UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

**Docket Number(s):** 09-3877-ag **Caption [use short title]** Rosario v. Holder

**Motion for:** National Network to End Violence Against Immigrant Women

Set forth below precise, complete statement of relief sought:

Leave to file an amicus brief

**MOVING PARTY:** National Network to End Violence Against Immigrant Women **OPPOSING PARTY:** -

☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

**MOVING ATTORNEY:** Janet Levine, Jody Goodman, Robert McNary **OPPOSING ATTORNEY:** -

[name of attorney, with firm, address, phone number and e-mail]

Crowell & Moring LLP
1001 Pennsylvania Ave. NW, Washington, DC 20004, 202-624-2500
515 S. Flower St., 40th Floor, Los Angeles, CA 90071, 213-443-5583
jlevine@crowell.com; jgoodman@crowell.com; rmcnary@crowell.com

Court-Judge/Agency appealed from: Board of Immigration Appeals

**Please check appropriate boxes:**

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this Court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

**Signature of Moving Attorney:** **Date:** May 10, 2010 Has service been effected? ☑ Yes ☐ No [Attach proof of service]

## ORDER

**IT IS HEREBY ORDERED THAT** the motion is **GRANTED DENIED.**

**FOR THE COURT:**
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

**Form T-1080**

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: Rosario v. Holder Docket No.: 09-3877-ag

Counsel of Record (name/firm): Robert McNary, Crowell & Moring

Appearance for (party/designation): National Network to End Violence Against Immigrant Women, Amicus

Select One:

☐ Substitute Counsel (replacing name/firm: _____)

☐ Additional Counsel (co-counsel with name/firm: _____)

OR

☑ Amicus (in support of (party/designation): Josefa Rosario, Petitioner-Appellant)

DOCKET SHEET AMENDMENTS

**Substitute, Additional, or Amicus Counsel's Contact Information** is as follows:

Name: Robert McNary
Firm: Crowell & Moring LLP
Address: 515 S. Flower St., 40th Floor, Los Angeles, CA 90071
Telephone: 213-443-5590 Fax: 213-622-2690
Email: rmcnary@crowell.com

CERTIFICATION

I certify that:

☑ I am admitted to practice in this Court and, if required by Local Rule 46.1(a)(2), have renewed my admission on _____ OR

☐ I applied for admission on _____.

Signature of Counsel: _____

Type or Print Name: Robert McNary

# NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: Rosario v. Holder Docket No.: 09-3877-ag

Counsel of Record (name/firm): Janet Levine, Crowell & Moring

Appearance for (party/designation): National Network to End Violence Against Immigrant Women, Amicus

Select One:

☐ Substitute Counsel (replacing name/firm: _____)

☐ Additional Counsel (co-counsel with name/firm: _____)

OR

☑ Amicus (in support of (party/designation): Josefa Rosario, Petitioner-Appellant)

## DOCKET SHEET AMENDMENTS

**Substitute, Additional, or Amicus Counsel's Contact Information** is as follows:

Name: Janet Levine
Firm: Crowell & Moring LLP
Address: 515 S. Flower St., 40th Floor, Los Angeles, CA 90071
Telephone: 213-443-5583 Fax: 213-622-2690
Email: jlevine@crowell.com

## CERTIFICATION

I certify that:

☐ I am admitted to practice in this Court and, if required by Local Rule 46.1(a)(2), have renewed my admission on _____ OR

☑ I applied for admission on April 1, 2010.

Signature of Counsel: _____
Type or Print Name: Janet Levine

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: Rosario v. Holder Docket No.: 09-3877-ag

Counsel of Record (name/firm): Jody Goodman, Crowell & Moring

Appearance for (party/designation): National Network to End Violence Against Immigrant Women, Amicus

Select One:

☐ Substitute Counsel (replacing name/firm: _____)

☐ Additional Counsel (co-counsel with name/firm: _____)

OR

☑ Amicus (in support of (party/designation): Josefa Rosario, Petitioner-Appellant)

DOCKET SHEET AMENDMENTS

**Substitute, Additional, or Amicus Counsel's Contact Information** is as follows:

Name: Jody Goodman
Firm: Crowell & Moring LLP
Address: 1001 Pennsylvania Ave. NW, Washington, DC 20004
Telephone: 202-624-2841 Fax: 202-628-5116
Email: jgoodman@crowell.com

CERTIFICATION

I certify that:

☐ I am admitted to practice in this Court and, if required by Local Rule 46.1(a)(2), have renewed my admission on _____ OR

☑ I applied for admission on April 19, 2010.

Signature of Counsel: Jody Goodman /RM
Type or Print Name: Jody Goodman

Case No. 09-3877

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

---

**JOSEFA ROSARIO,**
**Petitioner-Appellant,**

**v.**

**ERIC H. HOLDER, JR.,**
**Respondent-Appellee**

---

**On Petition for Review of an Order of the**
**Board of Immigration Appeals**
**No. A074-915-199**

---

# MOTION OF NATIONAL NETWORK TO END VIOLENCE AGAINST IMMIGRANT WOMEN FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER-APPELLANT


Janet Levine (*admission pending*)
Robert McNary
CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

Jody Goodman (*admission pending*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500
*Counsel for Amicus*

## MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

The National Network to End Violence Against Immigrant Women (the "Network") respectfully moves pursuant to Federal Rule of Appellate Procedure 29 for leave to file an *amicus curiae* brief in support of Appellant Josefa Rosario. The Network seeks leave to file its brief after the seven-day period provided for by Rule 29(e), which expired before the Network became aware of this case and secured appropriate counsel.

