No. 20-1471

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JENNIFER ARGUIJO

Plaintiff-Appellant,

v

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; CHAD WOLF, Acting Secretary of the Department of Homeland Security; KENNETH CUCCINELLI, Sr. Official Performing the Duties of the Director of the United States Citizenship and Immigration Services; SUSAN DIBBINS, Acting Chief, Administrative Appeals Office; MICHAEL PAUL, Director, Vermont Service Center

Defendants-Appellees.

On Appeal from the United States District Court
For the Northern District of Illinois, Eastern Division
No. 1:13-cv-05751
The Honorable Judge Andrea R. Wood

BRIEF OF *AMICUS CURIAE* NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT, INC. IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

George C. Summerfield
**Counsel of Record*
Daniel-Charles V. Wolf
Trevor J. Martin
Meghan K. Tierney
K&L GATES LLP
70 West Madison Street
Chicago, Illinois 60602
(312) 372-1121

Counsel for Amicus Curiae,
National Immigrant Women's Advocacy Project, Inc.

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1471

Short Caption: Jennifer Arguijo v. USCIS, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

National Immigrant Women's Advocacy Project, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

K&L Gates LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ George C. Summerfield Date: 07/24/2020

Attorney's Printed Name: George C. Summerfield

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: K&L Gates LLP

70 W. Madison Street, Suite 3300, Chicago, IL 60602

Phone Number: (312) 807-4376 Fax Number: (312) 827-8000

E-Mail Address: george.summerfield@klgates.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1471

Short Caption: Jennifer Arguijo v. USCIS, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

National Immigrant Women's Advocacy Project, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

K&L Gates LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Daniel-Charles V. Wolf Date: 07/24/2020

Attorney's Printed Name: Daniel-Charles V. Wolf

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: K&L Gates LLP

70 W. Madison Street, Suite 3300, Chicago, IL 60602

Phone Number: (206) 370-8017 Fax Number: (206) 623-7022

E-Mail Address: DC.Wolf@klgates.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1471

Short Caption: Jennifer Arguijo v. USCIS, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

National Immigrant Women's Advocacy Project, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

K&L Gates LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Trevor J. Martin Date: 07/24/2020

Attorney's Printed Name: Trevor J. Martin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: K&L Gates LLP

70 W. Madison Street, Suite 3300, Chicago, IL 60602

Phone Number: (312) 807-4281 Fax Number: (312) 827-8000

E-Mail Address: trevor.martin@klgates.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1471

Short Caption: Jennifer Arguijo v. USCIS, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

National Immigrant Women's Advocacy Project, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

K&L Gates LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Meghan K. Tierney Date: 07/24/2020

Attorney's Printed Name: Meghan K. Tierney

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: K&L Gates LLP

70 W. Madison Street, Suite 3300, Chicago, IL 60602

Phone Number: (312) 807-4255 Fax Number: (312) 827-8000

E-Mail Address: meg.tierney@klgates.com

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the undersigned counsel certifies that the *amicus curiae* is not a publicly held corporation, does not have a parent corporation, and that no publicly held corporation owns ten percent or more of its stock.

Dated: July 24, 2020

s/ George C. Summerfield
George C. Summerfield

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae National Immigrant Women's Advocacy Project, Inc. ("NIWAP") is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes. As a national resource center, NIWAP offers technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with immigrant crime victims. NIWAP's Director worked closely with Congress in the drafting of the immigration protections included in the Violence Against Women Acts ("VAWA"), both the original Act and each amendment, and the Trafficking Victims Protection Acts ("TVPA"), the original Act and the 2008 amendment. NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, Board judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals.

This case involves interpreting provisions of VAWA, the provisions of which allow children, including stepchildren, who have suffered extreme cruelty to self-petition for legal immigration status without the normally required sponsorship of a U.S. citizen or lawful permanent resident parent. Self-petitioning helps immigrant stepchildren escape an abusive stepparent's grasp. Important protections such as these are at the core of NIWAP's mission to promote access to legal mechanisms aimed at helping immigrant abuse victims. NIWAP attorneys and staff were actively involved in drafting VAWA's protections for immigrant abuse victims. As such, NIWAP has a unique interest in ensuring that VAWA is interpreted and applied correctly to immigrant survivors of domestic and child abuse. NIWAP, *as amicus curiae*, thus believes that this brief "will

assist the judges by presenting ideas, arguments, . . . [and] insights" that are not present in the parties' briefs. *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003).

