are all entitled to as citizens of the United States.

I greatly appreciate your time in reading my letter, and sincerely hope that substantive reform to these unjust provisions can be realized in the near future.

Respectfully,

Nicole A. Landry



To Whom It May Concern,

I inadvertently sponsored a large-scale, illegal drug producer and trafficker into my country – a man that would dupe me into marrying him, and then threaten to kill me, stalk me and attack me to protect his fraudulent immigration status. And instead of the DHS taking my pleas for help seriously, my husband had access to the confidential process established by the Violence Against Women Act ("VAWA") whereby he could fast-track his immigration status by a simple, unsubstantiated claim of emotional or physical abuse -- without any evidence whatsoever or obligation of the DHS to investigate such a bogus claim. I, on the other hand, had no such protection in the process. Here's my story.

Out of the blue, my Dutch husband announced on our second anniversary that he was divorcing me. When I wouldn't simply give up on our marriage, he admitted that he only married me for a green card. As his sponsor into the Unites States, I started researching the process to rescind his marriage-based immigration application. When he found out, he went ballistic. He tried to strangle me and threatened to kill me if I ever contacted the immigration authorities. Luckily, I barricaded myself in a room and called the police, but since I had no bruises the police did nothing. They told me I'd have to leave my home if I didn't feel safe.

As I was moving a week later, my husband threatened me at gunpoint. I fled the house when a phone call distracted him. My local police and district attorney still refused to get involved, despite that fact that a firearm was now involved.

When I contacted my congressional members for help, they offered to help me sponsor a foreigner into the country but refused to get involved with a "marriage dispute."

Although DHS investigators believed my husband committed marriage fraud, they refused to do anything since we were married for the required two years to provide him with a permanent green card and citizenship. The DHS also refused to take his domestic violence seriously unless he got a year in prison and a felony conviction of domestic violence. That same immigration office had numerous resources available to immigrants needing help, including local pro bono legal services.

Meanwhile, my husband was still stalking me and threatening me unchecked. Desperate and scared, I hired a retired FBI special agent as a private investigator. We soon found out that my husband was an "inadmissible alien" under U.S. law, and lied about crucial information on his immigration papers – a felony. Both were grounds to rescind his green card. I also found out that my husband was involved in large-scale, illegal drug tracking and production in his home country, the Netherlands. He also bypassed a background check before permanently entering the U.S. since he was marrying an American, according to the FBI and Department of State. When I contacted the DHS with evidence that I meticulously gathered with the retired special agent, the investigations unit refused to take even a sworn statement from me. Later that year, the DHS admitted to "losing" every stitch of evidence that the special agent and I ever submitted.

Most immigration lawyers will not help citizen spouses in my situation since we are working against their future lines of business. Most family law attorneys do not know immigration law or the impact of

alleged domestic violence claims on immigration status. With no resources available to me during this horrendous process, I've had to school myself on immigration and family law. Knowing that few people help immigration fraud victims, I set up a Web site to share information. I've also written a book about my experiences.

I've been horrified to hear similar stories repeated from other victims. These victims range from college professors and doctors to recent college graduates and retirees. Some have green cards, themselves, or became naturalized U.S. citizens. Men are just as likely to be victimized as women. I've met men that were horrified to realize that the Russian brides they sponsored were actually running drugs and prostitution out of their homes, had links to local Russian mafia organizations, and were a little too well educated on the VAWA immigration process within months of marrying their American spouses.

Thanks to VAWA, immigrant spouses have a streamlined green-card process based on false and flimsy allegations of abuse. VAWA immediately allows foreigners to become self-petitioning -- without any kind of investigation -- whereas they would normally not be allowed into the country. By claiming protection under VAWA, immigrant spouses no longer have to engage in a legitimate two-year marriage to a U.S. citizen. They can simply claim abuse one day into the marriage and be given a fast-track green card, and ultimately citizenship. Because of confidentiality rules, U.S. spouses are not even notified of such allegations and have to no opportunity to defend themselves in the process. According to DHS rules, immigrant spouses simply need a note from a social worker, psychologist or police officer, and the DHS is not even required by law to investigate such allegations. By doing so, the federal government has actually created an incentive for scammers to make false abuse claims under VAWA. The reward is high: unfettered U.S. citizenship.

Mafia and terrorist organizations planting themselves in the United States know that fraudulent marriages and VAWA loopholes remain the Achilles heel of American immigration law. They are hoping that American lawmakers continue ignoring the problem since there is nothing like guaranteed citizenship and legitimate, legal papers. As a result, we are rewarding the kind of people willing to engage in shady practices to attain citizenship. Yet, when American spouses are attacked and terrorized by the people that they sponsor into the country, our government looks the other way. I urge you to take action to remedy this unjust, unfair, and unconstitutional problem that is a growing epidemic in our country.

Respectfully,

Elena Maria Lopez

6/21/2010

To Whom It May Concern,

I am writing this letter to share my personal experience with marriage fraud and to voice my concerns regarding the current state of law that have proven to be inadequate in safeguarding the rights of American citizens.

I met my husband, Andre Meneguini, in November 2004 through a friend of my cousin. We dated intermittently until the summer of 2006. At the end of the summer, Andre told me that he wanted to move into an apartment together and that he found an apartment for us. Andre worked for an apartment building, finishing hardwood floors and performing various other general repairs. Andre also expressed that he wanted to get married, and shortly before Thanksgiving 2006, I agreed to marry him.

