

**NO. 11-35237**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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MONICA NAVARRO PIMENTEL, individually and on behalf of a class of  
similarly situated persons,

Plaintiff-Appellee,

v.

SUSAN DREYFUS, in her official capacity as Secretary of the Washington  
State Department of Social and Health Services,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

No. 2:11-cv-00119

The Honorable Marsha J. Pechman, United States District Court Judge

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**[LODGED] BRIEF OF *AMICUS CURIAE* LEGAL MOMENTUM IN  
SUPPORT OF PLAINTIFF-APPELLEE**

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**INTEREST OF AMICUS CURIAE**

Legal Momentum is the leading national women's legal rights organization working to ensure economic and personal security for all women and girls. Founded in 1970, Legal Momentum has worked for decades to improve the economic and personal security of low-income and marginalized women through national advocacy, policy development, litigation, and public education. Improving access to public benefits and well paying jobs and helping women live lives free of violence at home and in the workplace have been core parts of Legal Momentum's mission. Legal Momentum chaired the national task force that was instrumental in securing passage of the Violence Against Women Act ("VAWA") in 1994 and its reauthorizations in 2000 and 2005, and is a federally funded technical assistance provider helping judges, police, prosecutors, advocates, attorneys and employers in their efforts to assist victims of domestic violence, sexual assault, child abuse, dating violence and stalking.

Legal Momentum's Immigrant Women Program ("IWP") is actively involved in policy efforts to promote greater legal protections for immigrant victims of domestic violence, sexual assault, child abuse and human trafficking. IWP co-chairs the National Network to End Violence Against Immigrant Women ("Network"), a 3000 member coalition of advocates, lawyers, educators, other professionals, domestic violence and sexual assault survivors, and immigrant

women working together to end violence against immigrant women in the United States. IWP is Network's voice in its Washington, D.C.-based advocacy efforts to enhance legal protections and access to public benefits for battered immigrant women and their children. In this capacity, IWP staff led the effort to draft federal legislation securing immigration protection and access to federal and state funded public benefits for immigrant victims of domestic violence, child abuse, sexual assault and other violent crimes.

Accordingly, Amicus Legal Momentum has a strong interest in the outcome of this preliminary injunction appeal. Allowing the State of Washington (the "State" or "Washington") to withdraw food support to Appellee and the class she represents before the State's legal right to do so is fully determined will dramatically affect a particularly vulnerable population of battered immigrant women. In particular, this case affects immigrant victims of domestic violence present in this country under various circumstances – battered immigrant women and immigrant child abuse victims lawfully present in the United States who are in the process of attaining legal immigration status under VAWA's self-petitioning provisions; battered immigrants who have obtained certification from law enforcement officials attesting to the victim's helpfulness in a criminal case against her abuser who are in the process of applying for a crime victim U-visa; and battered immigrants who are otherwise legal residents of the United States.

By seeking to terminate essential food benefits – which the State provides to United States citizens – to lawful immigrant victims, the State violates lawfully present immigrant victims’ constitutional right to equal protection of the law and also places an extraordinarily heavy burden upon some of the most vulnerable members of society. Cutting off battered immigrant VAWA self-petitioners, U-visa victims, and their children and other legally present immigrant victims from food stamps dramatically increases the barriers immigrant victims must overcome to escape from abusive relationships. When immigrant victims cannot survive independently of their abusers, the State effectively deprives them of the benefit of the protections it purports to extend to all victims of domestic violence, and domestic violence perpetrators are not held accountable for the crimes they commit.

For battered women to successfully bring an end to their abusive relationship, they must find a way to survive economically while they transition away from financial dependence on their abusive partner. This is particularly true of battered immigrant women whose ability to survive economically is often tied to an abuser with more stable legal immigration status. For example, VAWA self-petitioners become qualified immigrants once the U.S. Department of Homeland Security (“DHS”) determines that their petition establishes a *prima facie* case for classification under the self-petition provisions of VAWA. Victims must then wait

for up to a year to have their case fully adjudicated and approved before they obtain legal work authorization. During this time period, public benefits may provide the sole source of sustenance for battered immigrants and their children, particularly if their abusers fail to pay child support.<sup>1</sup> When battered immigrant women and their children are deprived of access to necessities for survival, the likelihood that these women will be able to permanently separate from their abusers is seriously jeopardized. Moreover, the ability of battered immigrant women to remain free of their abusers and achieve self-sufficiency in the long term is seriously undermined by the loss of access to critical food benefits.

