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Domestic Violence Protections for Unauthorized Migrant Victims in Colorado: A Federal-State Partnership

DOMESTIC VIOLENCE PROTECTIONS FOR UNAUTHORIZED MIGRANT VICTIMS IN COLORADO: A FEDERAL–STATE PARTNERSHIP

MIMI E. TSANKOV[†] & PETULA MCSHIRAS[‡]

ABSTRACT

Domestic violence is a worldwide phenomenon, and since the mid-1990s, there has been a coordinated international effort to reduce its pervasiveness. In the United States alone, statistics suggest that one in every four women will experience domestic violence in her lifetime. In Colorado, the threat is equally pervasive with almost 19% of all criminal cases filed in the Colorado county court system in 2006 classified as domestic violence matters, and almost half of all murders having been committed by intimate partners. Yet, within the domestic violence victim population, there is a subgroup of victims that has been identified globally as uniquely vulnerable. Victims that lack legal immigration status are subject to even greater potential harm. With language and cultural barriers, as well as lack of knowledge about the domestic legal system, they fear that in seeking law enforcement protection, they may be removed from the United States, and, in some cases, separated from their children. Moreover, while unauthorized migrant domestic violence victims are eligible to apply for federal protection, immigration relief is inherently varied across jurisdictions, which can further discourage reporting.

The federal government has implemented a number of measures to provide support to unauthorized domestic violence victims. The protections range from visas based on assisting law enforcement to immigrant self-petitioning rights for victims of certain U.S. citizen and lawful permanent resident family members. In addition, due to Colorado's progressive law enforcement policies, the state receives more than \$6 million per year in federal funds to help support and enhance victim services, law enforcement initiatives, education programs, networking, advocacy, and other community-based efforts to end domestic violence.

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This Article evaluates the federal protections and Colorado state protections in place in the context of international human rights standards. It concludes that while the federal–state partnership has made significant strides in supporting this population, there are deficiencies inherent in the system such as the challenges of access to information.

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INTRODUCTION

“[T]here is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable.”

United Nations Secretary-General, Ban Ki-Moon (2008)¹

“[M]igrant women, like all women, should not be discriminated against in any sphere of their life”

General Recommendation No. 26

Committee on the Elimination of Discrimination Against Women

United Nations²

For the past twenty-five years, there has been a coordinated international effort to battle domestic violence worldwide.³ In the United States, statistics reveal that nearly one quarter of women will experience domestic violence including rape or physical assault at some point in their lifetime.⁴ The chances are even greater in other parts of the world where a host of factors including existing cultural norms limit progress in this area.⁵ Within the population of domestic violence victims, there is a subset that has been identified globally as even more vulnerable. This group is comprised of unauthorized migrants⁶ who lack legal status in the coun-

1. U.N. Secretary-General, Remarks to the Commission on the Status of Women in New York City, U.N. Doc. SG/SM/11437, WOM/1665 (Feb. 25, 2008), available at <http://www.un.org/News/Press/docs/2008/sgsm11437.doc.htm>.

2. Commission on the Elimination of Discrimination Against Women [CEDAW], General Recommendation No. 26 on Women Migrant Workers, ¶ 1, U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008), available at http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

3. In a 2005 United Nations (U.N.) World Health Organization (WHO) study, this preeminent health organization reported that “[v]iolence against women is a universal phenomenon that persists in all countries of the world, and the perpetrators of that violence are often well known to their victims. Domestic violence, in particular, continues to be frighteningly common and to be accepted as ‘normal’ within too many societies.” WORLD HEALTH ORG., WHO MULTI-COUNTRY STUDY ON WOMEN’S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN: INITIAL RESULTS ON PREVALENCE, HEALTH OUTCOMES AND WOMEN’S RESPONSES vii (2005), available at http://www.who.int/gender/violence/who_multicountry_study/en/.

4. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY iii (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>. The same study reflected that 7.6% of men were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or dating partner/acquaintance at some time in their lifetime. *Id.*

5. WORLD HEALTH ORG., *supra* note 3, at 5, 7–8.

6. There are a host of terms used in the common vernacular and in federal immigration law to refer to this group of individuals. The Immigration and Nationality Act (INA) refers to unauthorized migrants as “alien[s].” Pub. L. No. 82-414, § 101, 66 Stat. 163 (codified as amended at 8 U.S.C. § 1101(a)(3) (2012)), a term that has been the subject of much debate in recent years. This Article uses the term “unauthorized migrant” to describe someone who has moved across the U.S. international border and who is not a U.S. citizen, has not been admitted for permanent residence, and is not in a set of specific authorized temporary statuses permitting longer-term residence and work. See generally Gene Demby, *In Immigration Debate, ‘Undocumented’ vs. ‘Illegal’ Is More Than Just*

try in which they reside. They are considered to be subject to even greater discrimination, and, in the context of domestic violence, are susceptible to greater victimization.⁷ They often suffer language and cultural barriers, compounding their fear that if they come forward, they will be retaliated against or removed from the county in which they are living and be separated from their children.⁸

Legal jurisdiction in all domestic violence cases can span multiple adjudicatory bodies ranging from criminal courts to family law courts. In the unauthorized migrant context, an additional component affects outcomes: the role that federal immigration law plays in terms of both perpetrators and victims. Some perpetrators of domestic violence, depending on their immigration status in the United States, may be deportable because of their conduct.⁹ In addition, some unauthorized migrant victims of domestic violence may be eligible for immigration benefits as a result of the violence.¹⁰ However, the extent to which the law affords victims immigration protection is dependent upon the nature of their immigration history, the extent of the domestic violence abuse, and the inclination of local law enforcement to support such victims.¹¹ In the end, some unauthorized migrant victims may be deported depending upon a number of factors both within and outside of their control.¹² Thus, the stakes escalate even further in the unauthorized migrant context, where lack of knowledge about the legal system, the availability and likelihood of receiving legal protection, and the general uncertainty about outcomes further compounds the impediments to these victims seeking protection. In sum, it is the uneasy confluence of a complex set of factors, exacerbated by a precarious immigration situation, great uncertainty of outcomes, and high stakes that may influence victims to remain silent and do nothing rather than seek state or federal assistance.

The State of Colorado has been focused on improving and refining its domestic violence laws since 1991.¹³ Through partnerships with the

Semantics, NPR (Jan. 30, 2013, 5:30 PM), <http://www.npr.org/blogs/itsallpolitics/2013/01/30/170677880/in-immigration-debate-undocumented-vs-illegal-is-more-than-just-semantics>.

7. Gabriela Rodríguez Pizarro, U.N. Special Rapporteur on the Human Rights of Migrants, *Vulnerability of Women Migrant Workers*, in UNIFEM–CEDAW PANEL ON ADDRESSING WOMEN MIGRANT WORKERS’ CONCERNS 10 (July 2003), available at http://cedaw-seasia.org/docs/general/CEDAW_PANEL_AddrWomenMigrantWorkersConcerns.pdf.

8. *Id.* at 10–11.

9. See, e.g., INA §§ 212(a)(2), 237(a)(2).

10. See, e.g., *id.* §§ 101(a)(15)(U), 204(a)(1)(A)(iii), 240(b)(2).

11. DEP’T OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE: FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT 3, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

12. For general grounds of inadmissibility and deportability see sections 212 and 237 of the INA.

13. In 1991, the Colorado legislature passed comprehensive domestic violence legislation mandating, among other things, the enforcement of domestic restraining orders, see COLO. REV. STAT. § 18-6-803.5(3) (2013), and the arrest of a suspect upon “probable cause to believe that a

federal government, Colorado has created a number of support systems ranging from advocacy to providing shelter for this vulnerable population.¹⁴ As a result, the courts have seen the segment of the county court docket devoted to domestic violence prosecutions reach 17%, according to the most recent judicial branch statistics.¹⁵ The Congressional Budget Office reports that there are an estimated 11 million unauthorized migrants in the United States;¹⁶ about 9.7% of the population of Colorado is foreign born.¹⁷

This Article begins by examining the extent of the domestic violence problem and provides international, national, and Colorado statistics on unauthorized migrant domestic violence victims. It will describe the history of domestic violence awareness as a human rights issue specifically with regard to unauthorized migrant victims. Identifying international efforts to address the problem, this Article will explore the current landscape of protections worldwide. It will analyze the U.S. federal program to protect this vulnerable population, its local implementation in Colorado, and create context for key passages contained in the country's federal domestic violence legislation. This Article will investigate how both the federal program has changed throughout the past twenty-five years as it relates to unauthorized migrant domestic violence victims, examining the various types of federal relief offered to this vulnerable population. It will explore how Colorado has worked with the federal government to increase its protections for this group and consider the ways in which its enhanced state protections have evolved. It will conclude by exploring the perceived strengths and weaknesses in the current system and propose how the system can achieve greater success in protecting this population.

crime or offense involving domestic violence . . . has been committed," *see id.* § 18-6-803.6(1) (2013).

14. *See The Domestic Violence Program*, COLORADO.GOV, <http://www.colorado.gov/cdhs/dvp> (last visited May 9, 2014).

15. In 2013, the percentage of misdemeanor filings of domestic violence cases in the Colorado county courts comprised 17 percent of the yearly docket. COLO. JUDICIAL BRANCH, ANNUAL STATISTICAL REPORT: FISCAL YEAR 2013 100 tbl.30 (2013), *available at* http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2013/Fiscal%20Year%202013%20The%20Annual%20Statistical%20Report.pdf.

16. CONG. BUDGET OFFICE, A DESCRIPTION OF THE IMMIGRANT POPULATION—2013 UPDATE 15 Exhibit 12B (2013), *available at* http://www.cbo.gov/sites/default/files/cbofiles/attachments/44134_Description_of_Immigrant_Population.pdf. The CBO further reports that unauthorized migrants are comprised of an estimated 59 percent from Mexico, and an estimated 14 percent from El Salvador, Guatemala, or Honduras. *Id.* at 14 Exhibit 12A.

17. The Migration Policy Institute reports that "[i]n 2011, 9.7 percent of Colorado's total population were immigrants, compared to 8.6 percent in 2000 and 4.3 percent in 1990." *State Immigration Data Profiles: Colorado Demographics & Social*, MIGRATION POL'Y INST., <http://www.migrationinformation.org/datahub/state.cfm?ID=CO> (scroll down to the United States map and click on Colorado) (last visited May 12, 2014). "Of the total immigrant population in Colorado in 2011, 48.0 percent were born in Mexico . . ." *Id.*

I. BACKGROUND

A. Unauthorized Migrant Domestic Violence—A Conceptual Framework

Unauthorized migrant domestic violence matters can implicate at least six distinct areas of law: (1) international human rights law,¹⁸ in the civil rights context; (2) federal civil rights law¹⁹; (3) federal domestic violence criminal law²⁰; (4) state domestic violence criminal law²¹; (5) state family law²²; and (6) federal immigration law.²³ As such, definitions and understandings can differ depending upon the body of law being applied.

Under international human rights law, domestic violence has been framed as an issue of discrimination. In 1979, the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which stands as the primary international legal instrument addressing discrimination against women.²⁴ In 1992, the CEDAW Committee passed General Recommendation No. 19 setting forth that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”²⁵ Two years later, the United Nations appointed a Special Rapporteur to address the specific issue of violence against women as a form of discrimination.²⁶ In 1993, the United Nations

18. See *infra* notes 64–88.

19. 42 U.S.C. § 1981 (2012) prohibits state statutes that are discriminatory on the basis of alienage and protects noncitizens in the preemption of inconsistent state laws.

20. It is a federal domestic violence crime to: cross state lines or enter or leave Indian country and physically injure an “intimate partner,” 18 U.S.C. § 2261 (2012); to cross state lines to stalk or harass, or to stalk or harass within the maritime or territorial lands of the United States, 18 U.S.C. § 2261A (2012); to cross state lines or enter or leave Indian country and violate a qualifying Protection Order, 18 U.S.C. § 2262 (2012); to possess a firearm and/or ammunition while subject to a qualifying Protection Order, 18 U.S.C. § 922(g)(8) (2012); and to possess a firearm and/or ammunition after conviction of a qualifying misdemeanor crime of domestic violence, 18 U.S.C. § 922(g)(9) (2012).

