

7-1-2015

# Advancing a Human Rights Framework to Reimagine the Movement to End Gender Violence

Rosie Hidalgo

Follow this and additional works at: <http://repository.law.miami.edu/umrsjlr>



Part of the [Civil Rights and Discrimination Commons](#), and the [Women Commons](#)

---

## Recommended Citation

Rosie Hidalgo, *Advancing a Human Rights Framework to Reimagine the Movement to End Gender Violence*, 5 U. Miami Race & Soc. Just. L. Rev. 559 (2015)

Available at: <http://repository.law.miami.edu/umrsjlr/vol5/iss2/28>

This Part III: Reimagining Mobilization, Action, and Pedagogy is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Race & Social Justice Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# Advancing a Human Rights Framework to Reimagine the Movement to End Gender Violence

Rosie Hidalgo\*

I. DEVELOPMENT OF LEGISLATION IN THE UNITED STATES WITHIN GLOBAL CONTEXT OF HUMAN RIGHTS ADVOCACY.....	560
II. OPPORTUNITIES FOR IMPROVEMENT WITH THE REAUTHORIZATION OF GENDER VIOLENCE LEGISLATION .....	565
III. EXPANDING ADVOCACY BEYOND LEGISLATION FOCUSED ON GENDER VIOLENCE TO ADDRESS HUMAN RIGHTS ABUSES.....	572
IV. CONCLUSION.....	578

The United States has a strong interest in preventing and responding to gender-based violence around the world. Regardless of the form that gender-based violence takes, it is a *human rights violation* or abuse, a public health challenge, and a barrier to civic, social, political, and economic participation . . . Gender-based violence undermines not only the safety, dignity, overall health status, and *human rights* of the millions of individuals who experience it, but also the public health, economic stability, and security of nations.<sup>1</sup>

The statement above is found in the opening section of the strategy document that was jointly published by the U.S. State Department and the U.S. Agency for International Development in August, 2012 entitled “United States Strategy to Prevent and Respond to Gender-Based Violence Globally.” The development of this strategy is part of an

---

\* Rosie Hidalgo is the Deputy Director for Policy with the Office on Violence Against Women. Rosie has over twenty years of experience working in the movement to end violence against women.

Recommended Citation: Rosie Hidalgo, *Advancing a Human Rights Framework to Reimagine the Movement to End Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 559 (2015).

<sup>1</sup> U.S. DEP’T OF STATE. & USAID, U.S. STRATEGY TO PREVENT & RESPOND TO GENDER-BASED VIOLENCE GLOBALLY 7 (2012) (emphasis added) [hereinafter U.S. STRATEGY TO PREVENT].

ongoing effort to strengthen the United States' commitment to addressing gender-based violence globally as an explicit goal within foreign policy and international assistance efforts. While organized efforts over the past four decades to prevent and end domestic violence and sexual assault within the United States have rarely involved the use of human rights terminology or an explicit human rights framework, adopting this framework can help advance efforts to reimagine and expand the movement to end gender-based violence within the United States as well.

A human rights framework calls for a comprehensive, multi-faceted approach to ending gender-based violence. It recognizes that domestic violence is not "a private family matter" and that the state has an obligation in efforts to prevent and respond to this violence in a manner that is holistic, effective and accessible to *all* individuals, regardless of race, class, economic status, sexual orientation, immigration status, age, or other such characteristics. Additionally, it should take into account the intersection of oppressions that heighten vulnerabilities to abuse. Furthermore, a comprehensive human rights framework calls not only for institutional or social services responses, but for broader prevention efforts that include changing social norms and promoting social justice.<sup>2</sup>

#### I. DEVELOPMENT OF LEGISLATION IN THE UNITED STATES WITHIN GLOBAL CONTEXT OF HUMAN RIGHTS ADVOCACY

While efforts in the United States during the past four decades to strengthen legal and institutional responses to domestic violence and sexual assault may not have explicitly espoused human rights terminology, it is important to view those efforts in the context of the broader human rights efforts that were underway globally during that same time period. In particular, during the period in which advocates were calling for the passage of the Violence Against Women Act (VAWA) in the United States, there were significant efforts by advocates around the world to obtain a state commitment to addressing violence against women as a human rights issue.

VAWA legislation was first introduced in Congress in 1990 but passage was unsuccessful during that term of Congress. In 1993, prior to the U.S. Congress approving VAWA, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women.<sup>3</sup> This came about following the 1993 World Conference

---

<sup>2</sup> Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISP. J. BEHAV. SCI. 107, 107–33 (1999).

<sup>3</sup> The Declaration on the Elimination of Violence Against Women was adopted without a vote by the U.N. General Assembly on Dec. 20, 1993 through Resolution

on Human Rights, which recognized violence against women as a human rights violation and called for the appointment of a Special Rapporteur on violence against women in the Vienna Declaration and Programme of Action.<sup>4</sup>

Additionally, on June 9, 1994, the General Assembly of the Organization of American States (OAS) adopted in a special session the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.<sup>5</sup> Several months later, the U.S. Congress finally passed VAWA with bipartisan support, and it was signed into law on September 13, 1994 by President Clinton.<sup>6</sup>

During this same time period, there were many preparations underway for the United Nations 4th World Conference on Women, held in 1995 in Beijing, China. The Beijing Declaration and Platform for Action included the goal to “*Prevent and eliminate all forms of violence against women and girls*” and stated that “*Violence against women is an obstacle to the achievement of the objectives of equality, development and peace.*”<sup>7</sup> That same year, the U.S. Department of Justice created the Violence Against Women Policy Office and the Violence Against

---

48/104. The Declaration is considered to complement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979 by the United Nations General Assembly. While the United States is a signatory to CEDAW, it has not ratified it. Declaration on the Elimination of Violence against Women, 85th Plen. Mtg., U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

<sup>4</sup> The Vienna Declaration and Programme of Action was adopted by a consensus of representatives of 171 countries participating in the World Conference on Human Rights in Vienna, Austria on June 25, 1993. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, 37, U.N. Doc. A/CONF.157/23 (July 12, 1993); see also *Global Norms and Standards: Ending Violence Against Women*, UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards> (last visited Sept. 6, 2014).

