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## Dynamics of Domestic Violence Experienced by Immigrant Victims<sup>12</sup>

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A victim of domestic violence faces a variety of complex legal and personal issues that can be further exacerbated by the pressures of immigration and culture concerns.<sup>3</sup> Battered immigrant<sup>4</sup> women often feel

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<sup>2</sup> In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act’s (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim’s gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use “he” in this Manual to refer to the perpetrator and “she” is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.” On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (United States v. Windsor, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples

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(<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

<sup>3</sup> For more information on this topic, go to <http://niwaplibrary.wcl.american.edu/immigration>.

<sup>4</sup> The term "immigrant," unless otherwise noted, will be used in this manual as a general term to also include both documented and undocumented immigrants, refugees and migrants. The term "undocumented" refers to people currently living in the United States without permission from the Department of Homeland Security (formerly the Immigration and Naturalization Service). This unauthorized residence could result from a visa violation or an unlawful entry. "Documented" immigrants are those who hold valid visas to live in the United States, and include legal permanent residents ("green card" holders). These documented populations, although they are lawfully present in the United States, are often uninformed or misinformed about their legal rights. Many battered immigrants who are currently undocumented immigrants may qualify to

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isolated from their communities, both domestically and internationally. Moreover, foreign-born women are frequently uninformed, unfamiliar with or simply confused about, their legal rights and the social services available to them in the United States. This is due, in part, to the lack of interactions between immigrant victims and government agencies. Unfortunately, too often both, governmental and non-governmental agencies that help to redress domestic violence are not prepared to meet the diverse needs of battered immigrant women. Many lack language accessibility, cultural sensitivity, and have insufficient information regarding the legal rights of battered immigrants. The needs of immigrant victims can be met by educating advocates and attorneys, and ensuring that justice-system employees in all communities know immigrant victims' legal rights. Immigrant victims' access to services can be significantly improved by increasing the cultural sensitivity of these professionals. This means replacing prior assumptions individuals might have had about immigrant victims and their perpetrators. In doing so, these professionals can serve as culturally sensitive and well-informed guides to help immigrant victims navigate through their legal and personal challenges resulting from the violence they have endured.

In order for readers to better understand immigrant victims of violence against women, this manual seeks to explain the complex topics of domestic violence and immigration laws that are intended to assist immigrant survivors. The goal of this manual is to provide support and assistance to advocates and attorneys, arming them with the knowledge they need to confidently provide effective assistance to battered immigrant victim and the immigrant community. Additionally, this text is being written to provide immigrant advocates, immigrant attorneys, and social service providers to immigrant communities, with an understanding of general domestic violence dynamics and how these affect immigrant victims. Each of the following chapters will highlight particular issues of importance for advocates and attorneys helping immigrant victims overcome systemic barriers and find ways to navigate through systems that are not often responsive to immigrant victims' needs.

This chapter provides background information about the dynamics of domestic violence as experienced by immigrant victims. It provides a definition for domestic violence. Nine subsequent sections explain how immigrant victims fear deportation, the specific economic issues they experience, particular concerns about child custody, popular misconceptions about the U.S. legal system, and how advocates can help rebuild social support networks for immigrant victims. The chapter addresses culturally sensitive topics regarding health care, police relations and women's efforts to leave abusers.

### Definition of Domestic Violence

Violence against a woman caused by an intimate partner is a common occurrence in the United States. Domestic violence crosses racial, ethnic, national origin, religious, age, socioeconomic, and sexual lines.<sup>5</sup> It is also important to note that same-sex violence happens at approximately the same rate as opposite-sex

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battering.<sup>6</sup> The July 2000 *National Violence Against Women Survey* by the United States Department of Justice found that violence against women is primarily intimate-partner violence: 64.0% of the surveyed women who reported being raped, physically assaulted, and/or stalked since age 18 were attacked by a current or former spouse, boyfriend, cohabiting partner, or date.<sup>7</sup> According to a 1998 Commonwealth Fund Survey, nearly one-third of American women (31%) report being physically or sexually abused by a husband

attain legal immigration status either through the Violence Against Women Act (VAWA) or the U-Visa crime victim visa provisions discussed in Chapters 3 of this manual.

<sup>5</sup> American Bar Association Commission on Domestic Violence <http://www.abanet.org/domviol/stats.html> & Heise, Lori L., Jacqueline Pitanguy and Adrienne Germain. *Violence Against Women: The Hidden Health Burden*. The World Bank. No. 255. Washington, DC page 14. Lisa E. Martin, *Providing Equal Justice for the Domestic Violence Victim: Due Process and the Victim's right to Counsel*, 34 *Gonz. L. Review*. 329, 332 (1998-1999). See generally, Honorable Karen Burstein, *Naming the Violence: Destroying the Myth*, 58 *ALB. L. Review* 961 (1995); Zanita E. Gfenton, *Domestic violence in Black and white: Racialized Stereotypes in Gender violence*, 8 *Colum J. Gender and Law*. 1 (1998).

<sup>6</sup> David M. Zlotnik, *Empowering the Battered Woman: The use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*. 59 *Ohio St. Law Journal* 1153, 1162-63, 1215 (1995). Kathleen Finley Duthu, *Why Doesn't Anyone Talk about Gay and Lesbian Domestic Violence?* 18 *Thomas Jefferson Law Rev.* 23, 24 (1996).

<sup>7</sup> Tjaden, P. & Thoennes, N. (July 2000). *Full report of the prevalence, incidence, and consequences of violence against women*. (Publication #NCJ83781). Washington, DC: United States Department of Justice, Bureau of Justice Statistics. Available at <http://www.ncjrs.org/pdffiles1/nij/181867.pdf>.

or boyfriend at some point in their lives.<sup>1</sup> Violence by an intimate partner is far more likely to end in injury than violence by a stranger, and should, therefore, be considered more dangerous. Statistics from the Department of Justice revealed that in approximately 2 million of the 4.8 million intimate partner rapes and assaults reported, the victim was injured.<sup>2</sup> Victims sustain injuries in 48% of incidents of violence committed by an intimate partner, and in 32% of incidents of violence committed by a family member.<sup>3</sup>

A study of Latina immigrants who were surveyed in the Washington, DC metro area showed that, almost 50% have been abused physically, 11% sexually abused, and 40% had been psychologically abused.<sup>4</sup> Although the domestic violence rates are numerically close between US-born women and immigrant women, the dynamics are quite different for immigrant battered women. For example, immigrant women who have been in the U.S. for less than three years are less likely to call the police for help for fear of language barriers,<sup>5</sup> or because they fear a lack of responsiveness from police officers in documenting the event or arresting the abuser.<sup>6</sup> In turn, these obstacles for battered immigrant victims are tools of power and control for the abusers.

Domestic violence is a harsh reality for any woman, and for a woman who is unfamiliar with language, resources or a social support network, intimate partner violence can be even more traumatic. Abuse is an extension of power and control the abuser has over the victim. Some specific examples of power and control tactics are; emotional abuse, economic abuse, sexual abuse, coercion and threats, using children as leverage for the victim to endure the abuse, using citizenship or residency privilege, intimidation, isolation or manipulating situations in order to keep the victim dependent upon him. For many years domestic violence was seen in law as mainly consisting of physical and/or sexual abuse. In 1994, the Violence Against Women Act (VAWA) introduced the concept of the term *extreme cruelty*, which includes being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), stalking, fraud in foreign labor or forced prostitution are also considered domestic violence.

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<sup>1</sup> Karen Scott Collins, Cathy Schoen, Susan Joseph, Lisa Duchon, Elisabeth Simantov, and Michele Yellowitz. *The Commonwealth Fund. Health Concerns Across a Woman's Lifespan: 1998 Survey of Women's Health*, May 1999. Available at: [http://www.cmwf.org/programs/women/ksc\\_whsurvey99\\_332.asp](http://www.cmwf.org/programs/women/ksc_whsurvey99_332.asp)

<sup>2</sup> Tjaden, P. & Thoennes, N. (July 2000). *Full report of the prevalence, incidence, and consequences of violence against women*. (Publication #NCJ83781). Washington, DC: United States Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs>.

<sup>3</sup> Thomas Simon, James Mercy, and Craig Perkins. *Injuries from Violent Crime 1992-98*, Bureau of Justice statistics, Center for Disease Control and Prevention. <http://www.ojp.usdoj.gov/bjs/pub/pdf/ivc98.pdf> National Crime Victimization Survey June 2001. NCJ 168633

<sup>4</sup> Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in *DOMESTIC VIOLENCE: GLOBAL RESPONSES* 93(2000).

<sup>5</sup> Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 *UCLA WOMEN'S L.J.* 44, 71 (2003).

<sup>6</sup> Orloff, Leslye, Deeana Jang and Catherine Klein. American Bar Association. Vol. 29, No. 2, 316, Summer 1995.

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### BATTERING AND EXTREME CRUELTY

It is important for advocates and attorneys working with immigrant victims to become familiar with the definition of “domestic violence” under U.S. immigration law. Department of Homeland Security regulations state that abuse encompasses both battery and extreme cruelty.<sup>7</sup> Physical abuse and sexual abuse are the most common forms of abuse. Domestic violence includes, but is not limited, to: throwing objects, pushing or shoving, physical restraint by forcefully holding or tying up the victim (such as locking her in the house or room), slapping, pulling hair, punching, kicking, burning, choking, strangling or smothering, slamming the victim’s head into a hard object, beating up the victim, throwing the victim on the floor, running into the victim with an automobile, putting a dangerous substance, such as gasoline, on the victim’s skin, hair, or eyes, pushing, scratching, biting, burning, attacking, hitting, cutting, or stabbing the victim with a knife or machete, attacking, hitting, or shooting the victim with a gun, hitting the victim with other objects, and/or assaulting during pregnancy.<sup>8</sup>

Sexual abuse is typically defined as: rape, forcing a victim to participate in unwanted sexual behavior, making derogatory remarks about the victim, such as calling her a prostitute or mail-order bride,<sup>16</sup> telling her that she is legally required to have sex with him whenever he wants until they are divorced (in most states, a couple cannot be legally divorced until they are separated and have not had sex for six months),<sup>17</sup> making the victim view or perform in pornographic material, forcing the victim to have sexual relations with other men or engage in prostitution, accusing her of having sex with other men or of trying to attract other men through such behavior as applying makeup, and/or suggesting on legal documents that the victim has a history of prostitution.