By reason of its experience in protecting and advancing the interests of battered immigrant women, Legal Momentum can provide a valuable perspective on the irreparable harm that will fall on this especially vulnerable population in the absence of judicial intervention.

### **INTRODUCTION**

Defendant-Appellant Susan Dreyfus (“Appellant”) challenges the District Court’s decision preliminarily enjoining the State from implementing a new regulation terminating food benefits to legal immigrants under its Food Assistance Program for Legal Immigrants (“Food Assistance Program”), finding that

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<sup>1</sup> Lundy Bancroft and Jay Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamic* 152 (2002), [http://www.dwetendorf.com/Bancroft\\_BattererParent.pdf](http://www.dwetendorf.com/Bancroft_BattererParent.pdf).

Ms. Pimentel was likely to prevail on both her equal protection and due process challenges to the State law. Appellant's opening brief reads as if the sole issue before the Court is whether the District Court abused its discretion in finding that Plaintiff-Appellee Monica Navarro Pimentel ("Appellee" or "Ms. Pimentel") demonstrated a likelihood of success on the merits of her constitutional claims. That is, of course, not the case. To the contrary, this Circuit evaluates the propriety of preliminary injunctive relief on a "sliding scale" balancing several considerations, only one of which is likelihood of success on the merits. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). The other factors – the likelihood of irreparable harm in the absence of preliminary relief, the balance of equities between the parties, and the public interest – are of equal or greater importance. *Wild Rockies* contemplates cases such as this one, where a real and substantial showing of the likelihood of human suffering – comprising a strong showing on the irreparable harm, balance of hardships, and public interest prongs of the preliminary injunction test – justifies a preliminary injunction so long as there is a close question on the merits.

Appellant ignores these other elements of the analysis. But, Appellant may not simply wish them away, and this Court should not ignore the very real consequences that the outcome of this appeal will have, not just on the plaintiff in this case, but on a particularly vulnerable population of women and children who

have already been victimized by their batterers. For them, the loss of food assistance, even temporarily, removes a critical economic support enabling them to escape or remain free from abuse. The massive harm that would be caused to this most vulnerable population while it is not yet established that the State has the right to withdraw that support can never be remedied, and satisfies the “irreparable harm” and “balancing of the equities” tests, even if the plaintiff here had not established – as she plainly did – a likelihood of success on the merits.

Legal Momentum fully supports the arguments set forth in Ms. Pimentel’s answering brief, which persuasively explains why the District Court correctly found that Ms. Pimentel was likely to succeed on her constitutional claims. Accordingly, Legal Momentum adopts and will not duplicate those arguments here. This amicus brief will focus instead on important equitable considerations – in particular the irreparable harm that Ms. Pimentel and other class members who are victims of domestic violence will suffer if the District Court’s preliminary injunction order is not affirmed on appeal.

### **SUMMARY OF ARGUMENT**

A plaintiff seeking a preliminary injunction must establish “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat’l Res. Def. Council*, 129 S. Ct.

365, 374 (2008). As this Court recently held, the Ninth Circuit’s “sliding scale” or “serious questions” standard survives *Winter*. Under this approach, “the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another. For example, a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits.” *Wild Rockies*, 632 F.3d at 1131. Appellant’s brief addresses just one element of the *Winter* test, likelihood of success on the merits, entirely ignoring the other three elements – and the flexible balancing of those elements – that is required under this Circuit’s law and fundamental principles of equity jurisdiction.

As explained below, the other *Winter* elements – the likelihood of irreparable harm, the balance of equities between the parties, and the public interest – strongly favor preliminary injunctive relief in this case. *See Wild Rockies*, 632 F.3d at 1131-34 (recognizing that the sliding scale test embodies the principles of flexibility underlying equity jurisdiction, including flexibility in the face of varying factual scenarios and uncertainties inherent at the outset of complex litigation); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“The essence of equity jurisdiction . . . is [f]lexibility rather than rigidity . . .”).

