

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

_____)
In the Matter of:)
)
)
SUSANA RAMIREZ AVILA,) File No. A 74-572-016
) In Removal Proceedings
)
Respondent)
_____)

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**REQUEST FOR LEAVE TO APPEAR AS AMICI CURIAE
IN SUPPORT OF RESPONDENT'S APPEAL**

Pursuant to Rule 2.10 of the Board of Immigration Appeals Practice Manual, Legal Momentum, ASISTA, Family Violence Prevention Fund and National Network to End Violence Against Immigrant Women (“*amici*”) respectfully request permission from this Board to file a brief as *amici curiae* in support of Respondent Susana Ramirez-Avila’s appeal of the Immigration Judge’s Decision. The brief of the *amici* exposes the egregious mistakes of the Immigration Judge in interpreting and applying the requirements for cancellation of removal under Section 240A(b)(2) of the Immigration and Nationality Act (“INA”) for immigrant victims of domestic violence such as the Respondent. Specifically, the *amici* are concerned that the Immigration Judge’s decision negates Congress’s intent to make immigration relief available to immigrant survivors through the Violence Against Women Act of 1994 (“VAWA”) and its subsequent enhancements. The *amici* submit that the Immigration Judge failed to apply VAWA-specific statutes to Ms. Ramirez’s request for cancellation and issued flawed credibility, extreme hardship and good moral character determinations because he failed to consider those issues in the context of domestic violence as VAWA and Congress require.

A copy of the *amici*’s brief is attached.

The *amici* are leading domestic violence, immigration law, and women's rights organizations. All *amici* have substantial knowledge of the problem of domestic violence, the procedures for combating the problem nationwide and internationally, and the particular dynamics of domestic violence experienced by immigrant victims.

Amicus Legal Momentum is a national legal organization with substantial knowledge and insight into issues of domestic violence, immigration law, and women's rights. Legal Momentum has long been an advocate of women's right to live free from abuse. As the chair of the National Task Force to End Sexual and Domestic Violence, Legal Momentum was a leader in passing the Violence Against Women Act ("VAWA") in 1994 as well as VAWA 2000 and VAWA 2005. As co-chair of the National Network to End Violence Against Immigrant Women, Legal Momentum played the leading role in crafting and negotiating the provisions of VAWA, VAWA 2000, and VAWA 2005 (Pub. L. No. 109-162, 119 Stat. 2160 (2006)). Legal Momentum works closely with the Department of Homeland Security and Department of Justice to implement regulations, policies, and procedures that protect victims eligible for VAWA immigration relief.

Amicus ASISTA Immigration Technical Assistance Project ("ASISTA"), founded in 2004, is a collaboration of four prominent legal organizations that have provided comprehensive, cutting-edge technical assistance regarding immigration and domestic violence law for the past decade. 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,

work closely with Department of Homeland Security (DHS) personnel to ensure they implement the law as Congress intended and coordinate litigation to correct misapplications of the law by the Executive Office of Immigration Review (EOIR). Together with 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.

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

Amicus The National Network to End Violence Against Immigrant Women, founded in 1992, 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, ASISTA, and the Family Violence Prevention Fund. 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 Violence Against Women Act 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 Network has frequently appeared as *amicus curiae* in matters involving interpretation of VAWA and its amendments and reauthorizations.¹

Together, the *amici* are committed to achieving the underlying goal of the statutes at issue in this appeal.

As set forth in the Respondent's Brief appealing the Immigration Judge's decision, Section 240A(b)(2) of VAWA is intended to provide *all* immigrant survivors of domestic violence with the resources and opportunity to escape abusive relationships. Each of the *amici* are concerned that the Immigration Judge's decision demonstrates serious misunderstandings of domestic violence and immigration law issues. In support of the Respondent, the *amici* submit that the Immigration Judge ignored the VAWA immigration requirements set out in INA Section 240A(b)(2) regarding the "any credible evidence" and "extreme hardship" standards to be applied to battered immigrants seeking cancellation of removal. In addition, the Immigration Judge evaluated Respondent's credibility, moral character and hardship without considering the impact domestic violence may have on these issues.

The *amici* seek to provide the Board with their analysis of the true letter and spirit of VAWA using their extensive background and resources regarding these issues. In addition, the *amici's* brief will provide the Board with social science evidence regarding the domestic violence "cycle of abuse," and third party reactions to that abuse, which are integral to

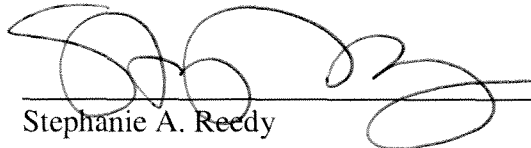
¹ See, e.g., *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049 (9th Cir. 2005); *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

understanding the plight of immigrant survivors of domestic violence. These issues are beyond the scope of the briefs of the parties. The *amici* therefore respectfully request leave to file the attached brief *amici curiae* in support of the Immigration Judge's decision.

CONCLUSION

For the foregoing reasons, the *amici*'s request for leave to file a motion as *amicus curiae* should be granted.

Respectfully submitted,



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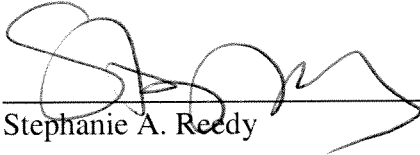
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I hereby certify that a copy of the foregoing submission was served via first class mail, postage prepaid, this 26th day of January, 2007, upon the following:

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Name: RAMIREZ-AVILA, SUSANA EDITH

A74-572-016

Type of Proceeding: Removal

Date of this notice: 11/01/2006

Type of Appeal: Case Appeal

Appeal filed by: Alien

Date of Appeal: 05/25/2006


NOTICE -- BRIEFING SCHEDULE

- o Enclosed is a copy of the decision of the Immigration Judge.
- o Enclosed is a copy of the transcript of the testimony of record.
- o Appealing party is granted until 11/22/2006 to submit a brief to the Board of Immigration Appeals. The brief must be **RECEIVED** at the Board on or before this date.
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BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENT'S APPEAL

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INTRODUCTION

Amici Legal Momentum, ASISTA, Family Violence Prevention Fund, and National Network to End Violence Against Immigrant Women (“*amici*”) submit this brief in support of Respondent Susana Ramirez-Avila’s (“Ms. Ramirez” or “Respondent”) appeal of the denial of her request for cancellation of removal and adjustment of status filed under Section 240A(b)(2) of the Immigration and Naturalization Act (“INA”). *Amici* are particularly knowledgeable about the Violence Against Women Act of 1994¹ (“VAWA”) and domestic violence in general, and believe this knowledge will be of assistance to the Board in its resolution of this appeal.²

The *amici* are concerned because the Immigration Judge in this case failed to apply VAWA’s immigration statutes when evaluating Ms. Ramirez’s claim for VAWA cancellation of removal. *Amici* are also concerned that the Immigration Judge’s credibility determination failed to account for factors specific to VAWA cases, and thus improperly narrowed the “any credible evidence” standard applicable to requests for VAWA cancellation of removal. Finally, the *amici* believe that the Immigration Judge’s “extreme hardship” and “good moral character” determinations were flawed because he failed to consider those issues in the context of domestic violence, as VAWA and its implementing regulations require. This distortion of the standards Congress intended to apply to domestic violence cases seriously hampers the effectiveness of the remedial schemes set forth in the INA as amended by VAWA, and should not be sustained.

¹ 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.).