In addition to physical battery and sexual abuse, the domestic violence definition under immigration law explicitly includes “acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.”<sup>18</sup> This expanded definition also includes harassment, which involves following the victim, threatening the victim, calling the victim names, preventing the victim from leaving the room or from calling the police, interfering with the victim’s living, making unwanted telephone calls to the victim, moving within two blocks of the victim’s house, loitering in front of the battered women’s shelter where the victim is staying, and contacting the petitioner’s employer.<sup>19</sup> This definition also encompasses a pattern of interactions in which one intimate partner is forced to change her<sup>20</sup> behavior in response to the threats or abuse. The definition is more inclusive than the state criminal or family law domestic violence definitions, which are generally limited to violent acts, kidnapping, threats, and attempts to harm or physically injure a partner.<sup>21</sup>

Psychological abuse is typically shown through emotional/verbal abuse and/or through dominance and isolation of resources.<sup>22</sup> Psychological abuse plays an important role in abusive relationships because it is often a precursor to physical and/or sexual abuse. Moreover, psychological abuse does not have a concrete beginning or end, like physical and sexual abuse, and this can create a constant climate of terror for the victim. Psychological abuse may consist of: insulting the victim or driving her friends away, continually criticizing her and calling her names, ignoring her feelings, manipulating, humiliating the victim in private or public, mocking or insulting personal beliefs, regularly threatening the victim, regularly threatening to leave or kidnap the children, threatening to abuse her loved ones, locking the victim out of the house, taking possession of the victim’s belongings and keeping control of them, throwing away the victim’s belongings, controlling what the victim can and cannot do, stalking, checking the victim’s mail, phone messages, and anything that may be private to her, becoming jealous and accusing the victim of sexual activity with others,

et al. eds., 2000) and from focus groups with Latina immigrant victims of domestic violence who participated in the development of the Needs Assessment Survey of Undocumented Women the results of which were published in 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, 4 (2000) .

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<sup>7</sup> 8 C.F.R. 204.2(c)(1)(E); see also INA §216(c)(4)(C), 8 U.S.C. 1186(c)(4)(C) (1994).

<sup>8</sup> This list derived from Mary Ann Dutton Et Al., American Bar Association, *Domestic Violence & Immigration: Applying the Immigration Provisions of the Violence Against Women Act: A Training Manual for Attorneys & Advocates* 3-4 (Bette Garlow

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- <sup>16</sup> Instead of using the term “mail-order brides,” which has been interpreted by many to somehow blame the victim for any abuse she may suffer at the hands of her husband, the preferred description is wives who met their husbands through international matchmaking organizations.
- <sup>17</sup> Need to look at Family Law or matrimonial horn book that we had at Ayuda to get cites for divorce separation requirements in all states also include here sample case law on ongoing sexual relations and separation for purposes of divorce.
- <sup>18</sup> Department of Homeland Security Regulations [8 C.F.R. § 204.2(c)(1)].
- <sup>19</sup> Catherine F. Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra Law Review 801, 866-867 (Summer 1993)
- <sup>20</sup> The use of “he” for the abuser and “her” for the victim is based on the fact that statistics show that the majority of perpetrators are male and the majority of victims are female. *Supra* note 1, at 17; Gerald T. Hotaling & David B. <http://www.vawnet.org/DomesticViolence/ServicesAndProgramDev/ServiceProvAndProg/BIW99-c1.pdf>. Tjaden, P. & Thoennes, N. (July 2000). *Full report of the prevalence, incidence, and consequences of violence against women*. (Publication #NCJ83781). Washington, DC: United States Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs>
- <sup>21</sup> Leslye Orloff and Janice 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, 106 (2001). See also Illinois’ Domestic Violence Act, where domestic violence is defined as “physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation,” Il. St. Ch.750 §60/227 (1986). Catherine F. Klein & Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. 801 (Summer 1993).
- <sup>22</sup> Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 103-104 (2000).

controlling money and accounts without letting the victim have any control, forbidding the victim to go to work or school, or forbidding her from accepting a promotion.

Isolation falls under the category of psychological abuse. An abuser can isolate his partner by: keeping her from accessing supportive individuals in the community, telling lies about her to her family, preventing her from having contact with her family, monitoring all her phone calls, disconnecting the phone, threatening to harm someone in her family, (in the United States or in her country of origin), destroying her personal belongings (such as clothes, letters, heirlooms, photos or other items brought from her home country), threatening to bring shame on the victim’s family, convincing her that his actions are not illegal unless they occur in public, threatening to throw her out of the house, blaming her for breaking up the family if she leaves him, telling her that she provoked the violence and is responsible for it. By isolating his partner, an abuser creates an environment where the immigrant victim feels she has no reliable support network.

The following are specific ways in which immigrant women are abused, although the experiences of individual victims will vary from case to case.<sup>9</sup>

### **Emotional Abuse:**

- Lying about her immigration status.
- Telling her family lies about her.
- Calling her racist names.
- Belittling and embarrassing her in front of family and friends.
- Causing her to “lose face”.
- Telling her that she has abandoned her culture and become “white,” or “American.”
- Preventing her from visiting sick or dying relatives.
- Abuser lying about his ability to have the immigration status of his lawful permanent resident abuse victims changed.

### **Economic Abuse:**

- Forcing her to work “illegally” when she does not have a work permit.
- Threatening to report her to immigration authorities if she works “under the table. ”
- Not letting her get job training or schooling.
- Taking the money that her family back home was depending upon her to send them.
- Forcing her to sign papers in English that she does not understand -- court papers, IRS forms, immigration papers.
- Harassing her at the only job she can work at legally in the U. S. , so that she loses that job and is forced to work “illegally. ”

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<sup>9</sup> This document was developed at Ayuda Inc., Washington, D.C.

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- Fraud in foreign labor<sup>10</sup>

### Using Coercion and threats:

- Threatening to report her to immigration authorities and get her deported.
- Threatening that he will not file immigration papers to legalize her immigration status.
- Threatening to withdraw the petition he filed to legalize her immigration status.
- Telling her that he will harm someone in her family.
- Telling her that he will have someone harm her family members in her home country.
- Threatening to harm or harass her employer or co-workers.

### Using Children:

- Threatening to remove her children from the United States.
- Threatening to report her children to the immigration authorities.
- Taking the money she was to send to support her children in her home country.
- Telling her he will have her deported and he will keep the children with him in the U S
- Convincing her that if she seeks help from the courts or the police, the U. S. legal system will give him custody of the children (In many countries men are given legal control over the children and he convinces her that the same will occur here).

### Using Citizenship or Residency Privilege:

- Failing to file papers to legalize her immigration status.
- Withdrawing or threatening to withdraw immigration papers filed for her residency.
- Controlling her ability to work.
- Using the fact of her undocumented immigration status to keep her from reporting abuse or leaving with the children.
- Telling her that the police will arrest her for being undocumented if she calls the police for help because of the abuse.

Under VAWA, actions that, in and of themselves, may not constitute abuse, but are part of a pattern of actions that together amount to extreme cruelty and considered domestic violence.<sup>11</sup> Some illustrations of “extreme cruelty” are:

### Intimidation:

- Hiding or destroying important papers (i.e. her passport, her children’s passports, ID cards, health care cards, etc.)
- Destroying the only property that she brought with her from her home country.
- Destroying photographs of her family members.
- Threatening persons who serve as a source of support for her.
- Threatening to do or say something that will shame her family or cause them to lose face.
- Threatening to divulge family secrets.

### Minimizing, Denying, Blaming:

- Convincing her that his violent actions are not criminal unless they occur in public.
- Telling her that he is allowed to physically punish her because he is the “man. ”
- Blaming her for the breakup of the family, if she leaves him because of the violence.
- Telling her that she is responsible for the violence because she did not do as he wished.

The enigmatic nature of domestic violence makes it a moving target because it can take on many different shapes. In addition to the most commonly recognized forms of domestic violence, physical violence and sexual aggression, psychological abuse also plays an important role in the pattern of abuse. Keeping in mind that immigration laws include some forms of emotional abuse and extreme cruelty, in the definition of domestic

<sup>10</sup> See VAWA §1222 and INA §101(a)(15)(U)(iii) of 8 U.S.C. 1101 (a)(15)(U)(iii) these provisions add fraud in foreign labor contracting,” as defined by 18 U.S.C. 1351, to the list of qualifying crimes for which immigrant victims may be eligible to apply for a U visa under the Immigration National Act

<sup>11</sup> Department of Homeland Security Regulations [8 C.F.R. § 204.2(c)(1)].

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violence, it is important for advocates and attorneys working with immigrant victims to recognize and document extreme cruelty in the same manner as they collect information from victims about sexual abuse evidence when preparing an application for an immigration benefit under the Violence Against Women Act.<sup>12</sup>

### Domestic Violence as Experienced by Immigrant Women

Immigrant victims face added fears of being deported, i.e. removed from the U.S.,<sup>27</sup> losing the chance of any immigration status, losing custody and access to their children, to a partner with more stable immigration or citizen status, and confronting the cultural ramifications of leaving an abusive spouse. Furthermore, battered immigrant women often lack information about the United States legal system, the services offered by the U.S. to help domestic violence victims and about access to the public benefits safety net.

#### IMMIGRATION-RELATED ABUSE

Abusers of immigrant spouses and intimate partners often use immigration-status-related abuse to lock their victims in abusive relationships. For immigrant victims, this form of power and centrality is particularly malicious and effective. The fear induced by immigration related abuse makes it extremely difficult for a victim to leave her abuser, obtain a protection order, call the police for help, or participate in the abuser's prosecution. Immigration-related abuse plays upon the fact that the abuser may control whether or not his spouse attains legal immigration status in this country, whether any temporary legal immigration status she has *may* become permanent, and how long it may take her to become a naturalized citizen. Immigration-related abuse plays upon particular vulnerabilities for immigrant victims and usually coexists with and/or predicts escalation.