## INTRODUCTION

As a domestic violence victim battered by her United States citizen husband, Ms. Rosario is challenging her deportation under the Violence Against Women Act. For the protection of domestic violence victims and encouragement to escape their batterers, the Violence Against Women Act (VAWA) provides for cancellation of removal where an alien has been subjected to battery or "extreme cruelty." Despite Ms. Rosario's having met all the statutory requirements, the Immigration Judge denied her request for relief. On the grounds that Ms. Rosario had failed to produce police reports or medical documentation that she was battered – and apparently recognizing, but ignoring, that Ms. Rosario had been battered – the Immigration Judge determined that Ms. Rosario had not been subjected to "extreme cruelty" under the statute. The Board of Immigration Appeals (BIA) affirmed, and Ms. Rosario has appealed.

With its unique and substantial experience in issues involving violence against immigrant women – including the specific issue involved here – the Network now moves for leave to appear as *amicus curiae* and to file an *amicus* brief. Pursuant to Rule 29(b)(1), the first section of this motion describes the Network's interest in the litigation. The second section, pursuant to Rule 29(b)(2), outlines why an *amicus* brief would be desirable and why the matters asserted would be relevant to the disposition of Ms. Rosario's appeal. The third section supports the Network's request for leave to file its *amicus* brief after the period provided for by Rule 29(e).

Counsel for the parties have been advised of the intended filing of this motion. Counsel for Appellant has consented to the filing of an *amicus* brief. Counsel for Appellee takes no position on the filing of this brief, and wishes to reserve the right to respond following its filing.

## LEGAL STANDARD

This court has broad discretion to grant leave to file an *amicus* brief. *Concerned Area Residents for the Environment v. Southview Farm*, 834 F.Supp. 1410 (W.D.N.Y. 1993), *citing Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982); *Citizens Against Cas. Gam., Erie. Co. v. Kempthorne*, 471 F.Supp.2d 295, 311 (W.D.N.Y. 2007). *Amicus* briefs can assist the court with insights not available from the parties. This is especially so when the *amicus* has "unique

information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Citizens Against Cas. Gam.*, 471 F.Supp.2d at 311, *citing Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). An *amicus* with significant experience representing individuals in similar circumstances and a longstanding interest in the specialized legal area can be particularly helpful. *Scarlett v. U.S. Dep't of Homeland Security Bureau of Immigration & Customs Enforcement*, 2009 WL 1322303, *1 (W.D.N.Y. May 12, 2009) (granting leave to non-profit legal services organizations to file a brief of *amici curiae*).

## INTERESTS OF THE *AMICUS CURIAE* IN THIS CASE

The Network is a coalition of domestic-violence survivors, immigrant women, advocates, activists, lawyers, educators and other professionals working together to end domestic abuse of immigrant women. The Network was founded in 1992. It is co-chaired by the Family Violence Prevention Fund, the Legal Momentum Immigrant Women's Project, and the ASISTA Immigration Technical Assistance Project. Together, these organizations use their special expertise to provide technical assistance, training, and advocacy to their communities. The Network significantly contributed to the passage of the 1994 VAWA and has since continued to enhance the legal remedies available to immigrant survivors. Through a collaborative approach, the

Network has made great progress in assuring that non-citizen victims of domestic violence, sexual assault, and trafficking are able to flee abuse, survive domestic violence crimes, and receive assistance.

The Family Violence Prevention Fund ("FVPF") is a non-profit tax exempt organization founded in 1980. The FVPF is a national organization based in San Francisco. It focuses on domestic violence education, prevention and public policy reform. Throughout its history, the FVPF has pioneered prevention strategies for justice, public education, and health care. The FVPF's Battered Women's Rights Project expands access to legal assistance and culturally appropriate services for all women, including battered immigrant women. The FVPF was instrumental in developing the 1994 VAWA and has since worked to educate health care providers, police, judges, employers and others regarding domestic violence. In addition, the FVPF has provided training and technical assistance to domestic violence shelters, legal assistance workers and other service providers on issues facing battered immigrant women.

Legal Momentum was founded as the NOW Legal Defense Fund by leaders of the National Organization for Women. Legal Momentum is a national organization providing assistance to victims of domestic violence. Legal Momentum has long been an advocate of women's right to live free from violence,

and has been actively involved in policy efforts to promote greater legal protections for battered immigrant women. Legal Momentum helped craft the provisions of VAWA, VAWA 2000, and VAWA 2005. It has substantial knowledge about the procedures for combating domestic violence nationwide and internationally, and the particular and peculiar dynamics and issues experienced by immigrant victims of domestic violence. As a co-chair of the National Network on Behalf of Battered Immigrant Women, Legal Momentum is responsible for the Network's advocacy efforts to enhance legal protections and access to services for battered immigrant women and their children; it maintains a national legal clearinghouse that tracks legal developments under VAWA. Using a broad range of legal and educational services to eliminate sex-based discrimination and secure equal rights, Legal Momentum has been engaged on many fronts in efforts to eliminate gender-motivated violence.

The ASISTA Immigration Assistance Project ("ASISTA"), founded in 2004, provides comprehensive, cutting-edge technical assistance regarding immigration and domestic violence. ASISTA seeks to enhance immigrant women's security, independence and full participation in society by promoting integrated holistic approaches and educating those whose actions and attitudes affect immigrant women who experience violence. In addition to serving as a clearinghouse for immigration law technical assistance,

ASISTA staff train civil and criminal judges and system personnel in best practices for working with immigrant survivors of violence. ASISTA works closely with Department of Homeland Security (DHS) personnel to ensure they implement the law as Congress intended, and coordinates litigation to correct misapplications of the law by the Executive Office of Immigration Review (EOIR). Together with the National Network to End Violence Against Immigrant Women and DHS, ASISTA contributed a section on VAWA to EOIR's 2005 training video for all immigration judges.

The Network and its co-chair organizations have appeared often as *amicus curiae* in matters involving interpretation of VAWA and its amendments and reauthorizations. *See, e.g., Lopez-Umanzor v. Gonzales,* 405 F.3d 1049 (9th Cir. 2005); *Hernandez v. Ashcroft,* 345 F.3d 824 (9th Cir. 2003). The co-chair organizations have unparalleled experience in myriad issues involving violence against women and in the specific issue involved here—violence against immigrant women. In particular, the Network has significant experience representing individuals in Appellant's circumstances and a longstanding interest in the Board of Immigration Appeals' interpretation of the Violence Against Women Act.

