UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEIDY MAVELY SOTO ALVARADO and MAURICIO ANTONIO GARCIA SOTO,

Plaintiffs,

v.

MERRICK B. GARLAND,
United States Attorney General, et al.,

Defendants.

Case No. 1:22-cv-00184-WES-LDA

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR RELIEF FROM FINAL JUDGMENT AND/OR LEAVE TO AMEND COMPLAINT

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I. STATEMENTS OF INTERESTED PARTIES

Amici curiae are National Immigrant Women's Advocacy Project, Inc., Harvard Immigration and Refugee Clinical Program, Rhode Island Coalition Against Domestic Violence, Women's Resource Center, Sojourner House, Progreso Latino, Blackstone Valley Advocacy Center, Elizabeth Buffum Chace Center, Domestic Violence Resource Center, American Civil Liberties Union of Rhode Island, Crossroads of Rhode Island, and Dorcas International Institute of Rhode Island (collectively, "*Amici*").

National Immigrant Women's Advocacy Project, Inc. ("NIWAP") is a nonprofit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes. As a national resource center, NIWAP offers technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with immigrant crime victims. NIWAP's Director worked closely with Congress in the drafting of the immigration protections included in the Violence Against Women Acts ("VAWA"), both the original 1994 Act and VAWA amendments made in 1996, 2000, 2005 and 2013 and the Trafficking Victims Protection Acts ("TVPA"), the original Act and the 2008 amendment. NIWAP provides direct technical assistance and training for attorneys, advocates, state family court judges, immigration judges, Board judges and judicial staff, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals.

This case involves interpreting provisions of amendments that became law as part of VAWA 2000 that Congress designed to protect battered immigrants by allowing abused immigrant

spouses of U.S. citizens and lawful permanent residents to file VAWA self-petitions to flee abusive relationships. The goal was to ensure that divorce did not preclude victims from filing VAWA self-petitions and that divorce and remarriage occurring after the victim filed their self-petition would have no impact on the battered immigrant spouse's ability to have their self-petition approved and would not lead to revocation of an approved self-petition. Congress understood that remarriage is one of the factors that can help victims heal from abuse and can play a role in enhancing victims' ongoing safety from the abuser.

All VAWA self-petitioner spouses will have suffered battering or extreme cruelty perpetrated by their U.S. citizen or lawful permanent resident spouse who would otherwise normally be required to sponsor the victim's application for lawful permanent residence. Self-petitioning helps battered immigrant spouses escape their abuser's grasp. Important protections such as the VAWA self-petitioning remarriage protections are at the core of NIWAP's mission to promote access to legal mechanisms aimed at helping immigrant abuse victims. NIWAP attorneys were actively involved in drafting VAWA's protections for immigrant abuse victims. As such, NIWAP has a unique interest in ensuring that VAWA is interpreted and applied correctly to immigrant survivors of domestic and child abuse.

The Harvard Immigration and Refugee Clinical Program ("HIRCP") is a clinical program at Harvard Law School that is dedicated to the representation of individuals applying for U.S. asylum and related protections, as well as the representation of individuals who have survived domestic violence and other crimes and are seeking avoidance of forced removal in immigration proceedings. HIRCP's clients include victims of human rights abuses applying for protection under VAWA. Accordingly, HIRCP and its clients have a direct interest in the outcome of this action.

The Rhode Island Coalition Against Domestic Violence ("RICADV") is a nonprofit

organization dedicated to ending domestic violence made up of ten member agencies. It was formed in 1979 to support and assist domestic violence shelters in Rhode Island. It provides statewide leadership on the issue of domestic violence, supports the work of its ten member agencies, strives to create justice for victims through systems and legislative advocacy, and raises awareness on the issue and the prevention of domestic violence in Rhode Island. Its network provides vital, life-saving domestic violence services to all those experiencing abuse, including immigrant survivors of abuse, which is why it is deeply concerned and monitoring Ms. Soto Alvarado's case and the negative impact it could have on other survivors of abuse going forward. All survivors deserve to have their protections upheld. It is crucial Ms. Alvarado receive fair, just, and swift action to reinstate her rights so she can live a life free from abuse in the United States as applicable by law under VAWA.

Founded in 1977, the Women's Resource Center (WRC) has a long history of providing a full range of compassionate, comprehensive direct services to survivors of domestic violence—including immigrant survivors. Its programs include: community-based prevention programs; a 24/7 hotline; crisis intervention counseling; support groups for women and children; individual support and advocacy for victims of all ages; court advocacy; confidential emergency shelter and transitional housing programs; and life-skills enhancing programs, including financial literacy for victims. The VAWA amendments that prohibit the revocation of self-petitioning protections in the case of remarriage are critical to our clients. When this prohibition is ignored by enforcement officials and the courts, it has a chilling impact on survivors. When the circumstances of Ms. Alvarado's case are heard by other immigrant survivors, it may impact their decision to leave a dangerous situation. It would also mean that survivors are prevented from healing, moving beyond their trauma, and rebuilding their lives if they want to ensure self-petitioning protection.