Economic independence is a key factor in any battered woman’s ability to escape an abusive relationship and to achieve safety and self-sufficiency in the

long term. But, for battered immigrant women, food assistance is especially critical to their ability to flee abuse and provide for their children. Withdrawal of food assistance, even for a short time, can seriously jeopardize the ability of battered immigrant women to escape their abusive partners – forcing immigrant victims to choose between returning to or remaining with their abusers, or facing hunger – a formidable barrier to independence. Thus, food benefits not only sustain Washington State’s battered immigrant women and their children as a matter of daily survival, but enable them to flee abuse and build independent lives separate from their abusers.

The State simply has not advanced any interest that would outweigh the hardships facing Ms. Pimentel and the class she represents in the absence of injunctive relief. Further, as explained below, the public interest favors the continued provision of food assistance to class members during the pendency of this litigation.

Equity thus dictates that food benefits should not be withdrawn from these vulnerable members of society pending the resolution of this case. In the absence of injunctive relief, Ms. Pimentel and other class members who are victims of domestic violence will be harmed in ways that cannot be remedied if it is ultimately determined that the State may not withdraw the food benefits currently provided under its Food Assistance Program. Accordingly, Legal Momentum

respectfully submits that the Court should affirm the District Court's decision to maintain the *status quo* until a final resolution of the issues presented in this case is reached.

## ARGUMENT

### **I. THE SUBSTANTIAL IRREPARABLE HARM THAT MS. PIMENTEL AND CLASS MEMBERS WOULD SUFFER IN THE ABSENCE OF PRELIMINARY RELIEF DEMONSTRATES THAT THE PRELIMINARY INJUNCTION WAS CORRECTLY GRANTED UNDER *WILD ROCKIES***

Washington's Food Assistance Program provides critical food assistance to legal immigrants, including victims of domestic violence. By withdrawing food benefits, the State of Washington is forcing immigrant victims of domestic violence to choose between remaining with or returning to their abusers or facing hunger. This is a formidable barrier to independence and a severe and irreparable harm.

#### **A. Immigrant Women are Uniquely Susceptible to Domestic Abuse**

According to a National Violence Against Women Survey conducted by the U.S. Department of Justice, 22.1 percent of women have reported physical assault by an intimate partner.<sup>2</sup> It is estimated that between three and four million women

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<sup>2</sup> Patricia Tjaden and Nancy Thoennes, *U.S. Dep't of Justice, Extent, Nature and Consequences of Intimate Partner Violence*, 10, 13 (2000), <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

each year are battered by husbands, partners and boyfriends.<sup>3</sup> Half of these women are beaten severely, and, in 30 percent of the domestic violence incidents reported, assailants use weapons.<sup>4</sup> In the United States, more than 31 percent of women killed are murdered by their husbands.<sup>5</sup>

The statistics in Washington are no less severe. One in five Washington women reports being injured by domestic violence sometime in her lifetime.<sup>6</sup> At least 30 percent of all female homicide victims in Washington state are killed by a current or former intimate partner.<sup>7</sup> Between 1997 and 2001, more than half of the victims in domestic violence-related homicides were women killed by their current or former husbands or boyfriends.<sup>8</sup> Of the nearly 500,000 men and women in state

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<sup>3</sup> *Domestic Violence: Not Just A Family Matter: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Comm. on the Judiciary*, 103d Cong., 35 (1994) (statement of Sen. Joseph Biden, Jr.); Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 *Clearinghouse Rev.* 383, 386 (1994).

<sup>4</sup> Zorza, *supra* note 3, at 386.

<sup>5</sup> *Id.* at 387.

