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REPORT ON LEGISLATION BY THE COMMITTEE ON DOMESTIC VIOLENCE

H.R. 4970 **Rep. Adams**

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2012

THIS BILL IS OPPOSED

The New York City Bar Association writes to oppose the House version of the Violence Against Women Act Reauthorization Bill ("VAWA"), H.R. 4970. This bill eliminates protections for especially vulnerable populations such as immigrants, LGBTQ and Native American women, provisions that appear in S.1925, a bipartisan bill which the Bar Association supports and which passed the Senate. We specifically express our concern about the bill's impact on immigrant survivors.

VAWA SELF-PETITIONS: SECTION 801

Domestic violence can take many forms: physical, verbal, emotional, financial and/or sexual. The common thread is that the abuser uses all of these different methods to maintain power and control over his victim, ensuring that she remains helpless to protect herself or leave the relationship. An immigrant victim is particularly vulnerable, because her abuser can threaten her with deportation, and prevent her from seeking outside help – assuring her that if she calls the police, the police will arrest *her* for being undocumented.

Often, when the abuser and the victim are married, the abuser could apply for legal status for the victim, but refuses to do so. The abuser therefore blocks off a legitimate avenue to lawful permanent residence status and citizenship. VAWA restored this avenue to victims, allowing them to self-petition for the immigration status. The biggest difference between a VAWA Self-Petition and a regular family-based petition is that the VAWA Self-Petition process proceeds *without the cooperation or knowledge of the batterer*.

The confidentiality of the VAWA Self-Petition is vital. The most dangerous and lethal time for a victim of domestic violence is when she attempts to leave her batterer. Yet H.R. 4970 proposes not only to inform the batterer of his victim's efforts to gain independence from him, but puts the batterer in control of her application. Section 801 of the bill requires the immigration officer adjudicating a domestic violence self-petition *to contact the batterer directly* and interview him regarding the abuse allegations in the petition.

This section is labeled a "fraud prevention initiative," but was drafted without relying on any studies or reports that fraud has been a problem with VAWA Self-Petitions. There are already safeguards in place to identify fraud in the self-petition process. Currently, any victim who seeks VAWA immigration relief must submit evidence that meets all of the elements required. The petitions and the evidence are reviewed and evaluated by immigration officers in the centralized Vermont Service Center VAWA Unit. These officers are carefully trained both in domestic violence issues and in recognizing fraudulent applications.

Section 801 will provide no additional assistance in identifying immigration fraud. If confronted about his crimes, the abuser will certainly not admit to them. Instead, he will deny the abuse, to ensure his wife's petition is denied – and then he will punish her severely, perhaps lethally.

Section 801 also contains other harmful provisions that the City Bar opposes:

1. First, the House bill simultaneously sets a higher standard of proof for self-petitions[1] and then creates dire consequences for having that self-petition denied. If the adjudicating officer does not believe all of the allegations in the petition, he or she must report the applicant to the FBI for a criminal investigation, and the applicant must be removed from the country on an expedited basis. These punitive provisions, which are not in place for other types of immigration applicants, are chilling for all victims, and will disproportionately impact victims who do not speak English or who do not have the benefit of legal advice and assistance.

2. Second, Section 801 dismantles the special Vermont Service Center VAWA Unit and provides that VAWA Self-Petitions would be adjudicated by local USCIS officers, who are not trained in VAWA or domestic violence issues. Decentralizing the VAWA determinations will increase the cost of adjudicating the petitions, as well as increase the risk that a meritorious petition will be denied, subjecting the applicant to the draconian consequences described above.

Between informing the batterer of his victim's attempt to leave him, setting a high standard for approval by untrained adjudicators, and with the consequences of a denied application so calamitous, the proposed VAWA revisions are unacceptably dangerous to victims. If these provisions pass, advocates in New York and around the country will be forced to advise their clients not to seek VAWA immigration relief at all. The entire purpose of the VAWA Self-Petition will have been destroyed, setting victims back 18 years and handing immigration status back to abusers as a tool for power and control.

