

Undocumented: The Need to Further Address the Intersection of Immigration and Domestic Violence in the United States

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UNDOCUMENTED: THE NEED TO FURTHER ADDRESS THE INTERSECTION OF IMMIGRATION AND DOMESTIC VIOLENCE IN THE UNITED STATES

JULIE FLOWER*

"If the numbers we see in domestic violence were applied to terrorism or gang violence, the entire country would be up in arms, and it would be the lead story on the news every night." –Rep. Mark Green¹

INTRODUCTION53

I. ISSUE54

II. BACKGROUND.....55

III. PREEXISTING LEGAL RESPONSES.....56

 A. SELF-PETITION.....56

 B. U-VISA58

 C. ADJUSTMENT OF STATUS60

IV. PROPOSAL: IMMUNITY FOR UNDOCUMENTED IMMIGRANTS WHO REPORT DOMESTIC VIOLENCE61

 A. THE STRENGTHS AND WEAKNESSES OF IMMUNIZING UNDOCUMENTED REPORTERS OF DOMESTIC VIOLENCE.....63

CONCLUSION65

INTRODUCTION

The issue of domestic and gender-based violence in the United States is a humanitarian concern because it is so common in our culture. One out of every four American women will be

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¹ *Bridging the Financial Gap to Support Victims of Domestic Violence and End the Cycle of Abuse*, MAXIMUS (Aug. 26, 2015), <https://www.maximus.com/foundation/blog/bridging-financial-gap-support-victims-domestic-violence-and-end-cycle-abuse>.

a victim of domestic violence at some point in her life.² Domestic violence is not only widespread; it is a dangerously underreported crime.³ Everyone stands to lose if domestic violence is not curtailed because the issue of violence against women affects everyone, not just victims.⁴ The prevalence of gender-based violence is persistent, and all victims deserve protection. As U.S. Representative Gwen Moore said in a speech on the House floor, domestic violence knows no gender, class, or race—only victims.⁵

I. ISSUE

Immigration status is a factor that affects domestic violence victims.⁶ Domestic violence is a notoriously underreported crime, and immigrants—particularly undocumented immigrants—are significantly less likely to report.⁷ Isolation—a common way of perpetuating abuse—is easy to attain in many cases of immigration due to relocation, leaving family and friends, and language barriers.⁸ One common abuse tactic specific to immigrants is threatening turnover to Immigration and Customs Enforcement (ICE), and with that threatening deportation and separation from children.⁹ Congress intended the provisions for immigrant women in Subtitle G of the Violence Against Women Act of 1994 (VAWA),¹⁰ and subsequent reauthorizations, to “remedy the inherent

² Erik Stegman, *3 Reasons the Violence Against Women Act Has Been Bipartisan for 18 Years, and Why Congress Should Fast Track It*, CTR. FOR AM. PROGRESS (Jan. 23, 2013, 12:00 PM), <https://www.americanprogress.org/issues/women/news/2013/01/23/50438/3-reasons-the-violence-against-women-act-has-been-bipartisan-for-18-years-and-why-congress-should-fast-track-it/>.

³ See Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution*, 7 UCLA WOMEN’S L.J. 173, 177 (1997) (“‘refusal to press charges’ is the norm in domestic violence prosecutions.”).

⁴ The United Nations Declaration on the Elimination of Violence against Women states that “violence against women is an obstacle to the achievement of equality, development and peace.” G.A. Res. 48/104, Declaration on the Elimination of Violence against Women, ¶ 4 (Dec. 20, 1993) [hereinafter DEVAW].

⁵ Videotape: *Gwen Moore Introduces Violence Against Women Act*, REP. GWEN MOORE (Mar. 28, 2012), https://www.youtube.com/watch?feature=player_embedded&v=R0_PsN4R23k. But see Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 VIOLENCE AGAINST WOMEN 38, 41, 43 (2005) (questioning if approaching domestic violence as a universal problem is effective and suggesting that the intersectionality of gender, class, and race must be assessed in understanding and responding to domestic violence).

⁶ Edna Erez, Madelaine Adelman & Carol Gregory, *Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 FEMINIST CRIMINOLOGY 32, 36 (2009) (“[I]mmigration intensifies domestic violence and creates vulnerabilities that impair immigrant women’s management of domestic violence”; “barriers to safety for immigrant women include a lack of resources for battered women, social isolation or lack of local natal kin, economic instability, and perceptions that disclosure of battering to outsiders sullies community status”).

⁷ Katerina Shaw, Note, *Barriers to Freedom: Continued Failure of US Immigration Law to Offer Equal Protection to Immigrant Battered Women*, 15 CARDOZO J. L. & GENDER 663 (2009).