<sup>6</sup> Washington State Dep't of Health, *Violence Against Women: Information for Healthcare Providers*, [http://www.doh.wa.gov/hsqa/emstrauma/vaw/data\\_stats.htm](http://www.doh.wa.gov/hsqa/emstrauma/vaw/data_stats.htm) (last visited May 26, 2011).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

prisons for a violent crime in 1997, 15 percent committed a violent crime against a family member.<sup>9</sup>

Although domestic violence plagues communities of all races, socio-economic backgrounds, and geographical locations, some communities within the United States are more vulnerable.<sup>10</sup> Immigrant women are a particularly vulnerable group of victims of domestic violence.<sup>11</sup> “Although the lifetime prevalence of domestic violence in the U.S. in the general population is estimated at 22.1 percent, the prevalence of domestic violence for immigrant women has been reported as being much higher.”<sup>12</sup> “Taken together, studies of intimate partner violence prevalence in Latina, South Asian, and Korean immigrant women report numbers that range from 30% to 50%.”<sup>13</sup> Battered immigrant women are particularly vulnerable “due to their limited English language skills, a lack of

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<sup>9</sup> *Id.*

<sup>10</sup> Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in *Domestic Violence: Global Responses 93* (A B Academic Publishers 2000), <http://www.legalmomentum.org/assets/pdfs/lifetimeprevalenceofviolence.pdf>.

<sup>11</sup> Giselle Aguilar Hass et al., Legal Momentum, *Battered Immigrants and U.S. Citizen Spouses 2* (2006), <http://action.legalmomentum.org/site/DocServer/dvusc.pdf?docID=314>.

<sup>12</sup> *Id.* (citation omitted).

<sup>13</sup> *Id.* (citation omitted).

knowledge they have about U.S. legal protections and services to help domestic violence victims, financial dependency upon male intimate partners and family members, isolation and lack of social support systems in the United States.”<sup>14</sup> As a result, “they tend to have fewer resources, stay longer in the relationship and sustain more severe physical and emotional consequences as a result of the abuse and the duration of the abuse than other battered women in the United States.”<sup>15</sup>

**B. Food Assistance is an Essential Element of the Ability of Immigrant Battered Women to Escape Their Abusers and to Achieve Safety and Self-Sufficiency in the Long Term**

Termination of food assistance affects multiple categories of battered immigrant women and their children. For example, loss of food benefits undermines the ability of battered women to leave their abusers, and also endangers battered women who have separated from their abusers, because, in addition to the hardships of hunger and malnourishment, such women face additional harm when their inability to feed their children drives them back into the abusive relationships they were trying to flee.

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<sup>14</sup> *Id.* (citation omitted).

<sup>15</sup> *Id.* (citation omitted).

“Economic independence is a key factor in determining whether a domestic violence survivor will successfully leave an abusive relationship.”<sup>16</sup> Economic circumstances often force battered women who lack adequate financial resources to choose between the dangers presented by unsafe dwellings in crime ridden neighborhoods or returning to or remaining with her abuser and risking enhanced dangers due to her partner's reprisals.<sup>17</sup> But “[i]ssues of economic survival particularly affect battered immigrant women, who also face overwhelming linguistic, cultural and legal barriers to critical services” and support that would enable them to flee their abusers and achieve self-sufficiency.<sup>18</sup> In particular, “the lack of access to financial resources is one of the most significant factors preventing immigrant victims of domestic violence from leaving abusive

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<sup>16</sup> Leslye E. Orloff et al., Legal Momentum, *Ensuring Economic Relief for Immigrant Victims Through Family Law Proceedings: Child Support and Spousal Support* 1 (2004), <http://action.legalmomentum.org/site/DocServer/dvusc.pdf?docID=314>. Although some victims of domestic violence may be eligible for child support which may enhance their ability to achieve self-sufficiency, many abused women forego obtaining child support from their abusers upon consideration of the risks of pursuing their rights. Some such risks include: the abuser learning the whereabouts of the victim and children or abuser retaliation in the form of actions for custody or visitation, resulting in increased contact between the abuser and the victim, and the potential for escalation of violence.

<sup>17</sup> Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes and Policy Implications*, 48 *Am. Psychologist*, 1077, 1081 (1993).

