

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-08636

JANE DOE, ET AL.,

Appellants,

v.

CLAIRE MCINTIRE, COMMISSIONER OF
THE DEPARTMENT OF TRANSITIONAL ASSISTANCE,

Appellee.

ON APPEAL FROM A JUDGMENT AND ORDER
OF THE SUPERIOR COURT

BRIEF OF AMICI CURIAE
JANE DOE, INC. AND THE MASSACHUSETTS
IMMIGRANT AND REFUGEE ADVOCACY COALITION

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Introduction

Plaintiffs-Appellants Jane Doe and Yocasty Bruno challenge on state and federal constitutional grounds the validity of St. 1997, c. 43, § 210, which denies state-funded cash assistance benefits to legal permanent residents of the United States who have not lived in Massachusetts for more than six months at the time of their application for such benefits. Amici **NOW Legal Defense and Education Fund**, Jane Doe, Inc. ("Jane Doe") and the Massachusetts Immigrant and Refugee Advocacy Coalition ("MIRA") subscribe fully to the legal arguments advanced by Doe and Bruno in their brief on appeal (hereafter "Doe Brief") and join Doe and Bruno in seeking reversal of the Trial Court's erroneous ruling that the statute in question passes constitutional muster. Amici do not propose to duplicate the substance of the Doe Brief but submit this brief in order to provide this Court with an additional perspective on the consequences of this unconstitutional legislation for some of the most vulnerable residents of the Commonwealth: battered immigrant

women who come to Massachusetts in order to escape from abusive relationships.

Identity of Amici Curiae

NOW Legal Defense and Education Fund ("NOW Legal Defense") is the leading national civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW Legal Defense was founded as an independent organization in 1970 by leaders of the National Organization for Women. NOW Legal Defense has been engaged on many fronts in efforts to eliminate gender-motivated violence. Most notably, NOW Legal Defense chaired the national task force that was instrumental in passing the historic Violence Against Women Act ("VAWA") and maintains a national legal clearinghouse that tracks legal developments under VAWA. Furthermore, NOW Legal Defense's Immigrant Women Program ("IWP") is actively involved in policy efforts to promote greater legal protections for battered immigrant women. IWP co-chairs the National Network on Behalf of Battered Immigrant Women, with over 400 member organizations nationwide, and is responsible for the Network's Washington-based

advocacy efforts to enhance legal protections and access to public benefits and services for battered immigrant women and their children. In this capacity IWP staff led the effort to draft federal legislation securing immigration protection and access to federal and state funded public benefits for battered immigrant victims of domestic violence. IWP's work to further access for battered immigrants to the full range of service battered immigrants need to escape abuse has included drafting a training manual for state TANF workers on working with immigrant victims of domestic violence and conducting numerous training for advocates, attorneys and government employees. NOW Legal Defense has participated as *amicus curiae* in numerous cases in support of the rights of women who have been the victims of sexual assault, domestic violence and other gender-motivated violence.

Jane Doe, formerly known as the Massachusetts Coalition of Battered Women Service Groups, is a membership organization including thirty-two battered women's programs across the Commonwealth of Massachusetts. The mission of Jane Doe is to advocate for battered women and their children by creating an

integrated community response to domestic violence through identification, safety planning, intervention and education. Each year, Jane Doe member programs serve several thousand women and children in emergency shelters and provide counseling to thousands more. Many of the women served by Jane Doe member programs are immigrants who, like plaintiff Jane Doe, are legal permanent residents of the United States and have come to Massachusetts to escape abusive relationships. Jane Doe has previously filed amicus briefs on matters relating to domestic violence and laws affecting victims of domestic violence.

MIRA is a non-profit, multi-ethnic and multi-racial coalition that unites more than one hundred forty immigrant organizations, human services agencies, labor unions, religious organizations and other groups in Massachusetts that are concerned about the rights and welfare of immigrants and refugees. Since its formation in 1987, MIRA has played a key role in policy advocacy and educational programs aimed at eradicating barriers that prevent immigrants and refugees from fair access to benefits such as state cash assistance for needy families. MIRA members include numerous agencies and organizations that

provide social and legal services, as well as other assistance to battered immigrant women. MIRA has previously filed amicus briefs in cases that affect the rights and welfare of immigrants and refugees.

