

# Ensuring Fairness and Justice for Noncitizen Survivors of Domestic Violence

BY GAIL PENDLETON

## A B S T R A C T

**M**any immigrants come to the United States because of the ideals embodied in our Constitution, especially the promises of freedom and impartial justice. Unfortunately, noncitizens often encounter special difficulties in accessing our civil court system and in obtaining justice from that system. This article attempts to explain why noncitizens may be reluctant to access and fully utilize their rights in the civil justice system, how the system may unwittingly discourage full participation, and what courts can do to ensure that noncitizens, especially noncitizen survivors of domestic violence and sexual assault, receive fair hearings and just results.

Many judges attempt to avoid allowing racial or gender bias from affecting deliberations in their courts. This article suggests that judges should consider immigration status (or lack thereof) in the same light. Like race and gender, immigration status should not affect whether an individual receives due process or the full panoply of remedies available from the court. One party may attempt to use immigration status as a weapon against another party in court. Courts should actively avoid

immigrant women who are abused face multiple barriers to seeking legal protection from the abuse. In many cases, immigrant women are unaware of the protections afforded noncitizens by the Violence Against Women Act (VAWA) and subsequent immigration laws. They may assume that noncitizens cannot access legal remedies or may fear deportation from being exposed as a noncitizen. These and other barriers such as language access and misinformation about U.S. laws about violence further shift the burden to judges, attorneys, and advocates to ensure that immigrant women are not underserved. The courts must also be aware of the consequences for noncitizens who perpetrate domestic violence. This article will provide a comprehensive overview of issues facing the courts when noncitizens are petitioners, respondents, or both in domestic violence cases, including a discussion of findings that can be made for immigrant survivors of domestic violence.

being used by abusers in this way, and should view such attempts with prejudice against the would-be manipulator.

## A. CONGRESSIONAL MANDATE

Congress has repeatedly acknowledged the particular vulnerability of noncitizen survivors of domestic violence and has taken steps to help them achieve security and safety. When

Congress passed the Violence Against Women Act (VAWA) in 1994,<sup>1</sup> it was well aware of the special problems facing battered women and children in our society.<sup>2</sup> It noted that domestic violence is “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser.”<sup>3</sup> In addition, “many immigrant women live trapped and isolated in violent homes afraid to turn to others for help; they fear continued abuse if they stay, and deportation if they attempt to leave.”<sup>4</sup> Congress created special routes to immigration status “to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.”<sup>5</sup>

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These measures were part of a larger scheme. Congress enacted VAWA “to respond both to the underlying attitude that [domestic] violence is somehow less serious than other crimes and to the resulting failure of our criminal justice system to address such violence.”<sup>6</sup> It intended to correct “not only the violent effects of the problem, but the subtle prejudices that lurk behind it.”<sup>7</sup> VAWA’s overarching goal was to eliminate existing laws and law enforcement practices that condoned abuse or protected abusers and, instead, to commit the legal system to protecting victims of abuse while identifying and punishing the perpetrators of domestic violence.<sup>8</sup> By including special provisions aiding noncitizens, Congress made clear that noncitizens are not exempt from this mandate. As described in Section C of this article, the civil court system in particular is often used by abusers as a weapon against their noncitizen victims. Civil courts must, therefore, be especially vigilant when noncitizens, or those who may be noncitizens, appear before them.

In 1994, Congress created two routes to immigration status for those who suffer domestic violence: self-petitioning and suspension of deportation (see Section D for more details on immigration options). In 1996, while erecting new barriers for most noncitizens, Congress included exceptions for VAWA applicants by allowing them access to public benefits,<sup>9</sup> and mandating confidentiality and presumptions against using information from abusers.<sup>10</sup> In the Battered Immigrant Women Protection Act, part of the Violence Against Women Act of 2000 (“VAWA 2000”),<sup>11</sup> Congress created new immigration provisions to aid battered immigrants by repairing residual immigration law obstacles impeding immigrants seeking to escape abusive relationships.<sup>12</sup> It expanded the categories of immigrants eligible for VAWA protection, improved battered immigrant access to public benefits, and created two new visas for noncitizen victims of crimes (see Section D for an expansion of U visas and T visas). VAWA 2000 moves forward Congress’s express and unequivocal intent to “ensure that domestic abusers with immigrant victims are brought to justice and that the battered immigrants Congress sought to help in the original Act are able to escape the abuse.”<sup>13</sup>

There are many ways that civil courts can further the national commitment mandated by Congress. But first, they must understand why noncitizen survivors may perceive their choices differently from citizens and how that inhibits their full participation in the civil court system.

## **B. REAL AND APPARENT OBSTACLES TO FULL PARTICIPATION<sup>14</sup>**

Noncitizen survivors face a number of obstacles when they try to access the legal system. Many of the obstacles noted below are not “problems” with the noncitizen, but problems embedded in systems that are supposed to assist everyone. Fortunately, the courts can help address all of these obstacles (see Section D).<sup>15</sup>

### **Lack of Knowledge and Misinformation about the Legal System**

Both citizen and noncitizen abusers routinely misinform their victims about their rights in the United States. For instance, they often claim that a noncitizen cannot obtain child custody from a U.S. court and that attempting to do so will result in the noncitizen’s deportation, or the child’s deportation if the child is undocumented. Courts who use a noncitizen’s immigration status against her when determining child custody serve as effective weapons in an abuser’s arsenal and legitimize fears that the civil system is not a source of justice for immigrants.

Many noncitizens also come from countries where women cannot receive justice. They may lack domestic violence laws, or, if laws do exist, they may be unenforced. Additionally, the proof requirements for enforcement may be absurdly onerous. Foreign courts may require oral testimony or prohibit testimony from women. They may provide justice only to those who pay for it. Social mores about “a woman’s place” also may discourage women from accessing civil systems in their homeland (or in the United States).

### **Fear of the Police and Judicial System**

Similar dynamics as described above apply to a noncitizen victim’s fear of the police and the judicial system. Abusers tell victims that the police will not help them if they are undocumented, or that calling the police will result in their deportation. Noncitizens may come from countries where police are instruments of repression, respond only to bribes, or believe women should be subordinate to men. Unfortunately, some police officers in this country do discriminate against noncitizens, especially if they are people of color or do not speak English well. Reports of police helping to enforce the immigration laws by arresting, detaining, and handing noncitizens over to Department of

Homeland Security (DHS) personnel undermine or eliminate any trust immigrant communities might have had in the police. Courts that allow or encourage DHS personnel to attend hearings (and often to arrest and detain noncitizens) ensure that immigrants will not view them as a source of fairness or justice.

### **Fear of Deportation or Removal**

Fear of deportation (now called “removal” by Congress and DHS) is paramount for all immigrants. Although some immigrants may travel safely back and forth between their home country and the United States, victims of domestic violence are rarely in this situation. They often will lose access to their children, be ostracized and shunned in their home country, and otherwise suffer if they are returned to their home country. If the children remain here, they often remain in the hands of the abusers.