21. See *infra* notes 237–43 and accompanying text.

22. See *infra* notes 245–47 and accompanying text.

23. See *infra* notes 90–161 and accompanying text.

24. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

25. CEDAW, General Recommendation No. 19, 11th Sess. (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

26. Commission on Human Rights, Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women, U.N. ESCOR, 50th Sess., U.N. Doc. E/CN.4/RES/1994/45, at 1 (Mar. 4, 1994), available at http://ap.ohchr.org/documents/dpage_e.aspx?m=106 (go to page 12 of the website to download document). The Special Rapporteur established procedures to seek information from governments concerning specific cases of alleged violence through the adoption of the so-called “Optional Protocol.” The Optional Protocol established a procedure for review of Convention violations by its signatories, and required the exhaustion of domestic remedies before triggering relief under CEDAW. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], G.A. Res. 54/4, at 3, U.N. Doc. A/RES/54/4 (Oct. 15, 1999), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/54/4&Lang=E; DONNA J. SULLIVAN, INT’L WOMEN’S RIGHTS ACTION WATCH ASIA PACIFIC, OVERVIEW OF THE RULE

defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”²⁷ About a decade later, the United Nations declared domestic violence to be both a public health policy concern as well as a human rights concern.²⁸ The United Nations further explained that the violence component of domestic violence involves:

[B]eing slapped or having something thrown at you that could hurt you, being pushed or shoved, being hit with a fist or something else that could hurt, being kicked, dragged or beaten up, being choked or burnt on purpose, and/or being threatened with, or actually, having a gun, knife or other weapon used on you.²⁹

It further defines domestic violence that is sexual in nature as follows: “[B]eing physically forced to have sexual intercourse when you did not want to, having sexual intercourse because you were afraid of what your partner might do, and/or being forced to do something sexual that you found humiliating or degrading.”³⁰ Acknowledging that the definition of an intimate partner relationship can vary between settings, the United Nations defines the relationship broadly as encompassing both formal and informal temporary relationships, including unmarried sexual relationships, where the female victim is at least fifteen years of age.³¹

As a result of growing concern about rising violent crime rates in the 1960s and 1970s, and the extent to which women were increasingly becoming victims of violence, Congress began taking action to address the issue.³² Following the enactment of the Violence Against Women Act (VAWA) in 1994, comprehensive federal domestic violence legislation, the federal government has played a leadership role in identifying model

REQUIRING THE EXHAUSTION OF DOMESTIC REMEDIES UNDER THE OPTIONAL PROTOCOL TO CEDAW 1 (2008), available at http://www.iwraw-ap.org/publications/doc/DonnaExhaustionWeb_corrected_version_march%2031.pdf.

27. G.A. Res. 48/104, at art. 1, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm>.

28. WORLD HEALTH ORG., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE 1 (2013), available at http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf.

29. *Id.* at 6.

30. *Id.* The study clarifies that conduct deemed “humiliating and degrading” may be regionally and culturally specific. *Id.*

31. *Id.*

32. Murray A. Straus & Richard J. Gelles, *Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys*, 48 J. MARRIAGE & FAM. 465, 471–72 (1986); see also LISA M. SEGHELLI & JEROME P. BJELOPERA, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING (2012), available at <https://www.fas.org/sfp/crs/misc/R42499.pdf>.

policies that tend to impact the prevalence of domestic violence.³³ The statute defines domestic violence as:

[F]elony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.³⁴

Pursuant to VAWA, the U.S. Department of Justice established the Office on Violence Against Women (OVW) and conferred upon it grant-making power to fund programs, policies, and practices for state and local governments that address the prosecution of domestic violence and provide a variety of financial and technical resources to help ameliorate the prevalence of domestic violence.³⁵ OVW provides support aimed at ending domestic violence, dating violence, sexual assault, and stalking.³⁶ OVW defines domestic violence as “a pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner.”³⁷ The nature of the violence can be “physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.”³⁸

There are similarities between the U.N. definition of domestic violence and the federal government definition in that they each include physical and sexual abuse. However, the U.S. Department of Justice definition goes further in that it includes the following:

Emotional Abuse: Undermining an individual's sense of self-worth and/or self-esteem is abusive[, including] . . . constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.

33. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 8, 18, and 42 U.S.C.).

34. 42 U.S.C. § 13925(a)(8) (2012). The VAWA provisions have been modified three times in the following legislation: Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended at scattered sections of 22 U.S.C.); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2005), *amended by* Pub. L. No. 109-271, 120 Stat. 750; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified as amended in scattered sections of 42 U.S.C.).

35. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, ABOUT THE OFFICE ON VIOLENCE AGAINST WOMEN, *available at* <http://www.ovw.usdoj.gov/docs/about-ovw-factsheet.pdf>.

36. *Id.*

37. *Id.*

38. *Id.*

Economic Abuse: Is defined as making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.

Psychological Abuse: . . . [C]ausing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.³⁹

The federal government defines the relationship component broadly ranging from marital unions to domestic partnerships to dating relationships.⁴⁰

In 2013, the U.S. Congress considered VAWA reauthorization legislation. The bill passed with expanded benefits for, among others, victims in same-sex unions.⁴¹ Thus, VAWA now offers protection from domestic violence to both opposite-sex as well as same-sex partners, and in an expanded number of other contexts.⁴²

B. Prevalence—By the Numbers

During the Sixty-Sixth World Health Assembly in May 2013, seven governments including the United States, declared violence against women and girls to be “a major global public health, gender equality and human rights challenge, touching every country and every part of society.”⁴³ Shortly thereafter, the World Health Organization (WHO) released the first international report measuring the prevalence of domestic violence globally and regionally and its health effects on women.⁴⁴ Worldwide, the numbers are staggering. Using credible research methodologies employed widely in the United States and elsewhere to document the prevalence of domestic violence, the study reports that domestic violence, also known as intimate partner violence, is a universal problem affecting between 23.2% and 36.6% of intimate partners depending on their country of residence.⁴⁵ Evidence suggests that women of lower so-

39. Office on Violence Against Women, *Domestic Violence*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/domviolence.htm> (last updated Mar. 2013); see also 42 U.S.C. § 13925(a)(8) (2012).

40. See 42 U.S.C. § 13925(a)(8) (2012).

41. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified as amended in scattered sections of 42 U.S.C.).

42. *Id.*

43. Kathleen Sebelius, U.S. Sec'y of Health & Human Servs., Addressing Violence Against Women: Health Impacts and the Role of the Health Sector, 66th World Health Assembly (May 2013) (internal quotation marks omitted), available at http://www.who.int/violence_injury_prevention/wha_outcome_statement.pdf (reading statement issued by the Assembly's participating nations). The statement was adopted by the governments of Belgium, India, Mexico, Netherlands, Norway, United States of America, and Zambia.

Id.

44. WORLD HEALTH ORG., *supra* note 28, at 1.

45. See *id.* at 17.

cio-economic means are more likely to experience abuse and less likely to receive medical care.⁴⁶

Study respondents residing in the Americas⁴⁷ reported the second highest prevalence of domestic violence with approximately 30% of women reporting lifetime exposure.⁴⁸ By way of comparison, the WHO reports that the lifetime prevalence of domestic violence for women in the United States and other high-income countries is about 23%.⁴⁹

The U.S. Department of Health and Human Services, National Center for Injury Prevention and Control of the Centers for Disease Control, issued a report in 2011 finding that, in 2010, almost one in five women and one in seventy-one men in the United States have been raped at some time in their lives.⁵⁰ Astonishingly, more than half of these female victims reported being raped by an intimate partner, and the other 40% reported being raped by an acquaintance.⁵¹ More than one third of women and more than one quarter of men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.⁵² Lifetime prevalence of rape, physical violence, and/or stalking by an intimate partner in Colorado was 32.7% of women, equating to an estimated 618,000 victims.⁵³

46. See generally KAREN SCOTT COLLINS ET AL., HEALTH CONCERNS ACROSS A WOMAN'S LIFESPAN: THE COMMONWEALTH FUND 1998 SURVEY OF WOMEN'S HEALTH 7-9 (1999), available at <http://www.commonwealthfund.org/Publications/Fund-Reports/1999/May/Health-Concerns-Across-a-Womans-Lifespan--The-Commonwealth-Fund-1998-Survey-of-Womens-Health.aspx>.

47. Respondent countries comprising the statistics for the Americas are: Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, and the Plurinational State of Bolivia. WORLD HEALTH ORG., *supra* note 28, at 44.

48. *Id.* at 16.

49. *Id.*; MC Black & MJ Breiding, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence — United States, 2005*, CENTER FOR DISEASE CONTROL & PREVENTION, MORBIDITY & MORTALITY WKLY. REP. (Feb. 8, 2008), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>.

50. MICHELE C. BLACK ET AL., CTNS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1 (2011), available at http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.

51. *Id.*

52. *Id.* at 2. The U.S. Bureau of Justice reports that although both men and women suffer intimate partner violence, women are most often the victims, comprising 85 percent of cases reported. CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 (2003).

53. BLACK ET AL., *supra* note 50, at 74. These statistics are considered to be underestimates due to the fact that

[i]ncidents of sexual violence, stalking, and intimate partner violence are underreported as crimes in the United States. Survivors may be reluctant to disclose their victimization—whether to law enforcement or to family and friends—for a variety of reasons including shame, embarrassment, fear of retribution from perpetrators, or a belief that they may not receive support from law enforcement. Laws may also not be enforced adequately or consistently, and perpetrators may become more dangerous after their victims report these crimes.

Id. at 91.

We are unaware of published statistics that estimate the number of unauthorized migrants living in Colorado who are victims of domestic violence. In the absence of a definitive study, we might be able to surmise the existence of the problem if not its extent. To begin, in September 2013, the Pew Research Hispanic Trends Project reported that the number of unauthorized migrants living in the United States was 11.7 million as of March 2012.⁵⁴ More than 60% of those individuals live in the states of California, Florida, Illinois, New Jersey, New York and Texas.⁵⁵ At 52%, the majority of them are Mexican citizens.⁵⁶

The 2012 census figures report that Colorado's population is about 5.1 million people.⁵⁷ The number of foreign-born persons estimated to be living in the state in 2011 was 9.7%.⁵⁸ There is no exact figure that has measured how many individuals in this group are unauthorized migrants, and how many are foreign born but have acquired legal temporary or permanent immigration status in the United States. However, according to 2011 U.S. Census data, more than 20% of the state's population is Hispanic, and of the total immigrant population in Colorado in 2011, 48.0% were born in Mexico, 3.8% in Korea, and 3.5% in Germany.⁵⁹ In Colorado, 35.9% of the foreign-born residents were U.S. citizens in 2011.⁶⁰

As for general statistics regarding unauthorized migrant domestic violence victims, 48% of Latinas reported in one scholarly survey that their partner's violence against them had increased after they had migrated to the United States.⁶¹ Furthermore, in a survey of immigrant Korean women in New York, the study found that 60% had been battered by their husbands.⁶² A 2006 study found that married unauthorized migrant women experience higher levels of physical and sexual abuse than unmarried unauthorized migrant women, with 59.5% married unauthorized migrant women being victims of domestic violence as compared to 49.8% of unmarried unauthorized migrant women.⁶³

54. JEFFREY S. PASSEL ET AL., PEW RESEARCH CTR., POPULATION DECLINE OF UNAUTHORIZED IMMIGRANTS STALLS, MAY HAVE REVERSED 6 (2013), available at <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed>.

55. *Id.*

56. *Id.* at 7.

57. *State and County QuickFacts: Colorado*, U.S. DEP'T COM., <http://quickfacts.census.gov/qfd/states/08000.html> (last revised Mar. 27, 2014).

58. *Id.*

59. *2010 Census Interactive Population Search: Colorado*, U.S. CENSUS BUREAU, <http://www.census.gov/2010census/popmap/ipmtxt.php?fl=08> (last visited May 9, 2014); MIGRATION POL'Y INST., *supra* note 17.

60. MIGRATION POL'Y INST., *supra* note 17.

61. Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 250 (2000).

62. TJADEN & THOENNES, *supra* note 4, at 27.

63. Dutton et al., *supra* note 61, at 259.

C. International Law Guidance

The impetus to develop a treaty to protect the rights of women emerged following the First World Conference on Women in Mexico City in 1975.⁶⁴ Despite the universality of domestic violence, it was not until more than five years later that state governments officially recognized this basic human right, and developed standards by which signatory governments would be required to implement protections for this group of vulnerable crime victims.⁶⁵ In 1979 the U.N. General Assembly adopted these standards through the adoption of CEDAW and its companion CEDAW Committee.⁶⁶ CEDAW includes a mechanism for monitoring compliance, and many scholars have hailed the Convention as an important advance in securing political, cultural, economic, social, and family life protections for women.⁶⁷

Considered a groundbreaking international legal instrument dealing with the human rights of women, the Convention establishes an international bill of rights and standards for combating discrimination against women, provides a model for how governments can support gender equality, and imposes state obligations for signatories that fail to meet their obligations under the Convention.⁶⁸ Countries that have ratified or acceded to the Convention are legally bound to adopt and implement provisions that support the standards outlined therein, including submitting national quadrennial progress reports outlining the steps they have taken to comply with their treaty obligations.⁶⁹

Although the language of CEDAW in its original form does not include an explicit reference to violence against women, over time the CEDAW Committee, through the promulgation of general recommendations and standards for signatory compliance, has expanded the definition of “discrimination” in Article 1 of the Convention to adequately protect the rights of women as encapsulated by the Convention.⁷⁰ For example, the CEDAW Committee has interpreted discrimination to include gen-

64. See Report of the World Conference of the International Women’s Year, June 19–July 2, 1975, Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975, U.N. Doc. E/Conf. 66/34 (1976).

65. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (noting the convention opened for signature March 1, 1980, and declared women’s equality with men to be a requirement for peaceful country development).

66. *Id.* at introduction; *id.* at pt. V, art. 17.

67. *Id.* at pt. V, art. 18; Marta R. Vanegas & Lisa R. Pruitt, *CEDAW and Rural Development: Empowering Women with Law from the Top Down, Activism from the Bottom Up*, 41 BALT. L. REV. 263, 271 n.30 (2012).