⁸ See Erez, *supra* note 6 at 42, 44 (“For women who immigrated with a spouse or partner, the move seemed to have an adverse effect on men’s level of violence and control tactics. Following their arrival to the United States, for half of these women, the level of violence increased, and almost one quarter (22%) stated that the violence began after arrival”).

⁹ See Erez, *supra* note 6, at 42, 46 (describing how abuse can coincide with “immigration-specific activities”).

¹⁰ Pub. L. No. 103-322, 108 Stat. 1902 (1994).

inequalities present in the U.S. immigration law with respect to battered women.”¹¹ This piece will focus primarily on the issue of immigrant women who experience domestic violence while in the United States.¹² It will delve briefly into the background of the issue and discuss the preexisting legal responses before proposing a policy of qualified immunity for immigrants who report domestic violence.

II. BACKGROUND

The Violence Against Women Act was signed into law in 1994 and reauthorized in 2000, 2005, and 2013.¹³ With the passage of VAWA in 1994, several protections went into place to address domestic violence as a serious and prevalent issue in America and the reauthorizations added specific provisions for immigrants.¹⁴

¹¹ Shaw, *supra* note 7, at 670.

¹² Note: This Comment will refer mainly to immigrant women because (a) women are statistically most likely to be victims of domestic violence, and (b) women’s immigration status has historically been, and still to some extent is, linked to their male relatives. This Comment acknowledges that any person—regardless of sex or gender—can be a victim of domestic violence and any immigrant can be adversely affected by current immigration laws pertaining to domestic violence. *See e.g.*, Michael S. Kimmel, “Gender Symmetry” in *Domestic Violence: A Substantive and Methodological Research Review*, 8 VIOLENCE AGAINST WOMEN 1332 (2002) (acknowledging that men are not the only perpetrators of domestic violence, while also refuting the idea of gender symmetry).

¹³ U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, TWENTY YEARS OF THE VIOLENCE AGAINST WOMEN ACT: DISPATCHES FROM THE FIELD (2016), <https://www.justice.gov/ovw/file/866576/download> [hereinafter TWENTY YEARS]. VAWA was up for reauthorization again in December 2018, but the Act expired and Congress’ most recent funding bill did not provide for its renewal. As of the publication of this Comment, the latest Reauthorization Act has passed the House and is currently on the Senate’s Legislative Calendar. *See* Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. (2019) (“Nothing in this Act, or in any amendments made by this Act, shall affect the obligation to fully comply with the immigration laws”); Juliegrace Brufke, *Congress Allows Violence Against Women Act Funding to Lapse*, THE HILL (Feb. 16, 2019), <https://thehill.com/homenews/house/430304-congress-allows-violence-against-women-act-to-lapse>.

¹⁴ TWENTY YEARS, *supra* note 13, at 1 (“The general shift over the three subsequent iterations of VAWA has been toward enhancing services for victims . . . and strengthening legal protections and civil remedies for all victims, particularly those for whom accessing safety and justice is harder because of their . . . immigration status.”).

Some argue that domestic violence is best addressed at the state and local level,¹⁵ but domestic violence in the context of immigration is a federal issue in part because immigration status is primarily regulated at the federal level.¹⁶

Prior to VAWA, a married woman's immigration status rested solely on their husband's status as a U.S. citizen or legal permanent resident and his willingness to petition on her behalf.¹⁷ With the various iterations of VAWA, several new protections emerged.¹⁸

III. PREEXISTING LEGAL RESPONSES

A. SELF-PETITION

The VAWA self-petition introduced a way for immigrant women to petition for legal status without relying on an abusive spouse to petition on their behalf.¹⁹ The VAWA self-petition expanded a similar provision in the Immigration Act of 1990, by adding several improvements to allow new applications,²⁰ to lower the petitioner's evidentiary burden, and to allow for suspension of removal in certain cases.²¹

¹⁵ See, e.g., mandatory arrest laws. Differing results from studies on mandatory arrest laws serve as an example of how local culture may affect responses to domestic violence. In an initial study in Minneapolis, laws that required an arrest in domestic violence situations were effective in curbing domestic violence. While this report limits its findings to Minneapolis, it strongly suggests similar studies be conducted in other environments. LAWRENCE W. SHERMAN & RICHARD A. BERK, *THE MINNEAPOLIS DOMESTIC VIOLENCE EXPERIMENT 1* (1984), <https://web.archive.org/web/20070705011333/http://www.policefoundation.org/pdf/minneapolisdve.pdf>. Still, not all states are prepared or equipped to deal with such a pervasive social problem as domestic violence. See *About Abuse: Domestic Violence*, WOMEN'S LAW, <https://www.womenslaw.org/about-abuse/forms-abuse/domestic-violence> (last visited Jul. 9, 2019) ("Although you may be a victim of domestic violence, the laws in your state may be written in a way that does not include or protect you (for example, emotional or psychological abuse may not qualify you for a protection order in some states and may not be illegal under your state's criminal laws).").

