

Supreme Court No. 83060-6
Court of Appeals No. 37098-1-II

SUPREME COURT OF THE STATE OF WASHINGTON

Jazmin E. Muriel,
Petitioner,

v.

Anthony P. Meredith,
Respondent

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

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In re Marriage of:

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Petitioner,

and

ANTHONY P. MEREDITH,

Respondent.

**MOTION FOR LEAVE
TO FILE BRIEF OF
*AMICI CURIAE***

I. RELIEF REQUESTED

The National Network to End Violence Against Immigrant Women, National Immigrant Rights Project, National Association of Women Lawyers, National Partnership for Women & Families, National Asian Pacific American Women's Forum, Jewish Women International, National Council of Jewish Women, and Tahirih Justice Center (collectively, "Movants") request permission to file the attached brief of *amici curiae* in support of Petitioner, Jazmin E. Muriel, pursuant to RAP 10.6. Petitioner consents to the filing of this motion and the attached brief.

II. IDENTITIES OF AMICI CURIAE

National Network to End Violence Against Immigrant Women.

The National Network to End Violence Against Immigrant Women (the “Network”), founded in 1992, is a broad-based coalition of more than 500 organizations and individuals who advocate, provide services, and offer assistance to immigrant victims of domestic violence, sexual assault, and trafficking. The Network is co-chaired by the Family Violence Prevention Fund, Legal Momentum (formerly NOW Legal Defense and Education Fund) and ASISTA Immigration Technical Assistance Project.

The Network’s efforts were instrumental in securing the passage of the Violence Against Women Act in 1994 and its reauthorizations in 2000 and 2005. Ongoing projects include organizing national conferences, providing technical assistance, and training family and immigration lawyers, advocates, justice system personnel (including in the Department of Homeland Security), government workers, and healthcare providers on the legal rights of immigrant survivors of domestic violence, sexual assault, and trafficking.

Northwest Immigrant Rights Project.

Northwest Immigrant Rights Project (“NWIRP”) is a non-profit legal organization dedicated to the defense and advancement of the rights of noncitizens in the United States. NWIRP provides direct representation

to low-income immigrants in Washington State who are applying for immigration and naturalization benefits. NWIRP also provides direct representation to low income immigrants placed in removal (deportation) proceedings. NWIRP focuses much of its resources in providing representation for victims of domestic violence and other victims of violent crimes who are in removal proceedings or qualify for immigration benefits under the Violence Against Women Acts of 1994 and 2000. As such, NWIRP has a direct interest in the issues of this case.

National Association of Women Lawyers.

The National Association of Women Lawyers (“NAWL”), founded in 1899, is the oldest women’s bar association in the country. NAWL is a national voluntary organization with members in all 50 states devoted to the interests of women lawyers, as well as all women. Through its members, committees and the Women’s Law Journal, it provides a collective voice in the bar, courts, Congress, and the workplace. Through its amicus work, NAWL has been a strong and clear voice for an end to domestic violence. It has an interest in protecting all women from abuse—particularly immigrant women, who are especially vulnerable in our culture.

National Partnership for Women & Families.

The National Partnership for Women & Families (the “National Partnership”) is a national, non-partisan nonprofit advocacy organization committed to promoting equal opportunity for women, quality health care, and policies that help women and men meet both work and family responsibilities. The National Partnership has devoted significant resources to combating sex, race and other forms of invidious discrimination in order to insure equal opportunity for all. The National Partnership is a strong supporter of the goals of the Violence Against Women Act and other legislative efforts to help victims of domestic violence.

National Asian Pacific American Women’s Forum.

The National Asian Pacific American Women’s Forum (“NAPAWF”), established in 1996, is the only national, multi-issue Asian & Pacific Islander (“API”) women’s organization in the country. NAPAWF’s mission is to build a movement to advance social justice and human rights for API women and girls through policy advocacy, community organizing and public education. One of the NAPAWF’s focus areas includes ending violence against women by raising the public and API community’s awareness and establishing zero tolerance for all forms of violence. NAPAWF believes in the preservation and expansion

of economic and legal protection for refugee/immigrant API women and girls regardless of citizenship status.