68. *The Human Rights of Women*, UNITED NATIONS POPULATION FUND, <http://www.unfpa.org/rights/women.htm> (last visited May 9, 2014).

69. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13, at art. 18, 24 (entered into force Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

70. *Id.* at art. 1 (internal quotation mark omitted).

der-based violence, identifying it as a form of “discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁷¹ Moreover, CEDAW has recognized that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women.”⁷² Since human rights principles are inherent to all human beings, under the U.N. standards migrant women are entitled to a “minimum” of human rights guarantees such as freedom from violence. Thus, under CEDAW the United Nations recognizes that unauthorized migrant domestic violence victims should be afforded the same protections as that of victims with legal immigration status.

To that end, CEDAW has adopted the U.N. Model Framework for Domestic Violence Legislation⁷³ (U.N. Model Framework), which provides guidance about the types of provisions that should be included in any domestic violence legal framework. The U.N. Model Framework suggests that, at a minimum, the laws should criminalize this type of violence, ensure the effective prosecution and punishment of perpetrators, empower and support victims of domestic violence, and employ methods to strengthen prevention.⁷⁴ They should also recognize domestic violence as gender-specific violence directed against women that occurs within families and in intimate relationships.⁷⁵ The framework asks signatories to recognize the seriousness of the offense and provide a range of remedies to provide survivors maximum protections.⁷⁶

The U.N. Model Framework suggests that in an ideal system, the police, prosecutors, and judges should be trained to support survivors of domestic violence, and to rehabilitate perpetrators of the violence.⁷⁷ Moreover, states should find ways to develop greater understanding within the community of the prevalence of domestic violence as well as its causes, and encourage community participation in eradicating domestic violence.⁷⁸

Yet, in the context of migrant women, there are a host of other considerations that need to be addressed. Most important is that unauthorized migrant domestic violence victims are fundamentally different be-

71. CEDAW, General Recommendation No. 19, 11th Sess. (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

72. CEDAW, General Recommendation No. 24, 20th Sess. (1999), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>.

73. See U.N. DEP’T OF ECON. & SOC. AFFAIRS, DIV. FOR THE ADVANCEMENT OF WOMEN, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN 1–3 (2010), available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

74. *Id.* at 2 ¶ 3.1.

75. *Id.*

76. *Id.* at 2 ¶¶ 3.11–12.

77. *Id.* at 10.

78. *Id.* at 2 ¶ 3.5.

cause they may be deported for violation of domestic immigration law if they are brought to the attention of law enforcement.⁷⁹ Additionally, they are more vulnerable since in many instances, as the United Nations has observed:

- (1) They migrate with spouses from cultures that value the submissive role of the women in the family;
- (2) They have diminished access to justice;
- (3) They may be ineligible for free government legal aid;
- (4) They might face unresponsive and hostile officials and, at times, collusion between officials and the perpetrator;
- (5) They may lose their right to work upon the report of abuse and then find themselves unable to amass the funds to remain in the country for the duration of any trial;
- (6) They may not know the language of the country;
- (7) They may not know their legal rights;
- (8) They may lack physical mobility and the ability to communicate to seek help due to employment constraints or living sites;
- (9) They may have limited ties to support groups, contacts, or cultural associations;
- (10) They may not be aware of the services that their embassy can provide;
- (11) They may not have access to their passport if it is held by an employer;
- (12) They may fear reprisal from criminal networks;
- (13) Due to their unauthorized migrant status, they may be vulnerable to exploitation and abuse from employers, and may be subject to forced labor; and
- (14) They may face harassment by the police.⁸⁰

Not surprisingly, the U.N. Model Framework “[r]ecommends that specific legal provisions be enacted to guarantee the rights of immigrant women who are victims/survivors of violence.”⁸¹ The U.N. Model Framework goes further to suggest that an effective system should acknowledge that violence against women may constitute persecution and that complain-

79. UNIFEM–CEDAW PANEL ON ADDRESSING WOMEN MIGRANT WORKERS’ CONCERNS, *supra* note 7, at 14.

80. *Id.*

81. U.N. DEP’T OF ECON. & SOC. AFFAIRS, *supra* note 73, at 2 ¶ 3.7.

ants/survivors of such violence should constitute “a particular social group” for the purposes of asylum law.⁸²

Although the United Nations has recognized that domestic violence can occur against either gender, statistics reveal that victims tend to be women in the vast majority of the cases, hence the specific appeal within CEDAW to support this vulnerable group.⁸³ The CEDAW Committee has concluded that since violence is disproportionately directed against women, gender-based violence is implicated in the CEDAW discrimination definition.⁸⁴

Today, governments in 189 countries have signed CEDAW, and 187 have ratified the treaty.⁸⁵ The United States is one of the two countries that have not yet ratified it.⁸⁶ Although President Jimmy Carter signed the Convention in 1980, the U.S. Congress has not yet ratified it, despite calls by multiple U.S. presidents, congressional leaders, and community stakeholders over the past twenty-five years to do so.⁸⁷ Critics have argued that the United States’ failure to ratify this treaty calls into question its credibility as a world leader on both human rights and women’s rights.⁸⁸

82. *Id.* at 3 ¶ 3.14 (internal quotation marks omitted).

83. *Id.* at 15.

84. CEDAW, General Recommendation No. 19, ¶ 6, 11th Sess. (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

85. See Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13, at tbl. of signatories (entered into force Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

86. *Id.* Article II, section 2 of the U.S. Constitution provides that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.” U.S. CONST. art. II, § 2, cl. 2. The treaty was presented to the Senate Foreign Relations Committee in November 1980. *Global Women’s Rights: CEDAW*, FEMINIST MAJORITY FOUND., <http://www.feminist.org/global/cedaw.html> (last visited May 10, 2014). In July 2002, the Senate Foreign Relations Committee voted to recommend ratification of CEDAW, but the issue has never come before the full Senate for a vote. *Id.* The other country that has signed but not ratified the treaty is Palau. The countries that have not ratified the treaty are: Iran, Sudan, South Sudan, Somalia, and Tonga. See Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13, at tbl. of signatories (entered into force Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

87. FEMINIST MAJORITY FOUND., *supra* note 86; Ambassador Susan E. Rice, U.S. Permanent Representative to the U.N., Statement on the 30th Anniversary of the Convention on the Elimination of All Discrimination Against Women (CEDAW), PRN 2009/319 (Dec. 18, 2009), <http://usun.state.gov/briefing/statements/2009/133840.htm> (“The Obama Administration strongly supports this landmark treaty, and is committed to United States ratification.”).

88. *Frequently Asked Questions*, CEDAW TASK FORCE OF THE LEADERSHIP CONFERENCE ON CIVIL & HUMAN RIGHTS, <http://www.cedaw2011.org/index.php/about-cedaw/faq> (last visited May 10, 2014); see also Jessica Riggan, Note, *The Potential Impact of CEDAW Ratification on U.S. Employment Discrimination Law: Lessons from Canada*, 42 COLUM. HUM. RTS. L. REV. 541, 542 (2011).

D. The U.S. System of Protection

In 1994, after acknowledging that the U.S. criminal justice system had routinely ignored and dismissed domestic violence,⁸⁹ the U.S. Congress implemented sweeping domestic legislation. The VAWA embodies many of the provisions of CEDAW's model framework, specifically as it relates to unauthorized migrant domestic violence victims. While the United States is not a party to CEDAW, CEDAW is nevertheless instructive when considering the passage of the VAWA by Congress in 1994 in the context of international principles as articulated through CEDAW. The landmark VAWA legislation has enabled the U.S. federal government to take a leadership role in combating gender-based violence by overhauling the criminal justice system's response to domestic violence at the federal level and in assisting states as they implement new protections in their individual locales.⁹⁰

Unauthorized migrants in the United States are particularly vulnerable.⁹¹ Data regarding the number of unauthorized migrants who are domestic violence victims is limited, but a 2005 study of foreign-born women in New York City revealed that domestic violence homicide victims were disproportionately represented in the foreign-born population.⁹² A recent study of battered unauthorized migrant women in the United States from thirty-five countries suggests that 18% have fled violent circumstances in their home countries, whereas 41% emigrated in search of better economic opportunities.⁹³ Another 34% claimed to have been motivated to follow their spouses to the United States.⁹⁴ Those fleeing violence sometimes do so in countries undergoing civil unrest where the violence that they are fleeing is state-sponsored. A variety of factors ranging from language barriers, de facto and batterer-imposed isolation, vulnerability of immigration status, religious convictions and country-specific traditional values, economic dependence on the abuser, lack of education, lack of a network of family and friends to provide a support

89. JOSEPH R. BIDEN JR., TURNING THE ACT INTO ACTION: THE VIOLENCE AGAINST WOMEN LAW i (1994), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-legislative-history/violence-against-women-act-hearings-and-reports/vawa-related-hearings-and-reports-1994/Senate%20Report-%20October%201993.pdf>.

90. *Id.* at ii-iv.

91. FAMILY VIOLENCE PREVENTION FUND, INTIMATE PARTNER VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: CHALLENGES, PROMISING PRACTICES AND RECOMMENDATIONS 4 (2009), available at http://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/IPV_Report_March_2009.pdf.

92. Victoria Frye et al., *Femicide in New York City: 1990 to 1999*, 9 HOMICIDE STUDIES 204, 204 (2005). A similar study for the period 1997 through 2009 of domestic violence homicide victims in Washington State reflected that almost 20 percent were unauthorized migrants, of which 93 percent were female, in a state where only 12 percent were foreign born. WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE, WASH. STATE DOMESTIC VIOLENCE FATALITY REVIEW, IMMIGRANT AND REFUGEE VICTIMS OF DOMESTIC VIOLENCE HOMICIDE IN WASHINGTON STATE (2011).

93. Edna Erez et al., *Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 FEMINIST CRIMINOLOGY 32, 43 (2009).

94. *Id.*

system, and lack of knowledge of the U.S. legal system impedes efforts to seek support.⁹⁵ Hispanic unauthorized migrants are reported to be the least likely to seek help.⁹⁶

The support provided under VAWA ranges from rendering unauthorized migrants who engage in domestic violence removable⁹⁷ to providing financial support for shelters to providing counseling and training for state and local police, prosecutors, and judges so that they may provide more effective law enforcement of gender-based violence. A significant component of VAWA is the mandatory interstate recognition of protective orders. The legislation also provides funding to states that promote pro-abusive spouse arrest policies, such as those that: (1) either encourage or mandate arrest of domestic violence offenders; (2) discourage dual arrests of victim and abuser; and (3) prohibit the issuance of mutual restraining orders, unless when judicially ordered.

1. Victim Self-Petitioning Relief

VAWA also provides certain unauthorized migrant-specific provisions. VAWA acknowledges that for unauthorized migrant victims to take action to increase their safety they necessarily run the risk of making themselves known to law enforcement and potentially subject to removal given their illegal status. In response, VAWA provides relief for domestic violence victims who are spouses, children, and parents of U.S. citizens and permanent residents. These domestic violence victims can self-petition for permanent status without their abuser's knowledge. To be successful in a petition, an unauthorized migrant victim must first establish the existence of one of the following familial relationships to a U.S. citizen or lawful permanent resident:

- a. Spouse;
- b. Child (unmarried and under age 21);
- c. Parent of an abused child (unmarried and under age 21); or

95. *Id.* at 46; Rupaleem Bhuyan et al., "Women Must Endure According to Their Karma": Cambodian Immigrant Women Talk About Domestic Violence, 20 *J. INTERPERSONAL VIOLENCE* 902, 909–12 (2005); Cynthia F. Rizo & Rebecca J. Macy, *Help Seeking and Barriers of Hispanic Partner Violence Survivors: A Systematic Review of the Literature*, 16 *AGGRESSION & VIOLENT BEHAV.* 250, 257–58 (2011).

96. Eben M. Ingram, *A Comparison of Help Seeking Between Latino and Non-Latino Victims of Intimate Partner Violence*, 13 *VIOLENCE AGAINST WOMEN* 159, 166 (2007).

97. The INA provides for removability for individuals who have been convicted of various crimes of family violence, including "crime[s] of domestic violence" against spouses or partners, stalking, violation of protection orders, and child abuse, abandonment, or neglect. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 237(a)(2)(E), 66 Stat. 163 (codified at 8 U.S.C. § 1227(a)(2)(E) (2012)) (internal quotation marks omitted). In addition, some domestic violence-specific crimes may also involve moral turpitude where the offense involves the infliction of bodily injury. Sanudo, 23 *I. & N. Dec.* 968, 971 (B.I.A. 2006).

d. Parent.⁹⁸

Furthermore, any claim must establish that the victim was physically battered and/or subjected to “extreme cruelty” by a U.S. citizen or lawful permanent resident spouse, parent, or adult child.⁹⁹ The type of abuse can range from serious violent physical abuse to threats of violence to verbal and emotional abuse.¹⁰⁰ Abused spouses are also required to establish:

- a. That the marriage was entered into in good faith;
- b. That the abuse occurred during the marriage, and that the marriage is still valid or was terminated less than two years prior to self-petitioning by death or a divorce that is related to the abuse.
- c. That the abuse occurred in the United States, and the victim lived with the abuser.
- d. That the self-petitioner has “good moral character.”¹⁰¹

VAWA self-petitioners submit a Form I-360, “Petition for Amerasian, Widow(er), or Special Immigrant,” with supporting documentation to the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and Vermont Service Center.¹⁰² The Vermont Service Center has designated a special VAWA unit that adjudicates these petitions.¹⁰³ Members of the VAWA unit undergo a uniquely rigorous initial training, which is followed by a lengthy period of mentorship of newer officers by more senior adjudicators.¹⁰⁴ Ongoing training is provided through more informal in-house meetings, more formal training sessions and conferences including policy updates from USCIS staff in Washington, D.C., as well as technical training from private sector advocacy organizations.