<sup>5</sup> The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women was adopted June 9, 1994, at the 24th regular session of the General Assembly of the Organization of American States (“OAS”) held in Brazil. It has been ratified by 32 of the 35 States of the OAS (Canada, Cuba, and the United States are not parties to this treaty). *The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, ORG. OF AM. STATES (June 9, 1994), available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

<sup>6</sup> The Violence Against Women Act (“VAWA”) was enacted as Title IV, sec. 40001-40703 of the Violence Crime Control and Law Enforcement Act of 1994, H.R. 3355, signed as Pub. L. 103-322 by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040). VAWA was reauthorized in 2000, 2005, and most recently in 2013. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat 54.

<sup>7</sup> *Beijing Declaration and Platform for Action*, THE FOURTH WORLD CONFERENCE ON WOMEN 4, 78 (Sept. 1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/>.

Women Grants Office to begin implementation of VAWA grant programs.<sup>8</sup>

VAWA was a significant step forward in encouraging states to develop and improve a more coordinated response to domestic violence and provided resources through the U.S. Department of Justice to support those efforts. However, one of the problematic aspects of the passage of VAWA is that it was part of a larger, more controversial crime bill, the Violent Crime Control and Law Enforcement Act of 1994.<sup>9</sup> While an effective criminal justice response is an important tool in efforts to prevent and respond to violence against women, through the years it has been demonstrated that an overreliance on the criminal legal system has resulted in a number of significant unintended consequences. These consequences have disproportionately impacted communities of color, immigrants, LGBT communities and others who do not fit the mainstream paradigm.<sup>10</sup> Additionally, an overemphasis on a criminal legal response has detracted from a broader social justice analysis of gender violence and attention to multiple forms of oppression that impact marginalized communities, as well as the need for more comprehensive responses and different pathways for survivors to pursue safety and well-being.

One recent article in the New York Times described the significant expansion of the domestic violence unit of the New York City Police Department—a 40% increase in staff over the last several years to 450 officers—as part of an effort to reduce domestic violence homicides.<sup>11</sup> During 2012, there were thirty-nine homicides in New York City involving intimate partners.<sup>12</sup> However, it is significant to note that, as stated in the article, “Less than a quarter of the victims and perpetrators of domestic homicides had contact with the police in the year before the murder, according to city statistics.”<sup>13</sup> Inevitably this highlights the importance of programs and efforts to reach individuals confronting domestic violence issues who do not turn to the police for assistance.

---

<sup>8</sup> OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, *About the Office* (Dec. 16, 2014), <http://www.justice.gov/ovw/about-office>.

<sup>9</sup> BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* 86 (2012). The author notes how the Violent Crime Control and Law Enforcement Act of 1994 legislation included a set of harsh laws that moved away from rehabilitation efforts, added many new death penalty offenses, and provided for huge increases in law enforcement budgets and prison construction, among other things.

<sup>10</sup> *Id.* at 91–92.

<sup>11</sup> Joseph Goldstein, *Police Take on Family Violence to Avert Death*, N.Y. TIMES, July 25, 2013, at A1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Additionally, when domestic violence victims do reach out to the police, courts, or service providers for help, they at times encounter significant barriers. One example is when survivors encounter life threatening language barriers, despite the fact that all recipients of federal funds have a legal obligation, under Title VI of the Civil Rights Act, to provide meaningful access to services for individuals with limited English proficiency.<sup>14</sup> In the case of Deisy Garcia, she and her two young daughters were murdered in New York City on January 18, 2014 by her ex-husband despite her attempts to reach out to the police for help. Following her murder it was discovered that Deisy had filed police complaints on three separate occasions in her native language of Spanish, describing incidents of abuse and stating that her ex-husband had threatened to kill her, but those complaints were never translated into English for review and possible action.<sup>15</sup>

This story demonstrates that when victims choose to turn to the police for help, it is important that the police respond in an effective manner and that the services are accessible to all survivors. In August 2011, the Inter-American Commission on Human Rights issued a landmark decision in the case of *Jessica Lenahan (Gonzalez) v. United States*.<sup>16</sup> The decision found that the United States violated the American Declaration on the Rights and Duties of Man when the police failed to respond appropriately to the domestic violence perpetrated against Jessica Lenahan and her three daughters, including their rights to life, non-discrimination, and judicial protection. The results of this case and the case of Deisy Garcia demonstrate the need to engage in systems advocacy in order to improve access and ensure a more effective response from an international human rights framework.

At the same time, it is important to note that an over-reliance on police response is insufficient, particularly when, as reported in the New York Times article, 75% of homicide victims in the city did not have contact with the police department in the year before their death.<sup>17</sup> This demonstrates the need to provide a wider array of prevention and intervention responses for survivors. While VAWA legislation has been criticized as resulting in an over-reliance on the criminal legal system, it is important to recognize that our nation's first federal legislation to

---

<sup>14</sup> Rosie Hidalgo, *Ensuring Meaningful Access to the Courts for Individuals with Limited English Proficiency*, 64 JUV. & FAM. CT. J. 45, 45–49 (2013).

<sup>15</sup> Chris Boyette & Maria Santana, *A Woman's Plea in her Native Language Goes Untranslated, Three Lives are Lost*, CNN, Feb. 20, 2014, <http://www.cnn.com/2014/02/19/us/new-york-domestic-killing-warnings/>.

<sup>16</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, CASE 12.626, REPORT NO. 80/11, JESSICA LENAHA (GONZALES) ET AL. UNITED STATES (2011).

<sup>17</sup> Goldstein, *supra* note 11.

support services for victims of domestic violence actually came ten years earlier, in 1984, when Congress first passed the Family Violence Prevention and Services Act (FVPSA).<sup>18</sup>

FVPSA authorized federal funding for the first time to help victims of domestic violence and their dependent children by providing funds, administered by the U.S. Department of Health and Human Services, that are primarily targeted to domestic violence shelters and related assistance. The following year, in 1985, the U.S. Surgeon General, C. Everett Koop, identified domestic violence as a public health issue that could not be dealt with by the police alone and testified to that effect at a U.S. Senate hearing on this issue.<sup>19</sup> However, over the past three decades, Congress has failed to authorize and appropriate sufficient resources to FVPSA to really address domestic violence as a public health issue or support more comprehensive responses or prevention initiatives.<sup>20</sup> Nonetheless, FVPSA continues to be an important federal program with opportunities to continue to strengthen the legislation when it is up for reauthorization in 2015.