In addition to deterring a victim from seeking help to counter abuse, immigration related abuse could be used to interfere with the victim's abilities to survive economically apart from their abusers. Legal immigration status leads to access to work authorization that allows immigrant victims to work legally in the United States. Moreover, abusers of immigrant victims who are the mothers of their children often keep the victim from attaining legal immigration status, and then try to raise her lack of legal immigration status in a custody case in order to win custody of the children despite his history of abuse.<sup>13</sup>

Some examples of immigration related abuse include, but are not limited to:<sup>29</sup>

- Threatening to report her or her children to the Department of Homeland Security
- Threatening to turn her into Department of Homeland Security for deportation
- Not filing papers to confer legal immigration status on her or her children
- Threatening to withdraw or withdrawing immigration papers he filed for her and/or her children
- Asking Department of Homeland Security to revoke any family-related non-immigrant visa issued to the victim and/or her children as dependents on the abuser's work-related- diplomatic, student visa, or other visa.
- Asking Department of Homeland Security to revoke an approved family based visa petition filed by the abuser.
- Making her come to the United States on a visitor's or fiancé visa although she is already married to her spouse.
- Forcing her to sign papers written in English that she does not understand, that have to do with her immigration claims
- Not giving her access to documents that she needs for her application for lawful immigration status

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<sup>12</sup> See chapter 3 for more information. This evidence should be collected and included in VAWA self-petitioning cases both when the case is based solely on extreme cruelty and when the extreme cruelty co-occurs with psychical and sexual abuse.<sup>27</sup> Removal is defined as, "the expulsion of an alien from the United States. This expulsion may be based on grounds of inadmissibility or deportability." See U.S. Citizenship and Immigration Services website at <http://uscis.gov/graphics/glossary3.htm> - R

<sup>13</sup> Chapter 6 of this manual discusses how to successfully counter these arguments when they arise in custody cases.<sup>29</sup> Advocates and attorneys working with battered immigrants on immigration cases should help the victim identify and document these types of abuse in the same manner as they document physical and sexual abuse.

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- Threatening to tell immigration authorities that she married him only to obtain lawful immigration status and that their marriage is fraudulent
- Getting the immigration authorities to revoke a visa it has granted to her as his spouse
- Turning her into the immigration authorities for deportation, controlling the mail, and hiding from her notices to appear before an Immigration Judge to defend against her deportation.
- Telling her that if she calls the police for help he will have her deported
- Misinforming her about the legal system and her rights in the legal system and under immigration laws.

Research on immigration-related abuse has found that it appears to be a lethality factor. If advocates or attorneys working with battered immigrants discover that the behaviors listed above are occurring, they should be vigilant about the possibility that the immigration-related abuse is a lethality factor that predicts escalation toward physical and/or sexual violence.<sup>14</sup> When immigration-related abuse is occurring in a relationship, advocates and attorneys working with immigrant victims should fully explore whether the client is also experiencing physical or sexual abuse. Some clients may not mention physical abuse because they are ashamed, fear the abuser, or have been taught that physical abuse is a normal occurrence. Immigrant victims of sexual abuse may be unaware that the forced sexual relations to which they have been subjected to are abusive. When physical and/or sexual abuse is not occurring, the presence of immigration-related abuse should inform the advocate or attorney that the abuse in the relationship is likely to escalate, and that they should do careful safety planning with the victim.<sup>15</sup> Advocates and attorneys should build trust in order to help the immigrant victim feel comfortable in revealing abuse that has occurred. Building a strong relationship between the victim and advocate can offer critical assistance to an immigrant abuse victim, helping her to document the pattern of physical, sexual and emotional abuse to support a VAWA immigration case or a battered spouse waiver.

### FEAR OF DEPORTATION

Fear of deportation<sup>16</sup> is the principal barrier to immigrant victims' seeking any type of aid after experiencing abuse, including assistance from shelters, advocates, hospitals, and the police.<sup>17</sup> This fear of deportation affects both immigrant victims of domestic violence who have legal permission to live and work in the United States, and those that are undocumented.<sup>18</sup> As a result, many battered immigrants believe that they have no legal right to protection from their abuser.<sup>19</sup> Many immigrant victims of domestic violence fear deportation because their relationship to the abuser is often the basis for their eligibility to reside legally in the United States. Many victims who qualify for VAWA, battered spouse waivers or the crime victim (U) visa<sup>20</sup> have no knowledge that options exist to attain legal immigration status without dependence on their abusers. Advocates and attorneys should be extremely sensitive to this issue and immediately assure battered immigrant women that they are not in danger of being deported because they seek help from advocates and attorneys, report the abuse, and/or obtain help.

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<sup>14</sup> See Leslye Orloff and Janice 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, 136 (2001).

<sup>15</sup> See safety planning in Chapter 5

<sup>16</sup> Being placed in removal proceedings in front of an immigration judge and losing the case can lead to deportation, which is defined as being returned to one's country of origin. It should be noted; however, that many immigrants are not aware that they have the right to a trial and thus fear that any "official" (which they may believe to include shelter directors and doctors, who in reality have no right to ask for her immigration status or report her as an illegal alien) will be able to simply send her out of the country. Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43 (2003).

<sup>17</sup> 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, 55 (2000).

<sup>18</sup> Raj, Anita and Jay Silverman. Violence Against immigrant Women: Roles of Culture, Context and Legal Immigrant Status on Intimate Partner Violence. *Violence Against Women*, Vol 8. No. 3, 2002 Sage Publications. March 2002 (367-398). Specific citation on pages 385-387

<sup>19</sup> Hogeland, Chris and Karen Rosen. *Dreams Lost, Dreams Found: Undocumented in the Land of Opportunity*. Independently published, 16, Spring 1990.

<sup>20</sup> The U-Visa is for undocumented abused immigrants who are not married to a citizen or a legal permanent resident of the United States. This legislation offers relief in cases of "certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime."



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The abusive spouse may be a citizen or lawful permanent resident who uses the fact that the law grants him control over his undocumented wife's and/or child's immigration status as a tool for perpetrating domestic violence and for keeping his victims from leaving him or seeking help. In other instances, the abuser may have "non immigrant" status, which is as legal permission to live and work in the United States but not permanently.<sup>21</sup> A holder of a "non immigrant" visa can in turn file for "derivative" status for his spouse and children.<sup>22</sup> In both the lawful permanent resident/United States citizen and non-immigrant visa-holder cases, immigration status becomes a factor that reinforces an abuser's power and discourages a woman from escaping, him or acting to stop the violence. Although there are now provisions, such as the Violence Against Women Act (VAWA), Crime Victim (U) Visa, and the Battered Spouse Waiver<sup>39</sup> that provide access to legal immigration status for many abused immigrant spouses and children who would otherwise be completely dependent on their abusers to attain legal immigration status, many isolated domestic violence victims who may qualify for these immigration benefits are not aware of these options.

Immigrant women may fear deportation even when they are legally residing in the United States with immigration authorities' knowledge and permission. This occurs particularly when battered women have gained legal immigration status because of their family relationships with their abusers. Victims who received lawful permanent residency based on a petition filed with immigration authorities by their citizen or legal permanent resident spouse may wrongly believe their abuser's claims that because he gave her legal immigration status, he has the power to take it away.<sup>40</sup>

The United States offers victims of domestic violence a range of services in the social services, health care and judicial systems designed to help victims and their children bring an end to the abuse they are experiencing and overcome the effects of the abuse.<sup>41</sup> In the United States, domestic violence is a crime, and victims can receive help through protection orders, police and criminal courts to hold their abusers and accountable. Many immigrant victims are in abusive relationships in which their abusive spouse or intimate partner has United States citizenship or a form of legal immigration status superior to the victim's immigration status. Along with this citizenship or legal immigration status comes the right to travel freely in and out of the United States. If an immigrant battered woman is deported and removed from the United States, her abuser can easily travel to follow her.<sup>42</sup> Returning a woman to her country of origin could endanger her if that country has no effective legal approach for deterring and punishing domestic violence perpetrators.

Some immigrant victims have been willing to cooperate with law enforcement and prosecutors to have their abusers prosecuted for domestic violence crimes he committed in the United States. The abuser's criminal domestic violence conviction can lead to his deportation. If the victim is later deported to her home country, the abuser can be waiting in the home country to retaliate against her. Both in this case and in the case where the abuser can freely travel in and out of the United States, the prospect of deportation makes it difficult for

abusive visa holder. A non-immigrant visa holder can decide whether to apply for legal immigration status for their dependent spouse and children and can seek to have her legal status terminated at any time. In some instances dependent spouses and children can also obtain legal work authorization along with their temporary legal immigration status in other instances they cannot. Certain classes of derivative non-immigrants may apply independently for USCIS work authorization after arrival in the United States. See, e.g., Pub. L. No. 107-124, 115 Stat. 2402 (Jan. 16, 2002); Pub. L. No. 107-125, 115 Stat. 2403 (Jan. 16, 2002) amending INA §§214(e) and 214(c)(2) permitting spouses of E or L-1 visa holders, respectively, to apply for work permission; 8 CFR § 214.2(j)(1)(v). The derivative recipient of an H visa holder cannot work unless they acquire their own non-immigrant visa that allows them to work. 8 C.F.R. §214.2(h)(9)(iv).

<sup>39</sup> VAWA allows spouses and children of lawful permanent residents and United States Citizens to file a "self petition" if they can prove that the relationship of good faith, that the petitioner has been abusive, and that the self-petitioner is of good moral character. A Battered Spouse Waiver helps lawful conditional residents who would otherwise have two years, who have suffered abuse, by allowing them to file for full lawful permanent residency then abusers without help or knowledge and without having to wait two years. See Chapter 3 for more information.

<sup>40</sup> An abuser cannot have a victim's lawful permanent residency taken away even if she received her legal permanent residency based on a petition he filed for her. Once an immigrant attains legal permanent residency there are very few

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<sup>21</sup> Examples of non-immigrant status include: college professors (INA §101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b), information technology workers (id.), diplomats (INA §101(a)(15)(A)(i), 8 U.S.C. 1101(a)(15)(A)(i), international organization employees (INA §101(a)(15)(G), 8 U.S.C. 1101(a)(15)(G), students (INA 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F), or religious workers (INA §101(a)(15)(R), 8 U.S.C. 1101(a)(15)(R).

<sup>22</sup> Derivative status is open to dependent spouses and children of visa holders who want to join their parents or spouses in the United States. Spouses and children are granted a form of legal immigration status that is completely dependent on the

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instances by which ways it can be lost. If the survivor leaves the United States without Department of Homeland Security permission for more than 6 months, they can lose lawful permanent residency. See INA §212 (a)(7)(A)(i)(I), 8 U.S.C. 1182(a)(7)(A)(i)(I) (1991), and also *Khodaghlian v. Ascroft*, 335 F.3d 1003, 1005-7 (2003). Additionally many criminal convictions can cause immigrants to lose lawful permanent residency. For battered immigrants this could pose the most serious risk of harm, particularly if she is living in a jurisdiction in which the police officers practice dual arrest, rather than arresting only the predominate perpetrator of abuse. in the relationship. For more detailed information about domestic violence and crimes see Chapter 1 of this manual. Leslye Orloff and Janice 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, 136 (2001).