Coming from an Italian-Catholic family, I wanted to have a traditional wedding with all of my family in attendance. However, Andre pressured me into marrying him before the New Year, so we had a civil ceremony on December 4, 2006 and planned on holding a church wedding in the future. In January 2007 we filed the I-130 and Andre received his temporary green card in May 2007.

Between May 2007 and April 2009, when he applied for his permanent green card, Andre was mentally and emotional abusive to me. He frequently made degrading comments about my appearance and would deride me in front of other people. In March of 2008 he began fabricating stories and telling his family that I had a short temper. His family saw how he treated me and refused to believe him.

Andre received his permanent green card in November 2009 and it became immediately apparent that he had gotten what he sought from our marriage. By May 2010 he had packed all of his belongings and moved out of our apartment.

Although my personal situation cannot be fixed, I believe that action should be taken to curb the rapidly increasing amount of fraudulent marriages that foreign citizens are using as a way to gain U.S. citizenship. Thank you for your time in reading my letter and I sincerely hope that meaningful progress can be made.

Respectfully,

Michele Meneguini

Michele Meneguini

06/15/2010 11:38 #7566 P.001 /001

To Whom It May Concern,

I am a naturalized United States citizen from Uganda. My husband, Abdallah Lubambula married me in bad faith to obtain immigration benefits and then abandoned me without a word as soon he obtained his conditional residence card.

I have since learned that he has a wife in Uganda whom he did not divorce before we married in July 2009. He is still married to this woman. He is planning to petition for her to come to the U.S. with their child as soon as he obtains his U.S citizenship and a divorce from me.

When I would visit him in Uganda before we were married, he would never take me to his home because he said it was improper since we were not yet married. Respecting his wishes, I did not insist, but I now know that the presence of hi wife was the true explanation for why I never saw his home in Uganda.

Abdallah frequently asked for money to send back to Uganda. He told me that he needed the money in order for his daughter to attend a private school in Kampala where she could get the best education. Seeing this as a worthy cause, I gave him money to send back to Uganda. In reality, he was sending the money I gave him to support his wife. Because he was not employed while in the U.S., my money was the only income supporting her livelihood.

He also convinced me to buy him a car and a trip to Jamaica. He told me that as soon as he found employment he would show his appreciation for my financial support by showering me with lavish gifts. Instead, he left me with thousands of dollars worth of unpaid bills, car payments, and various other expenses.

I have not received any communication from Abdallah since he left me but mutual friends have told me that they know of his whereabouts and also always knew of his plans to leave me as soon he got his permanent residence but had no way of telling me.

I have informed USCIS of Abdallah's actions. They were surprised to find out that he had two alien registration numbers and acknowledged that this was an error on their part. I am hoping that USCIS pursues an investigation into my husband's activities and ultimately revokes his conditional residence because it was fraudulently acquired and is void because of his prior marriage which remains un-terminated.

As I have learned more about marriage fraud, I am astounded by how easy it is for a foreign citizen to manipulate our country's laws in order to obtain citizenship. I am particularly hurt by the fact that I obtained my U.S. citizenship through the correct process and there are thousands of foreign citizens who attain citizenship every year by exploiting the loopholes that are present in our laws, specifically the Violence Against Women's Act. Please find the strength and integrity to help remedy this problem as it will only continue to grow.

Respectfully,

Annet Nanteza

To Whom It May Concern,

My name is Sylvia Liz Perez-Amaro. I married Ignacio Rivera, a Mexican citizen, in February 2008. Immediately, we filed all of the appropriate immigration applications, and he was subsequently granted temporary immigration documents.

He began talking about the reasons he married his previous wife, and mentioned that he only married her to get a marriage visa. He also told me that while I was in Puerto Rico from February to June 2007 with my mother who was undergoing chemotherapy, he modeled for a pornographic photographer and film maker.

I also discovered that he opened an account with a website based out of Mexico that essentially operated as a forum for adults to meet and have sexual encounters with minor children under the age of 18. Although I do not know if he ever had a sexual encounter with a minor, the fact that he was a member of this website is alarming in itself.

At the end of 2008, once he got his immigration papers, he began going out frequently and in many instances he would disappear for days at a time. He also was not working for about 2 months and he would stay at home playing video games, surfing the internet, and hanging out with friends while I was at work. One day I got tired of this and told him that he needed to find a job or else I would have to leave him.

I filed for divorce in April 2009 for mutual agreement under incompatibility characters grounds, and he did not accept because he had to renew his visa in August 2010. He repeatedly asked me to stop the process and started making what seemed to be genuine attempts at restoring my faith in our marriage. On May 18, 2009, I went to Williamson County Court at Georgetown, TX and signed a notice of non-suit to stop the divorce process. When I returned home, Ignacio was leaving the house, with many of his belongings. I showed him the documents of the non-suit and asked him where he was going. He told me that he was leaving me because he could not deal with our marriage anymore and that I should expect documents from his attorney in the near future. I was emotionally crushed because I believed him when he told me that he was committed to preserving our marriage.

To this day I am still married to Ignacio, although we remain separated. We have no custody battles or important properties together but, Ignacio insists on taking the divorce to court, claiming that I treated him with cruelty, and that I abused him psychologically.