Sojourner House is a nonprofit organization founded in 1976 by Providence residents and Brown University students who were concerned about what was then a silent epidemic: domestic and sexual violence. The mission of Sojourner House is to promote healthy relationships by providing culturally sensitive support, advocacy, housing, and education for victims and survivors of domestic violence, sexual assault, and human trafficking; and to effect systems change. Sojourner House believes that undocumented victims of domestic violence have the right to receive protection from abuse, and that includes the right to access immigration representation and pursue their legal status. It has the only immigration advocacy program in the State of Rhode Island that is housed within a domestic violence/sexual assault agency. It cares deeply about underserved populations because these victims are extremely susceptible to re-victimization by partners, employers and the court systems, among others. Ms. Soto Alvarado's case is a clear example of how the long delays in processing VAWA cases, including self-petitions and other types of relief, is just another barrier that they have to overcome if they want to have the opportunity for a violence-free life. During the pendency of their cases, most victims have to rely on others for support, which only enhances their vulnerability. Victims like Ms. Soto Alvarado should have the ability to rebuild their lives without the fear of repercussions.

Progreso Latino is a Latino-led, community based, non-profit organization established in 1977 to especially support the Latino and immigrant communities in Rhode Island. The agency offers social and immigration services and assists individuals facing domestic violence. It is deeply concerned with Ms. Soto Alvarado’s case and the potential negative impact it will have on other survivors of abuse going forward.

Blackstone Valley Advocacy Center has been providing services to victims of domestic and sexual violence in the Blackstone Valley area since 1987. It is a nonprofit organization whose

mission is to provide comprehensive services to victims of domestic violence, sexual violence, and prevention education to the community at large.

Elizabeth Buffum Chace Center is an essential community agency providing a comprehensive approach to ending domestic violence while supporting victims and the greater community through education, advocacy and therapeutic services. Its mission is to end the perpetration and societal tolerance of interpersonal violence, including all forms of domestic and sexual abuse, and until that is achieved, to provide comprehensive services to victims and education in the community.

Domestic Violence Resource Center promotes advocacy and empowerment as a way to end domestic violence, focusing on creating and providing opportunities in employment and education.

The American Civil Liberties Union of Rhode Island ("ACLU-RI"), with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union, a nationwide, non-profit, nonpartisan organization. ACLU- RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty and equality embodied in the laws and Constitution of the United States, including protecting the rights of immigrants.

In furtherance of those principles, ACLU-RI, through its cooperating counsel, and often in conjunction with the national ACLU Immigrants' Rights Project, has appeared before this Court and the U.S. Court of Appeals for the First Circuit, both as party counsel and as *amicus curiae*, in a number of cases addressing the rights of immigrants and the interpretation of federal immigration law. *See, e.g.*, *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. 2014), 793 F.3d 208 (1st Cir. 2015), 235 F.Supp.3d 388 (D.R.I. 2017); *Fernandes v. Immigration and Naturalization Service*, 79 F.Supp.2d 44 (D.R.I. 1999); *Vieira-Garcia v. Immigration and Naturalization Service*, 239 F.3d

409 (D.R.I. 2001); *Qu v. Central Falls Detention Facility Corporation,* 717 F.Supp.2d 233 (D.R.I. 2010); and *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020).

In light of the important and novel issues raised by this case and its potential impact on many individuals beyond the Petitioner, ACLU-RI joins this amicus brief to urge the Court's consideration of the significant issues discussed herein.

Crossroads of Rhode Island ("Crossroads RI") is the leading provider of housing and services to those experiencing homelessness in Rhode Island. Using the best practices Housing First Model, it strives to help homeless or at-risk individuals and families secure stable housing. Domestic Violence is one of the leading causes of homelessness for women. As an affiliate member of the Rhode Island Coalition Against Domestic Violence, the Domestic Violence Program at Crossroads RI provides integrated services to address the unique needs of domestic violence survivors, as it works with them to break the cycle of violence and find secure, stable housing. Through the Domestic Violence Program, it offers comprehensive trauma-informed services for domestic violence survivors, including a 24-hour crisis hotline, emergency shelter, rapid re-housing, advocacy, support groups, and children's enrichment programs.

Dorcas International Institute of Rhode Island is a non-profit agency with a guiding mission to empower individuals and families, especially the underserved, immigrants, and refugees, to become self-sufficient and fully participating members of our diverse community. The Immigrant Victims' Rights Project at Dorcas International helps immigrant victims escape violence, access services, and stabilize their lives by obtaining employment authorization, legal residence and citizenship. Immigration relief for victims of domestic violence and other crimes is an essential part of achieving safety, protection and healing. Immigrant victims are often reluctant to seek help, report crime, and cooperate with law enforcement due to fear of removal from the United

States. Obtaining legal immigration status for victims restores a measure of security to their lives because it enables self-sufficiency, and it removes the threat of deportation - a threat that is systematically weaponized by abusers and other criminals in the perpetration of crimes against immigrants.

