

12-5088-CV

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

ABDOLLAH NAGHASH SOURATGAR,

Petitioner-Appellee,

v.

LEE JEN FAIR,

Respondent-Appellant.

*On Appeal from the United States District Court
for the Southern District of New York (New York City)*

**BRIEF OF AMICI CURIAE TAHIRIH JUSTICE CENTER, ASIAN PACIFIC AMERICAN LEGAL CENTER, AYUDA, BATTERED WOMEN'S JUSTICE PROJECT, THE CENTRAL AMERICAN RESOURCE CENTER, GREATER BOSTON LEGAL SERVICES, IMMIGRATION & ASYLUM CLINIC OF BOSTON COLLEGE LAW SCHOOL, IMMIGRATION JUSTICE CLINIC, JOHN JAY LEGAL SERVICES, INC., INMOTION, INC., KENTUCKY COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, LEGAL SERVICES NYC, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT, NEW YORK ASIAN WOMEN'S CENTER, INC., PHILADELPHIA LEGAL ASSISTANCE, SEXUALITY & GENDER LAW CLINIC, COLUMBIA LAW SCHOOL
IN SUPPORT OF RESPONDENT-APPELLANT**

William C. Silverman, Esq.

GREENBERG TRAUIG, LLP

Attorneys for Amici Curiae Tahirih Justice Center, Asian Pacific American Legal Center, Ayuda, Battered Women's Justice Project, The Central American Resource Center, Greater Boston Legal Services, Immigration & Asylum Clinic of Boston College Law School, Immigration Justice Clinic, John Jay Legal Services, Inc., InMotion, Inc., Kentucky Coalition for Immigrant and Refugee Rights, Legal Services NYC, National Immigrant Women's Advocacy Project, New York Asian Women's Center, Inc., Philadelphia Legal Assistance, Sexuality & Gender Law Clinic, Columbia Law School

The MetLife Building
200 Park Avenue, 15th Floor
New York, New York 10166
212-801-9200

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, undersigned counsel

states that:

- Tahirih Justice Center is a nonprofit corporation organized under the laws of the State of Virginia. It has no parent company and has issued no stock.
- Asian Pacific American Legal Center is a nonprofit corporation organized under the laws of the State of California. It has no parent company and has issued no stock.
- Ayuda is a nonprofit corporation organized under the laws of the District of Columbia. It does not have a parent company and has issued no stock.
- Battered Women's Justice Project is a nonprofit corporation organized under the laws of the State of Minnesota. It has no parent company and has issued no stock.
- The Central American Resource Center is a nonprofit corporation organized under the laws of the State of California. It has no parent company and has issued no stock.
- Greater Boston Legal Services is a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts. It has no parent company and has issued no stock.

- InMotion, Inc. is a nonprofit corporation organized under the laws of the State of New York. It has no parent company and has issued no stock.
- Immigration and Asylum Clinic of Boston College Law School, organized under the laws of the Commonwealth of Massachusetts. It has no parent company and has issued no stock.
- Immigration Justice Clinic, John Jay Legal Services, Inc., is a Law Student Clinic at Pace University organized under the laws of the State of New York. It has no parent company except insofar as it is a component of the nonprofit New York corporation John Jay Legal Services, Inc., and has issued no stock.
- Kentucky Coalition for Immigrant and Refugee Rights is a nonprofit corporation organized under the laws of the State of Kentucky. It has no parent company and has issued no stock.
- Legal Services NYC is a nonprofit corporation organized under the laws of the State of New York. It has no parent company and has issued no stock.
- National Immigrant Women's Advocacy Project is a nonprofit organization at American University Washington College of Law, organized under the laws of the State of Maryland. It has no parent company and has issued no stock.