² The *amici* have worked collaboratively with Respondent’s counsel to ensure that this amicus brief does not merely repeat that which is in Respondent’s brief. Instead, this brief offers additional insight and perspective that the *amici* believe will be of assistance to the Board.

DESCRIPTION AND INTERESTS OF THE AMICI

The *amici* are Legal Momentum, ASISTA, the Family Violence Prevention Fund, and the National Network to End Violence Against Immigrant Women (the “Network”).

(1) Legal Momentum is a national legal organization with substantial knowledge and insight into issues of domestic violence, immigration law, and women’s rights. Legal Momentum has long been an advocate of women’s right to live free from abuse. As the chair of the National Task Force to End Sexual and Domestic Violence, Legal Momentum was a leader in passing the Violence Against Women Act (“VAWA”) in 1994 as well as VAWA 2000 and VAWA 2005. As co-chair of the National Network to End Violence Against Immigrant Women, Legal Momentum played the leading role in crafting and negotiating the provisions of VAWA, VAWA 2000, and VAWA 2005 (Pub. L. No. 109-162, 119 Stat. 2160 (2006)). Legal Momentum works closely with the Department of Homeland Security and Department of Justice to implement regulations, policies, and procedures that protect victims eligible for VAWA immigration relief.

(2) The ASISTA Immigration Technical Assistance Project (“ASISTA”), founded in 2004, is a collaboration of four prominent legal organizations that have provided comprehensive, cutting-edge technical assistance regarding immigration and domestic violence law for the past decade. 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, work closely with Department of Homeland Security (DHS) personnel to ensure they implement

the law as Congress intended and coordinate litigation to correct misapplications of the law by the Executive Office of Immigration Review (EOIR). Together with 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.

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

(4) The National Network to End Violence Against Immigrant Women, founded in 1992, 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, ASISTA, and the Family Violence Prevention Fund. 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 Violence Against Women Act 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 Network has frequently appeared as amicus curiae in matters involving interpretation of VAWA and its amendments and reauthorizations.³

RELIEF REQUESTED

The *amici* request that the Board reverse the Immigration Judge's findings and grant Respondent's request for VAWA cancellation of removal and adjustment of status under INA § 240A(b)(2). In the alternative, *amici* request that the Board vacate the Immigration's Judge's decision and remand the case for rehearing of the evidence presented by Respondent and potential expert testimony on the effects of domestic violence on victims and third parties. On remand, the immigration judge should be instructed to preserve the legislative intent of the VAWA by properly applying its statutory provisions and by considering the issues of credibility, good moral character and extreme hardship in that context.

SUMMARY OF RELEVANT FACTS

Ms. Ramirez was placed in removal proceedings on April 19, 2005. She sought relief from removal through a number of statutory provisions, including VAWA cancellation of removal available to immigrants who have suffered battery or extreme cruelty pursuant to INA § 240A(b)(2). The evidence presented at her hearing demonstrated that Ms. Ramirez's former husband, Jose Enriquez Ramos-Aguilar ("husband") was both psychologically and physically abusive, and that Ms. Ramirez continues to suffer the effects of that abuse today. Ms. Ramirez

³ See, e.g., *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049 (9th Cir. 2005); *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

also presented evidence indicating that her removal would result in extreme hardship for her and her three United States citizen children.⁴

Ms. Ramirez's Sworn Affidavit and Testimony

Ms. Ramirez entered the United States without inspection through El Paso, Texas, in February of 1992 to marry her husband, a legal permanent resident. Hearing Transcript ("Tr.") at 44-45. She was nineteen years old at the time of her marriage. *Id.* at 57. She separated from her husband after enduring nearly three years of abuse, testifying that her husband "hit me a lot, and . . . left me with a black eye and my neck. And he told me, he would tell me that he was going to kill me." *Id.* at 45, 47. The violence began soon after the birth of their son Enrique, when her husband threw her on the bed because the baby was crying. *Id.* at 45. He continued to abuse Ms. Ramirez both physically and psychologically throughout their marriage and the abuse escalated as time passed.⁵ *Id.* at 46.

She left her husband after a particularly violent attack in October 1995 when he beat her in their car. "He started hitting me in the eye and he took me by the neck." *Id.* at 5. "He got me by the neck and he told me that he was going to take me to the river and kill me." *Id.* at 90. Ms. Ramirez testified that her husband stopped beating her when he heard a police siren. *Id.* at 52. He took the car keys and disappeared. *Id.* When Ms. Ramirez told the police officer that her

⁴ Ms Ramirez has three sons: Enrique Misael Hernandez, born December 6, 1992, Kevin Garcia, born March 16, 1998, and Xavier Garcia, born September 19, 2004. *See* Birth Certificates for Enrique Hernandez, Kevin Garcia and Xavier Garcia (included in Exhibit 2 in the proceedings below) (attached as Exhibit A).

⁵ Ms. Ramirez's counselor said she believes "the abuse was of such a degree that [Ms. Ramirez] was able to quickly realize the danger. She suffered repeated physical incidents and infidelities as well as continual emotional and verbal abuse." Letter from Myrna B. Fraker, Catholic Charities, dated April 17, 2006 ("April 17th Fraker Letter") (included with Respondent's submission on appeal) (attached as Exhibit B).

husband had hit her, he took down some information and told her she would receive court papers in the mail. *Id.* She stayed with friends that night because her husband had the keys and she was afraid to go back to their apartment. Ms. Ramirez called the police about getting her husband out of the apartment, but they told her that because she had already given a report, “they couldn’t do anything until I got the letter in the mail. . . . They told me that they couldn’t arrest him.” *Id.* at 53.

Ms. Ramirez returned to her apartment a few days after the beating because she could no longer stay with her friends and had nowhere else to go. *Id.* Ms. Ramirez went back to her apartment, stayed there with her husband for three to four days, then asked him to leave, and he left. *Id.* When time passed and Ms. Ramirez had not received the letter she was told to expect from police, she went to the police station and filed a police report.⁶

Third-Party Evidence Presented By Ms. Ramirez

Ms. Ramirez was not the only witness to testify in Immigration Court about her abusive relationship. A neighbor, Dana Delgado, testified that Ramirez’s husband “had always been really aggressive, he was always yelling, and he was always slamming the door. And the same with the little boy, he would always like yell at him or send him outside.” Tr. at 99. “He would call her a damn broad and he would call her and tell her that she was a son of a bitch . . . and he would do the same to the little boy He would always slam the doors and I guess he broke

⁶ See State of New Mexico Uniform Incident Report, dated October 21, 1995 (included in Exhibit 2 in the proceedings below).

things because you could always hear a lot of noise.” *Id.* at 99-100. Ms. Delgado also said that Ms. Ramirez’s husband was “rough” and would “manhandle” his young son.⁷

Ms. Delgado also saw the physical injuries Ms. Ramirez sustained from her husband’s abuse. She testified in Immigration Court that two days after the October 1995 beating, she saw Ms. Ramirez wearing sunglasses and looking sad. “I asked her why she was like that. She took her shades off and she said ‘look at what my husband did’ She had a really, a black eye, and her neck . . . it was like blue and purple and it was scratched, she had scratches.” *Id.* at 98-99. Ms. Delgado not only saw the bruises and scratch marks, but had talked to Ms. Ramirez’s husband the night of the beating. She testified in Immigration Court that he told Ms. Delgado that he had beaten Ms. Ramirez that night. *Id.* at 98. Ms. Delgado testified that he told her, “he hit [Ms. Ramirez] a lot. And that he was afraid that the police was going to get him.” *Id.* Ms. Delgado said she did not call the police after the husband’s confession because “that was their, their business and I couldn’t get into that.” *Id.* at 99.