II. INTRODUCTION

Plaintiffs Geidi Mavely Soto Alvarado ("Ms. Soto Alvarado") and her son Mauricio Antonio Garcia Soto ("Plaintiffs") received approval of their Form I-360 Petition ("Petition") on February 2, 2019. Three years later, on March 29, 2022, the United States Citizenship and Immigration Services ("USCIS") revoked approval of the Form I-360 on grounds that "a qualifying relationship did not exist at the time of approval" because Ms. Soto Alvarado "remarried prior to the date" her Petition was approved. In successfully moving this Court for dismissal, the Government mistakenly claimed that this decision fell within the "discretion" of the agency, and therefore the Court lacked subject matter jurisdiction. It did not. To the contrary, rather than allowing the USCIS discretion to deny or revoke petitions based on remarriage, Congress explicitly prohibited the agency from taking such action through its amendments to the Violence Against Women Act ("VAWA") made in 2000 under 8 U.S.C. § 1154(h).

Despite Congress's intent, USCIS routinely, improperly denies and revokes self-petitions under VAWA on the basis of remarriage. Ms. Soto Alvarado's case is uniquely positioned to provide this Court the opportunity to adjudicate whether USCIS actually has discretion to do so as it has long claimed or whether it lacks such discretion under 8 U.S.C. § 1154(h). While subject matter jurisdiction under 8 U.S.C. § 1154(h), which cannot be waived, should have been raised at the outset, USCIS's continued misinterpretation of the statute for over two decades has contributed to confusion regarding the extent of USCIS's discretion.

As such, the *Amici* submit this petition to assist this Court in undoing a fundamental

misunderstanding by the Government of its discretion in these matters, and to protect the rights of abused spouses of U.S. citizens and lawful permanent residents, like Ms. Soto Alvarado, who have had their VAWA self-petitions denied or revoked on the basis of remarriage in contravention of the law. By relieving Plaintiffs from final judgment here and permitting them to amend the Complaint to assert a basis for subject matter jurisdiction under 8 U.S.C. § 1154(h), this Court will provide a forum to adjudicate this important issue that Congress attempted to remedy in VAWA 2000.

The original 1994 version of VAWA created a large loophole, rooted in the concept of coverture, that essentially stripped a survivor of domestic violence from the power to file a VAWA self-petition (using Form I-360) once the victim was no longer married to their spouse. Based on this structure of the 1994 VAWA self-petitioning law, VAWA self-petitioning regulations were promulgated to assist in the issuance and revocation of visas, such as the one relied upon by the Government in seeking dismissal Plaintiffs' Complaint. *See* Defendants' Motion to Dismiss, Dkt. No. 5 at 2-3 (citing 8 C.F.R. 204.2(c)(1)(ii) (1996)). Legions of evidence subsequently was presented to Congress of the increased risk to survivors if they were essentially mandated to remain in a dangerous marriage, and, in 2000, Congress amended VAWA to address these concerns. Relevant here, Congress specifically removed any discretionary ability for the Attorney General to use remarriage of an individual as a basis for revocation. *See* 8 U.S.C. § 1154(h) (as amended).

Congress also recognized that, due to administrative delays, self-petitioners under VAWA may have to put their lives on hold for years while their petitions were processed. The amendments allowed VAWA self-petitioners to move on with their lives and heal by divorcing and/or remarrying, without losing their ability to self-petition under VAWA.

The legislative history further underscores Congressional intent to protect VAWA self-

petitioners' rights to remarry. Specifically, in a full Senate Judiciary Committee Report regarding amendments to VAWA, former Senator Hatch explicitly "[c]larifie[d] that remarriage has no effect on a pending VAWA immigration petition."[1]

Given this clear Congressional mandate, this Court has subject matter jurisdiction over the Complaint and should relieve Plaintiffs from final judgment and/or permit them to amend the Complaint to assert a basis for subject matter jurisdiction under 8 U.S.C. § 1154(h), which removes USCIS's discretion to revoke a petition in the VAWA context on the basis of remarriage.

III. BACKGROUND

A. VAWA Initially Had Strict Requirements Regarding Divorce and Remarriage That Were Harmful to Abused Non-Citizens.

1. Early VAWA regulations were based on notions of coverture.

Congress enacted the VAWA in 1994 to combat domestic violence. VAWA provides non-citizen family members of abusive U.S. citizens and lawful permanent residents ("LPRs") the ability to self-petition for immigrant classification and receive lawful permanent residency without the abuser's knowledge or participation in the immigration process. By removing their dependence on the abusive U.S. citizen or LPR family member to obtain immigration status, VAWA allows non-citizen victims to seek both safety and independence from their abusers.