While VAWA's primary emphasis has been on encouraging states to strengthen the criminal legal system response to domestic violence, 30% of the VAWA funds that go to the states through the Services, Training, Officers and Prosecutors (STOP) grant program are allocated to victim services programs. The distribution of FVPSA and VAWA funds for services at the state level have primarily gone to mainstream shelter-based domestic violence service providers and has often resulted in a "one-size fits all approach." Under this approach, victims are mostly expected to go to domestic violence shelters and seek an order of protection and/or press criminal charges.<sup>21</sup> This approach, while beneficial to some, often fails to address the complexities of intimate partner violence and the lived realities of survivors. Inevitably, the risks

---

<sup>18</sup> The Family Violence Prevention and Services Act ("FVPSA") was first authorized as part of the Child Abuse Amendments of 1984 (PL 98-457). FVPSA was most recently reauthorized in 2010 as part of the Child Abuse Prevention and Treatment Act ("CAPTA", S. 3817 of the 111th Congress) through fiscal year 2015. See Child Abuse Prevention and Treatment Act, Pub. L. No. 111-320 (2010).

<sup>19</sup> *Domestic Violence and Public Health: Hearing Before the S. Subcomm. on Children, Family, Drugs, and Alcoholism of the Comm. on Labor and Human Resources*, 99th Cong. 433 (1985) (statement of Dr. C. Everett Koop, Surgeon Gen., U.S. Pub. Health Serv., U.S. Dept. of Health & Human Services).

<sup>20</sup> FVPSA authorization levels are at \$175 million a year, an amount that did not increase in the 2010 reauthorization. However, actual appropriations by Congress have been less than \$130 million, with a slight increase to \$133.5 million for Fiscal Year 2014. DEPT. OF HEALTH & HUMAN SERVICES, ADMIN. FOR CHILD. & FAMILY, CHILD. & FAMILY SERVICES PROGRAM, FY 2014 PROPOSED APPROPRIATION.

<sup>21</sup> Hannah Brenner, *Transcending the Criminal Law's One Size Fits All Response to Domestic Violence*, 19 WM. & MARY J. WOMEN & L. 301 (2013).

and challenges are heightened for survivors who face multiple oppressions at the intersections of race, ethnicity, poverty, immigration status, sexual orientation, disabilities, age, mental health issues, and other characteristics that place one under the category of “underserved.” Nonetheless, the manner in which federal resources are distributed has made it very difficult for community-based organizations to access funding to develop innovative approaches to preventing and ending gender violence and to better meet the needs of communities of color and underserved populations in a more comprehensive manner.

While it is important for the criminal legal system and domestic violence shelters to be accessible for survivors who wish to pursue that path, it is critical to recognize that our national response to gender-based violence falls very short of a comprehensive human rights approach to preventing and responding to domestic violence if we fail to take into consideration these intersections and complex realities. Additionally, the allocation of resources in such a manner has had the unintended consequence of turning the domestic violence movement more into a network of social services programs rather than a social change and social justice movement.<sup>22</sup>

## II. OPPORTUNITIES FOR IMPROVEMENT WITH THE REAUTHORIZATION OF GENDER VIOLENCE LEGISLATION

One advantage of the VAWA and FVPSA laws is that the requirement to reauthorize the legislation approximately every five years provides an opportunity to reassess the benefits as well as identify the gaps and shortcomings of the current legislation. With each prior reauthorization of VAWA (in 2000 and 2005), progress has gradually been made to strengthen a broader approach to addressing gender violence. The reauthorization of VAWA in 2013, though it proved to be a major legislative challenge, ultimately made advancements in expanding a human rights lens that called for improved protections for *all* survivors, particularly marginalized populations. This came about largely because of the solidarity of the National Task Force to End Sexual and Domestic Violence that agreed to stand together to insist that VAWA needed to include important protections for vulnerable populations who face additional barriers to accessing safety and well-being.<sup>23</sup> In particular, VAWA 2013 made advancements in efforts to

---

<sup>22</sup> RICHIE, *supra* note 9, at 77.

<sup>23</sup> The National Task Force to End Sexual and Domestic Violence (“NTF”) is organized by a Steering Committee comprised of national organizations whose primary purpose is to end domestic violence, dating violence, sexual assault, and stalking as well as a number of allied organizations who have historically focused significant time,

address gender violence against Native Americans, LGBT survivors, and immigrants and also strengthened grant programs focused on underserved communities and racial and ethnic minority communities.<sup>24</sup>

VAWA 2013 made significant advancements in strengthening protections for Native American victims of domestic violence on tribal land through a tremendous advocacy effort led by the National Congress of American Indians and other tribal organizations, working in collaboration with the National Task Force to End Sexual and Domestic Violence. The tribal jurisdiction provisions that were ultimately included in VAWA faced much heated debate and extensive opposition from those who did not support recognition of tribal sovereignty to hold non-Indian perpetrators accountable for domestic violence and dating violence perpetrated against Native American survivors on tribal land. These new provisions made a significant advancement in protecting the human rights of Native American survivors who suffer much higher rates of domestic violence and sexual assault on tribal land, often at the hands of perpetrators who are non-Indians. The provisions authorize tribal governments to prosecute non-Indian defendants involved in intimate relationships with Native women and who assault these victims on tribal land.<sup>25</sup> Prior to the enactment of this new version of VAWA, federal laws did not authorize tribal courts to pursue any form of prosecution against these non-Indian perpetrators. Jurisdiction for these types of cases largely rested on federal courts and U.S. Attorneys' offices, often hundreds of miles away, who did not prioritize these kinds of domestic violence cases and rarely prosecuted them.

The courageous testimony of Native American survivors, such as Diane Millich, highlighted how the lack of adequate protections increased the risks and dangers for Native American survivors of

---

resources and energy to ending violence against women. Steering Committee members work collaboratively to ensure that public policy initiatives are informed by diverse perspectives, address priority concerns, and help advance efforts to end violence against women. The Steering Committee activates the larger NTF membership when appropriate and creates and provides guidance to the numerous NTF subcommittees and workgroups. NAT'L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE AGAINST WOMEN, <http://4vawa.org/> (last visited Sept. 9, 2014).