Ms. Ramirez Continues to Experience The Impacts of Abuse

After her husband moved out, Ms. Ramirez received public assistance because she was “unable to make ends meet. . . . I was paying the apartment by myself and I didn’t have enough left over for food.” *Id.* at 70. She received assistance from December of 1995 through the end of 1996, until she was able to obtain employment to support herself and her child. *Id.* Ms. Ramirez used a false permanent resident card and social security number to obtain that employment. *Id.*

⁷ Enrique Ramirez, now 13, testified that he has not seen his father since he was three years old, and said he does not want to see him because of the abuse he and his mother suffered. Tr. at 109-110. “When I was smaller [], I kept having like dreams about, about one time when I was eating breakfast in the living room . . . I was . . . drinking milk and then he like stepped on it, I guess, and he thought it was me. And he, he put me in the, a cold shower and---” *Id.* at 110. “I first thought they were just like dreams, that they were not true until I got like frustrated and I asked my mom if that was true and she said it did happen.” *Id.* at 110-11.

at 122-23. She never claimed to be a United States citizen to get a job. *Id.* at 124. Ms. Ramirez sought counseling for depression and anxiety after separating from her husband. According to her counselor at Catholic Charities, she “still suffers disassociation because of the traumatic experiences which she suffered.”⁸ Ms. Ramirez now lives with Alejandro Garcia-Cautella, the father of sons Kevin and Xavier Garcia, but continues to have difficulty trusting others. Tr. at 121.⁹ Ms. Ramirez “strives to maintain the stability of her family and to safeguard her children from more harm,”¹⁰ and her counselor has noted that “it appears that her husband continues to act in ways that are vindictive towards her.”¹¹

Ms. Ramirez’s counselor believes that removing her to Mexico would “pose a hardship in acquiring continued therapy since the location of her hometown is rural and away from a large city in which she may be able to seek therapy.”¹² In addition, Ms. Ramirez testified that women who are victims of domestic violence are treated differently in Mexico, and said attempts to report the abuse in her home country usually result in inaction by police. Tr. At 68. Being a divorced woman in Mexico also results in stigma and unwanted attention from men. *Id.* Ms. Ramirez’s counselor has described the children as “living with the anxiety of the possibility of having to move to Mexico” and said that “they would be victimized by this experience.”¹³

⁸ See April 17th Fraker Letter.

⁹ Letter from M. Fraker, Catholic Charities, dated March 29, 2006 (“March 29, 2006 Fraker Letter”) (attached as Exhibit C) (noting Ms. Ramirez “appears to be dealing with some continuation from the abusive marriage in her present relationship especially with jealousy and mistrust issues.”).

¹⁰ See *id.*

¹¹ *Id.*

¹² *Id.*

¹³ April 17th Fraker Letter.

The Immigration Judge's Decision

After considering the exhibits and testimony presented by Ms. Ramirez in support of her request for VAWA cancellation of removal, the Immigration Judge denied her request for relief. He found Ms. Ramirez's testimony relating to the physical abuse and the corroborative testimony of her son and neighbor "not inherently plausible and not credible." Oral Decision of the Immigration Judge, dated April 28, 2006 ("I. J.") at 9. The Immigration Judge also determined that Ms. Ramirez lacked the requisite "good moral character" for VAWA cancellation of removal because she failed to file joint taxes with her ex-husband and did not file taxes on her own after their separation. *Id.* at 8. He also cited Ms. Ramirez's use of a false legal permanent resident card and social security number to obtain employment after she ended her abusive relationship as evidence that Ms. Ramirez lacked good moral character. *Id.* at 9. Finally, the Immigration Judge found that Ms. Ramirez had not satisfied the "extreme hardship" requirement of cancellation because the hardship demonstrated was not "exceptional and unusual." *Id.* at 10.

ARGUMENT

I. VAWA'S CANCELLATION OF REMOVAL STATUTE WAS ENACTED TO PROTECT BATTERED IMMIGRANTS AND CONGRESS HAS CONTINUED AND STRENGTHENED THAT PROTECTION IN SUBSEQUENT LEGISLATION

Congress passed the Violence Against Women Act in 1994 following years of investigation into the serious domestic violence problem existing in the United States. At the same time, Congress amended the nation's immigration laws to provide certain protections, including suspension of deportation relief, to immigrant victims of domestic violence. Since enacting VAWA, Congress has continued its commitment to protect and assist battered immigrants facing deportation or removal by declining to impose heightened standards on immigrant domestic violence victims and by affirmatively improving the protections established by the statute. These actions demonstrate Congress' continued intent to address the domestic violence dilemma in this country in a new, informed and enlightened manner.

When formulating the VAWA, Congress relied on disturbing statistics¹⁴ reflecting the serious and pervasive toll that domestic violence takes on society:

- At least 3 to 4 million women in the United States are abused by their husbands each year, and over sixty percent of victims are beaten while pregnant.¹⁵
- One-fifth of all reported aggravated assaults involving bodily injury have occurred in domestic situations.¹⁶
- One-third of domestic attacks are felony rapes, robberies, or aggravated assaults. Of the remaining two-thirds, involving simple assaults, almost one-half resulted in serious bodily injury.¹⁷
- More than one of every six sexual assaults per week is committed by a family member.¹⁸
- One-third of all women who are murdered die at the hands of their husbands or boyfriends, and one million women seek medical attention each year for injuries caused by their male partners.¹⁹

¹⁴ These statistics actually underestimate the extent of the problem, as recent research indicates that between 50 to 80 percent of intimate partner abuse incidents go unreported. *See* Patricia Tjaden and Nancy Tohennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, U.S. Department of Justice at 49-54 (2000), available at <http://www.ncjrs.gov/peffiles1/nij/181867.pdf> (noting that female respondents to the survey reported only one fifth of all rapes, one quarter of all physical assaults, and one-half of all stalkings by intimates to the police).

¹⁵ *See* H.R. Rep. No. 395, 103d Cong., 1st Sess., 26 (1993). However, most national estimates are derived from surveys or studies that typically exclude those who are very poor, who do not speak fluent English, whose lives are especially chaotic, or who are hospitalized, homeless, institutionalized, or incarcerated. *See* 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). Experts taking these factors into account have put the number of women battered each year at closer to six million. *See id.* (citing Senator Joseph R. Biden, *Remarks in the Rotunda of Russell Senate Office Building at the Opening of an Art Exhibition on Domestic Violence* (Oct. 26, 1994)).

¹⁶ *See* Majority Staff of Senate Comm. on the Judiciary, 102d Cong., 2d Sess., *Violence Against Women: A Week in the Life of America*, 32 (Comm. Print 1992) (hereinafter “*A Week in the Life of America*”).

¹⁷ *See* S. Rep. 103-138 at 41 (1993).

¹⁸ *See id.* at 38; *see also* *A Week in the Life of America*, *supra*, n.14 at 2.

¹⁹ *See* S. Rep. No. 138, 103rd Cong., 1st Sess. 60, n.16 at 41.

The statute's congressional reports went beyond simply discussing the severity of domestic violence, but addressed the unique nature of spousal or partner abuse. Unlike crimes committed by strangers, spousal abuse consists of chronic violence, and is characterized by persistent intimidation and repeated physical and psychological harm. Absent intervention, it is almost guaranteed that the same woman will be assaulted over and over by her mate.²⁰ Studies also indicate that the repeated violence escalates in severity over time, with one report noting 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.²¹ VAWA created a number of provisions that accounted for the dynamics of domestic violence, including interstate enforcement of protection orders and confidentiality between domestic abuse victims and their counselors.

