

Presidential Transition: First 100 Days
Executive Branch Actions That Enhance Protections
for Noncitizen Victims of Crimes
By Ellen Kemp¹ & Gail Pendleton²

This document first provides a summary of our recommendations. We are happy to provide background information explaining these suggestions more fully, if you wish.

Over the past 18 years, most significantly in the 1994 Violence Against Women Act (VAWA), Congress has created and expanded several special routes to immigration status for noncitizen victims of domestic violence, sexual assault, trafficking and other crimes. The most notable of these are "VAWA self-petitioning" (embedded in the regular family-system, but adjudicated by a special CIS unit), the U visa, and the T visa (both adjudicated by the same special unit). Some of these routes to status also are designed to help law enforcement work with this most vulnerable population: undocumented crime victims who are too afraid of deportation to report crimes or seek help.

While the Citizenship and Immigration Services (CIS) unit and policymakers assigned to these cases have done a stellar job, other parts of the Department of Homeland Security and the Department of Justice have proven less supportive. This is especially true for the U visa, a route to status for noncitizen crime victims who are helpful to local law enforcement, created in 2000, but for which DHS did not issue implementing regulations until 2007.

Despite some institutional resistance, tens of thousands of noncitizen crime victims have gained status through these new options, helping them access safety and justice for themselves and their children. This, in turn, allows them to become fully functioning members of our society.

We suggest that the new administration:

- * Highlight the positive results these laws have achieved;**
- * Exhort state and local law enforcement to use these laws to find and help noncitizen victims of crimes; and**

¹ Ellen Kemp is director of legal advocacy of the National Immigration Project of the National Lawyers Guild, where she has worked for seven years. Ellen specializes in providing technical assistance on VAWA, Us and Ts, and helps the National Network to End Violence Against Immigrant Women develop policy initiatives and analysis in this area. Contact: ellen@nationalimmigrationproject.org.

² Gail Pendleton is Co-Director of ASISTA, a DOJ Office on Violence Against Women-funded technical assistance and policy development organization. She also works as consultant, training judges and law enforcement on the U visa. Previously she worked for 20 years at NIPNLG and co-founded the National Network to End Violence Against Immigrant Women, the organization that worked with Congress to create the special routes to status discussed in this memo. She also serves as the primary liaison between the field and CIS personnel charged with implementing these laws. Contact: glpendleton@earthlink.net, (cell) 774-269-3110

*** Ensure that all Executive agencies adopt policies that help, not harm, noncitizen crime victims eligible for status.**

What you can do in the first 100 days:

A. Explicitly Support Laws that Help Community-Based Law Enforcement Protect Noncitizen Victims of Crimes

1. Announce your support for these laws and exhort all law enforcement to use them to help noncitizen victims of crimes. This one simple act will help enormously. The U visa, in particular, is designed to help local law enforcement work with undocumented victims of crimes. Many in local law enforcement have been reluctant to employ it, however, not understanding its purpose or their role in the process. **A message from the President or Attorney General** would encourage them to use this tool and to engage with immigrant communities to make it work.

2. Require All Implicated Federal Agencies to Develop Policies that Support Noncitizen Victim Access to Status, Using the Expertise of DOJ's Office on Violence Against Women (OVW)

DOJ's Office on Violence Against Women is the only federal agency, other than the small part of CIS charged with adjudicating victim claims, which has fully embraced helping noncitizen victims of crimes. They fund legal service providers that work with these victims and support national efforts to educate law enforcement and service providers about best practices for assisting this population. **The Executive should draw on OVW's expertise to ensure that the rest of the federal government employs best practices.**