NIWAP files this brief under Fed. R. App. P. 29(a). All parties to the appeal have consented to the filing. Appellant's counsel neither authored the brief in whole or in part, nor contributed financial support to the preparation or submission of this brief. No other individual(s) or organization(s) contributed financial support intended to fund the preparation or submission of this brief.

II. INTRODUCTION

A stepparent's abuse involves the same perversion of authority, trust, control, and innocence as does that of a blood relative; indelibly marking the victim's life long after the marriage affording the abusive stepparent the opportunity to commit these acts, has ended. Allowing stepchildren to self-petition for legal immigration status is intended to help alleviate these deleterious effects. The U.S. Citizenship and Immigration Service ("USCIS" or the "Agency") ignored this. It determined that Appellant, whose U.S. citizen stepfather abused her, is not entitled to self-petition for legal immigrant status under VAWA. The Agency's position underlying this determination is that stepchild status terminates along with the marriage that created it, unless the child maintains a "continuing relationship" with the abusive former stepparent. *See Arguijo v. U.S. Citizenship & Immigration Servs.*, No. 13-CV-05751, 2020 WL 231075, at *3 (N.D. Ill. Jan. 15, 2020).

But that is not what the statute says. Under the Immigration and Nationality Act ("INA"), a "child" who can self-petition under VAWA is defined, in relevant part, to include:

> an unmarried person under twenty-one years of age who is . . . a ***stepchild***, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

8 U.S.C. § 1101(b)(1)(B) (emphasis added). Thus, while the statute plainly specifies that a marriage between an immigrant's biological parent and a stepparent "creat[es] the status of stepchild," it plainly does ***not*** say that terminating the marriage also terminates the status.

In affirming USCIS's determination, the district court cited dictionary definitions of "stepchild" that purportedly require a valid ***current*** marriage. District Court Decision at 7 (emphasis added). The district court ignored clear Congressional intent reflected in both the statute's omission of any reference to the ***termination*** of stepchild status, and in the legislative context of the statute. Further, as explained herein, the cited dictionary definitions are entirely consistent with that intent. Thus, the statutory construction propounded by the USCIS and the district court, allowing for the termination of stepchild status, did not give effect to the unambiguously expressed intent of Congress, and was therefore erroneous.

The trauma a stepchild endures under a stepparent's abuse does not end with divorce. It does not end when a stepchild flees to escape abuse or ends all contact with her tormentor. Rather, it can continue regardless of any changes due to divorce, death, or distance. The plain text of the INA recognizes this by expressly omitting any provision that termination of a marriage ends stepchild status once that status was created. The district court was wrong to so hold.

III. ARGUMENT

A. Standard of review.

When a court reviews an agency's construction of the statute which it administers, it considers two questions: 1) whether Congress has directly spoken to the precise question at issue, which must be given effect; and 2) if not, whether the agency has adopted a permissible construction of the statute. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). Here, Congress expressed its clear intent that stepchildren are entitled to self-petition for legal immigration status, and it spoke directly to whether stepchild status

terminates by making no provision for such termination, as it has done in other statutes under which an enumerated event cuts off such status. The issue on appeal, then, is whether the Agency's decision, affirmed by the District Court, gave effect to this intent. The answer, as explained herein, is no.

The District Court, for its part, reviewed the Agency's decision under an "arbitrary and capricious" standard pursuant to 5 U.S.C. § 706(2). *Arguijo v. United States Citizenship and Immigration Services*, No. 13-cv-05751, 2020 WL 231075, at *3 (N.D. Ill. Jan. 15, 2020). While subsection (A) of that statute does reference an "arbitrary and capricious" standard of review, subsection (C) separately provides for judicial review of agency decisions that are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). The test set forth in *Chevron*, *supra*, provides the framework for such review when statutory construction is at issue. In other words, the District Court applied the wrong standard of review. And, as the District Court implicitly skipped over the first part of the *Chevron* inquiry entirely, proceeding directly to the reasonableness of the Agency's statutory construction, it erred in its review. *See Arangure v. Whitaker*, 911 F.3d 333, 338 (6th Cir. 2018) (citations omitted) ("*Chevron's* first step is not a free pass").

B. The district court's and USCIS's interpretation of the term "stepchild" as requiring an existing marriage ignores the plain text of 8 U.S.C. § 1101(b)(1)(B).

1. Read as a whole, 8 U.S.C. § 1154(a)(1)(A)(iv) and § 1101(b)(1)(B) unambiguously provide that stepchild status starts with, but does not end, with marriage.