Consistent with its purpose to remedy domestic violence, the VAWA also amended the nation's immigration laws to give battered immigrant women and children some measure of control over their immigration status.²² By enacting Section 40703²³ Congress acknowledged that previous immigration laws actually fostered the abuse of many immigrant women by placing their ability to gain permanent lawful status in the complete control of abusive spouses who were U.S. citizens or lawful permanent residents.²⁴ Section 40703 thus established a suspension of deportation remedy for the protection of immigrants who have been battered or subjected to

²⁰ See S. Rep. No. 545, 101st Cong., 2nd Sess. 36 (1990).

²¹ See *id.* at 37; see also Dawn Bradley Berry, *The Domestic Violence Sourcebook* 35-37 (3d ed. 2000) (describing escalating pattern of domestic violence).

²² H.R. Rep. No. 395, 103d Cong., 1st Sess. at 25 (1993).

²³ 8 U.S.C. § 1254(a)(3).

²⁴ See H.R. Rep. No. 395, 103d Cong., 1st Sess. at 26-27 (1993).

extreme cruelty by a spouse who is a citizen or lawful permanent resident, and provided for adjusting the status of such immigrants to legal permanent residence.²⁵

In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”),²⁶ which erected new barriers to gaining lawful permanent residence for many family-based petitioners²⁷ and heightened requirements for relief from deportation.²⁸ However, IIRIRA included specific exceptions for those who had approved VAWA self-petitions²⁹ or could qualify for VAWA immigration relief.³⁰ Under those exceptions, battered immigrants are eligible for cancellation of removal after only three years of continuous physical presence in the United States, compared with the 10 years required for most applicants under IIRIRA. Congress also preserved more lenient standards for evaluating the hardship of removal for battered immigrants. Those applicants need only show “extreme hardship to the alien, the alien’s child, or (in the case of an alien who is a child) to the alien’s parent”³¹ to establish eligibility for cancellation of removal, while non-battered applicants must demonstrate “exceptional and extremely unusual” hardship to a United States citizen or legal permanent resident.³² After Congress enacted IIRIRA the then-INS General Counsel noted that Congress’ decision to

²⁵ The current VAWA special cancellation provisions are codified at 8 U.S.C. § 1299b(b)(2).

²⁶ 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 (“IIRIRA”).

²⁷ *See, e.g.*, new INA §§ 212(a)(4)(C)(ii) (new enforceable affidavits of support) and 212(a)(9)(B) and (C) (new “unlawful presence” bars to admission).

²⁸ *See* new INA § 240A, 8 U.S.C. § 1229b, replacing former INA § 244.

²⁹ *See* INA § 212(a)(4)(C)(I)(I) & (II) (exemption from enforceable affidavit of support requirement).

³⁰ *See* INA § 212(a)(9)(B)(iii)(IV), referencing INA § 212(a)(6)(A)(ii) (exception to three- and ten-year unlawful presence bars).

³¹ INA § 240A(b)(2)(E), 8 U.S.C. § 1229b(b)(2)(E).

³² INA § 240A(b)(1).

preserve the extreme hardship standard for battered immigrants was “significant” and indicated congressional intent to “apply a more liberal standard to battered spouses and children.”³³

In October of 2000, Congress once again revisited VAWA, this time strengthening VAWA’s protections by enacting the Battered Immigrant Women Protection Act as part of the Violence Against Women Act of 2000 (“VAWA 2000”).³⁴ That statute was designed to remove residual immigration law obstacles that hindered the attempts of immigrants seeking to escape from abusive relationships.³⁵ VAWA 2000 contained many important immigration reforms, including removal of strict evidentiary requirements to show “extreme hardship,” expansion of the categories of immigrants eligible for VAWA protection, and improved access to public benefits for battered immigrants. VAWA 2000 manifested Congress’s express and unequivocal intent to “ensure that domestic abusers with immigrant victims are brought to justice and that the battered immigrants Congress sought to help in the original Act are able to escape the abuse.”³⁶

Most recently, in December 2005, Congress passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”) which President Bush signed into law (Public Law 109-162) on January 5, 2006. VAWA 2005 built upon the progress made in VAWA 1994 and VAWA 2000 by strengthening protections for domestic abuse survivors in removal proceedings. Among other important reforms, VAWA 2005 improved

³³ 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 6-7, reprinted in 76(4) Interpreter Releases 162 (Jan. 25, 1999) (hereinafter “Virtue General Counsel Memo”).

³⁴ 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).

³⁵ 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).

³⁶ *Id.*

immigration options for family abuse survivors seeking VAWA cancellation of removal. Specifically, VAWA 2005 section 812 exempts VAWA cancellation of removal applicants from the immigration consequences of overstaying a voluntary departure grant so long as the extreme cruelty or battery is at least one central reason for the overstay.³⁷ In addition, VAWA 2005 section 813(b) contains a Congressional statement that federal officials “should particularly exercise [their] authority [to consent to an alien’s reapplication for admission after a previous order of removal, deportation, or exclusion in VAWA cancellation of removal cases]. Thus VAWA 2005 is the third time in the last 11 years that Congress has acted to provide special immigration protections to domestic abuse survivors.

II. THE IMMIGRATION JUDGE FAILED TO APPLY VAWA-SPECIFIC IMMIGRATION STATUTES WHEN EVALUATING MS. RAMIREZ’S CREDIBILITY AND THE POTENTIAL HARDSHIP OF HER REMOVAL

Immigration judges considering a battered immigrant’s request for VAWA cancellation of removal (often referred to as “special cancellation”) must determine whether the applicant satisfies statutory requirements specific to immigrants who have been battered or subjected to extreme cruelty. Special cancellation cases must, among other things, be evaluated under the eased evidentiary and hardship standards set out in the statute. In this case, the Immigration Judge applied *stricter* standards for both considerations, and his decision should be reversed.

First, under eased evidentiary standards for domestic violence cases mandated by Congress in INA § 240A(b)(2), immigration judges must “consider *any credible evidence* relevant to the application” of a battered immigrant seeking suspension of deportation.³⁸ In

³⁷ See INA 240(B)(d)(2), 8 U.S.C. § 1231B(d)(2).

³⁸ INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2)(D) (emphasis added).

essence, Congress created a new remedy for battered immigrants in recognition of the serious and unique social, economic, and emotional difficulties they face. However, in deciding that Ms. Ramirez's account of abuse lacked credibility, the Immigration Judge referenced INA § 240(c)(4)(c) in his oral decision, and clearly adopted that heightened standard for his credibility determination. *See* I. J. at 5. The Immigration Judge noted in his decision that "Section 240(c)(4)(c) of the Act provides that the Court may base a credibility determination on the *inherent plausibility* of the applicant's account" and found the evidence presented by Ms. Ramirez to be "not inherently plausible" and "not credible." *Id.* at 5, 9 (emphasis added).

Second, battered immigrants seeking cancellation of removal and lawful resident status under INA § 240A(b)(2) need only demonstrate that the hardship of removal would be "extreme."³⁹ This standard is far more lenient than the "exceptional and extremely unusual hardship" standard applied to other nonpermanent residents seeking cancellation of removal.⁴⁰ Yet in Ms. Ramirez's case, the Immigration Judge believed "the hardship must be *exceptional and unusual*. That is the hardship must be substantial beyond the hardship that would ordinarily be expected when a family member leaves the country." I. J. at 10 (emphasis added). The Immigration Judge also cited *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), a decision interpreting the term "exceptional and extremely unusual hardship" as used in INA § 240A(b)(1)(D) of the Act, *not* the "extreme hardship" required of VAWA cancellation requests under INA § 240A(b)(2).

