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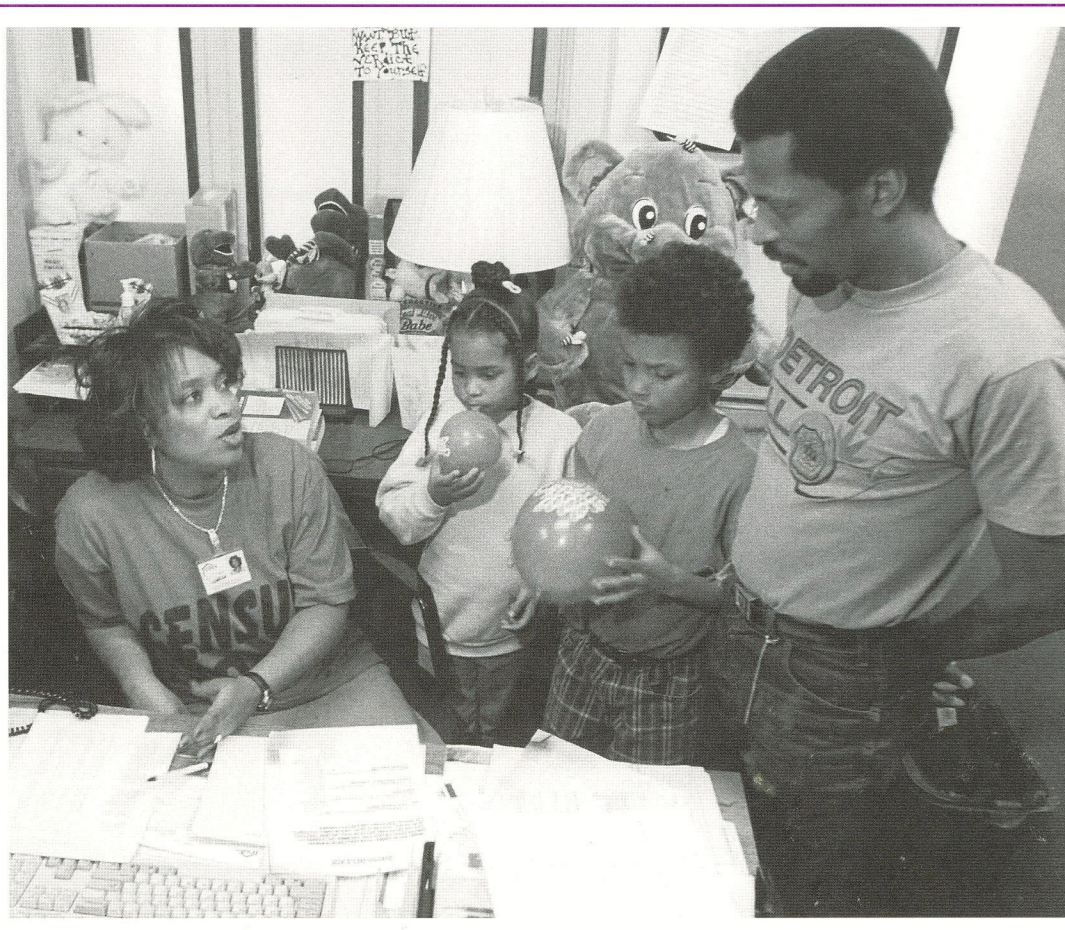

Breaking the Cycle of Defeat for Noncustodial Parents through Advocacy

Opening a Door to Help: Legal Services Programs' Key Role in Representing Battered Immigrant Women and Children

By Leslye Orloff, Amanda Baran, Laura A. Martinez-McIntosh, and Jennifer Rose

Mariella Batista approached the family court building in Riverside, California, 9-year-old son in tow, ready for her hearing. Her family law attorney, who had little domestic violence experience, had no time to meet with Mariella before the court date and arranged to meet her outside the courthouse before the hearing. Mariella, a Cuban immigrant, had a history of years of abuse at the hands of her partner and was attempting to gain control of her life by instituting legal action to gain custody of her son. Suddenly her estranged partner approached her and grabbed the boy. In fear, Mariella began to run, and the man shot her.[1]