DHS POLICIES

ICE and CBP, in particular, must immediately develop or perfect policies that help, not harm noncitizen victims of crimes. ICE's main job is enforcement and its agents are not trained or working in an appropriate environment to identify victims of crimes such as domestic violence, sexual assault, and other crimes. Instead of seizing on loopholes in the laws to detain and deport victims of crimes (as happens too frequently now), they should refer self-identified victims to crime victim advocates and agencies that work with noncitizen crime victims. Establishing an internal victim advocacy system at ICE has not proven effective, partly because ICE is not institutionally organized to have a victim-centered approach to crime and enforcement and the agency as a whole is not sympathetic to the U visa, but also because it is not a best practice to use law enforcement agents to identify and work with crime victims on their safety options. At the federal and local level, as advocated and taught by DOJ's Office on Violence Against Women's technical assistance providers, the best practice for prosecutors and local police is to partner with advocates whose job it is to work with victims of crimes. ICE does not have those relationships. The job of ICE is and should remain focusing on investigating and prosecuting perpetrators/immigration law violators.

For this reason, the **Executive should mandate that DOJ's Office on Violence Against Women be consulted on any policy or system these agencies set up.**

Mandate that ICE develop and implement protocols prohibiting enforcement actions at locations where such actions will discourage victims accessing justice. These include, but are not limited to courthouses, shelters, Family Justice Centers, rape crisis counseling centers, and emergency rooms. ICE should consult with DOJ's Office on Violence Against Women to ensure its protocols encompass all locations necessary for victims to access safety and justice.

Mandate that ICE modify its policies implementing 8 USC 1367 (special confidentiality and information source protections) to prohibit using information that flows from information provided by crime perpetrators ("fruit of the poisonous tree"). The law embodies an assumption that information from perpetrators is not only false, but intended to thwart victim access to justice. Attempts to use its loopholes to detain and deport victims make ICE a tool of the perpetrators, not of justice.

DHS should adopt a formal policy that **any detention or Notice to Appear that flows from such information shall be deemed contrary to law, 8 USC 1367, and public policy, and shall be rescinded.**

Save money and bed space by releasing detained crime victims.

PROBLEM: ICE's mission and priority is enforcement. Unfortunately ICE is often locking up and deporting victims of crimes. These victims are often already in the process of cooperating with state, local, or federal law enforcement authorities in the investigation or prosecution of a crime. By locking up victims without regard to these special circumstances, ICE thwarts the intent of Congress in creating special immigration relief for victims of crimes and undermines the relationship that local, state, or federal law enforcement agencies have built within their communities. Moreover, locking up and deporting victims of crimes in immigration detention prisons re-traumatizes them and limits or nullifies their ability to help other branches of law enforcement. It also costs a lot of money. In FY2009, ICE will spend almost \$2.5 billion on detention and removal operations, of which over \$1.7 billion is for "custody operations." (U.S. Immigration and Customs Enforcement (ICE) Fact Sheet, Fiscal Year 2009, October 23, 2008, <http://www.ice.gov/pi/news/factsheets/index.htm>).

The system currently wastes precious tax dollars detaining and deporting victims of crimes who, in all likelihood, will prevail in their applications for administrative immigration relief. Detention priorities should reflect national priorities, and fighting crime and helping crime victims should trump removing people for lack of documents.

SOLUTION:

- Issue policy guidance instructing ICE to refrain from detaining victims of crimes and to release victims of crimes from detention using all and any tools at their disposal, such as parole, deferred action, and stays of removal.
- Restore the spirit of previous policy guidance memoranda which instructed ICE to de-prioritize detention and removal of special victims of crimes and to focus instead on keeping them in the U.S.
- Issue supplemental guidance to the DHS/ICE guidance memorandum of October 18, 2004, detailing “detention priorities,” to list victims of crimes and VAWA self-petitioners as defined at 8 U.S.C. 1101(a)(51) as “Not A Priority.” (DHS policy guidance memorandum, Asa Hutchinson, Detention Prioritization and Notice to Appear Documentary Requirements, October 18, 2004).

