APPENDIX 10.—STATEMENT OF LESLYE ORLOFF AND ELLEN LAWTON, AYUDA, INC., CLINICA LEGAL LATINA, AND WILLIAM TAMAYO, THE ASIAN LAW CAUCUS

INTRODUCTION

On May 17, 1991, the Immigration & Naturalization Service ("INS") issued an interim rule which requires that battered spouses seeking a waiver of a joint petition on the basis of extreme cruelty submit an affidavit of a licensed mental health professional. Section 108 of the proposed Immigration & Naturalization Housekeeping Amendments Act of 1992 would remove that requirement. It is important that all are clear in considering this amendment that the existence of a bona fide marriage is and must remain the primary focus of any inquiry under the Marriage Fraud Act; once an alien spouse has established the bona fides of the marriage, whether actual spousal abuse is documented should be secondary. If the abused spouse presents witness statements, lease agreements, or wedding or other pictures to establish the bona fides of the marriage, INS need not dwell on the abuse issue as strongly. The focus of the inquiry must remain on the marriage, with presentation of proof of abuse relevant only to explain why the abused spouse could not safely remain with her abuser for two years while awaiting her permanent residence visa.

In response to concerns and questions expressed by the Committee regarding Section 108 of the Immigration & Naturalization Housekeeping Amendments Act of 1992, we submit the following testimony. First, we provide a brief overview of the legislative history of the Immigration Marriage Fraud Act and Amendments which traces the response of the INS to battered women in the past and reveals the need for adoption of the current amendment. Second, we

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present national statistics to demonstrate that standards of evidence in spousal abuse cases in no jurisdiction are as stringent as those proposed for extreme cruelty cases by the INS, and we suggest possible evidentiary elements that would be more appropriate. Thirdly, we address the INS's misplaced reliance on affidavits by licensed mental health professionals which are required when a waiver for extreme cruelty is sought.

Finally, we discuss our additional concerns about INS confidentiality regulations that also reflect INS' narrow and unrealistic approach on spousal abuse issues. Section 108 could be amended to include these concerns.

I. The INS and the Battered Spouse Waiver

Historically, the immigration petition process has allowed a citizen or lawful permanent resident to extend citizenship to a spouse through marriage. In 1986, the Immigration Marriage Fraud Act (IMFA) was passed to deter fraudulent marriages entered into between an alien spouse and a U.S. citizen or lawful permanent resident solely to acquire legal status for the alien.[1] The Act imposed a two-year period of conditional residence on all aliens who acquired legal status through marriage.

In order to remove the conditional status, the couple would have to file a joint petition after two years had passed. Failure to file the joint petition would terminate the alien's conditional residence by operation of law, and subject the alien spouse to

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[1] Pub.L. No. 99-639, 100 Stat. 3537.

deportation. Because the law required a joint petition, alien spouses and their children frequently were held hostage by abusive citizen or resident spouses with express or implied threats of deportation. Until the passage of the Immigration Act of 1990 (IMMACT),[2] an abused spouse had little recourse if she wanted to continue to reside lawfully in the United States but her husband refused to sign the requisite petition.

Although the joint petition could be waived prior to 1990, the alien spouse had to demonstrate that the marriage had been entered into in good faith and had been terminated for good cause, or that deportation would subject her to extreme hardship because of circumstances arising during the two-year conditional residence. Regardless of the waiver used, the alien spouse was required to demonstrate that the marriage was in fact bona fide.[3] Interestingly, if the petitioner dies within the two year period, the alien spouse is excused from filing the joint petition, is not required to file the waiver, and the marriage is presumed to have been bona fide. Both the extreme hardship and good faith/good cause waivers were interpreted narrowly, making it very difficult for spouses who were victims of domestic abuse to take advantage of the waiver.

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[2] Pub. L. 101-649.

[3] Under § 2 of the IMFA, a couple was required to demonstrate that: (1) they did not marry for the purpose of procuring the alien's entry into the U.S. as an immigrant; (2) the marriage has not been judicially annulled or terminated; and (3) the alien did not pay her spouse a fee in return for his filing an immigrant visa petition on her behalf.