98. INA § 204(a)(1)(A)(iii), (iv), (vii); *see also* U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., POLICY MEMORANDUM: ELIGIBILITY TO SELF-PETITION AS A BATTERED OR ABUSED PARENT OF A U.S. CITIZEN; REVISIONS TO ADJUDICATOR’S FIELD MANUAL (AFM) CHAPTER 21.15 (AFM UPDATE AD 06-32) (2011), *available at* <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/VAWA-Elder-Abuse.pdf>.

99. INA § 204(a)(1)(A)(iii), (iv), (vii).

100. 8 C.F.R. § 204.2(c)(H)(vi), (e)(G)(vi) (2014); *Hernandez v. Ashcroft*, 345 F.3d 824, 834 (9th Cir. 2003).

101. INA § 204(a)(1)(A)(iii).

102. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., INSTRUCTIONS FOR FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT 7-8 (2013), *available at* <http://www.uscis.gov/sites/default/files/files/form/i-360instr.pdf>.

103. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., REPORT ON THE OPERATIONS OF THE VIOLENCE AGAINST WOMEN ACT UNIT AT THE USCIS VERMONT SERVICE CENTER: REPORT TO CONGRESS 3 (2010), *available at* <http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/vawa-vermont-service-center.pdf>.

104. *Id.* at ii.

If a VAWA self-petition is ultimately approved, the recipient is permitted to apply for lawful permanent residence, and after three years, he or she can apply for U.S. citizenship.¹⁰⁵

In 1997, the government agency that received and adjudicated these self-petitions received 2,491 petitions and approved 75% of those filed.¹⁰⁶ Over the years, the number of filings has grown incrementally, and in 2011, the agency received 9,209 self-petitions and approved 68% of those petitions.¹⁰⁷ There is no numerical limit to the number of petitions that can be granted in a fiscal year.¹⁰⁸

2. VAWA Cancellation of Removal

Unauthorized migrants who have already been placed in removal proceedings are able to apply for a special type of VAWA relief based on the domestic abuse that they have suffered at the hands of a U.S. citizen or lawful permanent resident spouse or parent.¹⁰⁹ Immigration judges, through the authority delegated to them by the U.S. Attorney General, have the authority to cancel the removal of an otherwise unauthorized migrant on account of domestic abuse through a special type of VAWA-based cancellation of removal (VAWA Cancellation of Removal).¹¹⁰ Like the VAWA self-petitioner, the VAWA Cancellation of Removal applicant must establish that he or she was physically battered and/or subjected to “extreme cruelty” by a U.S. citizen or lawful permanent resident spouse, parent, or adult child.¹¹¹ In addition, to be eligible for relief the domestic violence victim must have been physically present in the United States for a continuous period of not less than three years prior to applying and must be a person of good moral character who has not been convicted of various types of criminal conduct.¹¹² The removal must result in extreme hardship to the victim, the victim’s child, or if the victim is the child, then to the victim’s parent.¹¹³

3. The U Visa

Individuals who provide assistance to law enforcement in a criminal prosecution may be eligible for temporary immigration status under the

105. INA § 319(a).

106. WILLIAM A. KANDEL, CONG. RESEARCH SERV., R42477, IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) 4 (2012), available at <http://www.fas.org/sgp/crs/misc/R42477.pdf>.

107. *Id.* at 5.

108. *Id.* at 19, 23–24 (explaining that the VAWA self-petition process is equivalent to the immediate relative process which grants lawful permanent residence to foreign national spouses of U.S. citizens without numerical limitation); INA § 204(a)(1)(A)(iii).

109. INA § 240A(b)(2).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

U nonimmigrant visa provisions.¹¹⁴ A victim, such as a domestic violence victim, must establish that he or she has been the victim of a crime, has suffered substantial mental or physical abuse, and is willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity.¹¹⁵ First, the U visa benefits state and local law enforcement in the investigation and prosecution of cases of domestic violence and other crimes.¹¹⁶ Second, it assists law enforcement to better serve victims of crimes.¹¹⁷ Finally, it offers a temporary legal status to its recipients.¹¹⁸

Congress has imposed a numerical limit of 10,000 visas that can be issued per year.¹¹⁹ When petitions are over-subscribed, the federal government is unable to continue processing and approving the pending requests.¹²⁰ Another important distinction is that the VAWA battered spouse petition requires an affirmative showing of good moral character, while a U visa petition does not.¹²¹ This difference can be useful for a domestic violence victim who has a criminal record herself that is unrelated to the domestic abuse.

In order to establish eligibility for this relief, an applicant must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity.¹²² The individual must be deemed to have information concerning that criminal activity, which is viewed as being helpful in the investigation or prosecution of that activity under a law of the United States.¹²³ A petition for U nonimmigrant status must also contain a certification of helpfulness from a certifying agency whereby law enforcement determines whether the individual “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the criminal activity.¹²⁴ The list of law enforcement

114. *Id.* § 101(a)(15)(U).

115. *Id.*

116. Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464 (2000) (codified as amended at scattered sections of 22 U.S.C.); see New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (amending 8 C.F.R. §§ 103, 212, 214, 248, 274a, 299).

117. VTVPA 114 Stat. 1464; New Classification for Victims of Criminal Activity, 72 Fed. Reg. 53014.

118. INA § 101(a)(15)(U).

119. *Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status> (last updated Nov. 5, 2013) [hereinafter *Victims of Criminal Activity*].

120. *Id.*

121. Compare INA § 204(a)(1)(A)(iii), with *id.* § 101(a)(15)(U).

122. *Id.* § 101(a)(15)(U)(i)(I), (iii); see also *Victims of Criminal Activity*, *supra* note 119.

123. INA § 101(a)(15)(U)(i), (iii); see also U.S. DEP’T OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT 1–2, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

124. INA § 101(a)(15)(U)(i)(III).

agencies that are authorized to certify a U visa petition is broad, including all authorities responsible for the investigation, prosecution, conviction, or sentencing of the qualifying criminal activity, including, but not limited to, the following entities:

- Federal, State and Local law enforcement agencies;
- Federal, State and Local prosecutors' offices;
- Federal, State and Local Judges;
- Federal, State, and Local Family Protective Services;
- Equal Employment Opportunity Commission;
- Federal and State Departments of Labor; and
- Other investigative agencies.¹²⁵

In some circumstances, the perpetrator of domestic violence is no longer in the jurisdiction of the law enforcement agency, has been deported under federal immigration law, or for some other reason an arrest or prosecution is not likely. Since there is no statute of limitations on the signing of the law enforcement certification, a law enforcement agency can still issue a certification.¹²⁶

U nonimmigrant status cannot exceed four years.¹²⁷ However, extensions are available upon certification by a certifying agency that the foreign national's presence in the United States is required to assist in the investigation or prosecution of the qualifying criminal activity.¹²⁸ Nationwide, the number of U visa petition filings has been on the rise.¹²⁹ In Fiscal Year 2009 there were 6,835 applications filed.¹³⁰ Three years later that number had nearly quadrupled to 24,768.¹³¹ Thus, the exponential increases in applications combined with a 10,000-visa annual cap, has left demand far exceeding availability.¹³² Indeed, the fiscal year 2014 cap was reached on December 11, 2013, marking the fifth straight year that USCIS has reached the statutory maximum in accepting U visa applica-

125. U.S. DEP'T OF HOMELAND SEC., *supra* note 123, at 2–3.

126. *Id.* at 4.

127. *Victims of Criminal Activity*, *supra* note 119.

128. *Id.*

129. See U.S. CITIZENSHIP & IMMIGRATION SERVS., FORM I-914 - APPLICATION FOR T NONIMMIGRANT STATUS, FORM I-918 - PETITION FOR U NONIMMIGRANT STATUS RECEIPTS, APPROVALS, AND DENIALS: FISCAL YEAR 2013 (2013), available at http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1914t-1918u_visastatistics_fy2013_qtr3.pdf.

130. *Id.*

131. *Id.*

132. See *id.*

tions.¹³³ USCIS will not be available to issue U visas again until October 1, 2014.¹³⁴

A benefit to U visa petitioners is that their derivative family members such as spouses, children, or other qualifying family members who are accompanying the principal victim are also eligible for derivative relief. For unauthorized migrants who fear the impact of coming forward to law enforcement on their close family members, this feature is appealing.

4. Asylum, Restriction on Removal, and Relief Under the Convention Against Torture

In addition to the immigration-specific relief that was enacted through VAWA, there are a few other types of federal domestic violence immigration protections. Unauthorized migrants who fear domestic violence in their home country and who have suffered substantial domestic violence there can apply for asylum protection in the United States. To be eligible for that relief, they must establish that they have been unsuccessful in gaining protections from their own government and that they have a well-founded fear of persecution. To establish a well-founded fear of persecution, the domestic violence victim must establish that the harm he or she suffered was on account of his or her political opinion, religion, nationality, race/ethnicity, or membership in a particular social group.¹³⁵ There have been some successful asylum claims based on political opinion or religion, but a majority of victims seek to establish that their harm was on account of their membership in a particular social group.¹³⁶ This, however, is more difficult for a victim of domestic violence as one cannot define the social group by the harm they suffered or fear suffering.¹³⁷ Until recently, a social group based on gender violence had not been recognized in a decision that had the force of established precedent.¹³⁸ As

133. *USCIS Approves 10,000 U Visas for 5th Straight Fiscal Year*, U.S. CITIZENSHIP & IMMIGR. SERVS., (Dec. 11, 2013), <http://www.uscis.gov/news/alerts/uscis-approves-10000-u-visas-5th-straight-fiscal-year>.

134. *Id.*

135. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 101(a)(42), 66 Stat. 163 (codified as amended at 8 U.S.C. § 1101 (2012)).

136. See S-A-, 22 I. & N. Dec. 1328, 1328, 1333 (B.I.A. 2000) (finding that a woman with liberal Muslim beliefs established a well-founded fear of persecution on account of religious beliefs where her father who inflicted the harm was an orthodox Muslim); *Fisher v. INS*, 79 F.3d 955, 962 (9th Cir. 1996) (holding that dress and conduct rules pertaining to women may amount to persecution if a woman's refusal to comply is on account of her religious or political views); *Lazo-Majano v. INS*, 813 F.2d 1432, 1436 (9th Cir. 1987) (finding that an alien who was a domestic servant of a sergeant established the harm she continuously suffered while working for him was on account of her political opinion), *overruled on other grounds by Fisher*, 79 F.3d 955.

137. See C-A-, 23 I. & N. Dec. 951, 960 (B.I.A. 2006).

138. See R-A-, 22 I. & N. Dec. 906, 906 (B.I.A. 2001), *remanded by* 23 I. & N. Dec. 694 (B.I.A. 2005), *vacated*, 24 I. & N. Dec. 629 (B.I.A. 2008). Until August 2014, there were no published precedent decisions in which a domestic violence victim had been found to be eligible for relief based on a protected ground. However, the advocacy community had noted that in a factually similar domestic violence-based case, the Department of Homeland Security filed a brief asserting

such, a person seeking asylum based on domestic violence must show that they belong to a cognizable social group. This is no easy task as it requires an immutable characteristic that is particularized and socially visible.¹³⁹ Without an already recognized social group, victims of domestic violence have been left to articulate a social group that is not defined by the harm, but is still a narrow and specific enough definition to be accepted as a particular social group under current law. However, in a recent precedent-setting decision, the Board of Immigration Appeals issued a landmark holding recognizing that women who have experienced domestic violence may be deemed a “member of a particular social group” in some circumstances.¹⁴⁰ If successful, a grant of asylum leads to lawful permanent residence and eventually citizenship.¹⁴¹

Applying a similar analysis as that for asylum eligibility, a domestic violence victim can also apply for restriction on removal.¹⁴² The standard for eligibility is higher than that of asylum, and a victim needs to establish that the future harm would be more likely than not to occur in the victim’s home country.¹⁴³ Individuals who are ineligible for asylum due to a disqualifying criminal conviction or a delayed filing of their application for relief usually pursue restriction on removal.¹⁴⁴

The benefits to a grant of restriction on removal are not as expansive as those related to asylum.¹⁴⁵ While an individual who is granted restriction on removal cannot be removed from the United States to the country she was fleeing, she can be removed to a third country if one is available.¹⁴⁶ While the individual may not adjust her status to legal permanent residency, she can obtain work authorization while living in the United States.¹⁴⁷

The United States is a signatory to the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-

that domestic violence victims could adequately meet the current requirements for social group membership if they articulate their proposed group by identifying the specific characteristics that the persecutor targets in choosing the domestic violence victim as well as provide evidence of societal abuse in that country towards that characteristic. In addition, the victim would need to establish that the harm feared is “serious enough to constitute persecution”; that the fear is well-founded such that a victim is unable to relocate within the country; and that the state is unwilling or unable to protect the victim. Brief for Department of Homeland Security, *In re L-R-*, available at <http://cgrs.uchastings.edu/pdfs/Redacted%20DHS%20brief%20on%20PSG.pdf>.