Jewish Women International.

Jewish Women International (“JWI”), founded as Bnai Brith Women in 1897, is recognized as the leading Jewish organization committed to ending the cycle of family violence and to ensuring that women and children are safe in their homes and relationships. Today, JWI’s 75,000 members, supporters, and partners work in more than 100 communities across the United States. In partnership with the most influential Jewish, interfaith and secular organizations and individuals working in anti-violence initiatives, JWI facilitates local and national task forces, engages in advocacy, and provides programs, training, education, technical assistance, and resources to diverse and typically underserved communities and programs. Some examples of JWI’s work include its founding and leadership of the Interfaith Domestic Violence Coalition, a group of more than 25 national organizations representing diverse faiths advocating for national legislation protecting women and children experiencing abuse, the National Alliance to End Domestic Abuse, providing training to thousands of advocates and professionals via monthly teleconferences, JWI’s bi-annual international conferences on domestic abuse, its NGO status at the United Nations where it monitors

issues affecting women and children, JWI's prevention programs teaching teens and educators about healthy relationships and dating abuse, and its National Library Initiative, which places children's libraries in battered women's shelters. JWI understands that immigrant women who are victims of domestic abuse are particularly at risk. JWI is a Jewish women's organization and the immigrant experience is part of the family histories of its members. JWI is deeply invested in ensuring the protection of vulnerable victims of abuse.

National Council of Jewish Women.

The National Council of Jewish Women (the "NCJW") is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideas into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families, and by safeguarding individual rights and freedoms. Petitioner's position is consistent with NCJW's Resolutions, which state that the organization endorses and resolves to work for the "elimination of, and protection from, all forms of harassment, violence, abuse, and exploitation against women."

Tahirih Justice Center.

The Tahirih Justice Center is a pro bono legal advocacy organization representing women and girls who are fleeing human rights

abuses, including domestic violence. Tahirih engages in direct litigation, public policy advocacy, and education and outreach to ensure systemic change that protects women and girls from violence. Over the past ten years, through direct services and referrals, Tahirih has assisted over 7,500 women and children fleeing gender-based violence.

III. INTERESTS OF AMICI

Movants are concerned that the Court of Appeals' decision in *In re Marriage of Meredith*, 148 Wn. App. 887 (2009), errs in holding unconstitutional provisions of protection-from-abuse orders preventing abusers from contacting government agencies regarding their victims' immigration status, and in so doing permits batterers to use immigration status as a tool of ongoing abuse against their immigrant victims. Courts across the country exercise their discretion under state statutes to craft protection order provisions designed to stop each specific abuser's abuse, harassment, and control over his victim. Protection orders can include provisions that the abuser not contact a range of government agencies including but not limited to the Internal Revenue Service, child protective services, welfare agencies and the Department of Homeland Security. *Meredith* could undermine the issuance of these much needed protections.

Meredith also has the potential to create a chilling effect preventing immigrant victims of domestic violence from seeking

protection orders against their abusers for fear of deportation initiated by their abusers' reports to authorities.

IV. FAMILIARITY WITH ISSUES

The Movants include some of the foremost authorities on domestic violence and immigration issues. They include organizations and individuals who provide direct services to immigrant victims of domestic violence, act as legal advocates on behalf of this vulnerable population, train and educate professionals on domestic violence and immigration-related abuse, and advocate on community and national levels for stronger legal protection for victims of violence. Members of the Movant organizations have conducted extensive research into the prevalence and effects of domestic violence in immigrant communities in the United States and have been instrumental in the passage of the Violence Against Women Act and its reauthorizations. As a result of this expertise and experience, the Movants are uniquely qualified to speak to the need for tailored protections against immigration-related violence in domestic violence protection orders.

V. SPECIFIC ISSUES TO BE ADDRESSED

The brief of *Amici* will discuss (1) the prevalence of immigration-related domestic violence in United States immigrant communities as established through recent social science research, (2) the Violence

Against Women Act's confidentiality provisions and lawmakers' recognition that threats of and attempts at deportation are a primary means by which abusive partners control their immigrant victims, and (3) the need for creative, tailored protection order provisions to address immigration-related abuse.