<sup>24</sup> *The Violence Against Women Act Reauthorization of 2013: Summary of Changes*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, [http://nnev.org/downloads/Policy/VAWA2013\\_Summary.pdf](http://nnev.org/downloads/Policy/VAWA2013_Summary.pdf) (last visited Sept. 6, 2014).

<sup>25</sup> *President Obama Signs Violence Against Women Act into Law: NCAI Praises Passage of Protections for All Women; Tribal Courts Gain Jurisdiction Over Non-Indian Domestic Violence Perpetrators*, RESTORATION OF NATIVE SOVEREIGNTY & SAFETY FOR NATIVE WOMEN MAG., at 3–4, June 2013, <http://restoration.niwrc.org/files/Restoration-V10.2.pdf>.

domestic violence at the hands of non-Native abusers.<sup>26</sup> During her testimony at a congressional briefing, Diane shared how the violence continued to escalate over the course of her marriage to her husband who was not Native American. She stated, “After one beating, my ex-husband called the tribal police and sheriff himself to show me that no one could stop him.”<sup>27</sup> When she left her husband he subsequently showed up at her workplace and tried to kill her, shooting and wounding instead a co-worker who pushed her aside during the shooting. Even then, there was confusion over who had jurisdiction between the federal and state courts and they agreed to let him take a plea to a minor offense.<sup>28</sup>

Jefferson Keel, the President of the National Congress of American Indians (NCAI) and Lt. Governor of the Chickasaw Nation, in speaking about the implementation of the new VAWA law stated, “We have strong tribal courts systems that protect public safety, and we will need to continue to expand our capacity and our codes. The law respects tribal sovereignty and also requires that our courts respect the due process rights of all defendants. My hope is that this new law is rarely used. Our goal isn’t to put people in jail. It is to create an effective deterrent so that our people can lead safe and productive lives.”<sup>29</sup>

While these new provisions providing for tribal jurisdiction for non-Indian perpetrators of domestic violence were an important advancement of protections in VAWA and a historic advancement for Tribal sovereignty, ultimately Congress did not go far enough to include victims of sexual assault on tribal land at the hands of non-Indian assailants and did not include necessary protections for Alaska natives.<sup>30</sup> Continued advocacy is underway to further expand these protections.

A second major area of contention in efforts to expand the protections of VAWA during the recent reauthorization process revolved around provisions to enhance access to services and prevent discrimination for LGBT survivors of domestic violence, sexual assault, stalking and dating violence. The 2013 reauthorization of VAWA made important and historic changes that will have a life-saving impact for many LGBT survivors. First, it added the term “intimate partner” to the list of eligible relationships for domestic violence protection.

---

<sup>26</sup> SoleyByRequest, *Diane Millich’s Story and The Violence Against Women Act*, YOUTUBE (Mar. 7, 2013), <https://www.youtube.com/watch?v=ahE6D4MjX1g>.

<sup>27</sup> *Signing of VAWA 2013: Historic Introduction of Vice President Joe Biden by Diane Millich*, RESTORATION OF NATIVE SOVEREIGNTY & SAFETY FOR NATIVE WOMEN MAG., June 2013, at 6–7, <http://restoration.niwrc.org/files/Restoration-V10.2.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Introduction to the Violence Against Women Act*, COURT CLEARINGHOUSE: A PROJECT OF THE TRIBAL LAW & POLICY INSTITUTE, [http://www.tribal-institute.org/lists/title\\_ix.htm](http://www.tribal-institute.org/lists/title_ix.htm) (last visited Sept. 6, 2014).

Additionally, “sexual orientation” and “gender identity” were explicitly added to the anti-discrimination language, clarifying that programs and services for domestic violence survivors may not discriminate on these grounds. Also, individuals who face barriers in accessing and using services due to their sexual orientation or gender identity are designated as “underserved” populations, meaning more resources can go toward prevention, outreach, and access to services within the LGBT population. Finally, there was a creation of a new purpose area within the VAWA victim services funds that allows for the targeting of victim services funds toward LGBT services.

In January of 2013 the Centers for Disease Control released the first set of national prevalence data on intimate partner violence, sexual violence, and stalking victimization by sexual orientation. The study found that lesbian, gay and bisexual people experience intimate partner violence and sexual violence at the same or higher rates over their lifetimes as heterosexuals.<sup>31</sup> Additionally, the New York City Anti-Violence Project’s National Coalition of Anti-Violence Programs (NCAVP) found that transgender people experience sexual violence at twice the rate of non-transgender people.<sup>32</sup> The new provisions in VAWA, which were a historic advancement in explicitly identifying and seeking to address the needs of LGBT individuals in federal legislation, represent a significant step toward ensuring that all people, regardless of sexual orientation, gender, or gender identity, are able to access services and seek safety and well-being.

A third major area of contention in the VAWA reauthorization efforts entailed maintaining and enhancing protections for immigrant survivors. Since its enactment in 1994, VAWA has always included vital protections for immigrant survivors of domestic violence and sexual assault. Congress recognized that the abusers of immigrant victims often use their victims’ lack of immigration status as a tool of abuse, leaving the victim too afraid to seek services or report the abuse to law enforcement. Congress sought to remedy that in VAWA to ensure that all victims have access to safety and protection and that all perpetrators can be held accountable. VAWA “self-petitioning” was created in 1994 to assist victims married to abusive spouses who are U.S. citizen or lawful permanent residents and who use their control over the victims’ immigration status as a tool of abuse (e.g., by failing to petition for them

---

<sup>31</sup> Press Release, Centers for Disease Control and Prevention (“CDC”), CDC Releases Data on Interpersonal and Sexual Violence by Sexual Orientation (Jan. 25, 2013), [http://www.cdc.gov/media/releases/2013/p0125\\_NISVS.html](http://www.cdc.gov/media/releases/2013/p0125_NISVS.html).

<sup>32</sup> Sharon Stapel & Rea Carey, *An Open Letter About New Protections for LGBT Survivors of Violence*, ANTI-VIOLENCE PROJECT (October 2, 2013), <http://www.avp.org/resources/avp-resources/274>.

and thus intentionally leaving victims without legal status and without legal work authorization).