The Network became interested in Ms. Rosario's case because the Violence Against Women Act represents this country's most critical legal protection for

immigrant victims of domestic violence. Requiring alien victims of domestic violence to submit a police report or a medical record to prove battery or extreme cruelty would represent a dramatic and incorrect reinterpretation of the VAWA, and would have an enormous and detrimental impact on domestic violence victims. Rather than requiring documentary corroboration of abuse, VAWA requires that immigration authorities accept "any credible evidence" of battery or extreme cruelty. That rule ensures that immigration relief is not denied for lack of any specific piece of evidence. "Any credible evidence" was designed so that neither DHS nor immigration judges could deny a battered immigrant's case just because she did not present a police report, medical record, evidence of conviction or psychological report. Deporting aliens who have been "battered or subjected to extreme cruelty" but who have not filed a police report would effectively eviscerate the statute. The co-chair organizations are therefore gravely concerned about the BIA's decision in this case.

## DESCRIPTION OF THE *AMICUS* BRIEF

The ruling below by the Board of Immigration Appeals has vitiated the statutory protection for alien victims of battery or "extreme cruelty." This incorrect interpretation—imposing an external requirement for a police or health provider documentation—means that Ms. Rosario is scheduled for deportation despite meeting all of the statutory requirements for cancellation. By assisting the

court with its unique and substantial expertise on the Violence Against Women Act and the "extreme cruelty" provision, an *amicus* brief by the Network would be highly relevant to deciding Ms. Rosario's appeal.

A Network *amicus* brief can provide context for the VAWA and its legislative history. As a non-party expert in the broader issues involving battered immigrant women and the VAWA, the co-chair organizations can assist the Court's understanding both of the underlying problem of domestic violence and the laws recently designed to address it. In particular, the Network can provide the Court its expertise on the VAWA provision cancelling removal for immigrant women who have been "battered or subjected to extreme cruelty" by a citizen or permanent resident spouse.

The Network *amicus* brief explains how "battery" under VAWA does not require that a respondent go to the police, the hospital, or provide any police reports, medical reports, or any evidence other than her own testimony or other credited testimony or evidence, in order to qualify for cancellation of removal. VAWA does not require that battery occur any specific number of times, or even more than once. The *amicus* brief also shows that Congress intended to define "extreme cruelty" as encompassing physical, psychological, and emotional abuse. Congress intended "extreme cruelty" under VAWA to cover an overall pattern of violence, including insults, demands for money, threats, and intimidation.

A Network *amicus* brief will also outline the social science evidence regarding the cycle of violence that is often present in intimate partner abuse. The behavior of Ms. Rosario and her abuser closely tracked the pattern of tension building, acute battering, and loving contrition which is described by social science evidence as the "cycle of violence." Familiarizing the Court with studies regarding this cycle will aid the Court's understanding of how the abuser's behavior fit into an "overall pattern of violence," which qualifies as "extreme cruelty" under the immigration statute and its regulations.

The Network's analysis, insight, and unique deep understanding of these critical issues will aid the Court, without causing any undue hardship on or inequity to Appellant or Appellee. All of the issues to be briefed by *amicus* were raised before the lower court. The *amicus* is simply in a better position to expand the issues before the court.

## REQUEST FOR LATE FILING

Having become aware of this case after the customary deadline had passed, the Network asks for leave to file its *amicus* brief after the seven-day-period provided for by the Federal Rules of Appellate Procedure. Rule 29(e) provides that this court may grant leave for later filing. Leave to file an *amicus* brief past the usual deadline may be granted where the *amicus* has recently discovered the

case and acts promptly after first learning of the action. *Andersen v. Leavitt*, 2007 WL 2343672, *4 (Aug. 13, 2007 W.D.N.Y.).

Here, the Board of Immigration Appeals decision was not published, nor was there any publication or news coverage of the decision; the Network therefore did not know of the case until Appellant's counsel contacted it in February 2010. The Network secured the *pro bono* services of Crowell & Moring in late March. As soon as that representation was arranged, the Network acted promptly to draft a brief and a motion for leave to file an *amicus* brief.

## CONCLUSION

For the foregoing reasons, the motion for leave to file a brief *amicus curiae* on behalf of the Network co-chair organizations should be granted.

Respectfully submitted,

Janet Levine (*admission pending*)
Robert McNary
CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

Jody Goodman (*admission pending*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500
*Counsel for Amicus*

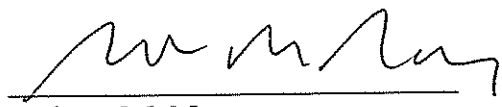
May 10, 2010

## CERTIFICATE OF SERVICE

I, Robert McNary, certify that I have served a true copy of this brief to the counsel for Appellant and counsel for Appellee, at the following addresses:

Elyssa Williams
Formica, P.C.
900 Chapel Street
Suite 1200
New Haven, CT 06510
ewilliams@formicalaw.com

Matthew A. Spurlock
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
matthew.spurlock@usdoj.gov



Robert McNary
CROWELL & MORING LLP
5 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5590
*Counsel for Amicus*

May 10, 2010

Case No. 09-3877

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

---

**JOSEFA ROSARIO,**
**Petitioner-Appellant,**

**v.**

**ERIC H. HOLDER, JR.,**
**Respondent-Appellee**

---

**On Petition for Review of an Order of the**
**Board of Immigration Appeals**
**No. A074-915-199**

---

# DECLARATION OF ROBERT MCNARY IN SUPPORT OF MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

I, Robert McNary, declare under penalty of perjury that the following is true and correct.

1. I am an attorney with Crowell & Moring LLP, counsel for the National Network to End Violence Against Immigrant Women ("the Network") in its motion for leave to file an *amicus curiae* brief in this action.