<sup>41</sup> Orloff, Leslye. Lifesaving Welfare Safety Net access for Battered Immigrant Women and Children: Accomplishments and Next Steps. William and Mary Journal of Women and the Law, Vol 7, Issue 3. Spring, 599 2001.

<sup>42</sup> Leslye Orloff and Janice 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, 133 (2001).

an immigrant victim to even consider seeking a court protection order, prosecuting her abuser for his crimes, and/or leaving her abuser.

The threat of being turned over to the immigration authorities and subsequently placed in removal proceedings<sup>43</sup> deters a battered immigrant woman from seeking help from police stations, shelters, counseling programs, and the courts.<sup>44</sup> Domestic violence programs, either non-profit or government-sponsored, and justice-system agencies generally, have no federal obligation to inquire about the immigration status of domestic violence victims.<sup>45</sup> However, many battered immigrant victims believe that if they seek help they will be turned in to the immigration authorities by that agency's staff.<sup>46</sup> Abusers reinforce this fear by telling their wives and girlfriends that if they turn to service-providers, police, courts, or health care personnel for help, they will be reported to the immigration authorities. The battered immigrant women who do turn to the justice and social service systems for help and who are asked questions about their immigration status, or who are provided less assistance because they are non-citizens or are non-English speaking, are scared away from seeking further assistance. Knowledge of such treatment spread from woman to woman by word of mouth in immigrant communities, and can cause a ripple effect that deters other immigrant women from seeking help.<sup>47</sup>

Many immigrant victims of domestic violence who find their way to the doors of domestic violence and legal services programs across the country may, as a matter of law, qualify for one of several forms of immigration relief available to help immigrant victims. Despite this fact, if a battered immigrant is turned into immigration authorities by her abuser, picked up in a traffic stop by an immigration officer, or detained by immigration authorities at her place of employment, there is little possibility that immigration authorities personnel will ask about her domestic violence history. She could be deported without ever having a meaningful opportunity to file for the immigration relief for which she qualifies.

<sup>43</sup> Removal proceedings are proceedings before immigration judges in which the government is seeking the immigrants' removal from the United States and the immigration judge can order a person deported the United States. It is extremely important that battered immigrant women who are placed in removal proceedings consult a skilled immigration attorney who has been trained on VAWA to help her National Network to End Violence Against Immigrant Women may be able to successful obtain VAWA "cancellation of removal". If there are no local immigration attorneys familiar with VAWA Immigration Protection, contact the National Alliance to End Violence Against Immigrant Women (formerly known as National Network on Behalf of Battered Immigrant Women). (info@endabuse.org or Phone: 415- 252-8900) <sup>44</sup> See generally Mary Ann Dutton, *Battered Women's Strategic Response to Violence: The Role of Context*, in Future interventions with Battered Women and their Families 105 (J.L. Edelson & Zvi C. Eisikovits eds. 1996).

<sup>45</sup> Orloff, Leslye. Lifesaving Welfare Safety Net access for Battered Immigrant Women and Children: Accomplishments and Next Steps. William and Mary Journal of Women and the Law, Vol 7, Issue 3. Spring 2001 (597-657) Page 626; Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43, 55 (2003).

<sup>46</sup> Nonprofit non-governmental programs have no obligation to inquire into, or report, victim's immigration status. See also AG Order No. 2170-98. 63 FR 41664 (Aug. 4 1998). Law enforcement officers in virtually all jurisdictions (except Dade County Florida and Alabama at the time of this writing) have no federal obligation to ask about the immigration status of crime victims when the police are called for help. Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43, 89 (2003). The only agency staff who are required as a matter of federal law to ask about immigration status and report persons known to be in the U.S. unlawfully are the staff of certain public benefits-granting agencies (e.g. TANF, Food Stamps, Medicaid, SSI). Interim Guidance Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 62 Fed. Reg. 61344, 61345 (1997). For a fuller discussion of this issues see chapter on Public Benefits, Chapter 4 of his manual.

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<sup>47</sup> Raj, Anita, and Jay Silverman, "Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence," *Violence Against Women* Vol. 8 No. 3, March 2002, page 385.

Bauer, H.M. et al. 2000. Barriers to health care for abused Latina and Asian immigrant women. *Journal of Health Care for the Poor and Underserved*, 11 33-44. Bui, H.N. & Morash, M. 1999. Domestic violence in the Vietnamese immigrant community: an exploratory study. *Violence Against Women*, 5, 769-795. Dasgupta, S.D. & Warrier, S. 1996. In the footsteps of Arundati: Asian Indian Women's Experience of domestic violence in the U.S. *Violence Against Women*, 2, 238-259. George, M.S. & Rahangdale, L. 1999. Domestic Violence and South Asian Women. *North Carolina Medical Journal*, 60, 157-159. Haile-Mariam, T. & Smith, J. 1999. Domestic violence Against Women in the International Community. *Emergency Medicine of North America*, 17, 617-630. Huisman, K.A. 1996. Wife battering in Asian American Communities: Identifying the service needs of an overlooked segment of the U.S. population. *Violence Against Women*, 2, 260-283. Kulwicki, A.D. & Miller, J. 1999. Domestic Violence in the Arab American population: Transforming environmental conditions through community education. *Issues in Mental Health Nursing*, 20, 199-215. Perry, C. M. et al., Voices from an Afghan community. *Journal of Cultural Diversity*, 5, 181-205. (1998). Sorenson, S. B. 1996. Violence against women: Examining ethnic differences and commonalities. *Evaluation Review*, 20, 123-145.

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If the abuser files a petition with immigration authorities seeking legal immigration status for the victim and/or her children and then retracts it or stops replying to immigration authorities' inquiries for evidence, the abused immigrant and her children can be placed in removal proceedings. If her abuser is controlling the immigrant's correspondence, she may not find out about her date to appear in court before an immigration judge, and she may be ordered deported without her knowledge. An abuser's threats about his wife's immigration status, and the fear of being deported, decrease the possibility that she will seek help and/or refuge.

### FEAR OF DEPORTATION AND ITS IMPLICATIONS FOR SERVICE PROVIDERS

VAWA and other forms of immigration protection for battered immigrant women were created by Congress with the express intention of removing immigration status as a tool used by abusers to intimidate their spouses, children and intimate partners who are immigrants.<sup>23</sup> Fear of deportation is the primary deterrent to a battered immigrant woman taking steps to escape her abuser. To counter this fear it is essential that service providers make it clear to all seeking domestic violence related services that they will not be deported for seeking help. In fact, under current law, battered immigrants who seek help from the criminal justice system to stop domestic violence and hold perpetrators accountable, may have new options to attain legal immigration status open to them as immigrant crime victims.

It is very important to head off immigration/deportation concerns in the first interview with a battered woman. It is important that this be done with all battered women whether or not the advocate or an attorney suspects she may be a non-citizen.<sup>24</sup> As a matter of federal law,<sup>25</sup> all services of domestic violence advocates, shelters, and other victim services are to be provided without any requirement that service providers ask questions regarding the victim's immigration status. Legal services providers can help battered immigrants who qualify for relief under VAWA's immigration provisions and any other victims abused by spouses or parents,<sup>26</sup> and can make referrals to other agencies that can provide services to those who may not qualify for assistance, without collecting any information about the immigration status of the domestic violence victim.

A good example of what to say to an immigrant victim of domestic violence would be,

"My name is \_\_\_\_\_. I work for \_\_\_\_\_ and am here to answer any questions you may have. My job is to help women find safety, and everything you tell me is confidential, which means no information I collect will be disclosed to anyone. All abused women can seek services and justice system help to end domestic violence without regard to immigration status. I will ask you questions to see if you are eligible for relief under the Violence Against Women Act, which was designed to help immigrant victims of domestic violence. Regardless of your immigration status, you have access to police protection, shelters, protection orders, custody, child support, hospitals, emergency medical care, and criminal prosecution of your abuser. I can help you access these services and other forms of assistance that will help you overcome the abuse."

### Economic Abuse As Power and Control Over Immigrant Victims

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<sup>23</sup> Congress stated that the passage of VAWA was "an essential step in forging a national consensus that our society will not tolerate violence against women." S. Rep. No. 103-138, at 41-42 (1993). See also 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, 109 (2001).

<sup>24</sup> There are many victims who are immigrants who may not have an accent, may be fluent in English, may be Caucasian and may have a higher level of education. Regardless, the victim could still be an immigrant. Thus we recommend that all advocates and attorneys should notify all who seek their services that assistance is open to all domestic violence victims without regard to immigration status.

<sup>25</sup> Interim Guidance: Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 62 Fed. Reg. 61344, 61345 (1997). See also AG Order No. 2170-98. 63 Fed. Reg. 41664 (Aug. 4 1998).

<sup>26</sup> Ibid. 61346.

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As for all battered women, economic stability can serve as a gateway to autonomy and independence for immigrant victims of domestic violence. Thus, it is often an issue of significant concern and vulnerability for immigrant women.<sup>27</sup> Immigrant women still residing with their abusers list “lack of money” as a primary reason for remaining in an abusive relationship.<sup>28</sup> Research has found that more than two-thirds of battered immigrant women who stayed with their abusers reported a lack of money as the primary reason for not leaving a violent home.<sup>29</sup> Economic dependence on the abuser dramatically limits an immigrant victim’s options for physical and legal separation from her abuser. She may be totally dependent upon him for economic survival.<sup>30</sup> The immigrant victim of domestic violence often has less exposure to the English language and/or vocational skills than her abuser, which could be due to her husband’s isolation tactics. She may lack access to education, and she may be unsure of her ability to secure jobs that allow her to be economically independent. When immigrant victims leave abusive partners who have been financially supporting them, they often have less access to the public benefits safety net than other battered women.<sup>56</sup>

Economic-related abuse is abuse committed by one’s spouse or intimate partner designed to exploit a victim’s economic vulnerabilities. This abuse can include:<sup>57</sup>

- Dominating control of the family finances
- Refusing to give her money to buy clothes, food, etc.
- Harassing her while she is at work, potentially causing her to lose her job
- Harassing her at her job when her legal immigration status is based on working for a particular employer, and, losing access to this job causes her to rescind her legal immigration status.
- Forcing her to work illegally
- Preventing her from working or attaining the skills necessary for obtaining a job
- Refusing to pay child support
- Stealing money that she needed to support her family members in her home country<sup>531323334</sup>

Although most immigrants ultimately succeed economically in the U S, economic success is initially challenging, even for those immigrants with permission from immigration authorities to legally reside and work in the United States. A variety of factors including discrimination, lack of vocational skills, and insufficient knowledge of American systems contribute to economic difficulty faced by new immigrants. When immigrant women come from countries that lack a public education system, that deny access to educate women, or that maintain customs that stop girls from attending school at a young age. Their earning capacity and options for economic survival apart from her abuser are limited.<sup>35</sup>

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<sup>27</sup> Orloff, Leslye. Lifesaving Welfare Safety Net access for Battered Immigrant Women and Children: Accomplishments and Next Steps. William and Mary Journal of Women and the Law, Vol 7, Issue 3. Spring 2001 (597-657). Page 617; Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar Hass. Georgetown Journal of Gender, Social Policy & the Law Offering a Helping Hand Page 249

<sup>28</sup> Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar Hass. Georgetown Journal of Gender, Social Policy & the Law Offering a Helping Hand Page 271

<sup>29</sup> About a third cited lack of a place to go (35%) and lack of employment (32%) as reasons that they have not left an abusive relationship. See 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, 271 (2000).

