# "Good" and "Moral" Victims: How the Violence Against Women Act's Self-Petition Reflects the Intersections of Violence and Crimmigration

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## I. INTRODUCTION

The Violence Against Women Act (VAWA) was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994.[1] VAWA was the first comprehensive federal legislative package designed to address domestic violence, sexual assault, stalking, and other forms of gender-based violence. It is heralded as an aggressive federal response against the "historic paternalism and sexism that characterized domestic violence and sexual assault as 'private' family matters tacitly condoned by the community and official systems."[2] Among its many provisions, VAWA's self-petition process serves as a vital form of protection for undocumented survivors, allowing battered spouses, children, and parents of United States citizens or lawful immigrant abusers to independently petition for lawful immigration status—provided they prove their "good moral character" under the law.[3] This raises a critical question: how does the historic stigmatization and criminalization of immigrants intersect with the concept of a "good" and "moral" character?

In recent decades, immigration law has increasingly adopted a securitized framework that mirrors criminal law enforcement, giving rise to what has been coined "crimmigration," or the convergence of criminal and immigration law that classifies undocumented immigrants as "criminally alien," and therefore, deserving of detention, incarceration, or expulsion.[4] The emergence of America's draconian and retributive crime policies, crimmigration, and the VAWA self-petition has created significant challenges for those with prior criminal histories, arrests, or convictions in demonstrating their "good moral character" (GMC), a requirement imperative to the self-petition process.

This Note begins by tracing the historical background of the evolution of anti-violence legislation, federal crime policy in the twentieth century, and immigration law in the United States. It then critically examines whether the VAWA self-petition is adequately structured to provide formerly incarcerated or convicted immigrants with a viable success path towards

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[1] OFF. OF JUST. PROGRAMS, *1994 Violence Crime Control and Law Enforcement Act*, U.S. DEP'T OF JUST. (Feb. 14, 2020), https://www.ojp.gov/ojp50/1994-violent-crime-control-and-law-enforcement-act [https://perma.cc/SAS7-SY9K].

[2] FRANCINE T. SHERMAN, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION'S NAT'L GIRLS INITIATIVE, UNINTENDED CONSEQUENCES: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE MANDATORY AND PRO-ARREST POLICIES AND PRACTICES ON GIRLS AND YOUNG WOMEN 3 (2022).

[3] *See* U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Abused Spouses, Children and Parents*, https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents [https://perma.cc/Z9WB-E9R2] (describing the VAWA eligibility requirements for undocumented survivors of domestic and intimate partner violence) [hereinafter Abused Spouses].

[4] *See* Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 377–78 (2006) (analyzing how and why the state apparatus has weaponized and merged criminal and immigration law to criminalize immigrant communities).

lawful immigrant status. Further, it explores the extent to which VAWA can serve as an effective tool for supporting victims of domestic and gender-based violence without reinforcing or expanding carceral mechanisms. Ultimately, this Note advocates for a four-pronged solution to restructuring the self-petition: (1) a reevaluation of the GMC standard; (2) a congressional amendment to the Immigration and Nationality Act's language regarding GMC; (3) a context-specific and trauma informed U.S. Citizenship and Immigration Services (USCIS) adjudicative process; and (4) a reallocation of VAWA's funding towards community-oriented organizations and resources.

## II. BACKGROUND

To understand the underpinnings of VAWA and the self-petition, it is essential to examine the history and legislative developments that led to its enactment. VAWA's evolution mirrors key inflection points in American legal and political history, reflecting fears surrounding criminal acts that contributed to the expansion of the carceral state, recognizing domestic violence as a public health emergency, and, through its immigration assistance provisions, acknowledging that survivors of violence—regardless of immigration status—must have pathways to legal protection. This section will detail the intersection of these four factors. First, it will trace the early stages of anti-crime legislation in the United States, starting with the integration of British common law principles into its judicial system and the gradual incorporation of anti-domestic violence provisions into federal law in the twentieth century. Second, it will highlight the federal policies that ushered in the harsh and punitive anti-crime measures in the twentieth century that continue to have disproportionate impacts on Black, Brown, and immigrant populations. Third, it will explore VAWA's development and implementation, particularly as enacted alongside the Victims of Crime Act (VOCA). Lastly, it will explore the history of immigration law and the emergence and proliferation of crimmigration as it pertains to the VAWA self-petition.

### *A. The History of Domestic Violence Law in the United States*

The deep-rooted history and prevalence of domestic and sexual violence are not novel phenomena in American history.

> Today, intimate violence is recognized as a serious harm—harm within intimate relationships that has an impact on every aspect of the law, including criminal law, torts, reproductive rights, civil rights, employment law, international human rights, and especially family law. We . . . recognize that it has profound consequences for women's

> rights to full citizenship, equality, work, economic independence, and health, not only in this country but around the world.[5]

However, anti-domestic violence legislation addressing intimate and sexual violence is a relatively recent development in the twentieth century. As British parliament member William Blackstone remarked, "[b]y marriage, the husband and wife are one person in law[;] that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband[;] under whose wing, protection, and *cover*, she performs everything[.]"[6] A woman's legal identity fused with that of her husband's; considered a single entity with him, she had very limited access to property, contractual, or financial rights.[7] Under this "Single Entity Theory," a woman relinquished her independence and was subject to "chastisement," which was corporal punishment from her spouse.[8]

The most significant influences on early colonial American jurisprudence were British common law and Christianity.[9] As such, chastisement was institutionalized.[10] Domestic violence was sanctioned by religion, and as a result, informed the legal parameters that governed the acceptability of spousal violence.[11] Within colonial populations, the family patriarch was responsible for ensuring and enforcing the rules of conduct within a household.[12] From 1633 to 1802, only twelve instances of marital abuse were reported.[13] However, as the American legal system became more secularized,

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[5] Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L. Q. 353, 354 (2008).

[6] NAT'L CONST. CTR., *Commentaries on the Laws of England, Vol. 1 The Rights of Persons (1765) and Vol. 2, The Rights of Things (1766)*, https://constitutioncenter.org/the-constitution/historic-document-library/detail/sir-william-blackstone-commentaries-on-the-laws-of-england-vol-1-the-rights-of-persons-1765-and-vol-2-the-rights-of-things-1766 [https://perma.cc/8FH2-W4L8].

[7] *See* Rachel Ablow, *'One Flesh,' One Person, and the 1870 Married Women's Property Act*, BRANCH COLLECTIVE (2012), https://branchcollective.org/?ps_articles=rachel-ablow-one-flesh-one-person-and-the-1870-married-womens-property-act [https://perma.cc/P4AD-RSG6] (explaining the legal concept of coverture as applied in British common law).

[8] Helena Wojtczak, *British Women's Emancipation Since the Renaissance*, HASTINGS PRESS (2009), https://www.hastingspress.co.uk/how/wifebeatingthumb.html [https://perma.cc/6DQP-F3GG].

[9] *See* Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118–24 (1996) (explaining how William Blackstone's ideas of marriage and chastisement influenced early American jurisprudence).

[10] *Id.* at 2124.

[11] Eve S. Buzawa & Carl G. Buzawa, *The Evolution of the Response to Domestic Violence in the United States*, *in* GLOBAL RESPONSES TO DOMESTIC VIOLENCE 61, 70 (Eve S. Buzawa & Carl G. Buzawa eds., 2017).

[12] *Id.*

[13] *Id.*

"determining the appropriateness of conduct that was 'suitable in the Eyes of the Lord'" became less important.[14] Nonetheless, secularization did not eliminate domestic violence, nor did it catalyze the enactment of anti-domestic violence legislation. In *Bradley* v. *State*, the Mississippi Supreme Court endorsed the mythologized "rule of thumb," a British common law principle that "a husband could beat his wife 'with a rod no thicker than his thumb.'"[15]

> [U]ntil the start of the twentieth century, women actually had few legal rights. A husband owned all family property and assets, and in practice was permitted to "chastise" his wife physically, and the right to force her to move and accept new domiciles even if this meant destroying her connection with her family. Legislatures and courts also viewed the husband as having absolute sexual rights with his wife, regardless of her consent.[16]

The tides began to turn in the late nineteenth century as the growth of the women's movement "helped women achieve some financial freedom and allowed some protection of their property rights" with all states passing the Married Women's Property Acts.[17] "Wife beating" became an especially contentious topic as the temperance, social purity and suffragist movements began gaining traction, and state legislatures began implementing the beginnings of anti-domestic-violence laws as a result.[18] In 1871, Alabama became the first state to rescind the legal right of men to physically assault their spouses.[19] In the 1880s, Maryland and North Carolina both criminalized spousal violence, albeit, only to the extent that a husband's battery resulted in permanent injury, endangered her life, or was malicious beyond all

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[14] *Id.* at 70.

[15] *Id.*

[16] *Id.*

[17] Buzawa & Buzawa, *supra* note 11, at 70.

[18] *See* Sarah Trieu, *History of Intimate Partner Violence Reform, Freedom & Citizenship*, COLUMBIA UNIV. CTR. FOR AM. STUD., https://freedomandcitizenship.columbia.edu/ipv-history [https://perma.cc/UQS3-2L8U] (chronologizing the history of intimate violence reform).

