Declaration of Leslye E. Orloff

My name is Leslye E. Orloff. I am Director of the National Immigrant Women's Advocacy Project ("NIWAP") and Adjunct Professor at the American University, Washington College of Law. My curriculum vitae is attached.

I was a co-founder and co-chair of the National Network to End Violence Against Immigrant Women and was the Washington D.C. spokesperson for the organization from 1992 through 2011. As spokesperson, I was closely involved in the enactment of the Victims of Violence Against Women Acts ("VAWA") in 1994, 2000, 2005, and 2013 as well as the Trafficking Victims Protection Acts of 2000 and 2008. I lead the drafting of the provisions contained in each of these laws which provided protection for immigrant victims of domestic violence, sexual assault, child abuse, stalking, and human trafficking. I also assisted a bipartisan team of Congressional staff and members of Congress in creating and drafting the amendments to the VAWA self-petition. These amendments became law as VAWA and TVPA, and the reauthorizations of these law were later passed.

Of particular importance to this affidavit is the fact that I was very involved in the bipartisan negotiations in Congress leading to the enactment of the VAWA 2000. One of Congress' goals in the VAWA 2000 amendments to the VAWA self-petition was to allow battered immigrant spouses of U.S. citizens and lawful permanent residents to divorce and remarry without losing the ability to gain lawful permanent residency through VAWA self-petition. VAWA 2000 sought to eliminate many of the means by which abusive citizen and lawful permanent resident spouses could continue to exert power and control over the battered immigrant spouse's life.[1] Allowing divorce and remarriage were key factors in providing

[1] When abusers controlled the immigration status of a victim spouse 72.3% never filed immigration papers on behalf of the immigrant victim spouse (Dutton, Orloff, & Hass, 259). Those who filed immigration papers on behalf

immigrant victims protections from abusers. In section 1507, the Act[2] included amendments designed to ensure that neither divorce nor remarriage would terminate an abused immigrant spouse's ability to win approval of a pending VAWA self-petition or revoke an already approved self-petition.

Following the passage of VAWA in 1996 and the creation of the VAWA self-petition, problems arose because the victims' spouses would cut off the victims' access to the self-petitioning remedy by divorcing the victim. There were also many cases of divorced immigrant victims with pending VAWA self-petitions who began new relationships and sought marriage with men that were helping protect the victim and often her children from her abuser. The VAWA self-petitioning laws needed to be amended to ensure that when battered immigrants with former U.S. citizens and lawful permanent resident spouses remarried, it would not cut them off from VAWA self-petitioning.

The VAWA 2000 amendments 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. It is important to remember that all VAWA self-petitioners were spouses or children of citizens and lawful permanent residents and would have received lawful permanent residency from their marriage, had their citizen or lawful permanent resident spouse not been abusive. If those marriages ended in divorce, they would have been lawful permanent residents, and there would be no immigration consequences to their immigration status or for remarrying.

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of the spouse had an average delay of almost 4 years, (Dutton, Orloff, & Hass, 292). Dutton, M.A.; Orloff, L. & Hass, G.A. Characteristics of help-seeking behaviors, resources, and service needs of battered immigrant Latinas: Legal and policy implications." *Georgetown Journal of Poverty, Law and Policy* (2000).

[2] INA Sections 204(a)(1)(A)(iv); 8 U.S.C. 1154(a)(1)(A)(iv); 204(a)(1)(B)(v); 8 U.S.C. 1154(a)(1)(B)(v); 204(h); and 8 U.S.C. 1154(h).

Another purposes of the VAWA 2000 amendments was to permit self-petitioners to remarry while their petitions were pending and after their petitions were approved, without the remarriage affecting the self-petitioner's eligibility for VAWA protection. One of the issues with the original Violence Against Women Act was that remarriage was considered grounds for denial of a pending VAWA self-petition and revocation of an already approved VAWA self-petition. The VAWA self-petitioning regulations stated as follows:

> Legal status of the marriage. 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 filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.
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> 8 C.F.R. § 204.2(c)(1)(ii).

The Immigration and Naturalization Service ("INS"), in the preamble to the 1996 VAWA self-petitioning regulations, further explained INS' reasoning for denying VAWA petitions if a divorced self-petitioner remarried:

> [A] pending spousal self-petition will be denied or an approved self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.
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> 61 FR 13061 (Mar. 26, 1996).

It was this flawed reasoning and the regulation by INS that lead Congress to overrule by statute when it passed the VAWA 2000 amendments to the VAWA self-petition laws.