Congress recognized the shortcomings of the two waivers with respect to battered immigrant spouses, and sought to address them in IMMACT. Specifically, the legislative history of that Act stated:

> The terms of the [Immigration Marriage Fraud Act] statute do not make it sufficiently clear that an abused spouse who has entered a marriage in good faith will be granted the waiver either on the basis of "extreme hardship" or termination of the marriage for "good cause." In many cases there are obstacles that prevent a battered alien spouse from initiating a divorce, such as lack of resources to pay for a lawyer; ethnic or cultural prohibitions against divorce; fear of further physical violence; and the risk of deportation itself.[4]

In response to these concerns, Congress modified the IMFA's waiver provisions by significantly revising the good faith/good cause waiver to eliminate the requirement that the marriage be terminated by the alien spouse for "good cause," and adding a third waiver ground specifically to help battered spouses and children.

The battered spouse and child waiver[5] specified that the marriage need not be terminated, a distinct benefit to the battered spouse who is fearful of the consequences of seeking a divorce. Like the other waivers, the battered spouse waiver requires that the alien show that the marriage was entered into in good faith and that he or she was not at fault in failing to meet the joint petition requirement. Once these requirements are met, there must be a showing that during the marriage the alien spouse or child "was battered by or was the subject of extreme cruelty perpetrated

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[4] H.R. Rep. No. 723 Part 1, 101st Cong., 2d Sess. 51 (1990).

[5] IA90 §701 et. seq.

by his or her spouse or citizen or permanent resident parent."[6] That section also added a confidentiality provision to ensure that the abuser would not become aware of the information in the waiver application.

While § 701 refers to "extreme cruelty" as a basis for the battered spouse waiver, the legislative history uses the term "extreme mental cruelty."[7] The INS, in implementing the interim regulation pertaining to the battered spouse waiver for extreme cruelty, has confined the definition of extreme cruelty to include only that abuse which inflicts psychological or mental suffering.

By restricting the definition in this way, certain forms of abuse outside of battery, such as threats to take away the children, or derogatory statements meant to disempower or embarrass the woman, will not necessarily be seen as inflicting mental suffering, but which are nonetheless abusive. Other examples of abusive behavior which are frequently criminal in nature, yet not included in the definition of extreme cruelty include failure to properly provide for the child or spouse, deprivation of economic resources, and medical deprivation. In short, the requirement that a battered immigrant spouse provide an affidavit attesting to her psychological or mental suffering fails to protect women and children who are in fact victims of extreme cruelty which is not necessarily manifested through mental suffering, and points up the inadequacy of such a requirement for documenting abuse.

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[6] IA90 § 701(a)(5) (amending INA § 216(c)(4)).

[7] H.R.Rep.No. 723 Part 1, 101st Cong., 2d Sess. 51 (1990).

Given the clear intent of IMMACT -- to protect battered women and children from being trapped in abusive situations -- the definition of extreme cruelty should be considerably broadened to include the situations like those referred to above. The following section describes the use of a significantly broader view of non-battery spousal abuse throughout the judicial system.

II. Appropriate Standards of Evidence in Domestic Violence Cases

The INS has suggested that stringent proof requirements, such as an affidavit from a mental health professional, are necessary to deter fraud in battered spouse waiver applications.[4] This assertion ignores both the nature of spousal abuse, and the fact that the INS regularly assesses the credibility of applicants in order to determine whether or not applications are fraudulent in a broad variety of cases, including asylum cases, waivers based on extreme hardship and waivers based on termination of a marriage. In none of these cases does INS require the level of proof being asked of immigrant battered women who suffer extreme cruelty.[5]

In the preamble to the regulation, the INS explained the basis for the requirement of an affidavit from a licensed mental health professional in the following manner:

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[4] Testimony of Commissioner Gene McNary, Immigration & Naturalization Service, May 20, 1992 at 8.

[5] Under the battered spouse waiver, the alien spouse must still demonstrate that the marriage was entered into in good faith and that he or she was not at fault in failing to meet the joint petition requirement, in addition to demonstrating either physical abuse or extreme cruelty. See supra.

> The Service agrees with those commenters who have stated that most Service officers have not received training in this area and are not qualified to make reliable evaluations of an abused applicant's mental or emotional state. Therefore, it is necessary for the Service to rely upon the judgment of professionals trained in the area of evaluating an individual's emotional or mental condition.[10]

As Section III discusses, it is fallacious to assume that a professional "trained in the area of evaluating an individual's emotional or mental condition" is necessarily equipped to assess a situation involving spousal abuse or has even been trained in the dynamics of spousal abuse.

More importantly, stringent proof requirements misperceive the nature of standards of evidence in spousal abuse cases. An examination of what is typically required to document physical and/or emotional abuse in civil protection order proceedings reveals that the unique circumstances of domestic violence require an infinitely more flexible standard of evidence than the present INS rule offers.