- New York Asian Women’s Center, Inc. is a nonprofit corporation organized under the laws of the State of New York. It has no parent company and has issued no stock.
- Philadelphia Legal Assistance is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania. It has no parent company and has issued no stock.
- Sexuality & Gender Law Clinic, Columbia Law School is a law student clinic, organized under the laws of the State of New York. It has no parent company and has issued no stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT..... i

TABLE OF AUTHORITIES..... v

INTRODUCTION, INTEREST OF *AMICI CURIAE*,
AND SOURCE OF AUTHORITY TO FILE 1

BRIEF FACTUAL BACKGROUND 5

ARGUMENT 8

 I. Manipulation of immigration status is a common tool of abuse
 used by batterers to establish and maintain power and control
 over the victim..... 8

 II. Manipulation of immigration status and other tactics of coercive control
 and dangerous to the health and wellbeing of victims
 and their children 11

 III. The District Court failed to properly assess the allegations of domestic
 violence..... 15

 IV. This Court should clarify the proper inquiry into the nature,
 severity and potential impact of domestic violence as it relates
 to children in the Hague Convention cases 18

CONCLUSION 18

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32..... 20

TABLE OF AUTHORITIES

Federal Cases

Elyashiv v. Elyashiv,
353 F. Supp. 2d 394 (E.D.N.Y. 2005)..... 13

European Connections & Tours, Inc. v. Gonzales,
480 F. Supp. 2d 1355 (N.D. Ga. 2007) 11

Nicholson v. Williams,
203 F. Supp. 2d 153 (E.D.N.Y. 2002)..... 15

Federal Rules

Fed. R. App. P. 26.1 i

Fed. R. App. P. 29(C)(5) 3

Fed. R. App. P. 32 20

Fed. R. App. P. 32(a)(5) 20

Fed. R. App. P. 32(a)(6) 20

Fed. R. App. P. 32(a)(7)(B)..... 20

Fed. R. App. P. 32(a)(7)(B)(a)(5-6) 20

Fed. R. App. P. 32(a)(7)(B)(iii)..... 20

Congressional Authority

H.R. REP. NO 103-395 (1994)..... 11

H.R. Con. Res. 172, 101st Cong. (1990)..... 13

S. REP. NO. 103-138 at 40 (1993)..... 19

S. REP. NO. 112-153 at 12 (2012)..... 11

Other Authorities

ANITA RAJ & JAY SILVERMAN, *Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367 (2002) 10

ANN COKER ET AL., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 24 AM. J. OF PREVENTATIVE MED. 260 (2002) 12

DOMESTIC ABUSE INTERVENTION PROJECT, POWER AND CONTROL WHEEL (1984)..... 9

EDNA EREZ & CAROLYN HARTLEY, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4 WESTERN CRIMINOLOGY R. 155, 158 (2003)..... 11

Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003) 10

EVAN STARK, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 985 (1995) 8, 9

GISELLE AGUILAR HASS, NAWAL AMMAR & LESLYE ORLOFF, *Battered Immigrants and U.S. Citizen Spouses* 4-5, April 24, 2006 11

JEFFREY L. EDLESON, *Children’s Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 846 (1999)..... 14, 17

JEFFREY L. EDLESON, ET AL., *The Overlap Between Child Maltreatment and Woman Battering*, 5 (2) J. VIOLENCE AGAINST WOMEN 134 (1999) 13

L. Orloff, et. al., *Countering Abuser’s Attempts to Raise Immigration Status of the Victim in Custody Cases*, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2004) 11

LAURA DUGAN, DANIEL S. NAGIN, & RICHARD ROSENFELD, *Do Domestic Violence Services Save Lives?*, 250 NAT’L INST. JUST. J. 20, 20-25 (2003) 16

LUNDY BANCROFT & JAY G. SILVERMAN, *BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 6-32 (2002) 9, 14, 17

MARY A. DUTTON & LISA A. GOODMAN, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 753 (2005) 12

Mary A. Dutton, Lisa A. Goodman & R. James Schmidt, *Development and Validation of a Coercive Control Measure for Intimate Partner Violence: Final Technical Report* (2005) 8-9

MARY A. DUTTON, LESLYE E. ORLOFF & GISELLE AGUILAR 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 (2000)..... 13

MARY A. DUTTON, *Pathways Linking Intimate Partner Violence and Posttraumatic Disorder*, TRAUMA, VIOLENCE & ABUSE, July 2009, at 211, 212 12

MARY A. KERNIC ET. AL., *Children in the Crossfire*, 11 VIOLENCE AGAINST WOMEN 991, 993 (2005) 14, 17

MICHAEL. P. JOHNSON & KATHLEEN. J. FERRARO, *Research on Domestic Violence in the 1990s: Making Distinctions*, 62 J. MARRIAGE & FAM. 948, 948-63 (2000)..... 8, 9,10

MICHELLE J. ANDERSON, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401 (1993) 10, 11

NEW CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, *FEMICIDE IN NEW YORK CITY: 1995-2002* (2004) 13