In the 2000 reauthorization of VAWA, Congress expanded protections for immigrant survivors as part of the Victims of Trafficking and Violence Prevention Act. The T visa was created to assist victims of trafficking and the U visa was created to encourage immigrant victims of certain serious crimes (including domestic violence and sexual assault) to report those crimes and cooperate with police and prosecutors without fearing they could face deportation.<sup>33</sup> The 2005 VAWA reauthorization continued bipartisan support for all these protections and included additional enhancements in the protections for immigrant survivors.

While the bipartisan VAWA reauthorization bill that was introduced in the Senate in 2012 sought to maintain and enhance protections for immigrant survivors, the separate VAWA reauthorization bill that was initially introduced and passed in the House of Representatives later that year actually would have rolled back critical protections for immigrant survivors for the first time ever in the history of VAWA.<sup>34</sup> It was revealed that some of those provisions to weaken protections for immigrant survivors were being advocated for by organizations that had ties to the mail-order bride industry in the United States.<sup>35</sup> Once again, the solidarity of the National Task Force to End Sexual and Domestic Violence and the support of grassroots advocates throughout the country was critical in sending the message to Congress that VAWA needed to protect all survivors and that the advocacy community nationwide refused to accept a VAWA that endangered the safety and well being of immigrant survivors. Ultimately, the reauthorization legislation that was signed into law did not roll back any existing protections and did expand the eligibility categories for the U visa, improved protections for the children of U visa applicants, strengthened the International Marriage Broker Regulation Act to better regulate the mail-order bride industry, and reauthorized the Trafficking Victims Protection Act, among other provisions for immigrant survivors.<sup>36</sup> Although it was not possible during

---

<sup>33</sup> Victims of Trafficking and Violence Prevention Act (“VTVPA”), Pub. L. No. 106-386, 114 Stat. 1464, 1479–1534 (2000).

<sup>34</sup> MUJERES LATINAS EN ACCION & NAT’L LATINO NETWORK: CASA DE ESPERANZA, LATINA PORTRAIT: THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT AND LATINAS, 15 (2012), available at [http://nationallatinonetwork.org/images/MMLEA\\_REPORT2012FINALOL.pdf](http://nationallatinonetwork.org/images/MMLEA_REPORT2012FINALOL.pdf)

<sup>35</sup> Laura Basset, *Mail Order Bride Company President Lobbying to Weaken Protections for Abused Immigrants*, HUFFINGTON POST (May 8, 2012, 4:19 PM), [http://www.huffingtonpost.com/2012/05/08/violence-against-women-act\\_n\\_1500693.html](http://www.huffingtonpost.com/2012/05/08/violence-against-women-act_n_1500693.html).

<sup>36</sup> IMMIGRATION COMM. OF THE NAT’L NETWORK TO END SEXUAL AND DOMESTIC VIOLENCE, IMPORTANT PROTECTIONS FOR IMMIGRANT VICTIMS IN THE VIOLENCE AGAINST

the reauthorization process to obtain an increase in the number of U visas available to immigrant victims, a commitment was made to continue pursuing that goal in subsequent immigration reform legislation.<sup>37</sup>

A fourth area of advancement in VAWA 2013 was making some changes in grant programs to improve access to critical funding for community based organizations that are primarily focused on addressing the needs of racial and ethnic minority communities or other underserved populations. Specific grant programs in VAWA, such as the “Culturally Specific Services for Victims Program” and the “Outreach and Services to Underserved Populations Grant,” both of which were strengthened in the 2013 reauthorization of VAWA, are important steps forward in this direction.<sup>38</sup>

It is well known that domestic violence occurs across all racial, ethnic, and economic groups. However, the number and quality of studies aimed at having a better understanding of the prevalence and nature of gender violence in communities of color is still very limited. Beyond issues of prevalence, it is important to recognize that domestic violence victims from communities of color often face intersecting issues that compound the problem, including heightened economic and employment barriers, language access barriers, challenges dealing with the criminal legal system and immigration system, racism, anti-immigrant sentiment, and barriers to accessing health care and mental health services, among others. These issues have a disproportionate impact on marginalized racial and ethnic minority communities and result in additional layers of complexity in reaching and providing effective assistance to these survivors in a comprehensive and accessible manner. It is also important to address intersecting issues that affect individuals within racial and ethnic minority communities who are also underserved as a result of disabilities, sexual orientation, geographic isolation, immigration status, age and other factors that compound the challenges for them to access safety and well-being.

As a result of the added complexities in addressing domestic violence in communities of color, it is necessary to support the development of programs that provide culturally competent and trauma-informed services to ensure that more victims of gender violence in racial and ethnic minority communities receive appropriate intervention and prevention services. Additionally, it requires supporting initiatives

---

WOMEN REAUTHORIZATION ACT OF 2013 – S. 47, available at <http://casadeesperanza.org/pdfs/VAWAImmigrationfactsheetS47.pdf>.

<sup>37</sup> *How Comprehensive Immigration Reform Affects Immigrant Survivors of Violence*, NAT'L LATINO NETWORK (July 25, 2013), <http://www.nationallatinonetwork.org/policy-and-action/policy/immigration-reform>.

<sup>38</sup> 42 U.S.C. §§ 14045(a) (2010).

and allocating resources to build capacity within racial and ethnic minority communities to take the lead in addressing domestic violence and sexual assault in their communities and to develop innovative approaches within community-based organizations that are trusted by the community. It is well known that many survivors from communities of color have different patterns of seeking and utilizing services. For example, studies have found that Latinas are less likely to seek shelter services and more likely to speak to family members, friends or neighbors about violence than other ethnic groups.<sup>39</sup> Additionally, Latinas are less likely to contact authorities and pursue legal remedies.<sup>40</sup> While it is important that traditional services be fully accessible to all individuals, it is important to listen to the voices of survivors and develop more holistic programs that provide survivors with choices and different pathways to safety and well-being. These types of programs contribute not only to enhancing access to services, but also can play a significant role in fostering social change.