Abusers play on this fear in many ways. They routinely threaten to report their victims to DHS. In many situations, they actually do control their victims’ access to immigration status, and their victims’ status may be revoked by DHS if reported. Abusers very typically call DHS when a victim starts to challenge their domination, alleging that she married him only to gain immigration status. Fortunately, with the new routes to status, noncitizens in this situation may be able to gain status without the help, and despite the interference, of the abuser.

Any systems that actually do turn noncitizens over to DHS legitimize this fear and erect an insurmountable barrier to serving immigrant communities. Unfortunately, DHS may attempt to remove noncitizen victims reported to them by abusers, even though the victims have pending applications for immigration status based on domestic violence.<sup>16</sup>

### **Fear the Abuser Will Be Removed**

Many noncitizens who suffer abuse wish to achieve safety for themselves and their children, but they do not wish their abusers to be removed. Courts should not dismiss these concerns; they are quite legitimate. Abusers often take their children with them when they leave the United States; once this happens it is unlikely the noncitizen parent will ever see them again. If the abuser returns to the United States, he may be even more dangerous than when he left.

The abuser may provide vital financial support to

the family, especially the children, which will end with his removal. Many immigrants, including abusers, send money back to their family in the home country; this flow will end with the abuser’s removal and will cause hardship to the communities and people the victim cares about. Her family and community in the homeland may shun and blame her for causing hardship to them and to the abuser and for leaving her husband.

Many noncitizens who suffer domestic violence have an immigration status that depends on the abuser’s presence in the United States. Although Congress has created special routes to status for many noncitizens, not all will qualify, they may not be aware they qualify, or the process for qualifying is onerous (see Section D for more on the routes to status). When DHS removes an abuser, it rarely provides information to the victim about her eligibility to apply for status.

### **Language and Gender Barriers**

Language barriers are especially problematic in the civil court system, which rarely requires competent interpretation and often lacks multi-lingual personnel. Victims are discouraged from accessing the court when they cannot communicate with court personnel. Courts may allow family members to serve as interpreters, or enlist immigrant community members who may have a bias against, or paternalistic approach to, the victim. Political, cultural, and gender differences may inhibit a victim from speaking openly in court, and many interpreters may fail to provide phrase-by-phrase interpretation. In addition, many immigrant women may be reluctant to discuss domestic violence in front of men, especially men from their community.

### **Cultural and Religious Barriers**

In some U.S. communities, cultural or religious leaders may pressure victims to submit to domestic violence. Challenging male domination or “airing dirty laundry” will be punished by isolation and social disapproval. Divorce may violate social mores and bring shame to the victim’s family or community. Even when they are ready to leave their abusers, many noncitizens find that available shelters and domestic violence resources are culturally and linguistically inappropriate. Noncitizen victims may not even realize what a “shelter” is; if they are sent there without explanation, they may believe they are in a detention center.

### **Economic Barriers**

Economic control is a common form of abuse in many cultures. Its consequences are exacerbated for noncitizen victims because they cannot legally obtain work authorization without applying for immigration status. If they can work, they often cannot find child care. If they are eligible for public benefits, they often cannot obtain them because public benefits administrators are ignorant about laws authorizing noncitizens to receive benefits or are antagonistic to noncitizens generally.

Some of these obstacles are common to virtually all domestic violence victims encountered in family court; some are permutations of common problems, or severe versions of what courts regularly see. However, some are specific to immigrant women who may be suffering simultaneously from race, gender, cultural, and language barriers, and must overcome fear of removal to access the system. Thus, family courts may see only the few immigrant women whose desperation has overwhelmed their fears. Fortunately, there are steps the courts can take to increase real and perceived access to the courts and to assist the individuals who have mustered the courage to appear before them.

### **C. WHAT THE COURTS CAN DO TO ENHANCE ACCESS**

Although some of these suggestions may seem obvious, readers are encouraged to take these suggestions beyond their individual courts to the system as a whole, or at least to share them with other judges who seek to increase trust with and access to immigrant communities.

### **Do Not Involve or Function as DHS**

The most obvious pitfall to avoid is to not allow DHS personnel to attend hearings or to wait outside to arrest and detain noncitizens in the court. This pitfall most likely will occur because an abusive spouse has called in DHS, hoping to intimidate the victim from attending the hearing or asserting her rights. If DHS detains her, the abuser will have succeeded.

Being in the United States without documents is not a crime; it is not a violation of a criminal provision of the immigration laws, but of the civil provisions. Enforcement of the civil provisions of the immigration law is vested with federal enforcement authorities. Despite rumblings

from the Department of Justice that local law enforcement may have inherent authority to enforce both the criminal and civil provisions, current case law and policy concerns dictate that enforcement of the civil provisions remains with the arm of government empowered by the Constitution to govern our borders.<sup>17</sup>

Policy reasons for keeping the enforcement of civil immigration laws separate from local police and judicial functions include the fact that immigrants will not call the police or access the court system if they hear they will be exposed to DHS by doing so. In addition, Congress, the creator of our immigration laws, has mandated that noncitizen victims of violence be encouraged to access the system, achieve safety, and obtain immigration status. Other systems should not undermine this mandate.

An issue paper on domestic violence prepared for the National Council of Juvenile and Family Court Judges provides an apt summary:

Local courts and law enforcement officers have no authority to enforce the non-criminal provisions of the Immigration and Nationality Act. There is also no requirement that a victim or witness state her place of birth or immigration status when filing a complaint or a police report. Under federal law, the police have no duty to inquire into the immigration status of a victim, witness, or arrestee (*Gonzalez v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983)). Despite this fact, some judges and law enforcement officers do inquire into immigration status in domestic violence cases. Such inquiries during police investigations or at trial significantly erode community confidence in the judiciary and cooperation with the police. For victims of family violence, this practice can be lethal. It can drive a victim who has finally turned to the courts or the police for protection back into an increasingly violent home.<sup>18</sup>

### **Avoid Red Herrings**

Parties often raise immigration status, or the lack of status, as a factor civil courts should consider in making its decisions. Courts should view such attempts as red flags for underlying domestic violence and avoid being sidetracked from normal evidentiary examination. When

a party raises the issue, judges should consider why, or if, immigration status is relevant. Judges should question whether a party is attempting to invoke bias rather than raising a legitimate factual issue. If the former is true, a judge can analogize and review how he or she would view a party raising race or gender to impugn another party. Immigration status should not be different. Attempts to manipulate immigration status as a weapon of abuse is exactly what Congress sought to prevent in VAWA.