JUSTIFICATION: By locking up and removing victims of crimes, ICE thwarts Congressional will and local, state, and federal efforts to investigate and prosecute crimes. It also contributes to government waste in spending taxpayer dollars. Previous policy guidance memoranda support allowing victims of crimes to access the special immigration relief that Congress created for them. These policy memoranda include, among others, the guidance memorandum issued by DOJ/INS, Michael Cronin (August 30, 2001): Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Policy Memorandum #2 – “T” and “U” Nonimmigrant Visas and the guidance memorandum issued by USCIS, William Yates (October 8, 2003): Centralization of Interim Relief for U Nonimmigrant Status Applicants. The latter guidance memorandum states, in relevant part:

“In an effort to provide interim relief for this vulnerable population, the Office of Programs issued interim guidance in August 2001, which directed that no one who appeared to be eligible to apply for U nonimmigrant status be removed from the United States until he/she has had the opportunity to avail him/herself of the provisions of the VTVPA. It further instructed field offices to use existing mechanisms (parole, deferred action, and stays of removal) to achieve this objective.”

(Guidance memorandum, USCIS, William Yates (October 8, 2003): Centralization of Interim Relief for U Nonimmigrant Status Applicants.)

Mandate policies to promote screening and release of victims of crimes picked up in a raid or enforcement action.

PROBLEM: Immigration raids have re-traumatized victims of crimes and created a climate of fear discouraging victim cooperation with other branches of law enforcement. ICE is conducting raids and community-based enforcement actions that include women and children who may be victims of crimes. ICE is charged with an enforcement mission and is not equipped to identify victims of crimes. By not accurately identifying victims of crimes that are detained and deported after a raid or other enforcement action, ICE is undermining the will of Congress and the effectiveness of local, state, and other federal law enforcement to combat crime. It is also ignoring international law on the treatment of

victims of crimes. Victims of crimes are being locked up and removed without access to the special protections created for them by law. ICE is wasting taxpayer monies and resources detaining, prosecuting, and deporting this population of special victims.

SOLUTION:

- Institute a policy to release immediately victims picked up in a raid or enforcement action who can show they have filed as a VAWA self-petitioner as defined at 8 U.S.C. 1101(a)(510 or for a U or T visa. Re-define these victims for ICE and other immigration enforcers as being in a protected group, a species of "Victim Protection Program."
- Allow outside advocates specializing in domestic violence, sexual assault, and other crimes to interview non-citizens detained after a raid or other enforcement action before they are transferred or removed. The federal Office of Violence against Women (OVW) within the Department of Justice and state coalitions on domestic violence, sexual assault, and victims of crimes should determine who these advocates are.

JUSTIFICATION: ICE's main job is enforcement. ICE is not institutionally set up to have a victim-centered approach to crime and enforcement. A raid or enforcement action can be a swiftly-paced operation. Transfers and removals may happen immediately or overnight. ICE agents need a simple, straightforward instruction to weed out potential victims of crimes from their enforcement efforts. Victims of crimes as a class must be de-prioritized for detention and removal, and an effective, simple message to ICE field agents would be a "Victim Protection Program."

With regard to outside advocates interviewing those picked up in a raid or enforcement action, the key word is "outside." ICE agents are not equipped to identify victims of crimes nor do they inspire trust in immigrant victims of crimes. Having victim/witness coordinators embedded within ICE does not work because they are associated with enforcement and victims will not talk to them. ICE needs to adopt "best practices" and partner with outside, independent advocates who specialize in working with victims of crimes.

"Law enforcement officers involved in situations where trafficking is suspected are encouraged wherever possible to involve members of local non-governmental organizations who may be helpful in approaching, contacting and interviewing suspected victims. Clear follow-up procedures must also be in place in order to ensure the safety of individuals identified as victims and place them within a support system."

(October 2008, UN Office on Drugs and Crime, Global Programme Against Trafficking in Human Beings, Toolkit to Combat Trafficking in Persons, Tool 6.7 Checklists to facilitate victim identification, p. 276)

These policies may not be completed within the first 100 days, but mandates to revise policies that undermine the laws for noncitizen victims of crimes should go out within this time period.