<sup>30</sup> See 8 U.S.C. § 1182(a)(4)(E) INA § 212(a)(4) and Section 804 of VAWA which exempt VAWA self-petitioners and T/U visa petitioners from the “public charge exception” to admissibility (in which a petitioner is deemed inadmissible to the United States because s/he might become a public charge, a person who is primarily dependent on the US government for subsistence). See Section 804 - 212(a)(4)

<sup>31</sup> U.S.C. 1182(a)(4)(E)

<sup>32</sup> See Chapter 4 on Public Benefits for a fuller discussion.

<sup>33</sup> This document was developed at Ayuda Inc., Washington, D.C.

<sup>34</sup> This document was developed at Ayuda Inc., Washington, D.C.

<sup>35</sup> Randolph Capps et al., *A Profile of the Low-Wage Immigrant Workforce*. Brief No. 4 in Series "Immigrant Families and Workers: Facts and Perspectives" October 27, 2003

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Economic survival, however, can be easier for documented women than for undocumented immigrant women. Undocumented immigrants, if they work, do so in the underground economy often taking jobs that earn below the minimum wage, and regularly do not include benefits such as medical insurance, paid vacation, sick leave, and pensions.<sup>60</sup> To address this issue and to provide immigrant victims who qualify for immigration benefits with a chance to sever economic dependence from their abusers, both VAWA and U Visa immigration relief enable a battered immigrant woman to obtain legal work authorization.<sup>61</sup> Battered immigrants who qualify for VAWA are additionally granted special access to public benefits which they can use to help sever economic dependence on their abusers, and, which they can rely if their abuser interferes with their ability to work.

Since economic concerns, ranging from suffering economic abuse to obtaining economic independence, make it difficult for an immigrant woman to leave her abuser confidently, it is extremely important for service providers to inform a battered immigrant woman about opportunities that can help them become financially independent. Service providers should be familiar with, and able to explain, the various options for battered immigrant women to survive the abuse and to support her children. Options that should be examined are:

- Obtaining child support from her abuser (including rent payments, repairs to property, payment of medical bills or health insurance)
- Accessing public benefits for which she and her children qualify
- Obtaining legal work authorization.

Many community-based programs offer battered women, including immigrant women, important lifesaving services (including shelter, food, healthcare and clothing). It is important for advocates and attorneys to emphasize that all battered immigrant women, regardless of their qualifications for permanent public benefits, are allowed access to a plethora of services such as shelters, soup kitchens, food banks, and transitional housing for up to two years.<sup>62</sup>

Battered immigrant women and children who qualify for immigration relief under the Violence Against Women Act can be eligible to access certain public benefits, including: housing and post secondary educational loans.<sup>63</sup> Battered immigrants who have been in the United States since August 22, 1996, or who live in a state that has chosen to offer benefits to most immigrants may also be eligible for Medicaid, Temporary Assistance to Needy Families (TANF), and State Child Health Insurance Program (SCHIP). U.S. Citizen children of immigrant victims independently qualify to receive benefits even when their parents do not.<sup>64</sup>

### Concerns over Custody of Children as a Barrier for Immigrant Victims

<sup>60</sup> Mary Ann Dutton & Giselle Aguilar Hass, *Expert Testimony Concerning Battering*, in MARY ANN DUTTON, ET AL., AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT, Appendix C. (Bette Garlow, et al., eds., 2000).

<sup>61</sup> Counseling expeditiously helping battered immigrant women to file for VAWA immigration relief or the crime victim U visa can set them on a path toward obtaining legal work authorization based on deferred action status (Counseling expeditiously helping battered immigrant women to file for VAWA immigration relief or the crime victim U visa can set them on a path toward obtaining legal work authorization based on deferred action status<sup>61</sup> either after the VAWA self-petition or cancellation application has been approved, or after receiving deferred action status in the U visa case. A battered immigrant woman who obtains work authorization is better able to support herself and her children after separating from her abuser.) either after the VAWA self-petition or cancellation application has been approved, or after receiving deferred action status in the U visa case. A battered immigrant woman who obtains work authorization is better able to support herself and her children after separating from her abuser.

<sup>62</sup> See also AG Order No. 2170-98. 63 FR 41664 (Aug. 4 1998)

<sup>63</sup> Qualified Immigrants may access certain Federal Programs; Supplemental Security Income (SSI), Food Stamps, Temporary Assistance for Needy Families (TANF), Emergency Medicaid/Full Scope Medicaid, State Children's Health

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Insurance Program (SCHIP), Medicare “Premium Free” Part A, Premium “Buy-in” Medicare, HUD Public Housing Section 8 Programs, Title XX Block Grants, Social Security, Other Federal Public Benefits subject to welfare law restrictions, and Benefits exempt from welfare law’s restrictions. See National Immigration Law Center Fact sheet on Public Benefits at [http://www.nilc.org/immspbs/special/ovrvw\\_imm\\_elig\\_fed\\_pgms\\_031904.pdf](http://www.nilc.org/immspbs/special/ovrvw_imm_elig_fed_pgms_031904.pdf)

<sup>64</sup> Advocates and attorneys working with immigrant victims need to know that immigrant victims are entitled to apply for benefits on behalf of their children that qualify without having to apply for benefits for themselves and without having to answer any questions about their own immigration status or whether they have a social security number. Also, battered immigrants should not be sent to apply for benefits unaccompanied since state benefits workers are often uninformed about immigrant victims and their children’s legal rights access about public benefits. See Chapter 4 on Public Benefits.

Many battered immigrant women are the primary caretakers of their children<sup>36</sup> and are concerned that, if they leave their abusers, it will have a negative impact on their children. An immigrant woman may believe her abuser when he tells her that if she leaves him, he will obtain custody of the children because he has secure immigration status and she does not.<sup>37</sup> These threats lead immigrant victims to fear that their abusers will cut them off from any access to their children. Additionally, many battered immigrant women have worked hard to protect their children from the abuser’s violence, and are rightly afraid that, if they leave the abuser and he gets custody, his violence may shift to the children, or he will use control over the children to continue to harm her and them. Even if she takes the children with her and is awarded custody by the court, she is concerned that the children will be harmed during unsupervised visitation. Her fear that her abuser will redirect the abuse towards the children is a legitimate concern since in 60% of households where women face abuse, children are also abused.<sup>38</sup> Many women will hesitate to leave a relationship if that decision could potentially place their children in care of the abuser.<sup>39</sup> Immigrant women believe they will lose custody of children to their abusers if they leave the relationship because they are unfamiliar with the family laws in the U.S. that require courts to consider domestic violence in custody cases<sup>40</sup> and to protect victims of domestic violence, regardless of their immigration status.<sup>41</sup>

Battered immigrant women need to be informed about laws that create a preference for placing children in the custody of non-abusive parents. A study by the American Psychological Association concluded that “in matters of custody, preference should be given to the non-violent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety to the children and the

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<sup>36</sup> Mary Ann Dutton & Giselle Aguilar Hass, *Expert Testimony Concerning Battering*, in MARY ANN DUTTON, ET AL., AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT, Appendix C. (Bette Garlow, et al., eds., 2000).

<sup>37</sup> When an immigrant woman comes from a country that traditionally awards custody and control over children to their fathers as a matter of law, she often believes her abuser’s threats that if she leaves him he will obtain custody of the children (Leslye Orloff and Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women*, (AYUDA 1999). In the context of her upbringing and unfamiliarity with the United States legal system, her husband’s threats may seem quite realistic and she may be legitimately concerned that she will lose custody of her children to her abusive husband (This document was developed at Ayuda Inc., Washington, D.C) Thus it is not surprising that fear of losing custody is one of the main reasons that immigrant women hesitate to leave an abusive relationship.

<sup>38</sup> Memoranda from the National Network on Behalf of Battered Immigrant Women to Walter Laramie at the Vermont Service Center 5 (April 25, 2001) (on file with author). The separation of the victim and batterer can enhance the danger of redirected abuse towards the children. The batterer can use the children as a way to continue abusing the victim by means of manipulation of the children and/or threatening to harm them. Concerns about the children and their safety consequently complicate a battered immigrant’s decision-making about whether leaving her batterer will reduce or increase the safety of her children (Dutton and Hass, Appendix C at note 25-26).

<sup>39</sup> A battered immigrant woman may worry that if she tries to leave her abuser, he will kidnap her children and may take them outside of the United States to the abuser’s home country, where she will have great difficulty getting them back and where there may not be legal protections against ongoing abuse. The risk of kidnapping by a batterer is a very real threat. Often times a batterer has more social connections than his victims and may be able to exploit these relationships to successfully abduct their children. If the abuser was not born in the United States he may be successful in his kidnapping attempts due to connections with the police, government, or other family members, or others he has outside of the United States who are willing to help him. (For a full discussion see Leslye Orloff and Janice 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, 135 (2001)

<sup>40</sup> For example, see North Dakota’s Best Interest and Welfare of Child – Court Consideration – Factors; N.D.C.C. §14-0906.2(1)(j) (2003). See also California’s Family Code, Ca. Fam. Code §3044.

<sup>41</sup> See Jurisdiction Chapter of this manual. <sup>71</sup>

*Id.* at note 29

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other parent.”<sup>71</sup> The American Bar Association (ABA) Center on Children has urged courts to offer the same protection to children of immigrant parents.<sup>42</sup>

Service providers should become familiar with, and inform battered immigrant women about U. S. laws aimed at protecting the best interest of children who have lived in abusive homes. Advocates and attorneys should obtain protection orders on behalf of battered immigrant women that award immigrant victim’s

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<sup>42</sup> The ABA recognizes that information about domestic violence should be accessible by all peoples and urges legal professionals, who have dealings with battered immigrant parents and their children, to help them better understand the legal system while adequately addressing their fears and concerns. For non-English speaking battered immigrant parents, their greatest barrier to accessing legal services remains their inability to effectively communicate. The ABA further proposes that multi-lingual court reporters should be made available to help battered immigrants. See *The Impact of Domestic Violence on Children*, A report to the President of the American Bar Association (October 1994).