139. S-E-G-, 24 I. & N. Dec. 579, 583 (B.I.A. 2008); A-M-E-, 24 I. & N. Dec. 69, 73 (B.I.A. 2007); Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), *overruled in part by* Mogharrabi, 19 I. & N. Dec. 439 (B.I.A. 1987).

140. A-R-C-G-, 26 I. & N. Dec. 388, 392-393 (B.I.A. 2014); *see supra* note 138.

141. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 209, 66 Stat. 163 (codified as amended at 8 U.S.C. § 1159 (2012)).

142. *Id.* § 241(b)(3).

143. *Id.*; *see also* INS v. Cardoza-Fonseca, 480 U.S. 421, 444 (1987).

144. *See* INA § 208(a)(2), (b)(2).

145. *See id.* § 241(b)(3).

146. *Id.*

147. 8 C.F.R. § 1274a.12(10) (2013).

ment (Convention Against Torture).¹⁴⁸ If a domestic violence victim is able to establish that it is more likely than not that he or she would be tortured if returned to the proposed country of removal by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, then Article 3 of the Convention Against Torture may be applied to withhold his or her removal.¹⁴⁹

5. Special Immigrant Juvenile Status

Domestic violence victims who meet the definition of juvenile under U.S. law and who are deemed to be special immigrants such that they have been declared dependent on a U.S. juvenile court, or who have been placed under the custody of a state agency, and whose reunification with one or both of the immigrant's parents is not viable and would not be in the juvenile's best interest due to abuse, neglect, or abandonment, are eligible for Special Immigrant Juvenile Status.¹⁵⁰ Upon application to the USCIS, a domestic violence victim may have this status conferred upon him or her.¹⁵¹ This status permits a juvenile to apply for permanent residence in the United States.¹⁵²

6. Removal of Conditions on Permanent Residence

Migrants who marry a U.S. citizen or lawful permanent resident, and who apply for lawful permanent residence status less than two years before their second-year anniversary, are granted conditional Permanent Residence Status.¹⁵³ In order to make that conditional status permanent, the petitioning spouse and the beneficiary are required to file a joint petition requesting that the conditions on status be removed.¹⁵⁴ In the case of an abused spouse, however, federal law permits a waiver of the joint petition requirement and permits a victim to self-petition to remove the conditions.¹⁵⁵ To establish eligibility for a waiver of the joint petition requirement, the unauthorized migrant domestic violence victim must establish that the marriage was entered into in good faith but legitimately

148. Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242(b), 112 Stat. 2681-822, (codified at 8 U.S.C. § 1231 (2012)); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, U.N. GAOR, 39th Sess. Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984). Some have argued that this relief may be viable given the fact that victims need not establish a nexus to a particular social group. See, e.g., Barbara Cochrane Alexander, Comment, *Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims*, 15 AM. U. INT'L L. REV. 895, 914 (2000).

149. 8 C.F.R. §§ 1208.16(c), .17, .18 (2013). Contrast this relief with permanent residence available under section 245 of the Immigration and Nationality Act.

150. INA § 101(a)(27)(J). This section was added by section 153 of the Immigration Act of 1990. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), enacted on December 23, 2008, clarified and expanded the definition to juveniles. Pub. L. No. 110-457, 122 Stat. 5044 (2008) (codified at 22 U.S.C. § 7701).

151. INA § 101(a)(27)(J).

152. *Id.* § 203(b)(4).

153. *Id.* § 216.

154. *Id.* § 216(c).

155. *Id.* § 216(c)(4)(C).

terminated before the end of the two-year conditional period.¹⁵⁶ This law enables a battered immigrant to leave the abusive relationship since the victim need not rely on the abusive spouse to receive the waiver. In order to be successful in waiving the joint petition requirement, the conditional resident must establish that she was subject to battering or extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the course of the marriage.¹⁵⁷

7. Prosecutorial Discretion

Unauthorized migrant domestic violence victims have the right to request that they be considered for prosecutorial discretion in immigration enforcement actions.¹⁵⁸ This policy enables law enforcement to focus limited resources on higher priority cases, and permits the compassionate and humanitarian use of law enforcement tools, when deemed appropriate.¹⁵⁹ In June 2011, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) further clarified the circumstances under which prosecutorial discretion and enforcement policies should be employed in cases involving victims and witnesses to crimes.¹⁶⁰ The memo instructs that “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”¹⁶¹ This document refers specifically to domestic violence victims. If an unauthorized migrant has already been ordered removed, ICE may grant a stay of removal or deferred action.¹⁶² However, these types of relief do not confer any legal status on an unauthorized migrant.¹⁶³

II. COMPARISON OF VAWA AND INTERNATIONAL STANDARDS

A. *The Nation's Report Card*

The U.N. Model Framework provides guidance on the types of provisions that, from its perspective, should be included in state domestic

156. *Id.*

157. *Id.*

158. JOHN MORTON, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, MEMORANDUM: EXERCISING PROSECUTORIAL DISCRETION CONSISTENT WITH THE CIVIL IMMIGRATION ENFORCEMENT PRIORITIES OF THE AGENCY FOR THE APPREHENSION, DETENTION, AND REMOVAL OF ALIENS 4 (2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>; JOHN MORTON, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, MEMORANDUM: PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS 1–2 (2011) [hereinafter PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS], available at <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

159. PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS, *supra* note 158, at 2.

160. *Id.*

161. *Id.* at 1.

162. *Id.* at 2.

163. *Id.*

violence legislation.¹⁶⁴ In this Part, we will examine some of the key components of that construct specifically as they relate to unauthorized migrants, in light of the United States domestic violence legal framework.

First, one of the key recommendations in the U.N. Model Framework is that domestic violence be recognized as “gender-specific violence directed against women, occurring within the family and within interpersonal relationships.”¹⁶⁵ In this respect, VAWA departs from the United Nations’ guidance even though there is ample language in the legislative history acknowledging the disproportion between male and female victims.¹⁶⁶ The provisions of VAWA are gender-neutral and thus apply equally to men and women.¹⁶⁷ This legal construct runs counter to CEDAW principles and the U.N. Model Framework.

Second, in the United States, unauthorized migrant victims of domestic violence are able to self-petition for immigration relief, based on the domestic violence itself, and receive temporary legal status based on the support they provide to law enforcement in prosecuting the criminal conduct. VAWA provides protection and support to all victims of violence regardless of whether they have legal immigration status. This structure clearly embodies the spirit of the U.N. Model Framework. In fact, the U.N. Model Framework cites directly to the self-petitioning rights afforded under VAWA and VAWA Cancellation of Removal as examples of best practices.¹⁶⁸

Third, the U.N. Model Framework recommends that domestic violence law enforcement systems recognize the seriousness of domestic violence as an offense, and the provision of a range of remedies to provide survivors maximum protections.¹⁶⁹ Through the enactment of VAWA, and the ripple effect that has occurred in state and local gov-

164. U.N. DEP’T OF ECON. & SOC. AFFAIRS, *supra* note 73, at iii.

165. Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, Commission on Human Rights, A Framework for Model Legislation on Domestic Violence, U.N. Doc. E/CN.4/1996/53/Add.2 (Feb. 2, 1996).

166. *Domestic Violence: Not Just a Family Matter: Hearing Before the Subcomm. on Crime & Criminal Justice of the H. Comm. on the Judiciary*, 103d Cong. 1–3 (1994).

167. 42 U.S.C. § 13925(b)(8) (2012) (“[Nonexclusivity:] Nothing in this subchapter shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this subchapter.”); NAT’L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE AGAINST WOMEN, FREQUENTLY ASKED QUESTIONS ABOUT VAWA AND GENDER, available at http://www.ncdsv.org/images/FAQ_VAWA%20and%20Gender.pdf (In explaining the titling of VAWA, then-Senator Biden said in 2005: “The reality is that the vast majority of victims of domestic violence are women and children, and most outreach organizations take those demographics into consideration when providing services . . . The bottom line is—violence is violence no matter what gender the victim. Because of that, the Violence Against Women Act applies to all victims of domestic violence, irrespective of their gender. Nothing in the act denies services, programs, funding or assistance to male victims of violence.” (omission in original) (internal quotation marks omitted)).

168. U.N. DEP’T OF ECON. & SOC. AFFAIRS, *supra* note 73, at 34.

169. *Id.* at 2 ¶¶ 3.11–12.

ernments throughout the United States strengthening domestic violence legislation, a strong argument can be made that the U.S. government has taken the issue seriously and has devoted substantial resources to reducing domestic violence.

As of September 30, 1996, the INA had added a separate charge of removability for perpetrators of domestic violence.¹⁷⁰ Any unauthorized migrant who is convicted of a crime of domestic violence, is removable.¹⁷¹ The term “crime of domestic violence” means any crime of violence as defined in Title 18 of the United States Code, Section 16, and is applicable in the context of an expansive definition of spouses including current or former spouses, common law spouses, or domestic partners.¹⁷² Moreover, INA Section 237(a)(2)(E)(ii) renders removable any unauthorized migrant who is enjoined under a protection order and who is found by a court to have violated a portion of that protection order in a manner that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.¹⁷³

An order of removal is the most severe application of immigration law that is embodied in the federal system. The consequence for an unauthorized migrant being found inadmissible in a removal proceeding is that he or she will generally be removed and thus barred from the United States for ten years.¹⁷⁴ Domestic violence offenses for which an unauthorized migrant was sentenced to imprisonment of one year or more, and for which a sentence of at least one year was imposed, are deemed aggravated felonies. Unauthorized migrants who have been removed apropos of an aggravated felony offense are generally unable to return to the United States for life unless the U.S. Attorney General authorizes special permission to return.¹⁷⁵ In the case of a second or subsequent removal, an individual will be barred from the United States for twenty years.¹⁷⁶ Individuals convicted of a domestic violence offense and removed from the United States as an aggravated felon who later enter or attempt to enter the United States without authorization will be subject to federal prosecution for illegal reentry and lengthy prison sentences of up to twenty years.¹⁷⁷

Fourth, the U.N. Model Framework recommends that police, prosecutors, and judges be trained to support survivors of domestic violence

170. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 237(a)(2)(E)(i), 66 Stat. 163 (codified at 8 U.S.C. § 1227 (2012)).

171. *Id.*

172. *Id.* (internal quotation marks omitted).

173. *Id.* § 237(a)(2)(E)(ii).

174. *Id.* § 212(a)(9)(A)(ii).

175. *Id.* § 212(a)(9)(A)(ii), (iii).

176. *Id.* § 212(a)(9)(A)(i), (ii).

177. *Id.* § 276.

and to rehabilitate perpetrators of the violence.¹⁷⁸ Moreover, the U.N. Model Framework recommends that any legal framework should find ways to develop greater understanding within the community of the prevalence of domestic violence as well as its causes and encourage community participation in eradicating domestic violence.¹⁷⁹

Pursuant to its grant-making power, the OVW funds programs and develops policies and best practices for state and local governments that address the prosecution of domestic violence, including matters involving unauthorized migrants.¹⁸⁰ In addition, the OVW provides a variety of financial and technical resources to help ameliorate the prevalence of domestic violence especially in this vulnerable community.¹⁸¹

Since 2000, the OVW has provided extensive reporting to the U.S. Congress about grants made under the program and their effectiveness in the communities they serve.¹⁸² Currently, the OVW administers twenty-four grant programs.¹⁸³ In general, those grant programs that are targeted directly toward unauthorized migrant victims are the following:

- (a) Legal Assistance for Victims Grant Program;
- (b) Coordinated Community Response Grant Program;
- (c) Community Education and Public Awareness Activities Grant Program;
- (d) Historically Underserved Populations Grant Program; and
- (e) Culturally and Linguistically Specific Services Grant Programs.

178. U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 73, at 2 ¶ 3.12.

179. *Id.* at 2 ¶ 3.5.

180. See OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, GRANT PROGRAMS TO END VIOLENCE AGAINST WOMEN (2011), available at <http://www.ovw.usdoj.gov/docs/ovw-program-factsheet.pdf> (describing the 21 grant programs offered by OVW).

181. *Id.*

182. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1003, 114 Stat. 1464 (2000) (codified as amended at scattered sections of 22 U.S.C.).

183. *Grant Programs: About OVW Grant Programs*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (last updated Apr. 2012) (listing the grant that OVW currently administers as: Campus Grant Program; Children and Youth Exposed to Violence Grant Program; Court Training and Improvements Program; Culturally and Linguistically Specific Services for Victims Program; Education, Training and Enhanced Services to End Violence Against and Abuse of Women with Disabilities; Engaging Men; Services, Training, Education and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program (STEP); Tribal SASP; Sexual Assault Service Program-Cultural; Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program; Grants to Encourage Arrest Policies and Enforcement of Protection Orders; Grants to Indian Tribal Governments Program; Grants to Tribal Domestic Violence and Sexual Assault Coalitions; Legal Assistance for Victims Grant Program; Rural Grant Program; Safe Havens: Supervised Visitation and Safe Exchange Grant Program; Services to Advocate for and Respond to Youth Grant Program; Sexual Assault Services Program; State Coalitions Grant Program; STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grants to States; and Transitional Housing Grant Program).