³⁹ INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).

⁴⁰ *See* INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D) (requiring that the immigrant establish such "exceptional and unusual hardship" to the alien's spouse, parent or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence").

The Immigration Judge ignored the specific statutory provisions created by Congress to help battered immigrants obtain VAWA cancellation of removal. He applied incorrect and more stringent statutes in both his credibility and hardship determinations, and his decision should be reversed on those grounds alone. However, as explained in more detail below, even if the Immigration Judge had applied the correct statutes when evaluating Ms. Ramirez's credibility and potential hardship, his decision failed to consider the unique dynamics of domestic violence and reflected common misunderstandings about abuse and its victims.

III. IMMIGRATION JUDGES MUST, UNDER VAWA, CONSIDER THE NATURE AND IMPACT OF DOMESTIC ABUSE WHEN EVALUATING A BATTERED IMMIGRANT'S CREDIBILITY

Immigration judges cannot adequately evaluate the credibility of abused immigrants unless they understand the dynamics and psychology of domestic violence, the common reactions of its victims, and the judicial system's tendency to minimize the importance or severity of partner abuse. Failure to consider these issues when making credibility determinations contravenes Congress's intent that VAWA remedy the common misunderstandings of domestic violence which are "frequently comprised of 'myths, misconceptions, and victim blaming attitudes.'"⁴¹

A. A Battered Woman's Response to Domestic Abuse Is Often Misunderstood

Immigration judges must give due consideration to the psychological effects of abuse when evaluating an applicant's credibility. Female victims of domestic abuse experience many of the same reactions as victims of other trauma, such as war or forced captivity. During an

⁴¹ See *Hernandez v. Ashcroft*, 345 F.3d 824, 835 (9th Cir. 2003) (quoting H.R. Rep. No. 395, 103d Cong., 1st Sess. at 24 (1993)).

assault, a victim's focus will center on self-protection and survival, and ordinary reactions immediately following an attack include shock, denial, withdrawal, confusion, mental numbness, and fear. Long-term reactions often include fear, anxiety, fatigue, dependence, suggestibility, and depression.⁴²

Those who are unfamiliar with victim reactions to domestic violence may be inclined to discredit what are actually common responses to abuse. They may not understand why a domestic violence victim chooses to remain in or return to an abusive relationship, to leave her children with the abusive partner or not pursue child custody,⁴³ to fail to obtain a protection order,⁴⁴ to refuse to press criminal charges against the abuser,⁴⁵ or to fail to tell anyone about the

⁴² See Mary P. Koss, Lisa A. Goodman, Angela Browne, Louise F. Fitzgerald, Gwendolyn Puryear Keita, & Nancy Felipe Russo, American Psychological Association, *No Safe Haven: Male Violence Against Women at Home at Work, and in the Community*, 75-82 (1994); Council of Scientific Affairs, American Medical Association, *Violence Against Women: Relevance for Medical Practitioners*, 267:23 J. AM. MED. ASS'N, 3184, 3186 (June 1992).

⁴³ Women who raise concerns about a violent partner in family court proceedings are unlikely to be believed because lawyers and judges tend to overemphasize the possibility that false allegations are being used to further custody claims. Certainly there is the possibility that false allegations are being lodged; however, much more common are false denials by actual perpetrators of violence. The overwhelming reality is that victims of domestic violence are far more likely to cover up, minimize, and deny their abusive experiences than to lodge false allegations. Yet genuine batterers routinely denounce their accuser and commonly retaliate with accusations that their partners are actually the aggressors, are unfit, or are systematically brainwashing the children. Peter G. Jaffe, Nancy K.D. Lemon, & Samantha E. Poisson, *Child Custody & Domestic Violence: A Call for Safety and Accountability* 17 (2003).

⁴⁴ The extent to which a victim is required to present tangible evidence of physical abuse (vs. verbal report) hampers the ability of battered immigrant women to access protection orders because the women may not have reported the abuse to police, sought medical help for violence, or sought help from victim's services programs due to fear of deportation, language access, cultural barriers, or lack of information about these services. Other factors that can influence a battered immigrant woman's willingness to obtain a protection order or access other forms of legal protection include: variations in a battered immigrant woman's ability to articulate in English or through a qualified interpreter her experiences and needs, information the immigrant victim has heard from other women about a victim's ability to access legal immigration status without the cooperation of the abuser, or the willingness of the court to grant custody of the children to the immigrant woman particularly when the abuser is a citizen. Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, *Use and Outcomes of Protection Orders by Battered Immigrant Women* (2006).

abuse.⁴⁶ Strangers to the dynamics of violent relationships commonly expect battered women to leave their partners immediately after an attack, even though the fright, shock, and injury that commonly result from such an event often make this “precisely when she is least able to plan such a move.”⁴⁷ Other common misperceptions stem from a lack of understanding of the “cycle of violence” that exists in these relationships. That cycle includes “a tension building phase, followed by acute battering of the victim, and finally by a contrite phase where the batterer’s use of promises and gifts increases the battered woman’s hope that violence has occurred for the last time.”⁴⁸

Those unfamiliar with the cycle of violence may also misinterpret an abuser’s apparent nonviolence. Abusers exercise power and control over their victims through a “pattern of interaction” comprised of physical, sexual, and psychological elements. It may not be necessary

Footnote continued from previous page

⁴⁵ Many immigrants have a strong distrust of the police. When this lack of trust is combined with fears of arrest, deportation, separation from children, economic repercussions, and retribution from their abusers, it becomes clear why many battered immigrant women hesitate to contact the police to report abuse. These barriers become even more pronounced when the batterer is a US citizen and the victim a non-citizen. Police officers are more likely to believe the citizen batterer when he contradicts the battered immigrant woman’s accusations of violence. Leslye Orloff, Mary Ann Dutton, Giselle Aguilar Hass, and Nawal Ammar, *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13 UCLA WOMEN’S L.J. 43, 47-55 (2003).

⁴⁶ See Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Women’s Syndrome*, 21 HOFSTRA L. REV. 1191, 1195 & n.16 (1993) (hereinafter “Dutton, *Understanding Women’s Responses to Domestic Violence*”). Among strategies cited, perhaps the most commonly expected of the battered woman by the layperson include calling the police and leaving the home. However, empirical studies have shown that most battered women do not call the police for help with domestic violence. When battered women do call the police, the consequences may not always be positive. In one study, only 49% of battered women who called the police reported the outcome to be fairly effective, and almost 20% indicated that calling the police resulted in increased violence by the batterer, a rate higher than any other formal help-seeking strategy. *Id.* at 1229.

⁴⁷ See Angela Browne, *When Battered Women Kill* 111 (1987).