Statement of Interest

This appeal raises an issue of critical importance to a specific group of victims of domestic violence -- battered immigrant women who are legal permanent residents of the United States, but who have not yet lived in Massachusetts for six months. By denying these victims emergency subsistence cash benefits to which they previously were entitled, and which the Commonwealth provides to United States citizens who have not resided in Massachusetts for more than six months, the Commonwealth does more than simply violate their constitutional rights to equal protection of the law; it also places an extraordinarily heavy burden upon some of the most vulnerable members of society at precisely the moment when they are at greatest risk. By increasing the barriers that confront this group of women who are seeking to escape from abusive relationships, moreover, the Commonwealth effectively hampers and denies them many other statutory protections that it

purports to extend to all victims of domestic violence.

For battered women to successfully bring an end to their abusive relationship they must be able to find a way to survive economically while they transition away from financial dependence on their abusive partner.¹ This is particularly true of battered immigrant women whose ability to survive economically is often tied to an abuser with more stable legal immigration status.² When battered immigrant women and their children are cut off from the ability to survive economically when they flee abuse, the help offered them through the legal relief offered in a protection order or in a criminal prosecution of the abuser and the protections offered by shelter and domestic violence services are undermined.

As indicated in the description of Amici, each has strong interests in the outcome of this appeal.

¹ Chris M. Sullivan et. al., *After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 VIOLENCE AND VICTIMS 267, 270-273 (1992)

² Leslye Orloff, *Lifesaving Welfare Safety Net Access For Battered Immigrant Women and Children: Accomplishments and Next Steps*, Vol. 7 Issue 3, WM. & MARY J. WOMEN & L. 597, 608-612, 614-620 (2001).

By reason of their experience in protecting and advancing the interests of battered immigrant women, Amici can provide a valuable perspective on the consequences of St. 1997, c. 43, § 210(c)(3) on this particularly vulnerable population.

Statement of Issue Presented for Review

Amici adopt the Statement of the Issue set forth at page 1 of the Doe Brief.

Statement of the Case

Amici adopt the statement of prior proceedings, statement of facts and explanation of the Superior Court's decisions set forth at pages 1 - 14 of the Doe Brief.

Argument

THE IMPOSITION OF A DURATIONAL RESIDENCY REQUIREMENT ON THE AVAILABILITY OF EMERGENCY ASSISTANCE TO IMMIGRANTS WHO ARE VICTIMS OF DOMESTIC VIOLENCE PLACES A SEVERE AND UNJUSTIFIABLE CONSTRAINT UPON THEIR ABILITY TO ESCAPE FROM ABUSIVE RELATIONSHIPS.

The Commonwealth of Massachusetts has a demonstrated commitment to protecting victims of domestic violence. Article I of the state's Declaration of Rights includes among the "natural, essential and unalienable rights" of all people in Massachusetts "that of seeking and obtaining their

safety." [cite] In legislation such as G.L. c. 209A and in its judicial decisions, moreover, the Commonwealth has affirmed the "basic human right, the most basic condition of civilized society: the right to live in physical security, free from the fear that brute force will determine the conditions of one's daily life." Opinion of the Justices, 427 Mass. 1201, 1206 (1998) (quoting Custody of Vaughn, 422 Mass. 590, 595 (1996)). As this Court recently confirmed in Champagne v. Champagne, 429 Mass. 324, 328 (1999), it is the policy of the Commonwealth to preserve "the fundamental human right to be protected from the devastating impact of family violence."³

³ This court's and the State of Massachusetts' findings that domestic violence is a human rights issue is consistent with evolving international and national recognition that violence against women is a "human rights concern with a profound impact on the physical and mental well-being of those affected by it." Lori L. Heise, Jacqueline Pitanguy and Adrienne Germain, *Violence Against Women: The Hidden Health Burden*, 255 WORLD BANK DISCUSSION PAPERS vii (1994). The United States confirmed its recognition of domestic violence as a human rights issue by signing on to the Beijing Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing China September 15, 1995. See, Barbara Stark, *Domestic Violence and International Law: Good-bye Earl (Hans, Pedro, Gen, Cho. Etc.)* 47 LOYOLA L. Rev. 255, 262-280 (Spring 2001).