Since much of domestic violence happens with no witnesses, or with only children as witnesses, courts see many cases where the victim testifies, the batterer testifies, and no other evidence is presented. When this occurs, the court carefully questions both parties, and evaluates the testimony in determining credibility. Contrary to INS statements defending the interim regulation at

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[10] 56 Fed. Reg. 22635-38 (May 16, 1991) (codified at 8 CFR § 216.5)

issue,[11] evaluating the credibility of affidavits and witnesses is precisely the type of judgment that INS officers are called upon to make on a regular basis when considering political asylum applications and deportation proceedings.

In making a determination of whether or not to grant a battered spouse waiver, the only inquiry by the INS should be on the credibility of the reports of abuse, not on whether the alien spouse is suffering extreme cruelty. Unlike in the asylum context where the INS inquires as to whether the applicant has a well-founded fear of persecution, under the IMFA the INS need only see that there was some abuse to constitute sufficient and rational reason for the alien spouse to leave their husband within the two year period. By placing the INS in the position to measure the quality and quantity of the abuse one must suffer to seek a waiver, we give the INS authority and discretion beyond that contemplated by the statute. We do not believe it was ever the intent of Congress to empower the INS to determine how much abuse any individual seeking to avail themselves of this waiver must suffer.

When victims are able to garner other evidence of the violence, the evidence usually takes the form of medical records, photographs, police reports, and physical evidence, as well as supportive testimonial evidence from friends, family members,

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[11] "...as most INS officers have not received training in this area and may not be qualified to make reliable evaluations of an abused applicant's mental or emotional state, we feel it is preferable to rely on the judgment of a professional." Testimony of Commissioner Gene McNary, Immigration & Naturalization Service, May 20, 1992.

children, co-workers, neighbors, school teachers, social workers, police officers, and health professionals.[12]

A survey of the standard of proof typically applied in domestic violence cases is equally instructive in determining the appropriate evidentiary requirements for a battered spouse waiver. The standard of proof used in the vast majority of jurisdictions for issuance, modification and extension of a civil protection order is, at the highest, a "preponderance of the evidence" standard (20 states), however a number of states employ a lesser standard of "good cause" (20 states), "reasonable grounds" (4

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[12] The scope of evidence that is typically admissible at civil protection order hearings for issuance, modification, extension and enforcement of civil protection orders is summarized well in the New Jersey statute Nj.:2C:25-13 a.:

> The court shall consider <u>but not be limited to the following factors</u>:
>
> (1) The previous history of domestic violence between the petitioner and the defendant including threats, harassment and physical abuse;
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> (2) The existence of immediate danger to person or property;
>
> (3) The financial circumstances of the plaintiff and defendant;
>
> (4) The best interests of the victim and any child;
>
> (5) In determining custody and visitation the protection of the victim's safety; and
>
> (6) The existence of a verifiable order of protection from another jurisdiction.
>
> (emphasis added)

states) or "probable cause"(4 states).[13]

The above-referenced standards of evidence are representative of that which is required in civil litigation. The INS, as an administrative agency, is subject to an equal, and occasionally lower, standard of proof.[14] It is only fitting that a victim of spousal abuse should be able to seek and obtain relief from both the courts and the INS based on the same evidence.

III. Spousal Abuse and Mental Health Professionals

Under the new rule, a waiver application based on extreme cruelty must be supported by the affidavit of a licensed clinical social worker, psychologist or psychiatrist.[15] By contrast, in order to prove physical abuse, a waiver applicant may submit a broad variety of evidence including, but not limited to, personal statements, reports, records and/or affidavits from police, judges, medical personnel, school officials, friends, neighbors, family

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[13] In the New Jersey case of Ros v. Ros, 253 N.J.Super. 418, 601 A.2d 1201 (1992), the court explained the "preponderance of the evidence" standard is lower than the criminal reasonable doubt standard, since a domestic violence complaint is typically pursued as a civil action and civil remedies are obtained. The court stated, "[a]llegations of domestic violence will frequently be difficult to prove due to the private nature of the offense. There are usually few, if any, eyewitnesses to marital discord or domestic violence, thus enhancing credibility disputes." Id. at 1206.

[14] In seeking asylum, for example, the applicant's burden is to establish the likelihood of persecution by a preponderance of the evidence. Matter of Acosta, 19 I & N Dec. --(I.D. 2986, BIA 1985).

