



Eradicating domestic violence is a worldwide challenge for the global community. Eradicating domestic violence in the unauthorized migrant community presents even greater demands. Yet the U.S. policies emerging to address this concern have been multipronged.

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Domestic Violence and the Plight of the Unauthorized Migrant

Immigrant women face their partner's threats to abandon them, or they are left for other women. Often they are held back from the immigration process though threats of actual violence. These fears are real and create formidable barriers for immigrant women trying to end violence in their own home. Imagine if you could not speak English and had no emotional support from a network of family or friends. Basic service can be completely cut off. Others may avoid even seeking assistance fearing her partner may be deported and knowing that her relatives in their homeland are dependent upon income generated by the abusive partner.

*Statement of Beverly C. Dusso,
Harriet Tubman Center, 1996 Hearing Before the
Committee on the Judiciary, U.S. Senate¹*

Beverly C. Dusso's words before the Senate Committee on the Judiciary some 18 years ago acknowledged the gravity of the challenges facing domestic violence victims in the United States. Her comments crystallized how domestic violence impacts migrants and called upon the United States to respond to a UN General Assembly resolution asking governments throughout the world to work to eradicate it.² In the United States, it is estimated that one-quarter of all women experience severe domestic violence, such as rape or physical assault, at some point in their lifetime.³ While the victims often need medical, emotional, legal, and law enforcement support, it is a well-documented phenomenon that they tend to be reluctant to seek the support they need.⁴ Migrant domestic violence victims may be even more vulnerable:⁵ if they lack legal status, coming forward to seek support may reveal that fact, rendering them potentially subject to removal from the United States.⁶ In the years following Dusso's statement, the United States has acknowledged this inequity, and it is now well-recognized that unauthorized migrants who lack legal immigration status are more likely to suffer abuse.⁷

The estimated population that may be affected by this phenomenon is significant. The Congressional Budget Office reports that, as of the end of 2011, an estimated 11.5 million unauthorized migrants lived in the United States.⁸ In a Department of Justice (DOJ) survey, 48 percent of Hispanic women in the United States reported having suffered an incidence of domestic violence, including rape by an intimate

partner; and up to 60 percent of Korean women in New York reported having been subject to domestic abuse.⁹ As the United Nations has acknowledged, migrants are subject to potentially pronounced discrimination and victimization, since they often suffer language and cultural barriers and fear that in coming forward they may be retaliated against or removed from the country in which they are living.¹⁰

Understanding the maze of legal rights involved in migrant domestic violence matters can be daunting. The cases can involve diverse areas of law and multiple jurisdictions. First, international human rights law, such as the 1951 Convention Relating to the Status of Refugees, and a victim's eligibility for humanitarian asylum relief can be implicated in these cases.¹¹ Second, the Fifth Amendment due process clause affords a migrant victim federal civil rights protections in immigration proceedings.¹² Third, federal domestic violence criminal law, such as interstate enforcement of domestic violence protection order violations, may be a factor in any offender criminal prosecution and immigration relief to a migrant victim.¹³

Fourth, individual state domestic violence civil and criminal laws may be enforced against an offender. As of August 2013, approximately 47 states and the District of Columbia define domestic violence in their civil codes and provide for civil protection orders.¹⁴ As of that date, 38 states define domestic violence specifically within their penal code,¹⁵ and the remainder provide protection by making domestic violence an additional factor in other crimes, such as assault and battery.¹⁶

Fifth, state family law statutes include best interest of the child determinations in the domestic violence context.¹⁷ Finally, federal immigration law is implicated in all of the above areas, ranging from prosecution of migrant offenders¹⁸ to offering a host of protections to migrant victims.¹⁹ Further complicating this area of the law is that a single case can span multiple adjudicatory bodies, including state criminal and family law courts, federal immigration agencies, federal immigration courts, federal district courts, and federal circuit courts, with each of these entities having its own distinct set of precedent authority and path for appellate review.

What makes domestic violence cases especially fraught for migrant victims is the added uncertainty they face about federal immigration law implications.²⁰ While an offender may be deportable based on the nature and extent of the abusive conduct,²¹ the extent to which victims are eligible for immigration protection depends upon a number of factors, including the nature of their immigration history, the extent of the domestic violence abuse, and whether they have engaged in any criminal conduct.²² Notwithstanding the victimization, some unauthorized migrant victims may be deported depending upon a number of factors both within and outside of their control.²³ In some cases, this general uncertainty about outcomes and the high stakes at issue may impede the desire to seek state or federal assistance.²⁴

The key federal law governing domestic violence in the immigration context is the Violence Against Women Act (VAWA).²⁵ Passed in 1994, this comprehensive federal domestic violence legislation enables the federal government to lead the charge in identifying model policies that could be replicated throughout the United States to limit the prevalence of domestic violence.²⁶ The enactment of VAWA has caused a pronounced

ripple effect throughout the United States of strengthening state and local responses to domestic violence.²⁷

VAWA defines domestic violence expansively to include:

[A]ny felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.²⁸

The statute endorses protection from domestic violence that takes the form of "physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person"²⁹ and applies to both opposite-sex and same-sex unions.³⁰