I understand that it may be too late to assist with my personal matter but it is not too late to reform the current system which not only allows for, but incentivizes, injustice. Foreign citizens committing marriage fraud and using certain provisions of Violence Against Women Act (VAWA) as a way to obtain unconditional U.S. citizenship is a widespread problem that needs to be addressed. Thank you for your time with this matter, and I hope that remedial action is taken promptly.

Respectfully,

Sylvia Perez-Amaro

Sylvia Perez-Amaro

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06/17/2010 08:07 [redacted] [redacted] PAGE 02/02

To Whom It May Concern,

My name is Debra C. Peters of Tampa, Florida. I am writing this letter to ask for your help in modifying certain provisions of VAWA and immigration law that are increasingly being manipulated by foreign citizens in order to obtain U.S. citizenship. I met my ex-husband, Oscar Gonzalez Badia, a computer software engineer and a Cuban national, online during the summer of 2005. Oscar was living in Japan and told me that he was working for his father, installing a computer security system. Oscar asked me to visit him at his home in Cuba, but because of the unfavorable political relationship between the U.S. and Cuba, we decided to meet in Lima, Peru, where he had family and friends. We met in Lima in October of 2005 and began a serious relationship. To eliminate the expense of hotels and the exit problems for Oscar from Cuba, we decided to rent an apartment together in Miraflores, Peru. During one of my subsequent trips, Oscar asked me to marry him and I began the application for a K-1 visa.

After Oscar arrived in the U.S. we got married on November 5, 2006. After we became married, he immediately changed, not even wanting to spend our wedding night or honeymoon together intimately. He became cold, distant and aggressive and when I inquired as to why he said he was homesick. After I signed his Adjustment of Status ("AOS") papers, he spent a mere 37 days with me over the course of the next 9 months. During this time he was physically violent with me, broke things in my home, put my minor daughter's picture on singles sites on the internet, fraudulently obtained my passwords and wired money from my bank accounts to his, bugged our home and computers, and alienated my friends and family. Oscar made no attempt to be a devoted, caring husband or form any sort of substantive marital bond.

I discovered that, during our engagement, he had an illegitimate child with Noelia Trigoso Sanchez in Peru and had been sued for paternity during our marriage. He and his family kept all of this a secret. Upon further investigation, I learned that he had conspired with his Bolivian woman, Linda Rocio Shirasawa of Yokohama, Japan to help her obtain an American visa, through marriage, after he received his residency and U.S. citizenship. I unveiled that he had received a 5 year ban from Japan for a visa overstay. Oscar had declared his eternal love for Linda Rocio and invited her to my apartment during our engagement. Oscar deliberately targeted me and used me to get U.S. citizenship as well as for the financial support that I was able to provide him.

Oscar began claiming that I emotionally abused him a few days after his AOS papers were signed. I sought help from I.C.E., U.S.C.I.S., and the Department of Homeland Security. None of these agencies were helpful or communicated with me regarding any changes to the sponsorship. The marital fraud epidemic can be significantly curtailed if laws are enacted that require American sponsors to be made aware of the high rate of marriage fraud during a joint interview, at the American Embassy, and in the beneficiary's country. Also, sponsors should not be prohibited from acquiring any information regarding the sponsorship. Marital fraud for immigration benefits is a growing problem in our country that needs to be addressed by the men and women who have the elected power to implement legislation to protect our rights as sponsors and citizens of the United States and to ensure that American citizens have the same rights as foreign citizens.

Respectfully,

Debra C. Peters

Debra C. Peters
June 17, 2010

70894.286

To Whom It May Concern,

I am writing this letter to share my personal experience concerning marriage fraud. I met my husband, Artur Polard, in September of 2006 through a co-worker of mine. I did not become aware until later that Artur was in the United States from his native Poland on an expired tourist visa and he was working illegally as an ironworker. Artur and I hit it off when we began to date and my feelings for him deepened. He was kind and sweet to me and we seemed genuinely compatible. We were married on July 7, 2007.

Almost immediately after we were married, Artur's entire demeanor toward me changed dramatically. He became very emotionally distant and did not attempt to establish a marital bond. At the same time, he expected me to do all of the cooking, cleaning, and other domestic chores. I also noticed that Artur spent much of his time chatting with Polish women on the internet. In the summer of 2008, Artur returned to Poland for a vacation without me, and I started to feel as though our marriage was spiraling downward.

In June of 2008, Artur received his conditional green card, which was set to become unconditional in March of 2010. After about a year of encouraging him to go to marriage counseling with me, he relented in December of 2009, but did not apply himself to the therapy at all. Our marriage continued to deteriorate and on March 1st, 2010 he packed up his belongings and moved out.

After I told him that I would not jointly file for the I-751 to remove the conditions from his green card, he made several attempts to contact me and make amends. Since our falling out, I have discovered that he received obtained his tourist visa illegally by purchasing it in Warsaw. I also learned that he acquired his State of Connecticut driver's license illegally in the same manner.

Currently I am in the process of filing for divorce on the account of fraud, and the attorney I am working with is looking into the option of filing a formal report with U.S.C.I.S.

Throughout this process, I have educated myself with regards to immigration law as it pertains to marriage fraud and have been astounded by the amount of loopholes that are readily available to foreign citizens to exploit the system and attain unconditional U.S. citizenship. Marriage fraud is a growing problem in our country and if we continue to allow it to occur unchecked, the potential negative ramifications are countless. Beside the threat that fraudulent marriages pose to our country's national security, fraudulent marriages accentuate inherent flaws in our legal system by exposing the fact that foreign citizens are given greater rights than the American citizen.

