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**TABLE OF CITATIONS**

**Cases**

*Bark v. INS*, 511 F.2d 1200 (9<sup>th</sup> Cir. 1975)..... 36

*Lutwak v. U.S.*, 344 U.S. 604 (1954)..... 36

*McCormack v. Kirtley*, 115 Ariz. 25, 563 P.2d 280 (1977) ..... 14

*Owen v. Mecham*, 9 Ariz.App. 529, 454 P.2d 577 (Ariz. Ct. App. 1969) ..... 14

*Smith v. Melson*, 135 Ariz. 119, 659 P.2d 1264 (1983)..... 14

**Statutes and Legislative Authorities**

Violence Against Women Act (1994) .....passim

Violence Against Women Act II (2000)..... 1, 35

Ariz. Rev. Stat. § 12-2101 ..... 2

Ariz. Rev. Stat. § 25-403 ..... 31

H.R. Rep. No. 395, 103d Cong., 1st Sess., 26 (1993) ..... 16

S. Rep. No. 138, 103d Cong., 1st Sess. 41 (1993)..... 16, 17

S. Rep. No. 545, 101st Cong., 2d Sess. 36 (1990)..... 18

**Books and Law Review Articles**

Angela Browne, Violence Against Women by Male Partners: Prevalence,  
Outcomes and Policy Implications, 48 Am. Psychol. 1077 (1993)..... 15

Angela Browne, When Battered Women Kill 105-07 (1987) ..... 17

Karen Scott Collins et al, *Health Concerns Across a Woman's Lifespan:  
1998 Survey of Women's Health*, The Commonwealth Fund (May 1999) ..... 14

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. Pov. L. & Pol'y. 245 (2000)..... 19, 21



## INTEREST OF THE AMICI

1           Legal Momentum is a national organization that provides assistance to  
2  
3 victims of domestic violence, and it has substantial knowledge and insight into  
4 issues of domestic violence, immigration law, and women's rights.<sup>1</sup> Legal  
5 Momentum has long been an advocate of a woman's right to live free from  
6 violence. As the chair of the National Task Force to End Sexual and Domestic  
7 Violence, Legal Momentum was a leader of the original push to pass the  
8 Violence Against Women Act ("VAWA") in 1994, as well as "VAWA II" in  
9  
10 2000, which strengthened the law and reauthorized it through 2005. As co-  
11 chair of the National Network to End Violence Against Immigrant Women,  
12  
13 Legal Momentum played an instrumental role in crafting the provisions of  
14  
15 VAWA and VAWA II that protect immigrant women.

16           Legal Momentum has extensive knowledge of and experience with the  
17  
18 problem of domestic violence, the procedures for combatting the problem  
19 nationwide and internationally, and the particular dynamics of domestic  
20  
21 violence experienced by immigrant victims.

## STATEMENT OF THE CASE

22  
23           This case involves the appeal of a December 17, 2003, ruling made  
24  
25 "under advisement" by the Pima County Arizona Superior Court Judge Pro

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26  
27 1       Legal Momentum was formerly known as the NOW Legal Defense and  
28 Education Fund.

1 Tempore. Following a trial that extended five days between March 26, 2003  
2 and October 17, 2003, the Court granted Appellee David Salcido a Decree of  
3 Annulment of Marriage and denied Appellant Irina Salcido's cross claim for  
4 dissolution of marriage and spousal maintenance.  
5

6 Appellant filed a timely Notice of Appeal on January 15, 2004 in order to  
7 seek a decree of dissolution. This Court has jurisdiction pursuant to Ariz. Rev.  
8 Stat. § 12-2101(B).  
9

### 10 STATEMENT OF THE FACTS

11 Appellant Irina N. Tsaregorodtseva Salcido first came to the United  
12 States as a Russian citizen on a student visa in July, 1997, to pursue a Master's  
13 Degree in library sciences from the School of Library and Information Science  
14 of the Catholic University of America in Washington, D.C. Annulment Order  
15 at 1; 3/26/03 Tr. at 8:7-24; 4/14/03 Tr. at 64:7-9. Prior to that time, she had  
16 lived in Russia, where she had married and divorced Igor Gousselchtchikov and  
17 had a child by him, Slava, who resided there with his father. *See* App. Ex. 1  
18 (Trial Ex. 4) (2001 K-1 visa application). Irina met Appellee David Salcido, a  
19 U.S. citizen, during the last six months of 1997 on an Internet site called "Little  
20 Russia," a website that provided a forum for discussing Russian culture, arts,  
21 politics, and other issues. Annulment Order at 1; 4/15/03 Tr. at 87:12- 89:24.  
22 Their Internet romance began when Mr. Salcido, who resided in Tucson, sent  
23 Irina an e-mail complimenting her for chastising another Russian woman for  
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1 Internet behavior that she considered immoral. 4/15/03 Tr. at 63:24 – 64:6.

2 The two continued regular Internet correspondence while Irina continued her  
3 graduate work in Washington, D.C., and their relationship evolved to daily e-  
4 mail exchanges. *Id.* at 64:6-11. As the romance developed further, Irina visited  
5 David in Tucson once, and David visited Irina in Washington twice, once for  
6 ten days. *Id.* at 64:11-14, 65:14-19; 3/26/03 Tr. at 9:11– 11:20; Annulment  
7 Order at 2.  
8

9  
10 After their first contact and through the Spring of 1998, the two became  
11 more attached to each other: David testified that his “feelings grew deeper” and  
12 he started giving Irina presents and money for support, and Irina became  
13 “engrossed in this developing romantic relationship,” though she had no  
14 particular intent for it to grow into marriage at the time. 3/26/03 Tr. at 10:6:18;  
15 4/15/03 Tr. at 65:15-17. During conversations about their pasts, the couple  
16 discussed previous painful experiences which they had shared and they cried  
17 together. 4/15/03 Tr. at 64:11-65:6. David viewed his relationship with Irina  
18 and her son as another chance to succeed at having a loving family relationship  
19 where his past attempt at such a family with his then-current wife, Galina, had  
20 failed. *Id.* at 65:7-13. David “was proud of [Irina and] wanted to see more of  
21 her,” and therefore assisted in arranging a three month paid internship for Irina  
22 at Pima Community College in Arizona during the Summer of 1998. *Id.* at  
23 65:15-21; 93:6-17; *see also* 64:20. With David’s financial assistance, Irina flew  
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1 her son, Slava, from Russia to Tucson, and the three lived together as a family  
2 in David's apartment during part of that Summer of 1998. *Id.* at 93:18-94:1.