2. The Network did not know of this case until learning of it from counsel for Appellant Josefa Rosario in February 2010.

3. Since learning of the case, the Network acted promptly to secure *pro bono* representation by an experienced firm, and ultimately secured the *pro bono* services of Crowell & Moring in late March.

4. As soon as its representation by Crowell & Moring had been arranged, including *pro bono* approval and conflicts checks, and the brief had been written, the Network moved for leave to file an *amicus* brief.

Robert McNary

CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

May 10, 2010

Case No. 09-3877

---

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

---

**JOSEFA ROSARIO,**
**Petitioner-Appellant,**

**v.**

**ERIC H. HOLDER, JR.,**
**Respondent-Appellee**

---

**On Petition for Review of an Order of the**
**Board of Immigration Appeals**
**No. A074-915-199**

---

# BRIEF OF *AMICUS CURIAE* NATIONAL NETWORK TO END VIOLENCE AGAINST IMMIGRANT WOMEN IN SUPPORT OF PETITIONER-APPELLANT


Janet Levine (*admission pending*)
Robert McNary
CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

Jody Goodman (*admission pending*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500
*Counsel for Amicus*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**



**STATUTES**

**OTHER AUTHORITIES**

**REGULATIONS**

Josefa Rosario, an immigrant from the Dominican Republic, is exactly the person Congress sought to protect when it passed laws granting relief from removal and deportation for abused immigrants married to United States citizens. But instead of granting Ms. Rosario cancellation of removal in this case, the Immigration Judge ("IJ") found that Ms. Rosario had not proven that she was battered or subjected to extreme cruelty as required by the Violence Against Women Act of 1994 ("VAWA"). The Board of Immigration Appeals ("BIA" or "the Board") affirmed and adopted the IJ's decision. The BIA's ruling misapplies and misstates the law and must be reversed.[1] The *amicus*[2] submits this memorandum in support of Appellant Rosario, seeking reversal of the Board's decision, since Ms. Rosario was "battered or subjected to extreme cruelty" at the hands of her citizen husband. INA § 240A(b)(2); 8 U.S.C.A. § 1229b(b)(2).[3]

---

[1] This Court reviews *de novo* the BIA's application of legal principles to undisputed facts. *Monter v. Gonzales*, 430 F.3d 546, 553 (2d Cir. 2005). This Court also reviews *de novo* purely legal and nondiscretionary determinations of the BIA. *Sepulveda v. Gonzales*, 407 F.3d 59, 63 (2d Cir. 2005) (affirming "judicial review of nondiscretionary, or purely legal, decisions regarding an alien's eligibility for § 1229b relief"); *see also Hernandez v. Ashcroft*, 345 F.3d 824, 834 (9th Cir. 2003) (reviewing "extreme cruelty" determination under § 1229b(b)(2) as an objective and nondiscretionary application of law to fact).

[2] Pursuant to L.R. 29.1(b), the *amicus* certifies that (1) neither party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

[3] The Illegal Immigration Reform and Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996, H.R. 3610, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (hereinafter "IIRIRA") eliminated special suspension of deportation created by the Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55 (codified in scattered sections of Titles 8, 14 and 42 of U.S.C., and replaced it with special VAWA

Notwithstanding credible testimony that Ms. Rosario was battered *and* subjected to extreme cruelty, both the BIA and the immigration judge required proof not contemplated or required by the statute – medical, police, or psychological reports. The Board concluded that despite Ms. Rosario's having been pushed, shaken, and thrown by her ex-husband, Ms. Rosario's failure to provide "any medical or psychological reports in support of her application" [BIA decision at 2], "did not . . . adequately describe the requisite level of harm contemplated in section 240A(b)(2) of the Act." *Id.* That decision belies the legislative history of VAWA, VAWA's any credible evidence rules,[4] immigration and family law jurisprudence, and social science evidence, which show that such behavior constitutes both "battery" and "extreme cruelty" under the statute; the ruling should be reversed.

---

cancellation of removal, IIRIRA at § 304. VAWA suspension of deportation continues to apply to deportation cases initiated prior to IIRIRA.

[4] Congress created the "any credible evidence" rule to overturn Immigration and National Service regulations that required a victim to file a psychological report to file for a battered spouse waiver. Congress stated that VAWA 1994 "overrides this regulation by directing the Attorney General to consider any credible evidence submitted in support of hardship waivers based on battering or extreme cruelty whether or not the evidence is supported by an evaluation by a licensed mental health professional." H.R. Rep. No. 103-385, at 26 (1998). Congress has consistently required that courts and DHS accept any credible evidence in VAWA immigration cases without requiring a police report, medical records, a protection order, or any other specific piece of evidence.

## INTEREST OF THE *AMICUS*

This *amicus curiae* brief is submitted on behalf of the National Network to End Violence Against Immigrant Women (the "Network").[5] The Network is a coalition of domestic-violence survivors, immigrant women, advocates, activists, lawyers, educators and other professionals working together to end domestic abuse of immigrant women. The Network is co-chaired by Legal Momentum, the Family Violence Prevention Fund, and ASISTA Immigration Assistance Project. These leading national organizations – who participated in drafting VAWA – share a deep understanding of domestic violence, the procedures for fighting it, and the particular dynamics of domestic violence experienced by immigrant victims. The Network is concerned with the Board's interpretation because: (1) it effectively eliminates many batteries (batteries that are often precursors to serious or fatal beatings) from the protections of the statute, flatly contradicting congressional intent; (2) it ignores VAWA's requirement that the government accept "any credible evidence" of battering or extreme cruelty; and (3) it changes the concept of "extreme cruelty" under the statute by suggesting that non-physical domestic violence is permissible. The BIA's decision would allow abusers to use the

[5] Pursuant to Federal Rule of Appellate Procedure 29(b), this brief is accompanied by a Motion for Leave to File *Amicus* Brief, which more fully describes the interests of *amicus*.

immigration laws to exert control over non-citizen family members, leaving victims vulnerable both to continued abuse by their spouses and to deportation.