VAWA provides wide-ranging support, including enhanced immigration-related prosecution measures, expanded and better-coordinated federal and state enforcement partnerships, comprehensive immigration law benefits for victims, and expanded federal financial support and guidance for state and local initiatives.³¹ In Section I, this article explains the types of immigration-related prosecution measures available under federal immigration law. In Section II, the article evaluates the nature of expanded federal and state enforcement partnerships. In Section III, the article considers how immigration law benefits for victims have been expanded. In Section IV, the article discusses the nature of federal financial support and guidance for state and local law initiatives. Finally, the article concludes that while there has been significant progress in this area of the law in terms of the extent to which domestic violence crimes have been addressed generally, it is still not clear how well the population of migrant domestic violence victims' needs are being met, and whether policies in place have significantly curtailed continued abuse of this population. There may still be aspects that cause concern for victims and impede the extent to which victims fully engage the state and federal legal systems.³²

Enhanced Immigration-related Prosecution

The primary prosecution measure focusing on migrant perpetrators is a mechanism to remove from the United States unauthorized migrants found guilty of domestic violence.³³ In 1996, the Immigration and Nationality Act (INA) added a separate charge of removability³⁴ so that any unauthorized migrant convicted of a crime of domestic violence is removable.³⁵ Described as "probably the most far-reaching criminal deportability ground,"³⁶ the term "crime of domestic violence" means any crime of violence as defined in Title 18 of the U.S. Code, Section 16, and serves as a ground of removability in the context of an expansive definition of spouses, including current or former spouses, common law spouses, and domestic partners.³⁷ Furthermore, INA Section 237(a)(2)(E)(ii) renders removable any unauthorized migrant who is enjoined under a protection order and found by a court to have violated that order in a manner that involves credible

threats of violence, repeated harassment, or bodily injury.³⁸

An order of removal is the federal system's most severe immigration law penalty, as an individual who has been removed faces a number of obstacles if he or she tries to return to the United States.³⁹ The consequence of one removal order is that the offender will be barred from returning to the United States for 10 years.⁴⁰ In the case of a second or subsequent removal, an

VAWA allocated funds for state and local communities supporting the development of laws and policies that would achieve these goals.⁵² It exacted strict penalties for federal domestic violence violations, ranging from a maximum of 5 years when there is no injury to the victim, 10 years in the case of serious bodily injury or if a dangerous weapon is used, 20 years in the case of permanent disfigurement or life-threatening bodily injury to the victim, and

When VAWA was enacted in 1994, it created new federal domestic violence crimes, such as the crossing of state lines “with the specific intent to kill, injure, harass, or intimidate that person’s intimate partner,” and also mandated interstate recognition and enforcement of protection orders. To that end, VAWA allocated funds for state and local communities supporting the development of laws and policies that would achieve these goals.

individual is barred from the United States for 20 years.⁴¹

Some domestic violence offenses are also considered aggravated felonies, and, as such, carry even more severe penalties.⁴² A domestic violence/aggravated felony removal involves a criminal statute that carries a term of imprisonment of one year or more, and in which a sentence of at least one year was imposed.⁴³ Unauthorized migrants who have been removed pursuant to an aggravated felony offense are prohibited from returning to the United States for life unless the U.S. attorney general authorizes special permission to return.⁴⁴ Individuals who are removed as aggravated felons and who later enter or attempt to enter the United States without authorization will be subject to federal prosecution for illegal reentry and lengthy prison sentences of up to 20 years.⁴⁵

Yet, despite the existence of these advanced immigration removal tools, some argue that the extent to which they have been used is unclear. In its annual release of immigration statistics, the Department of Homeland Security (DHS) does not publish comprehensive statistics on the precise criminal history of all migrants who are removed.⁴⁶ For example, DHS, which brings removal cases before U.S. immigration courts, reports that in 2012, approximately 199,000 of the 419,384 individuals removed from the United States had a prior criminal conviction.⁴⁷ The most common categories of crime for which individuals were removed were immigration-related offenses, such as smuggling, criminal traffic offenses, and dangerous drug offenses.⁴⁸ However, the statistics reflect that the vast majority of individuals who were removed on criminal grounds were not subject to domestic violence removal charges, since 86 percent had different criminal offenses identified, and the remainder of unnamed offenses represented a catchall category comprising 14 percent of total removals.⁴⁹

Expanded and Better-coordinated Federal and State Enforcement Partnerships

When VAWA was enacted in 1994, it created new federal domestic violence crimes, such as the crossing of state lines “with the specific intent to kill, injure, harass, or intimidate that person’s intimate partner,”⁵⁰ and also mandated interstate recognition and enforcement of protection orders.⁵¹ To that end,

up to life imprisonment if the crime of violence results in the victim’s death.⁵³

Since its enactment, the United States’ response to domestic violence has become more effective in that communities better recognize the special needs of victims, dedicated law enforcement officers and specialized prosecutors have been trained to support this population, and emergency shelter and crisis hotlines have been created to provide support, including legal assistance.⁵⁴ Thus, as a result of VAWA, and its impact across the country, federal, state, and local laws now consistently reflect domestic violence offenses as crimes against the state,⁵⁵ and every state in the country provides for some form of protective order for victims of domestic violence.⁵⁶

Improved Immigration Law Benefits for Victims

Victims have a range of immigration benefits to pursue in response to domestic violence. First, certain domestic violence victims who are relatives of U.S. citizens and permanent residents can self-petition for permanent immigration status. This relief is available to an unauthorized migrant victim who suffers abuse within the context of the following familial relationships to a U.S. citizen or lawful permanent resident:

- a. Spouse;
- b. Child (unmarried and under age 21);
- c. Parent of an abused child (unmarried and under age 21); or
- d. Parent.⁵⁷