The most common ways abusers use immigration status in family court are to ask the judge to require the victim to provide a copy of her application for immigration status and then to argue that she should not receive custody of children because she is undocumented. Ironically, the very reason she is undocumented may be that he never filed or finished an application for immigration status for her. The following examines why these allegations are not relevant.

The contents of an immigration application are not relevant for many reasons. Abusers generally allege that victims are making up the domestic violence charges so they can obtain immigration status. If it is the application itself that impugns the victim's credibility, the contents of the application should not be relevant. Congress created a special law ensuring confidentiality of such immigration applications<sup>91</sup>; any DHS or Department of Justice employee who violates this provision is subject to a \$5,000 fine. Family courts should not be complicit in the abuser's attempts at intimidation by forcing victims to reveal the contents of their applications. The abuser should be subjected to the normal evidentiary requirements and standards for proving domestic abuse.

Lack of immigration status is also not relevant to the issue of child custody. It cannot be in the best interests of a child to be placed with an abusive parent solely because he is a citizen or has immigration papers. Lack of status does not make a person an unfit parent. Nor does the fact that a person is undocumented mean that she is a flight risk or faces imminent removal (unless the abuser has called in DHS). If a noncitizen has been living in the United States and is accessing the civil court to obtain its protections, it is no more likely that she will flee the jurisdiction than would a citizen in her shoes. If a judge is concerned, he or she should ask the usual questions concerning flight risk, but should not apply an inaccurate presumption against noncitizens.

Unless a noncitizen is facing a final order of removal from an immigration court, having pursued all possible appeals, she is not facing imminent removal, regardless of the abusers' allegations. Fortunately, the immigration system still provides some due process for noncitizens before they may be removed from the United States. Because abusers often succeed in getting their victims placed into removal proceedings, Congress created a special route to status for victims of domestic violence in such proceedings (see Section D for more information on the routes to status).<sup>20</sup>

As the American Bar Association's Center for Children and the Law noted in 1994:

Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent act...[W]hen the judicial system condones these tactics, children suffer...[P]arties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce, or child support proceedings...[T]his...will ensure that children of domestic violence victims will benefit from... laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.<sup>21</sup>

### **Examine Assumptions**

Sometimes courts make presumptions about parties who appear before them that may be true for the vast majority of the population, but are not true for noncitizens. This seems to be particularly true when children are involved. For instance, a standard presumption applied to mothers who are victims of domestic violence is that they can work and obtain public benefits, and therefore leave their abusers. This assumption is inaccurate for noncitizens. They cannot legally work without authorization. If they successfully apply for immigration status as a victim of crime, they will be able to work, but a judge may be the first person to tell them this is an option. In addition, few noncitizens, including lawful permanent residents, are eligible for most federal public benefits. Although states have filled in some gaps, there are still very few benefits available to noncitizens. Moreover, if benefits are avail-

able, using them may make it difficult to ultimately gain lawful permanent residence (green card), or may be perceived as a barrier to gaining such status.

A noncitizen mother's inability to work has nothing to do with lack of character; it is dictated by our laws. Requiring noncitizen mothers to forfeit their children if they cannot work or obtain public benefits is not in the best interests of the children, if the alternative is living with the abuser or in foster care. Instead of applying presumptions based on mainstream experience, judges should examine the underlying reason for the presumptions. If it is economic independence or living away from the abuser, judges should give the noncitizen the chance to show alternative ways she can do this, and give her time to do it.

### Examine Credibility Concerns

Most family court judges are familiar with how the experience of domestic violence and post-traumatic stress syndrome may affect a party's ability to present testimony.<sup>22</sup> For instance, numerous studies have demonstrated that most abused women minimize, rather than exaggerate, the severity of the violence to which they have been subjected.<sup>23</sup> Some victims may be reluctant to discuss the abuse or may omit significant details about incidents of abuse to which they do testify. In addition, trauma such as that associated with spousal abuse often results in impaired memory.<sup>24</sup> Various coping mechanisms may affect memory.<sup>25</sup>

In addition, judges should consider special credibility issues arising from cultural differences. Many cultures still view domestic violence as a private and shameful matter that is not to be discussed openly, and view battered women with contempt.<sup>26</sup> Immigrant women may come from cultures where looking another person in the eye is a form of disrespect; judges should avoid assuming that this is, instead, a sign of mendacity. Immigrants with less education may not remember events by calendar dates, but are used to assessing time frames through significant events, such as birthdays and other events. Attempts to pin them down using an unfamiliar framework will result in inaccuracies and contradictions due not to lack of credibility but a desire to appease or please an authority figure.

This section has emphasized things judges should avoid doing. There are, however, several ways in which the court may help noncitizen domestic violence survivors gain security and independence.

## D. HOW COURTS CAN HELP NONCITIZENS APPEARING BEFORE THEM

Judges are in a unique position to help noncitizens, and choosing to do so is not "interventionist." The following suggestions reflect what is already taking place in court proceedings involving U.S. citizens. For example, many judges already provide referrals to domestic violence services, consider all consequences to the parties before rendering a decision, and attempt to rectify abusive power differences between the parties to ensure fair hearings. Judges should incorporate similar considerations regarding immigration status and its manipulation into their decision-making and practices.

### Access to Accurate Interpretation

Lack of accurate interpretation will prevent noncitizen victims from fully participating in their hearings. As noted earlier, problems abound with using interpreters from the family or the immigrant community. Although courts should strive in the long run to hire multi-lingual staff, in the interim they should work with local immigrant community non-profit organizations, universities, and domestic violence groups with multi-lingual staff to ensure accurate interpretation.

### Rights of Noncitizens

As noted above, one of the main reasons noncitizen victims may not access the civil court system is lack of information or misinformation about their rights in the system. Judges can alleviate this problem by explaining to all who appear before them the role of the judge and the irrelevance of immigration status, as well as other factors that noncitizens may assume affect outcomes. Some points judges may make include:

- Women can testify, and their testimony is as important as men's;
- Money plays no (legitimate) role in our legal system; rights are not based on economic wherewithal, and bribery is a serious crime;
- A person's immigration status is not the concern of this court; it provides justice to all regardless of status;
- If this is a custody hearing, what matters is the best interests of the child. Explain what this means and does not mean (gender and immigration status do not automatically determine who gets custody of the children);

- If this is a protection order hearing, the protection order itself does not affect the immigration status of either party. If a party violates the order, however, it may make that party removable. This includes anyone who is not a U.S. citizen; and
- If any parties are noncitizens, they may wish to consult with a domestic violence agency or immigration advocate about their immigration options. Either provide brochures used by local agencies that assist noncitizen domestic violence survivors (perhaps via clerks) or provide the information through written or oral notice.