OVW issues a variety of statistics measuring the effectiveness of these grant programs that are based, in part, on grantee reporting. The *Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act in 2012* (OVW 2012 Report to Congress) identifies key data regarding how these grant programs impact unauthorized migrants.¹⁸⁴ The Legal Assistance for Victims (LAV) Grant Program supports state and local government civil and criminal legal assistance programs for unauthorized migrants who seek relief in legal matters arising out of their domestic violence. It can include the provision of legal services in connection with immigration-specific relief, as well as support in the family law context. In 2012, OVW's total grants awarded were greater than \$400 million, of which about 8% was devoted to LAV programs.¹⁸⁵

In the early 2000s, the Coordinated Community Response Grant Program (CCR) focused on creating reforms within the criminal legal system, including the revision of policies, procedures, and rules that guide the practice of law enforcement officers, prosecutors, judges, and court personnel.¹⁸⁶ This effort resulted in a number of reforms, including the issuance of protective policies and the development of practice guides.¹⁸⁷ However, more recently, CCR grant programs have become cross-disciplinary collaborations, fostering formal interagency relationships to improve coordination and collaboration.¹⁸⁸ OVW requires most discretionary grantees to develop and/or participate in a CCR to address violence against women in their community. OVW reports that the most effective CCR grant programs are those that engage all sectors of the criminal legal system and victim advocacy/service agencies in local, cross-disciplinary teams for purposes of examination and, in some cases, revision of current policies.¹⁸⁹

In the OVW 2012 Report to Congress, OVW reported that in Brooklyn, New York, and in California, CCR grants have been effective in promoting greater utilization of the criminal justice system by unauthorized migrants since they have instituted policies that make the system less threatening.¹⁹⁰ Changes can include same-day release of police reports to victims, and at no cost, where there were previously significant delays and costs associated with the release of reports.¹⁹¹ Moreover, CCR

184. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, 2012 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT 91 (2012) [hereinafter OVW, 2012 BIENNIAL REPORT], available at <http://www.ovw.usdoj.gov/docs/2012-biennial-report-to-congress.pdf>.

185. See *Fiscal Year 2012 OVW Grant Awards by Program*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/fy2012-grant-program.htm> (last updated Jan. 2014).

186. OVW, 2012 BIENNIAL REPORT, *supra* note 184, at 17.

187. *Id.* at 18.

188. *Id.* at 19.

189. *Id.* at 261.

190. *Id.* at 20.

191. *Id.* at 22.

grantees report that as a result of these collaborations there are faster responses to requests for needed documentation for U visa petitions.¹⁹² The OVW 2012 Report to Congress refers specifically to success through a CCR grant to the Denver Domestic Violence Triage Review Team between City and County of Denver law enforcement and community representatives.¹⁹³ Through this program, representatives from the criminal justice system and community-based agencies have collaborated in improving the assessment and outreach with domestic violence victims in the early stages of the criminal justice process.¹⁹⁴ There was a joint “ride-along” with community partners and law enforcement shift officers as they responded to a variety of police calls, followed by discussions about how to better serve the needs of domestic violence victims.¹⁹⁵

One of the most successful CCR grant programs has been one that focuses on VAWA training for a wide range of professionals who are likely to come in contact with victims who are unauthorized migrants.¹⁹⁶ For the years 2011 and 2012, OVW reports that it awarded grants to 1,191 grantees and supported the training of 661,263 professionals, which were comprised of:

- ▶ law enforcement officers: 93,241
- ▶ victim advocates: 86,211
- ▶ healthcare professionals: 42,405
- ▶ attorneys and law students: 36,575.¹⁹⁷

The Community Education and Public Awareness Activities Grant Programs support general education and public awareness activities that are aimed at discovering the root causes of domestic violence, including finding ways to change community norms.¹⁹⁸ The programs support training to help law enforcement better understand the importance of fostering policies within their police department that better serve several types of victims, including domestic violence victims.¹⁹⁹ Moreover, these grants support outreach efforts to marginalized communities including unauthorized migrant families in, for example, rural areas.²⁰⁰

Culturally and Linguistically Specific Services Grant Programs underscore the Community Education and Public Awareness Activities Grant Program and provide services that are tailored linguistically, religiously, and culturally to the needs of the particular unauthorized mi-

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 29.

197. *Id.* (emphases omitted) (footnotes omitted).

198. *Id.* at 32.

199. *Id.*

200. *Id.* at 36.

grant population group.²⁰¹ Between 71% and 89% of the victims served through this program had been victimized by a current or former spouse or intimate partner.²⁰² Female victims of Asian and Hispanic ethnicity between the ages twenty-five and fifty-nine were the predominate groups that accessed these services.²⁰³

The Historically Underserved Populations Grant Program serves, in part, unauthorized migrants and refugees that need support in pursuing legal advocacy, as well as several other vulnerable populations.²⁰⁴ The funds under this program specifically focused on unauthorized migrants and refugees, including about 34,000 victims/survivors per year who were immigrants, refugees, or asylum seekers.²⁰⁵

Finally, the U.N. Model Framework states that any legal framework should recognize that unauthorized migrant domestic violence victims are fundamentally different and more vulnerable, and that specific legal provisions be enacted to guarantee the rights of immigrant women who are victims of violence.²⁰⁶ It suggests that unauthorized migrant victims should not be deported or subjected to other punitive actions related to their immigration status when they report such violence to police or other authorities, and that the system should permit immigrants to confidentially apply for valid immigration status independent of their abuser.²⁰⁷ The U.N. Model Framework goes further to suggest that an effective system should acknowledge that “violence against women may constitute persecution and that complainants/survivors of such violence should constitute ‘a particular social group’ for the purposes of asylum law.”²⁰⁸

B. Areas for Improvement

In Part II above, this Article detailed the provisions put in place through VAWA as well as other measures that are in effect which address the unique challenges that unauthorized migrants face. In many respects, as has been detailed above, these provisions meet the U.N. Model Framework recommendations. However, despite the success that our system has experienced, critics have identified limitations.

First, there are fees associated with the filing of some immigration petitions. While there are no fees associated with the filing of a VAWA

201. *Id.* at 10.

202. *Id.* at 196.

203. *Id.* at 197. For the period July 2009 through June 2011, the number of victims served that received support in connection with immigration matters rose steadily, culminating in 618 victims being served during the period January 2011 through June 2011. *Id.* at 200. Support was provided in a range of immigration applications including VAWA Self-Petitioners, VAWA Cancellation of Removal, U Visas, asylum, and others. *Id.*

204. *Id.* at 78.

205. *Id.* at 79.

206. U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 73, at 34 ¶ 3.7.

207. *Id.*

208. *Id.* at 3 ¶ 3.14 (internal quotation marks omitted).

Self-Petition, a U visa petition, an SIJS Petition, or an Application for Asylum, Withholding of Removal, or Convention Against Torture, administrative costs in some other types of applications can be significant. The current cost to file an application for lawful permanent residence is, at a minimum, \$1070.²⁰⁹ A petition to remove conditions on residence has a fee of \$590.²¹⁰ Moreover, the fee for filing VAWA Cancellation of Removal is \$185.²¹¹ Unauthorized migrant domestic violence victims can apply for a waiver of any fees associated with immigration applications and petitions.²¹²

Second, under the U.S. legal framework, victims of domestic violence at the hands of U.S. and lawful permanent residents are able to apply independently to legalize their status through a VAWA Self-Petition, VAWA Cancellation of Removal, or a Self-Petition to Remove Conditions on Lawful Permanent Residence.²¹³ If successful, the victim would not be subject to other punitive actions related to his or her immigration status.²¹⁴ Moreover, the victim can apply for this relief confidentially.²¹⁵ However, success in each of these three contexts requires a demonstration of battery or extreme cruelty.²¹⁶ This is a high standard to meet. Furthermore, if the victim is subject to domestic violence by an unauthorized migrant perpetrator who is neither a U.S. citizen nor a lawful permanent resident, the victim is not eligible to pursue these types of relief.²¹⁷

Third, the domestic violence victim may pursue a U visa as a crime victim.²¹⁸ However, success will require in part a demonstration to law enforcement of helpfulness.²¹⁹ A common concern about the U visa process is this “helpfulness” certification requirement.²²⁰ Critics charge that

209. *I-485, Application to Register Permanent Residence of Adjust Status*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/i-485> (last updated Aug. 8, 2013). This fee includes the cost of required biometrics fees. *Id.*

210. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP'T OF HOMELAND SEC., INSTRUCTIONS FOR PETITION TO REMOVE CONDITIONS ON RESIDENCE: USCIS FORM I-751, at 4 (2013), available at <http://www.uscis.gov/sites/default/files/files/form/i-751instr.pdf>. This fee includes the required biometrics fees. *Id.*

211. EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, APPLICATION FOR CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS: OMB#1125-0001 (2013), available at <http://www.justice.gov/eoir/eoirforms/eoir42b.pdf>.

212. U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP'T OF HOMELAND SEC., FACT SHEET: USCIS FEE WAIVER GUIDANCE (2004), available at http://www.uscis.gov/sites/default/files/files/pressrelease/FeeWaiver03_29_04.pdf.

213. *See supra* Part I.D.1–6.

214. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 240A(b), 66 Stat. 163 (codified at 8 U.S.C. § 1229(b) (2012)).

215. *Id.* § 245A(c)(5).

216. *Id.* § 240A(b)(2).

217. *See supra* Part I.D.1, 2, 6.

218. *See supra* Part I.D.3.

219. *See supra* Part I.D.3.

220. Jamie R. Abrams, *The Dual Purposes of the U Visa Thwarted in a Legislative Duel*, 29 ST. LOUIS U. PUB. L. REV. 373, 390, 396 (2010).

this requirement has proven to be controversial in practice as individual law enforcement entities are able to establish their own criteria for defining helpfulness.²²¹ And, not surprisingly, the application of the definition reflects the range of views and proclivities of the individual certifying authorities.²²² Law enforcement certification is issued at the discretion of the individual law enforcement agency, and any such agency cannot be compelled to issue such certification. Thus, differences in the policies and procedures can lead to disparity in the issuance of certifications.²²³ Given that discretionary element and the lack of uniformity across jurisdictions, an unauthorized migrant domestic violence victim may choose not to seek redress.²²⁴

Fourth, an unauthorized migrant may pursue an application for asylum. However, it is not enough to show just that the victim suffered harm; he or she must also show that the harm was on account of membership of a cognizable social group or other protected ground.²²⁵ Moreover, if the victim is applying for asylum more than one year after arrival in the United States, there is a heavy burden to prove that the delay was caused by an exceptional circumstance or a change in conditions, such as to excuse the delay. Generally, lack of knowledge about the filing deadline is not an excuse for failure to timely file as there is no exception in the statute or the regulation for this purpose.²²⁶ Further, any argument that there was a change in the domestic violence victim's circumstances or an extraordinary circumstance that was directly related to the failure to timely file and which the victim did not intentionally create through her action or inaction, could be undercut by evidence of ongoing abuse that predated the one-year period.²²⁷ In addition to these challenges, the applicant also needs to establish by clear and convincing evidence that the home government would not be supportive in protecting the victim, and that the victim could not relocate to safety within the home country.²²⁸

Fifth, a claim to relief based on restriction on removal requires a showing that it is more likely than not that the victim would be persecuted on account of a cognizable social group.²²⁹ The burden is a heavy evidentiary one that requires an unauthorized migrant to establish roughly a 51% likelihood of persecution if returned to one's home country.²³⁰ A

221. *Id.* at 396.

222. *Id.* at 395.

223. *Id.* at 395–96.

224. *See id.*

225. *See* Immigration & Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 208(b)(1)(B)(i), 66 Stat. 163 (codified at 8 U.S.C. § 1158(b)(1)(B)(i) (2012)).

226. HUMAN RIGHTS FIRST, *THE ASYLUM FILING DEADLINE: DENYING PROTECTION TO THE PERSECUTED AND UNDERMINING GOVERNMENTAL EFFICIENCY* 4–5 (2010), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>.

227. 8 C.F.R. § 208.4(a)(4)(i)(A), (a)(5) (2013).

228. *Id.* § 208.13(b)(3).

229. *See supra* notes 144–46.

230. 8 C.F.R. § 208.16(b)(1)(iii) (2013).

claim under the Convention Against Torture is even more tenuous because success would require a demonstration, in part, that a public official in the home government acquiesced in the domestic violence that must meet the federal definition of torture, and thereafter breached his or her legal responsibility to intervene to prevent such activity.²³¹

Sixth, individuals who meet the federal definition of juvenile can seek Special Immigrant Juvenile Status.²³² However, the process is lengthy, involving multiple state and federal government agencies that can be daunting to a juvenile.²³³ Moreover, juveniles do not have a right to government-provided legal representation in pursuing federal immigration benefits.²³⁴ Given their age, this cumbersome process can be particularly daunting considering that: (a) a guardianship must be established at the state government level; (b) a state juvenile court must make a series of findings about dependency and neglect; and (c) an application must be submitted to USCIS requesting both SIJS status and lawful permanent residence.²³⁵

Finally, prosecutorial discretion is available at the discretion of the DHS. Implicit in any discretionary determination is a measure of uncertainty, which can impact an unauthorized migrant's decision to seek it.²³⁶

In sum, the United States has in place a wide variety of measures designed to support domestic violence victims. Nevertheless, varying levels of uncertainty are inherent in each. This uncertainty can hinder an unauthorized migrant domestic violence victim's decision to seek assistance.