Respectfully,

Lise Polard

70894.287

To whom it may concern,

In January 1994, I married Jiri Poner, a citizen from The Czech Republic. We were married in Prague and our twins, a boy and a girl, were born there. We moved 12 times in the 3 years we were married with our infants in tow, first between Germany and the Czech Republic and eventually around the U.S. The moves were always explained as necessary for business. We "settled" in Massachusetts and applied for his green card with what was then the INS.

We received notice of our interview with INS, and within a couple of days Jiri informed me we would be divorcing. He instructed me to file for the divorce and to continue to sponsor him for his green card. He moved out, taking our computer and business documents with him. When I did file, the judge ordered me to attend the INS interview, but the agents explained that I couldn't be ordered to attend. They discovered that Jiri's Visa was invalid and he met no legal requirement to be here except through our marriage. I was told I could be prosecuted by the federal government for marriage fraud if I continued, so I withdrew my petition. I was told Jiri would face deportation.

Back in family court, Judge Robert A. Scandurra gave Jiri sole access to our banking even though I was a guarantor on our loans, allowed court ordered support and maintenance to go unpaid, disregarded Jiri's threats to take the children back to the Czech Republic, and ignored evidence of child abuse. The Massachusetts judge also allowed Jiri to take and sell my car to offset our debts. Under the instruction from my family law attorney in Indiana, I left the state with my children and returned to my family's home in IN.

Through the INS supervisor, I was put in touch with the two INS trial attorneys who asked me to provide affidavits in support of the INS charge of marriage fraud. Friends complied. I informed the trial attorneys that Jiri had a pending criminal fraud charge and arrest warrant from Germany, two things he failed to mention on his INS application. I also had records showing the use of different social security numbers, as well as our bank documents revealing substantial wire transfers back to Prague. I learned he had been borrowing money from bankers and investors to open various businesses, only to spend down the cash before moving out of town and defaulting on those loans. He owed hundreds of thousands of dollars in Europe and now in the United States.

Once the case went to trial and Jiri presented his self-petition in 1998 as a battered and abused spouse under VAWA, his deportation proceedings stopped. The 2 trial attorneys no longer took my calls and Jiri was on track to receive a green card. The judge gave Jiri sole permission to sell our home without my signature, then Jiri filed a kidnapping charge against me the following day.

Records show he sold the house to a friend of his for $150,000 under fair market value and continued living there. He then buried the difference and filed personal bankruptcy, leaving me more than $250,000 in debt to the bank as the guarantor on the loan that the family court judge allowed him to spend down during our divorce proceeding.

Back in Indiana, I was arrested in my pajamas baking Christmas cookies with my children. The detectives gave me the name and number of a prominent attorney. He was able to get me released the next day, Christmas Eve, but I had to agree to return to Massachusetts with the children. The Massachusetts judge ordered evaluations for Jiri, me and the children. The child abuse investigator assigned to our case testified that the children and I should be allowed to return to Indiana and that Jiri should only be allowed to have monitored visitation with the

children. He thought Jiri had physically abused the children and wanted the case to remain open. The court ordered unsupervised visits for an extended period and offered to go to the Czech Republic to get the children should they be taken.

I called the State Department Office of Children's Issues and Consular Affairs and learned that I would have to allow the abduction to occur and rely on The Hague Convention as it pertains to the Civil Aspects of International Child Abduction to ensure their safe return home.
Afraid that they would be abducted, I again left the state with my children. This time we went to an undisclosed safe place. I contacted over 60 child advocacy groups and government agencies searching for emergency jurisdiction and help.

When I returned to Indiana with the children, I was arrested by two FBI agents and a sheriff. The federal government dropped the charges against me once they saw my file. Indiana released me on a $1,000 bond, but the Massachusetts judge ordered that I remain held on a half million dollar bond and be extradited back to Massachusetts.

I spent nearly a month in jail. My children were placed in foster care for 3 months while Massachusetts court-appointed experts evaluated us all to no finding. My children were returned to live with me, but I was not awarded child support. Jiri was given every weekend visitation with a court provided and paid for guardian ad litum. During this time, Jiri served a year on probation for assault and battery. He assaulted the husband of a wealthy woman he'd become involved with when the court questioned his treatment of their children.

Five months of this arrangement passed before our week long custody trial in February of 2000. Witness after witness testified on my behalf. Jiri perjured himself as did the court appointed ad litem. Before the judge ruled, Jiri relinquished his request for custody. He asked for less visitation time and a leniency on child support obligations. It was another 17 months before the children and I were allowed to leave the state lawfully. Judge Scandurra gave Jiri the $5,000 bond I was required to post before moving and issued another warrant for my arrest before agreeing with an Indiana judge that Massachusetts no longer had jurisdiction to rule on our case. We have not heard from Jiri in nearly nine years.

With sincere thanks,

Julie Poner

To whom this may concern,

My name is Cheryl Shanks and I moved to New York in November of 2001 from Oregon with my 2 teenage daughters. I was a single mother who had just completed nursing school. At a famly function, I heard about the immigration issues that were plaguing my sister's brother in-law, Steven Zorowitz, esq. In September of 2003, Steven married Eduardo Arrieta a Colombian national in Manhattan. They filed domestic partnership in the same city. Steven was an ADA in the Bronx and was able to provide full benefits to Eduardo as his partner but not citizenship. Out of supposed desperation, they started to make alternate plans to move to Canada.