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custody, proof of safe visitation and prevent child kidnapping. Well-crafted protection orders can be an integral defense mechanism to prevent violence from shifting toward children and parental kidnapping.<sup>43</sup> In addition to protection orders, other measures, which can help to mitigate the threat of violence towards a domestic violence victim's children, include:

- Removing the abuser from the family home
- Granting the battered immigrant custody and limiting the abuser to only supervised visitation during specified hours
- Warning the children's school about the abusive parent and giving them a copy of the protection orders that limit his access to the children
- Helping the battered immigrant get her children into counseling programs designed for children who have witnessed or experienced abuse.

Advocates for battered immigrant women need to identify domestic violence lawyers who can represent immigrant victims in custody cases. Some will work for legal services offices, or for program that receive funding from the Legal Assistance for Victims Grant Program awarded by the office on Violence Against Women of the U. S. Department of Justice. Others can be recruited and trained as pro-bono lawyers.<sup>44</sup>

### Language Issues

Any immigrant in the United States whose first language is not English faces substantial challenges in overcoming the language barriers in the United States. Sometimes an immigrant woman's spouse may serve as a translator or even her language teacher. Language barriers are exacerbated when the person who provides linguistic support is abusing an immigrant woman. Learning English becomes difficult when an immigrant lacks the money, time, and resources to attend English as a Second Language Classes. Immigrant women who are working and who are the primary caretaker of their children and who are the family cook and homemaker, often have little time of their own to devote to English classes. An immigrant may be able to survive within her immediate community without having to learn English. However, immigrants living in rural communities, and immigrant victims living in areas of the country where they are isolated from their own cultural community may, have a harder time encountering speakers of their native language. If an immigrant woman is abused, she may need to seek assistance beyond her immigrant community. The shelters, victim service programs, legal service offices, police departments, prosecutor's offices and courts may not have employees who can speak her native language and may not provide interpreters.<sup>45</sup> If a battered immigrant woman needs to seek work to become financially independent, her ability to speak English can affect the type of employment she can obtain. These linguistic limitations can seriously cripple a woman's ability to respond to domestic violence.

Language is particularly significant barrier to obtaining police assistance during an abusive incident. In one survey of Latina battered immigrant women, the overwhelming majority (75.6%) of participants spoke little or no English. In the case of the women who did not speak English, two-thirds of the time, the police who responded to the domestic violence calls did not speak Spanish to the victim or use an interpreter.<sup>46</sup> Without the ability to communicate safely and effectively with police, abused immigrant women are blocked from

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<sup>43</sup> See chapter 5.

<sup>44</sup> Lawyers with experience representing battered women need training on the special issues that can affect cases of immigrant victims. Lawyers working with battered women should be encouraged to see themselves as a valuable community resources and should consider focusing their representing battered women and battered immigrant women in more difficult contested custody cases.

<sup>45</sup> The Department of Justice recognizes that "[I]n certain circumstances, failure to ensure that LEP [limited English proficient] persons can effectively participate in or benefit from federally assisted programs and activities may violate prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national and origin discrimination." 67 Fed. Reg. 41455, 21 (2002).

<sup>46</sup> Jorge Banales. "Abuse Among Immigrants: As their Numbers Grow so Does the Need for Services." The Washington Post. 16 Oct. 1990; American Bar Association (ABA) Center on Children and the Law. "Special Groups: Immigrant Women and Children" in The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association. ABA 1994, 20; Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43 (2003).

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obtaining the police protection. When language barriers prevent communication with the victim, often police will speak only with the English-speaking abuser, who then has the power to twist the story to blame, the victim and play down the violence, or pretend that the violence never occurred. These language barriers lead to results from police calls harmful to victims and their children, including:

- The police do not arrest abuser, despite the presence of evidence that a crime has been committed against the battered immigrant woman.<sup>47</sup>
- Abusive behavior is condoned when police arrive and take no action against the abuser.
- Battered immigrant women and their children learn to believe their abuser's claims that no one in the United States justice system will offer them help because of their lack of legal immigration status.
- In the worst cases, the abuser is effective in convincing the police that she should be arrested either in addition to, or instead of, him. This arrest of the victim could lead to an innocent immigrant victim and a victim who has a valid self-defense claim getting poor legal advice and entering a guilty plea in her criminal case, which could result in her being deported.<sup>48</sup>

The absence of interpreters and bilingual staff at police stations, social service organizations, courts, and lawyers' offices complicates a victim's efforts to obtain help.<sup>49</sup> Employing trained interpreters and bilingual police would increase access to protection for immigrant victims of domestic violence. The current lack of competent linguistic support for domestic violence victims throughout the legal and social service systems in many jurisdictions makes reporting the violence, seeking help, and leaving abusers difficult for battered immigrant women.

### Service Providers as a Linguistic Bridge Between the System and the Client

All advocates and attorneys working with battered immigrants should have a system for offering interpretation services to non-English speaking victims who cannot communicate comfortably in English. Programs serving battered immigrants should not rely on the victim's friends, children, or family members for interpretation. Depending on friends or family members to interpret is often ineffective, and may even be dangerous, because it will be difficult if not impossible to determine whether the interpreter may be allied with, or likely to be contacted by, the abuser. One way to help ensure unbiased knowledgeable and accurate translations is to recruit and train a team of interpreters who are loyal to and work for your agency. Interpreters who will be working with battered immigrants should receive the same domestic violence training as provided to volunteers who work for your program. It is important that translators are not biased and can give an accurate representation of the facts.<sup>50</sup>

In order to address the need for linguistic support and, in lieu of relying on the client to identify an interpreter, advocates and attorneys working with battered women should plan and implement a strategy for securing and training persons who can provide interpretive services. Appropriate steps that the staff can take are to hire bilingual and bicultural staff from language minority communities living in the area they serve. Relationships should be established with churches and local social services, or community-based agencies serving the various immigrant populations living in your area. Staff from these organizations could be trained and hired to serve as interpreters for your clients, and could perhaps serve as on-call interpreters. Another

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<sup>47</sup> Leslye E. Orloff et al., Battered Immigrant Women's Willingness to Call for Help and Police Response, 13 UCLA WOMEN'S L.J. 43, 70-71 (2003).

<sup>48</sup> See Criminal chapter of this manual for how to effectively assist immigrant victims who have been arrested.

<sup>49</sup> Daniel Klaidman, *Courts Stumble in Serving Latinos*, LEGAL TIMES, Aug. 26, 1991; United States Department Susan M. Breall and Deborah A. Adler. Working with Battered Immigrant Women: A Guidebook for Prosecutors at 8. Hereafter Breall

<sup>50</sup> Loke, Tien Li, note, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. Pub. Int. L.J. 589, 624 (1997) (citation omitted); Susan M. Breall and Deborah A. Adler. Working with Battered Immigrant Women: A Guidebook for Prosecutors

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good source for finding interpreters and particularly persons who are speakers of less common languages<sup>51</sup> are students and/or faculty from local universities.<sup>52</sup>

When setting up language interpretation services it is also important for advocates and attorneys to keep in mind political, class, and social distinctions that may serve as a barrier for an interpreter to successfully understand a victim. If there are distinctions in social class or dialect, these can come between the victim and interpreter, and can pose an impediment to the interpreter's ability to translate. Similarly, ideological and political differences may also pose challenges for interpreters.

Domestic violence and legal service programs can help women from diverse cultures feel comfortable receiving services by hiring bilingual and culturally fluent staff. These programs should collaborate with other services in the community that work with immigrant populations in order to provide as comprehensive a service as possible. Finally, advocates and attorneys working on coordinated community response teams should work to ensure that other agencies, including the courts, police, shelters, and prosecutors include line items in their budget for interpreters.

### Misconceptions About the Legal System

Battered immigrant women may see the United States legal system not as a resource to help them overcome the abuse, but as an entity that will help her abuser. If a battered immigrant woman believes that the American legal system will operate unjustly, it may be hard for her to trust law enforcement, prosecutors, and United States courts. If a battered immigrant's country of origin functions on a system in which "law enforcement, government officials, and the judiciary all function within a repressive government,"<sup>83</sup> she may be understandably skeptical that the United States legal system will be any different, and will offer her protection. Institutional gender bias in victims' home countries can further misconceptions about the way the American legal system will treat their claims. An immigrant victim of domestic violence may come from a legal system where a woman's testimony is not considered valid evidence, or her word does not share the evidentiary weight of a man's as a matter of law.<sup>84</sup>

In some countries, success in legal proceedings is determined by money and power.<sup>85</sup> As a result, battered immigrant women may fear the American legal system because they have the mistaken belief that their lack

isolated victims. One way to address the needs of isolated victims is to set up an account with the AT&T language line, which can provide interpretive services in 150 languages.<sup>82</sup> Having bilingual staff and a local system of paid interpreters will be significantly more cost effective than relying exclusively on AT&T language line for interpretations. However, for the purpose of using AT&T Language line and/or other teams of trained interpreters, programs in a state or region can pool resources.

<sup>83</sup> Research of Latina immigrants found that only 27% called the police for assistance following abuse (Research of Latina immigrants found that only 27% called the police for assistance following abuse. Willingness to call was substantially related to the victim's immigration status. Among immigrant women surveyed, immigrant victims who were naturalized citizens or lawful permanent residents were the most likely to be willing to call police for help 34.4% of the time. This reporting rate appears to be significantly lower than the natural coverage (34.4% versus 53%). Fears about turning to the justice system for help continue despite attaining legal immigration status. Reporting rates among battered immigrants living in the United States with a form of non-permanent, usually time limited, legal immigration statuses are even lower (16.7%). For undocumented abused immigrants the rate at which they were willing to call the police for help dropped to 14.8%. Leslye E. Orloff, Mary Ann Dutton & Giselle Aguilar, *Battered Immigrant Women's Willingness to Call the Police for Help and Police Response* (to be published UCLA Journal on Women and the Law 2003), finding that 75.6% of the survey participants spoke little or no English, yet two-thirds of the time that officers were called to the scene of a domestic violence offense, they did not speak Spanish. Hereafter Orloff, Dutton, Aguilar Battered Immigrant Women's Willingness). Willingness to call was substantially related to the victim's immigration status. Among immigrant women surveyed,

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<sup>51</sup> i.e. Languages that are not prevalent within the greater community of immigrants, making finding well-trained interpreters more difficult.