A week earlier, a program funded by the Legal Services Corporation (LSC) had rejected Mariella's pleas for help in obtaining a civil protection order against her abuser, although she had told program staff that she feared for her life. The program's denial of representation came a few days after Congress passed a law prohibiting LSC-funded programs from providing legal assistance to any person who was not a citizen or lawful permanent resident, even if the program did not use LSC funds to do so.[2]

In response to Mariella's case and others like it, Sen. Edward M. Kennedy secured passage of an amendment to the Omnibus Consolidated Appropriations for Fiscal Year 1997 bill exempting battered women from the restriction on representation of immigrants by LSC-funded programs.[3] Introducing the amendment, Senator Kennedy noted that violence against women had reached epidemic proportions and crossed cultural, racial, and socioeconomic lines. He added, "There is no class of women who are immune from the horrors of domestic violence. Immigrant women are no exception."[4] Most important, the senator recognized that the amendment was consistent with Congress' passage in 1994 of the Violence Against Women Act, which uniquely affected immigrant women by granting them the right to self-petition. He noted that the Violence Against Women Act's immigration protections and Congress' expansion of public benefits access to eligible battered

[1] William Claiborne, *Abused Immigrant Slain After Plea for Legal Services Help Is Denied; New Law Limits Federal Program to Lawful Permanent Residents*, WASH. POST, June 5, 1996, at A3.

[2] *Id.*

[3] Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208 § 504(a)(11), 110 Stat. 3009 (1996).

[4] Sen. Edward M. Kennedy, Address Before the Senate Committee on Appropriations (June 26, 1996) (transcript on file with Leslye Orloff) [hereinafter Kennedy Address].

For the note on the authors, see page 45.

immigrants in the 1996 immigration reform legislation "are meaningless if victims cannot get help."[5] Senator Kennedy went on to state that barring LSC-funded programs from representing battered immigrants "severely restricts, if not bans, battered women's access to the protection we adopted in [the Violence Against Women Act]."[6] He urged Congress to

> [t]hink about how the process works. An immigrant woman, on the run from her husband's latest cycle of violence, flees to a legal services agency seeking a protection order. She has no idea of her rights under [the Act]. That agency cannot help her—they have to turn her away. How will she get the protection which may save her life? How will she find out about her rights under [the Act]? Under this bill [with restrictions on legal services representation]—she won't.[7]

In adopting the Kennedy Amendment, Congress sought to guarantee that "when someone comes to a legal services agency fleeing domestic violence, that agency does not have to check her immigration status. The agency can use its nonfederal funds to represent her."[8] The amendment opened once-closed legal services program doors to immigrant women trying to escape their abusers. Unfortunately many LSC-funded programs still either refuse to represent battered immigrant women at all or are unaware of the types of legal assistance they may offer both documented and undocumented immigrant victims of domestic violence.

I. The Importance of Legal Representation in Domestic Violence Cases

An estimated 61 percent of women who head low-income households have experienced severe domestic violence perpetrated by an adult male partner.[9] Although all jurisdictions in the United States offer victims of domestic violence and their children a variety of civil and criminal court options to obtain protection, for most victims, effective access to these options is extremely limited without assistance from legal aid attorneys. In testimony before Congress, the LSC chairman confirmed that programs receiving at least part of their funding from the corporation are the country's "primary source of legal assistance for low-income women who are victims of domestic violence. More than one out of every six LSC legal issues addressed involves efforts to obtain protection from domestic violence."[10] A 1996 survey of state domestic violence coalitions confirmed overwhelmingly that battered women rely on legal aid attorneys as practically their only source of legal representation in protection order cases and family matters; in most communities, legal services and other nonprofit organizations have the greatest expertise on such issues.[11] Private family law attorneys have little or no understanding of domestic violence laws and dynamics and are ill-equipped to offer effective representation to battered women.[12] The case of Mariella Batista illustrates these dangers.