VI. NEED FOR ADDITIONAL ARGUMENT

Movants believe their expertise and experience in the particular area of immigration-related domestic violence will assist the Court in deciding whether to accept Petitioner's petition for review. *Meredith* is a case about First Amendment rights. But a well-reasoned decision on this case requires an examination of the equally important competing rights of a victim of domestic violence to obtain enforceable protection from ongoing abuse, harassment, threats, and harm, including immigration-related abuse. Movants are uniquely positioned to advise the court on immigration-related domestic violence issues and respectfully request the Court grant them leave to file the attached brief of *amici curiae* in support of Petitioner, Jazmin E. Muriel.

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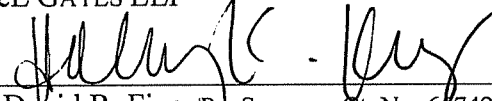
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Respectfully submitted this 17th day of July, 2009.

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**BRIEF OF AMICI CURIAE
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I. INTRODUCTION

The issue of whether Washington courts may, by way of specifically tailored protection-order provisions, prevent batterers from abusing their victims through immigration-related abuse, threats and harassment, presents a question of substantial public interest that should be decided by the Washington Supreme Court. *See* RAP 13.4(b)(4). Threats of and attempts at deportation are prevalent forms of abusive conduct, the isolating and harmful effects of which are well documented in both social-science research and existing federal law. Since the viability of tailored protection-order provisions preventing immigration-related abuse has direct impact on one of Washington State's most vulnerable

populations,¹ *Amici* respectfully urge the Court to accept review of *In re Marriage of Meredith*, 148 Wn. App. 887 (2009).

II. IDENTITIES AND INTERESTS OF AMICI

The identities and interests of *Amici* are set forth in *Amici*'s motion to file brief of *amici curiae*, which *Amici* are filing contemporaneously with this brief.

III. STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in Petitioner's petition for review.

IV. ARGUMENT

A. Threats of and Attempts at Deportation are a Recognized Form of Domestic Abuse and Constitute Controlling and Abusive Conduct.

1. Social-Science Research Makes Clear that Immigration-Related Violence Is a Significant Threat to Immigrant Women.

A batterer's ability to threaten his victim's immigration status is a powerful tool of control and isolation whether used alone or in conjunction with physical, sexual or other psychological abuse. *See Anita Raj, et al., Immigration Policies Increase South Asian Immigrant Women's Vulnerability to Intimate Partner Violence*, 60 J. AM. MED. WOMEN'S ASS'N 27 (2005). Immigrant women living in the United States face a number of obstacles, which may include undocumented status, language

¹ In 2000, 10.4 per cent of people living in Washington State were foreign born (both legal and illegal) immigrants. U.S. Census Bureau, 2000 Census Bureau, 2000 Census (Washington), available at <http://quickfacts.census.gov/qfd/states/53000.html> (July 8, 2009).

difficulties, lack of information about resources and fear of legal systems. See Giselle Aguilar Hass, Mary Ann Dutton & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 94 (AB Academic 2000) (“Hass”). These obstacles combine with batterers’ ability to threaten the immigration status of their victims to put countless immigrant women in the position of choosing between the risk of deportation and that of ongoing, escalating abuse. See *id.* at 105.

Immigration-related abuse is prevalent. Research has found that the incidence of intimate-partner violence among immigrant populations is 30-50 per cent. See Anita Raj & Jay Silverman, *The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367, 367 (2002). A 2003 nationwide National Institutes of Justice funded study found that 65 per cent of the battered immigrant women interviewed reported such threats. See E. Erez & N. Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study*, Nat’l Institutes of Justice Report Grant No. 98-WT-VX-0030 (2003). A nationwide cross-cultural study of immigrant victims eligible to seek protection orders found that 51 per cent reported that their abusers had turned them in to immigration authorities or sometimes (11.3 per cent), often (10.6 per cent), or very often (29.1 per cent) threatened to do so. Mary Ann Dutton, et al., *Use and Outcomes of*