### **Rights in the Immigration System**

If abusers are misinforming noncitizens about their rights, courts should provide accurate information, especially concerning the rights of those detained by DHS. Although the full panoply of rights afforded to everyone in the criminal system is not available, noncitizens do have the following rights if arrested or detained by DHS:

- The right to speak to an attorney before answering any questions or signing any documents;
- The right to a hearing with an immigration judge;
- The right to have an attorney represent them at that hearing and in any interview with DHS (not government-paid attorneys); and
- The right to request release from detention, by paying a bond if necessary.<sup>27</sup>

If a noncitizen appears concerned about exposure to DHS, she probably needs help obtaining accurate information about her immigration options.

### **Access to Accurate Legal Immigration Advice**

If judges are concerned that noncitizens before them need accurate legal advice about their immigration options, they should be aware that many immigration attorneys are not familiar with the special routes to status for victims of domestic violence. Moreover, since VAWA's passage, many domestic violence service providers, or hybrid organizations addressing both domestic violence and immigration issues, have developed expertise in helping noncitizens seeking such status. Judges can do a great service to noncitizens by working with local domestic violence

and immigration advocates to ensure they make useful referrals to noncitizens who appear in their court.<sup>28</sup>

### **Unintended Consequences of Protection Orders**

There are several situations in protection order hearings that judges should flag as possible sources of unintended consequences. These reflect ongoing problems with the system failing to identify primary perpetrators and with a new law that makes noncitizens removable for violating certain portions of protection orders.

#### **Removal Following Protection Order Violations**

In 1996, Congress added a special ground of deportation for those who are convicted of domestic violence crimes or are found by a court to have violated certain provisions of protection orders.<sup>29</sup> News of this new law spread quickly in immigrant communities, resulting in additional reluctance by abused noncitizens to access the system, for the reasons noted in Section B. Judges can help alleviate these concerns by crafting protection orders that reflect the victim's goals: does she want him removed if he violates its terms, or will his removal harm her or her children? The provisions to avoid, if the victim does not want her abuser removed, are those involving "threats of violence, repeated harassment, or bodily injury."<sup>30</sup>

#### **Manipulation of Consent and Mutual Orders by Abusers**

Any order that implicates a noncitizen victim's future behavior makes that person vulnerable to further manipulation by the abuser and, ultimately, removal for violation of the order's provisions. Judges should expect abusers to use mutual orders issued against noncitizen victims by alleging they have violated the provisions that render them removable. Abusers have learned that racing to the court to file protection orders against noncitizen victims is an effective way of undermining both their access to the court and to immigration status. Judges should closely scrutinize cases brought against noncitizens to ensure that the charge is not a part of a larger pattern of abuse. If a judge suspects a noncitizen is not the primary perpetrator, the judge should suggest that she obtain an attorney to represent her or ask questions to discover the facts.

While consent orders may not be as readily manip-

ulated by abusers against noncitizens, they are notably unhelpful to a noncitizen seeking immigration status based on domestic violence. This is doubly true for mutual orders. Unless these orders provide detail about who committed the domestic violence and its nature, they will only cloud a noncitizen's application for immigration status. While such orders may enhance efficiency in the court system, they fail to alter the power differential between a citizen abuser and his noncitizen victim and are a disservice to noncitizen victims of domestic violence.

### Affidavits of Support and Kidnapping

Two issues not necessarily related to domestic violence may arise frequently when noncitizens are in the court. In the normal family-based immigration process, the U.S. citizen or lawful permanent resident files an application for the immigrant spouse or child. As of 1996, these applications must include enforceable affidavits of support.<sup>31</sup> Although the enforcement provisions of the law appear designed to ensure reimbursement for public benefits distributed to the immigrant, not to allow immigrants to sue for general support,<sup>32</sup> these contracts serve as ample evidence of a spouse's ability to provide support. Those who sign such contracts must show they can support their immigrating spouse or child at 125 percent of the poverty level. An individual who signs such an affidavit cannot later claim lack of resources unless circumstances have changed significantly; either he committed perjury when he signed the affidavit or he is now misrepresenting his ability to provide support.

When one or both parties are noncitizens or travel abroad frequently, the court should take measures to prevent child kidnapping. Judges should require that the parties turn over the children's passports and agree not to remove the children from the court's jurisdiction. Ensuring that passport offices know not to reissue passports for the children is an additional necessary step.

### Protection Order Strategies

The process for obtaining immigration status may take many months. During that period, the noncitizen victim may need to continue living with the abuser for economic reasons. If this is the case, courts should consider fashioning orders that recognize the victim's need

to live with the abuser for at least some period into the future. Because many noncitizen victims also may wish to avoid placing their abusers in jeopardy of removal, they may prefer protection orders that allow them to continue to live together but that require the abuser to attend an intervention program (in his language) and to refrain from threatening, assaulting, or harassing her.<sup>33</sup>

In addition to ensuring specific evidence is in the record, as noted below, judges may wish to ensure the abuser does not manipulate the immigration system against his victim. Using the "catch-all" provision, protection orders may include:

- Prohibiting the abuser from contacting DHS to undermine the victim's current status or application for future status;
- Requiring him to pay the fees for his victim's application for status;
- Requiring him to pay the costs for replacement identification and travel and immigration documents; and
- Requiring him to produce a copy of any immigration application he has filed for his spouse or children.

### Information Concerning Routes to Immigration Status

There are several routes to status based on domestic violence. Judges should mention these to noncitizens (and their attorneys/advocates) who appear before them. None of these statuses requires that the applicant be documented. For self-petitioning, VAWA cancellation, and battered spouse waivers, the abuser must be or have been a U.S. citizen or lawful permanent resident, and the applicant must be or have been a spouse or child of the abuser. For the U and T visas, the status of the perpetrator and his relationship to the victim are irrelevant. The applicant must be willing to be helpful (or already have been helpful) in an investigation or prosecution of a crime, however. Asylum is available for those persecuted or fearing persecution in their homeland (although the persecutor may be in the United States now); special immigrant juvenile status is available for neglected, abandoned, or abused noncitizen children.

### Background

In the traditional family-based petition process, noncitizens must rely on their U.S. citizen or lawful per-

manent resident relatives to file applications for lawful permanent residence, rendering them particularly vulnerable to abusive sponsors. Congress first addressed this problem in 1990 with the battered spouse waiver for conditional residents<sup>34</sup> who otherwise had to rely on abusive spouses to file a “joint” petition with them. It soon became evident, however, that this remedied only part of the problem; many spouses and parents failed to file petitions for their noncitizen relatives, using their control of the immigration process as a weapon of abuse. In the 1994 VAWA, Congress added two new forms of immigration relief to help this latter population: “VAWA self-petitioning” and “VAWA suspension of deportation.”

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act reframed VAWA suspension of deportation as VAWA cancellation of removal. In October 2000, President Clinton signed the Victims of Trafficking and Violence Protection Act of 2000,<sup>35</sup> which removed many of the problems noncitizens encounter in pursuing VAWA status. It also included new nonimmigrant visas leading to lawful permanent residence for other victims of crimes, including domestic violence survivors who do not qualify for VAWA relief.