Protection orders are an extremely important tool to thwart ongoing violence and improve safety for battered women.

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[5] Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, § 384, 110 Stat. 3009-546 (1996); Kennedy Address, *supra* note 4.

[6] Kennedy Address, *supra* note 4.

[7] *Id.*

[8] *Id.*

[9] Legal Services Corporation (LSC), Helping Victims of Domestic Violence (July 1999) (citation omitted), *at* www.lsc.gov/pressr/pubs/helpingv.htm.

[10] Douglas S. Eakeley et al., LSC, Testimony before the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the House Appropriations Committee (Mar. 3, 1999), *available at* www.lsc.gov/pressr/pr_t_app.htm.

[11] Leslye Orloff, Memorandum to Bonnie Campbell, U.S. Dep't of Justice, Re Survey Findings: Effects of Legal Services Cuts and Welfare Reform on Battered Women 1 (July 10, 1996).

[12] *Id.*

According to a survey by the National Institute of Justice, 72–80 percent of battered women who received protection orders reported that their lives subsequently improved and they felt safer.[13] However, the effectiveness of protection orders varied with victims' ability to access courts, assistance, and support.[14] Researchers found that the availability of direct assistance makes victims more likely to seek services.[15] What has been clear for years is that battered women need legal representation to obtain civil protection orders and that women who appear with counsel are much more likely to receive protection orders than women who appear alone.[16] With legal representation, the protection orders that battered women receive are more likely to contain effective and complete remedies.[17]

The reality in many jurisdictions, particularly those covering rural areas, is that only legal aid attorneys have the domestic violence training to help victims access the full range of civil court options that can help end abuse. When LSC-funded programs decline to represent battered immigrant women and their children, the victims lose access not only to legal representation but to all justice system protections. For this reason, Congress allowed non-LSC funds "to be used to provide legal assistance in domestic violence and related matters to immigrant victims…to ensure that individuals confronted with domestic violence have a way to access the Legal Services system."[18] All legal aid programs, including those receiving LSC funding, should make serving domestic violence victims, including immigrants, a top priority.[19]

II. LSC-Funded Services for Battered Immigrants

Many noncitizen battered immigrant women and abused immigrant children are eligible to receive legal services because they qualify for assistance under the LSC Act and regulations, even without the Kennedy Amendment.[20] LSC funds may be used to represent the following categories of battered women and abused children:

- lawful permanent residents;
- lawful conditional residents;
- immigrants who are married to U.S. citizens, have applied to adjust their status to that of lawful permanent resident, and whose application has not been rejected;
- immigrants who are parents or unmarried children under 21 of U.S. citizens, have applied to adjust their status to that of lawful permanent resident, and whose application has not been rejected;

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[13] Susan I. Keilitz et al., Nat'l Ctr. for State Courts, *Civil Protection Orders: Victims' View on Effectiveness*, NAT'L INST. OF JUSTICE 1, 2 (1998).

[14] *Id.* at 1.

[15] *Id.* at 2.

[16] PETER FINN & SARA COLSON, NAT'L INST. OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 19 (1990); Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 247, 249 (1993).

[17] Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 812 (1993).

[18] Comm. on Appropriations, Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1997, 104th Cong. 2d Session, H.R. Rep. No. 104-676, at 131 (1996).

[19] Many LSC-funded programs already make domestic violence a priority area. LSC, Helping Victims of Domestic Violence (July 1999), www.lsc.gov/pressr/pubs/helpingv.htm.

[20] For more information on representation of immigrants by LSC-funded programs, see Sara Campos, *Representing Immigrants: What Do LSC Regulations Allow?*, *in* POVERTY LAW MANUAL FOR THE NEW LAWYER 144–51 (2002), *available at* www.povertylaw.org/legal-research/manual/index.cfm.