3 During this time – late 1997 through 1998 – David dissolved his marriage  
4 to his then-wife Galina, who had wed David in 1993 after migrating to the  
5 United States from Russia on a K-1 visa. App. Ex. 2, at 5 (Trial Ex. 0) (Jan. 2,  
6 1997 letter<sup>2</sup> to Department of Justice). On August 12, 1998, David Salcido  
7 petitioned for the annulment of his marriage to Galina on the grounds that she  
8 previously had been married in Russia and had not obtained a divorce prior to  
9 marrying Mr. Salcido. *Id.* In addition to petitioning for an annulment, Mr.  
10 Salcido also reported Galina Salcido to the Immigration and Naturalization  
11 Service (“INS”), requesting that the INS nullify her green card and deport her to  
12 Russia for fraud and misrepresentation. *Id.* at 6 (Jan. 2, 1997 letter to the  
13 Department of Justice). His attempt to obtain an annulment of *that* marriage  
14 was rejected and the marriage was dissolved on November 23, 1998. *Id.* at 7  
15 (Decree of Dissolution of Marriage). Additionally, David had also filed an  
16 immigration application on behalf of another previous spouse, Doris B. Salcido,  
17 presumably through the K-1 visa process; her visa was approved in 1990, and  
18 the marriage ended in November 1992. App. Ex. 1 (Trial Ex. 4) (2001 K-1 visa  
19 application).  
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1 The summer of 1998 was difficult for Irina and David. Irina testified that  
2 in June of 1998, she discovered that David maintained extensive  
3 correspondence with other girlfriends in foreign countries through cassette  
4 tapes, cards, and pictures, and that when she revealed this discovery to David he  
5 slapped her for the first time in their relationship. 4/14/03 Tr. at 94:2-9; 3/26/03  
6 Tr. at 13:16-21. Later during that summer on August 26, a bystander filed a  
7 police report after witnessing a man sitting in a car with Irina on the Pima  
8 college campus strike her face with sufficient force to tilt her head backwards in  
9 the car seat. App. Ex. 3 at 1, 3 (Trial Ex. J) (Police Reports); 4/14/03 Tr. at  
10 94:10-24. A police officer observed that the slap left a small mark on her lower  
11 lip and swelling in the same area. *Id.* at 3. When interviewed by the police  
12 officer, Irina said that “she made her boyfriend angry and he slapped her,” and  
13 that he had also slapped her once a few months before. *Id.* at 4. The officer  
14 additionally noted that Irina was initially unwilling to identify her boyfriend  
15 because “based on her cultural background she feels this sort of incident is  
16 acceptable,” and because she “expressed fears of our legal systems.” *Id.*  
17  
18 However, following a second interview Irina ultimately identified her  
19 boyfriend, and the man who had slapped her, as David Salcido. *Id.* at 1.  
20  
21  
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25 \_\_\_\_\_  
26 (...continued)

27 2 Amici believe the date is a typographical error, and should be January 2,  
28 1998. Irina Salcido stated that Galina left Mr. Salcido in December, 1997.  
4/14/03 Tr. at 90:9-20.

1 Irina returned to college in Washington, D.C., at the end of her internship  
2 in August, 1998. 4/14/03 Tr. at 95:8-96:11. Upon her return to Washington,  
3 D.C., David repeatedly contacted Irina and attempted to reestablish a  
4 relationship. *Id.* at 96:7-16. In September or October of 1998, David e-mailed  
5 Irina proposing that she marry him and return to Tucson, provided that she quit  
6 smoking and spending time on the Internet or with other men. *Id.* at 96:7-  
7 97:15. In December of 1998 following Irina's completion of her studies at  
8 Catholic University, Irina and Slava returned to Tucson to live with David, and  
9 they celebrated Christmas together. *Id.* at 97:16-23. The three lived together in  
10 David's apartment from December, 1998 through February, 1999. 3/26/03 Tr.  
11 at 17:13-22.

15 David testified that during this time, Irina found K-1 visa papers filled  
16 out for another woman, Tamara Shang, his Venezuelan girlfriend, in their  
17 apartment. 4/14/03 Tr. at 97:24-98:24. As with David's ex-wife Galina, these  
18 papers would have permitted Ms. Shang to come to the United States as Mr.  
19 Salcido's fiancé. *Id.* The relationship between David and Irina continued,  
20 however, and Irina found a night shift job as a long distance operator during  
21 January or February of 1999. *Id.* at 101:2-11. In February, Tamara Shang  
22 called their residence and became upset upon discovering from Irina that she  
23 and David were in a relationship; following this call David prohibited Irina  
24 from answering the phone. *Id.* at 101:21-102:6.  
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1 Following a phone call from another woman and David's receipt of a  
2 phone bill incurred by Irina, David attacked Irina in their apartment, attempting  
3 to strangle her, tearing her robe, and breaking the door frame in the bedroom.  
4 *Id.* at 103:6-15. The police came and arrested David for domestic violence. *Id.*  
5  
6 at 103:16-18; 67:21-68:1. Mr. Salcido testified that he was ultimately convicted  
7 of domestic violence charges in May, 1999. *Id.* at 103:19-24. Following the  
8 incident in February 1999, Irina and Slava moved out into a separate apartment.  
9  
10 *Id.* at 103:25-104:9.

11 In February, Irina was introduced to Algie Mendralla through a coworker  
12 and they began dating. 3/26/03 Tr. at 18:16-24. Irina testified that although she  
13 did not love Mr. Mendralla, he told her he loved her and he was kind to her son,  
14 and she hoped she would grow to love him. *Id.* at 20:6-13. After dating for six  
15 weeks, they were married on April 9, 1999. *Id.* at 18:20-19:10. She and Mr.  
16  
17 Mendralla planned to go to Russia together after Irina's visa expired. *Id.* at  
18 22:7-20. Irina suspected that Algie had married her for financial reasons, and  
19 she broke off the relationship the day of the wedding when she found Algie  
20 taking money from her purse. *Id.* at 22:21-23:7; *id.* at 25:5-18. She and Mr.  
21  
22 Mendralla never consummated the marriage and separated shortly after it  
23 occurred. *Id.* at 21:16-22:1; 22:25-23:16.  
24  
25

26 Shortly after her separation from Mendralla in April 1999, Irina  
27 discovered that she was pregnant with David's child and she and Slava moved  
28

1 back in with David for four weeks. *Id.* at 18:6-12; 21:4-21. David had heard of  
2 Irina's marriage to Mendralla through a third party. 4/14/03 Tr. at 111:5-9.  
3 They ultimately broke off the relationship again when Irina refused to ignore  
4 the subpoena ordering her to appear in court to testify on the domestic violence  
5 charges against him. *Id.* at 106:17-107:12. Irina returned to Russia with her  
6 son upon the expiration of her visa in May, 1999. *See id.* at 107:13-18; App.  
7 Ex. 1 (Trial Ex. 4) (2001 K-1 visa application).  
8  
9

10 David testified that in late June after Irina arrived in Russia, she  
11 contacted him to inform him that she had had an abortion. 4/14/03 Tr. at 71:13-  
12 18. In August 1999, Irina received a parcel in Russia from David full of gifts  
13 for her and Slava. *Id.* at 109:3-9. Their contact with one another during this  
14 separation continued. *Id.* at 71:19-21. Beginning in January of 2000, David  
15 began sending Irina money, and in August David spent a month in Russia  
16 visiting Irina. *Id.* at *Id.* at 109:20-23; 72:6-7. She was living in poor conditions  
17 with her ex-husband and Slava, and so David rented her and Slava an  
18 apartment. *Id.* at 73:2-6. During this time, they made plans for Irina to come  
19 back to the United States and marry David. 73:11-14.  
20  
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22

23 Before she had returned to Russia, Irina had asked Mendralla to obtain a  
24 divorce. 3/26/03 Tr. at 25:19-26:9 However, she was not sure whether he had  
25 done so, and was therefore not sure whether she was free to marry David. *Id.* at  
26  
27  
28



1 25:10-26:9 Irina solicited David's assistance while she was in Russia in  
2 obtaining a divorce from Mendralla. 5/8/03 Tr. at 5:2-6:11.

3 David and Irina applied together for a K-1 "fiancée" visa so that Irina  
4 could come to the United States and marry David. 4/14/03 Tr. at 4:22-8:20.  
5 David filled out and signed the application for Irina's K-1 application. *Id.* at  
6 7:7-22.  
7

8 When Irina arrived in the United States in January 2002 on a K-1 visa as  
9 David's fiancée, she had not yet obtained a divorce from Mendralla and did not  
10 know whether he had obtained one from her. 3/26/03 Tr. at 25:10-26:9. David  
11 assisted her with filing for a divorce from Mendralla. 5/8/03 Tr. at 6:4-19. On  
12 April 17, 2002, Irina and David married in Nogales, Arizona. *Id.* at 7:24-8:2.  
13 They celebrated the wedding together and shared the news with Slava. *Id.* at  
14 8:3-16.  
15  
16  
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18 For three months following their marriage, the couple did many things  
19 together as a family. They went to church every Sunday, visited friends  
20 together and visited David's mother and his son from a prior marriage. *Id.* at  
21 9:15-22. They went to the gym together, had barbecues in their backyard, had  
22 picnics and walks by the lake, went together to various cafes and restaurants,  
23 and went to the movies on weekends. *Id.* According to David, "We did all the  
24 things that normal people do that are married." 5/8/03 Tr. at 36:10-21. During  
25 this time between March and June of 2002, Irina earned over \$4,000 which was  
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28

1 placed in their joint checking account. App. Ex. 4 (Trial Ex. B) (Irina Salcido's  
2 earnings, March-June, 2002).