After the initial passage in 1994, VAWA self-petitioning regulations were issued as interim final rules on March 26, 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) was enacted on September 30, 1996. Unfortunately, these regulations were based on notions of coverture and required that the self-petitioning spouse must be legally married to the abuser when the petition was filed and that the self-petition must be denied if the marriage to the

[1] Ex. 1, 146 Cong. Rec. S10196 (2000), available at https://www.congress.gov/crec/2000/10/11/CREC-2000-10-11-senate.pdf.

abuser legally ended through annulment, death, or divorce before that time.[2] The regulations also stated that the self-petitioner's remarriage would be a basis for the denial of a pending self-petition.[3]

The concept of coverture is that a wife is subordinate to her husband and is under his control.[4] Coverture was incorporated into early immigration laws and was strengthened by the 1986 Immigration Marriage Fraud Amendments.[5] The common law doctrine of coverture made it so that the very being or legal existence of a woman was suspended during the marriage or incorporated into that of the husband.[6] Before any immigration benefit could attach to an immigrant wife, her husband had to petition for her or she had to accompany him.[7] These restrictions perpetuated the assumption that a wife was under the control of her husband.[8] The VAWA self-petition was created as an important part of the original 1994 Violence Against Women Act to sever this dependence that fosters abuse and free battered non-citizen spouses to leave abusive marriages and rebuild lives where the victims and their children could be safe from ongoing abuse.

The bars on divorce and remarriage contained in the 1996 regulations had dangerous consequences and created a loophole for abusive spouses. For example, in order to prevent abused immigrant spouses from utilizing VAWA's self-petitioning protections, abusive citizen spouses could rush to the court and seek quick divorces so that the abuser could make sure that any self-petition filed by the abused spouse would be denied. The regulations also prevented immigrant-

[2] 8 C.F.R. § 204.2(c)(1)(ii) (March 26, 1996, superseded by statute).
[3] *Id.*
[4] *See* Janet M. Calvo, Spouse-Based Immigration Laws: The Legacies of Coverture 28 San Diego L. Rev. 593, 595 (1991).
[5] *See id.*
[6] *See id.* at 596.
[7] *See id.* at 600.
[8] *See id.*

spouses with pending VAWA self-petitions from remarrying even though the new partner could potentially help them heal and protect them from a prior abusive partner.

2. The regulations failed to consider the increased risk to domestic violence victims following separation from an abusive partner.

The regulations promulgated in 1996 did not account for the heightened risks for victims of domestic violence following separation from their abusive partners. In the 1990s and beyond, social science research demonstrated that the danger to an abused spouse did not end upon separation, divorce, or remarriage. Instead, the victim's risk of being abused or killed substantially increases with separation because domestic violence flows from the abuser's need to exercise control in his relationship with the victim.[9] This exercise of control necessarily prevents the victim from unilaterally ending the relationship.[10]

Women who leave abusive partners are often stalked, followed, and harassed for months or even years.[11] National Crime Survey Data showed that in almost 75% of spouse-on-spouse assaults, the victim was divorced or separated at the time of the assault.[12] In fact, research indicated that intimate partner violence continues to *escalate* after separation or when women decide to leave the relationship and that women are at greatest risk of homicide at the point of separation or after

[9] Mary Ann Dutton and Lisa A. Goodman, Coercion In Intimate Partner Violence: Towards A New Conceptualization, 52 Sex Roles 743, 743 (2005), available at https://www.researchgate.net/publication/227252624_Coercion_in_Intimate_Partner_Violence_Toward_a_New_Conceptualization.

[10] Peter G. Jaffee, et al., Common Misconceptions In Addressing Domestic Violence In Child Custody Disputes, Juvenile and Family Ct. J. 57, 59 (2003) ("[S]eparation may be a signal to the perpetrator to escalate his behavior in an attempt to continue to control or punish his partner for leaving."), available at: https://www.researchgate.net/publication/227626092_Common_Misconceptions_in_Addressing_Domestic_Violence_in_Child_Custody_Disputes.

[11] Ruth E. Fleury, et al., When Ending the Relationship Doesn't End the Violence: Women's Experiences Of Violence By Former Partners, 6 Violence Against Women 1363, 1364–65 (2000) available at https://vaw.msu.edu/wp-content/uploads/2013/10/Expartner.pdf; *see also* Johns Hopkins School Of Nursing, The Danger Assessment (2009), available at https://www.dangerassessment.org/.

[12] Kristina Rose and Janet Goss, Domestic Violence Statistics, National Criminal Justice Reference Service, Bureau of Justice Statistics, 7 (1989).

leaving a violent partner.[13] The risk is even greater "[w]hen the worst incident of abuse was triggered by the victim's having left the abuser for another partner or by the abuser's jealousy."[14] By the late 1990s, it was "well documented that the rate of violence in the relationship rises upon separation."[15]

Indeed, after reviewing research regarding domestic violence in a 2003 VAWA suspension of deportation case, the United States Court of Appeals for the Ninth Circuit noted that "[s]ignificantly, research also shows that women are often at the *highest risk* of severe abuse or death when they attempt to leave their abusers." *Hernandez v. Ashcroft*, 345 F.3d 824, 837 (9th Cir. 2003) (emphasis added).