III. FEDERAL–STATE PARTNERSHIP IN SUPPORT OF DOMESTIC VIOLENCE PROTECTIONS

A. Statutory Protections

In Colorado, government officials and non-governmental entities have been working to improve and refine domestic violence laws for more than twenty years. The trend started in 1994, immediately following the enactment of VAWA, when the Colorado General Assembly voted to strengthen civil and criminal laws and procedures to protect victims

231. *Id.* § 208.18(a)(7) (2013).

232. *See supra* notes 150–52.

233. *See* CENTER FOR HUM. RTS. & CONST. L., SPECIAL IMMIGRANT JUVENILE STATUS MANUAL 38–54, available at http://immigrantchildren.org/documents/Final_Manual.pdf (last visited May 24, 2004).

234. *See* Safe Passage Immigration Project, *Special Immigrant Juvenile Status: A Step-by-Step Guide for the Safe Passage Immigration Project: Volunteer Attorneys*, JUST. ACTION CENTER N.Y.L. SCH. 4, <http://www.safeassageproject.org/wp-content/uploads/2013/11/Safe-Passage-SIJS-Manual.current-as-of-11.02.13.pdf> (last updated Nov. 2, 2013).

235. CENTER FOR HUM. RTS. & CONST. L., *supra* note 233, at 39–44.

236. KATE M. MANUEL & TODD GARVEY, CONG. RESEARCH SERV., R42924, PROSECUTORIAL DISCRETION IN IMMIGRATION ENFORCEMENT: LEGAL ISSUES I (2013).

of domestic violence, including codifying amplified domestic abuse protections in the form of issuance and enforcement of restraining orders.²³⁷ The enabling legislation, known as the Victim Rights Act, became effective in January of 1995.²³⁸ The Victim Rights Act provides victims of crime an active role in the criminal justice process.²³⁹ This system of rights applies to all victims regardless of their immigration status in the United States.

Colorado Revised Statute 18-6-800.3 defines domestic violence as

an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. 'Domestic violence' also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.²⁴⁰

The Colorado Revised Statutes further define an intimate relationship as "a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time."²⁴¹ As recently as the 2013 legislative session, the Colorado General Assembly continued in its efforts to further strengthen protections for domestic violence victims, and it recently approved a law that requires abusers who are subject to a qualifying protection order or convicted of a qualifying crime involving domestic violence to surrender their firearms.²⁴²

Over the past twenty years, domestic violence cases prosecuted in Colorado county courts have been increasing dramatically. For the period 2006 to 2008, the number of domestic violence convictions in the county courts alone reached 14,000 misdemeanor domestic violence convictions, and excluding municipal violations, represents 22 percent of the county courts' dockets.²⁴³

237. See H.B. 94-1090, 59th Gen. Assemb., Reg. Sess. (Colo. 1994); Melody K. Fuller & Janet L. Stansberry, *1994 Legislature Strengthens Domestic Violence Protection Orders*, 23 COLO. LAW. 2327, 2327 (1994). In adopting this legislation, Colorado joined a nationwide movement of implementing "mandatory arrest" statutes. Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1670 (internal quotation marks omitted).

238. COLO. REV. STAT. §§ 24-4.1-301 to -304 (2013).

239. *Id.*

240. *Id.* § 18-6-800.3(1).

241. *Id.* § 18-6-800.3(2).

242. S.B. 13-197, 69th Gen. Assemb., Reg. Sess. (Colo. 2013).

243. Colorado Coalition Against Domestic Violence, *Fact Sheet: Domestic Violence*, [http://www.ccadv.org/media/documents/DV%20Fact%20Sheet%202012\(1\).pdf](http://www.ccadv.org/media/documents/DV%20Fact%20Sheet%202012(1).pdf) (last visited Oct. 1, 2013).

B. Pro-Victim Focus

Colorado's domestic violence laws and protections apply to all individuals present in the state, whether legally present or not. Moreover, by comparison to other states, the laws can be described as pro-victim and are more stringent than those of many other states.²⁴⁴ Across the nation, we are seeing some states enacting statutes that require mandatory arrest when there is probable cause to believe that an act of domestic violence has been committed or there is a violation of a protective order. In other states, arrest in the domestic violence context is at the officer's discretion.²⁴⁵ In Colorado, there is a mandatory arrest policy stating an officer shall arrest when there is probable cause to believe that a crime involving domestic violence was committed.²⁴⁶ Thus, by comparison to other states, Colorado's protections are considered pro-arrest/pro-victim laws.²⁴⁷ When an officer encounters a law enforcement scenario in which both parties mutually accuse one another of violence, the officer is not required to arrest both parties, but can do so at his or her discretion.

C. State and Federally Funded Community Service Programs

For the past two decades, the Colorado Department of Human Services, Office of Children, Youth, and Families, Domestic Violence Program (DVP) has been working to ensure that domestic violence issues are addressed adequately in the delivery of human services in the state.²⁴⁸ Their activities include providing resources and funding to domestic violence crisis centers throughout the state, developing effective collaborations with other state and county offices, as well as with non-profit and community groups to support domestic violence victims.²⁴⁹ With a grant budget of about \$3 million annually in revenue from five state-funding

244. COLO. REV. STAT. § 18-6-803.6 (2013); ABA COMM'N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE ARREST POLICIES BY STATE (2011), available at http://search.americanbar.org/search?q=domestic+violence+arrest+policies+by+state&client=default_frontend&proxystylesheet=default_frontend&site=default_collection&output=xml_no_dtd&oe=UTF-8&ie=UTF-8&ud=1 (follow link to first search result entitled *Domestic Violence Arrest Policies by State*).

245. See ABA COMM'N ON DOMESTIC VIOLENCE, *supra* note 244. The ABA Report assembled the domestic violence arrest statutes in force at that time, and concluded that 23 states employ a discretionary arrest policy, where police officers may arrest a person in a domestic violence context. *Id.* In 18 of the states and the District of Columbia, there is a mandatory arrest policy. *Id.* In the remaining nine states, there is often a pro-arrest policy where arrest is considered the "preferred" action, and/or certain conditions are delineated in which arrest is considered mandatory, such as where there has been an infliction of physical injury, threatened use of a deadly weapon, and/or a violation of a restraining order. *Id.*

246. COLO. REV. STAT. § 18-6-803.6 (2013).

247. See ABA COMM'N ON DOMESTIC VIOLENCE, *supra* note 244.

248. DOMESTIC VIOLENCE PROGRAM: OFFICE OF CHILDREN, YOUTH, & FAMILIES, COLO. DEP'T OF HUMAN SERVS., 2012 ANNUAL REPORT 1 (2012), available at <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251885459376&ssbinary=true>.

249. *Id.* at 1.

sources, DVP provides leadership, guidance, and awareness within government agencies and oversees grant-funded programs.²⁵⁰

DVP issues an annual report in which it provides comprehensive information on the state's efforts to support programs addressing domestic violence.²⁵¹ This report reflects that the state provides support for a wide variety of programs, including advocacy support to victims with immigration issues, community education, and assistance to law enforcement.²⁵² In 2012, DVP administered funds to forty-four domestic violence crises centers throughout the state, which provide crises intervention, advocacy, and other support services for victims, as well as provide education aimed at prevention in local communities. The crises centers addressed more than 63,000 calls, and served more than 26,000 victims and their dependents.²⁵³ Many of the crisis centers provide legal advocacy, and some do so specifically for immigration.²⁵⁴

In addition, OVW funds a variety of programs in Colorado on a bi-yearly basis. In 2012, OVW granted state agencies and non-profits serving the Colorado community \$6,437,596.²⁵⁵ Historically, the largest grant awarded is to the Colorado Division of Criminal Justice (CDCJ) in Denver as a Services, Training, Officers, and Prosecutors Violence Against Women (STOP) grant.²⁵⁶ In 2012, CDCJ was awarded \$2,228,188 to be administered and distributed through the CDCJ Crime Victim Services Advisory Board.²⁵⁷ According to the CDCJ's 2010 annual report concerning the expenditures of STOP grant funds, white females between the ages of twenty-five and fifty-nine were most likely to comprise the 7,662 victims served during 2010.²⁵⁸ By far, the second largest ethnicity

250. *Id.* at 22.

251. *Id.*

252. *See id.*

253. *Id.* at 9.

254. *Legal Advocacy Services*, COLO. COALITION AGAINST DOMESTIC VIOLENCE, <http://ccadv.org/wp-content/uploads/2013/11/DV-Fact-Sheet-2012.pdf> (last visited Oct. 1, 2013).

255. Office on Violence Against Women, *FY 2012 OVW Grant Awards by State: Colorado*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/grant2012.htm#co> (last updated Nov. 2013) [hereinafter *FY 2012 OVW Grant Awards by State: Colorado*]. In 2012, OVW grants to Colorado state and local governments, as well as Colorado organizations, represented 1.6 percent of the Office on Violence Against Women grant awards for that year. *See id.* The following table provides data on OVW Grant Awards to support Colorado programs from 2006 through 2011:

2006	\$4,611,277.00
2007	\$7,544,478.00
2008	\$5,257,634.00
2009	\$12,063,133.00
2010	\$6,366,972.00
2011	\$7,698,048.00

Office on Violence Against Women, *Awards: Grant Awards by State*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/grantactivities.htm> (last updated Feb. 2014) [hereinafter *OVW, Grant Awards by State*].

256. *See OVW, Grant Awards by State*, *supra* note 255.

257. *FY 2012 OVW Grant Awards by State: Colorado*, *supra* note 255.

258. VIOLENCE AGAINST WOMEN MEASURING EFFECTIVENESS INITIATIVE, COLO. DIV. OF CRIMINAL JUSTICE, STOP VIOLENCE AGAINST WOMEN FORMULA GRANTS 6 (2011) [hereinafter

served were Latinos at 29.9%.²⁵⁹ In total, 428 individuals were classified as immigrants, refugees, or asylum seekers, representing 5% of the individuals receiving services.²⁶⁰ The statistics reported in 2010 did not differ markedly from those presented above for 2011, except that fewer immigrants, refugees, or asylum seekers received services.²⁶¹ CDCJ reported that 260 individuals, representing 3.4% of the victims served, were classified as immigrants, refugees, or asylum seekers.²⁶²

The remainder of the amount awarded by OVW in 2012 was to eleven Colorado agencies and organizations in amounts ranging from about \$80,000, awarded to the Colorado Coalition on Domestic Violence, to about \$837,000, awarded to the Denver Division of Criminal Justice to encourage arrest policies and enforcement of protection orders program.²⁶³ These programs were classified as the following types of programs: state coalitions, sexual assault services, transitional housing, arrest, safe haven, technical assistance, and rural.²⁶⁴

An important development in Colorado was the creation of a Domestic Violence Benchbook for use by members of the legal community who handle cases involving domestic violence.²⁶⁵ Developed in concert with judges, lawyers, and advocates as well as the Family Violence Program of the Colorado Bar Association, the Benchbook devotes an entire chapter to discussing immigration options for domestic violence victims.²⁶⁶

D. Unauthorized Migrant Victims in Colorado

In the United States, studies have shown that foreign-born individuals present in the United States suffer a higher incidence of domestic violence.²⁶⁷ Moreover, individuals from specific nationalities are particularly affected. Among these, women of Hispanic origin are reputed to suffer some of the greatest levels of domestic violence, with 48% reporting that their partner's violence against them had increased after emigrating to the United States.²⁶⁸ These statistics are concerning for the state of

STOP VIOLENCE AGAINST WOMEN GRANTS], available at http://dcj.state.co.us/ovp/Documents/VAWA/CO_Annual_report_summary_stateprofile_2011.pdf.

259. *Id.*

260. *Id.*

261. STOP VIOLENCE AGAINST WOMEN GRANTS, *supra* note 258, at 6.

262. *Id.*

263. *FY 2012 OVW Grant Awards by State: Colorado*, *supra* note 255.

264. *Id.*

265. *Colorado Domestic Violence Benchbook*, COLO. BAR ASS'N, http://www.cobar.org/repository/DV%20Benchbook%20Final%2010_2011.pdf (last visited May 11, 2014).

266. *Id.* at ch. 12.

267. See, e.g., N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, FEMICIDE IN NEW YORK CITY: 1995–2002, at 5 (2004), available at http://www.nyc.gov/html/doh/downloads/pdf/ip/femicide1995-2002_report.pdf (last visited Oct. 1, 2013).