With the coercion of my family, I offered to help them out. Steven, the brother, promised every one that there was no way that I could get in trouble for my involvement in the scheme, and he promised that he had thoroughly researched the matter as an ADA. Eduardo has a cousin who worked with an attorney in New York City which is where I was taken to fill out the immigration documents. The plan was for me to marry Eduardo and have him move in with me while Steven sought employment and residence in Cherry Hill.

Eduardo had moved in to my guest room immediately after the wedding. We had a brief sexual relationship then I discovered I was pregnant in December 2003. Steven and Eduardo tried to spread rumors to the family that I had forced Eduardo to have sex with me as a means to get child support. My sisters came to my house and forced Eduardo to leave because of the rumors he was spreading. At Steven's urging, I agreed to not file for divorce.

When I received the interview notice for the I-751, I withdrew my application in writing with INS. Secretly, Eduardo and Steve requested a delay for the interview and had it rescheduled for a later date, and then filed a domestic abuse charge against me with immigration. They used the same lawyer they had used for the initial filings for this charge.

When Steven and Eduardo realized that I was not willing to continue the sham, they completed the VAWA I-360 filling. They claimed that I had caused mental abuse to Eduardo, and his immigration status was put on hold. Nothing I submitted to the Vermont Service Center was treated as evidence.

Starting in December of 2004 Eduardo began filing for full custody but not divorce. He has taken me to the Superior court, Appellate court and even filled for the supreme court as well as the Pennsylvania lower court, because our son was born in Philadelphia. Eduardo and Steve have sent family services to my house twice on false abuse claims to no finding and hired a private investigator to follow me and several members of my family. My two daughters were ordered to complete psychological evaluations to no finding as well. I currently have an appellate court decision pending. I have refinanced my home 3 times and have no more equity to pull out. Steve and Ed have legally stated that their plan was for me to be their surrogate, and now they won't leave me alone until they have what they want.

Judge Solomon, who had tried our divorce, stated in his colloquy that "it was obvious that this was a sham marriage", but he didn't do anything about it. I have all the court transcripts and documents for validation. My family law lawyer is Ron Manos, esq. Steven ad Eduardo hired Lauren Kane, esq.

In the initial court documents that were filed for divorce proceedings, Eduardo states that he met me in 1999 and that we had dated and decided to marry. However, I didn't graduate form nursing school in Oregon until June of 2000. Once Judge Solomon was aware that the marriage was a sham Eduardo changed his story and states in later documents that I had agreed to be a surrogate for him and Steven, and that therefore they should be given full custody. The first time that I was told of Steven and Eduardo's scheme to make me a surrogate was the day after I gave birth.

These men have made numerous claims against me and my ability to mother my child, all to no

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Judge Solomon, who had tried our divorce, stated in his colloquy that "it was obvious that this was a sham marriage", but he didn't do anything about it. I have all the court transcripts and documents for validation. My family law lawyer is Ron Manos, esq. Steven ad Eduardo hired Lauren Kane, esq.

In the initial court documents that were filed for divorce proceedings, Eduardo states that he met me in 1999 and that we had dated and decided to marry. However, I didn't graduate form nursing school in Oregon until June of 2000. Once Judge Solomon was aware that the marriage was a sham Eduardo changed his story and states in later documents that I had agreed to be a surrogate for him and Steven, and that therefore they should be given full custody. The first time that I was told of Steven and Eduardo's scheme to make me a surrogate was the day after I gave birth.

These men have made numerous claims against me and my ability to mother my child, all to no avail. In the initial divorce pleadings Eduardo was also requesting alimony, half of the value of my home, my retirement accounts, bank accounts, and a recent inheritance from my grandfather in Seattle whom he never met or knew. He also wanted me to pay half of his credit card debts and other bills.

In the Divorce interrogation Eduardo was to produce a copy of his Domestic Partnership with Steven but he claimed that he lost it. I am keenly aware that what I did was illegal and wrong. At the time that I did it, my family and I believed Steven's professional advice, that I could not legally get in trouble for it.

I have hired two well known immigration attorneys in the area, which is how I found out the potential repercussions for my actions. I have attempted to "turn myself in" on many occasions, and I would love to share the documentation which I have kept to prove it. Eduardo has admitted to everything that I have mentioned under oath, yet nothing has been done about it. I know, they are busy, but I hope you can please do something about my situation.

Sincerely,

Cheryl Shanks

[redacted]

To whom this may concern,

I write today as a follow-up to a meeting I had with Mr. Tony Simon. At his request, I have compiled these issues for your review in hopes of preventing another tragedy in our immigration system. It came to my attention that you are working on immigration legislation. Please consider my story.

Eight years ago, I began going to Ghana and had a house built there; I later brought the man who built my house to the U.S. and married him. We found out he had a daughter he didn't know about who was carrying water from village to village in Ghana to support herself. I flew there, found her, got her into a private boarding school and began the process of getting her a visa. In 2008, I obtained a visa for Abigail and brought her over. This is when events spun horribly out of control. A few weeks after she arrived, her father finally received his green card. He didn't need us anymore: He accused me of sexual abuse—knowing it would bring the greatest stigma—and told police, backed by three friends from Ghana I'd never met, that her life was in danger. They removed her from my home and ultimately returned her to her father. After he beat her repeatedly, my stepdaughter was placed in DCYF custody and I haven't seen her since. This meant he didn't have to care for her, and it has tied me up in court for over a year.