3 However, David was annoyed by some of Irina's behaviors: for  
4 example, she smoked despite promising to quit and she cooked Russian food  
5 every day (despite David's attempts to teach her to cook Chinese food).  
6  
7 4/14/03 Tr. at 73:21-75:7. David sometimes "had to get her up [in the] middle  
8 of the night to have her take a bath." *Id.* at 77:15-16. David was also annoyed  
9 that Irina spent much of the day at work and did not come home on the bus until  
10 "after sundown." *Id.* at 75:8-16. He was worried that she was seeing another  
11 man. *Id.* at 75:17-25.  
12  
13

14 In July 2002, David told Irina that he was not going to file papers with  
15 the INS to complete her change of status. 4/14/03 Tr. at 76:16-24. After he  
16 refused to complete the change of status form, Irina no longer had a permit to  
17 work in the United States. *Id.* at 78:22-25. Nevertheless, Irina found work  
18 nearby at a Russian refugees' gift shop, and David "was happy because [he]  
19 knew where she was and she was earning money." *Id.* at 79:3-5.  
20  
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22 Irina testified that in July 2002, David became physically abusive to her  
23 again, "tearing at my T-shirt, pulling my hair, pulling me by the ear." 5/8/03  
24 Tr. at 1623-25. Irina testified that one night David came home from work upset  
25 and "grabbed me by the ear, grabbed me like that, threw me to the kitchen  
26 where he released me and yelled at me, things like, Where's my dinner, bitch."  
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1 3/26/03 Tr. at 1-23. One of these incidents led Irina to call 911 for the first  
2 time. 5/8/03 Tr. at 18:19-25. David testified that between July and September  
3 of 2002, police came to their house three times. *Id.* at 20:5-10. He left the  
4 house each time before the police arrived. 5/8/03 Tr. at 20:5-10.

5  
6 On September 9, 2002, Irina came home at 10 o'clock, and she and  
7 David argued; David testified that "[w]e had a little domestic violence that  
8 night." 4/14/03 Tr. at 76:1-15; 5/8/03 Tr. at 20:18-21:17. David took Slava and  
9 drove away before the police came so that he would not have to talk to them.

10  
11 4/14/03 Tr. at 76:1-15. David later showed the police a "bloody chin" claiming  
12 Irina had injured him, but the police said he had probably done this injury  
13 shaving. *Id.* David testified that Irina's injuries from that night were really  
14 incurred at work. *Id.* at 79:9-24. Following that fight, the police took pictures  
15 of various marks and bruises on parts of Irina's body. 5/8/03 Tr. at 20:18-  
16 21:17. Both David and Irina filed for Orders of Protection against each other,  
17 Irina for her injuries and David for damage to his property. *Id.* at 21:78-80:17.  
18  
19 Irina was granted an Order of Protection, and the trial judge granted her  
20 temporary possession of the marital residence, causing David to move out for  
21 three months. *Id.* at 79:25-80:4; App. Ex. 5 (Trial Ex. F) (Police reports re  
22 Lucy's Dollar Store); *see also* Oct. 23, 2002 Minute Entry by Judge Henry at 1-  
23 3. Irina had possession of the residence from September 14 through December  
24 31<sup>st</sup>, 2002. 5/8/03 Tr. at 44:9-12.  
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1 Two days after this violent incident, on September 11, 2002, David wrote  
2 a letter to the INS stating his intent to file for a divorce from Irina and stating  
3 his intent to withhold her final status paperwork. App. Ex. 6 (Trial Ex. 5)  
4 (David Salcido's letter to INS). Irina also testified that the INS showed her  
5 another letter David had written them calling her a criminal who had committed  
6 marriage fraud. 3/26/03 Tr. at 2-6; 5/8/03 Tr. at 9-11. On October 14, 2002,  
7 David came to Irina's place of employment and harassed Irina's employer while  
8 Irina was not there. App. Ex. 5 (Trial Ex. F) (Police reports re Lucy's Dollar  
9 Store). David testified that "I asked her to back out. I told her to keep her  
10 mouth shut." 5/8/03 Tr. at 23:5-6. On November 22, 2002, David wrote a  
11 letter to Irina's employer threatening to report her to the INS for hiring illegal  
12 aliens. App. Ex. 5 (Trial Ex. F) (Police reports re Lucy's Dollar Store).  
13 Following this incident, Irina lost her job. 5/8/03 Tr. at 22:5-24:3.  
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### 18 STATEMENT OF ISSUES FOR REVIEW

- 19 1. What is the appropriate standard of review?
- 20 2. Whether the Court erred in declining to credit evidence of  
21 domestic violence committed against Appellant Irina Salcido as  
22 true?  
23
- 24 3. Whether it was error to exclude this evidence of domestic violence  
25 from the Court's equitable determination of which party was more  
26 "deceived and exploited in the relationship?"  
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4. Whether it is improper to consider the self-petitioning provisions of VAWA as evidence of potential motive to lie about incidents of domestic violence, particularly where such incidents predated the break up of the marriage?
  5. Whether granting an annulment rather than a divorce in certain cases involving evidence of domestic violence against an immigrant spouse circumvents federal protections granted to immigrant women?

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### ARGUMENT

15 In its decision below, the trial court held that “the facts would support  
16 either a dissolution or an annulment” of the marriage. Annulment Order at 7.  
17 Nevertheless, in weighing the equities, the trial court concluded that “Petitioner  
18 [David Salcido] more than Respondent [Irina Salcido] was deceived and  
19 exploited in the relationship.” *Id.* This holding was error where, as here, Irina  
20 submitted proof of David’s acts of domestic violence committed against her but  
21 the judge specifically declined to consider their truth and thus afford them  
22 proper (or any) weight in its decision. *Id.* at 6 n.2. The court may have thus  
23 unwittingly allowed itself to become a tool for manipulation and harassment of  
24 battered immigrant spouses such as Irina Salcido in this case.  
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1 Congress recognized that immigrant women who are abused by their  
2 citizen and lawful permanent resident spouses are particularly vulnerable to  
3 ongoing abuse exacerbated by the spouses' ability to exert control over the  
4 immigrant spouses' immigration status, and it passed various federal  
5 protections to alleviate some of these hardships. In divorce/annulment cases  
6 brought against battered immigrant women by their abusive spouses, courts  
7 must be especially sensitive to the difficulties faced by battered immigrant  
8 women and should be wary of effectively preempting the federal protections  
9 passed by Congress to ensure their safety.  
10  
11

#### 12 STANDARD OF REVIEW

13 An appellate court should not accept the trial court's findings of fact on  
14 appeal if they are "clearly erroneous or unsupported by any credible evidence."  
15 *Smith v. Melson*, 135 Ariz. 119, 121; 659 P.2d 1264, 1266 (1983); *McCormack*  
16 *v. Kirtley*, 115 Ariz. 25, 28; 563 P.2d 280, 283 (1977); *Owen v. Mecham*, 9  
17 Ariz.App. 529, 531, 454 P.2d 577, 579 (Ariz. Ct. App. 1969). The Court is not  
18 bound by the trial court's conclusions of law and is "free to draw [its] own  
19 legal conclusions from the facts in evidence." *Smith*, 135 Ariz. at 121; 659  
20 P.2d at 1266.  
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1 **I. THE COURT ERRED IN FAILING TO CONSIDER DOMESTIC**  
2 **VIOLENCE COMMITTED AGAINST IRINA WHEN WEIGHING**  
3 **THE EQUITIES IN ITS DECISION TO AWARD DAVID AN**  
4 **ANNULMENT.**

5 In its decision below, the trial court gave no weight to Irina's evidence of  
6 domestic violence and abuse in the marriage: the court specifically declined to  
7 do so, stating that "in this ruling [the Court] need not and does not decide  
8 whether the allegations of domestic violence are true." Annulment Order at 6.  
9 Here, the evidence of domestic violence, particularly the post-marriage  
10 incidents for which there were police photographs and which resulted in the  
11 issuance of a protective order, is clear and convincing. The problem of  
12 domestic violence in the United States has been well documented and Congress  
13 has provided specific protections for battered immigrants through the Violence  
14 Against Women Act. David's attempt to use the very existence of VAWA here  
15 to discredit Irina's motives for reporting abusive incidents to the police should  
16 not have been credited, particularly when his escalating abusive behavior  
17 toward her exactly fits the pattern of abuse that Congress created VAWA in  
18 order to curb. Failure to consider the domestic violence committed by David  
19 against Irina in its equitable consideration of which party was most "deceived  
20 and exploited in the relationship" was clear error.