[19] Leslye E. Orloff & Paige Feldman, *Domestic Violence and Sexual Assault Public Policy Timeline Highlighting Accomplishments on Behalf of Immigrants and Women of Color*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 1 (2016), https://niwaplibrary.wcl.american.edu/wp-content/uploads/Herstory-2016-1.pdf [https://perma.cc/FN25-AX9P].

reasonable bounds.[20] By the end of the nineteenth century, chastisement as an official defense to a charge of assault largely ended.[21]

U.S. legislation, however, did not formally acknowledge intimate partner and gender-based violence as equally serious offenses until the late 1960s and early 70s.[22] Domestic violence had always been viewed as a private issue; state actors, like the judiciary or law enforcement, were reluctant to interfere with what they considered "minor, 'pretextual crimes' – such as violence in the family."[23] Instead, feminist activists and scholars, grassroots organizations, and rape crisis counselors often bore the responsibilities of addressing the plight of battered individuals who were facing abuse within the confines of their own homes.[24] Even during the early stages of reform, concerns about domestic violence were limited to legally married couples.[25] Law enforcement intervention was binary; on one hand, domestic violence was "identified as a recurring criminal justice problem" and highly dangerous to officers. Police trainings discouraged arrest and consisted of crisis intervention measures to "look for comorbidity with drunkenness, to mediate on the scene to defuse the immediate crisis, and to make appropriate referrals for longer term interventions."[26] On the other hand, if a domestic incident was not considered dangerous, spousal abuse was viewed as "an intractable interpersonal conflict unsuited for police attention and inappropriate for prosecution and substantive punishment []. . . . [M]any police departments had 'hands off' policies prior to the 1970's, and police training manuals actually specified that arrest was to be avoided whenever possible in responding to domestic disputes []."[27] Additionally, tracking and collecting accurate data on domestic violence rates became more difficult because domestic violence incidents were only considered a misdemeanor included in "the generic category of 'assault and battery.'"[28] This period of inconsistency had a profound impact on criminal justice processes.[29]

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[20] *Id.*

[21] Buzawa & Buzawa, *supra* note 11, at 70.

[22] Schneider, *supra* note 5, at 354.

[23] Buzawa & Buzawa, *supra* note 11, at 71.

[24] JEFFREY FAGAN, NAT'L INST. OF JUST., THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 7 (1996).

[25] *Id.* at 8.

[26] *Id.*

[27] *Id.* (citations omitted).

[28] Buzawa & Buzawa, *supra* note 11, at 72; *see* John R. Barner & Michelle Mohr Carney, *Interventions for Intimate Partner Violence: A Historical Review,* 26 J. FAMILY VIOLENCE 235, 236 (2011) (providing a historical overview of the difficulty in determining the scope of domestic violence laws in the 1960s and 1970s).

[29] *See* FAGAN, *supra* note 24, at 8.

It became increasingly clear to both victims and the legislature that treating domestic violence as a private issue needed to change. The year 1984 proved to be a critical turning point for anti-domestic violence.[30] In *Thurman* v. *City of Torrington*, the plaintiff filed suit against the Torrington Police Department, alleging its officers failed to carry out their official duties by ignoring the threats and assaults the plaintiff endured from her estranged husband, which culminated in her being stabbed by him.[31] The court ruled in favor of Thurman, stating "officers are under an affirmative duty to preserve law and order, and to protect the personal safety of persons []. . . . [A] police officer may not knowingly refrain from interference in such violence []. . . . Such inaction . . . is a denial of the equal protection of the laws."[32] The "perpetrator-centric criminal justice paradigm" ushered in after *Thurman* was characterized "by 'no-drop' policies, increased prosecutions, and mandatory arrests for . . . [domestic violence] and would become an increasingly more powerful and publicly recognized aspect of domestic violence intervention."[33]

As criminal justice interventions increased, so did the women's shelter movement. The Duluth Domestic Abuse Intervention Project in Minnesota was established in 1981 to create a coordinated community response to domestic violence, in which violence against women, children, or marginalized individuals was understood as the manifestation of the inequality and oppression these groups face.[34] The Duluth Model, utilized by the Duluth Project, employed a team of emergency responders, law enforcement officers, attorneys, courts, women's shelters, and social work agencies to aid victims, while also using rehabilitative methods to challenge "perpetrators' beliefs about power, control, and dominance over their spouses."[35] Advocates for the model also proved to be successful lobbyists, leading to the model's legislative adoption and negotiations with key intervening legal agencies to coordinate their interventions through community-based responses and written policies and protocols supported by the Duluth Model.[36] Despite increased awareness of the consequences of domestic violence, five years later, the U.S. Surgeon General C. Everett Koop

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[30] *See* Barner & Carney, *supra* note 28.

[31] Thurman v. City of Torrington, 595 F. Supp. 1521, 1524–26 (D. Conn. 1984).

[32] *Id.* at 1527–28.

[33] Barner & Carney, *supra* note 28, at 236.

[34] *Id.* at 236–38.

[35] *Id.* at 237.

[36] *Id.*

formally declared that domestic violence remained the "number one public health risk" to women in the United States.[37]

### *B. The Expansion of The Carceral State: Federal Anti-Crime Policy In The 20th Century*

In its 30-year tenure, VAWA has "changed the substantive law of intimate partner violence."[38] However, one of VAWA's greatest impacts has been ensuring that "criminalization is the primary response to intimate partner violence in the United States."[39] Since 1994, the Department of Justice's Office has distributed 8 billion dollars in federal funding, much of which has been conferred to "police, prosecutors, courts, and community-based agencies supporting the work of law enforcement."[40] In 2023, the Office on Violence Against Women allocated 700 million dollars toward various VAWA funding programs, including 255 million dollars to the Services Training Officers and Prosecutors (STOP) program alone.[41]

VAWA's response to domestic violence reflects the federal government's evolving approach to crime from the 1960s, leading up to VAWA's enactment in 1994. U.S. incarceration rates have increased fivefold since 1970, largely due to funding mechanisms initiated during the Nixon and Reagan administrations, which supported policies contributing to long-term impacts on the criminal justice system.[42] In response to rising public pressure over crime, President Lyndon B. Johnson signed the Law Enforcement Assistance Act into law; this piece of federal legislation, enacted in 1965, laid the foundation for modern carceral systems in the United States.[43] The Act characterized policemen as "frontline soldier[s]," and allocated 30 million dollars to state and local police departments to "purchase bulletproof vests,

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[37] NAT'L ORG. FOR WOMEN, *NOW's History with VAWA (Part One)*, https://now.org/nows-history-with-vawa-part-one [https://perma.cc/5J7M-8YXS].

[38] Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 GEO. J. GENDER & L. 84, 87 (2023).

[39] *Id.* at 84.

[40] *Id.* at 85.

[41] OFF. ON VIOLENCE AGAINST WOMEN, *OVW Fiscal Year 2024 Budget Submission*, U.S. DEP'T OF JUST., https://www.justice.gov/d9/2023-03/ovw_2024_bs_section_ii_chapter_omb_cleared_3-7-23.pdf [https://perma.cc/EZ69-MA47] (the STOP program refers to a series of federal grants that provide funding to law enforcement agencies and organizations that address domestic violence).

[42] Lauren-Brooke Eisen, *Federal Funding Fuels Mass Incarceration*, BRENNAN CTR. FOR JUST. (June 7, 2021), https://www.brennancenter.org/our-work/analysis-opinion/federal-funding-fuels-mass-incarceration [https://perma.cc/V5VM-VVTC] (chronicling how federal funding has directly fueled the Prison Industrial Complex).

[43] Hernandez D. Stroud et al., *A Proposal to Reduce Unnecessary Incarceration*, BRENNAN CTR. FOR JUST. 1, 5 (Mar. 14, 2023), https://www.brennancenter.org/media/10855/download [https://perma.cc/V2P8-R8RP].

helicopters, tanks, rifles, gas masks and other military-grade hardware."[44] President Johnson hoped that 1965 would be remembered as the year the U.S. "began a thorough, intelligent, and effective war against crime."[45]

Johnson also established the National Advisory Commission on Violence and Civil Disorders, known as the Kerner Commission, "to examine the causes of the racial unrest in Detroit, Newark, and other American cities. . . . [He] primarily wanted an investigation of 'the rioters' and what had caused the explosion of racial violence."[46] The commission's report was the most "hard-hitting indictment of white racism and racial segregation . . . . [The report] recommended that police departments eliminate brutality and misconduct . . . . [And it] declared that only 'a commitment to national action–compassionate, massive, and sustained' with racial integration . . . would resolve the urban crisis."[47] Despite these findings, Johnson signed his last piece of domestic legislation, the Omnibus Crime Control and Safe Streets Act of 1968.[48] This Act established the Law Enforcement Assistance Administration (LEAA), which received 7.5 billion dollars in funding from 1969 to 1980.[49] The LEAA then distributed these funds to state and local governments, which in turn used the funds to implement various crime-control initiatives.[50] Many consider Johnson's emphasis on crime control to be one of the most enduring aspects of his presidency.