P. Tjaden & N. Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey* (2000)..... 16

ROBERT B. STRAUSS, *Supervised Visitation and Family Violence*, 29 FAM. L.Q. 229, 239 (1995)..... 14, 17

Shawn Kanaiaupuni, *Child Well-Being and the Intergenerational Effects of Undocumented Immigrant Status* (Institute for Research on Poverty Discussion Paper no. 1210-00) at 28 (June 2000) 15

V. PUALANI ENOS, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L. J. 229, 235 (1996)..... 14, 17

**INTRODUCTION, INTEREST OF *AMICI CURIAE*,
AND SOURCE OF AUTHORITY TO FILE¹**

There is a wealth of research into domestic violence, including how it manifests itself and the ways in which it poses grave harm to children. This learning has served to challenge long-held traditional beliefs and conventional wisdom on domestic violence and improved society's ability to protect children from this pernicious social affliction.

In this case, the District Court erroneously substituted its own outdated notions of domestic violence for the expert testimony provided and the facts developed in the record. As a result, it unjustifiably distinguished, dismissed and disregarded critical facts reflecting a larger pattern of abuse. In particular, the District Court failed to recognize that Petitioner's efforts to obtain Iranian citizenship for Ms. Lee, which threatened Ms. Lee's Malaysian citizenship, would destabilize the child's residence and thereby pose a grave risk of harm to the child. Rather than recognizing this as part of a cycle of physical and psychological abuse, the District Court instead erroneously concluded - contrary to all authority on the subject - that there was no risk to the child because Petitioner was not "an obsessed or jilted lover who seeks to be reunited with respondent." (Order at 18). Thus, it is

¹ Pursuant to Fed. R. App. P. 29(c)(5), we state that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money intended to fund preparing or submitting the brief; and that no person - other than the *Amici Curiae*, their members, or their counsel - contributed money intended to fund preparing or submitting the brief.

not simply that the District Court's decision forcing repatriation of the child was contrary to the weight of the evidence, but that the way in which the District Court considered evidence on domestic violence, standing alone, was clear error as well.

This appeal is significant because of the need for judicial clarity in Hague Convention cases on how to consider allegations of domestic violence as they relate to the safety of children. The *Amici Curiae*, comprised of 15 separate organizations, have provided pro bono legal services to thousands of victims of domestic violence across the United States, including immigrant victims of domestic violence. In the course of their work, they have acquired considerable expertise in the methods that batterers employ to coerce and control their victims. In particular, they have learned, consistent with the prevailing literature, that batterers frequently use their victims' immigration status as a tool of abuse, threatening to have the victim deported or forcing them to live a life of uncertainty. This form of abuse causes serious harm to thousands of women and children across the United States and has prompted repeated legislative efforts by Congress to protect victims from its harmful effects. Accordingly, the *Amici Curiae* have a powerful collective and individual interest in ensuring that cases, such as this one, where immigration status is used as a tool of abuse are decided with a searching inquiry into the nature, severity, and impact of the alleged domestic violence as it relates to the safety of children. Anything less would prove detrimental to

immigrant victims of domestic violence across the country, including clients of the *Amici Curiae*.

This brief will be filed upon leave from this Court under Fed. R. App. P. 29(C)(5).

The specific *Amici Curiae* are:

- Tahirih Justice Center (“Tahirih”) is a national organization based in the Washington, D.C. area with additional offices in Houston, Texas and Baltimore, Maryland, is a non-profit organization dedicated to assisting immigrant survivors of gender-based violence. Tahirih has assisted over 14,000 women and children since opening in 1997, providing immigration, family law, and case management services.
- Asian Pacific American Legal Center, based in Los Angeles, California is the nation’s largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders. For the past 30 years, APALC has provided pro bono legal services to immigrant survivors of domestic violence, particularly those who are low-income and have limited English proficiency.
- Ayuda, based in Washington, D.C., is an advocacy group that provides services for low-income immigrants in the Metropolitan D.C. area. Ayuda provides a broad spectrum of legal, social, and language services, training and outreach, and provides immigration and family law services to numerous immigrant survivors of domestic violence.
- Battered Women’s Justice Project (“BWJP”), based in Duluth, Minnesota, is a national technical assistance center that provides training and resources for advocates, battered women, legal system personnel, policymakers, and others engaged in the justice system’s response to domestic violence. BWJP serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S. Department of Justice.