The National Network to End Violence Against Immigrant Women (Network) has a nationwide network of experts, including criminal and family court judges, that works together to ensure DHS implements the will of Congress. To this end, DHS has designated several officers who have worked closely with the Network since 1996. The Network and DHS have achieved significant system improvements without resorting to litigation. As noted earlier, most immigration attorneys are not familiar with special routes to status and often fail to present adequate cases because of their inexperience with domestic violence issues. Noncitizens are most likely to benefit from referrals to members of the Network, who employ a partnership model involving both domestic violence or sexual assault advocates and immigration attorneys.

A few caveats concerning gender-based asylum are needed. Gender-based asylum operates in the general asylum system, which is separate from the system noted above for forms of relief specifically designed for domestic violence survivors. In addition, gender-based asylum is in flux as of this writing because of indications that U.S. Attorney General John Ashcroft may retreat from the previous Attorney General’s commitment to recognizing gender-based violence as a basis for asylum.

**Self-petitioning** is done by filing an application with a special VAWA unit at the DHS Vermont Service Center.

**VAWA cancellation** of removal is for noncitizen survivors in immigration proceedings.

**Battered spouse waivers** are for noncitizens who already have lawful permanent residence but otherwise would need cooperation from their abusers to perfect their residence. They are paper filings with DHS offices, sometimes followed by in-person interviews.

The new **U visa** is a special visa for victims of crimes. It is filed with the special VAWA unit that handles self-petitions.

**Special Immigrant Juvenile Status** is available for children eligible for long-term foster care who are neglected, abandoned, or abused by their parents. The requirements for this status are quite different than those noted above, and civil court judges play a vital role in such cases. After reviewing how judges can help with the domestic violence cases, noted above, a special section will address this status and its requirements.

The **T visa** is a special visa for victims of human trafficking for labor exploitation or commercial sex, also filed with the special VAWA unit. It is helpful for family court judges to know about such cases but it is unlikely that they will play a role in documenting them.

**Gender-based asylum** based on domestic violence may be filed with an asylum office if the noncitizen has not been detained by DHS; noncitizens may also request asylum in immigration proceedings. Again, although judges should know about this option, it is unlikely they may make much of a contribution in helping document such cases, since they focus on persecution abroad. If the abuser is from the same country as the victim, family court judges may make findings on domestic violence and stalking (see below) that will show that he is likely to continue this behavior if both parties are removed to their homeland.

Finally, applying for asylum in general requires expertise beyond that needed for other forms of application. Nevertheless, if a noncitizen primarily fears being harmed in the homeland, she may wish to pursue this form of relief. To win such a case, she will need an attorney with experience in both asylum and domestic violence.<sup>36</sup>

### **Special Routes to Status: Self-Petitioning, VAWA Cancellation, Battered Spouse Waiver, and U Visa**

A key aspect of the special routes to status based on domestic violence is the “any credible evidence” standard dictated by Congress.<sup>37</sup> This is the most liberal evidentiary standard in the immigration law, acknowledging that the “primary” evidence normally required may be unavailable to many noncitizen survivors of domestic violence.<sup>38</sup> Findings, judgments, and documents from family court are inherently “credible” and extremely helpful to noncitizens seeking immigration status.

There are many kinds of evidence that may be helpful to noncitizens seeking status as victims of domestic violence. This section describes those most helpful.<sup>39</sup>

#### **Battery or Extreme Cruelty**

A requirement for self-petitioning, VAWA cancellation, and battered spouse waivers is proof of battery or extreme cruelty.<sup>40</sup> U visa applicants must show they suffered “substantial physical or emotional abuse”<sup>41</sup> as the result of a crime (including domestic violence and sexual assault). For self-petitioning and VAWA cancellation, battery or extreme cruelty to either the applicant or the applicant’s child will qualify a noncitizen for status.

Extreme cruelty is a broad concept for immigration purposes, covering any kind of abuse designed to exert power and control over the victim. It is not limited to any state definition (if there is one) and includes psychological, emotional, and economic abuse; coercion; threats (to anyone or anything the victim cares about); intimidation; degradation; social isolation; possessiveness; harassment of employers and other employment-related abuse; manipulating and using immigration status; and harming children, family members, and pets. Courts can help ensure this evidence is in the record by:

- Asking the victim questions on the record about the abuse, including abuse noted in previous police reports, and noting any criminal convictions of the abuser;

- Ensuring both oral and written witness testimony is in the record;
- Entering as part of the record any physical evidence, such as photos, letters, weapons, clothing, medical records, and subpoenaing these, if necessary;
- Incorporating expert affidavits into the record, including those of domestic violence, sexual assault, and mental health counselors (DHS considers them experts on these issues);
- Subpoenaing documents or proof that the abuser or system are loath to provide;
- Describing on the record any threats made by the abuser or other relevant behavior while the abuser is in court;
- Including evidence such as that above concerning abuse of the children; and
- If the children were not directly abused but lived in the household while abuse was occurring, including evidence of the effects on children, such as teacher’s and counselor’s affidavits, school records, and statements by the children (if they are willing and it is safe for them to do so).

This evidence, and any findings of abuse a judge may make, will be effective in proving “battery or extreme cruelty” for the battered spouse waiver, for self-petitioners, and for noncitizens seeking VAWA cancellation of removal in immigration proceedings.

If judges are empowered under state law to “investigate” the crime of domestic violence, they also may provide a certificate that states that the noncitizen “has been, is being, or is likely to be” helpful in an investigation or prosecution of that crime.<sup>42</sup> This document is essential to obtaining a U visa for victims of crimes.

#### **Evidence about the Abuser**

Self-petitioners and applicants for VAWA cancellation of removal must show several things about their abusers, or their relationship to their abusers, that may be difficult for them to document because the abuser controls the information. This includes such information as:

- The abuser is or was a legal spouse or parent;
- The abuser is or was a U.S. citizen or lawful permanent resident;
- The abuser resided with the applicant (not necessarily in the United States); and

- The marriage was legal and not solely for the purpose of conferring immigration status to the noncitizen (good faith marriage).

Because manipulation of immigration status is part of the pattern of abuse, judges should sanction this manipulation by requiring the abuser to provide documentation of these proof requirements. This can be done in several ways, depending on the posture of the case, and may include:

- Asking police to help noncitizens retrieve needed documents when helping battered immigrants collect possessions in the home;
- If the victim is obtaining an emergency protection order, encouraging her to bring to court any documents about her children, her marriage, her life with her spouse, and his status in the United States;
- Requiring the abuser to provide information or to cooperate in an ongoing immigration petition as part of discovery or sanctions against abuse; and
- If a judge has direct knowledge of information the applicant lacks, making findings providing the basis and content of that knowledge.