21 **A. Domestic Violence Is a Systemic, Nationwide Problem.**

22 Violence against a woman as caused by an intimate partner is a common  
23 occurrence in the United States. The July 2000 National Violence Against  
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1 Women Survey by the United States Department of Justice found that violence  
2 against women is primarily intimate partner violence; 64% of the surveyed  
3 women who reported being raped, physically assaulted, and/or stalked since age  
4 18 were attacked by a current or former spouse, boyfriend, cohabiting partner,  
5 or date.<sup>3</sup> According to a 1998 study, nearly one third of American women  
6 (31%) report being physically or sexually abused by a husband or boyfriend at  
7 some point in their lives.<sup>4</sup> Violence by an intimate partner is far more likely to  
8 end in injury than violence by a stranger and should therefore be considered  
9 more dangerous. Statistics from the Department of Justice show that  
10 approximately 2 million of the 4.8 million intimate partner rapes and assaults  
11 reported caused injury to the victim.<sup>5</sup>

15 Recognizing that family violence poses the single largest health threat to  
16 adult women and additionally endangers their children, Congress passed the  
17

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19 <sup>3</sup> Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence,*  
20 *Incidence, and Consequences of Intimate Partner Violence Against Women,*  
21 United States Department of Justice, Bureau of Justice Statistics (Nov. 2000), at  
22 iv, 46, available at <http://www.ncjrs.org/pdffiles1/nij/183781.pdf> (hereinafter  
23 *DOJ Report*). Note: In this brief, *Amici* refer to a number of journal articles, all  
24 of which are publicly available. However, if it would assist the Court, *Amici*  
will make a supplemental filing of any or all of those materials.

25 <sup>4</sup> Karen Scott Collins et al, *Health Concerns Across a Woman's Lifespan:*  
26 *1998 Survey of Women's Health,* The Commonwealth Fund (May 1999),  
available at [http://www.cmwf.org/programs/women/ksc\\_whsurvey99\\_332.asp](http://www.cmwf.org/programs/women/ksc_whsurvey99_332.asp).

27 <sup>5</sup> See *DOJ Report*, *supra* note 3.  
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1 Violence Against Women Act (“VAWA”) in 1994.<sup>6</sup> Its legislative history

2 reflects the shocking toll of domestic abuse:

- 3 • At least 3 to 4 million women in the U.S. are abused by their husbands  
4 annually, and over sixty percent of victims are beaten while pregnant.<sup>7</sup>
- 5 • One fifth of all reported aggravated assaults involving bodily injury  
6 have occurred in domestic situations.<sup>8</sup>
- 7 • One third of domestic attacks are felony rapes, robberies, or  
8 aggravated assaults. Of the remaining two thirds, involving simple  
9 assaults, almost one-half resulted in serious bodily injury.<sup>9</sup>
- 10 • More than one of every six sexual assaults per week is committed by a  
11 family member.<sup>10</sup>
- 12 • One third of all women who are murdered die at the hands of their  
13 husbands or boyfriends, and one million women seek medical  
14 attention each year for injuries caused by their male partners.<sup>11</sup>
- 15

16 <sup>6</sup> S. Rep. No. 138-138, at 41-42 (1993).

17 <sup>7</sup> H.R. Rep. No. 395, 103d Cong., 1st Sess., 26 (1993). However, most  
18 national estimates derive from surveys that exclude those who are very poor,  
19 who do not speak fluent English; whose lives are especially chaotic, or who are  
20 hospitalized, homeless, institutionalized, or incarcerated. Catherine F. Klein &  
21 Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis*  
22 *of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 809 (1994); Angela  
23 Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes*  
24 *and Policy Implications*, 48 Am. Psychol. 1077 (1993). Experts have put the  
25 number of women battered each year closer to six million. Klein & Orloff,  
26 *supra*, at 809 & n.11.

27 <sup>8</sup> Staff of Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *Violence*  
28 *Against Women: A Week in the Life of America*, 32 (Comm. Print 1992)  
(hereinafter *Judiciary Committee Report*).

<sup>9</sup> S. Rep. No. 138, 103d Cong., 1st Sess., 41 (1993).

<sup>10</sup> *Id.* at 38.

1 These statistics, relied on by Congress in formulating the VAWA, actually  
2 underestimate the extent of the problem, as more recent research indicates that  
3 between 50% to 80% of intimate partner abuse incidents go unreported.<sup>12</sup>  
4

5 In addition to severity of violence, unlike other crimes, intimate partner  
6 abuse consists of *chronic* violence. It is characterized by persistent intimidation  
7 and repeated physical and psychological harm. Absent intervention, it is highly  
8 likely that the same woman will be assaulted over and over by her mate.<sup>13</sup>  
9

10 Studies also indicate that repeated violence escalates in severity over time. One  
11 report notes that in over half of the cases involving women who were murdered  
12 by their husbands, the police had been called at least five times previously.<sup>14</sup>  
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19 (...continued)

20 <sup>11</sup> *Id.* at 41.

21 <sup>12</sup> Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of*  
22 *Intimate Partner Violence*, U.S. Dep't of Justice, Research Report of Findings  
23 from the National Violence Against Women Survey (2000) at v, 49-54 (female  
24 respondents reported only one fifth of rapes, one quarter of physical assaults,  
25 and one-half of stalkings), *available at*  
<http://virlib.ncjrs.org/VictimsOfCrime.asp> (hereinafter *DOJ Report*).

26 <sup>13</sup> S. Rep. No. 545, 101st Cong., 2d Sess., 36 (1990).

27 <sup>14</sup> *Id.* at 37; see also Angela Browne, *When Battered Women Kill* 105-07  
28 (1987) (aggressive acts often increase in number and severity over time as  
abusers become desensitized to violence).

1 Stalking behavior also is part of the chronic and repetitive nature of domestic  
2 violence.<sup>15</sup>

3 In 1994 Congress recognized that violence against women is a crisis  
4 demanding national attention, and it passed VAWA to protect domestic abuse  
5 victims and to enhance successful criminal prosecution of abusers. VAWA  
6 thus authorizes interstate enforcement of protection orders, commands full faith  
7 and credit for such orders, ensures confidentiality between victims of domestic  
8 violence and their counselors and offers immigration remedies for some  
9 immigrant victims. VAWA represents Congress' attempt to address domestic  
10 violence in a new, enlightened manner.

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14 **B. Immigrant Women Are Uniquely Vulnerable to Abuse.**

15 Immigrant women face heightened difficulties and dangers when they are  
16 abused because they are often fully dependant on their attacker due to language  
17 barriers, economic insecurity, and their immigration status.<sup>16</sup> These  
18 vulnerabilities to a potentially abusive spouse can be classified as (1)  
19 heightened exposure to physical abuse; (2) abuser's control over immigration  
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24 <sup>15</sup> *Judiciary Committee Report, supra* note 8, at 7; *DOJ Report, supra* note  
25 12, at iii, 14 (2000 survey showed intimate partner stalking is more prevalent  
26 than earlier estimates).