¹⁶ See Immigration and Nationality Act (INA), 82 Pub. L. No. 414, 66 Stat. 163 (codified as amended at 18 U.S.C. § 1101 *et seq.* (2014)). Although it has been amended, the INA remains the primary authority over immigration law. See *Laws, Regulations, and Guides Immigration and Nationality Act*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/laws/laws-regulations-and-guides-immigration-and-nationality-act> (last visited Jul. 9, 2019).

¹⁷ See Shaw, *supra* note 7, at 668.

¹⁸ See Title VIII Protection of Battered Immigrants in the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (listing the most recent protections found in Title VIII Protection of Battered Immigrants in the Violence Against Women Reauthorization Act of 2013, 113 P.L. 4, 127 Stat. 54 (2013)); see also Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. (2019) (currently pending under General Orders, Senate Legislative Calendar No. 66).

¹⁹ See 8 U.S.C. § 1154(a)(1)(A) (2000) (amending the INA to provide for self-petition).

²⁰ The Immigration Act of 1990 extended its protection only where an immigrant's spouse had already filed an application on behalf of the abused spouse. See 8 U.S.C. § 1154(a)(1)(A) ("An alien spouse . . . may file a petition . . . for classification of the alien . . ."); Shaw, *supra* note 7 at 669.

²¹ See Shaw, *supra* note 7, at 671.

Women who use the VAWA self-petition do not have to rely on an abusive spouse to sponsor their ability to stay in the United States.²² Providing for self-petition removes a key power that men married to immigrant spouses have historically held. That is, women’s immigration status is no longer completely at the mercy of their husbands, so long as certain conditions are met.²³ If the self-petition is approved, the recipient may be authorized to work in the United States and to file for a green card that may lead to permanent citizenship.²⁴

One limitation of the self-petition is that it is limited to women who are married to U.S. citizens or lawful permanent residents.²⁵ Not all immigrant women—including immigrant women lawfully present in the United States—are eligible to self-petition.²⁶

Worst still, despite being lowered by the 1990 reauthorization, the quanta of proof necessary to satisfy the requirements articulated under VAWA’s current provisions remain high.²⁷ Although Congress intended to allow “any credible evidence,” this standard is not always construed as liberally as Congress intended.²⁸ Abuse is difficult to prove and the courts have often found that affidavits alone are not enough to satisfy the requirements of the self-petition.²⁹

²² *Id.*

²³ *Id.*

²⁴ See U.S. CITIZENSHIP AND IMMIGRATION SERVS., IMMIGRATION OPTIONS FOR VICTIMS OF CRIMES, <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf> (last visited Jul. 10, 2019).

²⁵ Shaw, *supra* note 7, at 674.

²⁶ *Id.* (noting that “women whose husbands are present in the U.S. on a nonimmigrant or temporary visa” are not eligible beneficiaries of VAWA).

²⁷ See Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 BERK. WOMEN’S L.J. 137, 145–48 (describing evidentiary hurdles an applicant must overcome to satisfy the self-petition provisions of Subtitle G).

²⁸ See Shaw, *supra* note 7, at 677–78 (discussing the congressional purpose behind the “any credible evidence” standard); see also Oropeza-Wong v. Gonzales, 406 F.3d 1135, 1145 (9th Cir. 2004) (noting that the VAWA amendments were not passed “to strip federal courts of jurisdiction to ensure that battered women obtain the relief that Congress intended to make available to them”).

²⁹ Shaw, *supra* note 7 at 1053. See e.g., In Re Petitioner [Identifying Information Redacted by Agency], No. EAC 99 173 53013, 2000 WL 33712649 (I.N.S. Oct 3, 2000) (admin. review) (holding that where the petitioner was unable to procure documents, affidavits from herself, family members, and friends were not enough); In Re Petitioner [Identifying Information Redacted by Agency], No. EAC 00 203 50780, 2001 WL 34078368 (I.N.S. Sep. 13, 2001) (admin. review) (holding documentary evidence as set out in the federal regulation, including affidavits, as insufficient).