Language such as that quoted above is nothing more than rhetoric, however, to those Massachusetts residents who have arrived here without family or other local support network, without jobs, often without **full fluency in the English language**, and without the economic means to support themselves and their children independent of the abusive relationships from which they are trying to escape. By enacting St. 1997, c. 43, § 210, the Commonwealth has placed before these women and their children yet another barrier -- one that is as formidable as any imposed by the batterers who have controlled the lives of these women and children through violence and fear. **Cutting off access to the life saving welfare safety net deprives battered immigrant lawful permanent residents who have fled to Massachusetts seeking safety of any ability to transition away from dependence upon their abusers and to move toward a life of safety and economic stability for themselves and their children.**

While few in number, legal permanent residents like Jane Doe, who have come to Massachusetts to escape domestic violence, are at once the most vulnerable residents of the Commonwealth and the least

able to help themselves during the critical period following separation from their abusers. Without access to the emergency financial assistance to which they were entitled prior to 1997 and that the Commonwealth offers without any waiting period to United States citizens who relocate to Massachusetts for similar reasons, these women and their children may be forced to relinquish any hope of freedom from dependence on their batterers and will be forced by economics to return to the very abusive relationships from which they thought they had escaped.

A. The Unquestioned Need to Physically Distance Victims of Domestic Violence From Their Abusers Depends On Timely Access to Financial Resources.

As this Court has recognized, protection against actual and threatened violence at the hands of a batterer requires at a bare minimum the physical separation of victim and abuser. See, e.g., Champagne v. Champagne, 429 Mass. at 327, n.2 (citing the risk of harm to the abused party inherent in repeated court appearances to extend protective orders).⁴ The

⁴ According to a National Violence Against Women Survey conducted by the U.S. Department of Justice, 22.1% of women have reported physical assault by an intimate partner. PATRICIA TJADEN AND NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT NATURE AND CONSEQUENCES

Legislature, in Sections 3 and 7 of Chapter 209A, and the Trial Court in its Guidelines for Judicial Practice: Abuse Prevention Proceedings, Commentary to Guideline 4:01 (December, 2000), also have confirmed that physical separation is critical to providing "a true haven from abuse." Commonwealth v. Gordon, 407 Mass. 340, 347 (1990).⁵ Thus, protective orders issued

OF INTIMATE PARTNER VIOLENCE, at 11(2000). It is estimated that between three and four million women each year are battered by husbands, partners and boyfriends. Domestic Violence: Not Just A Family Matter: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103rd Con., 2nd Sess. (June 30, 1994) (statement of Sen. Joseph Biden, Jr.); Joan Zorza, Women Battering: High Costs and the State of the Law, 28 Clearinghouse Rev. 383, 386 (1994). Half of these women are beaten severely and in 30 percent of the domestic violence incidents reported, assailants use weapons. Zorza, supra at 386. In the United States, 31.5 percent of women killed are murdered by their husbands. Id. at 387. In Massachusetts, during calendar year 2000, nineteen women were killed as a result of domestic violence. Editorial, The Boston Globe, Dec. 31, 2000, p. D6. That number has varied in recent years, with a high of 49 in 1995. Id. A study in Philadelphia showed that one quarter of women killed by their partners were killed while trying to separate. TESTIMONY OF THE PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, Task force on Child Abuse and Neglect, Harrisburg, PA, April 2000. The U.S. Department of Justice has reported that more than one in three women who seek care in emergency rooms for violence-related injuries are domestic violence victims. Health Care Response to Domestic Violence Fact Sheet, FAMILY VIOLENCE PREVENTION FUND, at <http://www.fvpf.or/health/facts/html>.

⁵ In the Commentary to its Guidelines for Judicial Practice, supra, the Trial Court explicitly directs

by the trial courts of the Commonwealth typically restrict abusers from approaching the home and work place of their victims and specify a particular geographic distance from the victim that must be observed by each batterer on pain of criminal prosecution.⁶ These restraining orders are entered after hearings at which trial court judges have the opportunity to assess the risks posed to victims of domestic violence by those upon whom they once relied for love and security.

