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## **PROPOSED AMENDMENT**

### **Elevating a third drunk driving conviction to the status of an aggravated felony for the purposes of immigration removal**

#### **· What role does VAWA play in protecting Immigrant Crime Victims?**

Since its inception, the Violence Against Women Act (VAWA) has incorporated provisions to protect battered immigrants whose noncitizen status can make them particularly vulnerable to crimes of domestic violence, sexual assault, dating violence, and stalking and can be used as a tool of abuse to keep them in the shadows and too afraid to seek help or assist in the prosecution of crimes

Any proposals to change the Immigration and Nationality Act (INA) that are irrelevant to VAWA's focus on helping victims of domestic violence, sexual assault, dating violence, stalking and human trafficking should be kept out of VAWA. No such amendment to VAWA has ever been included in previous reauthorizations of VAWA in 2000 and 2005. Elevating a third drunk driving conviction to the status of an aggravated felony for the purposes of immigration removal, does not belong in VAWA and would also set a harmful precedence for future VAWA reauthorizations.

#### **· What Does This Proposal Do?**

The amendment labels a third drunk driving conviction carrying a one-year sentence as an aggravated felony for purposes of immigration removal, even if there is no damage to persons or property and regardless of whether the conviction is classified as a misdemeanor or felony under state or federal laws. It may apply retroactively.

#### **· How Does This Proposal Harm Immigrant Survivors?**

#### **Aggravated Felonies under Immigration Law Do Not Have any Waivers**

Under current law, an aggravated felony under immigration law prevents a showing of good moral character and makes an individual removable (deportable) from the United States, with no waiver possible, even if the individual is a long-term permanent resident, has extensive U.S. citizen family members, or contributes greatly to the community.

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*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.*

### **The Provision Harms and Separates Immigrant Victims' Families**

The amendment sweeps in lawful permanent residents (those with “green cards”) who have been long-time members of the community, requiring their mandatory detention and permanent deportation. The change employs a “one-size-fits-all” approach, treating all drunk driving violations the same even if there is no damage to persons or property (and in some states a person can be convicted of DUI if the vehicle is not being driven, as when someone passes out in a parked car). These harsh consequences will also be based in part on drunk driving convictions that are decades old, ignoring otherwise stable and productive lives and equities in the United States and imposing what is in effect a life sentence of separation from family.

### **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 Amendment Will Result in Victims Being Deported**

This amendment allows absolutely no discretion from deportation, even for immigrant survivors of domestic violence who pled to DUIs many years ago. Aggravated felonies fail to recognize that abused immigrant women often face prejudice in our court system based on race, lack of status, lack of English-language ability, and lack of access to adequate legal representation. They are often urged to plead rather than go to trial when wrongfully charged. This is because they and their lawyers are unaware of the immigration consequences of pleas and because immigrants are more likely to face bias at trial and suffer longer sentences.

### **Why Is It Inappropriate To Consider This Proposal in VAWA?**

This provision reverses settled Supreme Court case law on the scope of crimes of violence, which the court unanimously held simple drunk driving not to be.

There are many objections to adding new aggravated felonies to the Immigration and Nationality Act. Objections should have the opportunity to be fully briefed and discussed in a larger context rather than adding them to a statute whose sole focus is to enhance services and policies related to domestic violence, sexual assault, dating violence, stalking and trafficking, including the harm to immigrant victims of these crimes.

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VAWA is not the place to debate the merits of such a provision. Proposed legislation to change the INA that is irrelevant to VAWA's focus on helping survivors of domestic violence, sexual assault, dating violence, stalking and human trafficking should be kept out of VAWA.

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