Substantial research disproved the faulty assumption that remarriage provides protection from an abuser. Instead, remarriage can be an important form of help, support, and healing for victims. It may also play an important role in the victim's safety planning during a time when the victim is at high risk for escalating violence and lethality. The 1996 VAWA self-petitioning regulations perpetuated the laws of coverture by improperly assuming that once a VAWA self-petitioner remarried the victim became the property of their new spouse and were no longer the property of or under the control of the citizen or lawful permanent resident abusive spouse. Concluding, as the 1996 regulations did, that an abused spouse no longer needs protection of the law because they have divorced or remarried has no basis in fact or law.

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[13] Ruth E. Fleury, et al., When Ending The Relationship Doesn't End The Violence: Women's Experiences Of Violence By Former Partners, 6 Violence Against Women 1363, 1364–65 (2000) available at https://vaw.msu.edu/wp-content/uploads/2013/10/Expartner.pdf; Janice Roehl, Ph.D., et al., Intimate Partner Violence Risk Assessment Validation Study The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners (2005), available at https://www.ojp.gov/pdffiles1/nij/grants/209732.pdf.

[14] Jacquelyn Campbell, et al., "Risk Factors For Femicide In Abusive Relationships: Results From A Multisite Case Control Study" 93 NO. AM. J. OF PUB. HEALTH 1089, 1091 (2003), available at https://ajph.aphapublications.org/doi/epub/10.2105/AJPH.93.7.1089.

[15] Dutton, Orloff, and Hass, "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, 303 (2000).

3. The issues caused by the 1996 regulations were exacerbated by significant administrative delays.

Additionally, self-petitioners experienced significant delays in having their petitions adjudicated in District Offices across the country, sometimes waiting for years. Even now, the wait time can be over 2.5 years for VAWA self-petitioners.[16] VAWA self-petitioners are forced to put their lives on hold for an unpredictable length of time, sometimes exceeding years, and hold off on remarriage until their VAWA self-petitions can eventually be adjudicated. This is disruptive and, in some cases, dangerous for the self-petitioners. Against this backdrop, in 2000, Congress decided to amend VAWA's rules regarding divorce and remarriage.

B. In 2000, Congress Amended VAWA to Ensure That Non-Citizen Victims of Abuse Could Divorce and Remarry.

Recognizing the dangerous consequences of the 1996 regulations, Congress amended the VAWA self-petitioning statutes to remove the barriers preventing self-petitioners from remarrying in 2000. The original version of VAWA did not provide an express protection for remarriage. It stated, in pertinent part:

> The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) of this section or a petition filed under subsection (a)(1)(B)(ii) of this section pursuant to conditions described in subsection (a)(1)(A)(iii)(I) of this section.[17]

To remedy this, the 2000 Amendments expressly preserved the right of VAWA petitioners to remarry while their petitions were pending and after their petitions were approved without the remarriage impacting their eligibility for VAWA self-petitioning protections. Specfically, the 2000 Amendments provide, in part:

> Section 204(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h))

[16] Ex. 2, USCIS, Check Case Processing Times (according to USCIS, 80% of I-360 petitions under VAWA are completed within 33.5 months, but some cases take longer than others), available at https://egov.uscis.gov/processing-times/.

[17] 8 U.S.C. § 1154(h) (1994).

> is amended by adding at the end the following: "Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in section 204(a)(1)(A)(iv) or (vi) or 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205.[18]

One of Congress's key goals in making this amendment was to remove impediments that would encourage victims to stay with their abusers, foster the abusive citizen or lawful permanent resident spouse's power and control over their victims, and interfere with a victim's ability to heal, move on, and rebuild their lives.[19] At the time, Congress had strong bipartisan interest in supporting battered immigrants who had begun new relationships and sought to remarry.[20] Lawmakers from both parties wanted to promote marriage by allowing self-petitioners to remarry without jeopardizing their VAWA self-petitions.[21]

C. USCIS Has Not Updated VAWA's Remarriage Protections in Accordance with Congress's Amendments.

While VAWA, as amended, does not establish a bar to remarriage, USCIS's regulations and guidance continue to do so in contravention of the statute. Specifically, 8 C.F.R. § 204.2(c)(1)(ii) still states, in pertinent part: "[t]he self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition." Additionally, on February 10, 2022—over two decades after the 2000 Amendments—USCIS published a policy manual addressing VAWA self-petitions (the "Manual").[22] Despite Congress's clear language and intent regarding remarriage, USCIS's interpretation of VAWA's remarriage protections is still legally incorrect. In the section titled "Effect of Certain Life Events" regarding VAWA self-petitioners, the Manual improperly

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[18] Ex. 3, H.R. Rep. No. 106-939, at 68 (2000), available at https://www.congress.gov/106/crpt/hrpt939/CRPT-106hrpt939.pdf.