## ARGUMENT

### I. THIS COURT HAS JURISDICTION TO REVIEW THE BIA'S CANCELLATION DENIAL HERE

This Court has jurisdiction to review administrative decisions that are non-discretionary – that involve the objective application of law to a set of facts. *See* 8 U.S.C. §§ 1252(a)(2)(B) and (a)(2)(D). The IJ here applied the law to facts. The BIA's conclusion – that "battery or extreme cruelty" requires more than credible testimony, more than one battery, and more than psychological abuse – is therefore a legal decision that this court may review.

This Court has held that BIA decisions on aliens' eligibility for § 1229b relief are nondiscretionary and reviewable on appeal. *See Sepulveda v. Gonzales*, 407 F.3d 59, 62-63 (2d Cir. 2005). In *Sepulveda*, the IJ – and then the BIA – rejected the petitioner's application for deportation relief for failure to prove "good moral character." *Id.* at 61. This Court vacated the BIA decision, saying the BIA had made a nondiscretionary legal determination that time spent in jail barred cancellation of removal for lack of "good moral character." *Id.* at 63-64.

The Ninth Circuit has concluded similarly. In *Hernandez v. Ashcroft*, 345 F.3d 824, 833-35 (9th Cir. 2003), it held that the existence of battery or extreme cruelty "must be determined objectively from the facts," just like continuous

physical presence or habitual drunkenness. *Id.* at 834. *Hernandez* distinguished between statutory provisions explicitly committed "to the opinion of the Attorney General" and the extreme cruelty provision, which has no such clause, reasoning that Congress did not intend immigration judges to have the final say on what constitutes domestic violence:

> In light of Congress's desire to remedy the past insensitivity of the INS and other governmental entities to the dangers and dynamics of domestic violence, it appears quite unlikely that Congress would have intended to commit the determination of what constitutes domestic violence to the sole discretion of immigration judges.

*Id.* Similarly, this Court in *Sepulveda* emphasized "the strong presumption in favor of judicial review of administrative action, and the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien..." 407 F.3d at 62 (citations omitted). While Congress intended to shield discretionary decisions from judicial review,[6] whether an immigrant spouse has been battered or subjected to extreme cruelty should not be shielded from review [7]

---

[6] The Supreme Court recently recognized in an asylum case that where Congress has chosen to insulate certain executive decisions from judicial review, it has explicitly done so. *See Kucana v. Holder*, 130 S. Ct. 827, 838 (2010) (upholding jurisdiction to review denial of motion to reopen asylum case). The Court emphasized that it has "consistently applied" the principle that "executive determinations generally are subject to judicial review." *Id.* This Court has vacated denials of asylum claims when an immigration judge or the BIA has failed to consider relevant evidence. *See, e.g., Tian-Yong Chen v. INS*, 359 F.3d 121, 127-29 (2d Cir. 2004) (IJ and BIA ignored petitioner's testimony that he had been beaten). The IJ and BIA behaved similarly in this case, crediting but essentially ignoring testimony that Ms. Rosario had been battered and subjected to extreme cruelty. That decision is reviewable by this Court.

[7] Circuits are split on whether extreme cruelty is a discretionary determination, and therefore not subject to judicial review. *Compare Hernandez v. Ashcroft*, 345 F.3d 824, 833-35 (9th Cir. 2003) *with Stepanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009) (extreme cruelty

## II. CONGRESS INTENDED VAWA TO PROTECT DOMESTIC VIOLENCE VICTIMS; IT SHOULD BE APPLIED TO BEST FULFILL THE CLEAR CONGRESSIONAL INTENT

### A. The History, Scope and Purpose of VAWA

Congress enacted the Violence Against Women Act in 1994 after years of investigation into the domestic violence epidemic. The Act's legislative history reflects the shocking toll of domestic violence:

- At least 3 to 4 million women in the U.S. are abused by their husbands annually, and over sixty percent of abuse victims are beaten while pregnant. H.R. Rep. No. 395, at 26 (1993).

- One third of all murdered women are killed by their husbands or boyfriends, and one million women seek medical attention each year for injuries caused by their male partners. *Id.* at 41.

These statistics, relied on by Congress in drafting VAWA, actually underestimate the problem; more recent research indicates that 50% to 80% of intimate partner abuse incidents are unreported.[8] Significantly, estimates often derive from surveys that exclude those who are very poor, who do not speak fluent English, whose lives are especially chaotic, or who are hospitalized, homeless,

---

determination is discretionary and not subject to review); *Wilmore v. Gonzales*, 455 F.3d 524, 528 (5th Cir. 2006) (same); *Perales-Cumpean v. Gonzales*, 429 F.3d 977 (10th Cir. 2005) (same). This Court's decision in *Sepulveda v. Gonzales*, 407 F.3d 59, 62-63 (2d Cir. 2005), however, is consistent with the Ninth Circuit's position in *Hernandez*.

[8] Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, U.S. Dep't of Justice, Research Report of Findings from the National Violence Against Women Survey at v, 49-54 (2000) (one fifth of rapes, one quarter of physical assaults, and one-half of stalkings reported), *available at* http://virlib.ncjrs.org/VictimsOfCrime.asp.

institutionalized, or incarcerated. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 809 (1994); Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes and Policy Implications*, 48 Am. Psychol. 1077 (1993). Experts have concluded that close to six million women are battered each year. Klein & Orloff, *supra*, at 809 & n.11.

Intimate partner abuse consists of *chronic* violence. It is characterized by persistent intimidation and repeated physical and psychological harm. It is *not* a one-time beating followed by a lifetime of domestic tranquility. Absent intervention, it is almost guaranteed that an abused woman will be assaulted repeatedly by her mate. S. Rep. No. 545, at 36 (1990). And repeated violence escalates in severity. One report notes that in over half of the cases involving women who were murdered by their husbands, the police had been called at least five times previously. *Id.* at 37; *see also* Angela Browne, *When Battered Women Kill* 105-07 (1987) (aggressive acts often increase in number and severity over time).