Examples of helpful evidence include:

#### LEGAL MARRIAGE

- Copies of the abuser's prior divorce agreements and the couple's marriage certificate and marriage license (legal marriage);
- Findings that show common law marriage, if a judge's state recognizes such marriages (DHS recognizes common law marriages from any jurisdiction where they are legal);
- Findings or documents in the record that a divorce between the abuser and the noncitizen applicant for status is connected to domestic violence (self-petitioners must show this if they file for status within two years of a divorce from their abuser); and
- If it turns out the abuser is a bigamist, the judge should make findings, or include documents in the record that support this. Self-petitioners whose abusers are bigamists are still eligible for status, even though their marriages are not legal. If a judge believes the noncitizen married the abus-

er in good faith, not realizing he was a bigamist, this finding should be made on the record.

#### ABUSER'S STATUS

- Copies of the abuser's immigration documents (lawful permanent residence card or naturalization certificate), U.S. passport, or birth certificate (proving he was born in the United States);
- Copies of documents relating to children that might indicate his status, such as children's birth certificates, baptismal certificates, registration for school, etc.; and
- Anything relating to military service (only U.S. citizens and lawful permanent residents may serve in the U.S. military).

#### RESIDENCE AND GOOD FAITH MARRIAGE (OFTEN THE SAME KIND OF DOCUMENTS)

- Copies or evidence of bills, mortgages, tax forms, bank accounts, leases/rent payments, mail to both parties, school records, work records, any documents that show the couple resided together (shows co-residence and good faith marriage);
- Children's documents that show co-residence, such as birth certificates;
- Affidavits or statements from neighbors, landlords, family, or others who know the couple's living situation and marriage;
- Wedding and vacation pictures, insurance policies listing victim as beneficiary; and
- Letters from the abuser to the noncitizen or her family demonstrating they had a real marriage.

#### NONCITIZEN'S DOCUMENTS

- Documents belonging to the noncitizen controlled by the abuser, including any immigration papers filed for her, her and the children's identification documents, wedding pictures, invitations, etc.

#### Extreme Hardship

For VAWA cancellation and the T visa, applicants must show they will suffer extreme hardship in the homeland if they are removed from the United States. Similarly, special immigrant juveniles need a finding by a civil court judge that it is not in their best interests to be removed. If it appears that an abuser has succeeded in bringing DHS

into the picture, and DHS is going to try to remove the victim, these findings will be particularly helpful.

### VAWA CANCELLATION FACTORS

VAWA cancellation applicants must show extreme hardship to themselves or to their children (regardless of the children's immigration status). The factors DHS considers for VAWA cancellation (also for self-petitioning before VAWA 2000) are summarized in the following considerations:

- The need for access to courts and to the criminal justice system in this country;
- The applicant's need for and use of services or support systems in this country juxtaposed against the lack or unavailability of similar services and support in the homeland;
- The lack of laws or enforcement of laws in the home country that protect victims of domestic violence, and the likelihood the abuser will follow her back (or already is there);
- The likelihood people in the home country (including his relatives, her relatives, or their community) will harm the applicant;
- The abuse the victim suffered was very severe or longstanding;
- Laws, social mores, and customs in the home country that penalize or ostracize women who challenge the subordination of women, who are divorced, or who have adopted "Western" values; and
- The application of all the above factors to the children.

Much of the evidence discussed earlier concerning battery and extreme cruelty will also help prove VAWA cancellation factors. In addition, judges can help by including in the record evidence that:

- The abuser stalks or intends to stalk the victim or her children;
- The abuser has threatened to follow the victim or the children back to the home country or has done so in the past;
- The applicant is receiving and needs social, medical, or mental health services and support

in this country, or that the judge has referred or recommended such services for her;

- The applicant needs ongoing access to the court for future custody determinations or modifications, further orders or actions if the abuser violates court orders, child support, maintenance, visitation, etc.;
- The long-term nature of the abuse or its high level of violence (e.g., rape, aggravated assault, etc.);
- The noncitizen parent is and should be primary caretaker of the children;
- The children will suffer if forced to choose between staying with the abuser in this country or returning to the home country with their mother (where they may not speak the language, will not have access to counseling or adequate schooling, will be ostracized, etc.); and
- The effect of the abuse on the children and their need for support and services here.

### Identification of Noncitizens Eligible for U and T Visas

The two new visas Congress created in 2000 are for certain victims of crimes. Neither the status of the victim nor of the perpetrator is relevant for either visa. Thus, the U visa in particular should prove helpful to domestic violence survivors whose abusers are undocumented or are not their spouses or parents.

Accessing the criminal justice system is essential to both visas, but family courts may advise noncitizens unaware of this option that they may wish to pursue a U or T visa, and refer them to advocates or attorneys who can help them.

#### The U Visa

Victims of a large array of crimes are eligible for U visas. They include victims of domestic violence, nannies subjected to abuse from their employers, trafficking victims, and victims of rape in the workplace. To qualify for a U visa, victims must show that they have suffered "substantial physical or mental abuse." The proof discussed earlier regarding battery and extreme cruelty will, therefore, be helpful in these cases as well. In addition, judges who have authority to investigate crimes should provide certificates to noncitizens who are qualifying victims of crimes and have been, are being, or are likely to be helpful in further investigation or prosecution.<sup>43</sup> This will

both encourage undocumented victims of crimes to report them and help the criminal justice system prosecute perpetrators who prey on immigrant communities.

### The T Visa

These visas for victims of trafficking for sex or labor require the involvement of federal law enforcement.<sup>44</sup> If federal law enforcement is not helpful, as has been true in too many trafficking cases, the family court system may provide valuable “secondary” evidence. Such evidence could include findings or documents that show the non-citizen is a victim of such trafficking and that either the requests by federal law enforcement were not reasonable, or that the victim did, in fact, comply with requests.

In addition, T visa applicants must show extreme hardship involving unusual and severe harm if removed.<sup>45</sup> This is a higher standard than for VAWA cancellation. Nevertheless, the court may help by ensuring that evidence is on the record regarding:

- The age and personal circumstances of the applicant;
- Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the home country;
- The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- The impact of the loss of access to the U.S. courts and criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- The reasonable expectation that the existence of laws, social practices, or customs in the home country to which the applicant could be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the home country would severely harm the applicant; and
- The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under Section 244 of the Act, or the granting of other relevant protections.