By 2000, the social science research, as well as the stories of abused immigrant spouses and children who were being harmed by the VAWA self-petitioning regulations, called for divorce and remarriage to be amended in the new legislation. The social science research in the

1990s showed that the danger to an abused spouse did not end with separation, divorce, or remarriage. Social science research available in 1989 revealed that violence between spouses or ex-spouses made up the largest victim category among incidents of family violence with 2,333,000 over 9 years.[3] In fact, research demonstrated that intimate partner violence continues to escalate after separation or when women decide to leave the relationship.[4] Some women who left abusive partners faced stalking, following, and harassment for months and up to years.[5] Research published in 1988 found that women's risk of abuse increases with separation[6] and that separation increases the risk of being killed by an abusive husband by 75%.[7] By the late 1990s, it was "well documented that the rate of violence in the relationship rises upon separation."[8] Because the social science indicated that the danger to an abused spouse did not end after separation and divorce, Congress amended the provision in VAWA 1994 to allow VAWA self-petitioners to remarry and divorce and still be approved or keep approval for their VAWA self-petition, rather than waiting until they had received their lawful permanent residency based on the VAWA self-petition to remarry.

The bipartisan negotiations leading to the VAWA 2000 VAWA self-petitioning amendments intended to allow the VAWA self-petitioner to re-marry without the remarriage affecting the victim's VAWA self-petition case or an approved VAWA self-petitioner's access to lawful permanent residency. Some self-petitioners were able to obtain protection through

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

[4] Angela Browne, When Battered Women Kill, New York, NY: The Free Press, 1987, p. 114.

[5] Id.

[6] Stark E., Flitcraft A., Violence among Intimates. In: Van Hasselt V.B., Morrison R.L., Bellack A.S., Hersen M. (eds) Handbook of Family Violence, 1988, p. 308.

[7] Barbara Hart, National Estimates & Facts About Domestic Violence, NCADV Voice, Winter 1989, p. 12.

[8] Dutton, Orloff, and Hass, "Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications," *Georgetown Journal on Poverty Law & Policy*, Volume VII, Number 2, Summer 2000 (attached hereto).

remarriage, and lawmakers from both parties wanted to promote marriage by allowing self-petitioners to remarry without jeopardizing their VAWA petitions. The goal of the 2000 amendments to the statute was to nullify the sentence addressing remarriage in 8 C.F.R. § 204.2(c)(1)(ii).

The legislative history of Violence Against Women Act of 2000's immigration provisions was co-authored by Senators Hatch, Abraham, Kennedy, and Biden. Senator Hatch presented the full Senate Judiciary Committee's Report which stated the following in the committee's section by section summary of the Act regarding the VAWA self-petitioning amendments that the Act –

"[c]larifies that remarriage has no effect on a pending VAWA immigration petition."

140 Cong. Rec. S10196.

Senator Abraham also introduced for an additional explanation of legislative history for the Congressional Record. Senator Abraham co-authored this supplemental explanation with Senator Kennedy in which the Sub-Committee added clarification with regard to battered immigrants whose self-petitions were approved and who were in the process of or awaiting the date on which they could apply for lawful permanent residency based on their approved self-petition.

The Sub-committee states also that

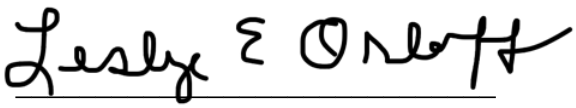
"remarriage cannot serve as the basis for revocation of an approved self-petition or rescission of adjustment of status."

140 Cong. Rec. S10192.

The 2000 VAWA amendments provided protection to battered immigrant self-petitioners who were unable to obtain protection under the immigration provisions of VAWA 1994,

including immigrant victims omitted or prevented from access to VAWA self-petitioning and lawful permanent residency based on an approved VAWA self-petition. The VAWA 2000 amendments to VAWA self-petitioning were explicitly written to ensure that battered immigrant spouses of U.S. citizens and lawful permanent residents could file for divorce and remarry. Once their VAWA self-petition was filed, battered immigrant spouses would not be barred from the VAWA self-petitioning program and its path ultimately to lawful permanent residency and citizenship. Simply stated, after VAWA 2000 became law, VAWA self-petitioners were free to divorce or remarry without losing the protections VAWA confidentiality offered them.

I certify under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge, information, and belief.



08/22/19

Leslye E. Orloff
Director, National Immigrant Women's Advocacy Project
American University, Washington College of Law

Date