268. Dutton et al., *supra* note 61, at 250. Moreover, married immigrant women experience higher levels of physical and sexual abuse than unmarried immigrant women, 59.5 percent compared

Colorado, where the foreign-born population residing in the state between 2008 and 2012 reached 9.7 percent, and in 2012, 21 percent of the population was Hispanic.²⁶⁹ Given the high percentage of foreign-born Latinas in Colorado, the number of unauthorized migrant domestic violence victims could be statistically significant.²⁷⁰

Other states have observed this tendency. In a 2000 study, 48% of Latinas reported that their partner's violence against them had increased since they immigrated to the United States.²⁷¹ A study focused on unauthorized migrants in New York City found that 51% of intimate partner homicide victims were foreign-born.²⁷² A similar national study demonstrated that married unauthorized migrant women experienced higher levels of physical and sexual abuse compared to unmarried unauthorized migrant women at 59.5% compared to 49.8%, respectively.²⁷³

Yet, even with a variety of important rights secured through the Victim Rights Act, in the context of unauthorized migrants, a critical aspect in the decision to come forward to seek help from law enforcement has been reported to be whether, by doing so, a victim will be referred to ICE for prior immigration violations.²⁷⁴

Colorado's recent history on ICE referrals in the context of domestic violence victims has been varied. In 2006, the Colorado State Legislature passed Senate Bill 90 (SB 90) requiring police officers to report suspected undocumented foreigners who are arrested on a criminal offense to ICE.²⁷⁵ Later, Colorado entered into a Memorandum of Agreement

to 49.8 percent, respectively. *Id.* at 259; see also *The Facts on Immigrant Women and Domestic Violence*, FUTURES WITHOUT VIOLENCE, http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf (last visited May 12, 2014).

269. See CONG. BUDGET OFFICE, A DESCRIPTION OF THE IMMIGRANT POPULATION: AN UPDATE 16-17 (2011), available at <http://quickfacts.census.gov/qfd/states/08000.html>. Mexican citizens comprise 62 percent of immigrants present in the United States illegally, and another 24 percent are from other Latin American countries. *Id.* The population is predominantly of working age with 71 percent estimated to be between the ages of 25 and 54. *Id.* The DHS reports that in 2009, about 4 percent of the total U.S. population of 307 million consisted of unauthorized migrants. *Id.* Three quarters of them reside in 10 states, mostly on the East and West Coasts of the United States. *Id.*

270. There are about five million people living in Colorado, of which 9.9 percent are estimated to be foreign-born individuals. *Id.* at 11.

271. Dutton et al., *supra* note 61, at 250.

272. N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, *supra* note 267, at 5 tbl.3.

273. Dutton et al., *supra* note 61, at 259; see also *The Facts on Immigrant Women and Domestic Violence*, *supra* note 268.

274. See NATALIA LEE ET AL., NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, AM. UNIV. WASH. COLL. OF LAW, NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS 39 (2013), available at <http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf>; MEMORANDUM OF AGREEMENT BETWEEN U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, AND COLORADO DEPARTMENT OF PUBLIC SAFETY 3 (2011) [hereinafter MEMORANDUM OF AGREEMENT], available at http://www.ice.gov/doclib/foia/secure_communities-moa/colorado-sc-moa.pdf.

275. S.B. 06-090, 65th Gen. Assemb., Reg. Sess. (Colo. 2006).

(the ICE–Colorado MOA) with ICE to have state and local law enforcement officers voluntarily check the fingerprints of every person booked by law enforcement officers against a DHS database for immigration violations.²⁷⁶ Critics advanced concerns about the impact that it would have on domestic violence victims.²⁷⁷

In August 2011, the concerns about the ICE–Colorado MOA was rendered moot because ICE terminated its MOAs with all states, including Colorado, stating that the MOAs were not necessary and that ICE would continue to expand the program unilaterally.²⁷⁸ DHS clarified that all jurisdictions would be required to participate in Secure Communities by 2013.²⁷⁹ In the midst of mounting concerns, a series of public officials and community stakeholders charged that it would severely impact the willingness of domestic violence victims to come forward and seek law enforcement help.²⁸⁰ The Homeland Security Advisory Council (HSAC) composed of leaders from state and local government, first responder agencies, the private sector, and academia, provides advice and recommendations to the Secretary on matters related to homeland security.²⁸¹ The HSAC convened a task force to address concerns about Secure Communities.²⁸² Created as a subcommittee of the HSAC, the so-called Task Force on Secure Communities issued a report of its findings and recommendations in September 2011 (Task Force Findings and Recommendations Report).²⁸³ The Task Force Findings and Recommendations Report identified five areas of concern, specifically identifying that the Secure Communities program had had unintended consequences, including: (1) Disruption of relations between law enforcement and the communities they serve; (2) The possible increase in the levels of crime rising out of victim's fears about the consequences of reporting; and (3)

276. MEMORANDUM OF AGREEMENT, *supra* note 274, at 2.

277. See Kirk Siegler, *Immigrant Groups Decry Governor, ICE Agreement*, NET RADIO NEB., Jan. 5, 2011, <http://www.publicbroadcasting.net/netradio/news.newsmain/article/0/0/1744833/Nebraska.News/Colorado.Immigrant.Groups.Decry.Governor.ICE.Agreement>.

278. U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, ICE RESPONSE TO THE TASK FORCE ON SECURE COMMUNITIES FINDINGS AND RECOMMENDATIONS 3–4 (2012) [hereinafter ICE RESPONSE TO TASK FORCE REPORT], available at <http://www.ice.gov/doclib/secure-communities/pdf/hsac-sc-taskforce-report.pdf>; ICE, *Secure Communities: Get the Facts*, U.S. DEP'T OF HOMELAND SECURITY, http://www.ice.gov/secure_communities/get-the-facts.htm (last visited May 12, 2014).

279. RIAH RAMLOGAN, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, MEMORANDUM: SECURE COMMUNITIES – MANDATORY IN 2013, at 1 (2010), available at <http://images.politico.com/global/2012/01/icefoiaoptoutdocs.pdf>.

280. COLO. IMMIGRANT RIGHTS COAL., SECURE COMMUNITIES – POSITIONS BY ELECTED OFFICIALS, LAW ENFORCEMENT, PROFESSIONAL ASSOCIATIONS & COMMUNITY ORGANIZATIONS (2011), available at [http://www.leg.state.co.us/Clics/Clics2011A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/c174e95285f39e52872578370070a27e/\\$FILE/0214HseLocalAttachG.pdf](http://www.leg.state.co.us/Clics/Clics2011A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/c174e95285f39e52872578370070a27e/$FILE/0214HseLocalAttachG.pdf).

281. HOMELAND SEC. ADVISORY COUNCIL, TASK FORCE ON SECURE COMMUNITIES: FINDINGS AND RECOMMENDATIONS 4 (2011), available at <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf>.

282. *Id.*

283. *Id.*

The possible reduction in public safety.²⁸⁴ Furthermore, the Task Force Findings and Recommendations Report stated that “[e]very effort must be made to ensure that crime victims and witnesses, *particularly in domestic violence cases*, are protected against unwarranted immigration enforcement actions, as outlined in Director Morton’s June 17, 2011 memo.”²⁸⁵ The Task Force Findings and Recommendations Report further recommended that ICE “[e]nsure that protections exist for crime victims and witnesses, and victims of domestic violence. Much of the fear within immigrant communities stems from concerns that immigrants are putting themselves or their family members in danger of deportation if they contact authorities to report crimes as victims or witnesses.”²⁸⁶ This national report further hailed ICE’s work with Colorado to monitor the consequences of the Secure Communities policies around the state as a national prototype for determining if Secure Communities were successfully targeting law enforcement’s high-priority criminals.²⁸⁷

In April 2012, ICE issued its response in the so-called ICE Response to the Task Force on Secure Communities Findings and Recommendations report.²⁸⁸ In it, ICE reiterated that it “is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime, absent special circumstances,” and it “direct[ed] all ICE officers, special agents, and attorneys to exercise appropriate discretion to ensure that victims of and witnesses to crimes and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties are not penalized by removal.”²⁸⁹ ICE also reported that it was developing training tools to help law enforcement officers better identify vulnerable victims, better assist prosecutors in handling victim-related cases, and offer better protection to victims in those cases.²⁹⁰ Finally, ICE declined to support further implementation of federal–state joint monitoring of enforcement actions related to Secure Communities, arguing that “[i]mmigration enforcement is a federal law enforcement function, and Secure Communities stems from a congressionally mandated information sharing partnership between two federal agencies,” and that it “would be unduly burdensome.”²⁹¹

With this period of upheaval as a backdrop, in its Spring 2013 legislative session, the Colorado State Legislature passed the Community and Law Enforcement Trust Act, effectively repealing SB-90 which had imposed a state-level mandatory reporting requirement regarding suspected

284. *Id.* at 24.

285. *Id.* at 26 (emphasis added).

286. *Id.* at 24.

287. *Id.* at 21; Nancy Lofholm, *Colorado’s Pact with ICE Becoming National Template*, DENV. POST, Aug. 13, 2011, http://www.denverpost.com/news/ci_18673491.

288. ICE RESPONSE TO TASK FORCE REPORT, *supra* note 278.

289. *Id.* at 15.

290. *Id.* at 15–16.

291. *Id.* at 13.

unauthorized migrants.²⁹² However, the federal policies discussed above remain in place, and some have argued that these policies do not go far enough in protecting unauthorized migrant domestic violence victims.²⁹³

IV. COLORADO'S ROAD FORWARD

Unauthorized migrant domestic violence victims have been identified internationally, federally, and at the Colorado state level, as a particularly vulnerable victim population. Their language and cultural barriers are compounded by fear associated with their precarious immigration status, which can hinder their desire to seek support. The federal government and its Colorado counterpart have a strong record of action over the past twenty years, in trying to improve and refine domestic violence laws and to provide support for this group.

The U.N. Model Framework recommends that unauthorized migrant victims of domestic violence should be able to self-petition for immigration relief, based on the domestic violence itself, and receive temporary legal status based on the support they provide to law enforcement in prosecuting the criminal conduct.²⁹⁴ Not only is this relief available, but also stakeholders in the Colorado legal community have detailed and up-to-date information about these types of relief, as they are included within the Colorado Domestic Violence Benchbook. In addition, Colorado has sophisticated systems in place to provide advocacy support for needy victims.

Colorado's domestic violence law enforcement systems are pro-arrest/pro-victim. In substance and in practice, the model recognizes the seriousness of domestic violence as an offense, as is recommended by the U.N. Model Framework. Moreover, the state has allocated substantial funds to train police, prosecutors, judges, and supported collaborations with non-profit groups on how best to support survivors of domestic violence.

However, there are a number of factors endemic to the system that may be impacting the extent to which unauthorized migrants are seeking help. First, financial support for programs that assist this population has diminished. This year, Americans witnessed a political battle in the U.S. Congress about what direction the United States should take in the fight against domestic violence.²⁹⁵ With VAWA funding up for renewal, Congressional leaders had significant concerns about how much funding to

292. H.B. 13-1258, 69th Gen. Assemb., Reg. Sess. (Colo. 2013).

293. See *Another Missed Opportunity: How the Long-Awaited S-Comm "Reforms" Are Designed to Fail*, NAT'L IMMIGR. LAW CENTER (May 2012), <http://www.nilc.org/scommresponse.html>.

294. See U.N. DEP'T OF ECON. & SOC. AFFAIRS, *supra* note 73, at 2-3.

295. Norma Espinosa, *The Fight to Reauthorize the Violence Against Women Act: Protecting Immigrant Women from Domestic Abuse*, CENTER FOR AM. PROGRESS (May 3, 2012), <http://www.americanprogress.org/issues/women/news/2012/05/03/11524/the-fight-to-reauthorize-the-violence-against-women-act/>.

allocate for support prevention and protection policies, as well as whether to support domestic violence protections in the same-sex relationship context and on tribal lands.²⁹⁶ While they ultimately did reach an agreement, critics point out that funding levels represent a 17% decrease from 2005 funding levels, and that it took more than two years for Congress to ultimately agree on a compromise during which there was no funding for these programs.²⁹⁷

Second, there is wide degree of uncertainty that is associated with immigration referrals by state law enforcement as well as in the challenge of meeting the high burdens associated with applying for federal immigration relief. Given the high stakes surrounding these decisions that victims must navigate, reluctance to seek help seems inevitable.

U.S. Census data reflects that 9.7% of the Colorado population is foreign born.²⁹⁸ Of that group, the vast majority are Hispanic, who seek help less often.²⁹⁹ Given the population estimates and research about the prevalence of domestic violence in the Hispanic community, it is possible that the number of potentially affected individuals is significantly greater than what has been addressed through existing support systems. In the coming years, we will have more data from which to assess whether the current system is meeting the needs of an increasing number of unauthorized migrants than it has been able to support over the past two decades.

296. See, e.g., 159 CONG. REC. E217-03 (Feb. 28, 2013) (statement of Rep. Sheila Jackson Lee in support of the Violence Against Women Reauthorization Act of 2013).

297. See Senate Judiciary Comm. Majority Staff, *Why the Violence Against Women Act Matters*, <http://www.leahy.senate.gov/imo/media/doc/042612VAWA-WhyVAWAMatters-OnePager.pdf> (last visited May 12, 2014).

298. MIGRATION POL'Y INST., *supra* note 17.

299. Dutton et al., *supra* note 61.

