



PROPOSED AMENDMENT

Expanding the Definition of Aggravated Felony to Include All Domestic Violence Convictions

What Does This Proposal Do?

· **The Amendment Makes all Domestic Violence Convictions Aggravated Felonies**

The amendment makes even misdemeanor convictions for domestic violence-related offenses, including those with no actual violence involved, “aggravated felonies.” An aggravated felony means deportation with no possible waiver and is a bar to showing good moral character for VAWA self-petitioners, also with no waiver. There are no exceptions to the consequences of aggravated felonies, even in cases where the individual convicted was not the primary aggressor and acted in self-defense, or is a long-term legal resident whose spouse or children do not want him/her deported.

How Does This Proposal Affect Victims?

· **This Amendment Will Result in Victims Being Deported**

Unfortunately, it is not uncommon for immigrant victims of domestic violence to be arrested in a dual arrest or because of language barriers that prevent them from being able to communicate with law enforcement, resulting in the abuser obtaining the arrest of an immigrant victim who had tried to defend herself during a domestic violence incident. The amendment will prevent immigrant victims from obtaining VAWA self-petitions (when married to an abusive spouse who is a U.S. Citizen or Legal Permanent Resident who failed to assist her in legalizing her status) because there is no exception or waiver for the aggravated felony bar to good moral character. It will also likely lead to deportation of wrongly accused victims who have been convicted because they may have pled to domestic violence charges due to language barriers, legal counsel that was unaware of the consequences of pleading, or bias against immigrants and women of color.

· **Why Does Current Law Make This Proposal Unnecessary?**

Currently, more serious domestic violence convictions are **already** considered aggravated felonies, if there is actual violence and there is a sentence of a year or more. Additionally, many domestic violence convictions can already be the basis for deportation. The difference between current law and the proposal is that the proposal will eliminate any judicial discretion, including for victims of violence who have convictions, regardless of context or circumstances. For instance, INA section 237(a)(2)(E)(i) provides that domestic violence, stalking, child abuse, child neglect, or child abandonment convictions make an individual removable (deportable), *unless*

the individual can show s/he is not the primary perpetrator of violence in the relationship. Making all domestic violence offenses an aggravated felony for deportation purposes would essentially erase access to this important exception that Congress had put in place to help immigrant victims.

· **This Amendment Will Discourage Victims from Seeking Help from Law Enforcement**

This amendment creates a chilling effect on seeking help from the legal system by discouraging many victims from contacting law enforcement for help with domestic violence if they know the abuser will be deported with no possible waiver (including individuals with Lawful Permanent Residency status), or if they themselves risk arrest and deportation. This decrease in crime reporting will lead to communities that are less safe and in which victims are more isolated.

· **Victims and their Children will Lose Access to Financial Support**

The amendment punishes US citizen spouses of legal immigrants or their children in many cases. This amendment will mean loss of child support and spousal support, increasing the burden on public assistance and human service programs.

This Q & A was compiled by the Immigration Committee of the National Task Force to End Sexual and Domestic Violence, which includes members that are leading national experts on VAWA protections for immigrant survivors such as: ASISTA Immigration Assistance, Casa de Esperanza: National Latin@ Network for Healthy Families and Communities, National Immigrant Justice Center, National Immigration Project of the National Lawyers Guild, Tahirih Justice Center and the Washington State Coalition Against Domestic Violence.