27 <sup>16</sup> Leslye E. Orloff and Janice V. Kaguyutan, *Offering a Helping Hand:  
28 Legal Protections for Battered Immigrant Women: A History of Legislative  
Responses*, 10 J. Gender, Soc. Pol'y & Law 95, 97-98 (2002).

1 status; (3) abuser's ability to perpetrate economic abuse; and (4) potential for  
2 possessiveness, harassment, and controlling behavior.

### 3 1. Heightened Exposure to Physical Abuse

4 Immigrant women are uniquely vulnerable to their abuser following the  
5 onset of domestic violence in their relationship. For example, one study shows  
6 that of Latina immigrants surveyed in the Washington, D.C. metro area, almost  
7 fifty percent had been abused physically, eleven percent had been sexually  
8 abused, and forty percent had been psychologically abused.<sup>17</sup> Although the  
9 domestic violence rates are numerically close between U.S. born women and  
10 immigrant women, the dynamics are quite different for immigrant battered  
11 women. For example, immigrant women who have been in the United States  
12 for less than three years are less likely to call the police for help due to language  
13 barriers<sup>18</sup> or fear of lack of responsiveness from police officers in documenting  
14 the event or arresting the abuser.<sup>19</sup> Immigrants also often lack knowledge about  
15 the United States legal system and social service support.<sup>20</sup> Battered spouses  
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21 <sup>17</sup> Giselle Aguilar Hass *et al*, *Lifetime Prevalence of Violence Against*  
22 *Latina Immigrants: Legal and Policy Implications*, Domestic Violence: Global  
23 Responses (2000), at 93-113.

24 <sup>18</sup> Leslye Orloff *et al*, *Battered Immigrant Women's Willingness to Call for*  
25 *Help and Police Response*, 13 UCLA Women's L.J. 43, at 44, 71 (2003).

26 <sup>19</sup> Deena Jang *et al*, 29 Am. Bar. Assoc. 316 (Summer 1995).

27 <sup>20</sup> Leti Volpp, *Working with Battered Immigrant Women: A Handbook to*  
28 *Make Services Accessible* 6 (1995); Mary Ann Dutton *et al.*, *Characteristics of*  
*Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant*

(continued...)

1 may fear asking for help, thus subjecting themselves to continued abuse if they  
2 stay and to deportation if they report the abuse and/or attempt to leave.<sup>21</sup> In  
3 turn, these obstacles for battered immigrant victims are tools of power and  
4 control for the abusers.

## 5 6 2. Abuser's Control Over Immigration Status

7 Abusive spouses of immigrant women often threaten to report their  
8 victims to the government and especially to the immigration authorities.<sup>22</sup>  
9 Research confirms that abusers use control over immigration status as a tool to  
10 lock their abused spouses and children in abusive relationships.<sup>23</sup> Among  
11 abused immigrant women who were married to citizens or lawful permanent  
12 residents, 72.3% of their abusive spouses never filed family based immigration  
13 petitions,<sup>24</sup> while the rest subjected their spouses to lengthy delays before  
14 filing.<sup>25</sup>  
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19 (...continued)

20 *Latinas: Legal and Policy Implications*, 7 Geo. J. Pov. L. & Pol'y. 245, 275  
(2000) (hereinafter Dutton, *Help-Seeking Behaviors*).

21 <sup>21</sup> Orloff & Kaguyutan, *supra* note 16, at 110 (citing VAWA legislative  
22 history, noting that the battered immigrant's spouse may revoke the status  
23 petition at any time prior to the issuance of permanent legal status to the  
immigrant woman).

24 <sup>22</sup> Volpp, *supra* note 20, at 6.

25 <sup>23</sup> Hass, *supra* note 17, at 105-07; Dutton, *Help-Seeking Behaviors*, *supra*  
note 20, at 259.

26 <sup>24</sup> Dutton, *Help-Seeking Behaviors*, *supra* note 20, at 259.

27 <sup>25</sup> *Id.* (noting mean delay of 3.97 years).  
28

1 In addition to demonstrating that abusers use immigration status to  
2 establish power and control over their victims, this same research found that  
3 immigration-related abuse is often a lethality predictor and an indicator that the  
4 level of abuse is likely to escalate.<sup>26</sup> Physically and sexually abused immigrant  
5 women experienced immigration-related abuse at rates significantly higher than  
6 the rates experienced by psychologically abused women.<sup>27</sup> Immigration-related  
7 abuse includes but is not limited to threats of deportation, not filing papers, or  
8 calling INS.<sup>28</sup> Just as a cut telephone cord may provide corroborating evidence  
9 of abuse in domestic violence cases, immigration-related abuse provides  
10 corroborating evidence of physical and sexual abuse of immigrant victims.<sup>29</sup>  
11 Further, when immigration-related abuse occurs in emotionally abusive  
12 relationships that do not yet include physical or sexual abuse, it is a likely  
13 predictor of escalating abuse.<sup>30</sup>

14 The facts of the Salcido case clearly illustrate the relationship between  
15 immigration-related abuse and enhanced violence. David Salcido's decision  
16 not to complete papers that would provide Irina with legal immigration status  
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18 <sup>26</sup> Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand:*  
19 *Legal Protections for Battered Immigrant Women*, 10 Am. U. J. Gender Soc.  
20 Pol'y & L. 95, 111 (2002).

21 <sup>27</sup> Hass, *supra* note 17, at 105-09.

22 <sup>28</sup> *Id.* at 108.

23 <sup>29</sup> Orloff & Kaguyutan, *supra* note 26, at 111.

24 <sup>30</sup> Hass, *supra* note 17, at 109.

1 was closely followed by increasing physical assaults against Irina beginning in  
2 July, 2002, the same month David told Irina that he would not follow through  
3 on her immigration papers. The violence continued between July and  
4 September, 2002, leading ultimately to the award of a Protection Order against  
5 David. Two days after, Irina called the police, and sought the protection order,  
6 and David retaliated by again perpetrating immigration-related abuse –  
7 contacting INS to withdraw paperwork he had filed with them for Irina. This is  
8 exactly the pattern of escalating abuse that Congress sought to curb in the  
9 Violence Against Women Act.  
10  
11

### 12 3. Economic Abuse

13 Many abusers, particularly those of immigrant women, use restrictions on  
14 their victims' economic freedom to dominate them. Immigrant women report  
15 that lack of access to economic resources is the single largest barrier to leaving  
16 an abusive relationship.<sup>31</sup> Abusers prevent their victims from participating in  
17 the labor market or sabotage their paid work.<sup>32</sup> Moreover, they control the  
18 victims' access to money by taking their salaries, making them ask for money,  
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22 <sup>31</sup> Dutton, *Help-Seeking Behaviors*, *supra* note 20, at 295-96; *see generally*  
23 Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant*  
24 *Women and Children: Accomplishments and Next Steps*, 7 *Wm. & Mary J.*  
25 *Women & L.* 597, 617-21 (2001).

26 <sup>32</sup> *New York Victim Service Agency Report on the Costs of Domestic*  
27 *Violence* (1987); Susan Schechter & Lisa T. Gray, *A Framework for*  
28 *Understanding and Empowering Battered Women, in Abuse and Victimization*  
*Across the Life Span* 242 (1988).