In order to escape the control and intimidation inherent in abusive relationships, victims of domestic violence often must go to great lengths. As the record in this case demonstrates, after leaving the

judges that: "a no-contact order . . . should always include a reasonable distance in yards which the defendant should observe in staying away from the plaintiff . . . or the children." (emphasis supplied).

⁶ Similar stay away provisions are standard in virtually every state's civil protection order statute. Courts across the country routinely order abuser to stay away from the victim's person as well as her home, workplace and a broad range of other locations that the victim may frequent. They also order that the abuser maintain a stated minimum distance from the victim. Catherine Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law* 21 HOFSTRA LAW REVIEW, 807, 918-925 (1993).

household of a man who had repeatedly beat and sexually assaulted her and had caused her to go into premature labor, plaintiff Jane Doe was unable to find safety even in a local domestic violence shelter designed for that very purpose. A:4, ¶¶ 11,13. Indeed, it was the staff of the shelter in Puerto Rico who sent Ms. Doe to Massachusetts after concluding that she and her children could not be adequately protected from the violence of her batterer as long as they remained in Puerto Rico. A:4, ¶ 13. When professionals entrusted with securing the safety of victims of domestic violence feel compelled to send a victim all the way from Puerto Rico to Massachusetts in order to assure her physical safety, every effort should be made to implement that professional judgment by finding a way to permit Jane Doe and her children to remain in a safe place.

Because battering often increases immediately after separation, it is critical that victims be afforded adequate shelter. The danger of assault is particularly acute during the first few months after separation, and the criminal law is replete with cases describing serious bodily injury and murder committed by abusers in response to flight by their partners.

See, e.g., Mildred Pagelow, Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases, 8 Violence and Victims 69, 72 (1993); Margo Wilson and Martin Daly, Spousal Homicide Risk and Estrangement, 8 Violence and Victims 3 (1993); Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich.L.Rev. 1, 4-6, 71-72 (1991).

As the case of Jane Doe makes clear, moreover, shelters cannot always be counted on to provide adequate protection, particularly where the batterer is willing to go to great lengths to track down and stalk the victim. A determined batterer often can use personal contacts and creative strategies to track down the addresses of local shelters, threatening the lives of all shelter residents, not just his victim. Kathleen Ferraro and John Johnson, The New Underground Railroad, 6 Studies in Symbolic Interaction 377, 380-83 (1985) (describing case histories in which batterers obtain information from friends on the police force and sympathetic taxi drivers or used visitation with children to locate their victims). **Abusers stalking their immigrant women victims have enlisted the help of the INS to locate immigrant victims living in battered women's shelters. Immigrant**

Women Program, NOW Legal Defense and Education Fund,
INS Investigative Actions at Shelters Jeopardize Victims' Safety, 15-16
(Memo submitted to the Immigration and Naturalization
Service, April 25, 2001). Even anti-stalking laws
cannot guaranty the safety of such victims.⁷

Further, shelters cannot be relied on to provide
protection indefinitely. As the record reflects,
shelter rules in Massachusetts limited to ninety days
the length of time during which Jane Doe and her
children could remain in the shelter that harbored
them after they arrived from Puerto Rico. Once that
period elapsed, Ms. Doe became dependent on public
assistance for food, shelter and clothing. A:9, ¶ 16.⁸

⁷ It must also be recognized that for every six
women who seek to escape an abusive relationship, five
cannot find safety because of a lack of shelter
capacity or funds sufficient to find alternate
housing. Edwin Molina, "Battered Women's Group Cites
Rise in Domestic Violence Deaths," The Boston Herald,
Oct. 6, 2000, p.2 (quoting Massachusetts Senator Linda
J. Melconian).