U-VISAS

The U-Visa was created in order to encourage immigrant victims of domestic violence and sexual assault crimes to come forward and report those crimes to the police. U-Visas are currently available to victims who get a signed certification from law enforcement that they provided useful information or were helpful to an investigation or prosecution.

H.R. 4970 implements unnecessary bars to relief, which discourage victims from coming forward. Section 802 arbitrarily requires that there be an *active* investigation or prosecution. Yet law enforcement officials know that any type of information about a crime, even if it is not ultimately acted upon, helps them keep their communities safer.

The House's insistence on active prosecutions punishes victims for law enforcement decisions that are out of the victims' control. It also undermines law enforcement discretion. Implementing these hurdles to the U-Visa process will not effectively reduce fraud, because law enforcement already acts as a gatekeeper by assessing whether the victim was helpful and cooperative when deciding whether to sign a certification.

In addition, an immigrant with an approved U-Visa currently has a path to lawful permanent residence and citizenship. Section 806 of the House bill eliminates that path entirely. Coming forward to

[1] The new standard would be "clear and convincing evidence" – an even higher standard than that required for asylum petitions.

police will therefore mean that the victim attracts the notice of law enforcement and USCIS – without any hope for future stability. This makes it *less* likely that victims will want to come forward and assist law enforcement. Without a path to immigration security, victims will revert back to the days when they feared the police as agents of deportation, and will resume allowing their batterers to commit crimes against them with impunity.

THE BAR ASSOCIATION SUPPORTS S.1925

As described in our letter dated February 29, 2012,[2] S.1925 provides vital protections for survivors. It makes clear that VAWA protections extend to all victims, regardless of sexual orientation; the House bill critically omits protection for LGBTQ survivors who experience discrimination because of their sexual orientation.

Moreover, Title VI of S.1925, unlike the House bill, requires that covered public housing agencies and owners adopt an emergency transfer and relocation plan. These plans are crucial for survivors who frequently are forced to choose between staying in a dangerous location or losing their housing subsidy and becoming homeless. S.1925 also requires that tenants be given notice of the VAWA protections upon eviction, a provision that is omitted from the House bill. This requirement ensures that survivors are aware of their rights at the moment they need that information most.

Additionally, S.1925 improves existing grant programs by explicitly authorizing that grants can be used to develop policies that incorporate risk assessment analyses. For example, S.1925 amends the STOP grant program to allow the development of standardized response policies for law enforcement agencies, using evidence-based indicators to assess the risk of domestic and dating violence homicide and prioritize dangerous or potentially lethal cases. The August 2011 decision by the Inter-American Commission on Human Rights in *Jessica Lenahan (Gonzales) v. United States*, calling on the federal government to strengthen law enforcement responsiveness, establishes the compelling need to integrate risk assessment into how law enforcement and other agencies address violence.

Finally, S.1925 expands protections for immigrant victims. The Senate bill adds dating violence and stalking to the list of crimes which could make a victim eligible for U-Visa relief. It also enables a victim to apply for a U-Visa without a certification from law enforcement, if she can prove to USCIS that she *attempted* to be helpful to an investigation or prosecution. This fix would protect victims from arbitrary denials of certifications based on factors beyond their control: for example, if the certifying official misunderstands the law, the prosecution file is lost, or instructions to the victim on how to cooperate are not available in her language. Adding the option to proceed without a certification still would not open up the door to fraud, as the victim would bear the burden of proof that she attempted to be helpful, and the discretion whether or not to award immigration relief would rest where it belongs, with USCIS.

The City Bar endorses and continues to support the bipartisan S.1925. Where H.R. 4970 rolls back protections for victims, and in fact makes it more dangerous for victims to come forward or attempt to leave their abusive relationships, S.1925 strengthens protections for victims.

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[2] *See* http://www2.nycbar.org/pdf/report/uploads/20072257-LettertoUSSenateSupportingVAWAReauthorization.pdf.