- The Central American Resource Center (“CARECEN”), based in Los Angeles, California, was founded in 1983 and provides legal representation to asylum seekers. Of the thousands of clients served by CARECEN each year, many are asylum seekers fleeing domestic violence or immigrant survivors of domestic violence seeking humanitarian relief under the U Visa and Violence Against Women Act.
- Greater Boston Legal Services (GBLS), based in Boston, Massachusetts, has a hundred-year history as the primary provider of civil legal services for low income individuals in Boston and thirty-one surrounding cities and towns. As part of its broad array of legal services, GBLS represents hundreds of immigrant clients who are eligible for protection under the Violence Against Women Act because they have been victims of domestic violence, coercion and control.
- InMotion, Inc. (“InMotion”), based in New York, New York, was founded in 1993 to help women free themselves from abusive relationships, stay in their homes and achieve financial stability. InMotion primarily offers services in the areas of matrimonial, family and immigration law. Of the 6,500 women and children served by InMotion in 2012, the overwhelming majority were victims of domestic violence, many were immigrants, and most were mothers.
- Immigration & Asylum Clinic of Boston College Law School (“IAC”), based in Boston, Massachusetts, advises and represents noncitizens in a range of immigration matters. IAC represents both parents and children who have been victimized by domestic violence, and have numerous clients whose immigration status has been manipulated by abusive husbands.
- Immigration Justice Clinic, John Jay Legal Services, Inc. (“IJC”), based in White Plains, New York, serves indigent people living, working or detained in the Lower Hudson Valley, the five boroughs, and occasionally New Jersey and Connecticut. Many IJC clients are victims of protracted and devastating intimate partner violence or child abuse. IJC routinely deals with clients whose abusers threaten and make use of every component of the legal system, often through the use of outrageous misrepresentations.

- Kentucky Coalition for Immigrant and Refugee Rights (“KCIRR”), based in Lexington, Kentucky, is an advocacy organization working to improve the lives of immigrants and refugees in Kentucky and throughout the United States. KCIRR’s constituents include numerous victims of domestic violence, whose abusers often view the legal system as simply another weapon in an arsenal of terror and domination.
- Legal Services NYC (“LSNYC”), based in New York, New York, is an anti-poverty organization that has been seeking justice for low-income New Yorkers for more than forty years. LSNYC handles more than 18,000 individual cases each year, representing hundreds of victims of domestic violence and counseling thousands more through community clinics and family justice centers.
- National Immigrant Women’s Advocacy Project (“NIWAP”), based at American University College of Law in Washington DC, works to protect and expand rights and options for immigrant women and their children. NIWAP focuses on improving conditions through key areas such as immigration policy, justice system relief for immigrant women, and rights and protections for victims of domestic violence, sexual assault, and sex trafficking.
- New York Asian Women’s Center, Inc. (“NYAWC”), based in New York, New York, is the United States’ largest provider of services to Asian and Asian-American survivors of domestic violence in the United States. NYAWC provides comprehensive services, including a multilingual hotline, shelters, children’s programs, legal services, and advocacy and outreach.
- Philadelphia Legal Assistance (“PLA”), based in Philadelphia, Pennsylvania, is Philadelphia’s largest provider of civil legal aid for low-income residents with nowhere else to turn. PLA’s Family Law Unit serves approximately 3,500 clients a year, including numerous victims of interpersonal violence. Recognizing that abusers often use immigration status as a tool of power and control, the Family Law Unit prioritizes representation of immigrant survivors of domestic violence.
- Columbia Law School Sexuality & Gender Law Clinic (“SGLC”) was founded in 2006 as the first clinical law program focusing directly on

sexuality and gender in the law. SGLC works on issues of family recognition, discrimination, criminal law, domestic violence, immigration and asylum, and human trafficking, including the particular difficulties faced by immigrant victims of domestic violence.