One example of such a program is Caminar Latino, a comprehensive intervention program in Atlanta, Georgia for Latino families affected by domestic violence. The intervention program developed by Caminar Latino over the course of more than two decades is based on an approach focused on listening and incorporating the voices of survivors and the emerging needs of the population served. In this manner, they have developed programs that create behavior change, build strength and resiliency, and enhance self-empowerment.<sup>41</sup> As stated in the article about Caminar Latino, “What most of the women wanted was for the violence to stop, not to leave their partners, with whom many of them continued to live.”<sup>42</sup> Following the voices of women participants in the program, additional programs for youth and men who battered were developed, creating an intervention that incorporates and addresses the needs of the entire family in a culturally relevant approach. Additionally, they use a community engagement model to raise awareness and foster leadership in the community, and they involve participants of the

---

<sup>39</sup> Sharon M. Flicker et al., *Concomitant Forms of Abuse and Help-Seeking Behavior Among White, African American, and Latina Women Who Experience Intimate Partner Violence*, 17 *VIOLENCE AGAINST WOMEN* 1067, 1078 (2011). See also Eben M. Ingram, *A Comparison of Help Seeking Between Latino and Non-Latino Victims of Intimate Partner Violence*, 13 *VIOLENCE AGAINST WOMEN* 159, 168 (2007).

<sup>40</sup> Maria J. Zarza & Rachel H. Adler, *Latina Immigrant Victims of Interpersonal Violence in New Jersey: A Needs Assessment Study*, 16 *J. AGGRESSION MALTREATMENT & TRAUMA* 22, 36 (2008).

<sup>41</sup> Julia L. Perilla et al., *Integrating Women’s Voices and Theory: A Comprehensive Domestic Violence Intervention for Latinas*, 35 *WOMEN & THERAPY* 93, 100–02 (2012).

<sup>42</sup> *Id.* at 95.

program in the development and implementation of community-based participatory research.

While the grant programs for culturally specific and underserved communities were strengthened in VAWA, nonetheless, the reality is that these grant programs are very small compared to the extent of the need. Additionally, community-based organizations focused on marginalized communities will continue to face significant barriers for sustainability unless there is a more intentional effort to increase access to federal resources, such as VAWA, FVPSA and the Victims of Crime Act (VOCA) funds, which are generally distributed at the state level to more traditional programs.

### III. EXPANDING ADVOCACY BEYOND LEGISLATION FOCUSED ON GENDER VIOLENCE TO ADDRESS HUMAN RIGHTS ABUSES

While legislation such as the Violence Against Women Act and the Family Violence Prevention and Services Act provide important opportunities for policy advocacy to continue striving to improve our nation's response to and prevention of gender violence, advocates must also lend our voices and increase our advocacy efforts around other pieces of legislation that can have a significant impact on addressing and reducing gender violence and protecting human rights in the United States. One clear example is the movement to obtain comprehensive immigration reform.

As previously stated, since the enactment of VAWA, Congress has recognized the heightened vulnerability to abuse that immigrant survivors face when their immigration status can be used against them as a tool of abuse. As Congress considers how to meaningfully reform the nation's immigration system, it has a special obligation to safeguard and enhance protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other abuses. Unfortunately, despite current humanitarian provisions of U.S. immigration law and current VAWA protections intended to reduce these vulnerabilities, many obstacles to immigrant survivors' access to safety and justice still remain. Immigration reform is necessary not only to protect those who have experienced abuse, but it is critical to help prevent and reduce the significant vulnerability to abuse and exploitation that currently exists in the United States.

In particular, the significant increase in the entanglement of local law enforcement with immigration enforcement has driven immigrant victims further into the shadows. Even before the implementation of these new policies, research showed that immigrant victims of domestic

violence without legal immigration status were half as likely to call police as those with stable legal status.<sup>43</sup>

The U.S. immigrant population in 2012 was approximately 41 million, or 13% of the total U.S. population. As a point of comparison, immigrants as a share of the total U.S. population reached a peak of approximately 15% in 1890. In 2012, approximately 51% of the overall immigrant population was female.<sup>44</sup> Estimates are that there are approximately 11.5 million undocumented or unauthorized immigrants living in the United States.<sup>45</sup> This includes 4.1 million women living in the United States as undocumented immigrants.<sup>46</sup> Abusive partners, opportunistic predators, and manipulative employers often exploit a victim's lack of immigration status, or dependent immigration status, as a way to maintain power and control and to keep victims silent, too afraid to seek help for fear of deportation or fear of losing custody of their children.<sup>47</sup>

Whereas the U visa was created with the intent of helping immigrant victims and to serve as a law enforcement tool, the annual cap is currently limited to 10,000 U visas per year. Additionally, survivors must provide a certification from law enforcement or an investigative agency regarding their cooperation with the investigation or prosecution of a designated crime in order to be able to apply for U visa. Many immigrant survivors are fearful and do not want to get involved with the criminal legal system, but for those who are willing to do so, they discover after coming forward that there is no obligation for law enforcement to certify that they have been cooperative, regardless of the situation.<sup>48</sup> Furthermore, the standard is applied very differently by different jurisdictions throughout the country, with some agencies refusing to provide a certification for U visa applications altogether regardless of the immigrant victim's helpfulness in the prosecution or investigation of a

---

<sup>43</sup> Leslye Orloff et.al, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L. J. 43, 60 (2003).

<sup>44</sup> Chiamaka Nwosu, Jeanne Batalova & Gregory Auclair, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Apr. 28, 2014), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2>.

<sup>45</sup> *Id.*

<sup>46</sup> Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEWRESEARCH CENTER: HISPANIC TRENDS (Apr. 14 2009), <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>.

<sup>47</sup> Rosie Hidalgo, *Crossroads: The Intersection of Immigrant Enforcement and the Child Welfare System*, 64 Juv. & Fam. Ct. J. 35, 37–39 (2013).

<sup>48</sup> DEPT. OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL & TERRITORIAL LAW ENFORCEMENT 2 (2012), [http://www.dhs.gov/xlibrary/assets/dhs\\_u\\_visa\\_certification\\_guide.pdf](http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf).

designated crime.<sup>49</sup> Furthermore the discretion exercised by law enforcement agencies is not subject to any form of review. This uncertainty, combined with the lack of information, limited access to legal services and advocacy assistance, and fears of deportation leaves millions of individuals in the shadows and with heightened vulnerability to abuse and exploitation.