<sup>18</sup> Orloff et al., *supra* note 16, at 1 (citation omitted).

relationships.”<sup>19</sup> In a study of Latina immigrant women, the authors found that “[f]or many battered immigrant Latinas, economic factors pose a significant barrier to their escape from the domestic violence; these factors include financial dependence on the batterer, lack of formal education and lack of employment skills.”<sup>20</sup>

The availability of food assistance is particularly important to victims who are trying to escape abuse, because their abusers may have prevented them from working outside the home, or otherwise made it difficult for them to hold a job.<sup>21</sup> Studies have shown that abusers may be threatened by any steps a woman may take toward financial independence.<sup>22</sup> Thus, abusers may thwart a job search or

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<sup>19</sup> *Id.* (citation omitted); 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’y* 245, 250 (2000). “[S]ocial disadvantages, combined with difficulties in obtaining secure financial status without relying on the partner’s economic help after separation, force some battered women to choose between enduring the violence and living in poverty.” *Id.*

<sup>20</sup> Dutton et al., *supra* note 19, at 250.

<sup>21</sup> Orloff et al., *supra* note 16, at 2.

<sup>22</sup> U.S. Gen. Accounting Office, GAO-05-701, TANF: State Approaches to Screening for Domestic Violence Could Benefit from HHS Guidance 7-8 (2005), <http://www.gao.gov/new.items/d05701.pdf>.

employment by interfering with transportation to work, or by making harassing phone calls to a woman while she is in the workplace.<sup>23</sup>

This financial control and isolation is especially exacerbated where the abuser is a U.S. citizen and the victim is an immigrant.<sup>24</sup> This is because an immigrant spouse is generally dependent on the U.S. citizen for immigration status.<sup>25</sup> “Immigration status determines whether someone can work in the United States legally and whether he or she is eligible to receive certain public benefits.”<sup>26</sup> Thus, the family-based immigration process and laws relating to temporary visas leave immigrant victims vulnerable to economic control.<sup>27</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Orloff et al., *supra* note 16, at 2; Hass, et al., *supra* note 11, at 3. In one study, approximately 50 percent of immigrant women that reported domestic violence were married to a U.S. citizen. Some studies show the percentage as being significantly higher. Although studies show that foreign-born men and men born in the United States are equally likely to be perpetrators of domestic violence, the likelihood of abuse rises significantly when U.S. citizen men marry foreign women. When U.S. citizen men marry foreign women, the abuse rate is approximately three times higher than the abuse rate in the general population in the United States. Hass, at 4-5.

<sup>25</sup> Orloff et al., *supra* note 16, at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* For example, immigrant victims may lack work authorization under a variety of situations, such as:

- when their abusive citizen spouse has not filed immigration papers for them;

(continued...)

Abusers control the immigration status of their wives and children by failing to seek appropriate and timely visas and using threats of deportation and separation of mothers from children to keep them from seeking help, seeking work or calling the police.<sup>28</sup> For example, in one study 72.3 percent of abusers never file immigration papers on behalf of their victim spouse.<sup>29</sup> Those who filed immigration papers on behalf of a spouse had an average delay of almost four years,<sup>30</sup> rendering the spouse a virtual hostage during that time. By failing to secure immigration status and work authorization for his spouse, the abuser limits

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- when their immigration status is dependent upon the status of their abusive spouse, and they are not authorized to work under the particular immigration status category;
  - when they are undocumented; and
  - when they qualify for the battered spouse relief under VAWA or the crime victim act (U Visa) but do not know they qualify, or have filed for relief but have not yet been approved.

*Id.* Waiting times between filing and approval can be up to and often more than a year.

<sup>28</sup> Orloff et al., *supra* note 16, at 2; Dutton et al. *supra* note 19 at 292-293; Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int'l J. Police Sci. & Mgm't 230, 239 (2005).

<sup>29</sup> Dutton et al., *supra* note 19 at 259.

<sup>30</sup> *Id.*

his victim's opportunities for employment, makes her vulnerable to exploitation by unscrupulous employers, and ensures her continued economic dependence.