⁸ The ninety day limit is imposed on domestic
violence shelters by the Department of Social
Services. Regardless of whether or not a shelter
resident has a place to go or the wherewithal to
obtain housing, she must leave the shelter at the end
of that time. States and/or shelter policies that pose
strict time limitations on shelter residents create
problems for battered women whose abusers are
stalkers. For these women moving to a transitional
housing program in the state or community in which she
lived with her abuser is not a safe option. For this

In the absence of such support, victims like her are once again placed at enormous risk.⁹

reason, shelters who can no longer house a battered woman and her children will collaborate with other shelters at other locations to help the battered woman find an alternate shelter location where she can be safe. This is the approach taken in the case of Jane Doe. Although it would be better public policy to allow longer shelter stays and give shelters flexibility to allow residents to stay longer when necessary, in stalking cases, moving the victim to a safe unknown location in a different state may still be the best option. When states impose bars to benefits access like that imposed on lawful permanent resident battered immigrants by the current Massachusetts law, they heighten the danger to battered immigrant lawful permanent resident victims of domestic violence whose abusers are stalkers placing them at a distinct disadvantage. It is only after battered women find a way to feed, clothe and safely shelter their families that they can turn their attention to obtaining protection orders, criminally prosecuting their abuser and finding permanent work.

⁹ Economic circumstances often force battered women who lack adequate financial resources to choose between the dangers of the crime ridden neighborhoods, unsafe dwelling and street crime or returning to her abuser and risking enhanced dangers due to her partner's reprisals. Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes and Policy Implications*, 10 *AMERICAN PSYCHOLOGIST*, 1077, 1081 (1993). The lack of full access to preventive and intervention efforts, including but not limited to making legal protections available to all abused women regardless of color, citizenship and economic status while ensuring the socio-cultural appropriateness of such efforts, as a factor for continued risk. Equal enforcement of orders of protection and other statutes, regardless of ethnicity, economic status, locale of the complainant or citizenship status is what is needed to reduce risk factors. *Id.* at 1084.

B. The Period During Which Victims of Domestic Violence are Most in Need of Financial Assistance is Immediately After They Leave Abusive Relationships.

Domestic violence disproportionately affects poor women. Between fifty and eighty percent of women who receive welfare benefits are past or current victims of abuse. See Elizabeth Shor, Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility, 9 Cornell J. L. & Pub. Pol'y 697, 702 (2000). Because so many battered women and their children are economically dependent on their abusers, moreover, lack of access to financial assistance may force women to remain in or return to abusive situations. See Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. , 121 S.Ct. 2791, 2828 (1992).¹⁰

¹⁰ The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she is able to obtain the economic resources to survive without him. Edward W. Gondolf and Ellen R. Fisher, Battered Women as Survivors: An Alternative to Treating Learned Helplessness 95-96 (1988); Ida M. Johnson, Economic, Situational, and Psychological Correlates of the Decision-Making Process of Battered Women, 73 Fam. In Soc'y: J. of Contemp. Human Serv. 168 174-75 (1992); Debra S. Kalmuss & Murray A. Strauss, Wife's Marital Dependency and Wife Abuse, VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8145 FAMILIES 369, 369-71 (Murray A Strauss & Richard J Gelles, eds., 1990); Thomas L. Kirsch II, Problems in Domestic Violence:

The need for financial assistance is most critical at the time of escape from the abusive relationship. That is the time when victims of domestic violence are most vulnerable and that is the time when the availability of public assistance can mean the difference between life and death to many of the women and children who seek shelter in Massachusetts.¹¹ As the executive director of one

Should Victims Be Forced to Participate in the Prosecution of Their Abusers? 7 WM. & MARY J. WOMEN & L. 383, 392-93 (2001); Lewis Okun, Woman Abuse: Facts Replacing Myths 55 (1986). Thus, it is not surprising that batterers commonly isolate their victims from financial resources, including earnings from employment outside the home. See, e.g., Melanie Shepard and Ellen Pence, The Effect of Battering on the Employment Status of Women, 3 Affilia 55, 57-59 (1988). Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused. Michael J. Strube & Linda S Barbour, The Decision to Leave An Abusive Relationship: Economic Dependence and Psychological Commitment, 45 J. MARRIAGE & FAM. 785, 790-792 (1993). This is particularly true for battered immigrants whose spouses use superior immigration status to control all financial matters. Leslye Orloff, Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps 7 WILLIAM AND MARY JOURNAL OF WOMEN AND THE LAW, 597, 619 (2001)

¹¹ Battered women with or without children comprise a significant portion of the homeless population. Joan Zorza, Woman Battering: A Major Cause of Homelessness, 25 Clearinghouse Rev. 421 (1991); Donna Mascari, Comment, Homeless Families: Do They Have a Right to Integrity?, 35 UCLA L. Rev. 159, 163 (1987).