BRIEF FACTUAL BACKGROUND

Following a year-long courtship, the parties were married on January 16, 2008 and the subject child was born a year later. (Trial Tr. at 403; 482). The marriage quickly turned abusive, as Petitioner subjected Ms. Lee to continuous physical and psychological violence from February 2008 onwards (Trial Tr. at 397; 399-400; 430-33; 433-35; 495-98). For example, a May 31, 2008, assault, which occurred when Ms. Lee was five weeks pregnant, left her with medically documented injuries. (Trial Tr. at 444-53; JA-4; JA-5). This was only the first of many abuses documented in the record.²

The record shows that the parties originally intended for the child to have Malaysian citizenship in order to be eligible for Singapore permanent residency, and the child was indeed registered for Malaysian citizenship after his birth. (Trial Tr. at 39-40; 483; 536 JA-32; JA 34). Petitioner then took control of Ms. Lee and

² In March 2009, Petitioner struck Ms. Lee multiple times in the shoulder while she was breastfeeding her child. (Order at 14). In late 2009 or early 2010, Petitioner took the subject child from Ms. Lee's arms and proceeded to beat her. *Id.* On January 5, 2010, Petitioner threatened to kill Ms. Lee, chased her into the street when she attempted to flee with her son to a neighbor's home, assaulted her, and forced her to return to the house. (Order at 15). Petitioner filed a second police report after this incident, but again received no help from the authorities. (Trial Tr. at 531-36; JA-6; JA-8).

the child's birth certificates and passports and locked them in a safe in his office. (Trial Tr. at 482; 783-85).

What followed was a deliberate attempt by Petitioner to strip his wife and child of their Malaysian citizenship, leaving them as Iranian nationals ineligible to continue residing in Singapore. While it is beyond the scope of this brief to provide a full recitation of the events, four facts stand out on the issue of whether Petitioner attempted to effect a change in citizenship status for Ms. Lee and their child: First, in June 2011, upon first hearing that Petitioner might be attempting to have her stripped of her Malaysian citizenship, Ms. Lee visited the Malaysian High Commission in both Singapore and Kuala Lumpur, and asked her attorney to contact the Malaysian authorities out of concern over the status of her citizenship. (Trial Tr. at 565-66; 574-75; JA-40; JA-158; JA-451).

Second, Ms. Lee received two letters from the Malaysian High Commission, in March and May of 2012, informing her that the Commission had received complaints regarding Ms. Lee's dual citizenship and warning her that her Malaysian citizenship was in danger of being terminated. (JA-43; JA-46).

Third, in a letter from the Iranian Embassy in Singapore provided at trial by Petitioner, the Embassy states that an application was submitted for the issuance of Ms. Lee's Iranian national card on June 21, 2011 – a month after Ms. Lee left the family home and filed for sole custody of the child. (JA-42).

Fourth, as the District Court found, it is undisputed that Petitioner wishes to remove the subject child from Singapore to Iran. (Order at 26).

ARGUMENT

I. Manipulation of immigration status is a common tool of abuse used by batterers to establish and maintain power and control over the victim.

The history of modern research into domestic violence has its origins in research on physical injuries and mental traumas stemming from domestic abuse. EVAN STARK, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 985 (1995). Over the decades, researchers have established that violence alone is insufficient to explain the level of trauma observed in many domestic violence victims, and have recognized that this violence is part of a broader pattern of behavior aimed at stripping the victim of independence and subjecting the victim to the all-encompassing power and control of the batterer. *Id.*, at 986. This pattern of behavior is known as “coercive control” or “intimate partner terrorism,” and has been confirmed by numerous studies across the past two decades. MICHAEL. P. JOHNSON & KATHLEEN. J. FERRARO, *Research on Domestic Violence in the 1990s: Making Distinctions*, 62 J. MARRIAGE & FAM. 948, 948-63 (2000); Mary A. Dutton, Lisa A. Goodman & R. James Schmidt, Development and Validation of a Coercive Control Measure for

Intimate Partner Violence: Final Technical Report (2005), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/214438.pdf>.

In a coercive control situation, which is the driving model in most, if not all, domestic violence cases, the batterer is motivated less by issues of jealousy, poor anger management, or substance abuse, and more by the desire to establish and maintain their control over the life of their victim. JOHNSON & FERRARO, *supra*, at 949 (“‘domestic violence’ or ‘battering’ as it is generally understood by professionals and by the public is primarily a problem of heterosexual male control of women partners”); LUNDY BANCROFT & JAY G. SILVERMAN, BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 6-32 (2002). To enforce this control, an abuser will deploy a variety of tools, including threats and intimidation, emotional abuse, economic abuse, physical abuse, sexual abuse, and isolation of the victim from friends and family. STARK, *supra*, at 986.³ Since “the unique profile of ‘the battered woman’ [ultimately] arises as much from the deprivation of liberty implied by coercion and control as it does from violence-induced trauma,” the significance of these psychological tools of coercive control is immense. *Id.*

³ These behaviors are sometimes visualized using a “power and control wheel” first propagated by the Domestic Abuse Intervention Project of Duluth, Minnesota. DOMESTIC ABUSE INTERVENTION PROJECT, POWER AND CONTROL WHEEL (1984), available at <http://www.theduluthmodel.org/pdf/PowerandControl.pdf>.