The Agency's statutory construction, which denies access to self-petitioning to those that purportedly lose stepchild status, was contrary to clear Congressional intent expressed in the plain text of the governing statute. In affirming the Agency's decision, the district court relied on dictionary definitions that define a stepchild as a "child of one's" spouse. District Court Opinion

at 7. These definitions do not further specify whether or when a stepchild ceases to be such, *e.g.*, in the event of death or divorce. And the applicable statute itself only qualifies the term "stepchild" by requiring that the child "had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred." 8 U.S.C. § 1101(b)(1)(B). Put simply, the statute says only that stepchild status results from a marriage that happened before the child turned eighteen. It says nothing about how (if at all) that status ends. Holding, as the district court did, that termination of the marriage terminates this status amounts to re-writing the statute, and ignoring Congressional intent as expressed in the unambiguous statutory text.

Other aspects of the statutory scheme, when read as a whole, support that stepchild status does not terminate under VAWA. First, VAWA's provision that a stepchild "who has resided in the past" with an abusive citizen parent, 8 U.S.C. § 1154(a)(1)(A)(iv), supports that such status does not terminate. By adding "who has resided in the past," Congress sought to promote access to relief through VAWA, allowing self-petitioning for immigrant victims of abuse so they could leave abusive homes, sever dependence on the perpetrator, and rebuild their lives. 146 Cong. Rec. S10170 (daily ed. Oct. 11, 2000).[1]

Second, the definition of "child" includes a stepchild under twenty-one if "the child ***had*** not reached the age of eighteen . . . at the time the marriage creating the status of stepchild

[1] The legislative history, also an indicator of Congressional intent, specifies with regard to spouses that "***recently divorced*** battered immigrants will be able to file self-petitions. Current law allows only battered immigrant women ***currently married*** to their abusive spouses to qualify for relief. As a result, many abusers have successfully ***rushed to the court house to obtain divorces, in order to deny relief to their immigrant spouse***. This provision will prevent this unfair result and ensure that victims are not wrongly deprived of the legal protection they need." 146 Cong. Rec. S10170 (daily ed. Oct. 11, 2000) (emphasis added). The same policy consideration applies at least equally to children.

occurred" (emphasis added). 8 U.S.C. § 1101(b)(1)(B). Use of the past perfect "had" refers to an event that began and finished in the past, *see* GRAMMARLY BLOG, https://www.grammarly.com/blog/past-perfect/; whereas Congress could have used the present perfect "has," *see* GRAMMARLY BLOG, https://www.grammarly.com/blog/present-perfect-continuous-tense/, to describe an event that began in the past and continues to the present. The past-perfect tense "had not" includes a situation in which the marriage creating stepchild status has ended.

Third, the word "is" in § 1101(b)(1)(B) does not in and of itself suggest that stepchild status requires a present marriage. The present tense "is" would indicate that a continuing marriage is required only if that requirement were inherent in the word "stepchild," which it is not.

2. In other statutory contexts, Congress has been explicit with its intent that divorce terminates stepchild status, suggesting that no such termination occurs in the instant context.

In drafting 8 U.S.C. § 1101(b)(1)(B), Congress chose to omit from the definition of "stepchild" language it included in another statutory provision that expressly states that one ceases being a stepchild "after the divorce of the member from the stepchild's parent by blood." 37 U.S.C. § 401(b)(1)(A) (defining various types of dependents of service members). Congress's decision to insert this language in the service member dependency statute implicitly recognizes that stepchild status persists after termination of the marriage. Said differently, if the ordinary meaning of "stepchild" necessarily means that stepchild status ends along with the marriage that created it, there would be no need to include a further explicit statement to that effect, as Congress did in the service member dependency statute. Under the canons of statutory construction, courts construe language in a statute to avoid rendering any term superfluous. *Maslenjak v. United States*, 137 S. Ct. 1918, 1925 n.2 (2017).

In any event, the district court itself recognized that the dissolution of a marriage does not necessarily terminate stepchild status. Rather, according to the court, that status endures at least when there is a "continuing relationship" between the stepchild and stepparent. District Court Opinion at 10-11. But the notion that such a relationship is ***required*** has no basis in the statutory text. As mentioned, the unqualified reference to "stepchild" in § 1101(b)(1)(B) suggests a continuing status, in contrast to the qualified reference in the service member dependency statute or in a statutory provision requiring that a dependent stepchild "lived with the individual in a regular parent-child relationship" to establish family member status for purposes of receiving certain benefits. *See, e.g.,* 5 U.S.C. § 8701(d)(1)(B) (stating this requirement for both stepchildren and foster children). This latter statutory provision belies the notion that "stepchild" status inherently requires an ongoing relationship because it explicitly notes additional requirements limiting when stepchild status applies.