At the same time that protections for immigrant victims are very limited in scope and availability, the United States has embarked on a massive enforcement effort that has resulted in the deportation of nearly two million individuals in the past five year period, tearing apart families and communities.<sup>50</sup> Annual deportations have increased more than 400% since 1996, averaging nearly 400,000 people per year during the past several years, and has resulted in more than 2 million deportations during the first five years of the Obama Administration.<sup>51</sup> This has partly been the result of a significant increase in the entanglement between local law enforcement and the efforts of Immigration and Customs Enforcement (ICE).<sup>52</sup>

There have been numerous reports of victims of domestic violence who have been arrested and put into immigration detention when they or someone else called the police as a result of a domestic violence incident.<sup>53</sup> The vulnerability of immigrant survivors is further heightened at the intersection of immigration issues with language access barriers. The heightened danger for immigrant survivors is evident in the story of Isaura Garcia.

On February 6, 2011, Isaura Garcia, a resident of Los Angeles, was arrested and placed in deportation proceedings after she called 911 to

---

<sup>49</sup> Dan Levine & Kristina Cooke, *Special Report: U.S. Visa Program for Crime Victims Is Hit-or-Miss Prospect*, REUTERS (Oct. 21, 2014, 9:18 AM), <http://mobile.reuters.com/article/idUSKCN0IA1H420141021?irpc=932>.

<sup>50</sup> See RACE FORWARD (FORMERLY THE APPLIED APPLIED RESEARCH CENTER), SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 3–4 (2011).

<sup>51</sup> Walter A. Ewing, *The Growth of the U.S. Deportation Machine*, IMMIGRATION POLICY CENTER (Apr. 9, 2014), <http://www.immigrationpolicy.org/just-facts/growth-us-deportation-machine>; Ana Gonzalez-Barrera & Jens Manuel Krogstad, *U.S. Deportations of Immigrants Reach Record High in 2013*, PEWRESEARCH CENTER (Oct. 2, 2014) <http://www.pewresearch.org/fact-tank/2014/10/02/u-s-deportations-of-immigrants-reach-record-high-in-2013/>.

<sup>52</sup> AARI KOHLI ET AL., UNIV. OF CAL., BERKELEY SCH. OF LAW, C.J. EARL WARREN INST. ON LAW & SOC. POL'Y, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS & DUE PROCESS 1 (2011).

<sup>53</sup> See, e.g., Rebecca T. Wallace, *Claudia's Story: How a Domestic Violence Victim's Call for Help Resulted in Three Days in Jail and Deportation Proceedings*, COLORADO RIGHTS BLOG (June 19, 2014), <http://aclu-co.org/blog/claudias-story-domestic-violence-victims-call-help-resulted-three-days-jail-deportation-proceedings/>.

seek help after her boyfriend beat her and violently threw her out of their apartment.<sup>54</sup> When the police arrived she tried to explain in her broken English what had happened but the police credited her boyfriend's version of events over hers and arrested Isaura.<sup>55</sup> Isaura, a victim of severe ongoing domestic violence with a history of 911 calls and emergency room visits, was startled to find that officers were arresting her and fainted.<sup>56</sup> The police officers took her to the hospital where a doctor found bruises on her body and identified her as a victim of domestic violence.<sup>57</sup> Nonetheless, LAPD officers booked her on a felony domestic charge.<sup>58</sup> Under a controversial policy known as "Secure Communities," which as of 2013 is now in effect in every police jurisdiction nationwide, her arrest resulted in sending her fingerprints to Immigration and Customs Enforcement, which determined that she was undocumented and subsequently issued a detainer.<sup>59</sup> Despite the fact that LAPD dropped the charges, Isaura was nevertheless transferred to immigration authorities as a result of the ICE detainer, and was placed in deportation proceedings to be sent back to Mexico and away from her young son.<sup>60</sup> Once the ACLU became aware of the situation and intervened with a public protest, ICE later dropped its deportation proceedings and an attorney was able to help her file for U visa. However, countless other victims are swept into the ICE dragnet without coming to the attention of advocates. ICE has said that its priority is to deport criminal offenders. But ICE deports approximately 400,000 people each year, and in 2012 only 55% had criminal convictions.<sup>61</sup> Additionally, these incidents are well-known in immigrant communities and have a significant chilling effect on the willingness of other victims and witnesses to come forward and seek help.<sup>62</sup>

---

<sup>54</sup> *Domestic Violence Victim's 911 Call for Help Results in Deportation Proceeding*, ACLU OF S. CAL. (May 12, 2011), <https://www.aclusocal.org/a-domestic-violence-victims-911-call-for-help-results-in-deportation-proceedings-secure-communities-program-endangers-crime-victims/>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> RAPE IN THE FIELDS (PBS, Univision, & Center for Investigative Reporting broadcast June 25, 2013).

<sup>62</sup> The National Latin@ Network for Healthy Families and Communities, a project of Casa de Esperanza, partnered with the National Domestic Violence Hotline to develop and conduct a survey of Latina callers over a six week period in 2012 regarding barriers that Latina domestic violence survivors face when seeking and accessing services. The results of the survey documented issues with language accessibility as well as issues related to immigration status. Thirty-nine percent of Latinas who indicated that they had

Many law enforcement officers and communities have expressed deep concerns that programs that increase the entanglement between local law enforcement and immigration enforcement efforts undermine public safety and community policing and drive immigrant victims further into the shadows.<sup>63</sup> As Congress debates immigration reform legislation, some legislators are proposing even stronger measures aimed at further increasing the involvement of state and local law enforcement in the implementation of more stringent enforcement provisions, such as through the Strengthen and Fortify Enforcement Act (“SAFE” Act, HR 2237), which passed the House Judiciary Committee on June 18, 2013.<sup>64</sup> The Major Cities Chiefs Association, an association comprised of police chiefs and sheriffs from the sixty-six largest law enforcement agencies in the United States, issued the following statement in opposition to such legislation:

Any Congressional measure that would require state and local law enforcement agencies to engage in immigration enforcement is strongly opposed by the Major Cities Chiefs. This proposal would undermine the trust and cooperation between police officers and immigrant communities, which are essential elements of community-oriented policing. Such a measure would result in fear and distrust of local police, damaging our efforts to prevent crime and weakening our ability to apprehend those who prey upon the public. Moreover, it would divert scarce and critical resources away from the

---

been born in a foreign country reported that they were afraid of calling the police or going to court for help as a result of the general immigration situation. Survivors stated that abusers often threaten them that they will be deported if they call the police. They also feared being separated from and losing custody of their children if they are put into detention. Nearly one in three Latinas who completed the survey in Spanish (31%) reported that they had encountered challenges accessing domestic violence related services because of language accessibility issues. See NATIONAL LATINO NETWORK FOR HEALTHY FAMILIES & COMMUNITIES AND THE NATIONAL DOMESTIC VIOLENCE HOTLINE, REALIDADES LATINAS: A NATIONAL SURVEY ON THE IMPACT OF IMMIGRATION AND LANGUAGE ACCESS ON LATINA SURVIVORS 3–8 (2013); see also NIK THEODORE, UNIV. OF ILL. AT CHICAGO, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 1–18 (2013).

<sup>63</sup> Pamela Constable, *For Immigrant Women, Domestic Violence Creates a Double Shadow*, WASHINGTON POST (Dec. 2, 2013), [http://www.washingtonpost.com/local/for-immigrant-women-domestic-violence-creates-a-double-shadow/2013/12/02/5626b85e-55e6-11e3-8304-caf30787c0a9\\_story.html](http://www.washingtonpost.com/local/for-immigrant-women-domestic-violence-creates-a-double-shadow/2013/12/02/5626b85e-55e6-11e3-8304-caf30787c0a9_story.html).

<sup>64</sup> *What’s on the Menu: Immigration Bills Pending in the House of Representatives in 2014*, Immigration Policy Center (Mar. 26, 2014), <http://www.immigrationpolicy.org/just-facts/what%E2%80%99s-menu-immigration-bills-pending-house-representatives-2014>.

core mission of local police—to create safer communities.<sup>65</sup>

Increased exploitation in the workplace is also a reality for many undocumented individuals who often face poor working conditions, sexual abuse and harassment, and wage theft. In a recent documentary produced by PBS Frontline, Univision, and the Center for Investigative Journalism, entitled “Rape in the Fields,” a one year investigation revealed very high levels of rape and sexual assault of immigrant women who work in the agricultural sector in the United States.<sup>66</sup> As stated in the documentary, over half a million women labor in the fields in the United States, the great majority undocumented. Most are too afraid to come forward to report the rape or sexual abuse for fear of losing their jobs and being unable to feed their children, or for fear of being arrested and placed in detention. For those who do come forward, they have often found that local law enforcement is not interested in prosecuting their reports of these crimes.

William Tamayo, an attorney with the Equal Employment Opportunity Commission (EEOC) has been successful in bringing some cases against agricultural companies that fail to stop the abuse of mid-level supervisors who often are the ones that prey on the migrant workers. “Sexual violence doesn’t happen unless there’s an imbalance of power,” Tamayo said, “and in the agricultural industry, the imbalance of power between perpetrator, company and the worker is probably at its greatest.”<sup>67</sup> As stated in the investigative report, the combination of financial desperation and tenuous immigration status make agricultural workers vulnerable to workplace violence and less inclined to report crimes. This situation of heightened vulnerability to abuse and exploitation of immigrant women is found not only in the agricultural industry, but throughout the hotel and restaurant industry, as well as those who are employed as domestic workers, in addition to other sectors.<sup>68</sup>

---

<sup>65</sup> Statement, Major Cities Association, Police Chiefs from Nation’s Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law (June 2013), <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/MCCAPC130821.pdf>.

<sup>66</sup> Nwosu, Batalova & Auclair, *supra* note 44.

<sup>67</sup> Bernice Yeung & Grace Rubenstein, *Female Workers Face Rape, Harassment in U.S. Agricultural Industry*, CENTER FOR INVESTIGATIVE REPORTING (June 25, 2013, 2:39 AM) <http://www.pbs.org/wgbh/pages/frontline/social-issues/rape-in-the-fields/female-workers-face-rape-harassment-in-u-s-agriculture-industry/>.

<sup>68</sup> LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT, *TRABAJADORAS: CHALLENGES & CONDITIONS OF LATINA WORKERS IN THE UNITED STATES* 49 (Mariya Strauss ed., 2012).

The current situation demonstrates that very limited access to remedies such as the U visa, which even then are only available after someone has been raped or beaten, do not come close to addressing what is a critical situation of high levels of vulnerability to abuse and exploitation for millions of undocumented women in the United States. Furthermore, a system of immigration enforcement that relies on increasing entanglement with local police drives immigrant victims further into the shadows, undermines their access to safety and state protection, and further emboldens perpetrators. Immigration reform that provides a pathway to legalization and work authorization is urgently needed to address these human rights' abuses and help prevent and reduce domestic violence, sexual assault, and trafficking.

#### IV. CONCLUSION

As stated at the outset, “Regardless of the form that gender-based violence takes, it is a *human rights violation* or abuse, a public health challenge, and a barrier to civic, social, political, and economic participation.”<sup>69</sup> A human rights approach is necessary not only in addressing gender violence globally, but in order to advance efforts to prevent and end gender violence in the United States as well.

A human rights framework helps one understand that all individuals, regardless of their individual circumstances, have a right to live free from the threats and realities of domestic violence, dating violence, sexual assault, stalking, and trafficking. In order to accomplish this, such a model needs to develop a more comprehensive approach as well as develop policies to end violence at the intersections with other forms of oppression. This requires supporting the efforts of different communities, particularly historically marginalized communities, to access effective services. Furthermore, it also requires widening access to resources to help build capacity and leadership within different communities to prevent and respond to gender-based violence in effective, culturally-accessible ways that contribute to wider social change. By acknowledging that a “one-size fits all approach” is not conducive to meaningful access, a human rights framework should move us toward developing and supporting different policies and pathways for survivors to seek safety, stability, and well-being at the personal, familial, and community level.

---

<sup>69</sup> U.S. STRATEGY TO PREVENT, *supra* note 1, at 7.