[15] 56 Fed. Reg. 22635-38 (May 16, 1991) (codified at 8 CFR § 216.5).

members, or social service agency personnel. Thus, the INS interim rule imposes significantly more burdensome evidentiary requirements only in the case of extreme cruelty.

The requirement of an affidavit by a mental health professional to prove extreme cruelty manifests a fundamental misunderstanding of the obstacles faced by battered immigrant women in obtaining access to any social or legal services, and severely undermines the Congressional intent that the waiver should "ensure" that neither a spouse nor a child would be "entrapped in the abusive relationship by threat of losing their legal status."[16] The requirement also presumes that all mental health professionals possess an understanding of spousal abuse issues. This presumption is belied by recent statistics which reveal that mental health professionals are often not trained in or knowledgeable about the dynamics of spousal abuse, nor are they generally trained to work with immigrant and refugee populations.

For example, in one study, nearly half of the psychotherapists surveyed failed to identify obvious evidence of spousal abuse, despite their professional training (and licenses).[17] The reasons for such a statistic are manifold. Frequently, mental health

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[16] H.R. Rep. No. 723 Part 1, 101st Cong., 2d Sess. 78 (1990). See also 136 Cong. Rec. 8642 (daily ed. Oct. 2, 1990) (statement of Rep. Louise Slaughter (D-N.Y.) (noting that the waiver would be granted to an abused conditional resident spouse, an abused conditional resident child or a conditional resident spouse seeking to protect an alien or citizen child from abuse by the citizen or resident spouse).

[17] See Harway & Hanson, "Therapists' Recognition of Wife Battering: Some Empirical Evidence," 6 Family Violence Bulletin 16 (Fall 1990).

professionals are simply not trained to identify or treat spousal abuse.[18] Even with training, many licensed mental health professionals lack the same experience working directly with victims of spousal abuse, that shelter workers, clergy and others in the social services who work frequently with victims of such abuse possess.[19] The result is that mental health professionals are frequently unable to provide accurate assessments in spousal abuse cases.

The inability of mental health professionals to even recognize indicia of spousal abuse is more plausible when compared with the failure of physicians to recognize physical evidence of spousal abuse. In a study of emergency room records conducted by Mascia (1984), 11% of the female injury cases were detected as spousal abuse. After training, the number of cases detected as spousal abuse rose significantly.[20]

Using current diagnostic and identification procedures, physicians identify approximately 1 abuse victim in 25, while mental health practitioners identify as few as 1 in 30.[21] In view of such statistics, it is clear that reliance on affidavits of

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[18] Id.

[19] Id. Most battered women and particularly immigrant and refugee women lack the financial resources to seek and obtain mental health services from licensed professionals.

[20] Saunders & Rose, "Attitudes of Psychiatric and Nonpsychiatric Medical Practitioners Toward Battered Women: An Exploratory Study," p. 4 (1984).

[21] Stark and Flitcraft, "Spouse Abuse," Surgeon General's Workshop on Violence and Public Health Source Book, p. 17.

mental health professionals as evidence of extreme cruelty is dramatically misplaced.

The inaccessibility of mental health professionals for immigrant women magnifies the inappropriateness of reliance on an affidavit. Acquiring such an affidavit is not only beyond the means of most immigrant women,[22] but it is often impossible to find mental health professionals with relevant language and cultural skills to examine clients. While the INS regulation requires only that the mental health professional be licensed, it is logical that for an evaluation to be probative or useful, the practitioner must be fluent in the waiver applicant's language and familiar with specific cultural issues which may relate to the problem of spousal abuse in the pertinent culture.

The language and cultural barriers faced by immigrant women are enormous. Most mental health agencies, shelters and other service groups are not equipped to deal with the special needs of women who do not speak English. This problem exists nationwide. Where shelters do begin to address language barriers, there are also problems. For example, 75 different languages are spoken in Northern Virginia, yet the Domestic Violence Program in Alexandria, Virginia provides regular counselors in only four of those

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[22] Hogeland & Rosen, Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity 10-11 (1990) (survey of immigrant women in San Francisco area found that incomes were well below the national poverty level).

languages.[23] A 1988 survey of human services agencies by the Northern Virginia Planning District Commission found that there was "insufficient" bilingual assistance to meet the demand, and according to mental health officials, there are few Cambodian social workers in the Washington area, and no Cambodian psychiatrists.[24]