- immigrants who have been admitted as refugees or granted asylum;
- immigrants who have been granted conditional entry pursuant to Immigration and Naturalization Act § 203(a)(7), as in effect on March 31, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of catastrophic natural calamity; and
- immigrants who are lawfully present in the United States as a result of withholding of deportation.

The Kennedy Amendment allows LSC-funded programs to use non-LSC funds to represent domestic violence victims regardless of citizenship or immigration status, provided that the legal assistance is directly related to preventing or obtaining relief from the battery or cruelty and

- the applicant has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented or acquiesced to such battery or cruelty;
- or the applicant's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the immigrant or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented, or acquiesced to such battery, and the immigrant did not actively participate in such battery.[21]

LSC-funded agencies may also represent a client not eligible under the Kennedy Amendment if, while doing so, the agency represents an eligible client who has a legal right or interest in the matter.[22] For example, a program may use LSC funds to represent the mother of a U.S. citizen or legal permanent resident child who is being abused by the child's father when the child's parents are not married and the mother is seeking assistance with a protection order or family court case to gain protection for the child. In this situation, although the woman herself is not eligible for representation under the Kennedy Amendment because she is not the subject of the abuse and is not married to the child's father, the child, as a U.S. citizen or legal permanent resident, is eligible for LSC representation without restriction.[23]

A. Service "Directly Related to the Abuse"

Dependence on an abuser for financial support and immigration status can complicate the problems that a battered immigrant woman faces, and an effective legal response must address these complications. LSC-funded programs may use non-LSC funds to represent otherwise-ineligible battered immigrants on matters directly related to the abuse.[24] "Directly related" is a confusing concept that many programs interpret narrowly; as a result, they offer battered immigrant women few services beyond obtaining protection orders. However, LSC regulations define "directly related to abuse" broadly as any legal assistance that will

- assist victims of abuse in escaping from the abusive relationship;
- ameliorate the effects of abuse; or
- protect against future abuse.[25]

Battered immigrants have the same range of legal options as other battered women, and legal representation on a wide array of issues may be deemed related to the abuse. In fact, the preamble to the LSC regulations states explicitly that abuse victims need a broad variety of legal services. It makes representation permissible in a broad range of immigra-

[21] Legal Services Corporation Appropriations Act § 504(a)(11).

[22] Campos, *supra* note 20.

[23] *Id.*, *citing* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134 § 504 (a)(11), 110 Stat. 1321-54 (1996); 45 C.F.R. § 1626.5 (2001).

[24] Legal Services Corporation Appropriations Act § 504(a)(11), 110 Stat. 3009 (1996).

[25] Restrictions on Legal Assistance to Aliens, 45 C.F.R. § 1626.2(g) (1997).

tion matters and gives, as examples, Violence Against Women Act immigration cases and other immigration cases that would allow an abuse victim to stabilize immigration status, facilitate naturalization, or acquire work authorization, so long as she can show the necessary connection to abuse.[26]

The preamble also approves of legal assistance on other poverty law issues that affect a battered immigrant woman's self-sufficiency and ability to become independent of her abuser, including

- civil protection orders;
- contempt actions;
- divorce;
- termination of parental rights;
- child custody;
- child and spousal support;
- maintaining health insurance under the abuser's policy;
- housing, including eviction defense, retaining the family home for the battered immigrant and her children, or evicting the abuser from the residence;
- public benefits;
- medical assistance;
- employment;
- abuse and neglect;
- juvenile proceedings; and
- small claims cases.[27]