It was wrong to read such a continuing relationship requirement into § 1101(b)(1)(B). No such additional protection is needed, because the continued status of being a "stepchild" is inherent in that word, especially when viewed in the statutory framework under consideration in this Appeal. *See, e.g.*, *Palmer v. Reddy*, 622 F.2d 463, 464 (9th Cir. 1980) (the definition of "stepchild" under section 1101(b)(1)(B) is "without further qualification"); *Si Min Cen v. Attorney General*, 825 F.3d 177, 185 (3rd Cir. 2016) (no need to demonstrate a parent-child relationship with U.S. stepparents under section 1101(b)(1)(B)).

C. The definition of stepchild in 8 U.S.C. § 1101(b)(1)(B) is clear when read within the overall context of VAWA's underlying purpose and relationship to the INA.

The definition of child (and stepchild) under § 1101(b)(1)(B) is clear because it expressly omits any circumstances under which the stepchild relationship ends. The correctness of that definition is clearer still in the context of VAWA and its underlying purpose and history.

The broad goal of VAWA within the INA is to "remove immigration laws as a barrier that [keep] battered immigrant women and children locked in abusive relationships." Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1518 (2000). VAWA's legislative history recounts the plights of many immigrant women "caught between their desperate desire to flee their abusers and their desperate desire to remain in the United States." 146 Cong. Rec. S10205 (daily ed. Oct. 11, 2000). Amendments to VAWA aimed to address "targeted improvements that our experience with the original Act has shown to be necessary, such as . . . strengthening and refining the protections for battered and immigrant women." 146 Cong. Rec. S10192 (daily ed. Oct. 11, 2000).

Senator Leahy discussed one such "targeted improvement" when he said that "VAWA [] will ensure that the immigration status of battered women will not be affected by ***changes in the status*** of their abusers." 146 Cong. Rec. S10185 (daily ed. Oct. 11, 2000) (emphasis added). Such improvements include the ability for an immigrant spouse to self-petition in the event that a marriage was not valid, and the provision allowing self-petitioners to remarry in order to protect themselves from ongoing domestic violence. *Id.*

Similarly, in renewing VAWA, Congress explicitly addressed the impact of divorce in other contexts, but did not do so with regard to the stepchild relationship—again suggesting that inherent to that relationship is its persisting status, unless limited by an express termination provision. The renewal of VAWA carefully provided safeguards for battered immigrant spouses to obtain legal relief and protection from their abusers in the event of a change in marital status. VAWA's 2000 amendment added a provision that allows for battered spouses to self-petition within two years of divorce if the divorce was related to domestic violence. Battered Immigrant Women Protection Act of 2000, § 1503. The legislative history of this amendment particularly

pointed out the expansion of those eligible to file self-petitions would "ensure that victims are not wrongly deprived of the legal protection they need." 146 Cong. Rec. S10170 (daily ed. Oct. 11, 2000).

This amendment to the protections of divorced immigrants under VAWA is further evidence that Congress expressly considered the impact of divorce in the context of self-petitioning. If Congress intended divorce to have an impact on the stepchild relationship, it was more than capable of so stating. Divorce thus does not impact the definition of "stepchild." Put simply, Congress had to make post-divorce rights explicit for former spouses, because inherent in the term "spouse" is a current marriage; but it did not have to do this for stepchildren, because there is no corresponding inherency for that term.

When viewed within the overall purpose of VAWA to offer protection for abused immigrant children and stepchildren, and sever any need for the child victim to remain dependent upon or in a relationship with the abuser, the plain language interpretation of the term "stepchild" from the broader landscape of the INA is consistent with what Congress sought to achieve when it adopted the INA's definition of child (and stepchild) for purposes of self-petitioning under VAWA—ensuring that a change of status in an abusive marriage will not affect immigration status.

D. Even if 8 U.S.C. § 1101(b)(1)(B) is susceptible to USCIS's urged interpretation, this Court should not adopt that reading since it leads to absurd results and overlooks the impact of the very abuse VAWA seeks to mitigate.