[19] National Immigrant Women's Advocacy Project (NIWAP) Letter to USCIS (March 9, 2022), at 35, available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/NIWAP-Comments-VAWA-Policy-Manual-USCIS-3.9.22-Final.pdf.

[20] *Id.*

[21] *Id.*

[22] USCIS Policy Manual, February 10, 2022, available at https://www.uscis.gov/policy-manual.

states:

> Self-petitioning spouses may remarry after the self-petition is approved without impacting the approved self-petition or their eligibility for an immigrant visa or adjustment of status. However, if the self-petitioner marries again before approval of the self-petition, the officer must deny the self-petition. [23]

USCIS is aware that this regulation is outdated and has been superseded by subsequent amendments to VAWA statutes. In fact, in the Manual, USCIS explains:

> The VAWA regulations at 8 CFR 204.2 were promulgated in March 1996 and *have not been updated to include superseding statutory provisions*. Note that some of the regulatory provisions may no longer apply.[24]

Despite this understanding, USCIS refuses to address the fact that the remarriage bar was specifically overruled by subsequent Congressional legislation.

IV. ARGUMENT

In dismissing Plaintiffs' Complaint, this Court concluded that it lacked subject matter jurisdiction because USCIS's decision to revoke Ms. Soto Alvarado's petition under VAWA was discretionary, relying on 8 U.S.C. § 1155 and the First Circuit's decision in *Bernardo ex rel. M & K Eng'g, Inc. v. Johnson*, 814 F.3d 481 (1st Cir. 2016). Dkt. 8 at 6-7. This Court should grant Plaintiffs' motion for relief from final judgment and/or leave to amend their Complaint because USCIS did not have discretion to deny or revoke Ms. Soto Alvarado's petition on the basis of remarriage pursuant to 8 U.S.C. § 1154(h) and *Bernardo* is distinguishable. In permitting Plaintiffs to amend their Complaint to assert subject matter jurisdiction under 8 U.S.C. § 1154(h), which cannot be waived, this Court will provide the parties the opportunity to adjudicate this long-standing issue borne out of USCIS's misinterpretation of Congress's attempt to protect the right

[23] USCIS Policy Manual, February 10, 2022, Volume 3, Part D, Chapter 3(B)(2), available at https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-3.

[24] USCIS Policy Manual, February 10, 2022, Volume 3, Part D, Chapter 1(c), fn. 11, available at https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-1.

of abused spouses of U.S. citizens and lawful permanent residents, like Ms. Soto Alvarado, to remarry.

A. USCIS Did Not Have Discretion to Deny or Revoke Ms. Soto Alvarado's Petition on the Basis of Remarriage.

Ms. Soto Alvarado filed a VAWA self-petition (Form I-360) based on the abuse she suffered perpetrated by her United States Citizen husband. 8 U.S.C. § 1154(a)(1)(A)(iii)(II). USCIS approved the Petition, then, upon learning that Ms. Soto Alvarado remarried while her VAWA self-petition (Form I-360) was pending, USCIS revoked the approval. USCIS's revocation was based on the 1996 VAWA self-petitioning regulations 8 C.F.R. § 204.2(c)(1)(ii), which is an outdated regulation that provides that:

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly file, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage . . . will be a basis for the denial of a pending self-petition.

Dkt. No. 5-1 at p. 3. To the contrary, under VAWA 2000, USCIS did *not* have discretion to either deny or revoke Ms. Soto Alvarado's Petition on the basis of remarriage.

In VAWA 2000, Congress's first reauthorization of VAWA, Congress made significant amendments to its immigration protections. The 2000 Amendments were designed to overrule the 1996 regulations (i.e., 8 C.F.R. § 204.2(c)(1)(ii)) and to ensure that divorce, death, annulment,[25] and remarriage[26] did not preclude immigrant spouses who were battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses from utilizing VAWA's self-petitioning protections.

[25] INA § 204(a)(1)(A)(iii)(II)(aa)(CC); 8 U.S.C. § 1154 (a)(1)(A)(iii)(II)(aa)(CC); INA § 204(a)(1)(B)(ii)(II)(aa)(CC); 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(CC).

[26] INA § 204(h).

VAWA 2000 amended immigration laws to provide protections that allow VAWA self-petitioners to: (1) file VAWA self-petitions within 2 years of termination of the marriage or divorce; (2) file VAWA self-petitions within 2 years of the abuser's death; and (2) remarry after the VAWA self-petition was filed.