⁴⁸ *Hernandez*, 345 F.3d at 836 (quoting Dutton, *Understanding Women’s Responses to Domestic Violence* at 1208).

for the abuser to resort to violence to control his victim because an incident in the past often remains a strong enough threat to effectively control the victim and gain her obedience. When the victim shows signs of resistance, the abuser merely resorts to violence to reestablish control, teaching the victim to recognize certain non-violent cues as predictors of violence, and transforming the “meaning of the communication . . . far beyond what is being said or done in the moment.”⁴⁹

B. The Criminal Justice System Has Typically Minimized The Severity of Domestic Violence and the Credibility of Its Victims

Members of law enforcement and the judiciary have traditionally considered domestic violence to be a mere “family problem” that is less deserving of time and attention. Domestic violence cases historically were categorized as misdemeanors, even though more than a third of such cases, if committed by a stranger, would have been termed felonious rape, robbery, or aggravated assault.⁵⁰ At the time the VAWA was enacted, some states still did not recognize spousal rape as a crime and others had policies not to prosecute husbands for spousal rape unless women suffered some violent act in addition to the rape, such as kidnapping or being threatened with a weapon.⁵¹ Studies demonstrate that domestic violence cases historically were diminished

⁴⁹ See Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 24 (Oct. 1994) (hereinafter Dutton, *The Dynamics of Domestic Violence*) (“[B]oth parties [come to] understand the meaning of specific actions and words within the continually changing context that includes a history of violence or abuse and the resultant physical injuries and psychological, social, and economic consequences of it.”); Dutton, *Understanding Women’s Responses to Domestic Violence*, *supra* n.49 at 1208-09 (describing possible patterns of violence and abuse).

⁵⁰ See Eve S. Buzawa & Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* (2d ed. 1996); see also Barbara J. Hart, *Victim Issues* at 3 (1992) (“National data reveal that law enforcement routinely classify domestic assault as misdemeanors even though the criminal conduct involved actually included bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults.”).

⁵¹ See S. Rep. No. 138 at 63.

at every stage with chilling effect: Police failed to arrest batterers and preferred to treat such situations as domestic “disputes,” prosecutors failed to actively pursue cases against batterers thinking women would drop the charges, and judges failed to sentence them as heavily, if they chose to sentence them at all.⁵²

VAWA was enacted “to respond both to the underlying attitude that [domestic] violence is somehow less serious than other crime and to the resulting failure of our criminal justice system to address such violence.”⁵³ Congress intended VAWA to correct “not only the violent effects of the problem, but the subtle prejudices that lurk behind it.”⁵⁴ Immigration judges must therefore evaluate evidence of beatings and emotional abuse inflicted upon immigrants with the seriousness that Congress intended.

C. Female Victims Are Subjected to Higher Credibility Standards

Multiple sources confirm that women testifying about domestic violence or other intimate crimes face severe credibility burdens that are not imposed on victims of other violent crimes. For example, in the context of rape, although most states have now abolished corroboration requirements and jury warnings that conviction without corroboration is unsafe, many judges continue to give such warnings based on an outdated sense of women’s tendency to lie about

⁵² See Buzawa & Buzawa, *supra* n.50 at 82-96; Jeffrey Fagan, National Institute of Justice Research Report, *The Criminalization of Domestic Violence: Promises and Limits* at 3-4 (1995). See also Browne, *supra* n.47 at 121 (tracing one woman’s complaints of abuse through each step of the enforcement process, starting with the district attorney: “[H]er complaints were not taken seriously,” the deputy didn’t send her warrants out for evaluation because he “only sent those [he thought were] really important,” and the hearing officer didn’t approve them because he “wasn’t a marriage counselor” and he “sort of felt sorry for the guy, he seemed so upset”).

⁵³ S. Rep. No. 138 at 60.

⁵⁴ *Id.* at 63.

such matters.⁵⁵ Women also face additional credibility burdens simply by virtue of their language patterns: studies reveal that listeners associate powerlessness with a lack of credibility, and attribute various speech behaviors common to women to untruthfulness. These behaviors include high pitch, frequent smiling, infrequent use of numerical specificity, and hesitance or lack of confidence in speaking.⁵⁶ It is important to note that *such behaviors are not in fact accurate predictors of untruthfulness.*⁵⁷

These credibility problems are particularly intense in domestic violence cases. Studies of gender bias in state and circuit courts commissioned through the VAWA legislation explicitly confirm the existence of a higher credibility standard: “Every study collected substantial evidence that the credibility accorded women litigants is less than that accorded men litigants. The problem seems particularly acute when the issue is a woman’s accusation that a man has been violent toward her.”⁵⁸ The unique stereotypes and trauma associated with domestic violence almost guarantee that battered women come to the stand with the deck stacked against them:

There is a special need to treat credibility evidence forthrightly in cases implicating domestic violence. The views of women, as played out in evidentiary policy, have been gender biased. Women often have been disbelieved, whether as complainants or witnesses. For example, stereotypical portraits of battered women as weak, passive, or pathological for not leaving their abusers fuel society’s

⁵⁵ See Kathy Mack, *Continuing Barriers to Women’s Credibility: A Feminist Perspective on the Proof Process*, 4 CRIM. L.R. 327, 328-29 (1993) (hereinafter Mack, *A Feminist Perspective on the Proof Process*) (quoting a text from 1736 describing rape as “an accusation easy to be made and hard to be proved, and harder to be defended by the party accused, tho’ never so innocent”).

⁵⁶ See *id.* at 330.

⁵⁷ *Id.*

⁵⁸ Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 247, 254 (1993).

disbelief of their claims and works together with the incorrect notion that batterers are monsters, not normal men. In fact, a male batterer may minimize and deny his violence and be so convinced that his story is correct that he appears credible, while the victim may be agitated, defensive, depressed, timid, or inconsistent, rendering her testimony suspect. Similarly, victims suffering from PTSD may appear unanimated and unemotional during their testimony or conversely belligerent and confrontational.⁵⁹

The case at bar graphically illustrates the need for this Board to address these concerns to ensure that the intent of Congress under the VAWA is fulfilled.

D. The Immigration Judge's Decision Relies On Common Misperceptions About The Dynamics Of Domestic Abuse

Immigration judges must consider “any credible evidence relevant to the application” presented by an applicant seeking special cancellation of removal pursuant to INA § 240A(b)(2)(D). In Ms. Ramirez’s case, the Immigration Judge’s decision evidences a fundamental ignorance of the nature of domestic violence cases and the impact of that abuse on the victim and third parties.

1. Many Women Do Not Report Their Abuse to the Police Or Seek Protection Through The Judicial System

The Immigration Judge discounted Ms. Ramirez’s testimony because he found it implausible that she would stay with a husband who beat her and not report the abuse or seek a protective order. *See* I. J. at 6-7 (noting that Ms. Ramirez “made no effort to divorce Mr. Hernandez [sic], or seek any kind of protective order,” and that Ms. Ramirez “alluded to the fact that she did not know, or was not fully advised of her rights Not only did [she] fail to take legal action to protect herself and her child, she remained in the same apartment after

⁵⁹ Myrna S. Raeder, *Proving the Case: Battered Woman and Batterer Syndrome: The Double-Edged Sword: Admissibility of Battered Woman Syndrome by and Against Batterers in Cases Implicating Domestic Violence*, 67 U. COLO. L. REV. 789, 807 (1996).

Mr. Hernandez [sic] left.”). The Immigration Judge also discredited the police report filed by Ms. Ramirez because the report was made “almost three months after the assault” and because officers “could find no evidence of a contemporaneous police report.” I. J. at 5. In fact, Ms. Ramirez’s actions mirror those of many domestic violence victims and should be considered supportive of her claims of abuse rather than detracting from her credibility.