To qualify, the victim must have been subjected to physical battery and/or “extreme cruelty” by a U.S. citizen or lawful permanent resident.⁵⁸ The type of abuse can range from serious, violent physical abuse to threats of violence and verbal and emotional abuse.⁵⁹ Abused spouses are also required to establish:

- a. That the marriage was entered into in good faith;
- b. That the abuse occurred during the marriage, and that the marriage is still valid or was terminated less than two years prior to self-petitioning by death or a divorce that is related to the abuse;
- c. That the abuse occurred in the United States, and the victim lived with the abuser; and
- d. That the self-petitioner has “good moral character.”⁶⁰

VAWA is commenced with the filing of Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. Self-petitioners need not notify an abuser that the petition has been filed. The request is submitted to the U.S. Citizenship and Immigration Services (USCIS), Vermont Service Center.⁶¹ These requests have been determined to be of a sensitive nature, and as such, the Vermont Service Center has designated a special VAWA unit to adjudicate them.⁶² Members of the VAWA unit undergo a very rigorous training program, followed by a period of mentorship.⁶³ VAWA unit members undergo both formal and informal ongoing training, such as training sessions and conferences from USCIS policy staff and members of private-sector advocacy groups. A successful VAWA self-petitioner may immediately apply for lawful permanent residence and, after three years in that status, for U.S. citizenship.⁶⁴

Since the establishment of this type of relief, the volume of VAWA self-petitions has steadily increased.⁶⁵ In 1997, self-petitioners filed 2,491 petitions; that number rose to 9,209 in 2011.⁶⁶ USCIS reports that, on average, between two-thirds to three-quarters of all petitions adjudicated each year have been approved, with the rate cresting at 85 percent in 2002 and hovering at 67 percent in 1998.⁶⁷ Self-petitioners that terminate the marriage within two years prior to the date of the filing the petition can still be successful as long as they can demonstrate a connection between the termination of the marriage and the battery or extreme cruelty.⁶⁸ When an I-360 petition is denied, the VAWA self-petitioner has the right to appeal to the USCIS Administrative Appeals Unit.⁶⁹

Due to the statutory requirements identified above, a *bona fide* self-petitioning domestic violence victim may nevertheless be unsuccessful in an I-360 filing.⁷⁰ For example, a victim may not be able to demonstrate a connection between the marriage termination and the battery or extreme cruelty.⁷¹ Similarly, the petition may be time-barred statutorily due to the date of the marriage termination and a delay in filing by the victim.⁷² Moreover, the “good moral character” requirement may derail an otherwise *bona fide* victim’s application if the victim has a criminal history that is not tied to the domestic abuse.⁷³

A victim who is in removal proceedings may apply for another type of relief: VAWA Cancellation of Removal.⁷⁴ This is available to unauthorized migrant respondents based on domestic abuse suffered at the hands of a U.S. citizen or lawful permanent resident spouse or parent.⁷⁵ Through this relief, immigration judges have the authority to cancel the removal of an otherwise unauthorized migrant on account of domestic abuse.⁷⁶ Like the VAWA self-petitioner, the VAWA Cancellation of Removal applicant must establish that he or she was physically battered and/or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse, parent, or adult child. In addition, to be eligible for relief, the domestic violence victim must have been physically present in the United States for a continuous period of not less than three years prior to applying, and must be a person of good moral character who has not been convicted of various types of criminal conduct.⁷⁷ The removal must result in extreme hardship to the victim, the victim’s child, or, if the victim is the child, then to the victim’s parent.⁷⁸ Finally, VAWA cancellation applicants are subject to the general 4,000-person annual Congressionally imposed cap on all types of cancellation

grants of relief combined.⁷⁹

The third type of relief is referred to as a U Visa. An unauthorized migrant who provides assistance to law enforcement in connection with a criminal prosecution may be eligible for temporary immigration status under this provision of immigration law as a victim of certain violent crimes, including domestic violence.⁸⁰ As long as the victim has suffered mental or physical abuse that is deemed substantial and is willing to assist law enforcement in the investigation or prosecution of the criminal activity, an unauthorized migrant victim is statutorily eligible for this status.⁸¹ This policy supports state and local law enforcement in the investigation and prosecution of cases of domestic violence and other crimes.⁸² It assists law enforcement in serving and protecting this designated class of crime victims.⁸³

U Visa recipients receive temporary legal status that cannot exceed four years,⁸⁴ and Congress has imposed an annual limit of 10,000 visas.⁸⁵ Once the cap is reached, the federal government stops processing and approving U Visa requests until the start of a new fiscal year.⁸⁶ U Visa petitioners do not need to establish that they possess good moral character.⁸⁷ This is an important distinction for a domestic violence victim who may have a criminal record, as well.