Massachusetts shelter has observed, moreover, welfare reform has only exacerbated the situation of many women who face "the choice of being beaten at home or being beaten by poverty." Molina, supra (quoting Laurie Holmes, executive director of HarborCOV Inc., a Jane Doe member program located in Chelsea).

C. Access to Financial Benefits is Especially Critical to Battered Immigrant Women, Who Constitute A Particularly Vulnerable Population.

Domestic violence can have a somewhat higher incidence among immigrant women than is found in the mainstream population of the United States.¹² In Massachusetts, moreover, "[i]mmigrant and refugee women are also over represented among victims of domestic violence homicide...." Governor's Commission on Domestic Violence, Subcommittee on Immigrants and Refugees, Statewide Hearings on Domestic Violence: Findings and Recommendations 1 (October 1998) (hereafter "Commission Report").

¹²Among immigrant Latinas the lifetime domestic violence rate has been reported to reach as high as 49.8%. For married or formerly married Latina immigrants that abuse rate rises to 59.5%. Mary Ann Dutton, Leslye Orloff and Giselle Aguilar Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications, Vol. II No. 2 GEORGETOWN J. ON POVERTY L. AND POLICY 245, 259 (2000).

Massachusetts courts have long recognized the devastating characteristics of domestic violence on its victims. Loss of self-esteem and emotional and psychological dependence are a few of the conditions which diminish the ability of victims to escape abusive relationships in the first place. See, Commonwealth v. Moore, 25 Mass. App. Ct. 63, 65 (1987). Immigrant women attempting to make the break from abusive situations into safety and self-reliance confront additional handicaps, such as linguistic and cultural barriers and social isolation, that further impede their ability to achieve self-sufficiency and also make it particularly difficult for outsiders to reach and assist them. See, e.g., Commission Report at 5 ("traditional beliefs, practices, and lack of knowledge about domestic violence make it difficult to address the issue"); Shor, supra at 703 (noting lack of emotional and physical strength to achieve self-sufficiency); Susan Girardo Roy, Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women, 9 Georgetown Immigration Law Journal 263, 269 (1995) (documenting the influence of factors such as "patriarchal family structures, subservient roles for women, and pressure from their

communities not to bring 'shame' upon those communities"); Sandra D. Pressman, The Legal Issues Confronting Conditional Resident Aliens Who Are Victims of Domestic Violence: Past, Present, and Future Perspectives, 6 Maryland Journal of Contemporary Legal Issues, No. 1, 129, 134 (Fall/Winter 1994-95) (social isolation arising out of dynamics of abuse coupled with lack of family and friends and unfamiliarity with the language and culture).

Added to these cultural barriers are the obstacles to economic independence arising from the lack of marketable skills, lack of facility with the English language and relatively low education levels. Maxine Yi Hwa Lee, A Life Preserver for Battered Immigrant Women: The 1990 Amendments to the Immigration Marriage Fraud Amendments, 41 Buffalo Law Review 779, 785-86 (1993); Roy, supra at 271-72. When an abused spouse is an immigrant the abusive spouse's control over the victim's immigration status and economic survival are two of the most significant factors undermining a battered immigrant's ability to seek help to end the violence. 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, Vol. II No. 2 GEORGETOWN J.
ON POVERTY L. AND POLICY 245, 269-271, 292-295 (2000).

In the absence of family or alternative support networks, the severity of these handicaps is multiplied. Jane Doe is a good example. The staff of the shelter in Puerto Rico specifically sent her to a state in the continental United States where no one knew either her or her abuser and thus, where her abuser would be unable to track her down. With a toddler son and a prematurely born baby daughter who suffers from hydrocephalus and has seizures, Ms. Doe had to cope with complicated medical needs and enormous demands on her time which prevented her from seeking employment. A:4-5, ¶¶ 12-14. Coupled with the likely effects of the abuse that she endured prior to the birth of her baby, these factors left her totally dependent on public assistance for her own and her children's' survival.¹³