Another limitation of the self-petition is that it is not common knowledge.³⁰ It is not a commonly known option, and without knowing it exists, immigrants cannot utilize it.³¹ But even those women who know that the option exists may be dissuaded from pursuing it if they lack access to an attorney, for any number of reasons.³² For example, Erez suggests that perceived legal dependency can be as important as actual dependency in influencing the options immigrant women seek because “abusers commonly convince[] immigrant women that they have no rights.”³³ The self-petition is a useful tool for some, but is not sufficiently inclusive.

B. U-VISA

In addition to the self-petition, VAWA created a new class of nonimmigrant visas available for battered immigrant women.³⁴ These “U-visas” are available to noncitizen victims who are willing to aid law-enforcement agencies in detecting, investigating, and prosecuting the perpetrators of a variety of criminal offenses, including domestic violence.³⁵ To qualify for a U-visa the applicant must: be a victim of a qualifying crime³⁶ which occurred in the United States, have suffered substantial mental or physical abuse as a result of the crime, be able to provide information about the crime, be helpful in the investigation or prosecution of the crime, and be admissible to the United States or be able to waive admissibility in advance.³⁷

Unlike self-petitions, U-visas are not limited to people who are married to U.S. citizens or lawful permanent residents—unmarried women and women married to undocumented spouses or spouses with nonimmigrant or temporary visas can apply for U-visas as well.³⁸

³⁰ See Erez, *supra* note 6, at 47, 52 (“However, although at least some immigrant battered women feel empowered to mobilize the criminal justice system, few seem to be familiar with new policies promulgated to protect battered immigrant woman [sic], such as the VAWA self-petition option.”).

³¹ See Erez, *supra* note 6, at 47 (describing how perceived legal dependency can be as important as actual dependency in influencing the options immigrant women seek and further noting “abusers commonly convinced immigrant women that they have no rights”).

³² *Id.* at 52.

³³ *Id.*

³⁴ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513 (2000).

³⁵ See INA, 8 U.S.C. § 1184(p) (“Requirements applicable to [U]-visas”); *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last updated June 12, 2018).

³⁶ Other qualifying crimes include abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, and other related crimes. See INA, 8 U.S.C. § 1101(a)(15)(U)(iii) (2014).

³⁷ See *id.* § 1101(a)(15)(U).

³⁸ Marriage status and immigration status of a spouse are not eligibility requirements for obtaining a U-visa. See Kwong, *supra* note 27, at 149–51.

Another strength of U-visas is that a recipient may be able to petition for family members to receive U-visas based on her U-visa receipt.³⁹ All recipients may petition for their spouse and children, and recipients under 21 years of age may additionally petition on behalf of their parents and underage siblings.⁴⁰ Family members do not count toward the U-visa yearly cap, which allows for more victims and more family members to receive the benefits.⁴¹

U-visas, however, have several limitations. For one, the number of U-visas which can be distributed is capped at 10,000 per year.⁴² The amount of applicants significantly outnumbers the available U-visas.⁴³ While there is a waiting list for those who do not receive a U-visa due purely to numerical reasons, the applicants often receive parole in the meantime.⁴⁴ However, waitlisted applicants are authorized to work while waiting.⁴⁵

Secondly, immigrants can only apply for a U-visa if they choose to press charges and go forward with a criminal case.⁴⁶ It is not common for immigrant victims of domestic violence to press charges, and therefore U-visas cannot benefit as many people as need the benefits U-visas offer.⁴⁷ Absent no-drop policies,⁴⁸ a victim cannot get protection without having to choose to prosecute.

Relatedly, since U-visas are reliant on the information of the applicant, if it is not found credible, then there is a risk that the woman will be not be deemed helpful and therefore will be

³⁹ See INA, 8 U.S.C. § 1101(a)(15)(U)(ii); see also *Victims of Criminal Activity*, *supra* note 35 (“Certain qualifying family members are eligible for a derivative U-visa based on their relationship to you, the principal, filing for the U-visa.”).

⁴⁰ See 8 U.S.C. § 1101(a)(15)(U)(ii).

⁴¹ See *Victims of Criminal Activity*, *supra* note 35.

⁴² See 8 U.S.C. § 1184(p)(2)(A) (“The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000). *But see id.* § 1184(p)(2)(B) (noting that the 10,000 cap does not apply “to spouses, children, or, in the case of alien children, the alien parents of such children”).

⁴³ See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, NUMBER OF FORM I-918, PETITION FOR U NONIMMIGRANT STATUS, BY FISCAL YEAR, QUARTER, AND CASE STATUS 2009-2018 (2018), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr3.pdf (charting the number of U-visa applications since 2009). For example, in 2017, there were 36,531 petitions for U-visas for victims of criminal activities (2,128 of which were rejected, but the number pending rose to 110,511—more than 11 times the number approved each year). *Id.*

⁴⁴ See *Victims of Criminal Activity*, *supra* note 35 (explaining that applicants on the waiting list are either placed on parole or granted deferred action until their petitions have been adjudicated).