Other Federal Agencies

Other federal agencies with roles in enabling access to safety and justice for noncitizen crime survivors, and which should be charged with developing policies, include the Executive Office for Immigration Review (EOIR), HHS (public benefits), HUD (housing for domestic violence victims), EEOC (crimes in the workplace), and DOL (large scale workforce crimes) (see Background: Federal Agency Roles). In particular:

HUD must amend its regulations to allow access to short- and long-term housing for approved "VAWA self-petitioners" (spouses and children of abusive US citizens and lawful permanent residents), who are "qualified aliens" under public benefits' laws.

HHS should immediately eliminate the HPV vaccine requirement for women seeking lawful permanent residence. While encouraging vaccination may be warranted for the some, all women seeking status should not be required to get it. It is expensive, it is not recommended by health care providers for all women, including older women, and those currently implementing the requirement are ill-trained on who should and should not be vaccinated.

EOIR should work with OVW on a regular training plan for all immigration judges and the Board of Immigration Appeals. If trial attorneys are not moved out of ICE, **ICE must also work with OVW to develop a regular training plan for all trial attorneys and any supervisory counsel.**

DOJ's Office of Immigration Litigation (OIL) should work with OVW to achieve training of all its attorneys on forms of relief designed for victims of crimes.

DOS should create a liaison position with CIS to facilitate processing crime victim cases through consulates. Some victims are deported by ICE but may still pursue their claims abroad. Close family members ("derivatives") abroad of those who receive status as victims of crimes must also process through consulates. DOS has repeatedly refused to assign personnel to ensure its officers understand the laws and implement them appropriately. This results in hundreds of eligible family members and victims of crimes being stranded abroad due to the ignorance of local officers.

B. Fully Fund Federal Agency Personnel Required to Adjudicate Cases and Support Victims

Fighting crime and helping its victims becomes even more important during economic hard times, when more people are out of work, they lack the resources to obtain help, they face competing needs that may hinder receiving the support they need, and they are more likely to turn on their family members or vulnerable members of society. In addition, crime perpetrators learn quickly which populations are most vulnerable;

undocumented immigrants are one of the most vulnerable populations in this country, because of their fear of deportation. Failing to adequately fund those who help crime victims will result in higher levels of violence, fear and economic loss to communities that can no longer function safely.

The two federal agencies that must be fully funded despite economic hard times are the CIS special unit that handles crime victim cases and DOJ's Office on Violence Against Women.

1. Separate the special victims unit of CIS from the rest of the agency's practices and protocols and line-item the money necessary for the unit to function well

The special unit that handles all victim case is woefully under-funded, lacking the personnel it needs to adjudicate cases in a timely fashion. The policymakers who write the regulations implementing the laws are similarly understaffed. In addition, CIS has severed the special relationship between its policy personnel, the field, and the special unit supervisors, a system that worked extremely well for over a decade. Finally, some aspects of crime victim claims remain under the jurisdiction of other parts of CIS, which receive no training on working with victims of crimes and frequently undermine the laws created for those victims. To fix these problems, please:

Mandate that CIS assign all aspects of crime victim cases to the special victims unit and prohibit other parts of CIS from making those decisions;

Restore the direct supervisory relationship between CIS VAWA/U policy personnel and the special victims unit; and

Consult with the CIS VAWA/U policy personnel and special victims unit supervisors to **determine what funding is necessary to adjudicate crime victim claims and to promulgate guidance and regulations in a timely fashion.**

2. Fund OVW to consult and help train CIS personnel

OVW has been supporting noncitizen victims of crimes since Congress created the special routes to status for crime victims. During this period they have provided leadership in funding and developing best practices for the field. CIS and other federal agencies working with noncitizen crime survivors would benefit greatly from OVW's expertise and experience. We suggest:

Consult with OVW and CIS VAWA/U policy personnel to **determine what funding is necessary to support OVW assisting CIS** and other federal agencies working with noncitizen crime victims.