A key component of the U Visa petition is establishing that an individual has suffered physical or mental abuse as a result of having been a victim of qualifying criminal activity that is deemed substantial.⁸⁸ Moreover, the victim must be considered helpful in an investigation or prosecution.⁸⁹ A law enforcement officer must certify the present or future helpfulness of the victim to the prosecution of the crime.⁹⁰ Federal, state, and local law enforcement agencies, in addition to a broad array of other types of investigative agencies, are authorized to certify a U Visa petition.⁹¹

While a grant of U Visa status is limited to a four-year period,⁹² extensions are available when a certifying agency confirms the continued need for a foreign national’s presence to assist in the investigation or prosecution of the qualifying criminal activity.⁹³ When a U Visa petition is not approved, the denial can be appealed to a USCIS Administrative Appeals Unit.⁹⁴ In fiscal year 2009, there were 6,835 U Visa applications filed.⁹⁵ Three years later, that number had nearly quadrupled to 24,768.⁹⁶ Currently, there are many more applications for relief than visas available due to the 10,000-person annual cap.⁹⁷

A benefit of being granted U Visa status is that the recipient’s family members, such as spouses, children, or other qualifying relatives who are accompanying the principal victim, are also eligible for derivative relief.⁹⁸ For unauthorized migrants who fear the impact on their close family members of coming forward to law enforcement, this feature may serve as an attractive side benefit.

The fourth type of immigration-specific relief is asylum protection in the United States.⁹⁹ Domestic violence victims who establish that they were unsuccessful in obtaining protection from their home government and that they have a well-founded fear of persecution, may be found eligible for asylum.¹⁰⁰ To establish a well-founded fear of persecution, the domestic violence victim must establish that the harm suffered was on account of political opinion, religion, nationality, race/ethnicity, or membership in a particular social group.¹⁰¹ Many domestic violence victims seek

to establish that the harm suffered or feared is on account of a particular social group,¹⁰² but a social group based on gender violence has not yet been recognized in a decision that has the force of established precedent.¹⁰³ As such, a victim seeking asylum based on domestic violence must meet existing criteria by showing that he or she belongs to a cognizable social group defined by an immutable characteristic that is particularized and socially visible.¹⁰⁴ Since there is no precedent case law recognizing a social group comprising victims of domestic violence, victims often advance a variety of claims that they argue are narrowly defined and specific enough to be accepted as a particular social group under current law.¹⁰⁵ However, at this time, the issue of whether domestic violence can form the basis for an asylum claim remains unresolved given the difficulty of defining a social group and the lack of published precedent decisions in which a domestic violence victim has been found eligible for relief based on a protected ground.¹⁰⁶

Despite the lack of judicial precedent, some victims point to a domestic violence-based case in which DHS filed a brief asserting that victims could adequately meet the current requirements for social group membership if they (a) identified the specific characteristics that the persecutor targeted in choosing the

Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).¹¹⁸ Victims of domestic violence who are able to establish that it is more likely than not that they would be tortured in their home country with the consent or acquiescence of a public official or other person acting in an official capacity, may be eligible for this relief.¹¹⁹ When victims argue that their home country has no specific legislation that addresses violence against women or that they offer no civil or criminal protection or redress from such violence,¹²⁰ they may be able to establish eligibility under the CAT due to lack of adequate action or intervention by government officials.¹²¹ There is no annual limit on the number of CAT requests that may be granted.¹²²

The seventh type of relief available to domestic violence victims is special immigrant juvenile (SIJ) status.¹²³ Juveniles, as defined under immigration law and regulation, who have been declared dependent on a juvenile or family law court in the United States or who have been placed under the custody of a state agency may apply for a special immigrant status.¹²⁴ Reunification with one or both of their parents must (a) not be viable and (b) not be in the best interest of the juvenile due to abuse, neglect, or abandonment.¹²⁵ SIJ petitions require that a juvenile or family

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domestic violence victim and (b) provided evidence of societal abuse in that country toward those characteristics.¹⁰⁷ In addition, the victim would need to establish that the harm feared is “serious enough to constitute persecution”; that the fear is well-founded such that a victim is unable to relocate within the country; and that the state is unwilling or unable to protect the victim.¹⁰⁸

When successful, a grant of asylum leads to lawful permanent residence and eventually citizenship.¹⁰⁹ There is no annual limit on the number of asylum requests that can be granted.¹¹⁰

Through a similar standard to asylum eligibility, a domestic violence victim can apply for restriction on removal (also known as withholding), which is the fifth type of related protection available under U.S. law.¹¹¹ The standard for eligibility is more rigorous than that of asylum, including a stricter burden of proof.¹¹² Individuals who have a disqualifying criminal conviction that renders them ineligible for asylum or who have filed their application for relief more than one year after their arrival in the United States, may find this type of relief attractive.¹¹³ However, the benefits of a grant of restriction on removal are not as expansive as those related to asylum,¹¹⁴ and while a recipient cannot be removed from the United States to the country in which the harm feared would or has already occurred, the victim may be removed to a third country if one is available.¹¹⁵ While an individual may not adjust status to legal permanent residency, work authorization is available to a recipient while living in the United States.¹¹⁶ There is no annual limit on the number of restriction on removal grants.

Sixth, the United States is a signatory to the UN Convention

court make findings of abuse, neglect, or abandonment. Once this state determination is made, the individual may petition USCIS to have SIJ status conferred¹²⁶ and permanent residence status granted.¹²⁷ Petitioners must be under 21 at the time their petition is filed.¹²⁸

The eighth type of relief available to a migrant domestic violence victim is the waiver on conditional permanent residence.¹²⁹ Usually, migrants who marry a U.S. citizen or lawful permanent resident and who are granted lawful permanent residence status by virtue of that relationship less than two years before the second anniversary of their marriage are granted a two-year, conditional permanent residence status. To make the status permanent, the petitioning spouse and the beneficiary are required to file a joint petition shortly before the second year following the grant of the conditional status.¹³⁰ In the domestic violence context, out of a concern that the joint petition requirement could inadvertently bind a domestic violence victim to an abusive spouse, federal law now permits a waiver of the joint petition requirement such that a victim may self-petition to remove the conditional status.¹³¹ The petitioner must establish that he or she entered into the marriage in good faith but terminated it before the end of the two-year conditional period as a result of battery or extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the course of the marriage.¹³² By virtue of this law, a battered immigrant may leave an abusive relationship, since the victim need not rely on the abusive spouse to be granted a waiver.¹³³