⁴⁵ *Id.*

⁴⁶ See Shaw, *supra* note 7, at 679.

⁴⁷ See *id.*

⁴⁸ No-drop policies leave prosecution to the sole discretion of the prosecutor, removing the choice from the victim. See generally Wills, *supra* note 3 (arguing in favor of no-drop policies).

ineligible for a U-visa.⁴⁹ By revealing her immigration status to law enforcement in hopes of receiving U-visa protections, an undocumented woman runs the risk of having that status flipped against her if she is not found eligible for a U-visa.⁵⁰

Further, U-visas are only valid for four years.⁵¹ Although requests for extensions exist, the scope of an extension is limited to exceptional circumstances or continuing need by law enforcement, such as an ongoing investigation or trial.⁵²

One argument against the U-visa is founded upon a national security concern. The expansion of U-visas to immigrant women is seen as a potential national security threat because immigrants could arguably take advantage of this system and claim domestic violence where it did not occur, in order to receive a visa.⁵³ Still, this is a controversial argument fueled in part by an anti-immigration post-September 11 climate where immigrant victims of domestic violence ultimately bear the brunt of these sentiments.⁵⁴

C. ADJUSTMENT OF STATUS

Another existing legal response at the intersection of immigration and domestic violence is adjustment of status.⁵⁵ In cancellation of removal and adjustment of status cases, which is provided for in the Immigration and Naturalization Act, the Attorney General may adjust the immigration status in certain instances.⁵⁶

⁴⁹ See Shaw, *supra* note 7, at 679.

⁵⁰ In one example, attorneys ran into problems securing U-visas for their clients in the wake of September 11 despite their clients agreeing to testify against one of the perpetrators of the attacks. Once the clients agreed, the prosecution interviewed them as potential witnesses—in the process obtaining sensitive information about their unlawful immigration status. Following these interviews, the prosecution determined that only a couple of the witnesses would provide enough information necessary in furthering their cases to warrant U-visa applications. The majority of the potential witnesses—who had cooperated with the system and revealed their immigration status in their effort to seek justice for the United States—were left vulnerable and in fear of deportation. This case demonstrates “just how difficult and risky obtaining a U-visa could be.” See Shaw, *supra* note 7, at 679.

⁵¹ See *Victims of Criminal Activity*, *supra* note 35.

⁵² See *id.* (noting consular delays and pendency of a Green Card application are the other two exceptions).

⁵³ Molly Ball, *Why Would Anyone Oppose the Violence Against Women Act?*, ATLANTIC (Feb. 12, 2013), <https://www.theatlantic.com/politics/archive/2013/02/why-would-anyone-oppose-the-violence-against-women-act/273103/> (listing the challenges VAWA faced to reauthorization in the House, which included issues of fraud in the application process and lack of grant oversight).

⁵⁴ See Erez, *supra* note 6, at 37 (“The rise in anti-immigrant public sentiment has resulted both in the exclusion of some immigrants from access to education and medical care and in increased local law enforcement of federal immigration law. When coupled with post-9/11 delays in processing visa applications, the consequences of anti-immigrant sentiment further complicate the implementation of legal reforms for immigrant battered women.”).

⁵⁵ See 8 U.S.C. § 1229B(b)(1) (2012); see also Shaw, *supra* note 7, at 679-80 (highlighting that the only other option available for undocumented immigrant battered women to obtain lawful resident status is through the cancellation of removal proceedings and adjustment of status to lawful permanent resident).

⁵⁶ See 8 U.S.C. § 1229b (2012).

Adjustment of status is a permanent solution, unlike U-visas which are temporary. While permanency is a significant strength of adjustment of status, the limitations of this solution make adjustment of status difficult to receive and thus an insufficient remedy.

One limitation of relying on adjustment of status is it only applies if already in deportation proceeding.⁵⁷ Therefore, it is a last-resort option available only to those not lawfully present in the country; the special provisions for domestic violence victims are further narrowed only to those married to U.S. citizens or lawful permanent residents.⁵⁸ Adjustment of status is also at the discretion of the Attorney General, which means there is no guarantee that the status will be changed,⁵⁹ and is limited to 4,000 per year.⁶⁰

There is a 10-year requirement to be eligible for adjustment of status.⁶¹ For domestic violence victims who are married to U.S. citizens or lawful permanent residents, the requirement is three years.⁶² This reduced requirement does not include undocumented women or women whose spouse is undocumented.⁶³ Although three years is significantly less than ten, no one should have to endure three years of violence. If the woman is ready to report, it should not matter whether it has been one day or one-hundred years.