C. Reduce Excessive Government Spending on Prosecuting Victims of Crimes

1. Ensure DHS/ICE is identifying and not detaining, prosecuting, and deporting victims of crimes.

ICE's main job is enforcement and its agents are not trained or working in an appropriate environment to identify victims of crimes such as domestic violence, sexual assault, and other crimes. ICE is not institutionally organized to have a victim-centered approach to crime and enforcement. At the federal and local level, as advocated and taught by DOJ's Office on Violence Against Women's technical assistance providers, the best practice for prosecutors and local police is to partner with advocates whose job it is to work with victims of crimes. ICE does not have those relationships.

Enforcement against victims of crimes is not a good use of ICE resources, given that law enforcement on the state and local levels need immigrant victims to report crimes, which they often are too afraid to do for fear of deportation. **Time and money are wasted on locking up victims of crimes who were specifically designated by Congress as a special group. Additionally, these special victim cases are those being litigated by national legal and advocacy groups, thus wasting scarce legal resources.** In FY2009, ICE will spend over \$200 million dollars on lawyers and litigation and almost \$2.5 billion on detention and removal operations, of which over \$1.7 billion is for "custody operations." Identifying and releasing victims of crimes seeking status would relieve some of this financial burden.

2. Unclog the immigration court docket by terminating immigration proceedings involving victims of crimes

Victims of crimes who are cooperating with law enforcement are occupying the immigration courts' dockets unnecessarily. DHS/ICE legal counsel practice with regard to victims of crimes is not uniform and some offices or individual ICE counsel refuse to administratively close or terminate special victim cases in immigration court proceedings, though these victims have a viable form of administrative immigration relief available to them. This practice is contrary to previous agency interim guidance and current regulations. In economic terms, maintaining special victims of crimes, including survivors of domestic violence, sexual assault, and other crimes, on immigration court dockets is an unnecessary drain on the court's limited resources.

SOLUTION:

- Issue policy guidance to ICE Office of Chief Counsel (OCC) instructing ICE counsel to join in motions to terminate without prejudice (or, in the alternative, administratively close) immigration proceedings involving applicants eligible for U or T nonimmigrant visas for victims of crimes or VAWA self-petitioners as defined at 8 U.S.C. 1101(a)(51).
- Issue policy guidance to ICE Office of Chief Counsel (OCC) instructing ICE counsel to join in motions to reopen proceedings for victims who have a final order of deportation, exclusion, or removal, and already have an approved case for a U visa, a T visa, and/or as a VAWA self-petitioner as defined at 8 U.S.C. 1101(a)(51) from CIS, so

that the final order may be terminated. This will unclog the immigration court dockets further, so that special victims with administrative relief options are not forced to proceed with judicial relief options that re-traumatize victims unnecessarily and waste the resources of both ICE counsel and the immigration courts.

JUSTIFICATION: Immigration Court is the venue of last resort for victims of crimes to be making their case because it re-traumatizes them, especially victims of domestic violence, sexual assault, trafficking, and other crimes. Immigration Judges lack jurisdiction over the nonimmigrant U and T visas or VAWA self-petitions. Economically, forcing special victims to continue proceedings in immigration court is a waste of money and resources for DHS and DOJ.

In FY2009, ICE alone will spend over \$200 million dollars on lawyers and litigation. A portion will be spent prosecuting cooperating victims of crimes. While it is true that some immigration judges will liberally grant continuances as a solution to ICE's refusal to join these motions, immigration judges are also under docket, time, and financial constraints which discourage them from granting multiple continuances. **While ICE's enforcement-focused budget has skyrocketed in recent years, in FY2009, the Executive Office for Immigration Review (EOIR), responsible for the nation's entire immigration court system, will receive a total of \$261 million dollars.** EOIR itself has recognized that its caseload is elevated and it is struggling to keep up due to ICE's enforcement efforts.