A powerful tool of coercive control and abuse is the manipulation of one's immigration status, which creates extreme vulnerability, anxiety, and inability to access certain protections, laws, or resources. Research has found that batterers often deliberately manipulate their spouse's immigration status as a further tool of abuse, in some cases withholding the immigration status their spouse is entitled to by refusing to petition on their behalf or reporting their spouse's undocumented status to authorities, using threats of deportation as a tool to prevent or punish attempts to leave the relationship. ANITA RAJ & JAY SILVERMAN, *Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367 (2002); Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf>; MICHELLE J. ANDERSON, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401 (1993); JOHNSON & FERRARO, *supra*, at 955.

This problem is so widespread, in fact, that it prompted Congress to pass the Violence Against Women Act of 1994 ("VAWA"), which included provisions to protect immigrant women from the use of their immigration status as a tool to further their abuse. The passage of VAWA was expressly predicated on the finding that "[d]omestic battery problems can become terribly exacerbated in marriages

where one spouse is not a citizen, and the non-citizen's legal status depends on his or her marriage to the abuser." H.R. REP. NO 103-395 (1994). Congress has also acknowledged that "abusers of undocumented immigrants often exploit the victim's immigration status, leaving the victim afraid to report the abuse to law enforcement and fearful of assisting with the investigation and prosecution of associated crimes." S. REP. NO. 112-153 at 12 (2012).

As one court noted, "[a]n estimated 70% of abusive U.S. citizen spouses . . . withhold the filing of the proper paperwork necessary to validate the legal status of their immigrant female partners to cause them to fall out of legal status and to hold the threat of jail or deportation over the woman." *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1361 (N.D. Ga. 2007); see also GISELLE AGUILAR HASS, NAWAL AMMAR & LESLYE ORLOFF, *Battered Immigrants and U.S. Citizen Spouses* 4-5, April 24, 2006. Indeed, "even for documented women, the threat of deportation is powerful enough to prevent them from leaving." EDNA EREZ & CAROLYN HARTLEY, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4 WESTERN CRIMINOLOGY R. 155, 158 (2003).⁴

⁴ Batterers also exploit their victim's immigration status in custody disputes, arguing that lack of legal status should preclude an award of custody. L. Orloff, et. al., *Countering Abuser's Attempts to Raise Immigration Status of the Victim in Custody Cases*, in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2004), available at

II. Manipulation of immigration status and other tactics of coercive control are dangerous to the health and wellbeing of victims and their children.

Domestic violence causes extensive harm to women and their children, above and beyond obvious physical injury, including exacerbated medical conditions and a heightened risk of illness. ANN COKER ET AL., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 24 AM. J. OF PREVENTATIVE MED. 260 (2002). Psychological consequences encompass a dramatically heightened risk of post-traumatic stress disorder and other maladies. A 1999 survey of the literature found that between 31 and 84.4 percent of battered women suffered from post-traumatic stress disorder. MARY A. DUTTON, *Pathways Linking Intimate Partner Violence and Posttraumatic Disorder*, TRAUMA, VIOLENCE & ABUSE, July 2009, at 211, 212. Indeed, psychological abuse in the form of control and domination – the pattern of coercive control – is closely associated with the poor health outcomes stemming from intimate partner violence. MARY A. DUTTON & LISA A. GOODMAN, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 753 (2005).

The manipulation of a victim's immigration status is closely associated with particularly dangerous forms of domestic violence involving physical and sexual

http://www.legalmomentum.org/assets/pdfs/www6_1_immigration_status_of_the_victim_in_custody_cases.pdf.

abuse. MARY A. DUTTON, LESLYE E. ORLOFF & GISELLE AGUILAR 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 (2000). As a result, married immigrant women face a substantially higher risk of sexual and physical abuse than the general population. *Id.* at 259. Immigrant women are also more likely to be murdered by their intimate partners. See NEW CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, FEMICIDE IN NEW YORK CITY: 1995-2002 (2004), available at <http://www.ci.nyc.ny.us/html/doh/html/public/press04/pr145-1022.html>.