Before VAWA, immigration laws unwittingly fostered the abuse of many immigrant women by giving the abuser – the U.S. citizen or lawful permanent resident spouse – control over the immigrant spouse's ability to gain permanent lawful immigration status. *See* H.R. Rep. No. 395, at 26-27. In a series of laws

and refinements, Congress changed this. Section 40703 of VAWA, initially codified at 8 U.S.C. § 1254(a)(3), gave battered immigrant women and children some measure of control over their immigration status by establishing a special suspension of deportation[9] remedy for immigrants who have been battered or subjected to extreme cruelty by a spouse who is a citizen or lawful permanent resident; it gave the Attorney General discretion to suspend deportation and adjust the status of these immigrants to lawful permanent resident. VAWA relief is predicated on "***any credible evidence*** relevant to the application." INA 240A(b)(2)(D) (emphasis added).[10]

In October 2000, Congress passed the Battered Immigrant Women Protection Act, part of the Violence Against Women Act of 2000 ("VAWA 2000").[11] The immigration provisions of VAWA 2000 aided battered immigrants

---

9 The Illegal Immigration Reform and Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996, H.R. 3610, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (hereinafter "IIRIRA") eliminated special suspension of deportation created by the Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C., 18 U.S.C. and 42 U.S.C.), and replaced it with special VAWA cancellation of removal, IIRIRA at § 304. VAWA suspension of deportation continues to apply to deportation cases initiated prior to IIRIRA.

10 The United States may not deny an application "for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility." *See* Paul W. Virtue, Office of General Counsel, *"Extreme Hardship" and Documentary Requirements Involving Battered Spouses and Children*, Memorandum to Terrance O'Reilly, Director, Administrative Appeals Office (Oct. 16, 1998), at 7, *reprinted in* 76(4) Interpreter Releases 162 (Jan. 25, 1999).

11 The Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified in scattered sections of 8, 18, 20, 28, 42, and 44 U.S.C.) (Oct. 28, 2000).

by eliminating residual obstacles impeding immigrants seeking to escape from abusive relationships.[12]

### B. Battery and Extreme Cruelty Are Separate Concepts

Under VAWA cancellation of removal, an immigrant woman is entitled to protection if she has been "battered *or* subjected to extreme cruelty" by her citizen or lawful permanent resident spouse. INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2). Battery and extreme cruelty each provide a basis for cancellation of removal. Congress included "extreme cruelty" in addition to battery to extend relief to immigrant victims without unconscionably requiring that they suffer a beating.

Regulations provide that "battery or extreme cruelty" includes "acts that, in and of themselves, may not initially appear violent but that are part of an overall pattern of violence." 8 C.F.R. § 204.2(c)(1)(vi). "Violence" is not limited to physical acts; instead "*[p]sychological* or sexual abuse or exploitation . . . shall be considered acts of violence." *Id.* (emphasis added); *see also* 61 Fed. Reg. 13061 (1996) (standard "*includes, but is not limited to*, being the victim of *any act or threatened act* of violence . . . *which results or threatens to result in physical or mental injury.*") (emphasis added). Non-physical abuse such as lying, social isolation, harassment, threats, and economic abuse can constitute extreme cruelty. 8 C.F.R. § 204.2(c)(1)(vi).

---

[12] The Violence Against Women Act of 2000 Section-by-Section Summary, Vol. 146, No. 126 Cong. Rec., 106th Cong., 2nd Sess., at S10195 (Oct. 11, 2000).

In the context of VAWA cancellation's predecessor, suspension of deportation, the Ninth Circuit held:

> Section 244(a)(3) introduces battery and extreme cruelty as parallel methods by which an individual may establish that she has experienced domestic violence. *See* INA § 244(a)(3) (requiring that applicant "has been battered or subjected to extreme cruelty"). The existence or nonexistence of battery is clearly a factual determination, readily resolved by the application of a legal standard defining battery to the facts in question.

*Hernandez v. Ashcroft*, 345 F.3d 824, 834 (9th Cir. 2003). *See also Perales-Cumpean v. Gonzales*, 429 F.3d 977, 981-86 (10th Cir. 2005) (considering allegations of extreme cruelty separately from allegations of battery).

While this Court has not examined "extreme cruelty" under VAWA,[13] when Congress created the law there was a long history of family law cases defining extreme cruelty.[14] Courts analyzing "extreme cruelty" in divorce proceedings include an array of psychological and emotional abuse in the definition of "extreme cruelty." *See, e.g., Pompa v. Pompa*, 259 A.D.2d 338, 338 (N.Y. App. Div. 1999) ("false, denigrating accusations, threatening violence and participating in one incident of actual violence, causing the wife to suffer from anxiety,

---

[13] The *amicus* is also unaware of any published Board decisions directly addressing what constitutes extreme cruelty. The BIA has ruled that extreme cruelty does not require a showing of intent. Order, *In re N-A-J*, Nov. 29, 2001 (unpublished BIA opinion) ("The plain language of section 244(a)(3) of the Act does not require that the alien establish intent in order to prove extreme cruelty.").

[14] *See* Norman J. Singer, *Sutherland Statutory Construction* § 50:03 (6th ed. 2000) ("The interpretation of well-defined words and phrases in the common law carries over to statutes dealing with the same or similar subject matter."); § 50:04.

palpitations and chest pain" constituted cruel and inhuman treatment); *see also* Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1200 (1993) ("Dimensions of abusive behavior that occur within intimate relationships can be categorized as physical, sexual, and psychological.") (hereinafter Dutton, *Women's Responses*).[15] In family law matters, courts have long equated "extreme cruelty" with "cruel and inhuman conduct."[16] National and international definitions of domestic violence, family law definitions of "extreme cruelty," and social science evidence all support that "extreme cruelty" may consist of psychological abuse without physical abuse.