The "War on Drugs" officially commenced in 1970 and 1971 under the Nixon Administration, where the Bureau of Prisons launched President Nixon's "Long-Range Master Plan" to expand the prison system based on projected population growth rates.[51] Block grants provided 250 million dollars, encouraging states to "increase arrests and incarceration and expand

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[44] Elizabeth Hinton, *Why We Should Reconsider the War on Crime*, TIME (Mar. 20, 2015, 7:00 EDT), https://time.com/3746059/war-on-crime-history (on file with the author).

[45] *Id.*

[46] Matthew D. Lassiter & Policing and Social Justice HistoryLab, *Kerner Commission*, UNIV. OF MICH. CARCERAL STATE PROJECT (2021), https://policing.umhistorylabs.lsa.umich.edu/s/detroitunderfire/page/kerner-commission [https://perma.cc/VQ46-QQ3Y].

[47] *Id.* (quoting the report).

[48] Hinton, *supra* note 44.

[49] Robert F. Diegelman, *Federal Financial Assistance for Crime Control: Lessons of the LEAA Experience*, 73 J. CRIM. L. & CRIMINOLOGY 994, 996 (1982).

[50] *Id.* at 996–98.

[51] James Kilgore, *The Punishment Paradigm: Two New Books Take on Prison, Race and History*, TRUTHOUT (July 5, 2016), https://truthout.org/articles/the-punishment-paradigm-two-new-books-take-on-prison-race-and-history [https://perma.cc/7VNM-P5LX].

prison construction expenditures."[52] However, the only population that grew was the prison population. Between 1970 and 1977, "an average of 28 new jail facilities every single month [were] built or placed in the queue, and 430 new state and federal prisons [were] built (by comparison, between 1870 and 1950, only 24 new facilities were built)."[53] The Drug Enforcement Agency (DEA) was also established in 1973 through the merger of the Office of Drug Abuse Law and Enforcement, the Bureau of Narcotics and Dangerous Drugs, and the Office of Narcotics Intelligence.[54] The DEA police force focused its policing efforts on raiding low-income neighborhoods, conducting covert operations, and carrying out mass arrests.[55] Its budget would increase to 200 million dollars by 1976.[56]

The Reagan Administration intensified the federal response to the War on Drugs, enacting the Anti-Drug Abuse Act of 1986, which allocated 1.7 billion dollars towards the cause and codified mandatory minimum sentences for drug offenses.[57] The most infamous feature of mandatory minimums was the enormous 100:1 disparity between the amounts of crack and powder cocaine required to trigger the same sentence; possessing five grams of crack cocaine or 500 grams of powder cocaine resulted in the same punishment.[58] This led to a significant rise in incarceration rates for nonviolent drug offenders—65% of whom were disadvantaged individuals of color, as law enforcement specifically targeted Black and Brown neighborhoods.[59] The War on Drugs' legacy has contributed to racial disparities within prison populations and has reinforced harmful cycles of poverty and crime.[60]

By the time the Violent Crime Control and Law Enforcement Act, known as the "Crime Bill," was enacted in 1994, overall crime in the United

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[52] Catherine Besteman et al., *Timeline of Incarceration in the U.S.*, MAINE STATE MUSEUM, https://mainestatemuseum.org/wp-content/uploads/2021/09/Timeline-of-incarceration-in-the-US.pdf [https://perma.cc/ZS5P-QQWM].

[53] *Id.*

[54] Editors of Encyclopedia Britannica, *War on Drugs,* BRITANNICA (Oct. 22, 2024), https://www.britannica.com/topic/war-on-drugs [perma.cc/ANU6-DYXW].

[55] Besteman et al., *supra* note 52.

[56] *Id.*

[57] Editors of Encyclopedia Britannica, *supra* note 54.

[58] *Id.*

[59] andré douglas pond cummings, *"All Eyez on Me": America's War on Drugs and the Prison-Industrial Complex*, 15 J. GENDER RACE & JUST. 417, 418 (2012); Latocia Keyes et al., *America's Anti-Drug Abuse Act, the Disproportionality of Drug Laws on Blacks: A Policy Analysis*, 18 JUST. POL'Y J. 1, 2 (2021).

[60] Cigdem V. Sirin, *From Nixon's War on Drugs to Obama's Drug Policies Today: Presidential Progress in Addressing Racial Injustices and Disparities*, 18 RACE, GENDER & CLASS 82, 93 (2011).

States had fallen by 1.5 %.[61] The Crime Bill, despite attempting to protect vulnerable and disenfranchised groups by "banning 19 types of semiautomatic assault weapons for limited period . . ." and including enactment of VAWA,[62] is most notorious for (1) its authorization of the death penalty for existing and new federal crimes, which divested judges of sentencing discretion, and "all but guaranteed imprisonment for many individuals previously eligible for probation, deferred prosecution, or drug or mental health treatment instead of prison time" and (2) funding states and territories to construct or expand correctional facilities.[63] The bill's vast funding mechanism incentivized states to adopt more punitive sentencing structures and practices.[64]

### *C. The Development and Implementation of the Violence Against Women Act*

Amid the backdrop of the War on Crime and the War on Drugs, then-Senator Joseph Biden introduced what he would later describe as his most significant piece of legislation, the Violence Against Women Act (VAWA), in 1990.[65] After conducting hearings with witnesses, survivors, and experts speaking on the prevalence of domestic violence over three years, Biden introduced the bill with the firm conviction that "violence against women reflects as much of a failure of our nation's collective moral imagination as it does the failure of our nation's laws and regulations."[66]

In 1994, through the Crime Bill, VAWA was enacted into federal law. VAWA was originally designed to equip federal and state actors with the "resources, training, and policies" to increase services for survivors of sexual and domestic violence.[67] Congress recognized that domestic violence prevention required a legislative response that extended beyond reactive, post-incident criminal proceedings; "Congress subsequently reauthorized and enhanced VAWA, with revisions to its policies and expansions of the

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[61] Stroud, *supra* note 43, at 6; *see generally* Genevieve McCloy, *The Politics of Criminalization: Examining the Complex Legacy of the 1994 Violence Against Women Act* 2 (May 22, 2024) (B.A. Senior Thesis, Claremont McKenna College) (analyzing "the interconnected issues of violence against women, patriarchy, and criminalization" that shaped VAWA). *Id.*

[62] Stroud, *supra* note 43, at 6.

[63] *Id.*

[64] *Id.* at 3–6.

[65] NAT'L ORG. FOR WOMEN, *The Early Years – Steps Along the Way*, https://now.org/the-early-years-steps-along-the-way [https://perma.cc/6RMY-5C9C].

[66] *Id.*

[67] U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, ANSWERING THE CALL: THIRTY YEARS OF THE VIOLENCE AGAINST WOMEN ACT 1 (2024), https://www.justice.gov/ovw/media/1367476/dl?inline [https://perma.cc/YKT2-NB7L].

grant funding streams, in 2000, 2005, 2013, and, most recently, in 2022."[68] Each reauthorization focused on "enhancing comprehensive services for victims[,] recognizing sexual assault, dating violence and stalking as serious crimes . . . and strengthening legal protections and civil remedies for all victims, particularly those who may face compounding barriers to accessing safety, services, and justice . . . ."[69] Each reauthorization reflected evolving understandings of intimate partner violence and expanded mandates to address underserved groups.[70] They also broadened 'culturally specific services' to include community-based resources, authorized changes to firearms laws, and provided new protections to support housing stability and economic security for victims.[71]

VAWA marked a historic shift in federal legislation, underscoring the nation's commitment to addressing domestic violence as a national public health issue. The law not only sought to provide survivors with legal and social access but also to change the perceptions of intimate violence, recognizing it as a serious social problem impacting individuals, families, and communities across the nation.

### *D. The Evolution of Immigration Law*

While VAWA's successive reauthorizations have aimed to expand protections for survivors of domestic violence, the convergence of immigration law and the criminal justice system created insurmountable challenges for formerly incarcerated or convicted immigrant survivors. The evolving landscape of crimmigration has compounded these challenges as hostile and racially charged attitudes towards immigrants continue to shape policy responses to crime and immigration. Longstanding societal and institutional animus toward immigrant communities, deeply embedded in U.S. history, persists in contemporary legal frameworks that, while ostensibly designed to regulate immigration, disproportionately impact survivors of domestic violence and abuse.

Enmity towards immigrant populations has long persisted in the United States' cultural and political zeitgeist, where these populations have been continual targets of stereotyping, racism, xenophobia, and scapegoating in

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[68] *Id.*

[69] *Id.*

[70] *See* LEGAL MOMENTUM, *History of the Violence Against Women Act*, https://www.legalmomentum.org/history-vawa [https://perma.cc/7Q9Y-LJFF] (summarizing the history of VAWA).