Fearful generally, exposed to exploitation and ineligible to earn a living wage, immigrant victims of domestic violence are trapped into economic dependence on their abusers. Even worse, once battered immigrants do find the courage to leave an abusive relationship, case processing backlogs in adjudications at DHS often result in significant delays in battered immigrant victim's access to legal work authorization. This causes significant additional financial hardship for battered immigrants and their children who are in the process of obtaining lawful permanent residency under VAWA.<sup>31</sup>

Of course, the challenges faced by survivors of domestic violence do not cease once they have separated from their abuser. A battered woman who has fled an abusive relationship faces hunger and malnourishment in the absence of access to food stamps. If she cannot feed herself and her children adequately, she is much more likely to return to her abuser, which places her at risk of enhanced dangers due to her partner's reprisals.<sup>32</sup>

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<sup>31</sup> Maia Ingram et al., *Experiences of Immigrant Women who Self-Petition under the Violence Against Women Act*, 16 *Violence Against Women* 858 (2010).

<sup>32</sup> See Browne, *supra*, note 17.

The record in this case illustrates the importance of the availability of economic support. Ms. Pimentel was married to an abuser who was a U.S. citizen.<sup>33</sup> Fortunately, VAWA enables immigrant victims of domestic violence to obtain legal status and work authorization directly, without dependence on an abusive spouse for cooperation. Having obtained legal status under VAWA, Ms. Pimentel became a “qualified” alien eligible to receive food benefits under Washington’s Food Assistance Program. Order Granting Preliminary Injunction, Feb. 17, 2011 (“Order”), ER 24. While applying for work authorization, Ms. Pimentel relies on food benefits to feed her family. *Id.* Without access to such food benefits during a critical time, Ms. Pimentel may not have been able to support her children independently. Her example illustrates how the loss of food benefits, even for a short time, can jeopardize the safety and well-being of women and children, causing irreparable harm to vulnerable families.<sup>34</sup>

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<sup>33</sup> Declaration of Monica Navarro Pimentel in Support of Motions for Temporary Restraining Order, Preliminary Injunction, and Class Certification, Jan. 20, 2011, at ¶ 4, ER 113.

<sup>34</sup> Courts have consistently acknowledged that the denial of access to food is a significant and irreparable harm. *See, e.g., Haskins v. Stanton*, 794 F.2d 1273, 1276-77 (7th Cir. 1986) (“We agree with the trial judge that the deprivation of food ‘is extremely serious and is quite likely to impose lingering, if not irreversible, hardships upon recipients.’”) (citation omitted); *Willis v. Lascaris*, 499 F. Supp. 749, 756 (N.D.N.Y. 1980) (“[T]here can be no doubt that even the slightest change in a household’s food stamp allotment threatens the well-being and the dignity of its members.”) (citing *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970)). Indeed, this  
(continued...)

**C. Alternatively, Violation of Ms. Pimentel’s and Class Members’ Constitutional Rights Constitutes Irreparable Harm Warranting Injunctive Relief**

This Court has repeatedly held that “[u]nlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm.” *Nelson v. Nat’l Aeronautics and Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), *rev’d on other grounds*, 131 S. Ct. 746 (2011); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009); *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997).

As described in Appellee’s answering brief, the District Court correctly found that Washington State’s termination of the Food Assistance Program likely constitutes a violation of Ms. Pimentel’s and class members’ equal protection and due process rights. In light of the likely violation of these important constitutional rights, it is evident that irreparable harm would result in the absence of preliminary relief.

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Court has held that the denial of access to similar benefits – even reductions of a relatively small magnitude – constitute irreparable harm. *Beno v. Shalala*, 30 F.3d 1057, 1063 n.10 (9th Cir. 1994) (“Numerous cases have held that reductions in [Aid to Families with Dependent Children] benefits, even reductions of a relatively small magnitude, impose irreparable harm on recipient families.”) (citing cases). Here, the harm is magnified and heightened in light of the vulnerability of the population affected – legal immigrants who constitute a “discrete and insular minority for whom heightened judicial solicitude is appropriate,” *Graham v. Richardson*, 403 U.S. 365, 372 (1971), and immigrant victims of domestic violence.