Finally, victims that are in removal proceedings may request

that prosecutorial discretion in immigration enforcement actions be exercised.¹³⁴ This enables law enforcement to focus limited resources on higher-priority cases and apply the law in a compassionate and humanitarian manner when appropriate.¹³⁵ In June 2011, Immigration and Customs Enforcement (ICE) issued a policy memorandum clarifying the circumstances under which prosecutorial discretion and enforcement policies should be employed in cases involving victims and witnesses to crimes.¹³⁶ ICE acknowledged there are instances in which state or local law enforcement officers may arrest and book multiple individuals at the scene of alleged domestic violence, including a victim or witness of domestic violence, and that through cooperation

that end, OVW identifies policies and best practices for state and local governments involving the prosecution of domestic violence matters, including those involving unauthorized migrants.¹⁴⁷ In addition, it provides financial and technical resources to victims.¹⁴⁸

OVW sets the federal government policy for combatting domestic violence in consideration of how these policies impact migrant victims.¹⁴⁹ The programs foster culturally and linguistically specific services for migrant victims, which is imperative, since these victims often suffer cultural and linguistic impediments to seeking assistance.¹⁵⁰ Additionally, OVW offers federal grants that encourage states to adopt specific arrest policies that may be deemed advantageous to migrants.¹⁵¹ It also provides funding and programming support

Referencing domestic violence victims specifically, the policy sets forth that if an unauthorized migrant has already been ordered removed, ICE may grant a stay of removal or deferred action through implementation of the policy. While the exercise of prosecutorial discretion does not confer permanent immigration relief, this form of temporary stay does offer a measure of protection to victims who might otherwise be removable.

agreements between state and federal law enforcement, an unauthorized migrant victim may come to the attention of ICE.¹³⁷ However, ICE modified the policy to state that “absent special circumstances, it is against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.”¹³⁸

Referencing domestic violence victims specifically, the policy sets forth that if an unauthorized migrant has already been ordered removed, ICE may grant a stay of removal or deferred action through implementation of the policy.¹³⁹ While the exercise of prosecutorial discretion does not confer permanent immigration relief, this form of temporary stay does offer a measure of protection to victims who might otherwise be removable.¹⁴⁰ However, advocacy groups have criticized ICE for failing to offer this benefit expansively.¹⁴¹ Critics have noted instances in which victims may not be offered this relief as a result of their criminal history, even when they argue that a conviction was tied to the domestic abuse.¹⁴²

In sum, it is clear that these federal immigration laws provide a host of potential immigration relief to migrant domestic violence victims. However, given the inherent limitations, migrant victims may still be deterred from seeking help and support.

Expanded Federal Financial Support and Guidance for State and Local Law Initiatives

The Office on Violence Against Women (OVW) supports and funds the implementation of VAWA and thereby a wide variety of initiatives aimed at reducing violence against women, including migrant victims.¹⁴³ The office manages an annual budget of more than \$400 million to fund state and community programs that provide, among other things, shelter services and legal assistance for victims.¹⁴⁴ Through federally coordinated policies and implementation procedures, the United States now promotes more effective state and local law enforcement of gender-based violence cases.¹⁴⁵ The overarching goal of many of these programs is to foster understanding within the various state and local communities about the causes of domestic violence and to reduce its prevalence through better community engagement.¹⁴⁶ To

for more effective implementation and enforcement of protection orders.¹⁵² OVW has demonstrated that jurisdictions with specialized domestic violence prosecution programs have the most successful prosecution outcomes.¹⁵³

The OVW reports to Congress about grants made under the program and the effectiveness in the communities served.¹⁵⁴ The following grant programs are targeted directly toward unauthorized migrant victims:

- Legal Assistance for Victims Grant Program (LAV Grant Program)
- Coordinated Community Response Grant Program (CCR Grant Program)
- Community Education and Public Awareness Activities Grant Program (CEEPA Grant Program)
- Historically Underserved Populations Grant Program (HUP Grant Program)
- Culturally and Linguistically Specific Services Grant Program (CLSS Grant Program)¹⁵⁵

In its “Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act in 2012,” the OVW reported on its various programs.¹⁵⁶ The LAV Grant Program targets the migrant population directly in its support of state and local government civil and criminal legal assistance programs providing assistance with legal matters arising out of domestic violence. By statute, the grant programs are required to

Implement, expand, and establish cooperative efforts and projects between domestic violence and sexual assault victim services organizations and legal assistance providers to help victims/survivors of sexual assault, domestic violence, dating violence, and stalking;

Implement, expand, and establish efforts and projects to give legal assistance to victims/survivors of sexual assault, domestic violence, dating violence, and stalking by organizations

with a demonstrated history of providing such direct legal or advocacy services; and

Provide training, technical assistance, and data collection to improve the capacity of grantees and other entities to offer legal assistance to victims/survivors of sexual assault, domestic violence, dating violence, and stalking.¹⁵⁷