The preamble recognizes that abusers use many tactics to maintain power and control over an intimate partner—particularly an immigrant—and that the assistance that a legal services program may offer should not be limited to representation on safety and family law issues. Legal assistance that at first glance may seem unrelated to abuse may be necessary to help a battered immigrant become self-sufficient so that she is not subjected to future abuse. For example, a woman who needs assistance with welfare eligibility because she is unable to meet her work requirements may not appear to need legal services directly related to the prevention of or obtaining relief from abuse. However, if she is failing to meet the work requirements because the abuser is committing ongoing abuse and sabotaging her efforts to work, she should be eligible for legal assistance. Similarly a battered immigrant may seek legal assistance to challenge an eviction action for nonpayment of rent. When the reason for nonpayment is that the abuser has left the apartment or has failed to pay child support, defense of the eviction action would be related to surviving the abuse.

B. "Battered or Subjected to Extreme Cruelty"

To receive services from an LSC-funded program, an immigrant woman or child who is not otherwise eligible for representation must have been "battered or subjected to extreme cruelty"—a definition that is broader than that contained in most state protection order statutes because it includes forms of emotional abuse that are not crimes.[28] Thus LSC-funded providers may help some battered immigrants apply for immigration benefits or represent them in divorce or custody matters when the immigrants are not eligible for protection orders.

LSC regulations define "battered or subjected to extreme cruelty" as including, but not limited to,

> 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), or forced prostitution

[26] *Id.*

[27] Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409, 19410–11 (Apr. 21, 1997) (codified at 45 C.F.R. pt. 1626).

[28] Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 107 (2002).

> shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that in and of themselves may not initially appear violent but that are a part of the overall pattern of violence.[29]

This expansive definition parallels those in immigration law and laws creating welfare access for undocumented battered immigrants with pending Violence Against Women Act immigration or family-based immigration cases.[30] It is, however, limited to abuse that occurs in the United States.[31]

III. The Limited Restriction on Battered Immigrants' Eligibility to Receive Services from LSC-Funded Organizations

Although the Kennedy Amendment allowed LSC-funded programs to use non-LSC funds to represent battered immigrant women and children who are not otherwise eligible for representation, including those who are undocumented, the programs may represent only immigrant victims who have been battered by

- a spouse or parent or
- a member of the spouse's or parent's family residing in the same household as the battered immigrant.[32]

Note that the relationship with the abuser is the paramount relationship. If the abuser is a spouse, former spouse, or parent, the victim may receive a full range of legal services on issues directly related to the abuse, regardless of whether the abuser is a citizen, lawful permanent resident, work visa holder, student visa holder, or diplomat; has some other form of legal immigration status; or is undocumented.

The LSC regulations direct LSC-funded programs to refer to state protection order statutes for guidance on the meaning of a "member of the spouse's or parent's family."[33] For example, an immigrant woman who lives in an extended family household with her spouse's in-laws and is sexually assaulted by her brother-in-law may receive assistance from a legal services program, as may an undocumented immigrant teenage girl who is the victim of incest perpetrated by her grandfather on her father's side.

The Violence Against Women Act uses two definitions of family relationships; one is part of the definition of domestic violence, and the other, used in the immigration context, was modeled after family-based immigration cases and limits the Act's self-petitioning and cancellation of removal provisions to persons abused by their spouse or parent.[34] Instead of using the former, more gener-

The Kennedy Amendment

The specific language of the Kennedy Amendment allows agencies funded by the Legal Services Corporation to assist a person

> (1) who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty; or
>
> (2) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty; provided that the legal assistance is directly related to the prevention of, or obtaining relief from, the battery or cruelty.

Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208 § 504(a)(11), 110 Stat. 3009 (1996).

[29] Restrictions on Legal Assistance to Aliens, 45 C.F.R. § 1626.2(f).

[30] Violence Against Women Act of 1994, Pub. L. No. 103-322, § 40701, 108 Stat. 1796 (1994) (codified as amended at 8 U.S.C. § 1154).

[31] Restrictions on Legal Assistance to Aliens, 45 C.F.R. § 1626.4.