VAWA 2000's legislative history provides important confirmation of Congressional intent with regard its divorce and remarriage self-petitioner protections. For example, in the Congressional Record, Congresswoman Sheila Jackson-Lee stated:

> This Conference Report now allows battered immigrants to file VAWA self-petitions if it is filed within two years of divorce. Divorced battered immigrants do not have access to VAWA immigration relief. There are many "saaavy" abusers who know that if they divorce their abused spouse they will cut off their victim's access to VAWA relief. Provisions in this report change that."[27]

Senator Edward M. Kennedy concurred in this Senate Congressional Record stating that under the VAWA 2000 amendments:

> Recently divorced battered immigrants will be able to file self-petitions. Current law allows only battered immigrant women currently married to their abusive spouses to qualify for relief. As a result, many abusers have successfully rushed to the court house to obtain divorces in order to deny relief to their immigrant spouse. This provision will prevent this unfair result and ensure that victims are not wrongly deprived of the legal protection they need.[28]

Moreover, with regard to guaranteeing that divorced, battered immigrant spouses of U.S. citizens and lawful permanent residents have the right to remarry, in the full Senate Judiciary Committee Report, former Senator Hatch explained that "remarriage cannot serve as the basis for revocation of an approved self-petition or rescission of adjustment of status"[29] and "[c]larifie[d]

[27] Ex. 4, 146 Cong. Rec. H9041 (2000), available at https://www.govinfo.gov/content/pkg/CREC-2000-10-06/pdf/CREC-2000-10-06-house.pdf.

[28] Ex. 1, 146 Cong.Rec. S10170 (2000), https://www.congress.gov/crec/2000/10/11/CREC-2000-10-11-senate.pdf.

[29] Ex. 1, 146 Cong. Rec. S10192 (2000), available at https://www.congress.gov/crec/2000/10/11/CREC-2000-10-11-senate.pdf.

that remarriage has *no effect on a pending VAWA immigration petition*."[30]

These divorce and remarriage protections were an important goal of the immigration provisions of VAWA 2000. The Senate Congressional Record includes a section by section analysis of VAWA 2000, which states, in part:

> VAWA 2000 addresses residual immigration law obstacles standing in the path of *battered immigrant spouses* . . . seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes in immigration law.[31]

VAWA 2000 included part of its legislative history in the statue itself, which explains that one of Congress's express goals articulated in Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000), Pub. L. 106-386, 114 Stat. 1464 (October 28, 2000) was to protect:

> [S]everal groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their victims can be deported as a result of actions of their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.[32]

As part of the 2000 Amendments, Congress identified, through Title V of the proposed amendments, specific issues related to Battered Immigrant Women. Under Title V, Section 1507 spoke specifically to remedying problems with implementation of the immigration provisions of the Violence Against Women Act of 1994, amending the statute as follows:

> (b) ALLOWING REMARRIAGE OF BATTERED IMMIGRANTS.—Section 204(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h)) is amended by adding at the end the following: ''Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205.''.[33]

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[30] *Id.*

[31] Ex. 1, 146 Cong. Rec. S10195 (2000) (emphasis added), available at https://www.congress.gov/crec/2000/10/11/CREC-2000-10-11-senate.pdf.

[32] VTVPA § 1502(a)(3).

[33] Ex. 3, H.R. Rep. No. 106-939, at 68 (2000), available at https://www.congress.gov/106/crpt/hrpt939/CRPT-106hrpt939.pdf.

VAWA's 2000 Amendments to 8 U.S.C. 1154(h) aimed to place abused immigrant spouses in the same position they would have been if their citizen or lawful permanent resident husband was not an abuser. Indeed, VAWA self-petitioners are spouses or children of citizens and lawful permanent residents who, but for the actions of their abusive citizen or lawful permanent resident spouse, would have received lawful permanent residency during the marriage. Had their marriages ended in divorce, they would have been lawful permanent residents and they would have the freedom to remarry with no immigration consequences of remarriage (at any point) on their immigration status. VAWA self-petitioning was created rectify the fact that abusive U.S. citizen and lawful permanent resident spouses refused to file a family-based visa petition on the battered immigrant spouse's behalf and to provide self-petitioners the protections and benefits that all non-abused spouses of citizens and lawful permanent residents receive.

This legislative history of VAWA 2000 demonstrates that Congress intended to preserve eligibility for VAWA's self-petitioning protections for divorced and for remarried self-petitioners from filing through final adjudication. Congress has never required that a divorced self-petitioner remain unmarried in order to qualify for VAWA self-petitioning in any provision of VAWA or its subsequent reauthorizations. Requiring a divorced, otherwise eligible self-petitioner to remain single for an undetermined and unpredictable amount of time undermines VAWA's protections for a large group of divorced, remarried battered immigrants that Congress explicitly chose to protect through VAWA 2000's Amendments. Relevant here, Ms. Soto Alvarado filed her Petition on June 30, 2017 and it was approved over a year and a half later on February 2, 2019. Dkt. 5. Then, it was not until March 29, 2022—four years and nine months after filing her Petition—that USCIS revoked her Petition.