**II. BECAUSE THE STATE HAS FAILED TO DEMONSTRATE ANY HARM OUTWEIGHING THE HARM FACED BY MS. PIMENTEL AND CLASS MEMBERS, THE BALANCE OF HARDSHIPS TIPS STRONGLY IN MS. PIMENTEL'S AND CLASS MEMBERS' FAVOR**

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In light of the irreparable harm Ms. Pimentel and class members would suffer from the loss of essential food benefits and violation of their constitutional rights, the balance of hardships tips sharply in their favor. The sole reason advanced by the State for cutting the Food Assistance Program was “to create a cost savings.” Order, ER 18. However, “cost savings,” particularly during the limited period before the Court reaches a final disposition in this case, do not outweigh Ms. Pimentel’s and class members’ suffering from the loss of food benefits. *Id.*, ER 25 (“Plaintiff’s and classes’ suffering ‘is far more compelling than the possibility of some administrative inconvenience or monetary loss to the government.’”) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

**III. THE PUBLIC INTEREST FAVORS AFFIRMANCE OF THE PRELIMINARY INJUNCTION**

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As the District Court recognized, there is a strong public interest in ensuring that the constitutional principles underlying our federal system – here, equal protection and due process – are not violated. *See* Order, ER 25. Moreover, the public interest is served by providing continued food assistance to the most vulnerable members of society pending the resolution of this case.

It is well recognized that society has a strong interest in providing protection and assistance to battered women fleeing abuse.<sup>35</sup> All fifty states have enacted civil protection order laws with the “universal goals of counteracting abuse, safeguarding domestic violence victims from further threats or violence, and protecting the survivor’s peace of mind.”<sup>36</sup>

Congress has acted to protect immigrant victims by taking away the legal leverage exploited by abusers against their immigrant spouses. The Violence Against Women Act is the centerpiece of these protections.<sup>37</sup> VAWA enables immigrant victims of domestic violence to obtain legal status and work authorization directly, without dependence on the abusive spouse for cooperation. In strengthening the protections for battered immigrants in 1996, Congress “recognized that immigrants battered by their United States citizen . . . spouses . . . would not be able to leave their abusers, cooperate in their abuser’s prosecution or seek protection from the courts if they could not sever the economic control their abusers held over them,” and “[w]ithout battered immigrant access to the public

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<sup>35</sup> See, e.g., Jane K. Stoeber, *Freedom From Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 Ohio St. L.J. 303, 306-09 (2011).

<sup>36</sup> *Id.* at 306-307.

<sup>37</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. 4, ch. 1, 108 Stat. 1902, 1904-10 (codified as amended in scattered sections of 8, 18, and 42 U.S.C. (1994)).

benefits safety net, the congressional purposes of VAWA 1994 were being thwarted.”<sup>38</sup> Similarly, the Battered Immigrant Women Protection Act of 2000 “recognized the desperate need for battered immigrants to survive economically” by providing that a self-petitioner’s use of public benefits did not jeopardize her ability to receive lawful permanent residence.<sup>39</sup>

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<sup>38</sup> Leslye E. Orloff and Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol’y & L. 95, 118-27 (2001) (discussing Congressional intent to expand protection for battered immigrants in 1996 and 1997 immigration reforms). Despite the strong policy in favor of helping battered women flee their citizen abusers, in reality, the protections under federal law for battered women are hampered because the procedures remain slow, cumbersome and bureaucratic. See Indira K. Balram, Comment, *The Evolving, Yet Still Inadequate, Legal Protections Afforded Battered Immigrant Women*, 5 U. Md. L.J. Race, Religion, Gender & Class 387 (2005). VAWA falls short of completely eradicating the obstacles that United States immigration laws have created for battered immigrant women. *Id.* In particular, there is a time gap before immigrant spouses can legally start to work. See Orloff & Kaguyutan, *supra*, at 123-24 (explaining that a battered immigrant’s receipt of authorization to work can take four months or longer and during this time her only option for survival may be reliance on the public benefits safety net); see also Sarah M. Wood, Note, *VAWA’s Unfinished Business: The Immigrant Women Who Fall Through The Cracks*, 11 Duke J. Gender L. & Pol’y 141, 153 (2004) (discussing problems addressed by VAWA reforms and serious gaps that remain).

<sup>39</sup> Orloff & Kaguyutan, *supra* note 38, at 145-53 (discussing Congressional intent to expand protection for battered immigrants in VAWA 2000 reforms). Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518 (2000) (stating that the goal of the 1994 VAWA legislation was to remove legal barriers that prevent abused immigrants from leaving abusive relationships).