In California's Orange County, which has a large Spanish-speaking population, the two most well-known medical facilities in the county lack Spanish-speaking therapists in their outpatient psychiatric services.[25] Ellen Mercer, director of the Office of International Affairs for the American Psychiatric Association has stated that "[i]t's difficult to find mental health services in many areas for people who don't speak English."[26]

The cultural barriers preventing abused immigrant women from seeking the services of mental health professionals are equally insurmountable. Effective services necessitate someone familiar with the languages and customs of the client's culture. According to Angus Morrison, executive director of Furthermore Foundation,

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[23] Banales, "Abuse Among Immigrants," The Washington Post, Sept. 16, 1990, at E5. In Washington, D.C., where the Spanish-speaking population is approximately 300,000, there is one Spanish-speaking licensed mental health practitioner.

[24] DeNeen L. Brown, "Old Burdens in a New Land; Horrors from Past can Wreak Havoc in Lives of Immigrants, Mental Health Experts Say," Wash. Post, Sept. 20, 1990.

[25] Mary Anne Perez, "Social Work Group Forms to Aid Latinos," Los Angeles Times, May 30, 1991.

[26] See Brown at VI.

"[i]t is difficult for non-Asians to counsel Southeast Asians, because they lack the linguistic skills or cannot recognize subtle cultural differences -- such as the Vietnamese habit of smiling to avoid answering a potentially embarrassing question."[27] For many immigrant women, the cultural taboos and shame associated with mental health counselling and therapy are simply too strong to overcome.

A third barrier to battered immigrant women's access to the requisite mental health professional is economic. Since many immigrant women are poor, and their husbands frequently control the family finances, a waiver applicant will not be able to afford the costs of psychological counseling on her own. Immigrant women must therefore rely on the scant services provided through shelters and other service providers. As discussed above, however, even where free or affordable services exist, they remain inaccessible due to the language and cultural difficulties which prevail. Moreover, few spousal abuse shelters have licensed clinical social workers on staff, much less psychologists or psychiatrists.

Each of these barriers -- linguistic, cultural and economic -- reduces the chance that an immigrant woman will have access to the type of practitioner presently required to support her waiver application. The result of INS' present policies will be to hold immigrant spouses and children captive in abusive relationships in direct contradiction to the intent of Congress when it passed the

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[27] Aaron Curtiss, "To Heal the Lingering Wounds of War," Los Angeles Times, Oct. 4, 1991.

1990 amendments to the Immigration Marriage Fraud Act of 1986 (IMFA).

IV. Confidentiality Provisions

The regulation proposed by INS in 8 CFR 3.27(c) implementing Section 701 is totally inadequate to protect victims of domestic violence. While the statute clearly intended that any information provided to the INS regarding the location of the victim of abuse would be confidential and would not be disclosed in any fashion by the INS, the interim regulation only provides for closed hearings before the immigration judge. Congress should consider amending Section 108 of the present Act to require INS to adopt confidentiality provisions similar to those used under the legalization program.

It is well known that batterers consistently use all available means to continue perpetrating attacks on their victims. It is also true that violence escalates after separation. Given these facts the Immigration Act of 1990 sought to allow the INS to collect information that it needed to process waivers for battered women while assuring that the disclosure of this information would not further endanger the victim. This goal can only be achieved if there is an absolute enforceable ban on the distribution of locational information presented to the INS by abused persons. If all distribution of locational information about the victim and her children is not precluded by the INS, the INS will become a tool that batterers can easily use to locate their victims and continue

abuse. All information provided by battered women and children to the INS must remain confidential if battered women and children are to be fully protected.

If the purpose of Section 701 is to be furthered, regulations must be implemented that would prevent all public disclosure of all information provided by victims of domestic violence. This would include all information contained on the form I-752 and any other documents submitted by the victim to support the I-752. Information obtained during interviews must also be protected. We would propose that the provisions that already exist in subsection (c)(5) of section 201(a) of Pub. L. No. 99-603 be extended to cover information provided in connection with petitioner or waivers filed by battered women and children. It is particularly important that the regulations adopted include both a prohibition against disclosure and criminal sanctions for disclosure.