Children are particularly vulnerable in domestic violence environments. Congress has found that “children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent.” H.R. Con. Res. 172, 101st Cong. (1990). A 1999 review of the social science literature concluded that child abuse occurs in 30 percent to 60 percent of families where intimate partner abuse occurs. JEFFREY L. EDLESON, ET AL., *The Overlap Between Child Maltreatment and Woman Battering*, 5 (2) J. VIOLENCE AGAINST WOMEN 134 (1999). This study found approval with the Eastern District in *Elyashiv v. Elyashiv*, 353 F. Supp. 2d 394, 408 (E.D.N.Y. 2005).

Even if child abuse does not occur while the parents are together, children of battered women are at heightened risk of child abuse following the parent's

separation. A batterer may become particularly inclined to hurt children following separation “because he no longer has access to their mother and he hopes to coerce her to return through his violent actions.” V. PUALANI ENOS, *Prosecuting Battered Mothers: State Laws’ Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN’S L.J. 229, 235 (1996). Batterers may also find other ways to use their children to intimidate their victims following separation, without concern for the wellbeing of the child. BANCROFT & SILVERMAN, *supra*, at 153.

Children suffer significant harm as a consequence of witnessing domestic violence. A 1999 meta-analysis of thirty-one studies concluded that “child witnesses of domestic violence exhibit a host of behavioral and emotional problems, when compared to other children.” JEFFREY L. EDLESON, *Children’s Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 846 (1999). Witnessing abuse places children “at serious risk of behavioral disturbance, poor academic performance, child abuse, and repeating the cycle of violence by becoming future perpetrators or victims of intimate partner violence.” MARY A. KERNIC ET. AL., *Children in the Crossfire*, 11 VIOLENCE AGAINST WOMEN 991, 993 (2005). Children witnessing domestic violence also tend to exhibit symptoms of post-traumatic stress disorder and face a “higher risk for suicide, substance abuse and crime.” ROBERT B. STRAUSS, *Supervised Visitation and Family Violence*, 29 FAM. L.Q. 229, 239 (1995). Lack of legal status and anxieties resulting from that

insecurity are associated with harmful health outcomes for children. Shawn Kanaiaupuni, *Child Well-Being and the Intergenerational Effects of Undocumented Immigrant Status* (Institute for Research on Poverty Discussion Paper no. 1210-00) at 28 (June 2000). In particular, fear of having a loved one deported places children at greater risk of poor health outcomes. *Id.*, at 29. It follows from this research that threats of deportation by an abusive parent would likely have an even stronger negative impact. When domestic violence is involved, formal deportation, its permanence, and unpredictability would certainly have an even more dramatic negative effect than a normal separation. *See Nicholson v. Williams*, 203 F. Supp. 2d 153, 199 (E.D.N.Y. 2002) (crediting expert witness testimony that “children exposed to domestic violence are at a significantly above-normal risk of suffering separation anxiety disorder if separated from their mother” so that such separation “is tantamount to pouring salt on an open wound.”)

III. The District Court failed to properly assess the allegations of domestic violence.

While the District Court heard evidence on domestic violence and the well-established body of knowledge concerning patterns of power and control by abusers, it did not apply these principles to the case on the grounds that Petitioner was not “an obsessed or jilted lover who seeks to be reunited with respondent” and thus did not pose a threat to Ms. Lee or the child. (Order at 18). Far from suggesting that the dangers of abusive behavior are confined to “jilted lovers

seeking to be reunited,” prevailing authority establishes that the opposite is true. In fact, abusive behavior is likely to escalate following separation. LAURA DUGAN, DANIEL S. NAGIN, & RICHARD ROSENFELD, *Do Domestic Violence Services Save Lives?*, 250 NAT’L INST. JUST. J. 20, 20-25 (2003); P. Tjaden & N. Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey* (2000).

Indeed, the record contains ample evidence of abuse by Petitioner after Ms. Lee left the family household. (Trial Tr. at 825-26; 563-65; 584-92; 626-37; 828-831; JA-12; JA-15; JA-17; JA-21; JA-119; JA-134).