Thus, these programs may include the provision of legal services in connection with immigration-specific relief, as well as support in the family law context. OVW reports that in 2012, about 8 percent of its total grant budget was devoted to LAV programs.¹⁵⁸ Of all legal assistance provided during this period under this grant program, 12.8 percent was immigration-related.¹⁵⁹

The CCR Grant Program implements reforms within the state and local criminal legal system, including revising policies, procedures, and rules that guide all participants in the law enforcement process, ranging from law enforcement officers, prosecutors, judges, and court personnel.¹⁶⁰ These programs are largely cross-disciplinary collaborations that foster formal interagency relationships with the hopes of improving coordination and collaboration.¹⁶¹

The 2012 OVW report cites that in Brooklyn, N.Y., and in the State of California, CCR Grant Programs have promoted greater utilization of the criminal justice system by unauthorized migrants in that they have instituted policies that make the system less threatening for vulnerable migrants.¹⁶² For example, police reports are now released to victims expeditiously and at no cost, where there were previously significant delays and costs.¹⁶³ Moreover, CCR Grant Program grantees report that as a result of these collaborations, there are faster responses to requests for needed documentation for U Visa petitions.¹⁶⁴

OVW reports that it supports CCR Grant Programs that train professionals who may come into contact with victims who are unauthorized migrants.¹⁶⁵ In 2011 and 2012, OVW reports that it awarded 1,191 grants and supported the training of 661,263 professionals, comprising the following:

- (a) Law enforcement officers: 93,241
- (b) Victim advocates: 86,211
- (c) Health care professionals: 42,405
- (d) Attorneys and law students: 36,575¹⁶⁶

The CEPAA Grant Program focuses on discovering the root causes of domestic violence, including finding ways to change community norms.¹⁶⁷ Training law enforcement to better serve victims¹⁶⁸ facilitates targeted outreach to marginalized communities, including, for example, unauthorized migrant families in rural areas.¹⁶⁹

CLSS Grant Programs support specialized services initiatives that are tailored linguistically, religiously, and culturally to the needs of the particular unauthorized migrant population group.¹⁷⁰ OVW reports that between 71 percent and 89 percent of the victims served through this program had been victimized by a current or former spouse or intimate partner.¹⁷¹ Female victims of Asian and Hispanic ethnicity between the ages 25 and 59 are reported to be the predominate groups that access these services.¹⁷²

OVW reports that the HUP Grant Program serves unauthorized migrants and refugees who need assistance in pursuing legal advocacy, as well as several other vulnerable populations.¹⁷³ A significant portion of the funds allocated are focused on unauthorized migrants and refugees, where about 32,000 victims/survivors annually are immigrants, refugees, or asylum seekers.¹⁷⁴

In sum, the OVW points to impressive population-wide statistics reflecting that between 1993 and 2010, intimate partner killings declined by 30 percent for women and 66 percent for men.¹⁷⁵ Intimate partner violence also dropped by 67 percent during the same period.¹⁷⁶ Yet, the statistics do not reveal the precise extent to which this progress is being realized in the migrant community and, as such, domestic violence abuse may continue to be quite prevalent.

Conclusion

Eradicating domestic violence is a worldwide challenge for the global community. Eradicating domestic violence in the unauthorized migrant community presents even greater demands. As this article has demonstrated, the U.S. policies emerging to address this concern have been multipronged.

With strengthened immigration removal statutes, offenders can now more easily be removed from the United States so they are no longer able to engage in the abusive conduct, and they are also subject to severe penalties should they return to the United States. Likewise, the scope and breadth of the state and local statutes criminalizing domestic violence conduct have developed such that these laws now consistently reflect domestic violence offenses as crimes against the state, and every state in the country provides for some form of protective order for victims of domestic violence. Successful offender removals rely on mature federal and state partnerships that facilitate a coordinated enforcement web and reflect common goals.

A variety of immigration benefits that specifically target this vulnerable population appear to be meeting the needs of some domestic violence victims, even though some forms of relief are oversubscribed annually. These immigration benefits support migrants in a range of circumstances where they have been victimized in the United States. Factors ranging from legal status of the perpetrator, the nature of the familial relationship, the number of years that the perpetrator and victim have been married, the victim's years of presence in the United States, and the nature of the harm suffered, all operate to tailor the type of relief appropriate to the victim. Relief is available through a VAWA self-petition, VAWA Cancellation of Removal, a U Visa, SIJ status, and a conditional permanent residence waiver. Some victims who have fled their home countries due to domestic violence may pursue humanitarian relief in the form of asylum, restriction on removal, or relief under the UN Convention Against Torture. Finally, even when a victim is unable to establish eligibility through any of these avenues of relief, DHS may exercise prosecutorial discretion.

A national effort, funded and guided by the federal government, to advance initiatives aimed at reducing violence against women has resulted in marked progress in reducing the pervasiveness of domestic violence. However, it is still not clear how well the population of migrant domestic violence victims' needs are being met and whether policies in place have significantly curtailed

continued abuse of this population. There may still be aspects that cause concern for victims and impede the extent to which victims fully engage the state and federal legal systems. ☺

Addendum: As this article was going to print, the Board of Immigration Appeals issued a precedent decision recognizing that women who have experienced domestic violence may be deemed a “member of a particular social group” in some circumstances. *Matter of A-R-C-G-*, et. al, 26 I. & N. Dec. 388 (B.I.A. 2014). This decision holds that following a case-specific inquiry, some married women in Guatemala who are unable to leave their relationship may be able to establish a cognizable social group. *Id.*



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those of the Department of Justice.

