



National Employment
Law Project

Oppose HR 4970: VAWA Reauthorization Endangers Immigrant Victims of Workplace Crime and Labor Trafficking

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Although the Senate has recently passed S1925, a bipartisan bill reauthorizing VAWA and strengthening protections for immigrant victims of crime, HR 4970 would drastically undercut existing protections for such victims. NELP opposes HR 4970, with specific opposition to Sections 802 and 806 of the bill.

Since its enactment in 1994, the Violence Against Women Act (VAWA) has provided critical protections for immigrant survivors of domestic violence and other crimes. This important law, which has always received broad bipartisan support, strengthens law enforcement's ability to detect, investigate, and prosecute crime, and protects immigrant victims who may fear coming forward due to their immigration status. VAWA supports victims of crimes such as domestic violence, but also provides protection to victims of crimes committed by abusive employers taking advantage of immigrant workers, including rape, sexual assault, sexual exploitation, labor trafficking, and involuntary servitude.

How Does VAWA Currently Protect Immigrant Workers Who Are Victims of Crime?

- In 2000, Congress created the "U" Visa as part of VAWA, to strengthen the ability of law enforcement agencies to investigate and prosecute specific crimes committed against immigrants, and to provide protection to victims who fear cooperating with law enforcement due to their immigration status.
- *When is a victim of crime eligible for a U visa?* To be eligible for a U visa, a law enforcement agency, including police departments, but also the Department of Labor or the Equal Employment Opportunity Commission, must certify that the victim has been helpful in an investigation or prosecution of a crime. The victim must also show that he or she has suffered substantial physical or mental harm as a result of the crime.

How does HR 4970 Endanger Immigrant Victims of Crime at the Workplace?

HR 4970 weakens the ability of law enforcement agencies to fight crime and build trust with immigrant victims of crime by limiting the circumstances in which a victim qualifies for a U visa. Specifically, Sections 802 and 806 of HR 4970 place arbitrary limitations on law enforcement agencies, and creates unrealistic barriers for victims of crime.

- Section 802 **requires that the crime must be reported within 60 days of the crime** for a certification to be issued. This is particularly unrealistic for immigrant victims of crime, including sexual assault and labor trafficking. Vulnerable victims require tremendous courage to come forward, and victims of traumatic crime often need more time to locate advocates, especially when facing language barriers or lack of services. Victims of sexual abuse, including children or workers, may have particular difficulty reporting a crime.
- Section 802 also **requires that the statute of limitations for prosecuting an offence has not lapsed**. This hampers the ability of law enforcement agencies to gather key evidence and witnesses in cases involving serial criminals, including sexual assault and abuse.

- Section 802 also **requires that the criminal activity be under active investigation or prosecution**. Law enforcement agencies may not have sufficient resources to actively investigate or prosecute all cases, and immigrant victims of crime may be re-victimized where their cases are not an enforcement priority for the agency.
- Section 802 also **requires that the petitioner must provide information that will assist in identifying the perpetrator of the criminal activity**. Victims of crime, especially those who have been severely traumatized, may not always be able to accurately identify the perpetrator.
- **Section 806 terminates U visa recipient's eligibility to qualify for permanent residence**. This provision would further discourage crime victims from cooperating with law enforcement, especially where victims may fear for their or their children's safety and stability when choosing to report a crime.

HR 4970 Would Eliminate Protections For Vulnerable Immigrant Victims of Crime.

The U visa has provided important protection for immigrants who have faced serious abuse by their employers. However, HR 4970 would eliminate these protections. Examples of cases include:

- Maria, a housekeeper at a motel in Michigan, endured unwelcome sexual comments, physical assaults, and attempted sexual assault by her manager while at work. When she complained about the attacks to her employer, he retaliated by firing her. She was terrified of speaking to anyone else, due to her immigration status. When she finally came forward, the EEOC sued her employer for unlawful employment practices, and certified her U visa application.
- Marisa and her two daughters worked at a restaurant in Colorado. Their employer sexually harassed and assaulted one of the daughters, and also refused to pay them all for their work. When they asked for their pay, the employer then threatened them all with deportation. Although this took place in January, they did not report the crime until July, after a community advocate assured them that the employer had committed a crime, and that it was safe to come forward with a U visa.
- Louisa, a home care worker, was physically and sexually abused by her employer. For several months, he hit her, groped her, and sexually assaulted her several times and threatened to have her deported if she reported the abuse. At first, she was too afraid to come forward, but she reported the crime after she had left the job. Although it had been more than 60 days since the crime had taken place, she was later able to report the crimes and gain the protection of a U visa. (Names have been changed to protect victims.)

For more information, please contact Eunice Cho, Staff Attorney, National Employment Law Project, at echo@nelp.org or at 510-663-5707. Additional information about U visas for victims of workplace crime is available at: <http://www.nelp.org/page/-/Justice/2011/UVisa.pdf?nocdn=1>.