USCIS's revocation of Ms. Soto Alvarado's petition was not discretionary and conflicts

with the VAWA 2000 Amendments and legislative intent. USCIS did not have discretion to revoke Ms. Soto Alvarado's Petition—or to deny the Petition in the first instance—on the basis of remarriage.

B. The First Circuit's Decision in *Bernardo* Is Distinguishable Because USCIS's Decision Here Was Not Discretionary.

In granting the Government's motion to dismiss, this Court relied on *Bernardo ex rel. M & K Eng'g, Inc. v. Johnson*, 814 F.3d 481 (1st Cir. 2016), but the case is distinguishable on the facts and law.

The *Bernardo* court considered whether it was precluded from reviewing USCIS's discretionary decisions regarding revocation of visa petition approvals under 8 U.S.C. § 1155. There, USCIS initially approved an I–140 Immigrant Petition for Alien Worker under 8 U.S.C. § 1153(b). *Id*. at 483. A few years later, USCIS issued a Notice of Intent to Revoke the approval on the grounds that the petitioner was "trying to circumvent Immigration Laws by committing Fraud" and requested additional documents, which the petitioner provided. *Id.* After reviewing the additional information and documents, USCIS revoked the petition pursuant to 8 U.S.C. § 1155. *Id.* The petitioner filed a complaint in Massachusetts federal district court challenging the revocation and the government filed a motion to dismiss for lack of subject matter jurisdiction. *Id.* The district court granted the motion and the petitioner appealed. *Id.* On appeal, the First Circuit determined that revocation under 8 U.S.C. § 1155 is discretionary. *Id.* Accordingly, relying on 8 U.S.C. § 1252(a)(2)(B)(ii), which withdraws judicial review from decisions "the authority for which is specified . . . to be in the discretion of the . . . Secretary of Homeland Security[,]" the First Circuit concluded that USCIS's discretionary decision was not subject to judicial review and affirmed. *Id.* at 484.

Here, on the other hand, as described above, USCIS's revocation of Ms. Soto Alvarado's

petition was not discretionary and in fact conflicts with the VAWA 2000 Amendments and legislative intent. Unlike the petitioner in *Bernardo*, Ms. Soto Alvarado filed a VAWA self-petition (Form I-360) and under the VAWA self-petitioning statutes and legislative history described in detail in the sections above the immigration statute eliminates USCIS's discretion to deny or revoke a petition on the basis of remarriage. Because USCIS's decision to revoke Ms. Soto Alvarado's Petition on the grounds it asserted was not discretionary pursuant to 8 U.S.C. 1154(h), this Court *does* have jurisdiction to review the revocation of Ms. Soto Alvarado's VAWA self-petition.

C. The Court Should Grant Plaintiffs' Motion Because Adjudication of Subject Matter Jurisdiction Under 8 U.S.C. 1154(h) in This Case is Vital to Achieving Congress's Intent.

It is imperative that this Court grant Plaintiffs' Motion so that it can take up the issue of whether USCIS had discretion to deny or revoke Ms. Soto Alvarado's Petition on the basis of remarriage under 8 U.S.C. 1154(h) and therefore whether this Court has subject matter jurisdiction.

Despite Congress expressly deciding that self-petitioners need not remain single until their VAWA self-petition is finally adjudicated in order to qualify for VAWA protection, USCIS continues to improperly mandate it. When "Congress has directly spoken to the precise question at issue," courts must give "effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). Where, as here, the Congress's intent is plain, unambiguous and at odds with a regulation, the regulation is deemed arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *See Adams v. Holder*, 692 F.3d 91, 95 (2d Cir. 2012) ("we proceed to a second step of analysis to examine whether the agency's interpretation is reasonable, and not 'arbitrary, capricious, or manifestly contrary to the statute'").

For over two decades, USCIS has operated contrary to the VAWA 2000 Amendments,

legislative history, and Congress's intent and, in doing so, has cause confusion among legal representatives and eliminated the protections Congress created for countless battered immigrant spouses of U.S. citizens and lawful permanent residents. This case provides a unique opportunity to for this Court to examine USCIS's interpretation and remedy an issue that has impacted battered immigrant spouses of U.S. citizens and lawful permanent residents for decades.

V. CONCLUSION

The plain language and legislative history of VAWA demonstrate that Congress intended for remarriage to have no impact on a pending VAWA petitions. USCIS's reliance on remarriage as a reason to deny or revoke self-petitions under VAWA is based on superseded law and regulations and is contrary to Congress's intent. Remarriage is not a bar to approval of a VAWA self-petition and USCIS does not have discretion to deny or revoke a VAWA petition on that ground. Accordingly, this Court has jurisdiction over Plaintiff's case and should grant their motion for relief from final judgment and/or leave to amend their complaint.

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Respectfully submitted,

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