Protection Orders by Battered Immigrant Women, Nat'l Institutes of Justice Report Grant No. 2003-WG-BX-1004 (2006). This research also found that when protection orders obtained by immigrant women were violated, the second most frequent form of violation was immigration-related abuse, including threats of deportation (68.3 per cent). *Id.*

Immigration-related abuse is powerful. Both in terms of immigration status and psychological entrapment, immigration-related abuse has real, detrimental effects on its victims. Studies have found that, when abusers control the immigration status of a victim spouse, almost three-quarters never file immigration papers on behalf of the immigrant victim spouse. When immigration papers are filed, the mean period of delay is almost four years. *See* Mary Ann 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. POVERTY L. & POL'Y 245, 292 (2002). Nearly 22 per cent of study participants reported that fear of being reported to immigration authorities kept them from leaving abusive relationships. *Id.* at 293. Fear of deportation was rated as the first or second most intimidating factor that kept battered immigrant women from seeking social services. *Id.*

The presence of immigration-related violence has also been found to signal underlying physical and sexual abuse and to combine with threats

to kill, threats to hurt children or take children away, and threats to take money in ways that directly undermine the ability of battered immigrant women to succeed in fleeing abuse. *See* Hass, at 107-08

2. Congress Enacted VAWA Confidentiality Provisions to Deter Immigration Abuse Related to a Batterer's Communications to DHS.

Federal law recognizes that immigration-related violence is a widespread threat. Congress enacted the 1994 Violence Against Women Act (and subsequent reauthorizations) ("VAWA") for the explicit purpose of "deter[ing] and punish[ing] violent crimes against women," including specifically violence against immigrant women. *See* Violence Against Women Act of 1993, Summary and Purpose, H.R. Rep. No. 103-395, at 25. Based on findings that "[m]any immigrant women live trapped and isolated in violent homes . . . They fear continued abuse if they stay with their batterers and deportation if they attempt to leave," VAWA sought to enact protections that would permit "battered immigrant women to leave their batterers without fearing deportation." *Id.* To this end, VAWA 1994 allowed victims of abuse to self-petition for legal-immigration status and lawful permanent residency and created cancellation of removal relief to assist battered immigrant women and children in deportation proceedings. *See* Immigration and Nationality Act §§ 101(a)(51); 240A(b)(2), 8 U.S.C. §§ 1101(a)(51); 1229b(b)(2) (as codified by 2005 reauthorization). VAWA reauthorizations since 1994 have expanded on these protections.

See generally, e.g., Violence Against Women and Dep't of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 STAT. 2960 (2005).

VAWA demonstrates Congress' recognition that a batterer's communications to immigration agencies about his victim's immigration status can and frequently does constitute abusive conduct. Under VAWA confidentiality provisions, the Department of Homeland Security, State Department, and Department of Justice may not rely upon information provided by an abuser, crime perpetrator, or his family members in a case against or for a benefit of his victim. *See* Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA") § 384, 8 U.S.C. § 1367. These confidentiality provisions also created protections against disclosure of information by the government regarding the victim and prohibitions against enforcement actions being taken at protected locations (shelters, courthouses, rape crisis centers). *See id.* In support of these provisions, then-Representative Patricia Schroeder explained that "[g]iving the abuser the ability to influence the [DHS] gives the abuser control over the victim's status. Decisions affecting a battered woman's immigration status shouldn't be based on statements of the abuser." Hearing on H.R. 2202 before the House Judiciary Committee, 104th Cong. (Sept. 19, 1995). In his remarks on VAWA's 2005 reauthorization, Representative John Conyers, Jr. emphasized that "[t]hreats of deportation are the potent tool abusers of immigrant victims use to maintain control over and silence

their victims and to avoid criminal prosecution” and that “[VAWA’s] provisions are designed to ensure abusers and criminals cannot use the immigration system against their victims . . . includ[ing] using DHS to obtain information about their victims . . . interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement offices to pursue removal actions against their victims.” Hon. John Conyers, Jr., Dep’t of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009, Extensions of Remarks E2606-07 (December 18, 2005).