[32] Legal Services Corporation Appropriations Act § 504 (a)(11).

[33] Restrictions on Legal Services to Aliens, 45 C.F.R. § 1626.2.

[34] Violence Against Women Act of 1994 § 40701.

al definition that appears throughout the Act and parallels state protection order statutes, Congress, when it drafted the Kennedy Amendment, adopted the definition of family relationships from the Act's immigration context. As a result, LSC-funded programs may use non-LSC funds to represent battered immigrants only when their abusers are their spouses or parents.

In other words, legal services programs may not use non-LSC dollars to represent an undocumented victim abused by her boyfriend or the father of her child to whom she is not married even when her abuser is a U.S. citizen. However, when the victim's citizen or lawful permanent resident minor child is a victim of parental abuse perpetrated by the child's father, an LSC-funded program may use non-LSC funds to help the mother get a protection order or seek custody or child support. As discussed below, this restriction makes it very important for LSC-funded programs to coordinate service provision with other attorneys handling domestic violence cases. Led by the National Network to End Violence Against Immigrant Women, efforts are under way to remove this restriction so that LSC-funded programs may represent the full range of immigrant victims who need their assistance.[35]

IV. Emergency Legal Assistance

Despite these restrictions on representing immigrants, LSC-funded programs may provide emergency legal assistance without written verification of immigration status. LSC regulations do not define "emergency," but the preamble to the LSC regulations states that "emergency" in the legal services context would include cases in which immediate action is necessary to preserve significant legal rights or prevent significant harm to the person's family, property, or other legal interests.[36]

Under this definition, LSC-funded programs should be able to help battered immigrants file for and obtain temporary protection orders and civil protection orders that remove the abuser from the family home, grant custody, grant temporary child support, and devise creative remedies.[37] Emergency legal assistance, without regard to the client's immigration status, may be provided to battered immigrants who qualify under state protection order laws but who are abused by persons who are not their spouse or parent.[38] Further assistance, however, is not permitted unless the battered immigrant's immigration status otherwise qualifies her for representation.[39]

V. Inquiring about Immigration Status

The Kennedy Amendment and LSC regulations make it absolutely clear that LSC programs need not ask an immigrant who is abused by a spouse or parent about her immigration status. Furthermore, programs that use non-LSC dollars to represent battered immigrants should not seek to verify immigration status, examine immigration documents, or keep records regarding the immigration status of clients who are abused by their spouses or parents. For funding purposes, this can make it difficult to know whether to charge time to LSC or non-LSC funds. The fol-

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[35] To join the National Network to End Violence Against Immigrant Women and sign up for one or more of the network's list-serves on immigrant women's legal rights in the areas of family law, public benefits, or immigration law, contact the Immigrant Women Program of NOW Legal Defense and Education Fund, 202.326.0040 or iwp@nowldef.org.

[36] Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409, 19413 (codified at 45 C.F.R. pt. 1626.8).

[37] For detailed information on issues that arise in protection order cases and strategies for obtaining creative remedies in protection order cases to help immigrant victims, see Immigrant Women Program, NOW Legal Defense and Education Fund, Battered Immigrants and Civil Protection Orders (2003), available from the Immigrant Women Program of NOW Legal Defense and Education Fund (see *supra* note 35 for contact information).

[38] Advocates should urge LSC-funded programs in their states to represent any battered woman in a protection order case without regard to her immigration status.

[39] *See generally* Campos, *supra* note 20, at 144.

lowing practical considerations should address this problem.

First, interviewers should determine whether applicants are victims of battery or extreme cruelty by a spouse or parent, thus establishing Kennedy Amendment eligibility. Once eligibility is established, the interviewer should qualify questions related to immigration status by assuring the applicant that the questions about to be asked are asked of everyone and that responses will be kept confidential, so as not to deter the applicant from applying for legal aid. Hence potential clients will not be afraid to access essential services, and LSC-funded organizations can provide much-needed services to battered immigrant applicants.