The State of Washington also recognizes that domestic violence is a serious crime,<sup>40</sup> and that victims of domestic violence must have access to the public benefits safety net if they are to break free. *See, e.g., Danny v. Laidlaw Transit Servs., Inc.*, 193 P.3d 128, 132-35 (Wash. 2008) (*en banc*) (describing recent changes to the Washington state laws enacted to enable victims of domestic violence to escape, including allowing victims to receive unemployment compensation if they must leave employment to protect themselves and allowing them to terminate residential leases without penalty); Wash. Rev. Code § 70.123.010 (2010) (finding that “[d]omestic violence is a disruptive influence on

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<sup>40</sup> *See* Patricia Sully, Comment, *Taking it Seriously: Repairing Domestic Violence Sentencing in Washington State*, 34 Seattle U. L. Rev. 963 (2011) (discussing the history of domestic violence law in Washington and the state’s recent increase in sentencing for chronic domestic violence offenders). As early as 1979, the state’s legislature enacted the Revised Code of Washington (RCW) 70.123, which provided funds and standards for shelters serving domestic violence, and RCW 10.99 (the Domestic Violence Act), which specifically recognized domestic violence as a serious crime and required law enforcement, prosecutors, and the courts to respond to domestic violence. *See id.* at 971-72. In 2010, Washington State enacted House Bill 2777, which instituted changes in domestic violence sentencing such as stricter sentencing for repeat offenders. *See id.* at 977; H.B. 2777, 61st Leg., 2010 Reg. Sess. (Wash. 2010). This law was intended to “give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable.” *See id.* (citation omitted). Significantly, there was widespread community involvement in the development of House Bill 2777. *See id.* at 981, n.174 (discussing the attorney general’s task force that proposed the recent sentencing reforms). Legislation such as the Domestic Violence Act and House Bill 2777 demonstrates the State’s commitment to addressing the problem of domestic violence.

personal and community life” and therefore recognizing that there is a need for “statewide development and expansion of shelters for victims of domestic violence”).

In particular, State law recognizes that removal of the legal and economic barriers that prevent battered women from escaping abuse is a necessary step toward achieving safety for victims. *See, e.g., Danny*, 193 P.3d at 132-35 (discussing amendments to the Washington Domestic Violence Protection Act made “to improve the protection order process so that victims have . . . easy, quick, and effective access to the court system,” including an amendment that gives full faith and credit to out-of-state protection orders to remove “the barriers faced by persons entitled to protection”) (citations and internal quotations omitted).

At the heart of the legislative actions described above is the recognition of the undeniable interest of society in assisting battered women to leave their abusers, remove children from the dangers present in abusive homes, and establish independent lives free of abuse. Withdrawal of food benefits from battered women – even for a short time – jeopardizes their ability to flee abuse and to achieve safety and self-sufficiency. Accordingly, it is in the public interest to continue food assistance to Ms. Pimentel and the class she represents for the duration of this litigation.

**CONCLUSION**

For the foregoing reasons, this Court should affirm the District Court's grant of a preliminary injunction.

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**STATEMENT OF RELATED CASES**

I hereby certify that I am not aware of any related cases within the meaning of the Ninth Circuit Rule 28-2.6 except for the case identified as related in the Appellant's brief.

Dated: May 27, 2011

/s/ Susanna Y. Chu  
Susanna Y. Chu

**STATEMENT OF AMICUS**

Pursuant to Fed. R. App. P. 29(c)(5), I hereby certify:

- (A) a party's counsel did not author the brief in whole or in part;
- (B) a party or a party's counsel did not contribute money that was intended to fund preparing or submitting the brief; and
- (C) a person – other than the *amicus curiae*, its members, or its counsel – did not contribute money that was intended to fund preparing or submitting the brief.

Dated: May 27, 2011

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Respectfully Submitted,

By: /s/ Susanna Y. Chu  
Susanna Y. Chu

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 27, 2011, I served the foregoing Motion of Legal Momentum to Participate as *Amicus Curiae* in Support of Plaintiff-Appellee Monica Navarro Pimentel, and [Lodged] Brief of *Amicus Curiae* Legal Momentum in Support of Plaintiff-Appellee with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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