Thus, federal law, through VAWA, recognizes that a known batterer’s communications to DHS about his victim’s immigration status constitute abusive conduct that should not be given any legal value.² The Court of Appeals’ decision in *Meredith* stands in sharp contrast to this view in ruling that Mr. Meredith’s calls to DHS about Ms. Muriel’s status are protected speech. *See Meredith*, 148 Wn. App. at 887. VAWA’s provisions support the conclusion that a civil-protection order’s injunction on communication with DHS on the part of a recognized batterer is a prohibition on abusive conduct rather than a prior restraint on protected

² Congress has also recognized that threats from abusers can prevent victims of domestic violence from accessing the justice system. Congress created a special visa to encourage such individuals to come forward. The U-visa” allows victims of domestic violence to obtain temporary non-immigrant visas and to later apply for adjustment to lawful permanent resident status. 8 U.S.C. § 1101(a)(15)(U).

speech and is a valid tool to prevent use of the U.S. immigration system to harm victims of abuse.

B. Availability of Creative, Tailored Protection-Order Provisions Is Essential to Combat Immigration-Related Abuse.

Effective, enforceable, civil-protection orders are an essential vehicle for protection of battered individuals from their abusers. This is especially true in the case of immigration-related abuse as VAWA confidentiality has not been fully implemented and does not by itself offer sufficient protection to victims. Protection order provisions ordering abusers not to contact DHS provide a state court remedy enforceable against abusers that works in tandem with federal VAWA confidentiality laws to stop immigration related abuse.

Because domestic abuse can take many forms and the tactics of abusers can morph to fit the particular behaviors and coping mechanisms of their victims, statutes authorizing the issuance of civil-protection orders recognize that they are most effective when tailored to the individual needs of the particular victim. See Leslye E. Orloff, et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 321 (1995). Protection orders are available in all 50 states, Puerto Rico, the District of Columbia and all U.S. territories. Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J.L. & FAM. STUD. 35, 38 n.16 (2008).

Most state domestic abuse statutes contain catch-all provisions (e.g., RCW 26.50.060(1)(f)) granting courts wide discretion in crafting provisions that meet the needs of the victim in the particular case. *Id.*

Civil-protection orders can only be truly effective if courts are able to use catch-all and statutory provisions to craft tailored relief. In the case of immigration-related violence, the court's ability to enjoin a batterer from persisting in abusive threats or attempts to communicate with immigration agencies and affect his victim's immigration status is essential to combat this specific, prevalent and powerful threat to vulnerable immigrant victims of domestic violence. The Court of Appeals' decision in *Meredith* removes the trial courts' power to use a tailored protection-order provision, its most effective tool, to combat this threat. Given its potential to deprive courts of an essential tool in combating abuse directed at immigrant women, the *Meredith* decision works a significant and concerning shift in the law. Such a troubling sea change in the law should not occur without review by this Court.

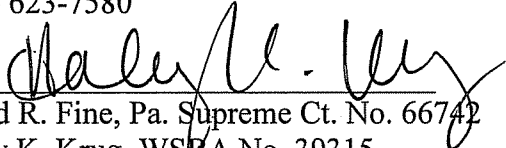
V. CONCLUSION

For the foregoing reasons, *Amici* respectfully request the Court grant Petitioner Jazmin E. Muriel's petition for review of *In re Marriage of Meredith*, 148 Wn. App. 887 (2009).

DATED this 17th day of July, 2009.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am over 18 years of age and work for the law office of K&L Gates, LLP.

On July 17, 2009, I caused to be served a true and correct copy of the National Network to End Violence Against Immigrant Women, et al's Motion for Leave to File Brief of *Amici Curiae*, together with attachments, on the following via first class regular U.S. mail:

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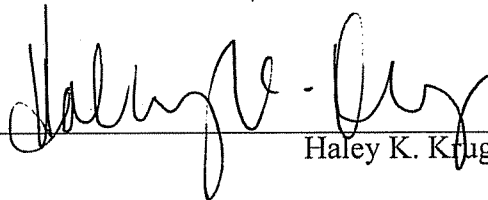
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