Research into domestic violence makes it clear that violence escalates over time and that separation does not end the violence but rather increases the risk of future violence. As a result, courts throughout the country have take steps to ensure that locational information of domestic violence victims and their children remain absolutely confidential and not be disclosed. Experts on domestic violence agree that one of the most difficult obstacles battered women must overcome in leaving a violent relationship is locating a safe and secure place to live with her

children apart from her batterer.[28] Many women feel safest choosing to live in a location that is not known to the batterer. The address may be a safe home, a shelter of the home of a friend, co-worker or relative. If the INS allows or assists a batterer in locating the victim's address, not only the battered woman and her children but the families who offer shelter may be endangered. Specifically, the National Institute of Justice urges that the address of battered women not be disclosed in any way to her batterer.

> [T]o be effective, temporary and permanent protection orders must include all the statutorily authorized protection against further abuse that the victim needs given the particular circumstances of the case... [I]n intimate relationships the victim needs a high level of protection because the batterer typically has ready access to the victim.[29]
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> ... (T)he court does not need specific statutory authority to impound the victim's address (that is, to keep it secret) if this measure is considered necessary to protect her safety.[30]

In addition to courts regularly impounding the address of the victim in any family violence case based on their equitable powers and the need to protect the victim and her children, statutes in many states specifically require impounding of the petitioner's

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[28] Finn and Colson, Civil Protection Orders: Legislation, Current Court Practice and Enforcement (National Institute of Justice, March, 1990) at 33, 42. See also, National Council of Juvenile and Family Court Judges, Family Violence: Improving Court Practice, (Reno, Nevada, 1990) and Attorney General's Task Force on Family Violence, Final Report, September 1984.

[29] Id. at 33.

[30] Id. at 33.

address."[21]

The safety of battered women and their children must become the prominent concern of the INS as it crafts regulations under Section 701. The interim regulation does not even begin to offer victims of violence the protection to which they are entitled. The INS must not become a tool used by batterers to track down their victims. The judiciary and state laws have recognized how batterers have used them in the past and have take strong measures to preclude assisting batterers in the future. The INS must do the same. The INS should follow the lead of the judiciary and craft regulations that will ensure the confidentiality of all information provided to the INS by victims of domestic violence.

The provisions of 8 CFR 3.27(c) do not accomplish this important goal. Regulations must preclude disclosure of all information to any person by any INS employee from the moment an

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[21] Examples include: Mt.:40-4-121 (battered woman's address can only be disclosed by application to the court on good cause shown); Ms.:93-21-9(7)(court may not disclose the address of a shelter or petitioner's address if unsafe for petitioner, petitioner's children, family or household members, orally in-camera to the judge permitted it necessary); Ca.:Sec. 545 (no disclosure of the address of petitioner's home, job, school, children's child care provider, or children's school); Pa.:23-6112 (nor disclosure when petitioner's family would be endangered); Nh.:173-B:3I (address impounded, when defendant must serve papers on the petitioner, he must serve them on the court who will forward the papers to the victim's address); No.:455.030.3 (petitioner can be required to provide the defendant with an alternative mailing address if the court determines that this will not endanger the petitioner, orally in-camera to the judge permitted); Tx.: 71.111 (clerk to strike petitioner's address from court papers, petitioner's address, phone number, her employer's address and phone number and the address of her child's day care are impounded); Il.:2312-3 Sec. 203 (b)(if disclosure is relevant for jurisdiction or venue the address is to be provided to the judge orally, in-camera).

I-752 application is filed with the INS. In domestic violence cases, the INS should adopt confidentiality provisions that are already in place under section 245 (A)(c)(5) of the INA in order to best protect victims from further abuse.

V. Conclusion

The federal government, particularly the Justice Department's 1984 report on family violence, has come a long way in recognizing the extent of wife abuse in the U.S. and in insisting that measures to protect victims of domestic violence are not thwarted by government entities with little understanding of abuse. Nevertheless, the INS, through the interim regulation requiring an affidavit for an extreme cruelty waiver, blocks such efforts to protect victims of abuse. We urge that Section 108 of the Immigration and Naturalization Housekeeping Amendments Act of 1992 be adopted to invalidate the INS regulation in order to fully implement Congress' intent to prevent the entrapment of children and spouses in abusive relationships. We further urge that Section 108 be amended to ensure the all information presented by abused spouses and children to the INS in conjunction with waiver requests be held confidential under the same type of confidentiality provisions that apply under the legalization program.

Fleeing a violent home is an important step in promoting the health and welfare of many women and children in the United States. We must not allow the INS to implement narrow policies that further

endanger the women and children that this Congress intended to protect. Their protection requires the passage of Section 108 of this Act and expanding that Section to protect the confidentiality of these needy victims of abuse in their homes.