To underscore this point, the preamble to the LSC regulations implementing the Kennedy Amendment states that, "[u]nder this analysis, the immigration status of Kennedy Amendment clients is essentially irrelevant, because they may be served with non-LSC funds regardless of citizenship or alien status."[40]

VI. Non-LSC Funding Sources to Support Legal Services for Battered Immigrants

The 2000 amendments to the Violence Against Women Act clarified that, as with other federal sources listed below, a wide range of funding under the Act, including legal representation in immigration cases, is available to assist battered immigrants. A wide range of foundation, private, corporate, and state and local government funding is available to support legal services under the Kennedy Amendment to immigrant victims of domestic violence and child abuse. As long as a legal services program receives non-LSC funds that allow such representation, it may represent battered immigrants.

Any funds provided to help battered women and children generally may be used to assist immigrant victims. Legal services programs should collaborate with service providers who work with battered women and in immigrant communities. Together these advocates should develop funding proposals to coordinate services to immigrant domestic violence victims; these proposals should fairly recognize the contributions of each partner agency and fairly share grant funds.[41] Funding sources for assistance to Kennedy Amendment clients include

- Services, Training, Officers, and Prosecutors (STOP) grants that states receive to develop and strengthen the criminal justice response to violence against women (STOP grant funding can be used to "provide assistance to victims of domestic violence and sexual assault in immigration matters," including legal assistance);[42]

- Rural Domestic Violence and Child Victimization Enforcement Grants designed to enhance services available to victims and children by encouraging community involvement in developing a coordinated response to domestic violence, dating violence, and child abuse (funding may be used to "provide treatment, counseling, and assistance to victims of domestic violence and child abuse, including in immigration matters");[43]

- Grants to Encourage Arrest Policies and Enforcement of Protection Orders, designed to encourage state and local governments to treat domestic violence as a serious problem by requiring the coordinated involvement of the entire criminal justice system, "including strengthening assistance to such victims in immigration matters";[44]

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[40] Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409, 19410.

[41] For a fuller discussion of the kinds of collaboration that most effectively can serve immigrant victims, see generally Immigrant Women Program, Collaboration and Advocacy (2003), available from the Immigrant Women Program, NOW Legal Defense and Education Fund (see *supra* note 35 for contact information).

[42] *See* Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1512(a) (codified as amended at 42 U.S.C. § 3796gg(b) (2000)).

[43] *Id.* § 1512(c) (codified as amended at 42 U.S.C. § 13971(a)(2)).

[44] *Id.* § 1512(b) (codified as amended at 42 U.S.C. § 3796hh(b)).

- Grants to Reduce Violent Crimes Against Women on Campus, intended to strengthen the higher-education community's response to sexual assault, stalking, domestic violence, and dating violence crimes on campuses and to encourage alliances between campuses and local criminal justice and victim advocacy organizations (the program's goals are to help institutions of higher learning create a coordinated community response to end violence against women on campuses and ally themselves with local nonprofit victim advocacy and civil justice organizations);[45]

- VOCA (Victims of Crime Assistance) grants to provide monetary compensation, safety services, programs to stabilize life circumstances, and funding for agencies responding to the physical and emotional needs of crime victims (states may use funding from this source to support programs including domestic violence shelters and services that assist battered women crime victims and may include undocumented immigrants among those entitled to services);[46]

- Family Violence Prevention and Services Act grants, awarded to states for distribution to programs that serve battered women, without regard to immigration status, through programs such as shelter, counseling, preventive activities, and outreach;[47]

- IOLTA (Interest on Lawyers' Trust Accounts) funds;

- state and local government funding;

- private foundation grants;

- corporate funding; and

- funding from religious institutions.

The Violence Against Women Act of 2000 explicitly added clients who are underserved due to immigration status to the definition of underserved populations.[48] Therefore, in funding applications, emphasizing service to immigrant victims of domestic violence is advantageous.