[71] *Id.*; *see* Violence Against Women Reauthorization Act of 2014, S. 47, 113th Cong. (2013) (expanding definitions of "culturally specific services."); *see also* Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. (2019) (expanded housing protections for survivors of domestic abuse).

every period of history.[72] The rapid industrial expansion at the turn of the twentieth century generated an immense demand for labor, a demand fulfilled by immigrant populations who arrived in search of opportunity and prosperity.[73] This surge in immigration simultaneously stirred anti-immigrant sentiment and nativism, defined as the movement advocating for the protection of the interests of native born or established inhabitants against those of immigrants.[74]

The Immigration Act of 1891 allowed the federal government, then known as the Federal Immigration Service, to oversee "admitting, rejecting, and processing all immigrants seeking admission to the United States . . . ."[75] The Act expanded the categories of immigrants deemed "excludable,"[76] including the Immigration Act of 1917's addition of moral turpitude as a basis for deportation, in order to criminalize immigrants.[77] Early twentieth-century eugenics research would influence the passage of the 1921 Emergency Quota Law, a temporary measure that restricted immigration and imposed quotas based on nationality.[78] The quota systems were designed to drastically limit immigration from Asia, Africa, the Middle East, and Southern and Eastern Europe, while favoring immigrants from Western and Northern European Countries.[79] By 1924, the Immigration Act codified a hierarchy of admissible

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[72] César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. REV. 1457, 1461–66 (2014); Walter A. Ewing et al., *The Criminalization of Immigration in the United States*, AM. IMMIGRATION COUNCIL, 1, 3 (2015).

[73] David. S. Cecelski, *The Anti-Immigrant Klan: The Ku Klux Klan and Immigration in the 1920s*, OHIO STATE UNIV., https://ehistory.osu.edu/sites/default/files/mmh/clash/Imm_KKK/anti-immigrationKKK-page1.htm (on file with author).

[74] *Id.*; Editors of Encyclopedia Britannica, *Nativism*, BRITANNICA, https://www.britannica.com/topic/nativism-politics [https://perma.cc/VZ3K-R528].

[75] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Origins of the Federal Immigration Service*, https://www.uscis.gov/about-us/our-history/explore-agency-history/overview-of-agency-history/origins-of-the-federal-immigration-service [https://perma.cc/GD46-K7FR] [hereinafter Origins of the INS].

[76] *See* U.S. CITIZENSHIP AND IMMIGRATION SERVICES, OVERVIEW OF INS HISTORY 4 (2012), https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf [https://perma.cc/D4GE-RSTZ] [hereinafter Overview of INS History].

[77] *Id.*

[78] Muzaffar Chishti & Julia Gelatt, *A Century Later, Restrictive 1924 U.S. Immigration Law Has Reverberations in Immigration Debate*, MIGRATION POL'Y INST. (May. 15, 2024), https://www.migrationpolicy.org/article/1924-us-immigration-act-history (on file with author).

[79] Muzaffar Chishti et al., *Fifty Years On, the 1965 Immigration and Nationality Act Continues to Reshape the United States*, MIGRATION POL'Y INST. (Oct. 15, 2015),

and excludable immigrants into federal law; this hierarchy reinforced "ideas of 'fitness' that were measured by an immigrant's race, ethnicity, class, and gender."[80] These quota systems would define immigration policy for nearly 40 years until the passage of the Immigration and Nationality Act of 1965.[81]

In 1933, Executive Order 6166 merged the Bureau of Immigration and the Bureau of Naturalization into one agency, the Immigration and Naturalization Service (INS).[82] This new agency shifted its efforts towards law enforcement, with increased resources to the "investigation, exclusion, prevention of illegal entries, deportation of criminal and subversive aliens" and cooperated "closely with the Department of Justice's United States Attorneys and Federal Bureau of Investigation (FBI) in prosecuting violations of immigration and nationality laws."[83] By the 1950s, public concerns over the presence of undocumented immigrants, many of whom were laborers who entered the United States from Mexico through the 1942 Bracero Program, prompted the INS to ramp up border enforcement.[84] The agency introduced various deportation programs that are still highly criticized and continue to be a controversial chapter in U.S. immigration history.[85]

In 1965, President Lyndon B. Johnson enacted the Immigration and Nationality Act (Act), which eliminated racial and national barriers to immigration.[86] The Act established a preference system that prioritized family reunification and the admission of highly skilled immigrants, while capping the number of visas at 290,000 annually.[87] However, policymakers severely underestimated the demand for visas through the family reunification provision, leading to a steady increase in the number of new lawful permanent residents.[88] Beginning in 1965, the number of new lawful permanent residents steadily rose each year; this, in turn, inadvertently laid

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https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-act-continues-reshape-united-states (on file with author).

[80] ERIKA LEE, AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882-1943 5 (1st ed., 2003); *see generally* 2 Stat. 27, ch. 126 (1882) (the Chinese Exclusion Act of 1882).

[81] Chishti et al., *supra* note 79.

[82] Overview of INS History, *supra* note 76, at 7.

[83] *Id.*

[84] Erin Blakemore, *The Largest Mass Deportation in American History*, HIST. (last updated June 30, 2025), https://www.history.com/articles/operation-wetback-eisenhower-1954-deportation [https://perma.cc/V8AD-HVBQ].

[85] *Id.*

[86] David S. FitzGerald & David Cook-Martín, *The Geopolitical Origins of the U.S. Immigration Act of 1965*, MIGRATION POL'Y INST., https://www.migrationpolicy.org/article/geopolitical-origins-us-immigration-act-1965 (on file with author).

[87] Chishti et al., *supra* note 79.

[88] *Id.*

the foundation for the rise of undocumented immigration.[89] The termination of the Bracero Program, which admitted 4.6 million workers to the United States during World War II, did not prevent former Bracero workers from occupying the same positions; instead, they entered through illegal channels.[90] While the Act allowed many immigrant families to build new lives in the U.S., it also resulted in detrimental unforeseen consequences for others. The Mexican diaspora, estimated at 34.8 million, is more socioeconomically disadvantaged than other ethnic groups; the undocumented Mexican immigrant population alone was estimated at 11 million in 2022.[91]

By 1980, immigration remained a top political issue.[92] The Immigration Reform and Control Act (IRCA) was enacted in 1986; it increased border controls and employer sanctions to decrease illegal immigration.[93] However, IRCA failed to address the underlying causes of illegal immigration and ultimately failed to curb the growing undocumented population.[94] Despite the intentions behind IRCA, its inability to address the root causes of undocumented immigration contributed to a growing frustration that would shape immigration policy in the 1990s. As a result, lawmakers began to introduce more stringent measures aimed at further restricting the rights and opportunities of undocumented immigrants.

### *E. The Rise of "Crimmigration"*

The 1990s witnessed a proliferation of anti-illegal immigration legislation that significantly restricted an "immigrant's access to employment, housing, education, and social welfare programs . . ." that further reinforced the distinction between illegal and legal immigrants.[95] The Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA), known together as the "1996 Laws," strengthened immigration laws, thereby creating barriers

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[89] *Id.*

[90] *Id.*

[91] Jeffrey S. Passel & Jens Manuel Krogstad, *What we know about unauthorized immigrants living in the U.S.*, PEW RSCH. CTR. (July 22, 2024), https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us [https://perma.cc/ZC8V-P8YT].

[92] Michael Jones-Correa & Els de Graauw, *The Illegality Trap: The Politics of Immigration & the Lens of Illegality*, 142 DAEDALUS 185, 187 (2013).

[93] *Id.*

[94] *Id.*

[95] *Id.*

to immigrants, especially those who committed crimes in the United States or overstayed their authorized period of stay.[96] Even minor offenses placed immigrants at risk of mandatory detention, separation from their families, and forcible removal or deportation.[97] These laws were often applied retroactively and imposed prolonged or permanent bars to immigrants seeking to return to the United States.[98]

Since the 1996 laws, new felony categories have been introduced, deportation has been applied to certain offenses, and new policies have had notable impacts on noncitizens.[99] In many respects, immigrants themselves have become criminalized and exist under a heightened level of scrutiny.[100] These sentiments were starkly expressed by President Donald Trump's 2018 remarks during a White House meeting with local leaders in which he stated, "We have people coming into the country . . . but we're taking people out of the country. You wouldn't believe how bad these people are . . . . These aren't people, these are animals. And we're taking them out of the country at a level, at a rate, that's never happened before . . . ."[101]

These policies eventually gave rise to what has been termed "crimmigration."[102] Juliet Stumpf, a pioneering scholar in this field, differentiated between the two legal domains by stating, "Criminal law seeks to prevent and address harm to individuals and society from violence or fraud or evil motive. Immigration law determines who may cross the border and reside here, and who must leave."[103] Over time, these distinctions have all but collapsed.[104] Stumpf further writes, "The 'crimmigration' merger has taken place on three fronts: (1) the substance of immigration law and criminal

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[96] LEGAL INFO. INST., *Illegal Immigration Reform and Immigrant Responsibility Act*, CORNELL LAW SCH., https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act [https://perma.cc/WVW4-C5MK]; FREEDOM FOR IMMIGRANTS, *A short history of immigration detention***,** https://www.freedomforimmigrants.org/detention-timeline [https://perma.cc/K2Y9-F9KF].

[97] Kica Matos & Erica Bryant, *25 Years of IIRIRA Shows Immigration Law Gone Wrong*, VERA INST. JUST. (June 28, 2022), https://www.vera.org/news/25-years-of-iirira-shows-immigration-law-gone-wrong [https://perma.cc/6GNX-DAJT].

[98] *See* Nancy Morawetz, *Rethinking Retroactive Deportation Laws and the Due Process Clause*, 73 N.Y.U. L. REV. 97, 99–100 (1998) (contextualizing how the IIRIRA and AEDPA retroactively applied to deport immigrants).

[99] Ewing, *supra* note 72, at 4.