It is my belief that he planned to do this from the start and was coached by friends to take advantage of the American woman (me). A man who barely speaks or reads English, and suddenly he is making accusations to authorities, saying exactly what he needs to, utilizing the exact branch of our judicial system to support his claims of alleged abuse. The biological father wants nothing to do with the child after years of planning with me to bring his child here, to live like a family "like he always wanted to." I was duped into thinking we would live as a family. He has been allowed to lead a new life without supporting the child, who is abandoned in our DCYF system, but as long as she's in DCYF, he can use it as a way of remaining in the U.S. permanently. This is a loophole that needs to be closed.

His allegations have had far-reaching effects. I've lost my job in the medical field because of the unfounded abuse charges. I suffer from PTSD, diagnosed at Butler. The lead doctor for the state did a follow-up, confirming the PTSD diagnosis. His report went on to say I could never had done what I was accused of, that this immigrant is a con man with a lot of support to allow his lies to be brought into several branches of our legal system. Meanwhile my stepdaughter remains in a long-term DCYF facility; she attempted suicide when she landed at DCYF, shortly after her father beat her. She has lost her chance at a normal life in America. Her father ruined two lives with his lies, yet he currently works in a local nursing home—with patients.

Please, Senator, can you do something? Change our laws, stop us from being abused? Immigration only investigates "rings" of immigrant marriage fraud. We, the victims, apparently only matter if numerous immigrants will be charged. This attitude facilitates the immigrant's abuse of the American, with the assistance of the U.S. government.

I was trying to do a good thing, give them a better life, by bringing them to the U.S. Please consider the marriage loophole and allow U.S. sponsors to report abuse/fraud *without* a statue of limitations. If we can prove the immigrant is committing fraud during the green card process, they should be subjected to an investigation, even once they have the card. This might have helped to prevent this man from doing the damage he did to both his daughter and myself.

Respectfully,
Phyllis Stafford

Phyllis Stafford
[redacted]

To Whom It May Concern,

I am writing this letter to share my personal experience pertaining to marriage and VAWA fraud. I hope that by voicing my story, I can help bring awareness to the growing problem of marriage fraud.

I met my husband while doing mission work in Sierra Leone. We returned to the United States and from the moment he was granted temporary U.S. citizenship, our relationship began to sour. Unbeknownst to me, my husband was still in contact with a woman who was our maid when we were living together in Sierra Leone.

My husband arranged with this woman to come to the U.S. so that he could marry her and she would be able to obtain temporary U.S. citizenship. He wanted her to do this even though we were still married. A few months after the woman arrived, she filed false allegations of domestic violence against me in order to obtain a green card. It is clear by her actions that she was coached on the I-360 provision of VAWA that allows a foreign citizen to self-petition for permanent U.S. citizenship by claiming domestic abuse.

It is unbelievable to me that all a foreign citizen has to do in order to become a U.S. citizen is claim domestic abuse. The claim does not need to be thoroughly reinforced with any form of substantial evidence and the U.S. citizen does not even get an opportunity for their side of the story to be heard because of the fact that they are considered a "prohibitive source." This is a blatant and inexcusable violation of the fundamental right of due process that is afforded to all U.S. citizens.

I do not doubt that such a large and inexplicably unjust loophole is an unintended consequence of VAWA, but it needs to be remedied nonetheless. The U.S. citizen should be afforded the right to be heard. If they are not, dishonest foreign citizens will continue to take manipulate the system while thousands of honest foreign citizens wait years upon years to enter the U.S. in the procedurally proper manner. Although it may be too late to help my individual situation, action needs to be taken to ensure that the basic rights of American citizens are safeguarded and that dishonest behavior is penalized rather than rewarded.

Respectfully,

Yvonne Washington-Turay

Yvonne Washington-Turay

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To Whom It May Concern,

My name is Stephanie Winters and I am a resident of Norman, Oklahoma. I met Maxwell Olufemi Ebegbune, a Nigerian immigrant, in Norman in the month of January 2008. He had told me that he has been in the country since 2000, but in a sworn deposition he stated that he has only been here on a student visa since 2002. I got pregnant in late February 2008 and decided to keep the baby, against Maxwell's wishes.

I gave birth to my daughter Lexi in December 2008 and I started to notice Maxwell acting differently from that day on. Our relationship started to fail but he was completely unresponsive to my efforts to try and salvage it. In the summer of 2009, he started to survey my every movement from his house across the street. Since he lives so close to me, I cannot legally call his actions "stalking." He would call, text, and attempt to walk into my house at all hours of the day and night, even into the wee morning hours. We did not ever live together, nor did he have a key to my home. I finally called the police on him and filed a harassment report on September 22, 2009. On September 30, I was served papers for a custody hearing.

Our hearing took place on November 17th, the same day I found out about Maxwell's wife. He was ordered to one hour per week of visitation until February 2010. During an exchange for a scheduled visitation on December 15, 2009 Maxwell physically assaulted my mother Rhonda Winters. After he refused to take my daughter's diaper bag from me, my mother tried to intervene and give him the bag. Maxwell then slammed his body into hers, knocking her against his car.