Further, the burden of proof placed on the victim is significant. Among other requirements, she must prove “good moral character”⁶⁴ and that she was “subjected to extreme cruelty.”⁶⁵ While domestic violence is already a difficult crime to prove in court, extreme cruelty is an exceedingly high burden.

IV. PROPOSAL: IMMUNITY FOR UNDOCUMENTED IMMIGRANTS WHO REPORT DOMESTIC VIOLENCE

In addition to the pre-existing legal remedies, Congress should pass a law granting immunity under certain circumstances to undocumented immigrants who report domestic violence—specifically to protect immigrants who report domestic violence from immigration law enforcement and other adversity related to one’s immigration status. This policy would have a cap

⁵⁷ See Shaw, *supra* note 7, at 680.

⁵⁸ *Id.* at 680-81 (“If a battered woman were to meet this requirement, it is likely she would also qualify under VAWA and would not need to seek cancellation of removal in the first place.”).

⁵⁹ See *id.* at 680.

⁶⁰ *Id.*

⁶¹ See 8 U.S.C. § 229b(a)(1)(A) (2012); Shaw, *supra* note 7, at 680.

⁶² 8 U.S.C. § 229b(a)(2)(A)(i)(III)(ii); Shaw, *supra* note 7, at 680.

⁶³ See Shaw, *supra* note 7, at 680.

⁶⁴ 8 U.S.C. § 229b(a)(1)(B). This creates a dilemma: how can good moral character be proven if the person is in deportation proceedings for being unlawfully present in the country? See Shaw, *supra* note 7, at 681-82.

⁶⁵ 8 U.S.C. § 229b(a)(2)(A)(i)(I)-(III).

like U-visas, but it should be available to all immigrants who report domestic violence, so that their immigration status—if revealed in the furtherance of addressing domestic violence—cannot be used against them.⁶⁶ Domestic violence is a severely underreported crime, and one’s immigration status should not deter her if she chooses to report abuse. If the violence occurs in the United States, the United States legal system should address it.⁶⁷

Putting aside any immigration debate, victims of domestic violence should be encouraged to come forward to report abuse because domestic violence is a public safety issue.⁶⁸ Underreporting and lack of prosecution lead to a culture of impunity that favors perpetrators. Everyone deserves to be protected from domestic violence, regardless of immigration status; everyone has a right to live free from violence and receive protections.

While expanding the cap for U-visas would also be a worthwhile policy change, raising the cap is not enough on its own. Many domestic violence victims choose not to pursue prosecution, and even those who do may not have sufficient evidence to move forward with prosecution.⁶⁹ Therefore, U-visas may not always protect the victim. Further, the choice and ability of a victim to report domestic violence or otherwise seek help should not turn on whether she chooses to press criminal charges. The proposed policy would encourage prosecution, but it would not make it a condition to receiving immunity.

Like U-visas, this policy should extend the protection against finding immigration violations beyond the immigrant-victim. Even with personal protection, the victim may not come forward out of fear that others will be implicated who may not be protected.⁷⁰ Family members

⁶⁶ While Immigration and Customs Enforcement (ICE) is charged with enforcing immigration laws, law enforcement throughout the country—including the same local officers who deal with domestic violence reports—are often bound to enforce immigration laws through 287(g) agreements. These 287(g) agreements include delegations of immigration enforcement authority from ICE to federal, state, and local law enforcement. As of August 2018, 287(g) agreements exist with 78 law enforcement agencies across 20 states, and these numbers continues to increase. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.ice.gov/287g> (last updated Aug. 10, 2018); see also Erez, *supra* note 6, at 53.

⁶⁷ See Wills, *supra* note 3, at 175 (describing the duties of the United States to protect its citizens—both individually and at large—from violence).

⁶⁸ See Wills, *supra* note 3, at 174 (“The State has a legitimate interest in maintaining public safety, especially by ensuring that domestic violence offenders are not allowed to flourish unabated.”). One non-legal response to the issue of domestic violence in immigrant communities is culturally-specific organizations and hotlines which provide support to immigrants who experience domestic violence. These organizations find success in pushing the message that domestic violence is a social, communal concern, not an individualized problem. This can be a powerful tool in unifying communities and helping immigrant victims who might not otherwise seek help to find their voice. See Sokoloff, *supra* note 5, at 50.

⁶⁹ See Wills, *supra* note 3, at 177.