### Gender-Based Persecution

A victim of domestic violence seeking asylum must show that she fears persecution in her homeland because she has been or is likely to be subjected to domestic violence if returned there. In most cases, the claim is based on past abuse; fleeing to the United States was the victim’s final desperate attempt to save herself and her children. Often, the abuser may now be in the United States, continuing the persecution of his family. These are the cases in which family courts may be helpful by making findings about, or including in the record, documents and oral testimony concerning:

- The abuse suffered by the victim at the hands of her abuser;
- The history of abuse, especially that which occurred in the home country;
- The abuser’s reasons for choosing the victim (believes he has right to control his family members, any threats, etc. he makes in court or otherwise);
- The abuser’s history of traveling to the home country;
- The abuser’s threats to follow the victim and her children back to the home country; and
- The lack of protection in the home country for the victim, including her past attempts to access safety and the consequences, or her reasons for believing accessing the system was pointless or dangerous.

It is virtually impossible to win an asylum claim without the help of an experienced advocate or attorney, so making helpful referrals is especially important in these cases.

### Special Immigrant Juvenile Status (SIJS)<sup>47</sup>

Special Immigrant Juvenile Status (SIJS) is available for undocumented children who are dependents of a juvenile court. Often, county personnel are involved in the process as well. The family courts, in particular, play an integral part in these applications.

An applicant must show that he or she is:

- Under the age of 21 and unmarried;
- A dependent of a juvenile court or in the custody of the state;

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- Eligible for long-term foster care;
- And the court has:
  - Determined that he or she is eligible for long-term foster care because of abuse, neglect, or abandonment; and
  - That it is not in the best interests of the child to be returned to the home country.

In addition, the family court must retain jurisdiction of the child until DHS had made a final decision on the SIJS.<sup>48</sup>

SIJS may be the only route to immigration status for many abandoned noncitizen children. Family courts should take care to notify children before them of this option, if it appears they may be undocumented. A child cannot win an application for SIJS, however, without specific findings by the family court. These include:

- Details of why and how the child has been neglected, abandoned, or abused by his or her parents, including the court's own findings and any documents submitted to the court to support that finding;
- Jurisdiction over the juvenile and that he or she is a dependent or in state custody (this includes delinquency hearings);<sup>49</sup>
- The child's eligibility for long-term foster care (the child may actually be placed in guardianship or adopted, but must be eligible for foster care); and
- Reasons why it is not in the best interests of the child to be removed to the home country.

### Avoiding Problems with DHS

Some DHS officers believe there is a lot of fraud in the SIJS system and that family courts "rubber stamp" their findings. To avoid this, judges should make clear that the reason for making these findings is because of the abuse, neglect, and abandonment suffered by the child and articulate as much as possible the reasons for these findings.

DHS also requires a high level of proof of the child's age, which is often difficult if the child is abandoned and

has no access to family records. The family court can help by subpoenaing production of helpful documents or by making findings of the child's age based on other documentation or testimony before it.

The other way DHS sometimes undermines SIJS applications is to procrastinate until the child becomes too old for foster care. If it is possible for the court to retain jurisdiction until the child turns 21, it should strive to do so, so that DHS may not prevent the child from getting status merely by failing to act on the application.

### Helping Educate Other Systems

If judges find that local DHS, county officials, or agencies working with noncitizens are unfamiliar with, or antagonistic to, helping make the SIJS process smooth and swift, judges may wish to educate those systems about the status and why it is helpful. Without the option of gaining immigration status, abandoned, neglected, and abused undocumented children are likely to enter the underground economy, become homeless, or engage in crime.

## E. CONCLUSION

Family court judges have an obligation, as do all judges, to ensure that Congress' mandate to protect immigrant victims of domestic violence is carried out. The laws have changed, and many new tools are available to immigrant victims. But these tools are useless if judges do not implement them properly. Congress' intent can be realized if family court judges understand the myriad fears and barriers facing immigrant victims, which hinder their ability to fully realize the benefits of the court system. Immigrant victims of domestic violence are oftentimes multiple victims of the system, of misinformation, and of their abusers. By ensuring that immigrants are given proper information and the ability to make educated choices, judges will ensure that the doors for protection open wider. By implementing and enforcing the immigration laws as Congress intended, judges will ultimately ensure that all victims of domestic violence receive justice.

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**AUTHOR'S NOTE:** The author acknowledges with deep gratitude the editorial contributions of Jannette Tucker, J.D., in the Family Violence Department of the National Council of Juvenile and Family Court Judges.

## END NOTES

- 1 Violence Against Women Act of 1994, Pub. L. 103-322, Title VI, 108 Stat. 1902, 8 U.S.C. §§1151, 1154, 1186a, 1186a note, 1254, 2245 (1994) (hereinafter VAWA).
- 2 See, e.g., H.R. Rep. No. 103-395 (1993); S. Rep. No. 138, 103d Cong., 1st Sess. 41 (1993); S. Rep. No. 101-545 st Cong., 36 (1990); Staff of Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *Violence Against Women: A Week in the Life of America* (Comm. Print 1992).
- 3 H. R. Rep. No. 103-395, pt. at 26-27 (1993).
- 4 Committee on the Judiciary, Report on Violence Against Women Act, accompanying H.R. Rep. No. 103-395 (1993), at 40.
- 5 H.R. Rep. No. 103-395. pt. at 37 (1993).
- 6 S. Rep. No. 138, at 60.
- 7 *Id.* at 63.
- 8 H.R. Rep. No. 103-395. pt. at 27 (1993); S. Rep. No. 103-138. pt. at 41 (1993).
- 9 Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-587 § 501, amending Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1631.
- 10 *Id.* § 384.
- 11 The Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified in scattered Sections of 8, 18, 20, 28, 42, and 44 U.S.C.) (Oct. 28, 2000).
- 12 The Violence Against Women Act of 2000 Section-by-Section Summary, Vol. 146 Cong. Rec. 510164-02, No. 126 Cong. Rec., 106th Cong., 2nd Sess., at S10195 (Oct. 11, 2000), found at 2000 WL 1509753.
- 13 *Id.*
- 14 Because most abusers are men, and most victims women, this article uses the generic male for abusers and the generic female for victims. Readers should note, however, that a significant minority of immigrant men have won cases based on domestic violence. This may be because lack of immigration status creates a power differential between citizen and noncitizen, regardless of gender.
- 15 A useful resource for readers interested in more detail is *Countering Abuser Attempts to Raise Immigration Status in Custody Cases*, from the forthcoming manual BREAKING BARRIERS by the Immigrant Women's Project of NOW Legal Defense and Education Fund (2002). To obtain copies, contact Harriet Lewis at iwpl@nowldef.org.
- 16 For specific case examples, copies of stays of removal and briefs, contact the author. The VAWA experts at DHS are attempting to create protocols that will prevent this; in the meantime, victims of domestic violence continue to be removed at the behest of their abusers.
- 17 The National Immigration Project Web site contains several legal memoranda on the state of current law, as well as policy statements by state attorneys general, police departments, and municipalities opposing local law enforcement of civil immigration provisions. Available at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).
- 18 Issue Paper on Domestic Violence Cases Involving Immigrant and Refugee Communities: The Response of the Courts (1991), prepared by the Family Violence Prevention Fund for the National Council of Juvenile and Family Court Judges, at 18.
- 19 Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009 (1986).
- 20 Readers seeking more detail on abusers' manipulation of noncitizens in custody situations should obtain the document noted in note 15.
- 21 Howard Davidson, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION, at 20 (August 1994).
- 22 See Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Women's Syndrome*, 21 HOFSTRA L. REV. 1191, 1195 & n.16 (1993).
- 23 See, e.g., ANGELA BROWNE, WHEN BATTERED WOMEN KILL, 126 (1987) (noting battered women's tendency to under-report the severity of abusive acts and resultant injuries); JUDITH HERMAN, TRAUMA AND RECOVERY, 82-83 (1992) (noting women's common attempts to minimize domestic violence); LIZ KELLY, HOW WOMEN DEFINE THEIR EXPERIENCES OF VIOLENCE, *in* FEMINIST PERSPECTIVES ON WIFE ABUSE, 124-28 (Kentsi Yilo & Michele Bograd, eds., 1988) (observing that women are often loathe to label abuse as abuse); LARRY L. TIFFT, BATTERING OF WOMEN: THE FAILURE OF INTERVENTION AND THE CASE FOR PREVENTION, 59 (1993) (noting minimization tendency).
- 24 INGER AGGER, THE BLUE ROOM: TRAUMA AND TESTIMONY AMONG REFUGEE WOMEN—A PSYCHO-SOCIAL EXPLORATION, 13 (1994) (explaining the phenomenon as “an alteration of consciousness in which experiences and affects are not integrated into memory and awareness”), *citing* I.L. McCANN & L.A. PEARLMAN, PSYCHOLOGICAL TRAUMA AND THE ADULT SURVIVOR, 41 (1990).