Endnotes

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⁸Congressional Budget Office, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and*

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⁹Intimate Partner Violence, *supra* note 7, at 33.

¹⁰UN Handbook on Domestic Violence Legislation, *supra* note 6, at 15.

¹¹UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137.

¹²*Matter of Garcia*, 17 I&N Dec. 319, 321 (BIA 1980).

¹³18 U.S.C. § 2262.

¹⁴Child Welfare Information Gateway, *Definitions of Domestic Violence*, p. 2 (2013).

¹⁵*Id.* at 4. The states with distinct domestic violence criminal statutes are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin. *Id.*

¹⁶*Id.*

¹⁷INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a).

¹⁸INA § 237(a)(2)(E), 8 U.S.C. § 1227(a)(2)(E).

¹⁹*See, infra* Section III.

²⁰*See*, UN Handbook on Domestic Violence Legislation, *supra* note 6, at 15.

²¹*See, e.g.*, INA §§ 212(a)(2), 237(a)(2) (2013).

²²*See, e.g.*, INA §§ 101(a)(15)(U), 204(a)(1)(A)(iii), and 240A(b)(2).

²³For general grounds of inadmissibility and deportability, *see* INA §§ 212, 237.

²⁴Barriers to Help-Seeking, *supra* note 5, at 290.

²⁵Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18, and 42 U.S.C.), as modified by Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386; Titles I, Section 3, and IX of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162, as amended by Public Law 109-271; and in the Violence Against Women Reauthorization Act of 2013, Public Law 113-4 [hereinafter “VAWA”].

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²⁷*Id.*

²⁸42 U.S.C. § 13925.

²⁹*Id.*

³⁰*Id.*

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³²UN Handbook on Domestic Violence Legislation, *supra* note 6, at 15.

³³Under INA § 237(a)(2)(E), perpetrators who have been convicted of various crimes of family violence, including “domestic crimes of violence” against spouses or partners, stalking, violation of orders of protection, and child abuse, abandonment, or neglect, are removable. In addition, some individual state domestic violence-specific statutes may also involve moral turpitude

where the offense involves the infliction of bodily injury. *In re Sanudo*, 23 I&N Dec. 968 (BIA 2006).

³⁴Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104–208, 110 Stat. 3009–546350(b).

³⁵INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i).

³⁶Kevin R. Johnson, Raquel Aldana, Bill Ong Hing, Leticia Saucedo, and Enid F. Trucios-Haynes, *Understanding Immigration Law*, Lexis Nexus, 319 (2009).

³⁷18 U.S.C. § 16 defines a “crime of violence” as (a) an offense that has as an element of the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

³⁸INA § 237(a)(2)(E)(ii), 8 U.S.C. § 1227(a)(2)(E)(ii).

³⁹INA § 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii).

⁴⁰*See Id.*

⁴¹*See* INA § 212(a)(9)(A)(i) & (ii), 8 U.S.C. § 1182(a)(9)(A)(i) & (ii).

⁴²*See* Transactional Records Access Clearinghouse, Nature of Charge in New Filings Seeking Removal Orders through March 2014, at trac.syr.edu/phptools/immigration/charges/apprep_new-filing_charge.php (last visited April 13, 2014). The publishers of that report state that “Only a small proportion of the filings in the Immigration Courts seeking to deport noncitizens have been based on alleged criminal activity.” *Id.*

⁴³INA § 237(a)(2)(E), 8 U.S.C. § 1227(a)(2)(E)(i).

⁴⁴*See* INA § 212(a)(9)(A)(ii) & (iii), 8 U.S.C. § 1182(a)(9)(A)(ii) & (iii).

⁴⁵*See* INA § 276, 8 U.S.C. § 1326.

⁴⁶*See* U.S. DHS *Yearbook of Immigration Statistics*, Table 41, 112 available at www.dhs.gov/publication/yearbook-2012 (last visited May 4, 2014).

⁴⁷John F. Simanski, and Lesley M. Sapp, *Annual Report—Immigration Enforcement Actions: 2012*, DHS Office of Immigration Statistics (December 2013) 5 [hereinafter “DHS 2012 Report”].

⁴⁸*Id.* at 7.

⁴⁹*Id.*

⁵⁰18 U.S.C. § 2261(a)(1).

⁵¹18 U.S.C. § 2265.

⁵²*Id.*

⁵³18 U.S.C. § 2621(b); 18 U.S.C. § 2262(b).

⁵⁴Sally F. Goldfarb, *The Legal Response to Violence Against Women in the United States of America: Recent Reforms and Continuing Challenges*, 1 (July 30, 2008) (Paper Presented to the UN Expert Group Meeting on Good Practices in Legislation on Violence Against Women, Vienna, Austria) [hereinafter “Goldfarb Report”].

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1.

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⁷¹*Id.*

⁷²*Id.*

⁷³*Id.*

⁷⁴INA § 240A(e)(1).

⁷⁵INA § 240A(b)(2).

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸*Id.*

⁷⁹INA § 240A(e)(1), 18 U.S.C. § 2262(b).

⁸⁰INA § 101(a)(15)(U).

⁸¹*Id.*

⁸²Victims of Trafficking and Violence Prevention Act of 2000, Pub.L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34 (2000) [hereinafter “VTVPA”]; *see also* New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248, 274a and 299 [hereinafter “New Classification”]).