Contrary to the Immigration Judge’s assumption, it is not unusual for a woman to stay with a violent partner, and her decision to do so does not make her ineligible for VAWA cancellation relief.⁶⁰ Many women, including U.S. citizens and permanent residents, do not leave their battering partners, often out of fear that the violence will continue or increase if they

⁶⁰ See *Hernandez*, 345 F.3d at 841 (rejecting “the notion that Congress would require women to remain with their batterers in order to be eligible for the forms of relief established in VAWA” and noting that such a requirement would be “flatly contrary to Congress’s articulated purpose”).

leave,⁶¹ or that they will be unable to support themselves and their children.⁶² Abusers commonly sabotage a victim's ability to work to increase their control and the victim's economic dependence.⁶³ Battered women may be hindered in their ability to leave the relationship because they have developed "skills of survival, rather than escape," focusing on "what they need to do to make it through today, rather than on making any long term plans."⁶⁴ Women in violent relationships also frequently "hope for a change in the man" and try to keep the man from becoming upset, thinking that "if [they] only tr[y] a little harder, things will be better."⁶⁵

Despite the many obstacles to accessing police protection, Ms. Ramirez did file a police report about the domestic violence. The Immigration Judge in this case completely dismissed the police report and instead faulted Ms. Ramirez for "fail[ing] to take any legal action to protect herself and her child..." I. J. at 5. In making this conclusion, the Immigration Judge held Ms. Ramirez to a standard that belies the reality of battered women's lives. According to statistics analyzing violent crime reporting by women in general, those victimized by someone intimate to them reported just 56 percent of the incidents to police, while women victimized by

⁶¹ One study of family violence using National Crime Survey data showed that in almost 75 percent of spouse-on-spouse assaults, the victim was divorced or separated at the time of the incident. Bureau of Justice Statistics, *Report to the Nation* (2d ed.), U.S. Department of Justice, March 1988 at 3.

⁶² A battered woman who leaves her abuser stands a 50 percent chance that her standard of living will drop below the poverty line. *Women and Violence, Hearings before the U.S. Senate Judiciary Committee, August 29 and December 11, 1990*, Senate Hearing 101-939, pt. 2, p. 95. A recent study in New York City found that one quarter of all homeless parents were homeless as a direct result of domestic violence. Institute for Children and Poverty, *The Hidden Migration: Why New City Shelters Are Overflowing With Families* (April 2002).

⁶³ Jody Raphael & Richard M. Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare* (1997).

⁶⁴ Roberta K. Thyfault, *Self-Defense: Battered Woman Syndrome on Trial*, CAL. W. L. REV., Vol. 20 at 490 (1984).

⁶⁵ *Id.*

strangers reported only 57 percent of the incidents.⁶⁶ Additional statistics show that just over half of all incidents of domestic violence against women in a National Crime Survey were reported to police.⁶⁷ Victims also commonly choose not to report violence to police because they think it is “a private or personal matter,” and some victimizations go unreported because the victim is afraid of a reprisal.⁶⁸ In the case of domestic violence of immigrants, many do not report abuse because they have a strong distrust of the police due to negative perceptions or experiences with police in their countries of origin and experiences of racism and prejudice with the police in the United States.⁶⁹

Finally, the Immigration Judge’s requirement that Ms. Ramirez seek a protection order belies the reality of battered women’s lives, including the harsh reality that protection orders often do not save battered women and their children. Statistics indicate that only a small number of domestic violence victims obtain protection orders, and that many victims do not believe seeking the help of police or a protection order will have positive results.⁷⁰ For example, approximately 60 percent of the women who obtain temporary restraining orders report that the

⁶⁶ Carolyn Harlow, Bureau of Justice Statistics, *Female Victims of Violent Crime*, U.S. Department of Justice, January 1991 at 3.

⁶⁷ Patrick A. Langan and Christopher A. Innes, Bureau of Justice Statistics, *Preventing Domestic Violence Against Women*, U.S. Department of Justice, August 1986 at 1.

⁶⁸ Harlow, *Female Victims of Violent Crime* at 3.

⁶⁹ Leslye Orloff, *et al.*, *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, *supra* n.45, at 47-55.

⁷⁰ Patricia Tjaden and Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence*, *supra* n.14. The survey found that only 16.4 percent of victims raped by an intimate partner, 17.1 percent of those physically assaulted, and 36.6 percent of those stalked by an intimate partner obtained protection orders from the courts.

orders are violated in the year after they were issued, and nearly a third of those women report that the violations involved severe violence.⁷¹

Well-publicized cases of women who obtained protection orders against their partners and were later injured or murdered by those partners likely contributes to a victim's hesitancy to seek orders of protection.⁷² As recently as 2005, the U.S. Supreme Court heard *Gonzales v. Castle Rock*, 545 U.S. 748 (2005), a tragic family violence case involving a triple homicide of the children. In this case the mother obtained a protection order against the violent father. Less than a month after the protection order was issued, he took their three daughters (ages 7, 8, 10) in violation of the order. The mother made several desperate pleas with the police to enforce the protection order, all of which were unsuccessful. By the time the police tracked the father down, he had fatally shot all three daughters in the head at close range.

The Immigration Judge's expectation that Ms. Ramirez should have obtained a protective order is particularly unreasonable given her status as an undocumented immigrant. Battered immigrants are especially unlikely to obtain orders of protection because many fear approaching law enforcement or the courts, are misinformed about their legal rights, or face language, cultural or religious barriers to interacting successfully in the legal system.⁷³

⁷¹ National Institute of Justice, U.S. Department of Justice, *Legal Interventions in Family Violence: Research Findings and Policy Implications* (NCJ 171666) 50 (July 1998).

⁷² See, e.g., *State v. Richardson*, 670 N.W. 2d 267 (Minn. 2003) (estranged husband killed wife's friend and kidnapped and terrorized wife and children after wife obtained restraining order); L.L. Brasier & John Masson, *Estranged Wife Killed With Ax*, DETROIT FREE PRESS, Dec. 31, 2002 (estranged husband killed wife while she slept next to two-year old son five days after wife obtained protection order); see also James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* at 145-49 (1999) (pregnant woman abducted at gunpoint, shot, stabbed, and strangled by her husband less than five months after a Massachusetts state court judge called her attempt to seek protection "trivial").

⁷³ See Deborah M. Weissman, *Addressing Domestic Violence in Immigrant Communities*, POPULAR GOVERNMENT (Spring 2000); Gail Pendleton, *Barriers Faced by Non-Citizen Survivors of Domestic Violence* (unpublished).

2. **Although Abusers Rarely Target Third Parties, Witnesses May Not Intervene In Or Report Abuse Because They Fear Injury or Reprisal**

The Immigration Judge's misunderstanding of the dynamics of domestic violence also led him to discredit the testimony of Ms. Delgado, a third-party witness who testified in Immigration Court about Ms. Ramirez's abuse. Even though Ms. Delgado said she had seen Ms. Ramirez's physical injuries and that Respondent's husband had confessed to beating his wife, the Immigration Judge found Ms. Delgado's testimony lacked credibility because her actions - and those of Ms. Ramirez's husband - did not comport with how he would have reacted to the situation. The Immigration Judge expressed doubt about Ms. Delgado's testimony related to Ms. Ramirez's husband, saying

the respondent's husband had fled the scene of the crime where apparently the respondent was the only eyewitness. He nevertheless drove to their apartment and confessed to Ms. Delgado and her husband in the parking lot. . . . Ms. Delgado described the respondent [sic] attempting to conceal the location of his automobile in the parking lot. She nevertheless described that he went into the apartment, which common sense dictates would be the first place that law enforcement officers would look for Mr. Hernandez in an attempt to place him under arrest.