## III. MS. ROSARIO QUALIFIES FOR VAWA RELIEF BECAUSE SHE SUFFERED BOTH BATTERY AND EXTREME CRUELTY

Ms. Rosario proved that she was the victim of both battery and extreme cruelty. Because the IJ found Ms. Rosario and her sister credible, Ms. Rosario met

---

[15] Several international organizations concur that definitions of domestic violence should not be restricted to physical abuse, but must include other elements such as psychological, sexual, and emotional harm. *See, e.g.*, United Nations Fourth World Conference on Women Platform for Action, *Violence Against Women*, ¶113 (1995) ("The term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty."), *available at* http://www.un.org/womenwatch/daw/beijing/platform/violence.htm; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *Article 2* (1994), ("Violence against women shall be understood to include physical, sexual and psychological violence."), *available at* http://www.oas.org/cim/english/convention%20violence%20against%20women.htm.

[16] *See, e.g.*, *Pearson v. Pearson*, 129 N.E. 349, 350 (N.Y. 1920) ("[t]he terms 'extreme cruelty' and 'cruel and inhuman conduct' are equivalent"); *Mathewson v. Mathewson*, 69 A. 646, 648 (Vt. 1908) (equating "cruelty," "extreme cruelty," and "cruel and inhuman treatment").

her burden of proof: she demonstrated eligibility for relief by "any credible evidence." 8 U.S.C. § 1229b(b)(2)(d).

### A. Ms. Rosario Was Battered By Her Husband

While finding Ms. Rosario credible, the immigration judge in this case discounted the physical assaults against Ms. Rosario. Ms. Rosario was shaken, pushed and shoved – actions constituting both civil and criminal battery under common law and state law.[17] Although the IJ noted that the physical abuse happened "on perhaps four or five occasions," the IJ found the absence of medical harm a police report or medical report determinative of Ms. Rosario's qualification for VAWA protection. The IJ said:

> [She never] needed hospital treatment or medication. . . . The respondent did not put into evidence any police report or other report that would substantiate or corroborate the alleged assaultive incidents.

IJ Oral Decision, April 21, 2008 at 6; *see also id.* at 9. The IJ concluded – and the BIA affirmed – that battery without a police report or hospital report is not battery for purposes of the VAWA. This is wrong for four reasons: (1) the law does not require a specific number of incidents to qualify as battery; (2) the law does not

---

[17] Under common law, battery requires intent to cause a harmful or offensive contact, and the resulting contact. 1 Restatement (Second) of Torts § 13 (1965). Ms. Rosario lived in Connecticut. Under the Connecticut criminal code, a person is guilty of assault in the third degree when "with intent to cause physical injury to another person, he causes such injury to such person." Conn. Gen. Stat. § 53a-61. Civil battery in Connecticut has been defined as "any touching of the person in rudeness or in anger." D. Wright, J. Fitzgerald and W. Ankerman, *Connecticut Law of Torts* § 6, at 8, 10 (3d ed. 1991).

require that a qualifying battery cause physical harm, though Rosario testified that Martinez's conduct did cause her pain, and therefore physical harm; (3) the law does not require that those seeking immigration relief access the civil or criminal justice systems[18]; and (4) the law does not require the kind of evidence the IJ and BIA here seem to require, such as police and hospital reports. Instead, Congress mandates use of the flexible "any credible evidence" standard to whatever evidence the applicant adduces. *See* 8 U.S.C.A. § 1229b(b)(2)(d).

What Mr. Martinez did to Ms. Rosario was battery.[19] Mr. Martinez shook and pushed Ms. Rosario. Oral Opinion, April 21, 2008 Tr. at 6. He did it more than once – a pattern of domestic abusers. As a result of her husband's conduct, Ms. Rosario's "body would hurt; the arms would hurt." Tr. 10/2/07 at 62. The IJ found Ms. Rosario's and her sister Emma Rosario's testimony credible, Oral Opinion at 3, 4,[20] thus meeting the "any credible evidence" standard. The BIA

---

[18] Congress clearly did not intend that a victim access our justice system to gain immigration status. In VAWA 2000, it imposed that requirement for U and T visa seekers, *see* INA §§ 101(a)(15)(U), (i)(III) & (T)(i)(III)(aa), but did not insert a parallel requirement for those seeking relief under VAWA cancellation.

[19] See *supra* at n.11; D. Wright, J. Fitzgerald and W. Ankerman, *Connecticut Law of Torts* § 6, at 8, 10 (3d ed. 1991) (noting that term "assault" is often used in Connecticut "when in truth 'battery' would be more accurate").

[20] Ms. Rosario's sister, Emma Rosario [for ease of identification, the sisters will be referred to by their first names in this discussion], witnessed at least one battery. Emma testified that she had seen Martinez throw Josefa onto a bed, and that on other occasions Josefa would tell Emma "things that happened," but that Emma heeded Josefa's admonitions not to get involved. Tr. 4/21/08 at 137. Emma testified about Josefa's timidity, reluctance to admit that anything was ever wrong, and reluctance to do anything about her husband's abusive conduct. Tr. April 21, 2008 at 133-34, 137. Researchers have observed that battered Latinas are "unlikely to classify such actions as pushing, shoving, grabbing and throwing things at them as physical abuse." M.A.

nevertheless adopted the IJ's reasoning that Ms. Rosario should be denied relief because she did not suffer any physical harm or injury that required any medical attention (BIA at 2 citing Tr. at 79; IJ at 6), and that Ms. Rosario "did not... describe the requisite level of harm contemplated in section 240A(b)(2)," at least in part because Ms. Rosario never reported the abuse to the police, nor did she permit her sister to do so. IJ at 6, 8-9; BIA at 2. These "elements" – physical harm requiring medical attention or a police report substantiating the battery and abuse – are not required under VAWA and indeed, would eviscerate VAWA protections.