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⁸⁴INA § 101(a)(15)(U); *See, also*, New Classification, *supra* note 83, at 110.

⁸⁵USCIS, *Questions and Answers: Victims of Criminal Activity, U Nonimmigrant Status* [hereinafter “Victims of Criminal Activity”].

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- ⁹³*Id.*
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- ⁹⁷*Id.*
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- ¹⁰⁴*Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 73-76 (BIA 2007); *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).
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- ¹⁰⁶*See Matter of R-A-*, 22 I&N Dec. 906 (AG 2001, BIA 1999) *vacated and remanded for reconsideration under future final regulations*, 23 I&N Dec. 694 (AG 2005), *remanded a third time by AG*, 24 I&N Dec. 629 (AG 2008).
- ¹⁰⁷U.S. DHS's Supplemental Brief at 2, 5, *Matter of [L-R-, redacted]* (April 13, 2009), available at cgrs.uchastings.edu/our-work/matter-l-r (last visited Aug. 21, 2014).
- ¹⁰⁸*Id.*
- ¹⁰⁹INA § 209.
- ¹¹⁰A review of the Immigration and Nationality Act reflects the absence of an annual limit on the number of asylum requests that can be granted. *See* INA § 208.
- ¹¹¹INA § 241(b)(3).
- ¹¹²*Id.* *See also INS v. Cardoza-Fonseca*, 480 US 421, 444 (1987).
- ¹¹³*See* INA §§ 208(a)(2), (b)(2).
- ¹¹⁴INA § 241(b)(3).
- ¹¹⁵*Id.*
- ¹¹⁶8 C.F.R. § 1274a.12(10).
- ¹¹⁷A review of the relevant statutes and regulations reflects the absence of an annual cap on the number of grants of restriction on removal.
- ¹¹⁸Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), Section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, Division G, Oct. 21, 1998).
- ¹¹⁹8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.
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- ¹²¹Alexander, Barbara Cochrane. *Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims*. AMER. U. INT'L L. REV. 15, no. 4, 895, 909 (2000).
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- ¹²⁴INA § 101(a)(27)(J).
- ¹²⁵INA § 101(b)(1) defines a child is an unmarried person under 21 years of age.
- ¹²⁶*Id.*
- ¹²⁷INA § 203(b)(4).
- ¹²⁸William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, § 235(d)(6).
- ¹²⁹INA § 216(c)(4)(C).
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- ¹³⁴*See* John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, United States Immigration and Customs Enforcement (June 17, 2011); Morton, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, United States Immigration and Customs Enforcement (June 17, 2011) [hereinafter "Director Morton's June 17, 2011 Memo"].
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- ¹⁴⁵*See* Department of Justice, Office on Violence Against Women, Grant Programs to End Violence Against Women, available at www.justice.gov/sites/default/files/ovw/legacy/2014/05/28/ovw-grant-programs-one-pager.pdf (last visited Aug. 21, 2014).
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¹⁵⁰*Id.*

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³Nancy K. D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?*, 21 BERKELEY J. GENDER L. & JUST. 38, 46 (2006).

¹⁵⁴Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386.

¹⁵⁵*Id.*

¹⁵⁶U.S. Department of Justice, OVW, *2012 Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act* 17.

¹⁵⁷*Id.* at 218.

¹⁵⁸OVW, *Fiscal Year 2012 Grant Awards by Program*, *supra*, note 157 at 17.

¹⁵⁹*Id.* at 230. This percentage was calculated by dividing the total number of legal issues addressed during the reporting period (204,782), by the number identified as immigration-related (26,192).

¹⁶⁰OVW, *OVW 2012 Report to Congress*, *supra*, note 157, at 17.

¹⁶¹*Id.* at 19.

¹⁶²*Id.* at 20.

¹⁶³*Id.*

¹⁶⁴*Id.* at 22.

¹⁶⁵*Id.* at 29.

¹⁶⁶*Id.*

¹⁶⁷*Id.* at 32.

¹⁶⁸*Id.*

¹⁶⁹*Id.*

¹⁷⁰*Id.* at 10.

¹⁷¹*Id.* at 196.

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¹⁷⁴*Id.* at 79.

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204.11(c).

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³⁴*See* n. 9 at 69-70.

³⁵*Supra*, n. 3 at 28.

³⁶Ronald Heifetz and Marty Linsky, *LEADERSHIP ON THE LINE* 207 (2002).

³⁷*Supra*, n. 3 at 73.

³⁸*Id.*

³⁹*Id.* at 207.

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⁴²*Id.* at 118.

⁴³*Id.* at 119.

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⁴⁵*Id.*

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⁴⁷*Id.*

⁴⁸*Id.* at 184.

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Supra*, n. 3 at 62.

⁵²*See* Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533 (codified as amended at 8 U.S.C. § 1101 (2006)).

⁵³*See* INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

⁵⁴*See* U.S. Citizenship and Immigration Services, *Number of I-918 Applications for U Nonimmigrant Status*, *available at* www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918uvisastatistics_fy2014qtr2.pdf (accessed Jul 2, 2014).

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⁵⁶*See id.* § 1513(b)(3).

⁵⁷*Id.*

⁵⁸*See* Department of Homeland Security, *U Visa Law Enforcement Certification Resource Guide*, page 9, *available at* www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (accessed Jul. 2, 2014).

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⁶⁰*See* INA § 245(m), 8 U.S.C. § 1255(m).

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