In failing to apply the prevailing authority on domestic violence, the District Court viewed facts in isolation, subject to minimization and explanation, and failed to recognize the distinctive and dangerous pattern of domestic violence at play. Accordingly, despite finding that Petitioner committed acts of violence against Ms. Lee in the presence of the child (Order at 14, 15), and that Petitioner filed false police reports against Ms. Lee (Order at 15),⁵ the District Court looked at the issue of the Iranian passports in isolation and not as yet another form of coercion and control. The Court made no effort to explain who, if not Petitioner, lodged a

⁵ On April 29, 2011, Ms. Lee commenced an ex parte custody proceeding in the Singapore Family Court, and on May 25, 2011, Ms. Lee took her son and left the family home. (Trial Tr. at 547-48; 555; 824). Petitioner then filed a police report falsely alleging that Ms. Lee ransacked the house, attacked him with a knife and chopper, and dislocated the subject child’s arm. (Order at 15).

complaint regarding Ms. Lee's dual citizenship with the Malaysian High Commission. The Court made no effort to explain why Ms. Lee would apply for an Iranian national card one month after leaving the family home. Nor did the Court address why Ms. Lee would go to Malaysian authorities out of concern for her citizenship unless these actions had been taken without her consent. The Court *did* find that Petitioner wished to take the child to Iran, but inexplicably found that of no moment.

But this was not the District Court's sole or gravest error. Fatal to any appropriate consideration of Ms. Lee's defense in the proceedings below was the District Court's failure to consider the impact of domestic violence and the manipulation of her immigration status on the wellbeing of the child. The District Court only focused on the absence of evidence of direct physical abuse against the child. As described above and as the record fully supports, the literature is clear about the insidious damage caused to children by mere exposure to domestic violence. (Trial Tr. at 1010-1012; EDLESON, *supra*; KERNIC, *supra*; STRAUSS, *supra* at 239). The District Court concluded that there was no such risk to the child here because "there is no credible evidence that petitioner and respondent will ever cohabit again." (Order at 20). As discussed above and supported by the record, this conclusion is simply wrong. (Trial Tr. at 988-989; 1013; ENOS, *supra*, at 235;) BANCROFT & SILVERMAN, *supra*, at 153). Further, the District Court did not

consider Petitioner's efforts concerning the Iranian passports as part of a broader of pattern of abuse, and accordingly did not consider the impact of those efforts on the child. Nor did the District Court give any consideration to the battle over the child's citizenship that appears inevitable on the record, or of its potential impact on the child.

IV. This Court should clarify the proper inquiry into the nature, severity and potential impact of domestic violence as it relates to children in Hague Convention cases.

Given the robust social science literature concerning domestic violence; given that domestic violence is a serious, pervasive and insidious problem that causes great harm; given that the manipulation of immigration status is a part of the pattern of domestic violence; and especially given that domestic violence cuts to the heart of the defense in this Hague Convention case — harm to the child — courts should be required to make a searching inquiry into the nature, severity and potential impact of alleged abuse. And in performing such an inquiry, no court should be permitted to substitute its own concept of domestic violence for credible scientific evidence in the record.⁶ Prevailing authority on the subject of domestic

⁶ Congress has recognized the need for courts to apply the latest scientific evidence on domestic violence: "Some judges and court personnel approach domestic violence cases, whether consciously or unconsciously, with assumptions based not on personal experience or the facts of a particular case but on stereotypes and biases. Judges and court personnel may also lack information about the psychological, economic, and social realities of domestic violence victims." S. REP. NO. 103-138 at 40 (1993).

violence must guide a court's discretion and serve as the special lens through which a court weighs evidence and finds facts. Accordingly, direction from this Court on the proper consideration of domestic violence allegations in Hague Convention cases is not only necessary to address the miscarriage of justice in this case, but is critically important for the many cases that will surely follow.

CONCLUSION

The judgment should be reversed and the Court should hold that allegations of domestic violence and manipulation of immigration status in a Hague Convention case require close consideration consistent with the prevailing authority on domestic violence.

Dated: New York, New York
February 22, 2013

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

William C. Silverman
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
(212) 801-3148
silvermanw@gtlaw.com
Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32

Pursuant to Fed. R. App. P. 32, the undersigned counsel for Appellant certifies that the foregoing amicus brief complies with the type-volume and typeface requirements of Fed. R. App. P. 32(a)(7)(B)(a)(5-6).

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,708, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font on Microsoft Word 2010.