VII. Individual and Systemic Advocacy Strategies

LSC program staff should educate advocates in the domestic violence community about the Kennedy Amendment because direct service providers may assume that the law prohibits most immigrants from receiving federally funded legal services. Advocates for battered immigrants and LSC-funded organizations should collaborate and develop a culturally sensitive referral system for these types of cases. LSC management and senior attorneys should also educate their own staff by including the language of the Kennedy Amendment and articles such as this one in their training manuals for new attorneys and paralegals.

Because LSC-funded programs may represent otherwise-ineligible battered immigrants under the Kennedy Amendment only if they are victims of abuse by spouses, former spouses, or parents, the programs should locate community resources to which they can refer immigrant victims whose abusers fall under other categories. LSC-funded programs, in turn, should accept referrals of clients who qualify for representation under the Kennedy Amendment. Without careful coordination, legal aid programs without LSC funding may fill their entire caseload with clients who would also qualify for representation by an LSC provider. In this event a battered immigrant whose abuser is the father of her children but is not her spouse and who needs representation in a custody case will have nowhere to turn. Local advocates and LSC programs should also work together to develop referral lists of private attorneys and other legal agencies whose staff understand domestic violence and immigration issues.

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[45] Grants may be used for training, creation, and development of victim services programs, and, under the Violence Against Women Act of 2000, campus funding may also cover services "including assistance to victims in immigration matters." *Id.* § 1512(d) (codified as amended at 20 U.S.C. § 1152).

[46] *Id.* § 1201 (codified at 42 U.S.C. § 3796gg).

[47] Family Violence Prevention and Services Act, 42 U.S.C. § 10402 (2000).

[48] Violence Against Women Act of 2000 § 1103(a).

Coordination can help fill a critical need to develop additional resources. In many communities LSC-funded organizations are overwhelmed by the demand for their services. Domestic violence advocates and legal services programs with experience representing battered women may want to consider joint efforts to raise non-LSC funds with which to provide legal services to immigrant battered women and children. With the help of advocates who interview clients and gather evidence, a single attorney can represent many more clients than she could working alone. This approach works particularly well in Violence Against Women Act self-petitioning cases.

A model approach to such collaboration has been developed in Albuquerque, New Mexico, where an attorney trained battered women's advocates across the state on the Violence Against Women Act's self-petitioning provisions. With advocates conducting client interviews and collecting evidence based on checklists the attorney supplied, she has been able to represent large numbers of battered immigrants with a very high success rate.[49] This approach is particularly effective for ensuring that victims living in rural communities gain access to immigration relief under the Act.

LSC-FUNDED PROGRAMS MAY USE ANY NON-LSC dollars they receive to represent battered immigrant victims of domestic violence and child abuse in a broad range of legal cases that will help immigrant victims escape, survive, and cope with the effects of abuse. Permissible assistance includes Violence Against Women Act self-petitions, filing for U visa crime victim protections, obtaining lawful permanent residency and work authorization, and representation in removal proceedings before immigration judges.[50] More legal services programs should represent battered immigrants and should develop the collaborative partnerships needed to provide effective, culturally competent services and to ensure that immigrant victims abused by their boyfriends may receive legal assistance beyond protection orders, custody cases, and immigration matters.

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[49] Mirna Torres of Catholic Charities in Albuquerque developed this approach. For more information and sample materials, contact the Immigrant Women Program of NOW Legal Defense and Education Fund (see *supra* note 35 for contact information).

[50] The Violence Against Women Act of 2000 created a new nonimmigrant visa classification, the U visa, to protect immigrant victims of certain crimes, including domestic violence and sexual assault. Battered immigrant women who are not eligible to self-petition under the Act may be eligible for a U visa. Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 1513 (a)(2)(A). For more information about the U visa, contact the Immigrant Women Program of NOW Legal Defense and Education Fund (see *supra* note 35 for contact information).