[100] *Id.*

[101] Sophie Tatum et al., *Trump Blames Democrats for Laws That Force Immigration Agents Break Up Families*, CNN (May 16, 2018, 7:54 PM EDT), https://www.cnn.com/2018/05/16/politics/trump-democrats-immigration/index.html [perma.cc/2JLJ-L5DM].

[102] Stumpf, *supra* note 4, at 376.

[103] *Id.* at 379 (footnotes omitted).

[104] *Id.* at 378.

law increasingly overlaps, (2) immigration enforcement has come to resemble criminal law enforcement, and (3) the procedural aspects of prosecuting immigration violations have taken on many of the earmarks of criminal procedure."[105]

One of the most prominent crimmigration policies has been the coordination between federal agencies, state authorities, and local law enforcement to identify and remove immigrants considered a threat to public safety. There are three main programs in the interior that effectuate these efforts: the "Criminal Alien Program (CAP), Secure Communities, and 287(g)."[106]

> CAP involves identifying deportable immigrants — immigrants who are not US [sic] citizens and who are incarcerated in federal, state, and local prisons — and deporting them before they are released back into the community. Secure Communities enables law enforcement officers to compare biometric data to a Department of Homeland Security database when arrestees are booked into local jails. Immigration and Customs Enforcement (ICE) is notified when a potentially deportable immigrant is arrested; it then begins an investigation and, if applicable, handles the deportation process. . . . The 287(g) program — named after the corresponding section of the Immigration and Nationality Act as amended by the 1996 IIRIRA — allows state and local law enforcement agencies to sign an agreement with ICE that delegates authority for immigration enforcement to these agencies. State and local law enforcement officers in participating jurisdictions can interview arrestees to ascertain their immigration status and potentially refer them to ICE for deportation. Under CAP, Secure Communities, and 287(g), immigrants must be incarcerated or arrested for some other crime before their immigration status is investigated.[107]

In theory, these programs should have decreased violent crime. However, studies have shown that they had little impact on lowering crime or increasing public safety; instead, they have further undermined public

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[105] *Id.* at 381 (footnote omitted).

[106] Pia Orrenius & Madeline Zavodny, *Do Immigrants Threaten US Public Safety?*, 7 J. ON MIGRATION & HUM. SEC. 52, 56 (2019).

[107] *Id.*

safety in immigrant communities by increasing the police presence.[108] Notably, the majority of immigrants detained or removed from these initiatives have been convicted of non-serious or non-violent convictions, like misdemeanors or traffic violations.[109]

Despite these perceptions and policies, innumerable studies have confirmed that immigrants are not only less likely to commit serious crimes than native-born people, but overwhelming evidence has suggested there is an inverse relationship between crime and immigration.[110] A 2024 study by the Texas Department of Public Safety found "that undocumented immigrants are arrested at less than half the rate of native-born U.S. citizens for violent and drug crimes and a quarter the rate of native-born citizens for property crimes."[111] Over a six-year period, researchers found that undocumented immigrants had the lowest offending rates in total and violent felony crimes.[112]

> A wealth of existing work finds immigration has either no impact on crime rates or contributes to a reduction in crime rates . . . . In one such study, Stowell (2009) indicate [sic] a negative effect of immigrant density on total crime rates in their study of U.S. metropolitan areas. Other work has disaggregated crime rates to examine the effects of immigration on particular types of crimes, and similarly finds no or negative associations between immigrant populations and crime . . . . Existing research specifically on undocumented immigration reaches a similar conclusion: there is no or limited evidence that undocumented immigration increases crime . . . . .[113]

"In other words, the overwhelming majority of immigrants are not 'criminals' by any commonly accepted definition of the term."[114] Despite these statistics, "[t]he level and breadth of immigration enforcement activities only increased further under the Trump administration, with President Trump signing Executive Order No. 13768[,] dramatically escalating border enforcement and expanding cooperation between [ICE] and local authorities

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[108] *Id.*

[109] *Id.*

[110] *Id.* at 54.

[111] NAT'L INST. OF JUST., *Undocumented Immigrant Offending Rate Lower than U.S. – Born Citizen Rate*, U.S. DEP'T OF JUST. (Sept. 12, 2024), https://nij.ojp.gov/topics/articles/undocumented-immigrant-offending-rate-lower-us-born-citizen-rate [perma.cc/QP3F-BDLJ].

[112] *Id.*

[113] Reva Dhingra et al., *Immigration Policies and Access to the Justice System: The Effect of Enforcement Escalations on Undocumented Immigrants and Their Communities*, 44 POL. BEHAV., 1359, 1362 (2022).

[114] Ewing, *supra* note 72, at 1–3.

just days after assuming office in 2017."[115] This order prioritized the forced removal of undocumented immigrants including those who had "been convicted of any criminal offense; [had] been charged with any criminal offense, where the charge [had] not been resolved; [or had] committed acts that constitute a chargeable criminal offense[.]"[116] These expansive measures deepened the racialized criminalization of immigrants, illustrating how historical prejudices continue to shape modern immigration policy.

### *F. VAWA's Self-Petition Structure and the Good Moral Character Requirement*

Immigrant survivors without valid citizenship or lawful residency "may face heightened risks as a result of factors like language, social isolation, lack of information or financial resources, cultural beliefs, or fear of deportation."[117] These same groups may choose to continue to endure their abuse to avoid interacting with law enforcement or facing the consequences of violating immigration law.[118]

The VAWA self-petition, then, acts as an estoppel against abusers, preventing or threatening to delay their noncitizen spouse's immigration process to "control, coerce, and intimidate them."[119] The abused noncitizen will have the opportunity to self-petition for "immigrant classification without [their] abuser's knowledge, consent, or participation in the immigration process."[120] Specifically, a battered spouse can self-petition if they prove the following:

> (1) [t]he abuser is a U.S. citizen or has lawful permanent resident status, (2) [t]he petitioner resides in the United States with the spouse, (3) [t]he petitioner entered marriage "in good faith," (4) [t]he petitioner's deportation would result in "extreme hardship" to either her/himself or to her/his children, (5) [t]he petitioner is a person of "good

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[115] Dhingra, *supra* note 113, at 1360.

[116] AM. IMMIGRATION COUNCIL, *Summary of Executive Order "Enhancing Public Safety in the Interior of the United States"* 1

https://www.americanimmigrationcouncil.org/sites/default/files/research/summary_of_executive_order_enhancing_public_safety_in_the_interior_of_the_united_states.pdf [https://perma.cc/637M-ZWBK].

[117] *Abuse in Immigrant Communities*, NAT'L DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/resources/abuse-in-immigrant-communities [https://perma.cc/BML3-MD2G].

[118] *Id.*

[119] Abused Spouses, *supra* note 3.

[120] *Id.*

> moral character," and (6) [t]he petitioner and/or child are or have been the subject of domestic violence or extreme cruelty perpetrated by the spouse during the marriage.[121]

Importantly, VAWA's 2000 reauthorization expanded protections for undocumented survivors by including a discretionary waiver for GMC determinations where a VAWA applicant's criminal act or conviction was connected to the abuse.[122]

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization.[123] However, this standard was not explicitly defined until 1952 with the passage of the Immigration and Nationality Act (INA).[124] The INA categorized GMC as any conduct that conforms to the standards of average citizens of the community in which the applicant resides.[125]

> In general, an [applicant] must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance. The applicable naturalization provision under which the [applicant] files determines the period during which the [applicant] must demonstrate GMC. The [applicant]'s conduct outside the GMC period may also impact whether he or she meets the GMC requirement. While USCIS determines whether an [applicant] has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude [applicants] from establishing GMC and may make the [applicant] subject to removal proceedings. An [applicant] may also be found to lack GMC for other types of criminal conduct (or unlawful acts).[126]

The USCIS, established in 2003 after the passage of the Homeland Security Act of 2002, assumed responsibility for all immigration functions of

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[121] Catalina Amuedo-Dorantes & Esther Arenas-Arroyo, *Police Trust and Domestic Violence Among Immigrants: Evidence from VAWA Self-Petitions*, CTR. FOR GROWTH AND OPPORTUNITY (Nov. 12, 2020), https://www.thecgo.org/research/police-trust-and-domestic-violence-among-immigrants-evidence-from-vawa-self-petitions [https://perma.cc/PZ9Y-AYNH] (footnotes omitted).

[122] Violence Against Women Act of 2000, S. 2787, 106th Cong. § 505(d) (2000).

[123] USCIS POLICY MANUAL, *Volume 12: Part F - Good and Moral Character, Chapter 1 - Background*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-1 [https://perma.cc/P748-YSY3] [hereinafter USCIS Chapter 1].

[124] Zachary New, *The Failures of Good Moral Character Determinations for Naturalization*, 93 U. COLO. L. REV. 367, 376 (2022).

[125] *Id.* at 377.