"The immigration court's caseload increases resulting from DHS' heightened enforcement efforts will remain the key challenge for EOIR. EOIR's courts continue to receive hundreds of thousands of matters for adjudication. Immigration court caseload continues to be maintained at very high levels, and the complexity of the caseload seems to be increasing. It is anticipated that the current and planned expansion of DHS enforcement efforts, e.g., detention bedspaces, criminal alien programs and border enforcement, will increase immigration court case receipts well into the future."

(Department of Justice, FY 2009 Congressional Budget Submission, Administrative Review and Appeals, <http://www.usdoj.gov/jmd/2009justification/>)

Furthermore, **the U visa interim regulations specifically anticipated that ICE counsel will regularly agree to joint motions to terminate proceedings** (without prejudice) for victims of crimes cooperating with law enforcement and seeking administrative immigration relief on that basis. The Supplementary Information section of the U visa interim rule states:

"However, in instances in which the U nonimmigrant status petitioner or a derivative family member of the petitioner listed on the Form I-918 is in removal, deportation, or exclusion proceedings before the Immigration Court or has a matter pending before the Board of Immigration Appeals (Board),¹⁸ this rule provides that the alien may seek the agreement of DHS' Bureau of Immigration

and Customs Enforcement (ICE) \9\ to file a joint motion to terminate the proceedings without prejudice while a petition for U nonimmigrant status is being adjudicated by USCIS.\10\ New 8 CFR 214.14(c)(1)(i) and (f)(2)(i). The joint motion to terminate must be filed with the Immigration Court or the Board, whichever has jurisdiction. Id. The agreement to pursue termination of the pending proceedings lies within the sole prosecutorial discretion of ICE. DHS is including a specific provision on motions to terminate in this rule to identify a mechanism that conserves prosecutorial resources with respect to a class of aliens who are providing assistance in investigating and prosecuting criminal activity.”

(New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53013 (September 17, 2007))

In fact, no specific provision on motions to terminate for victims of crimes was strictly necessary – ICE counsel already had the prosecutorial discretion to join in such motions – which lends further support to the assertion that victims of crimes cooperating with law enforcement are a special group that is meritorious, as a class, of prosecutorial discretion in motions to terminate (or, by extension, to administratively close.)

DHS has previously issued several guidance memoranda that support the conservation of prosecutorial resources by encouraging termination of removal proceedings, without prejudice, for victims of crimes cooperating with law enforcement.

“Once an individual is determined to have submitted prima facie evidence of his/her eligibility to apply for U nonimmigrant status, VSC personnel must then decide whether to exercise discretion and assess deferred action. [...] The ICE OCC shall then terminate removal proceedings on the basis of VSC’s approval of interim relief.

[...]

If the VSC approves interim relief, the alien should present the written notice to the appropriate ICE OCC. The ICE OCC shall terminate removal proceedings on the basis of VSC’s approval of interim relief.”

(Guidance memorandum, USCIS, William Yates (May 6, 2004): Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings.)

“Legal Proceedings:

No alien identified as a possible victim eligible for “T” or “U” nonimmigrant classification should be removed from the United States until they have had the opportunity to avail themselves of the provisions of the VTVPA. When a possible “T” or “U” victim is encountered during the course of proceedings, the District Counsel’s office should contact the District Victim-Witness Coordinator so that appropriate action can be taken in accordance with the instructions in this memo. The District Counsel’s Office has the discretion to seek a continuance of the proceedings or to request administrative closure or termination.”

(Guidance memorandum, DOJ/INS, Michael Cronin (August 30, 2001): Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA) Policy Memorandum #2 – “T” and “U” Nonimmigrant Visas)

Thus, the agency has the tools at hand to implement a rational policy regarding noncitizen crime victims in proceedings.