<sup>52</sup> The approaches listed above will be useful for immigrant victims who live within a cultural community in the United States. However, there are many battered immigrant women who are totally isolated from anyone who knows their language or culture except perhaps their abuser. For this reason it is important to set up systems for providing language access to these

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immigrant victims who were naturalized citizens or lawful permanent residents were the most likely to be willing to call police for help 34.4% of the time. This reporting rate appears to be significantly lower than the natural coverage (34.4% versus 53%). Fears about turning to the justice system for help continue despite attaining legal immigration status. Reporting rates among battered immigrants living in the United States with a form of non-permanent, usually time limited, legal immigration statuses are even lower (16.7%). For undocumented abused immigrants the rate at which they were willing to call the police for help dropped to 14.8%.

<sup>84</sup> Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination – A Report of the United States Commission on Civil Rights, 75 (January 1993). (Referencing Leslye E. Orloff's testimony before the Round Table Forum on Hispanics in the Courts, November 2, 1991.)

<sup>85</sup> The victim may come from a country in which testimony is not considered valid evidence or a legal system in which as a matter of law testimony offered by a man is valid evidence and testimony offered by a woman is not.<sup>85</sup> Immigrant victims who come from countries in which testimony particularly of a woman, is not considered valid evidence, have a very hard time

of financial and political capital, as well as lack of immigration status, prevents them from obtaining United States protection from the legal system.<sup>86</sup> The victim may believe that government officials in the United States will not be receptive to her claims, much less treat her with respect. When a battered immigrant comes from a country where the law enforcement officers themselves have been participants in violence against women, her belief in the potential value of calling on United States law enforcement officers is further undermined.<sup>87</sup>

Finally, a victim of domestic violence's misconceptions of the legal system may be magnified because she maintains a view of the legal system that was shaped by her abuser. He may misinform her that law enforcement agencies will not protect her.<sup>88</sup> He may also tell her that she will be ignored or even deported if she approaches the authorities. Since a battered immigrant woman may be cut off from other sources of information by language barriers and by her abuser, she may believe this misinformation. A 1998 Department of Justice survey found that only 53%<sup>89</sup> of all domestic violence victims call the police for help. The reporting rate for immigrant victims of domestic violence appears to be significantly lower, suggesting that victims do not believe that police are sources of help.<sup>90</sup>

Advocates and attorneys can facilitate a battered immigrant woman's rehabilitation by countering her misconceptions and educating her about how our legal system works to help battered women. In order to inform immigrant victims of their rights and make them comfortable with the legal system, advocates and attorneys must be familiar with the full range of services and legal options available to immigrant domestic violence victims.

An advocate or attorney should work to make a client more comfortable with the United States legal system, which may understandably differ from the legal system in her home country. A lawyer or advocate working with a battered immigrant woman who will be testifying in court or filing affidavits in an immigration case should make it especially clear to her that her testimony has value in this country. To alleviate the immigrant victim's fears about testifying and the court process, the advocate or attorney should take her to court to observe the proceedings so she knows what to expect, and so that she can see other women obtaining orders and other relief from the court. Advocates should accompany immigrant women applying for protection orders, and lawyers should represent them, particularly when the abuser is represented by counsel.

A victim's lack of knowledge about the legal system exacerbates physical and emotional abuse, as these misconceptions become a tool for the abuser. Augmenting the victim's fear of deportation and her misconceptions about the United States legal system through immigration related threats, an abuser is able to retain control over his victim, and, in many cases, effectively prevent her from seeking help about domestic violence.

### **Culture Barriers Faced By Immigrant Victims**

#### ISOLATION OF CULTURE

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Domestic violence takes a tremendous emotional toll on any woman, whether the victim is a citizen, an immigrant or a refugee. Survivors are confronted with a loss of trust in the person that they may have believed in the most. Some immigrant victims are so isolated that the abuser and his family may be the only

believing that testimony is valid evidence in U. S. Courts and that a U. S. Judge will believe her testimony as opposed to testimony presented by her abuser. This lack of confidence can lead to her testify in a way that may not sound credible.

<sup>86</sup> UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *LA VIOLENCIA DUELE/VIOLENCE HURTS: SYMPOSIUM ON DOMESTIC VIOLENCE IN THE HISPANIC COMMUNITY* 7 (30 DEC. 1996); Tracy Lai, *Asian women: Resisting the Violence, in THE SPEAKING PROFITS US: VIOLENCE IN THE LIVES OF WOMEN OF COLOR*, 10 (M. C. Burns ed., 1986);. 19-20

<sup>87</sup> Id at 20.lai

<sup>88</sup> Id at 20. lai

<sup>89</sup> CALLIE MARIE RENNISON & SARAH WELCHANS, BUREAU OF JUSTICE STATISTICS, *INTIMATE PARTNER VIOLENCE* 7 (2000).  
HEREAFTER RENNISON AND WELCHANS IPV

<sup>90</sup> Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 *UCLA Women's L.J.* 43, 55 (2003); ROBIN L. CAMP ET AL., *UNTOLD STORIES: CASES DOCUMENTING ABUSE BY U.S. CITIZENS AND LAWFUL RESIDENTS ON IMMIGRANT SPOUSES* (1993).

source of support in the victim's community or in the United States.<sup>53</sup> Like other domestic violence survivors, in order to find support and validation, immigrant victims need to turn to sources of support outside their immediate family. This support network plays a fundamental role in victims' first efforts to seek help to address the domestic violence she has been experiencing. Immigrant women are most likely to confide in other women about domestic violence, including predominately women friends, mothers, and perhaps sisters.<sup>54</sup> Confiding in other women serves as a safer outlet for the sometimes-complex emotional responses that domestic violence evokes.

Immigrant victims of domestic violence are at a substantial disadvantage in building this important network of support. Battered women typically seek help first from this informal network of support, and, afterwards, they may begin to seek help from formal social, legal, and justice systems. A domestic violence survivor who has lived in the United States may be able to piece together this important informal network through a lifetime of connections. This process is often much more complex for battered immigrant victim. Battered immigrant victims who have only lived in the United States for a comparatively short time may not have made as many trustworthy personal relationships, and as a result, have a harder time seeking support outside their relationship with the abuser and his family.

In addition to threats associated with immigration status, an immigrant woman may also encounter challenges from her cultural community as she begins to explore addressing her abuser's domestic violence. Her cultural or religious community may so highly value marriage that she fears being held responsible for breaking up her family if she tries to escape her abuser.<sup>55</sup> Community members may not want them to take any action against their abuser. They discourage battered immigrant victim from seeking help outside the community.<sup>56</sup> As a result when a battered immigrant does seek help from formal justice and social service systems, she may feel even more socially isolated than when she was with her husband.<sup>57</sup>

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<sup>53</sup> The abuser may seek to isolate his wife from her own immigrant community and/or from U. S. society, depending on the circumstances. For many victims, domestic violence aggravates the isolation and lack of social and community support mechanisms that are part of migrating to a new country. Traditionally, immigrants from the same country tend to gravitate towards each other for linguistic and cultural support within the greater US community. An abuser who removes his immigrant spouse or intimate partner from this support network makes it difficult for a domestic violence victim to feel as though she has the resources to safely leave her abuser or find help to end his violence. This problem is exacerbated in cases of immigrant victims living with their abusers in rural communities totally isolated from any immigrant population from her country of origin.

<sup>54</sup> 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, 265 (2000).

<sup>55</sup> In Asian and Pacific Islander communities many community and church leaders do not recognize domestic and/or sexual violence as a problem (Tracy A. Lai. *Asian Women Restricting the Violence, in The Speaking Profits US: Violence in the Lives of Women of Color* 10-11 (Maryviolet C. Burns & M. Div. eds., 1986).

<sup>56</sup> Edna Erez & Carolyn Copps Harley. *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*,. 2003 *W. Criminology Rev.* 161.

<sup>57</sup> Dutton and Hass Appendix at Pg. 8. Wives who met their husbands through international match-making organizations or who married military personnel stationed abroad may be at an even greater risk of social isolation due to the fact that the

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The tension between a domestic violence victim's traditional upbringing and the United States' new social system often cause immigrants feel caught between two cultural environments. Culture is most appropriately

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victim's husband may be the only person she knows in this country. Instead of having friends or other family members in her immediate immigrant community, a military or internationally matched wife will most likely have no community network in the United States. Violence Against Women Act Amendments in 2005 and 2013 require a Fiancé(e) or Spouse Sponsoring a K Visa to disclose the sponsoring fiancé(e) or spouse's protective orders, convictions, and history for "attempted domestic and sexual violence crimes." K visas are visas granted to immigrants marrying US citizens who enter the United States as either a fiance or a spouse. The goal of these protections and other provisions of the International Marriage Broker Regulation Act are to ensure that foreign fiancés and spouses receive information about the criminal and protection order backgrounds of their future or current U.S. citizen spouses before the immigrant spouse or fiancé enters the United States to help the foreign spouse or fiancé make an informed choice and have information about their legal rights in the U.S. before their enter the United States. See also Leslye E. Orloff and Hema Sarangapani, "Governmental and Industry Roles and Responsibilities With Regard to International Marriage Brokers: Equalizing the Balance of Power Between Foreign Fiancés and Spouses" *Violence Against Women* Vol. 13 No. 5, May 2007, 469-485 Available at <http://goo.gl/NrD1UF>; See further US Department of Homeland Security, IMBRA Pamphlet (2011), "Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa" Available at <http://goo.gl/4abTyH>

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“based on the region of origin.”<sup>58</sup> While a domestic violence survivor may find support, assistance, and acceptance of her plight in America, she may also face tremendous pressure from her cultural upbringing, family, friends and her cultural community in the United States. The American notion of “independence” may have a different meaning for immigrant women, and levels of tolerance for violence may change from culture to culture. In many cultures, domestic violence is seen as a private issue, one that should be resolved within the household, not in public using the justice system or law enforcement assistance.<sup>59</sup>

Seeking refuge in a shelter means leaving the home environment, a place of comfort, albeit abusive. The mere action of relocating to a shelter and leaving roots within the immigrant community may compound the trauma and loneliness a battered immigrant faces.<sup>60</sup> Elements of tradition, such as food, sleeping accommodations, and religious observance may not be preserved nor understood by shelter staff and other residents.<sup>61</sup> It is important to understand that some immigrant women will be more comfortable seeking social support from persons in their own cultural community while others will prefer obtaining help from persons outside their cultural community. Some battered immigrant women feel that they cannot safely access support in their own cultural community and seek help identifying programs that can connect them with women outside their communities, thereby establishing a support system not connected to the cultural community. Everyone is better able to heal and recover from trauma when familiar things surround them. Providing bilingual staff, options to cook, familiar foods, and sleeping arrangements that are more familiar can make the shelter a more welcoming place and more of a healing opportunity for immigrant victims. A battered immigrant woman is especially vulnerable after fleeing her husband and every effort to keep her comfortable should be made at the moment of transition.