Nearly every check he wrote to me for child support has been unacceptable due to the type of temporary checks he sends. Since his arrival to the country in 2002, he has changed his undergraduate several times in order to continually renew his F-1 visa. He has yet to finish his bachelor's degree. I have contacted the local police, sheriff, battered women's shelters, attorneys, supervised exchange sites, parenting classes, separation experts, ICE, Congressman Tom Cole, as well as Lisa Head of Tom Cole's office.

Thank you very much for your time and attention to this matter.

Respectfully,

Stephanie Winters

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To Whom It May Concern,

I am writing this letter to share my personal experience with marriage fraud. I moved to Holmes Beach, Florida toward the end of August 2009. I met my husband, Peter [redacted], shortly thereafter as he was my new neighbor. Peter almost immediately started asking me out on dates and to accompany him on fishing trips and various other recreational activities. At first, I declined his invitations, but he persisted and eventually I agreed to join him.

Once I started spending time with him, I began to develop feelings for him because he seemed to be a genuinely affectionate man who cared about me. Peter was a Dutch citizen, residing in the U.S. under a visitor's visa, and every six months he would return to Holland for about two weeks and then travel back to the U.S. He had been repeating this process for over a decade. In mid-November, Peter told me that he was dreading his next trip back to Holland, which was scheduled for January 16, 2010, because he believed that he would have to stay there for eight months. Because of the feelings I had developed for Peter, and the true potential that I believed our relationship had, I agreed to marry Peter so that he would not have to return to Holland.

Peter and I were married on December 22, 2009. After our marriage was official, Peter's temperament toward me completely changed. He began disapproving of everything I tried to do for him and his commitment to strengthening our relationship vanished. He was issued a conditional green card on April 13, 2010. Peter obtained a social security number on May 19, 2010 and on the next day abruptly told me that I needed to leave the house. That night he got physical with me and, as a result, I was awarded a temporary protective order against him.

I contacted the office of my Congressman, Mr. Vern Buchanan, and when I outlined my story, I was told that their office received similar calls on a regular basis, but that there was nothing they could do for me. I committed to educating myself about marriage fraud, with a particular focus on the immigration aspect.

I have been both shocked and appalled to find how vulnerable U.S. citizens are to marriage fraud and how easy it is for foreign citizens to attain unconditional U.S. citizenship pursuant to various provisions of the Violence Against Women's Act, specifically the I-360 exception.

At a time when national security is of such paramount importance to our country, it is essential that loopholes like these be not only addressed but remedied by lawmakers who have been given their legislative power by the American people to safeguard their most basic rights and protect their livelihoods. Even if it is too late to help my own cause, action needs to be taken to ensure that situations like mine do not happen in the future.

Respectfully,

Lauren [redacted]

WOMEN'S
REFUGEE
COMMISSION

Statement for the Record

Women's Refugee Commission

Before the Committee on the Judiciary

United States Senate

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

July 13, 2011

As members of the Senate Judiciary Committee consider the remarkable accomplishments of seventeen years of implementation of the Violence Against Women Act's groundbreaking provisions for victims of abuse, crime and violence, the Committee must also consider the gaps that remain to be filled in order to protect one of the most vulnerable and frequently forgotten group of victims: immigrant women. Despite continued efforts to promote the rights of victims of abuse and violence in the United States, immigrant victims still face an impossible choice. If they come forward to report violence or abuse, they must conquer their fear of detention, deportation and separation from their children and loved ones. Or, if they choose not to come forward, they must face the painful silence of enduring assault, abuse and rape. The Women's Refugee Commission regularly hears stories of immigrant victims of domestic violence, rape and sexual assault. These include stories where immigrants were unable to access or were denied access to protections after an instance of abuse, assault or rape; stories of immigrant women who were detained as a result of reporting victimization to authorities; and cases of immigrant parents who were separated from their children and dependents after reporting abuse to authorities. These cases illustrate violations of the basic rights and protections afforded to those on U.S. territory. The circumstances which allow them to occur can and must be eliminated.

Several key actions are critical to protect immigrants:

1) Implement PREA in Immigration Detention

Despite the substantial advances in protecting victims of sexual assault, rape and similar crimes, lawmakers must ensure that vulnerable immigration detainees receive the same protections from sexual crimes as individuals in U.S. jails. In 2003, Congress unanimously passed the Prison Rape Elimination Act of 2003 (PREA) to ensure that no imprisoned or detained individual would be subjected to sexual abuse or assault and to ensure that those who were assaulted or abused in prison or detention would have access to protections and remedies.

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womensrefugeecommission.org

Although the recommendations subsequently issued by the National Prison Rape Elimination Commission[1] were intended to apply to immigration detention, the rules proposed by Attorney General Holder earlier this year specifically exclude application of PREA rules to thousands of immigrants detained in Immigration and Customs Enforcement (ICE) and Office of Refugee Resettlement (ORR) custody.[2]

The failure to implement PREA in immigration detention is not only contrary to the original intent of the law, it creates a scenario in which individuals serving criminal sentences are granted protections against rape and sexual assault while immigrants, who are in administrative, civil detention, without any criminal convictions, are left vulernable and are not protected. Given that many immigrants who are ultimately detained are already vulnerable and in need of protection, this exclusion is particularly acute.