[126] USCIS Chapter 1, *supra* note 123 (footnotes omitted).

the federal government.[127] The USCIS's adjudication process for naturalization and the VAWA self-petition process utilize similar legal standards, but differ in their application. The critics of USCIS have expressed concern at the punitive nature of its adjudication process for citizenship, where "legal resident immigrants with criminal histories . . . live in the shadows of full membership, never able to possess the full rights, privileges, and respect that citizenship can bring."[128] In contrast, VAWA considers the unique challenges abused immigrant spouses face, and, as such, has a less stringent adjudication process under the self-petitioning process.[129] The evaluation of GMC is conducted on a case-by-case basis, in consideration of the INA, and considers the applicant's behaviors and criminal histories.[130]

Under INA § 101(f), immigrants may be conditionally or permanently barred from lawful residency or citizenship.[131] Permanent bars include cases involving extreme conduct, such as participation in Nazism, committing acts of genocide, or commissioning of torture or extrajudicial killings.[132] However, immigrants who have been convicted of aggravated felonies any time on or after November 29, 1990, are also permanently barred from establishing GMC.[133] Aggravated felonies describe a category of offenses that carry "particularly harsh immigration consequences for noncitizens convicted of such crimes."[134] Notably, an offense need not be aggravated or a felony to be considered an aggravated felony in immigration law.[135] Today, the definition of aggravated felony is incredibly broad, "covering some

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[127] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Our History*, https://www.uscis.gov/about-us/our-history [https://perma.cc/RVC5-68WY].

[128] Kevin Lapp, *Reforming the Good Moral Character Requirement for U.S. Citizenship*, 87 IND. L.J. 1571, 1574–75 (2012).

[129] *Id.* at 1589.

[130] USCIS POLICY MANUAL, *Volume 3: Part D - Violence Against Women Act, Chapter 2 - Eligibility Requirements and Evidence*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-2 [https://perma.cc/TF88-E3SL] [hereinafter USCIS Chapter 2].

[131] USCIS Chapter 1, *supra* note 123.

[132] USCIS POLICY MANUAL, *Chapter 4 - Permanent Bards to Good Moral Character*, U.S.

CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-4 [https://perma.cc/MDR6-D4EE].

[133] USCIS Chapter 2, *supra* note 130.

[134] AM. IMMIGRATION COUNCIL, *Aggravated Felonies: An Overview* 1, 1 (2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/aggravated_felonies_an_overview_0.pdf [https://perma.cc/T4Q9-RFSF].

[135] *Id.*

twenty categories and hundreds of offenses."[136] The range is incredulous: "murder, drug possession, writing a bad check, and misdemeanor shoplifting can equally and permanently bar someone from demonstrating good character."[137]

> The "aggravated felony" bar to a good moral character finding captures too many crimes which do not indicate a lack of character, and it endures too long even for more serious crimes. Moreover, some crimes that trigger a character bar reflect the grim economic circumstances or immaturity of the individual more than they indicate an irretrievably depraved character, but decision makers are not free to consider such factors where the statutory bar applies. Even when the character decision is constrained by bright-line rules, legislatively judging the character of others and discerning their worthiness cannot be anything but arbitrary and capricious. It substitutes behavior determination for a character assessment and ignores the variety of factors that surround any single act—such as environment and intention, reformation and repentance—that speak to the character of the actor.[138]

Conditional bars relate less to an individual's compliance with state or federal law, but rather, whether the individual's conduct is considered "so morally reprehensible" and "intrinsically wrong" that they are unable to measure up to the standards of the "average citizens in their community," and essentially has "reckless, evil, or malicious intent."[139] Such conduct includes the incredibly vague "crimes involving moral turpitude" (which the USCIS has directly explained has no explicit statutory definition), controlled substances violations, prostitution, false testimony, adultery, incarceration of 180 days, habitual drunkenness, failure to support dependents, and the catch-all provision of "unlawful acts that adversely reflect upon GMC;" these can all successfully preclude an immigrant from demonstrating GMC.[140] As USCIS states, "An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant's ability to establish GMC."[141]

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[136] Lapp, *supra* note 128, at 1592.

[137] *Id.* at 1631.

[138] *Id.* at 1632 (footnotes omitted).

[139] New, *supra* note 124, at 389; USCIS POLICY MANUAL *Chapter 5 - Conditional Bars for Acts in Statutory Period*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5 [https://perma.cc/J6EY-W787] [hereinafter USCIS Chapter 5].

[140] USCIS Chapter 5, *supra* note 139.

[141] *Id.*

### *G. Cancellation of Removal or Deportation for Survivors*

As of September 2025, ICE has detained 59,207 undocumented immigrants.[142] Given the volume of immigration enforcement, it is not uncommon that a VAWA self-petitioner may have a prior deportation order. An undocumented immigrant may seek protection through the VAWA cancellation of removal, a more lenient option for survivors of abuse. This relief is available to survivors who have been "battered or subjected to extreme cruelty committed by the US [sic] citizen or LPR."[143] There are, however, additional grounds of inadmissibility that are applicable to VAWA cancellation relief.[144]

In summary, an applicant seeking cancellation must also prove, among other factors, that they have possessed "good moral character during the period of required physical presence" within the United States for a period of three years; each application is "considered a 'continuing' application and the good moral character period accrues until the entry of a final administrative order."[145]

Cancellation of removal also allows an applicant "to overcome what would otherwise be an INA §101(f) good moral character bar if the relevant act or conviction is 'connected to' the abuse and does not give rise to one of the separate conduct or crime-based VAWA cancellation ineligibility bars."[146] In *Da Silva v. Attorney General,* the Third Circuit reasoned that a broad definition of "connected to" furthered the cancellation statute's purpose to "'ameliorate the impact of harsh provisions of immigration law on abused women.'"[147]

Nonetheless, the cancellation process remains highly discretionary. Despite its leniency, an applicant may still be denied by an immigration judge and be removed. Because of the immigration judge's discretion in determining GMC, an immigrant with any criminal history unrelated to their

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[142] Jiachuan Wu et al., *U.S. Deportation Tracker: Counting Arrests, Deportations*, NBC NEWS (Apr. 15, 2025, 4:00 AM), https://www.nbcnews.com/data-graphics/us-immigration-tracker-follow-arrests-detentions-border-crossings-rcna189148 [https://perma.cc/U6XN-28H6].

[143] USCIS Chapter 2, *supra* note 130.

[144] Ann Block et al., *VAWA Cancellation of Removal*, IMMIGRANT LEGAL RES. CTR. 2, 2 (2023) https://www.ilrc.org/sites/default/files/2023-03/VAWA%20Cancellation%20of%20Removal.pdf [https://perma.cc/GW5E-XS7N].

[145] *Id.* at 4, 17.

[146] *Id.* at 17.

[147] Da Silva v. Attorney Gen. U.S., 948 F.3d 629, 636 (3d Cir. 2020).

abuse may face significant hurdles in successfully canceling their removal order. It is important to note that an undocumented person who is eligible for VAWA cancellation may file a motion to reopen their application, a provision that acknowledges the unique vulnerabilities of survivors' navigating the complexities of the immigration and criminal justice systems.[148]

## III. ANALYSIS

### *A. Reevaluating the GMC Standard and Reforming Adjudication for USCIS*

The Violence Against Women Act and its reauthorizations have sought to mitigate the unique challenges immigrant domestic violence survivors face in their pursuit of legal status. It has, however, failed to fully recognize an important intersection of immigrant survivorship: the existence of survivors who have been criminalized or convicted of crimes independent of their abuse. As crimmigration has increasingly shaped the contours of U.S. immigration policy, it has become evident that the GMC requirements under VAWA have further complicated the ability of criminalized immigrants to demonstrate their character.

VAWA's intent to shield immigrant survivors from their abusers is undermined by INA § 101(f), which requires petitioners to prove their moral standing regardless of the circumstances surrounding any criminal conduct. The statute fails to consider circumstances involving abuse or coercion that may not always be directly or sufficiently connected to the abuse. In a landscape defined by heightened policing and surveillance, the looming threat of removal, and the tragic realities of detention and incarceration, immigrant survivors, particularly those with criminal histories, find themselves criminalized by punitive policies that complicate their ability to meet the GMC standard.

While certain crimes, such as participation in genocide, torture, aggravated felonies, or persecution, permanently bar survivors from establishing GMC, the more nebulous "conditional bars" introduce an additional layer of uncertainty and confusion.[149] Though these bars are not permanent, they would preclude anyone from establishing GMC if the aforementioned acts occurred within "the statutory period of three or five years."[150]

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[148] *See* Leslye E. Orloff, *Comparing VAWA Suspension of Deportation, VAWA Cancellation of Removal, VAWA Nicaraguan and Central American Relief Act (NACARA) and VAWA Self-Petitioning*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 1, 2 (2021), https://niwaplibrary.wcl.american.edu/wp-content/uploads/Suspension-Cancellation-NACARA-Self-Petition-Chart-4.28.20.pdf [https://perma.cc/HXT2-7HNX] (comparing various VAWA immigration provisions).

[149] New, *supra* note 124, at 378, 382–83.

[150] *Id.* at 378.

This analysis will propose solutions to mitigate these issues through: (1) congressional amendments to the INA's GMC language that reflects the complex and often nuanced experiences of criminalized survivors of violence; (2) the adoption of a more trauma informed adjudication process under USCIS; and (3) a reallocation of VAWA's funding resources to holistic, community based programs that center all immigrant survivors, regardless of criminal history.