¹³ It should be noted that although Jane Doe was able to obtain short-term shelter in Massachusetts, the availability of adequate shelter for battered immigrant women is extremely limited, as are other culturally and linguistically appropriate resources. Commission Report, supra at 5-11; Pressman, supra at

In these circumstances, the critical importance of immediately available financial assistance cannot be overstated. Without emergency benefits, "escape from a violent situation may leave an immigrant woman and her children helpless and poverty-stricken." Lee, supra at 786. As confirmed by the Subcommittee on Immigrants and Refugees of the Governor's Commission on Domestic Violence, following months of statewide hearings, the "rigid" six month residency requirement imposed on "legally present immigrants seeking benefits . . . keep immigrant women isolated in abusive homes and prevent battered immigrants, who attempt to flee their abusers, from being able to receive the crucial cash and food assistance to rebuild their lives at the most critical time." Commission Report at 26. By turning its back on these victims of domestic violence who have come to Massachusetts to escape abuse, until they have managed to survive here for at least six months, the Commonwealth has doomed many of these women and

136 (noting communication barriers imposed by linguistic, cultural, ethnic and religious backgrounds of victims); Huisman, K.A. Wife Battering in Asian American Communities: Identifying the Service Needs of an Overlooked Segment of the U.S. Population. 2(3)VIOLENCE AGAINST WOMEN 260-283 (1996).

children to homelessness, hunger and tremendous pressure to return to the situations from which they have fled at great risk to themselves.

D. Denial of Immediate Financial Assistance to Battered Immigrant Women is Contrary to the Public Policy of the Commonwealth.

The Massachusetts Legislature and the courts of the Commonwealth often have demonstrated their appreciation of the extent to which domestic violence has affected the lives of too many Massachusetts residents. Through legislation and judicial decisions, they have advanced and implemented efforts to stem the epidemic of domestic violence and afford adequate protection to its victims. The protections afforded by statutes such as Chapter 209A and [cite to anti-stalking law], however, have little meaning to battered immigrant women who lack the financial means to escape and remain away from their abusers. Legal immigrant battered women and their often U.S. citizen children, need access to the safety net that state-funded cash assistance provides to battered women, to help them survive economically while they rebuild

their lives and find ways to cope with the physical and psychological effects of abuse.

As long as St. 1997, c. 43, § 210 is permitted to deny state-funded cash assistance benefits to women like Jane Doe, at the most critical juncture of their lives, they cannot enjoy the rights and protections that the Commonwealth purports to grant to all residents, citizen or not, and that women like them enjoyed before the Legislature imposed the six-month waiting period in 1997. This year, both the Legislature and this Court took steps to expand the range of benefits generally available to victims of domestic violence.¹⁴ It is time to recognize the plight of women like Jane Doe and to extend the equal protection of these laws to them as well.

¹⁴ See, e.g., St. 2001, c. 69 (extending unemployment benefits to victims of domestic violence who are forced to leave their jobs); Turner v. Lewis, 434 Mass. 331, 334 (2001) (extending the protections of Chapter 209A to paternal grandmother who was being victimized by the unmarried mother of the child over whom the grandmother had custody, notwithstanding that the mother and grandmother did not live in the same household). Also in 2001 the federal protections providing access to legal immigration status for battered immigrants and access to public benefits were improved and expanded in the Violence Against Women Act of 2000, Division B, Title V of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (October 28, 2000).

Conclusion

For the foregoing reasons, as well as for those set forth in the Doe Brief, Amici respectfully urge this Court to hold that the constitutionality of St. 1997, c. 43, § 210 must be measured against the standard of strict scrutiny and that, applying that standard, it violates both the Fourteenth Amendment to the United States Constitution and Articles 1 and 10 of the Massachusetts Declaration of Rights.

Respectfully submitted,

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and Refugee Advisory
Coalition

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CERTIFICATE OF SERVICE

I, Toni G. Wolfman, an attorney for Amici Jane Doe, Inc. and The Massachusetts Immigrant and Refugee Advisory Coalition, hereby certify that on October , 2001, I served the foregoing Brief of Amici Curiae by causing two copies to be mailed, first class postage prepaid, to all parties of record.

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