⁷⁰ See Erez, *supra* note 6, at 52 (“Undocumented immigrants, as well as those in the midst of applying for legal status, or even legal immigrants may avoid engagement with the criminal justice system, in particular if they are part of a ‘mixed-status’ immigrant family or in order to prevent law enforcement from entering an immigrant-majority neighborhood.”).

or neighbors who may be called as witnesses or otherwise involved in the process should be included under the qualified immunity as well, in order for prosecution to have the greatest chance of success.

Further, although there should be a presumption that the victim's immigration status could not be used against them, the totality of the circumstances could be considered—specific, relevant, and important national security concerns may outweigh the immunity in certain instances.

A. THE STRENGTHS AND WEAKNESSES OF IMMUNIZING UNDOCUMENTED REPORTERS OF DOMESTIC VIOLENCE

This policy would prioritize the safety of women and communities, which should be at the forefront of domestic violence legislation.⁷¹ To effectively address domestic violence, policies should aim to address six goals: safety of the victim, stopping the violence, accountability of the perpetrator to the victim and the community, divestiture of the perpetrator, restoration of the victim, and enhancing the agency of the victim.⁷² This policy specifically addresses four of these goals: it ensures some safety for victims by providing some immunity from immigration law enforcement; it promotes accountability because it still encourages the prosecution of the perpetrator; it also facilitates restoration of the victim; and it enhances the agency of the victim to allow her to receive needed care and access the justice system.⁷³

This policy would also help curb the fear immigrant victims face in seeking medical treatment or other sources of support. In one study of immigrant women, over one-third of domestic violence cases that crossed paths with the criminal justice system were initiated by a third party, such as hospital personnel or a neighbor.⁷⁴ By shielding the victim's immigration status, this policy encourages women to both seek the help they need—without fear of deportation or other immigration-specific consequences—and to go forward with domestic violence prosecution.

No policy is without limitations though. There is a concern that even if Congress passes a law like the one this Comment proposes, domestic violence will still be underreported. Even with

⁷¹ See Sokoloff, *supra* note 5, at 56 (“The safety of battered women and their children must be the primary concern of policy makers. This means that providing sanctions to batterers and sanctuaries for victims and survivors is crucial.”).

⁷² Barbara J. Hart, *Arrest: What's the Big Deal?*, 3 WM. & MARY J. WOMEN & L. 207, 207-209 (1997).

⁷³ Prosecution may not be the solution to ending domestic violence, just as it has not ended murder or other crimes, but criminal accountability is an important form of deterrence. See Wills, *supra* note 3, at 176 (“Indeed, criminal intervention does not guarantee that a batterer will forever refrain from further violence. However, failure to try to achieve this goal is not an acceptable alternative.”).

⁷⁴ See Erez, *supra* note 6, at 49.

no-drop laws, many victims choose not to testify.⁷⁵ There is no conclusive evidence suggesting that encouraging voluntary disclosure will, in fact, lead to increased prosecution.

One factor that might contribute to this policy limitation is mistrust of the legal system.⁷⁶ The legal system as a whole has not been favorable to immigrants or domestic violence victims, especially under the Trump administration.⁷⁷ Courts have previously accepted a cultural defense in domestic violence cases, which only discourages future victims of abuse from pressing charges.⁷⁸ Moreover, domestic violence is not a crime in many countries, which may cause immigrants to avoid involving law enforcement despite ongoing abuse.⁷⁹ Without trust that this policy will in fact be respected—that the immigration status of the victim will not be used against her—then the goals of this policy will fail.⁸⁰

⁷⁵ See Wills, *supra* note 3, at 177 (“Faced with having to testify in court, domestic violence victims, especially battered women, routinely either recant, minimize the abuse, or fail to appear.”).

⁷⁶ Erez, *supra* note 6, at 36 (explaining that immigrants often lack trust in law enforcement agencies, and further that law enforcement agencies often lack the resources to assist immigrants, particularly immigrants who need translation services). Lack of translation services is particularly troubling because one prevalent tactic among abusers is to prevent a non-English-speaking victim from learning English in order to isolate the victim. *Id.* at 42.

⁷⁷ Under the current administration, mistrust of immigration authorities is particularly strong. Although the official stance is that all people regardless of immigration status have basic rights to relief from domestic violence, the ability to receive relief is hindered because “federal immigration agents do not consider courthouses off limits.” See Manya Brachear Pashman, *Immigrant women fear deportation under Trump if they report domestic abuse, advocates say*, CHICAGO TRIBUNE (June 26, 2017, 7:27 AM), <https://www.chicagotribune.com/news/immigration/ct-domestic-violence-immigration-met-20170626-story.html>) (describing why Trump’s immigration policies create fear in domestic violence victims who are immigrants or live in largely immigrant communities).