### B. Ms. Rosario Was The Victim of "Extreme Cruelty"

Mr. Martinez's pattern of insulting Ms. Rosario, demanding money, threatening, and intimidating, is part of a cycle that included shaking, pushing, and throwing Ms. Rosario, causing Ms. Rosario to fear for her safety, all amounting to extreme cruelty. Domestic violence commonly occurs as a cycle of behavior; courts and social scientists agree that evidence of abuse must be viewed in context to be correctly understood. *See* Dutton, *Women's Responses*, *supra*, at 1206. Acts

---

Dutton, L. Orloff, G.A. Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service needs of Battered Immigrant Latinas: Legal and Policy Implications*, Geo. J. on Poverty L. & Pol'y, Vol. VII, No. 2, at 249-50 & n.13 (Summer 2000), citing S. Torres, *A Comparison of Wife Abuse Between Two Cultures: Perceptions, Attitudes and Extent*, 12 Issues in Mental Health Nursing 126 (1991). Furthermore, undocumented battered Latinas may not report the abuse to the police because of fear of deportation. Dutton, Orloff and Hass at 252. That Josefa told her sister not to call the police, and never reported the abusive conduct to the police herself is consistent with her personality and her undocumented status. Josefa is precisely the sort of victim Congress sought to protect; she is a perfect illustration of why VAWA does not require that a domestic abuse victim make a police report.

that may not appear abusive to an observer take on added meaning when viewed from the perspective of a victim who has experienced past abuse. *Id.* ("[B]ehavior which may not be considered threatening by the recipient in one relationship may be considered a clear sign of danger in another relationship).

Mr. Martinez's abusive conduct included several features of extreme cruelty:

Threats: Abusers use many different kinds of threats to maintain their control over their victims. *See, e.g.*, Family Violence Prevention Fund, *Domestic Violence in Civil Court Cases* at 23-24 (1992). Ms. Rosario testified that her husband told her "you are in my hands." She feared what he would do if she did not give him the money he requested. When he left the house for days at a time, she feared what he would do upon his return. Tr. 10/2/07 at 79.

Immigration Related Abuse: Abusers of immigrant women often threaten to report their victims to the government, especially to immigration authorities. Leti Volpp, *Working with Battered Immigrant Women: A Handbook to Make Services Accessible* 6 (1995). Immigration related abuse also includes not filing papers. Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 Am. U. J. Gender Soc. Pol'y & L. 95, 108 (2002). Just as a cut telephone cord may provide corroborating evidence of abuse in domestic violence cases, immigration related abuse provides

corroborating evidence of physical abuse of immigrant victims. Orloff & Kaguyutan, *supra*, at 111.

Ms. Rosario knew that her immigration status was dependent on her husband. She testified that Mr. Martinez threatened to report her to authorities: "[He] gave me to understand that he was going to perhaps (indiscernible) to Immigration, because he would say you know you are in my hands," and that "[h]e was trying to denounce me or giving me [*sic*] to Immigration...." (Tr. 10/2/07 at 64). Mr. Martinez failed to appear when Ms. Rosario needed him at immigration hearings. *Id.* at 65; Tr. 4/21/08 at 137-38.

Economic Abuse: Many abusers of immigrant women use restrictions on their victims' economic freedom to dominate them. Immigrant women report that lack of access to economic resources is the single largest barrier to leaving an abusive relationship. Dutton, *Help-Seeking Behaviors*, at 295-96; *see generally* Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 Wm. & Mary J. Women & L. 597, 617-21 (2001). Ms. Rosario lived in fear of Mr. Martinez. He would be gone for days at a time, then appear only to demand money. She testified that she gave him money "because I was afraid that he was going to hit me, I didn't want him to hit me, I would just – because the way he shook me and everything, so I would give it to him." Tr. 10/2/07 at 62.

Degradation: Abusers use a variety of methods to degrade and humiliate their victims. They may call the victims insulting names, constantly criticize them, and blame them for problems they cannot control. *See, e.g.*, *Pfalzgraf v. Pfalzgraf*, Slip Opinion, 14-CA-79 (Ohio Ct. App. 1979); *Gazillo v. Gazillo*, 379 A.2d 288 (N.J.Ch. 1979). Ms. Rosario testified that her husband called her names and insulted her during their marriage. Tr. 10/2/07 at 80. She testified: "[H]e would be very aggressive and very offensive and then he would pressing [sic] me, asking him to – he would get me from my arms, and he would shake me and throw me away." Tr. 61:13-15.

Mr. Martinez's abusive conduct amounted to "extreme cruelty." *See* 8 C.F.R. § 204.2(c)(1)(vi). As Ms. Rosario's credible testimony established, Martinez physically and psychologically injured her. She said the abuse "affected me psychologically because, when he was out of the house, I was thinking when he is going to come back and hurt me." Tr. 10/2/07 at 79. In short, Ms. Rosario lived in constant fear. Contrary to the ruling below, Ms. Rosario is exactly whom Congress intended to protect under VAWA.

## CONCLUSION

The IJ and BIA committed egregious errors of law as applied to the facts of battery and extreme cruelty, and those errors mandate reversal. *Amicus*

respectfully requests that this Court exercise de novo review, reverse the Board, and grant the status to Ms. Rosario that Congress intended.

Respectfully submitted,

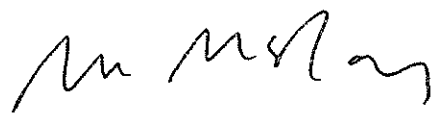
Janet Levine (*admission pending*)
Robert McNary
CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

Jody Goodman (*admission pending*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500
*Counsel for Amicus*

## CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(a)(7)(C), counsel certifies that this brief used proportionally spaced typeface of 14 points and contains 5,149 words. This brief complies with the type-volume limitation of FRAP 32(a)(7)(B).

Respectfully submitted,



Janet Levine (*admission pending*)
Robert McNary
CROWELL & MORING LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071-2258
(213) 443-5583

Jody Goodman (*admission pending*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500
*Counsel for Amicus*

May 10, 2010