### *B. Amending the INA's GMC Language for Criminalized Survivors of Violence*

A VAWA self-petitioner must submit primary evidence of their GMC through an affidavit that contains statements of their conduct and behavior, in addition to local police clearance or criminal background checks.[151] If any criminal background checks reveal conduct suggesting that a self-petitioner is no longer of GMC, or was not of GMC in the past, USCIS may deny both pending or previously approved petitions.[152]

The GMC requirement presents two challenges. First, the statutory definition of GMC in INA 101(f) is vague and discretionary. As stated in *Posusta v. United States*, GMC is "[o]bviously . . . incapable of exact definition; the best [courts] can do is to improvise the response that the 'ordinary' man or woman would make . . . . [L]aw is full of standards that admit of no quantitative measure; the most frequent instances are those that require 'reasonable' appraisals between conflicting values or desires."[153] Given the statute and regulations' fluid definition of GMC, a USCIS officer is granted significant discretion in evaluating petitions.

Second, the increase of policing and surveillance in immigrant communities whose histories are often shaped by systemic inequalities and racialized criminalization means that some survivors may have criminal histories at the time of filing. The USCIS adjudication process attempts to balance the state's interest in public safety with petitioners' opportunity to demonstrate their present moral character. Coupled with the rise of crimmigration, the constant threat of deportation or removal, and having to navigate a confusing and unforgiving criminal justice system, the average immigrant survivor with a storied criminal history may not have a fair or meaningful possibility of representing their GMC under the law.

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[151] USCIS Chapter 2, *supra* note 130.

[152] *Id.*

[153] Posusta v. U.S., 285 F.2d 533, 535 (2d Cir. 1961).

A congressional amendment to the INA's GMC provision, one that is both inclusive and clearly defined, is vital to ensure that immigrant survivors are not arbitrarily excluded from pathways to lawful status and eventually, citizenship. A more redemptive statutory scheme, in which immigrants with past criminal histories may provide character and fitness statements, psychological evaluations, records of achievement, or evidence of community engagement, is imperative. Such frameworks would not only recognize the potential for rehabilitation but also emphasize each individual's contributions to their community, fostering a just approach to immigration policy. This would allow for a system that prioritizes second chances, aligning with the values of fairness and humanity upon which the U.S. was founded.

### *C. Context Specific and Trauma-Informed USCIS Adjudication*

If not through a federal amendment to the INA, there must, at minimum, be a reevaluation of USCIS's training methodologies and the qualifications of those authorized to access and exercise discretion over VAWA self-petitions. "For discretionary good moral character assessments, now conducted by low-level bureaucratic staffers who are not required to be lawyers, psychiatrists, or counselors . . . the determination is little more than wild guessing. It certainly is not informed by psychological training or knowledge of desistance data."[154]

While new USCIS officers receive several weeks of general training, instruction on cross-cultural communication is minimal, focusing on language barriers rather than fostering cross-cultural competency or trauma awareness.[155] Although there are specific modules to train officers, the training often lacks the trauma-informed framework necessary to fairly adjudicate VAWA self-petitions. This absence becomes especially problematic when officers must assess cases involving survivors with a criminal history, cases that demand a nuanced understanding of trauma, criminalization, and crimmigration.

Organizations like the National Immigrant Women's Advocacy Project (NIWAP) play a critical role in filling gaps in USCIS training.[156] NIWAP "was formed to educate, train, offer technical assistance and public policy advocacy, and conduct legal and social science research that will assist a wide

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[154] Lapp, *supra* note 128, at 1632.

[155] *See generally* REFUGEE, ASYLUM, AND INT'L OPERATIONS DIRECTORATE, *Cross-Cultural Communication and Other Factors That May Impede Communication at an Interview* (Jan. 30, 2025), https://www.uscis.gov/sites/default/files/document/foia/CrossCultural_Communication_LP_RAIO.pdf [https://perma.cc/D7HQ-ADGF] (explaining how USCIS officers are trained to communicate with non-English speaking interviewees).

[156] *See generally* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *NIWAP Trainings* (Dec. 17, 2020), https://niwaplibrary.wcl.american.edu/niwap-trainings [https://perma.cc/PP8J-F4SQ] (providing materials for more than twenty years of trainings).

range of professionals working at the Federal, State, and local levels who work with and/or whose work affects immigrant women and children."[157]

As a separate, nongovernmental body or organization, NIWAP's involvement raises an important question: why is external expertise necessary? USCIS does not maintain an in-agency expert or dedicated body responsible for developing culturally competent training guides for USCIS officers. This omission is primarily due to USCIS's status as a governmental agency whose mandate prioritizes administering immigration benefits to applicants, including adjudicating thousands of immigration and naturalization petitions, and refugee and asylum claims.[158] As such, culturally competent training is not the agency's primary objective, nor is it allocated funding for such measures in its operational budget.

This is not to suggest that USCIS officers are incompetent or lack experience in exercising proper discretion. However, most USCIS officers are not equipped to assess deeply complex cases involving a survivor's trauma, particularly when the survivor also has a prior criminal history. Without the necessary trauma-informed framework, there is a substantial risk of further retraumatizing vulnerable applicants, particularly those whose past actions, often shaped by socioeconomic disadvantage, experiences of abuse, or other structural barriers and injustices, may not accurately reflect their current character.

The absence of such training exacerbates the challenges immigrant survivors face when navigating the petition process, where their path to protection and justice can often hinge on a subjective interpretation of their moral character. This systemic shift is necessary: USCIS should adopt more comprehensive, specialized training to ensure that adjudicators possess the nuanced understanding necessary to fairly assess the complex realities underlying VAWA self-petitions.

### *D. Reallocation of VAWA's Funding Towards Community-Based Resources*

Since its passage, VAWA has allocated a sizable portion of its funding measures towards law enforcement, the judiciary, prosecutors, and anti-violence organizations. This has, in turn, increased the belief that criminalization properly addresses victims' needs. While the state has

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[157] NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *Introduction* (June 10, 2014), https://niwaplibrary.wcl.american.edu [https://perma.cc/ZN8F-3JJV].

[158] *See* William A. Kandel, *U.S. Citizenship and Immigration Services (USCIS) Functions and Funding*, CONG. RSCH. SERV. 1–2 (2015), https://www.fosterglobal.com/policy_papers/2015/2015,0612-CRS.pdf [perma.cc/G7GC-GYB2].

legitimate public policy interest in mitigating the harms experienced by victims of domestic abuse, sexual assault, and other forms of violence, there remains little federal acknowledgement of the connection between VAWA and the expansion of the carceral state.

In fact, every authorization of VAWA has expanded funding for STOP and anti-violence agencies. Currently, there is funding towards community-based programs, transitional housing assistance programs, and grants to improve the criminal justice response.[159] However, there is a glaring lack of funding dedicated to organizations serving immigrant survivors, especially those who have criminal histories.

Instead of perpetuating investment in the carceral system, federal funding must address the complex needs of abuse survivors with complicated histories that focus on providing survivors with access to pro-bono legal counsel, rehabilitative programs, educational initiatives on survivors' rights and resources, and comprehensive support and legal services.

Adopting a holistic approach that acknowledges both the structural and systemic barriers to justice, as well as the complex realities of crimmigration, is critical. An approach that favors rehabilitation and restorative justice represents a crucial step toward mitigating the adverse consequences engendered by VAWA's and crimmigration's focus on retributivism, deterrence, surveillance, and criminalization.

In 2024, new grant programs such as the Demonstration Program on Trauma-Informed, Victim-Centered Training for Law Enforcement (Abby Honold Program) were launched to develop and evaluate "enhanced, trauma-informed training for law enforcement to improve the response to victims;" similarly, the 'Restorative Practices Pilot Sites Program' was established to "support, strengthen, and expand existing restorative practice programs that address domestic violence, sexual assault, dating violence, and stalking through a trauma-informed and survivor-centered approach."[160] There are, however, no grants that address the needs of survivors who reside at the intersection of victimization and criminalization.

Given the gap at this intersection, there is an urgent need for comprehensive reform and reallocation of VAWA funding. This reform and reallocation must be grounded in collaboration among anti-violence organizations, educational institutions, and legal aid organizations, all working together to build interconnected support systems that prioritize education and accountability, while shifting away from punitive models rooted in criminalization.

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[159] *See* Goodmark, *supra* note 38, at 87, 91.

[160] OFF. OF PUB. AFFAIRS, *Press Release: Justice Department Announces More Than $690 Million in Violence Against Women Act Funding*, U.S. DEP'T OF JUST. (Sept. 12, 2024), https://www.justice.gov/opa/pr/justice-department-announces-more-690-million-violence-against-women-act-funding [https://perma.cc/7UK8-47F8].

Although broad federal and state immigration and criminal justice reforms are necessary, VAWA can be an active catalyst for change. For example, its funds could be used to address the economic precarity that often worsens violence in the home.[161] Moreover, funding should be directed toward legal aid organizations that support survivors in navigating the criminal justice system and self-petitioning process. Many survivors are often discouraged from filing for a VAWA self-petition because they are unaware of their rights, responsibilities, and available legal avenues.[162]

At this juncture, much of VAWA still reflects the anti-crime policies of the twentieth century, which narrowly focus on deterring domestic abuse and intimate-partner violence through carceral mechanisms.[163] But domestic violence does not occur in a vacuum; individuals, whether labeled "good" or "bad" under federal law, can be victims of abuse and violence. Denying financial support and programming to those who have experienced both abuse and been convicted of a crime fundamentally conflicts with the spirit and purpose of VAWA.