Immigration detainees include unaccompanied children,[3] asylum seekers, torture survivors and victims of violence. They are not entitled to government-provided counsel to help them understand their rights and often do not speak English. Immigration detainees are rarely well-informed about the grievance system available to them. In addition, these individuals are in the hands of guards and immigration officers who have the power to detain, transfer and deport them. Even when they understand how to use protection mechanisms available to them, the power dynamics of immigration detention leave them feeling unable to report instances of abuse without the fear of physical or emotional retaliation.

The Women's Refugee Commission believes that safeguards must be in place to protect victims of sexual assault if and when such instances occur. These safeguards include immediate steps an immigration detainee could take if an assault occurrs while in custody, such as access to an independent phone line or independent non-governmental service organization where they could report the incident without fear of retaliation, and the assurance of an independent investigation into any wrongdoing. Victims must also be placed into a safe environment where they are separated from their alleged abuser. However, they should not be placed in segregation or protective custody unless they have expressly requested such housing.

2) Access to Relief for Victims

It is also critical to ensure that immigrant victims have access to protections that may be available to them under law. Immigrant victims may be entitled to legal relief, such as U Visas that would ensure their physical safety and legal protection as they assist in the prosecution of an offender. However, many immigrants are

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[1] National Prison Rape Elimination Commission, "Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails: Supplemental Standards for Facilities with Immigration Detainees" (NPREC Report), June 2009, http://www.ncjrs.gov/pdffiles1/226680.pdf.

[2] The Women's Refugee Commission submitted comments to the Attorney General's proposed rule. They can be found at: http://www.womensrefugeecommission.org/press-room/op-eds-letters-a-articles/1142-national-standards-to-prevent-detect-and-respond-to-prison-rape?q=prea

[3] Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody,* February 2009, http://womensrefugeecommission.org/programs/detention/unaccompanied-children.

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unaware that this protection exists. Furthermore, without the assistance of an attorney to explain his or her rights and assist with applying for relief, an immigrant victim of crime, sexual assault or abuse remains vulnerable to detention and deportation by Department of Homeland Security officials who retain the power over their detention placement and removal from the United States.

Women's Refugee Commission detention center visits consistently show that despite ICE's attempts to improve training to prevent and address sexual assault, detention center officials—both private contractors and DHS employees—remain insufficiently trained in identifying, understanding and responding to sexual assault in detention. We have heard stories of immigrant women who, when reporting a grievance, are intimidated and sometimes placed into isolating segregation units. Without understanding their rights, and without the implementation of safeguards that ensure immigrant detainees can access protection and justice when victimized or assaulted, vulnerable immigrant women, men and children are left with insufficient remedies and a violation of their basic human rights.

3) Eliminate the Cimate of Fear: Apprehension and Parental Custody

Those immigrants who have been the victim of a crime or sexual assault or abuse that occurred outside of federal custody also fear reporting their attackers or their attackers' crimes. While many victims are afraid to contact police for fear that they will be apprehended, detained and deported, victims are also concerned that they will be separated from their children as a result of contacting law enforcement. The Women's Refugee Commission has met with countless individuals where contact with law enforcement (regardless of the underlying reason) resulted in detention of an adult caregiver and the placement of a dependent either in a potentially unstable situation with a relative, neighbors or friends or into the local child welfare system. If the latter, immigrant parents who find themselves detained in ICE or DHS custody have very few remedies available to them to reunite with their child or dependent. Few safeguards exist to ensure that a parent could make child care arrangements in the event of apprehension and detention. In addition, caregivers struggle to stay in meaningful contact with their dependents and are often unable to participate in state custody proceedings from within immigration detention.[4]

As a result, many immigrants fear informing officials of the existence of their children, even where a child may be in danger if left in the custody of an abusive partner. Immigrant parents approaching law enforcement or immigration officials to report violence, an assault or a crime committed against them ought never to have to fear the unnecessary separation from their children or dependents as a result. Safeguards must be in place to protect immigrant parents who are victims of crime and violence, and their children, in particular in situations where a caregiver's partner may be the abuser. As with those immigrants reporting a crime or assault from within immigration detention, caregivers who come forward as victims to local law enforcement or immigration officials should be provided with access to the appropriate social services and legal remedies. They must be able to understand their rights and the protections available to them, and should receive the same treatment as any

[4] Women's Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. December 2010. http://womensrefugeecommission.org/reports/doc_download/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention.

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individual, immigrant or not, who reports a violent or sexual crime. The vulnerabilities immigrants face as victims of crime outside of detention are no less frightening, confusing and dangerous than the vulnerabilities faced by immigrant victims of crime who are abused in detention.

Conclusion: VAWA and the Need for Protection

The Violence Against Women Act has provided immigrant victims of crime with significant and important protections, and the Women's Refugee Commission commends Congress for recognizing the importance of the specific needs and vulnerabilities of these populations. Yet more must be done to eliminate the risk of abuse and assault faced by immigrant women, men and children and to protect the rights of and provide access to justice for those who are victims of violence, sexual assault, abuse and rape. These individuals ought never to think that their immigration status precludes them from protections or efforts to prevent violence and sexual abuse against them if they have been victimized. Anything less would be a failure of U.S. obligations to meet basic human rights. VAWA reauthorization can, and must, acknowledge the ongoing prevention and protection needs of immigrant victims.