⁷⁸ See, e.g., *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988) (giving defendant—a Chinese immigrant—only probation for the brutal killing of his wife, based on ‘expert’ testimony that he acted consistent with Chinese cultural norms); see also DEVAW, *supra* note 4, at Art. 4 ¶ 1 (“States should condemn violence against women and should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination.”); Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 393 (2003) (examining how culture is used selectively despite domestic violence being widespread); Leti Volpp, *(Mis)Identifying Culture: Asian Women and the ‘Cultural Defense’*, 17 HARV. WOMEN’S L.J. 57 (1994) (arguing against the cultural defense).

⁷⁹ See Erez, *supra* note 6, at 47-49 (“Unaccustomed to involving outsiders or reporting domestic violence to the police at home, [Haitian] women discussed the tension here in immigrant communities about disclosing abuse to family members and law enforcement.”). *But see id.* at 49-50 (describing how immigrant women felt “empowered” by the justice system, noting that women in the United States have “more support and protection” in gaining justice for domestic violence).

⁸⁰ See, e.g., Sokoloff, *supra* note 5, at 52 (“Strategies designed to combat violence within communities (sexual/domestic violence) must be linked to strategies that combat violence directed against communities (i.e., police brutality, prisons, racism, economic exploitation, etc.). One without the other is inadequate; for battered women on the margins of society, the two are intimately connected.”) (internal citations omitted).

This approach also does not dispel the national security concern that some people have expressed with U-visas.⁸¹ However, since the immunity proposed would be limited—although there should be a presumption that the victim’s immigration status could not be used against them—there could be a weighing of factors, where specific, relevant, and important national security concerns may outweigh the immunity.

Another flaw with this proposal is its scope; the policy is limited to domestic violence situations only. If immigrants are ultimately afforded immunity for domestic violence, why would other crimes be treated differently? Domestic violence is a public safety concern and a dangerously underreported crime, but other crimes are important as well.⁸² It is critical to encourage victims and bystanders—regardless of their immigration status—to come forward in cases involving non-intimate partner aggression, firearms, drug violence, and other threats to the public. Accordingly, a solution to this limitation might be to broaden the scope of this proposal to include all the qualifying crimes for U-visas.⁸³

Finally, the proposed policy also does not allow for those who come forward to obtain a work visa, as other remedies do. Even once the legal immigration status restraints tying an immigrant woman to her spouse disappear, she may remain economically, emotionally, or otherwise dependent on her spouse.⁸⁴ If a victim does not possess a work visa independently, then criminal accountability of her spouse may leave her without a means of supporting herself and discourage her from going forward with prosecution.⁸⁵ This is yet another example of the complexity involved with creating a law that encompasses the number of issues facing immigrant victims of domestic abuse.

CONCLUSION

Domestic violence is a humanitarian concern that is not properly addressed in the United States.⁸⁶ VAWA presents some potential remedies to immigrant women who experience domestic

⁸¹ See Ball, *supra* note 50 (noting how some opponents of VAWA believe the law presents undocumented immigrants with the opportunity to commit immigration fraud through the U-visa application process by lying about abuse that never occurred).

⁸² See *supra* note 36.

⁸³ See *supra* note 36 (listing these crimes).

⁸⁴ See Erez, *supra* note 6, at 36 (acknowledging the barrier that economic dependency creates in the immigrant domestic violence context).

⁸⁵ Although VAWA does allow for immigrant women to receive food stamps and other public benefits, this may not be enough support to encourage a victim to lose her economic ties. See Erez, *supra* note 6, at 37 (listing access to public benefits as a positive consequence of VAWA). *But see* Sokoloff, *supra* note 5, at 44 (arguing that access to public benefits is insufficient for marginalized women and that lack constitutes abuse); *see also* Sokoloff, *supra* note 5, at 44 (“[T]he lack of adequate institutional support in the form of social services and public housing as well as the intrusions and coercive controls by the state and its agencies (e.g., welfare) is another level of violence experienced by battered women, which occur in ways that are racialized as well as gendered and classed.”).

⁸⁶ See Stegman, *supra* note 2 (enumerating the prevalence of domestic violence in the United States).

violence.⁸⁷ However, despite the strengths of these remedies, none of the solutions offered fully address the problem of underreporting, particularly among immigrant women. Granting immunity from immigration law enforcement to undocumented immigrants who report domestic violence is another way to expand the protections afforded to women under VAWA. While this proposal is not without limitations, it is an improvement—as an addition—to the current VAWA immigration policies. Ultimately, future iterations of VAWA, including the 2019 reauthorization, should include more provisions to protect immigrants affected by domestic violence in the United States.

⁸⁷ See Title VIII Protection of Battered Immigrants in the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).