

## The Immigrant Witness and Victim Protection Act of 2019 (H.R. 4319)

Introduced by Reps. Panetta (CA-20) & Jayapal (WA-7)

**Cosponsored by:** Representatives Blumenauer (OR-3), Bonamici (OR-1), Carbajal (CA-24), Clarke (NY-9), Cleaver (MO-5), Correa (CA-46), Eshoo (CA-18), Espaillat (NY-13), Garcia (TX-29), Grijalva (AZ-3), Haaland (NM-1), Johnson (GA-4), Khanna (CA-17), Lofgren (CA-19), Maloney (NY-12), McGovern (MA-2), Meng (NY-6), Moore (WI-4), Murphy (FL-7), Napolitano (CA-32), Norton (DC-At Large), Omar (MN-5), Pressley (MA-7), Roybal-Allard (CA-40), Rush (IL-1), Sánchez (CA-38), Schakowsky (IL-9), Sires (NJ-8), Smith (WA-9), Soto (FL-9), Suozzi (NY-3), Swalwell (CA-15), Vargas (CA-51), Velázquez (NY-7).

**H.R. 4319-The Immigrant Witness and Victim Protection Act of 2019 will remove barriers to protection for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes who may be eligible for relief under the Violence Against Women Act (VAWA) and other federal laws.**

Abusive partners and perpetrators of crime often exploit victims' lack of immigration status or dependent immigration status as a way to keep victims silent and avoid any repercussions for their actions. Recognizing this acute vulnerability, in 1994 Congress created the VAWA self-petitioning process for spouses and certain family members of abusive U.S. citizen or lawful permanent residents who would otherwise be dependent on those abusers for legal immigration status. In 2000, with the passage of the Trafficking Victims Protection Act (TVPA), Congress created additional protections, including the U and T visa programs. The T visa was established to assist victims of human trafficking, and the U visa was established to assist noncitizen victims of certain eligible crimes (including domestic violence, sexual assault, among others) who are willing to assist in the investigation or prosecution.

Recent changes in immigration policy are undermining the thoughtful protections that Congress established over the past twenty-five years with bipartisan support, sharpening the tools of abusers and increasing the risks of harm to victims of violence. This bill will safeguard and improving existing protections for immigrant survivors in order to help them achieve safety and justice.

H.R. 4319 will enhance victim and community safety efforts in several ways, including:

- **Eliminating the U Visa Annual Cap:** U.S. Citizenship and Immigration Service (USCIS) has met the 10,000 annual cap on U visa principal applications every year since 2010.<sup>1</sup> For years, this cap has failed to adequately meet the needs and has created immense hardship and uncertainty for survivors.<sup>2</sup> H.R. 4319 seeks to eliminate the U visa cap to increase access to protections for

<sup>1</sup> See USCIS Press Release. USCIS Reaches Milestone: 10,000 U Visas Approved in Fiscal Year 2010 (July 15, 2010), available at <https://www.aila.org/File/DownloadEmbeddedFile/52988>

<sup>2</sup> See e.g. Kate Linthicum. "Safety for Immigrants Put on Hold by U Visa Delay" *Los Angeles Times* (Feb. 1, 2015), available at <https://www.latimes.com/local/california/la-me-u-visa-20150202-story.html>

survivors of crime, to enhance efforts of law enforcement to investigate and prosecute crimes in their communities, and to increase the efficiency of the adjudication process for USCIS.<sup>3</sup>

- **Providing Work Authorization to Survivors While Their Petitions Are Pending:** Survivors of domestic violence, sexual assault, human trafficking and other crimes are experiencing egregious delays in the processing of their VAWA self-petitions, as well as U visa and T visa petitions.
  - For example, it now takes a **minimum of 1.5 years** for the U.S. Citizenship and Immigration Services (USCIS) to adjudicate a **VAWA self-petition for abused spouses or family members of U.S. citizens or lawful permanent residents, or a T visa petition** for victims of human trafficking.<sup>4</sup> **The delays for U visa petitions for immigrant crime victims who are cooperating with law enforcement have skyrocketed as the initial adjudication process now takes over 4 years.**<sup>5</sup>
  - These significant delays, coupled with other barriers (an inability to have work authorization or a lack of access to financial support) can be devastating to survivors who face economic hardship, and can subject them to additional risks of violence, exploitation, and manipulation. **H.R. 4319 addresses this hardship by providing that USCIS grant work authorization for T visa petitioners, U visa petitioners, and VAWA self-petitioners if their cases have been pending for over 180 days.**
- **Preventing Survivors from Being Deported before their Humanitarian Immigration Cases Are Adjudicated:** The bipartisan protections created in VAWA and the TVPA are undermined when survivors are denied access to immigration benefits. Recent changes in ICE policies have made it even more important to reaffirm that VAWA and TVPA protections are meant to prevent keeping victims silent and in danger due to the fear of deportation. **H.R. 4319 instructs DHS officials not to remove survivors with pending T visa, U visa, or VAWA-based relief until a final decision has been reached in their cases including any appeal period.** Deporting survivors while they await decisions in their cases discourages them from accessing justice, separates them from their children and support networks, and undermines the usefulness of these laws as tools to help law

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<sup>3</sup> As recognized by DHS in its Congressional Budget Justification FY2017 Budget appropriations request, raising the cap would help “maximize efficiency” [https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%201\\_1.pdf](https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%201_1.pdf). Under the current framework, USCIS adjudicators must review a petition for consideration for the waitlist then again, often years later, for the issuance of a U visa. Eliminating the cap would reduce the necessity for this multi-year, multi-step adjudication process.

<sup>4</sup> As of September 10, 2019, the processing times listed on the USCIS website for I-360 VAWA self-petitions at the Vermont Service Center state that cases will be adjudicated between 18 and 23 months. The processing times for I-914 Applications for T Nonimmigrant Status are taking between 18 and 22.5 months. See <https://egov.uscis.gov/cris/processTimesDisplayInit.do>

<sup>5</sup> As of September 10, 2019, the processing time listed on the USCIS website for I-918 Petition for U Nonimmigrant Status is 52.5 to 53 months; this is the time from the initial filing to the waitlist determination stage. See <https://egov.uscis.gov/cris/processTimesDisplayInit.do>. The delay for the issuance of the actual visa can take years longer.

enforcement keep all communities safe. Unless corrected through legislation efforts like HR 4319, current ICE policy will effectively strengthen the upper hand of abusers and perpetrators to credibly threaten victims that they will be deported if they dare to report crimes.

- **Limiting Detention for Survivors with Pending Applications:** H.R. 4319 creates a rebuttable presumption that survivors with pending T visa, U visa, or VAWA-based relief should be released from detention. DHS can overcome this presumption based on clear and convincing evidence that alternatives to detention will not be viable or that the person is a threat to another person or the community.

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