1 and not giving them access to checking accounts. Abusers may also destroy  
2 family property, especially if they suspect that their victims plan to leave the  
3 relationship.<sup>33</sup> Abusers of immigrant women may force their victim to work  
4 illegally or harass her at the only job at which her visa permits her to work  
5 legally, or as in the Salcido case harass the immigrant victim's employer  
6 causing the immigrant victim to lose her job and have to resort to financial  
7 dependence on the abuser for survival.<sup>34</sup>  
8

#### 9 10 **4. Possessiveness, Harassment, and Controlling Behavior**

11 Acts of jealousy and possessiveness are a common behavior for those  
12 who commit domestic violence.<sup>35</sup> Abusers may dominate the victim's  
13 autonomy and decisionmaking to extreme lengths. Such domination also may  
14 take the form of forcing one's religion on one's spouse, particularly where that  
15 religion may reinforce the abuser's ability to control the spouse. Additional  
16 acts of this nature include threatening communications to friends or authority  
17 figures, dictating how and when to discipline a child, and trying control an  
18 immigrant spouse's movements and forbidding her contact with friends via  
19 phone or computer.  
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24 <sup>33</sup> Family Violence Prevention Fund, *Domestic Violence in Civil Court Cases* 23 (1992).

25 <sup>34</sup> Robin Runge *et al*, *Domestic Violence as a Barrier to Employment*,  
26 Clearinghouse Rev. (Jan.-Feb. 2001).

27 <sup>35</sup> Diana Follimstad *et al.*, *The Roles of Emotional Abuse in Physically*  
28 *Abusive Relationships*, 5 J. Family Violence 113 (1990).



1                   **B.     The Court Erred in Failing to Weigh the Extensive Evidence of**  
2                   **Domestic Abuse when Making Its Equitable Determination to**  
3                   **Grant an Annulment Rather than a Divorce.**

4                   In its decision below, the trial court gave no weight to Irina's evidence of  
5 domestic violence and abuse in the marriage. Although the court mentions  
6 Irina's allegations of abuse in its decision to award an annulment, Annulment  
7 Order at 2, 5, 6, the court apparently did not credit them nor give them any  
8 weight in its ultimate equitable determination because it noted that "in this  
9 ruling [the Court] need not and does not decide whether the allegations of  
10 domestic violence are true." *Id.* at 6. Because the court considered the  
11 domestic violence evidence as neither true nor untrue, this evidence could not  
12 have played any part in its final holding. Further, had the court credited or  
13 given the evidence any weight, it could not have come to the conclusion that  
14 "Petitioner [David Salcido] more than Respondent [Irina Salcido] was deceived  
15 and exploited in the relationship." *Id.* at 7. As detailed below, Irina was  
16 beaten, pushed, and slapped by David, and obtained an Order of Protection and  
17 a conviction against David for domestic violence. David also perpetrated  
18 several types of immigration-related abuse against Irina. Certainly where, as  
19 here, the evidence of domestic violence extended throughout the relationship  
20 and incidents of domestic violence long predated the divorce filing or the date  
21 on which David reported Irina to the INS, the use of the VAWA provisions to  
22 raise an inference of improper motive is wholly inappropriate and completely  
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1 frustrates the purpose of VAWA itself. Because the evidence of domestic  
2 violence in this case is plentiful and significant, it far outweighs any alleged  
3 attempts by Irina to “deceive[] and exploit[]” David in the relationship. It was  
4 clear error to award David’s request for an annulment.  
5

6 **1. Irina Presented Extensive Evidence of Domestic Violence**  
7 **and Related Abuse.**

8 The testimony and evidence presented by both parties make it clear that  
9 throughout their courtship and marriage, particularly between June 1998  
10 through May 1999 and between April through September 2002, David behaved  
11 violently toward Irina and engaged in other abusive behaviors as described  
12 above in order to dominate and control her. These acts included:  
13

14 *Physical Violence:* Irina testified that in June of 1998, David slapped her  
15 during an argument following her discovery of his continuing correspondence  
16 with other girlfriends. 3/26/03 Tr. at 13:16-21; 4/14/03 Tr. at 94:2-9. At the end  
17 of that summer just before her return to Washington, D.C., a bystander filed a  
18 police report saying she saw a man slap Irina in the face inside a car outside the  
19 library where Irina worked; Irina later identified that man as David. App. Ex. 3  
20 at 1, 3 (Trial Ex. J) (Police Reports); 4/14/03 Tr. at 94:10-24. This assault left a  
21 mark on her lip and some swelling. *Id.* at 3.  
22  
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24

25 Irina testified that in February 1999 while she was living with David in  
26 Tucson, David attacked her in their apartment, attempting to strangle her,  
27 tearing her robe, and breaking the door frame in the bedroom. 4/14/03 Tr. at  
28

103:6-15. The police came and arrested David for domestic violence. *Id.* at  
1 103:16-18; 67:21-68:1. Mr. Salcido testified that in May, 1999 he was  
2 ultimately convicted of domestic violence charges arising from this incident.  
3  
4 *Id.* at 103:19-24.

5  
6 Irina testified that in July 2002, David became physically abusive to her  
7 again, "tearing at my T-shirt, pulling my hair, pulling me by the ear." 5/8/03  
8 Tr. at 1623-25. One of these incidents led Irina to call 911 for the first time. *Id.*  
9 at 18:19-25, and David testified that between July and September of 2002,  
10 police came to their house three times. *Id.* at 20:5-10. Following another fight  
11 in the apartment on September 9, 2002, both parties filed for orders of  
12 protection against each other. *Id.* at 20:18-21:17. Following that fight, the  
13 police took pictures of various marks and bruises on parts of Irina's body. *Id.*  
14 The judge granted Irina an Order of Protection. App. Ex. 5 (Trial Ex. F) (Police  
15 reports re Lucy's Dollar Store). David's request for a protective order was  
16 denied. The evidence of domestic violence, particularly the post-marriage  
17 incidents for which there were police photographs and which resulted in the  
18 issuance of a protection order, is clear and convincing.

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23 David's suggestion at trial that App. Ex. 7 (Trial Ex. 3), a printout from  
24 the U.S. Department of Justice website providing instructions on how to apply  
25 for immigration benefits as a battered spouse or child, demonstrated that Irina  
26 fabricated evidence of domestic violence in order to obtain immigration status  
27  
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1 (3/26/03 Tr. at 64:22-67:3; *Id.* at 68:14-70:7) is wholly ridiculous, particularly  
2 in light of the significant evidence of abuse during the marriage. Immigrant  
3 spouses of citizens and lawful permanent residents are legally entitled to attain  
4 legal immigration status through the marriage. When abusive spouses of  
5 immigrant victims refuse to file, or file and withdraw, immigration papers for a  
6 spouse, the immigrant victim is authorized to file her own immigration papers.  
7 In that case proof of domestic violence is only one part of the proof the  
8 immigrant victim must submit to prove her case. Evidence of domestic  
9 violence, by itself, will not allow an immigrant victim to attain legal  
10 immigration status through VAWA. Victims must also show that they married  
11 in good faith and are of good moral character, among other factors. Domestic  
12 violence provides evidence of good faith marriage, because unless the marriage  
13 and relationship were real, domestic abuse would not occur.<sup>36</sup>

14 In the Salcido case, *all* of Irina's evidence of physical domestic violence  
15 occurred before Irina ever learned about VAWA's immigration protections.<sup>37</sup>  
16 David's actions in reporting Irina to the INS on September 11, 2002 and in  
17 petitioning to annul their marriage on September 19, 2002, all predated her

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24 <sup>36</sup> See U.S. Citizenship and Immigration Services, *International*  
25 *Matchmaking Organizations: A Report to Congress*, 15-16 (1999) (reporting  
26 research on immigration fraud showing no cases that involved mail order  
27 brides, fraud, and domestic abuse) available at  
28 <http://uscis.gov/graphics/aboutus/repsstudies/Mobrept.htm>.

<sup>37</sup> App. Ex. 7 is dated October 1, 2002. *Id.*; see also 5/8/03 Tr. at 26:6-28:1.

1 learning that help was available to her and could have triggered her learning  
2 about VAWA.