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[161] *See* NAT'L INST. OF JUST., *Economic Distress and Intimate Partner Violence*, U.S. DEP'T OF JUST. (Jan. 29, 2009), https://nij.ojp.gov/topics/articles/economic-distress-and-intimate-partner-violence [https://perma.cc/5H23-CZ9U]; *see also* Asha DuMonthier & Malore Dusenbery, *Intersections of Domestic Violence and Economic Security*, INST. OF WOMEN'S POL'Y RSCH. (Oct. 19, 2016), https://iwpr.org/wp-content/uploads/2020/11/B362-Domestic-Violence-and-Economic-Security.pdf [https://perma.cc/USW2-NB7R].

[162] *See* Maia Ingram et al., *Experiences of Immigrant Women Who Self-Petition Under the Violence Against Women Act*, 16 VIOLENCE AGAINST WOMEN 858, 859–61 (2010).

[163] Malore Dusenbery et. al, *Striving Toward Justice Diverse Domestic Violence Survivors' and Practitioners' Perceptions of Justice, Accountability, and Safety*, URB. INST. 1, 2–3 (2024).

### *E. VAWA's Uncertain Future Under the Trump–Vance Administration*

The current (2025) Trump-Vance Administration (Administration) is threatening the enforceability of VAWA. The Administration campaigned on the promise of mass deportation of undocumented immigrants, utilizing rhetoric widely criticized as racially charged and xenophobic.[164] In his inauguration speech, Trump all but promised that his Administration would deport "'millions and millions' of criminal aliens," reinforcing a carceral approach to penalize undocumented populations.[165]

Karoline Leavitt, Trump's new White House press secretary articulated the Administration's harsh stance at her first White House briefing, stating, "'I know the last administration didn't see it that way, so it's a big culture shift in our nation to view someone who breaks our immigration laws as a criminal, but that's exactly what they are.'"[166]

Since his inauguration, Trump has vowed to "protect the states" from what his Administration has termed an "invasion," where he will exercise his executive authority and utilize the INA to suspend the entry of undocumented migrants and escalate immigration enforcement efforts.[167] Section 208 of the INA provides that any individual, regardless of immigration status, may apply for asylum; in practice, eligibility may require applicants to demonstrate a fear of persecution on account of race, nationality, religion, membership in a particular social group, or political opinion.[168]

Yet various executive orders, fashioned as the Administration's use of immigration law for the purpose of "protection against invasion," have

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[164] *See* Steven Inskeep & Christopher Thomas, *Trump Promised the 'Largest Deportation' In U.S. History. Here's How He Might Start,* NAT'L PUB. RADIO (Updated Nov. 14, 2024, 3:26 EDT), https://www.npr.org/2024/11/12/nx-s1-5181962/trump-promises-a-mass-deportation-on-day-1-what-might-that-look-like [https://perma.cc/BY9Q-NSQA]; AM. CIVIL LIBERTIES UNION, *Trump On Immigration: Tearing Apart Immigrant Families, Communities, And the Fabric of Our Nation* 1, 1–5 (2024); Miguel Jiménez, *Trump Makes Xenophobia the Centerpiece of His Campaign,* EL PAÍS (Oct. 9, 2024), https://english.elpais.com/usa/elections/2024-10-09/trump-makes-xenophobia-the-centerpiece-of-his-campaign.html [https://perma.cc/37L6-WMWE].

[165] Donald J. Trump, *The Inaugural Address*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address [https://perma.cc/J9WW-2EZ6].

[166] Karoline Leavitt, *Press Briefing by Press Secretary Karoline Leavitt*, WHITE HOUSE (Jan. 29, 2025), https://www.whitehouse.gov/briefings-statements/2025/01/press-briefing-by-press-secretary-karoline-leavitt [https://perma.cc/M8T6-KYJQ].

[167] *See* Donald J. Trump, *A Proclamation: Guaranteeing the States Protection Against Invasion*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/*presidential*-actions/2025/01/guaranteeing-the-states-protection-against-invasion [hereinafter January 20, 2025 Proclamation].

[168] 8 U.S.C. § 1158(1); Hillel R. Smith, *An Overview of the Statutory Bars to Asylum: Limitations on Applying for Asylum (Part One)*, CONG. RSCH. SERV. 1, 1 (2022) https://www.congress.gov/crs-product/LSB10815 (on file with author).

specifically targeted undocumented immigrants who utilize the border to enter into the United States.[169] Those already within the borders of the United States are barred from claiming asylum or other protections, especially those with medical or criminal histories.[170] As of February 2026, nearly 70,000 migrants have been detained, where 47.4% possess no criminal record and are listed as an "other immigration violator."[171]

According to Eagan Immigration PLLC, VAWA's funding mechanisms and reauthorizations had either expired or were temporarily restricted during Trump's first administration.[172] While this did not directly impact VAWA visa applications because visa processing fees do not derive funding from VAWA, it did worsen the backlog of pending cases at USCIS.[173] VAWA visa applications were more affected by policy changes at the time; we can only expect the Administration's new policies to affect VAWA visa applications even more harshly.

As Eagan Immigration PLLC notes, "[A]ll the things that changed under the first Trump administration could potentially happen again. Here are two key things to expect: 1) Applications could take longer. . . . 2) Qualifying could get harder."[174] These projections appear increasingly punitive to undocumented immigrants, particularly those who have entered the U.S. through the southern border.

Abuse survivors petitioning under VAWA may face longer processing times due to the USCIS backlog and qualifying for a VAWA visa—especially for those with a prior criminal history—now threaten to stall access to legal protections. The Trump Administration's broader immigration stance has effectively institutionalized the criminalization of an undocumented immigrant's very existence; within this immigration paradigm, establishing

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[169] Proclamation No. 14159, 90 Fed. Reg. 8443 (Jan. 29, 2025).

[170] January 20, 2025 Proclamation, *supra* note 167; *see also* Team WOLA, *Trump's Executive Orders and Latin America: Key Things to Know*, WASHINGTON OFF. ON LATIN AM. (Jan. 24, 2025), https://www.wola.org/analysis/trumps-executive-orders-and-latin-america-key-things-to-know [https://perma.cc/UP3F-FJ8T] (elucidating on Trump's various executive orders regarding immigration).

[171] Wu, *supra* note 142.

[172] Alice M. Atteberry, *The Future of VAWA and T Visas Under Trump*, LINKEDIN: IMMIGRATION DIGEST BY EAGAN IMMIGRATION PLLC (Dec. 5, 2024), https://www.linkedin.com/pulse/future-vawa-visas-under-trump-eaganimmigration-dyxxe [https://perma.cc/Y5J9-AR6V].

[173] *Id.*

[174] *Id.*

GMC may prove to be an incredibly arduous endeavor for the foreseeable future.

As noted by USCIS officials, "[T]hey will begin interviewing some VAWA applicants about the abuse they suffered, placing applicants under increased scrutiny before the Trump administration has even taken office."[175] Given these developments, the risk of VAWA's immigration provisions being repealed or curtailed under the Administration is not hypothetical; should such measures materialize, immigrant survivors could find themselves in a more precarious and vulnerable position than ever before.

## IV. CONCLUSION

Since its enactment in 1994, the Violence Against Women Act has been lauded as a federal legislative milestone that has provided crucial funding to state and local governments to aid survivors of domestic and intimate-partner violence. Its passage addressed an urgent need for a comprehensive domestic-violence policy, as such violence was federally acknowledged as a severe public health issue.

However, like all legislation, VAWA is not without its flaws. It is imperative to contextualize VAWA within the broader architecture of the 1994 VOCA—one of the most punitive and retributivist pieces of federal legislation in the history of the United States. VOCA is the culmination of a 30-year "war on crime and drugs," as initiated by President Lyndon B. Johnson.

The same funding mechanisms created by VAWA have inadvertently contributed to the expansion of the United States' carceral geography and continue to disproportionately impact marginalized groups. Particularly vulnerable are immigrant survivors of color, many of whom face ongoing criminalization under severe and uncompromising immigration and anti-crime policy regimes. The self-petitioning process to achieve lawful immigration status through VAWA remains difficult to navigate for undocumented communities and is punitive towards those who may have a history of criminal activity, often a result of abuse or coercion, because of the GMC requirement.

Though a congressional amendment to the language of the GMC as applied to VAWA self-petitions or the adoption of a context-specific and trauma-informed USCIS adjudication process may not completely remedy the harms perpetuated by anti-crime policy, such reforms would meaningfully alleviate the challenges faced by immigrant survivors who have been previously criminalized.

A more sustainable long-term solution to ameliorate the obstacles faced by criminalized survivors involves restructuring VAWA's funding

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[175] *Id.*

mechanisms. This would involve redirecting resources away from programs like STOP, which increase immigrant interactions with law enforcement and the criminal justice system, and instead prioritizing community-based support through local organizations or specially designated state and federal agencies. Envisioning a future where immigrants experience diminished criminalization and are afforded greater dignity under the law is not only an ethical imperative, but with the appropriate resources and policy reforms, a tangible and actionable reality.