### HOW SERVICE PROVIDERS CAN HELP EASE IMMIGRANT VICTIMS FIND CULTURAL SUPPORT

Although there may be cultural differences between an immigrant culture and United States society as a whole, it is important not to make any stereotypical assumptions about any immigrant victim’s culture because members of that culture accept the abuse, or because domestic violence is a cultural norm. Just as with situations of other battered women, leaving an abusive relationship can be difficult<sup>62</sup> and dangerous. Yet battered immigrant women encounter barriers including language, immigration status, and culture that make it even more challenging for them to leave.

Service providers should work with clients to help them break their isolation by developing support networks they can trust. One of the best ways to do this is to identify and connect them with women’s groups in their own cultural community.<sup>63</sup> Since the early-to-mid 1990s several groups have developed in immigrant communities across the United States that has included providing assistance and support to battered immigrant women in their communities.<sup>64</sup>

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<sup>58</sup> Raj, Anita, and Jay Silverman, “Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence,” *Violence Against Women* Vol. 8 No. 3, March 2002, 369.

<sup>59</sup> Edna Erez. *Immigration, Culture Conflict and Domestic Violence/Woman Battering*. 12(1) *Crime Prevention and Community Safety: An Int’l Journal*. 30 (2002).

<sup>60</sup> Rennison and Welchans IPV at 9, at 9; Orloff, Dutton, Aguilar Battered Immigrant Women’s Willingness.

<sup>61</sup> Lai, *supra* note 14, at 10; Julia L. Perilla, *Violence en La Familia: An exploration of the Ecology and Dynamics of Domestic Abuse in a Latino Population 4*, presented at National Coalition of Hispanic Health and Human Services Organizations Biennial Conference (September 1996).

<sup>62</sup> It is difficult for an immigrant woman to report her husband’s abuse because she may fear that her family and community in her country of origin will condemn her for publicly announcing the abuse and breaking apart the traditional family structure. If she leaves her husband and returns back to her country of origin, the woman may be penalized by the community for leaving her abusive husband. Leslye E. Orloff & Janice Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10(1) *J. Gender, Soc. Pol’y & The Law*, 135 (2002)

<sup>63</sup> Research data (2002) is pending publication, available from Dr. Rachel Rodriguez, University of Wisconsin Madison, School of Nursing.

<sup>64</sup> In making referrals to women’s groups in immigrant communities it is important to determine whether they have experience working with domestic violence victims. If not, the victim should also become involved in other programs in the community specifically designed for battered women and the two groups should be encouraged to collaborate. If these programs are

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Another successful approach can be for your agency to introduce clients from the same cultural community to one another. These efforts in some instances have led to clients choosing to share housing together. Such efforts have also served as catalysts for immigrant women to work together on domestic violence issues in their communities, leading to the formation of more immigrant women's groups.

Advocates and attorneys should assist immigrant victims in gaining acceptable counseling and support groups. Support groups for the battered women serve as a vehicle for emotional rehabilitation and also establish social relationships with other battered women that play a critical role in each woman's healing and survival. Support groups are an important complement to individual therapy sessions for overcoming the emotional strain of domestic abuse. When battered immigrant women have children who have witnessed or experienced abuse, it is important to connect the children with culturally and linguistically competent support groups, counselors, and counseling programs that can help resulting psychological injuries, and help make it less likely that the children will repeat the cycle of violence as adults.

### Cultural Differences

Immigrant domestic violence victims often face cultural stigmatization for having revealed domestic violence. The myth that immigration to America will translate into instant success exacerbates this problem. Though seen as a cliché by many Americans, the notion of the American Dream is still very alive in immigrant communities, both abroad and in the United States. Friends and relatives may not understand that it is possible to have anything short of an ideal experience in the United States, because America has been billed for so long as the "land of opportunity." A domestic violence victim who speaks publicly about her experiences may be rejected from her community and viewed as having "failed," because her experience challenges the myth and deviates from the accepted cultural norm.<sup>65</sup>

When battered immigrants begin to explore or attempt to leave abusive relationships, they encounter systemic barriers, and face enhanced isolation that can come from having to leave or being ostracized from their cultural community.<sup>66</sup> In recent years, many immigrant women have begun to be able to utilize alternative sources of support from other immigrant women.<sup>67</sup>

### THE NEED TO OFFER HELP AND PROTECTION TO IMMIGRANT VICTIMS WHO DO NOT SEPARATE FROM OR RETURN TO THEIR ABUSER

A multitude of factors influence a battered immigrant's response to domestic violence. These factors include:

- Immigration related abuse,
- Fear of deportation,
- Economic dependence on her abuser,
- Concerns over loss of custody of her children,
- Language barriers,

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conducted only in English, advocates will need to identify interpreters who can help immigrant victims participate in these programs and activities.

<sup>65</sup> MARY ANN DUTTON & GISELLE AGUILAR HASS, *EXPERT TESTIMONY CONCERNING BATTERING*, IN MARY ANN DUTTON, ET AL., AMERICAN BAR ASSOCIATION, *DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT*, APPENDIX C, PAGE 8. (Bette Garlow, et al., eds., 2000).

<sup>66</sup> See Raj, Anita, and Jay Silverman, "Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence," *Violence Against Women*, Vol. 8 No. 3, Thousand Oaks: Sage, March 2002, 384.

<sup>67</sup> 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, 265 (2000); An important barrier to keep in mind when working with battered immigrant victims is the inability to communicate effectively. Interpreters are substantial to better help the battered immigrant woman when working with service providers. Leslye E. Orloff & Minty Siu Chang, *supra* note 128, at 10



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- Lack of Understanding about the U. S. legal systems help for battered women,
- Cultural barriers,
- Lack of culturally competent social support and,
- Isolation

It may be difficult for an outside observer to understand that for many battered immigrant women, the response to the abuse may not necessarily be to leave her abuser, but rather to stay with him for personal safety reasons.<sup>68</sup> A battered immigrant woman who is in an intimidating and unfamiliar culture may find comfort and continuity with an abuser, however physically oppressive he may be.<sup>69</sup> As with all battered women, a battered immigrant woman may hesitate to leave her abuser because she does not want to give up the positive, nurturing parts of their relationship. Research indicates that it takes 2 to 5 attempts before battered women in the U.S. can permanently separate from their abusers. It is critical that attorneys and advocates offer assistance to all battered women, including battered immigrant women, whether they are currently choosing to leave their abusers, or choose to return to their abuser. For battered immigrants, culture, language, immigration status, unfamiliarity with United States society, and religious concerns make leaving even more difficult. Service providers need to be aware of the range of services that they can provide that offer real assistance to battered immigrants when they choose not to separate from their abusers. These victims can:

- Obtain full-contact protection orders that order the abuser not to molest, assault, threaten, abuse, stalk or harass the victim in the future; order the abuser into counseling, order him to turn over the children's passports, and order him to turn over immigration documents and important papers to the victim.
- File for VAWA immigration relief
- Participate in counseling programs for battered women
- Participate in immigrant women's community based organizations
- Enroll in English as a Second Language programs
- Receive help accessing health care
- Access public benefits for which their citizen children qualify
- Verify their qualification for accessing public benefits for themselves before they have separated from their abuser. However, women who qualify for public benefits must *show proof of separation* from husband and *apply* for VAWA-related benefits in order to claim benefits for themselves.<sup>70</sup>

## Conclusion

Victims of domestic violence face a complicated set of challenges, compounded by the multifaceted struggles of being an immigrant concerned about how her options might be affected by her immigrant status. Due to their abuser's control over the information they have about their legal rights, many immigrant victims may fear deportation even when they have legal permanent residence. Battered immigrants who have temporary or undocumented immigration status will face even greater hurdles. The problem of domestic violence must be addressed in immigrant communities as well as in the country at large. Immigrant victims need improved access to the legal, social services, and health care systems that help battered women and systematic barriers to access them must be eliminated.

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<sup>68</sup> Lifetime Incidences at footnote, pages 29-30

<sup>69</sup> MARY ANN DUTTON & GISELLE AGUILAR HASS, *EXPERT TESTIMONY CONCERNING BATTERING*, IN MARY ANN DUTTON, ET AL., AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT, APPENDIX C, PAGE 8. (Bette Garlow, et al., eds., 2000).

<sup>70</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61, 366. (1997); This criterion can be satisfied in a number of ways. One recommended approach is that adopted by Illinois, which finds that this requirement is satisfied as long as the applicant has separated from her abuser within 30 days of her first receipt of benefits. She is not required to present evidence of separation before receiving her first payment benefits. Letter from Dan Lesser, National Center on Poverty Law, June 18, 2000.

## Overview of Domestic Violence

Advocates, attorneys, immigrant community-based organizations, and other service providers are the key to combating domestic violence because of their proximity both to the systems that are designed to improve the lives of battered women and to the women themselves. To make program services most accessible to immigrant victims, collaboration among professionals is key.

It is critical for immigration attorneys, domestic violence advocates, legal services and domestic violence lawyers, shelter programs, and immigrant community-based organizations to establish formal collaborations to effectively serve battered immigrant women. By collaborating, organizations can help provide support for allied organizations that may have less expertise on immigrant victim's legal rights or domestic violence. Immigrant rights organizations can train domestic violence staff on immigration laws and cultural issues; while domestic violence program staff can train immigrant rights and community groups on domestic violence issues. Each provider should offer frequent trainings about the relevant issues in their field. The advantages of collaboration include the creation of a comprehensive support network for immigrant victims of domestic violence that addresses the concerns facing immigrant victims of domestic violence.<sup>71</sup>

A network of service providers can help to ease the struggles that battered immigrant and refugee women endure. The support of collaborating professionals enables advocates and attorneys to assist battered immigrant and refugee women in overcoming the abuse they have suffered and in countering the many systemic barriers detailed in this chapter. This section has outlined some of the specific strategies that advocates and attorneys can employ to help the battered immigrant women and children with whom they work. Other strategies will be discussed in the chapters that follow.

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<sup>71</sup> See Chapter 1 of this manual for a fuller discussion of collaboration.

## Overview of Domestic Violence

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