3 *Immigration-Related Abuse:* In May or June of 2002, David refused to  
4 file Irina's final status immigration papers, saying that the marriage was over.  
5 5/8/03 Tr. at 13:3-9. On September 11, 2002, David sent a certified letter to the  
6 INS alleging that Irina "has been more interested in obtaining a US green card  
7 than in maintaining a harmonious marriage and relationship with her new  
8 husband," noted that he had withheld filing additional paperwork for Irina, and  
9 advised that he intended to file for divorce. App. Ex. 6 (Trial Ex. 5) (David  
10 Salcido's Letter to INS). Similarly, David appears to have been a recidivist,  
11 engaging in a pattern of such immigration-related abuse: With his ex-wife  
12 Galina, he sought an annulment from her in court after he met Irina on the  
13 grounds of fraud and bigamy, reporting that Galina never divorced the man she  
14 had been married to in Russia before he brought her to the United States on a  
15 K-1 visa. App. Ex. 2 (Trial Ex. O) (Jan. 2, 1997 letter to Department of  
16 Justice); 5/8/03 Tr. at 31:12-34:13. Like he did with Irina, David also reported  
17 Galina to the INS. In this way, David exerted power and control over the  
18 immigration status of his wives when it suited his purpose.  
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24 *Economic Abuse:* David testified that he maintained control over the  
25 family finances, paying the bills and accessing the money in their joint bank  
26 account. 5/8/03 Tr. at 9:22 – 11:20; App. Ex. 4 (Trial Ex. B) (Irina Salcido's  
27  
28

1 earnings March-June, 2002). He admitted that he stopped buying groceries so  
2 that Irina had nothing to eat at home. 5/8/03 Tr. at 13:10-17. David further  
3 admitted that after she obtained a job, he encouraged her to ask her boss to pay  
4 her in cash, under the table, "to avoid problems with the Internal Revenue  
5 Service." *Id.* at 15:13 - 16:11. In October 2002, David went to Irina's place of  
6 work and harassed Irina's boss about hiring undocumented workers. App. Ex. 5  
7 (Trial Ex. F) (Police reports re Lucy's Dollar Store). On November 22, 2002,  
8 David sent Irina's boss a harassing letter threatening to report her to the INS.  
9  
10 *Id.* Following this incident, Irina lost her job. 5/8/03 Tr. at 22:5-24:3.

11  
12 *Possessiveness, Harassment, and Controlling Behavior:* Irina stated that  
13 after the marriage David became a "control freak," and indeed David admitted  
14 that after they wed he didn't allow Irina to use his computer for e-mailing or the  
15 Internet and that he "tried to prohibit [her] from leaving the house." 5/8/03 Tr.  
16 at 14:5, 14:13-18; 3/26/03 Tr. at 36:24-37:11. He also forbade Irina from using  
17 the phone in their apartment. 4/14/03 Tr. at 101:21-102:6. David testified that  
18 he sometimes "had to get her up [in the] middle of the night to have her take a  
19 bath." *Id.* at 77:15-16.  
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22

23 **2. Court Erred in Failing to Consider Domestic Violence in**  
24 **Reaching Its Equitable Determination.**

25 When domestic violence is present in a relationship in a jurisdiction  
26 where annulment rather than divorce can be granted on a showing that one party  
27 was deceived and/or exploited in the relationship, the court must consider  
28

1 domestic violence in determining whether to grant an annulment. Domestic  
2 violence is relevant to any exploitation determination. Despite the extensive  
3 evidence submitted by Irina, including David's own admission that he had been  
4 convicted of domestic violence committed against her, the trial court  
5 specifically declined to decide "whether the allegations of domestic violence  
6 are true." Annulment Order at 6 n.2. The court therefore apparently gave no  
7 weight to the extensive evidence of domestic abuse suffered by Irina in the  
8 marriage in making its equitable determination of which party was most  
9 "deceived and exploited in the relationship." Just as evidence of domestic  
10 violence can create a rebuttable presumption against awarding custody of  
11 children to the perpetrator of the violence, Ariz. Rev. Stat. § 25-403(E), (N),  
12 such evidence as was present in the instant case should have at least created a  
13 presumption that Irina was more "exploited" in the marriage than David. The  
14 trial court's failure to consider the truth of David's domestic violence  
15 conviction and the other evidence presented, and give it proper weight, was  
16 clearly erroneous and should be reversed.  
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23 **II. THE TRIAL COURT'S FINDING THAT DAVID DID NOT KNOW**  
24 **IRINA WAS STILL MARRIED WHEN HE SUBMITTED HER K-1**  
25 **VISA PAPERS WAS CLEARLY ERRONEOUS.**

26 The trial court gave weight to its belief that David was "more deceived  
27 and exploited" in the marriage than Irina in arriving at its decision to grant an  
28

1 annulment rather than a divorce. Annulment Order at 3-4, 7. However, the  
2 court's finding that David was deceived about Irina's failure to obtain a divorce  
3 from Mr. Mendralla before coming to the United States on a K-1 visa was  
4 clearly erroneous. Specifically, the court found that Irina told David that she  
5 had obtained a divorce in Russia from Mendralla "in the context of her attempts  
6 to procure a visa" and that David "used that information in submitting the  
7 Fiancee Visa Application on [Irina's] behalf, not knowing she was still  
8 married." *Id.* at 4. The court accepted this conclusion that Irina had lied to  
9 David about obtaining a divorce, concluding that "though [Irina's] statement [to  
10 David] that she was divorced from Mendralla was false, the material omission  
11 on the Application appears to have been made by Petitioner [David Salcido]."  
12 *Id.* Thus the court correctly acknowledged that David filled out a K-1 visa  
13 application for Irina submitting information he knew to be false, because it  
14 omitted any mention of Mr. Mendralla's marriage to Irina of which David was  
15 fully aware; however, the court incorrectly found that David was deceived by  
16 Irina into believing that she had obtained a divorce from Mr. Mendralla in  
17 Russia.

18 This finding was clearly erroneous because an email written by David to  
19 Irina on March 27, 2001 submitted into evidence demonstrates that the plan to  
20 lie on the K-1 application and obtain a divorce from Mendralla once Irina  
21 arrived in the United States originated with David, not Irina. Responding to  
22



1 Irina's request to David to find information on Mendralla's whereabouts from  
2 the local courthouse to obtain a divorce before filing their K-1 papers, David  
3 stated that it was "impossible" to do so and suggested instead, "So let's get the  
4 annulment paperwork filed when you get here and this will be the 'last' mess I  
5 help you clean up—OK?"<sup>38</sup> App. Ex. 8 (Trial Ex. N) (Collection of letters and  
6 email between David and Irina Salcido); *see* specifically App. Ex. 9 (excerpt  
7 from Trial Ex. N) (Tue, 27 Mar 2001 at 22:24:44 EST email). This admission  
8 shows that it was David's intent all along to lie by omitting Mr. Mendralla on  
9 the K-1 form and then obtaining a divorce from Mendralla after Irina entered  
10 America on the K-1 visa but before the 90 days of the K-1 visa elapsed. Not  
11 only did David know that there had been no divorce, he himself masterminded  
12 the plan to lie on the K-1 form and then obtain the divorce in the United States.  
13  
14 *See also* 3/26/03 Tr. at 77:12-25; 78:16-79:19. Therefore the trial court's  
15 finding that Irina deceived David into believing she had obtained a divorce in  
16 Russia "in the context of her attempts to procure a visa" was clearly erroneous:  
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18 David knew that Irina had not yet managed to divorce Mendralla, but still urged  
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24 <sup>38</sup> Irina offered this multi-page exhibit of letters and email received from  
25 David into evidence at the end of the April 14, 2003 hearing, but this transcript  
26 and the beginning of the following transcript from May 8, 2003 do not appear to  
27 contain an evidentiary ruling on their admission into evidence, which may have  
28 been done at the start of the May 8, 2003 proceedings. This email was  
admissible as an admission by a party-opponent.