C. Mandate that the Laws Be Fully Implemented

Because of the understaffing noted above and the seven-year delay in issuing regulations for the U visa, there is a huge delay in issuing decisions in those cases. Also because of this delay, the number of cases filed after the regulations came out may exceed the 10,000 maximum that may be granted each year. Crime victims languish without legal work authorization, which is the single most important tool they need to function in our society. Moreover, they should not suffer because the agency delayed for seven years in implementing the law.

Several aspects of the 2005 law expanding routes to status for noncitizen crime survivors have yet to be implemented. In addition, the regulations governing VAWA self-petitions are obsolete, not reflecting changes made in 2000 and 2005.

Finally, the interim U regulations contain several provisions that are contrary to or not contained in the statutory language. The most troublesome example is the requirement that a law enforcement certification come from a head of agency or supervisor, which limits the U visa's usefulness for police officers and detectives who may most need it, but who are not "supervisors." Congress stated only that certifications come from police, prosecutors, judges and certain state, local or federal officials. As of this writing, CIS has not issued final regulations rectifying this and other "ultra vires" requirements.

To fix these problems quickly, please:

Mandate that CIS grant deferred action and attendant work authorization to all VAWA self-petitioners and U visa applicants whose applications have been pending for more than 180 days. Although Congress recently created a "bona fide" standard for granting early work authorization to U applicants, it is not clear that this will significantly decrease the waiting time for such approvals. If the special victims unit can make prima facie or bona fide determinations within 180 days, they could grant deferred action on that basis, with attendant work authorization.

Mandate that CIS assign granted U visas to the year in which the applicant originally applied (e.g. those who received "interim relief" in 2004 will receive visas assigned to that year's 10,000 limit) and, after such assignments, **if the total number of visas filed in any year for the next seven years (through 2014) exceeds the 10,000 maximum, CIS must assign these visas to the years in which it had failed to implement the law, namely 2000 - 2007.**

Mandate that CIS prioritize issuing guidance on the 2005. Guidance requires less bureaucracy than regulations, and has worked sufficiently well in the past, when the laws changed too rapidly for the regulatory process to keep up. If there is a way to accelerate the regulatory process, that would be helpful. DOJ and ICE involvement in the regulatory process has served as a major speed bump. Perhaps with a shift in attitude in those agencies, the process will improve.

Mandate that CIS prioritize issuing final U regulations that eliminate requirements not contained in the statute.

Instruct Asylum Office of DHS/CIS to adjudicate applications for VAWA NACARA

Problem: The DHS/USCIS Asylum Division has refused to adjudicate applications for NACARA relief by battered spouses and children protected under VAWA. It has misinterpreted the regulations and statutes to claim it has no jurisdiction over these applications and that only the immigration courts have jurisdiction. This position is legally incorrect and wrongly limits VAWA NACARA relief to victims of abuse already in immigration court proceedings, not to victims of abuse who are not currently before the immigration court. Practically speaking, this excludes most applicants who would otherwise be eligible.

Solution: Instruct DHS/USCIS HQ to issue a guidance memorandum clarifying that the DHS/USCIS Asylum Division has jurisdiction to adjudicate VAWA NACARA claims for special victims who are not currently before the immigration court.

Justification: The NACARA regulations have not been updated since the passage of Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA 2000), however, the current regulations on NACARA applicability at 8 CFR 204.61 already include abused spouses and children, when read in conjunction with Section 1510 of VTVPA 2000. Section 1510 states: "The amendments made by subsections (a) and (b) shall be effective as if included in the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1255 note; Public Law 105-100, as amended.)" NACARA originally amended the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and tracing the amendments to the various laws involved clearly shows that abused spouses and children of NACARAs are entitled to at least the same treatment as other NACARA applicants. Immigration Court is the venue of last resort for victims of crimes to make their case because it re-traumatizes them, especially victims of domestic violence. Abused spouses and children already fall into the jurisdiction of USCIS Asylum Division and should have their applications considered by them.

(end)