1. USCIS's reading of the statute is meaninglessly formal and would yield absurd results.

Running a proposed legal rule or interpretation through a series of hypothetical scenarios is a valuable tool for testing the rule to assess its viability and detect errors. *Cf.* Eugene Volokh, *Test Suites: A Tool for Improving Student Articles*, 52 J. LEGAL EDUC. 440 (2002) ("A test suite is a set of cases that programmers enter into their [software] programs to see whether the results look right . . . The test suite is the . . . tool for proving . . . that [a] claim is sound."). In this instance,

applying USCIS's interpretation of "stepchild" to at least the following hypotheticals confirms that adopting an interpretation requiring a continuing stepparent/stepchild relationship would lead to absurd results.

Hypothetical #1: An abuser terminates a marriage by killing a stepchild's mother. Under USCIS's interpretation of "stepchild," there would need to be a continuing relationship between the stepchild and her mother's murderer.

Hypothetical #2: A stepchild secures a no contact civil protection order against her stepfather as a result of abuse. That order would terminate stepchild status under the USCIS definition.

These hypotheticals expose USCIS's construction of "stepchild" for what it is: arbitrary and contrary to what Congress enacted VAWA to do.

2. The proper meaning of the statute recognizes what science confirms: In the context of abuse, a stepparent abuser creates enduring and psychological trauma for the victim.

As the district court recognized, the cases from which USCIS drew its "continuing relationship" test are an "uneasy fit" in the context of an abused self-petitioner. *Arguijo v. United States Citizenship & Immigration Servs.*, No. 13-CV-05751, 2020 WL 231075, at *5 (N.D. Ill. Jan. 15, 2020). "[T]he continuing relationship requirement arose in cases that did not deal with abuse and provides an accommodation for circumstances where a strict, plain language interpretation of the statutory text leads to a harsh result." *Id.* The district court's statement recognizes that in the context of abuse, a "continuing relationship" could perversely "incentiviz[e] a victim to maintain a relationship with her abuser" at grave risk to the victim. *Id.* at *7. Making this result all the more "uneasy" is that neither the district court nor USCIS considers what science has continued to confirm: in the context of abuse, a stepparent abuser creates enduring and psychological trauma for the victim.

There are many ways in which a stepparent abuser creates enduring psychological trauma for the victim. Suffering such abuse, or even witnessing it, as a minor affects the child's health and wellbeing. Diana J. English, David B. Marshall & Angela J. Stewart, *Effects of Family Violence on Child Behavior and Health During Early Childhood*, 18 J. FAM. VIOLENCE 43 (2003); Alissa C. Huth-Bocks, Alytia A. Levendosky & Michael A. Semel, *The Direct and Indirect Effects of Domestic Violence on Young Children's Intellectual Functioning*, 16 J. FAM. VIOLENCE 269 (2001); Joy D. Osofsky, *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, 6 CLINICAL CHILD & FAM. PSYCH. REV. 161 (2003). Even the physical development of a human brain is negatively affected.[2] When trauma alters a child's brain, the emotional, behavioral, cognitive, social, and physical problems are enduring. Decl. of David B. Thronson at 11, *O.M.G. v. Wolf*, D.D.C. No. 1:20-cv00786-JEB, Dkt. No. 25 (March 30, 2020) (citing J. Scott, et al., *A Quantitative Meta-Analysis of Neurocognitive Functioning in Posttraumatic Stress Disorder*, 141 PSYCH. BULLETIN 105 (2015)).

The proper, and plain and ordinary meaning of "stepchild," urged herein, which does not terminate upon divorce, and which does not require a continuing relationship with an abusive stepparent, assists in the avoidance of these adverse effects of abuse. Limiting "stepchild" in the manner proposed by USCIS leads to the absurd result wherein abuse is allowed to continue, and such a result is to be avoided in construing the statute at issue. *See United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989).

---

[2] Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/ (amicus brief submitted to the Department of Justice discussing effects of trauma in minors, particularly in immigrant minors).

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the district court's ruling and remand for entry of judgment in the Appellant's favor granting the Appellant's VAWA self-petition.

Dated: July 24, 2020

Respectfully submitted,

s/ George C. Summerfield
George C. Summerfield
Daniel-Charles V. Wolf
Trevor J. Martin
Meghan K. Tierney
K&L GATES LLP
70 West Madison Street
Chicago, Illinois 60602
(312) 372-1121

Counsel for Amicus Curiae, National Immigrant Women's Advocacy Project, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), I certify that the attached brief conforms to the type volume limitations of Fed. R. App. P. 32(a)(7)(B) and Cir. R. 32(c). This brief contains 3,753 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I hereby certify, in accordance with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), as amended by Cir. R. 32(b), that this brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman 12-point font.

Dated: July 24, 2020

s/ George C. Summerfield
George C. Summerfield

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ George C. Summerfield
George C. Summerfield