1 her to complete the K-1 forms with the intent to obtain the divorce in the United  
2 States.<sup>39</sup>

3 Thus, this factual finding was erroneous. Because the trial court  
4 undoubtedly gave significant weight to this (actually nonexistent) deception in  
5 its holding that David was “more deceived and exploited” in the marriage than  
6 Irina, that holding also was erroneous.  
7

8  
9 **III. IN ANNULMENT/DIVORCE DETERMINATIONS INVOLVING**  
10 **BATTERED IMMIGRANTS, COURTS MUST BE WARY OF**  
11 **EFFECTIVELY PREEMPTING FEDERAL LAWS PROTECTING**  
12 **IMMIGRANTS FROM ABUSE OF THEIR IMMIGRATION**  
13 **STATUS BY THEIR ABUSIVE SPOUSES.**

14 **A. Remedies Granted by Congress Protect Immigrant Women from**  
15 **Catch 22s Resulting from Domestic Violence.**

16 Through the VAWA provisions of 1994, Congress gave battered  
17 immigrant women married to citizens or lawful permanent residents the ability  
18 to self-petition for their immigration status.<sup>40</sup> To gain approval of a self-  
19 petition under the current version of VAWA, the immigrant spouse would have  
20 to prove, in addition to her abuser’s immigration status, that she had suffered  
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22

23 <sup>39</sup> See also App. Ex. 10 (excerpt of Trial Ex. N) (Tue, 19 Dec 2000  
24 11:01:26 EST email) (“Now get the K-1 papers in the mail---PLEASE---I don’t  
25 want you away from me not even ‘one second’ more than is necessary!!!!!!  
26 Yes, I will ‘try’ and locate Mandrella---but remember we are almost at  
27 1,000,000 inhabitants here in Tucson and the ‘privacy laws’ are strict.”).  
28

1 battering or extreme cruelty, that she had entered into the marriage in good  
2 faith, that she resided with the abuser for period of time, that she was of good  
3 moral character.<sup>41</sup> The self-petition protections apply to undocumented battered  
4 immigrants and to documented battered immigrants with non-permanent visitor,  
5 student, or work-based visas.<sup>42</sup>  
6

7 To prove the good faith requirement above, battered immigrants are  
8 encouraged to submit evidence demonstrating that they entered into their  
9 marriage in good faith. Such evidence could include: a marriage certificates;  
10 wedding pictures; love letters and emails documenting their courtship; pictures  
11 of the couple together or on vacation; birth certificates of children in common;  
12 letters or cards to the applicant or the applicant's family from the spouse;  
13 contact information of people who knew the unit as a married couple; photo IDs  
14 listing the married name, joint records such as leases, tax returns, or bank  
15 accounts.<sup>43</sup> Other writings such as police, medical records or other documents  
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20 (...continued)

21 <sup>40</sup> See VAWA 1994 § 40703(a) (codified at 8 U.S.C. § 1254(a) (amending  
22 INA § 204(a)(a))).

23 <sup>41</sup> See The Violence Against Women Act of 2000, Pub. L. No. 106-386,  
24 114 Stat. 1464 (codified in scattered sections of 8, 18, 20, 42, and 44 U.S.C.)  
(Oct. 28, 2000).

25 <sup>42</sup> See Orloff & Kaguyutan, *supra* note 16, at 114.

26 <sup>43</sup> See Leslye Orloff & Rachel Little, *Somewhere to Turn: Making*  
27 *Domestic Violence Services Accessible to Battered Immigrant Women. A 'How*  
28 *To' Manual for Battered Women's Advocates and Service Providers* (1999),  
Chapter 8, available at

(continued...)

1 may be relevant according to their content. Courts have held that, when  
2 attaining immigration status was one of many reasons for a couple to marry, but  
3 not the *only* reason, and the parties have lived together, have an intimate  
4 relationship, were in love with each other and the immigrant spouse intended to  
5 be truly married, the marriage is valid under immigration law. *See, e.g., Lutwak*  
6 *v. U.S.*, 344 U.S. 604 (1954); *Bark v. INS*, 511 F.2d 1200 (9<sup>th</sup> Cir. 1975).  
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26 (...continued)

27 [http://www.vawnet.org/DomesticViolence/ServicesAndProgramDev/ServicePr  
ovAndProg/BIW99-c8.php](http://www.vawnet.org/DomesticViolence/ServicesAndProgramDev/ServicePr<br/>28 ovAndProg/BIW99-c8.php).

1                   **B. Grant of Annulment Rather than Divorce Ignores Long**  
2                   **Relationship Between the Parties and Threatens to Effectively**  
3                   **Preempt Federal Law Protecting Immigrant.**

4                   Allowing courts to improperly award annulments rather than divorces in  
5 cases where there is evidence of immigration-related abuse would set a  
6 dangerous precedent for cases involving immigrants who have been abused by  
7 spouses with superior citizenship or immigration status; such a result would  
8 defeat federal protections for battered immigrant women, effectively  
9 preempting the federal VAWA self-petitioning provisions. This result would  
10 encourage abusers to use the family courts to gain leverage and favor of the  
11 courts against immigrant victims, while deterring immigrant victims from  
12 seeking vital help from immigration laws, family courts, and criminal courts.  
13

14                   Specifically, when courts grant annulments rather than divorces in cases  
15 involving battered immigrant women, the court could become susceptible to  
16 manipulation by abusive spouses with more stable citizenship or immigration  
17 status than their immigrant spouse. A court may inadvertently become  
18 complicit in helping abusers continue to exert power and control by essentially  
19 raising the specter and the possibility that the annulment will lead to the  
20 victim's deportation. This case provides a potent example of how, despite  
21 evidence of domestic violence, abusers of immigrant victims raise immigration  
22 status issues in family law cases to gain advantage and to harm immigrant  
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1 victims in annulments, divorces, property division, and custody and  
2 immigration cases.

3 In addition, where the evidence of domestic violence extended  
4 throughout the relationship, where incidents of domestic violence long predated  
5 the problems in the marriage, or where testimony regarding the existence of  
6 domestic violence is corroborated with police reports and photos or other  
7 witness testimony, the use of the VAWA provisions to raise an inference of  
8 improper motive in reporting domestic violence is wholly inappropriate and  
9 completely contradicts the purpose of VAWA itself. Because the evidence of  
10 domestic violence in this case is plentiful and significant, it far outweighs any  
11 alleged attempts by Irina to “deceive[] and exploit[]” David in the relationship,  
12 it was clear error to grant David’s request for an annulment.  
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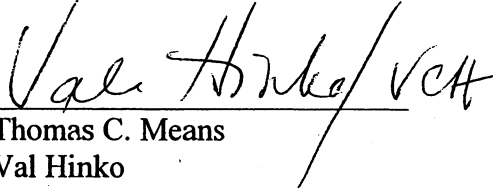
16 We urge the Court to make clear that the courts of Arizona cannot turn a  
17 blind eye toward the use of annulments or other legal procedures to manipulate  
18 and harass abused immigrant spouses.  
19

## 20 CONCLUSION

21 For these policy reasons, and because of the clearly erroneous findings  
22 and holdings of the trial court discussed herein, the district court’s order  
23 granting an annulment should be struck and this Court should grant Appellant a  
24 divorce.  
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Respectfully submitted,

  
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August 24, 2004

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**CERTIFICATE OF COMPLIANCE**

Pursuant to ARCAP 14 and 16, I certify that the attached brief:

Uses proportionately spaced type of 14 points or more, is double-spaced using a roman font, and contains 9019 words

or

Uses monospaced type of no more than 10.5 characters per inch and

Does not exceed 40 pages (opening and answering briefs) or 20 pages (reply briefs)

8/24/2004  
Date

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**CERTIFICATE OF SERVICE**

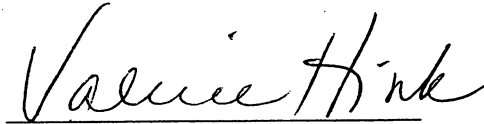
I hereby certify that a copy of the foregoing Response to Appellee's Motion for Extension of Time to File Answering Brief was served by first class mail, postage prepaid, this 24<sup>th</sup> day of August, 2004 to the following:

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