END NOTES

- <sup>25</sup> See BROWNE, *supra* note 23, at 91 (noting that victims of domestic violence commonly experience flashback or loss of memory for parts of traumatic episodes); HERMAN, *supra* note 23, at 187 (noting blurring effect); TIFFT, *supra* at 64 (“[T]he battered partner may suffer cognitive distortions, including dissociation, memory loss, a traumatic reexperiencing when exposed to associated stimuli, and a hypersensitivity to episodes of violence . . .”).
- <sup>26</sup> See K.J. WILSON, WHEN VIOLENCE BEGINS AT HOME, A COMPREHENSIVE GUIDE TO UNDERSTANDING AND ENDING DOMESTIC VIOLENCE 105-07 (1997) (noting cultural reticence of Latina women to discuss domestic violence and observing that Latina women are taught to “tolerate abuse for the sake of family pride”; women who attempt to leave battering husbands receive little familial support and in fact are often convinced to return); The Center for Health and Gender Equity, *Population Reports: Ending Violence Against Women 6* (Dec. 1999) (observing that in a variety of countries including Mexico, “studies find that violence is frequently viewed as physical chastisement—the husband’s right to ‘correct’ an erring wife”) found at [www.jhuccp.org](http://www.jhuccp.org). See also 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., 245 (Summer 2000).
- <sup>27</sup> Some of these rights are further limited for those with criminal convictions.
- <sup>28</sup> Contact the author for referrals to such agencies in your area.
- <sup>29</sup> INA § 237(a)(2)(E)(ii), 8 U.S.C. § 1227(a)(2)(E)(ii) (“Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order 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 is deportable.”) (emphasis supplied).
- <sup>30</sup> *Id.* For information on immigration consequences of criminal convictions, see information on the National Immigration Project’s Web site: [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).
- <sup>31</sup> See NA §§ 212(a)(4)(C)(ii) and 213A; 8 U.S.C. §§ 1182 & 1183a.
- <sup>32</sup> Compare INA § 213A(a)(1)(B) (“is legally enforceable against the sponsor by the sponsored alien...”) and INA § 213A(c) (allowing all remedies in 28 U.S.C. 3201, 3203-3205, under state law, and specific performance and legal fees) with INA § 213A(a)(2) (“enforceable with respect to benefits provided for an alien...”), 213A(b) (articulating reimbursement mechanism for public benefits spent on noncitizens).
- <sup>33</sup> For more information on crafting useful protection orders for noncitizens, see *Battered Immigrants and Civil Protection Orders*, from the forthcoming manual, *Breaking Barriers* by the Immigrant Women’s Project of NOW Legal Defense and Education Fund (2002). To obtain copies, contact [iwp@nowldef.org](mailto:iwp@nowldef.org).
- <sup>34</sup> INA §216(c)(4)(C), 8 U.S.C. §1186a(c)(4)(C), created by Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.
- <sup>35</sup> Pub. L. No. 106-386, § 2002, 114 Stat. 1464 (2000).
- <sup>36</sup> The author maintains a database and list serve of those specializing in domestic violence asylum cases, from which we may provide referrals to noncitizens needing assistance.
- <sup>37</sup> See, e.g., Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 at § 204(a)(1)(H); (codified as amended at 8 U.S.C. §1110 *et seq.*; hereinafter INA), 8 U.S.C. §1154(a)(1)(H); INA § 240A(b)(2)(D); 8 U.S.C. § 1229b; INA § 216(c)(4)(C); 8 U.S.C. §1186a(c)(4)(C).
- <sup>38</sup> See, e.g., 8 C.F.R. § 204.2(c)(2)(i).
- <sup>39</sup> For in-depth descriptions of eligibility requirements and filing procedures for the immigration applications described here, please visit [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org) and click on the domestic violence section.
- <sup>40</sup> INA §101(a)(1)(A)(D)(bb), 8 U.S.C. §1154(a)(1)(A)(iii)(D)(bb).
- <sup>41</sup> INA §101(a)(15)(U)(i)(I), 8 U.S.C. §1101(a)(15)(U)(i)(I).
- <sup>42</sup> INA §101(a)(15)(U)(i)(III) & INA §214(o)(1), 8 U.S.C. §§1101(a)(15)(U)(i)(III) & 1184.
- <sup>43</sup> For a sample certificate, go to the U visa section at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).
- <sup>44</sup> An applicant who never has had contact with an LEA [which are limited to federal agencies] regarding the acts of severe forms of trafficking in person will not be eligible for T-1 nonimmigrant status,” 8 CFR §214.11(h)(2).
- <sup>45</sup> INA §101(a)(15)(T), 8 U.S.C. §1101(a)(15)(T).

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**END NOTES**

<sup>46</sup> 8 CFR §214.11(i)(1).

<sup>48</sup> INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

<sup>47</sup> For more information on SIJS, go to [www.ilrc.org](http://www.ilrc.org), the Web site of the Immigrant Legal Resource Center.

<sup>49</sup> If the child is in DHS custody, that agency must consent to family court jurisdiction over its charge.