I. J. at 6.

The Immigration Judge also questioned the veracity of Ms. Delgado's testimony because he could not understand her decision not to report the husband's confession or Ms. Ramirez's injuries: "Although Mr. Hernandez [sic] confessed a serious crime to Ms. Delgado and her husband, she testified that neither she nor her husband called the police and reported the incident." *Id.* The Immigration Judge apparently did not even consider Ms. Delgado's

testimony corroborating the injuries Ms. Ramirez sustained because of her reluctance to get involved with her neighbor's violent relationship.⁷⁴

There are several plausible reasons why Ms. Delgado would not have called the police, including the belief that doing so could endanger the safety of her and her family. She had seen Ms. Ramirez's physical bruises and had heard Mr. Hernandez admit that he had beaten his wife. Furthermore, Ms. Delgado had seen Mr. Hernandez be "really aggressive, he was always yelling, and he was always slamming the door. And the same with the little boy, he would always like yell at him or send him outside." Tr. at 99. "He would call her a damn broad and he would call her and tell her that she was a son of a bitch . . . and he would do the same to the little boy He would always slam the doors and I guess he broke things because you could always hear a lot of noise." *Id.* at 99-100.

Third parties are often reluctant to intervene on behalf of a victim or report domestic violence because they fear they will suffer harm themselves. This fear is based on the perception that the abuser, who often seems (or may be) volatile, will exact retribution against a third party for assisting the victim. Indeed, this fear is heightened by media reports publicizing cases of

⁷⁴ See Tr. at 96-100 (testifying, *inter alia*, that Ms. Ramirez's husband told her "he had been dancing with another woman, and that his wife had gone to look for him and found him, and that he hit her a lot;" and that she saw Ms. Ramirez with "a really, a black eye, and her neck . . . was [] blue and purple and it was scratched").

harm to third parties in the workplace or in the courtroom.⁷⁵ Harm to third parties who intervene on behalf of a victim in a domestic violence situation most often occurs because the third parties are caught in the crossfire when the abuser attacks the victim.⁷⁶

Given these considerations, Ms. Delgado's decision not to call the police was understandable and credible, and the Immigration Judge should not have dismissed her testimony.

IV. IMMIGRATION JUDGES MUST UNDERSTAND AND CONSIDER THE NATURE AND IMPACT OF DOMESTIC ABUSE WHEN CONSIDERING "EXTREME HARDSHIP" IN VAWA CASES

Battered immigrants need only prove their removal will result in "extreme hardship" to establish eligibility for VAWA cancellation of removal.⁷⁷ In recognition of Congress' intent to provide additional protections to battered immigrants, legacy INS developed extreme hardship

⁷⁵ See e.g., Brian R. Ballou & Michael Levinson, *Deadly Rampage in Quiet Vt. Town*, THE BOSTON GLOBE, August 25, 2006 (man shot the mother of his ex-girlfriend at her home and the co-workers of his ex-girlfriend at her workplace); Hector Castro and Jennifer Langston, *Child support behind courthouse shooting: Police kill man with a grudge and a grenade*, SEATTLE POST-INTELLIGENCER, June 21, 2005. Available at http://seattlepi.nwsourc.com/local/229385_courhouseshooting21.html (man fatally shot pregnant estranged wife and two friends who had accompanied her to King County Courthouse; Timothy Blackwell was convicted of aggravated first-degree murder and manslaughter); William Yardley and Avi Salzman, *Divorce Court Shooting Kills Couple and Wounds Lawyer*, N.Y. TIMES, June 16, 2005. Available at <http://www.nytimes.com/2005/06/16/nyregion/16shoot.html?ex=1169787600&en=41d67fa687296c4a&ei=5070> (man fatally shot ex-wife, critically wounded her lawyer, and killed himself outside family courthouse in Middletown, CT).

⁷⁶ Although third parties may be injured, the primary focus of an abuser's control, is his victim and abusers rarely specifically target their actions toward third parties. See, e.g., City Council of New York, Comm. on Women's Issues and Comm. on General Welfare, Transcript of Hearing Apr. 24, 2004, at 63-64 (Testimony of Wanda Lucibella, Chief, Kings Co. New York District Attorney's Office Domestic Violence Bureau) (stating that in her experience with prosecuting thousands of cases it is extremely rare for batterers to target third parties); Bureau of Justice Statistics, *Third Party Involvement in Violent Crime*, 1993-99 (study finding in 18% of violent crime cases where a third party was present the actions of that person helped prevent injury whereas in 1% of such cases the actions of the third party caused injury).

⁷⁷ INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).

factors (later adopted by the Executive Office for Immigration Review) that reflect the experience of battered non-citizens.⁷⁸

Those factors include a number of issues unique to domestic violence, including the nature and extent of the physical or psychological consequences of the abuse, the impact of lost access to the United States courts and criminal justice system, the applicant's or her children's needs for social, medical, mental health, or other supportive services which might not be available or reasonably accessible in the home country, and the existence of laws, social practices or customs in the home country relating to abuse or attempts to leave an abusing spouse.⁷⁹ Each of these factors must be considered in determining the impact removal may have on battered immigrant women and their children. The juxtaposition of needed resources available here against a lack of resources in the home country, and the impact deportation may have on a child who has observed or been a victim of domestic violence, are particularly important considerations.⁸⁰

⁷⁸ See 8 C.F.R. § 1240.58(c) (setting out six factors that should be considered “in addition to, or in lieu of,” the traditional “extreme hardship” factors of 8 C.F.R. § 1240(b)); 8 C.F.R. § 1240.20(c) (noting that VAWA cancellation cases “shall be determined as set forth in” § 1240.58). See also Virtue General Counsel Memo, *supra* n.33 at 4-7; T. Alexander Aleinikoff, Office of Programs, *Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents 4-5*, HQ 204-P (Apr. 16, 1996) (creating pre-IIRIRA special grants of voluntary departure and work authorization for approved self-petitioners).

⁷⁹ 8 C.F.R. § 1240.58(c).

⁸⁰ Battered women are almost five times more likely than nonbattered women to require mental health treatment. See Evan Stark & Anne Flitcraft, “Spouse Abuse,” in *Violence in America: A Public Health Approach* (M.L. Rosenberg & M. A. Fenley, eds., 1991). Twenty-five percent of women using psychological services have histories of being victims of domestic violence. Evan Stark & Anne Flitcraft, “Violence Among Intimates: An Epidemiological Review,” in *Handbook of Family Violence* at 304 (Haselt et al., eds., 1988).

A. **Immigration Judges Must Consider Factors Specific to Domestic Abuse When Deciding Whether Removal Would Result in Extreme Hardship.**

Whether a battered immigrant would suffer “extreme hardship” through forced deportation must be interpreted in the context of the abuse suffered. To that end, immigration judges making the extreme hardship determination in cases filed under the VAWA provisions must understand the dynamics of domestic abuse and examine the specific factors the Attorney General has recognized are unique to its victims. Extreme hardship may encompass hardship on the immigrant, or on children in the household who have been subjected to or witnesses of domestic violence.

Experts agree that in order to recover from a violent relationship, the abused must first find safety and develop self-confidence about her ability to exert power and control over her own life. However, the recovery process is slow and extremely fragile. Victims of severe abuse are particularly vulnerable and incidents of stress and loss of control can greatly impede their recovery process. Subjecting a victim of abuse to the additional and substantial trauma of removal is likely to exacerbate the victim’s harm and greatly hinder her recovery. Moreover, many abusers threaten immigrant women with removal as a means of exerting control. Thus, actual removal may be viewed by many abuse victims as officially sanctioned implementation of the abuser’s threats, or as retaliation for having taken measures to end the abuse, thereby exacerbating the abused’s feelings of isolation, helplessness, and despair. In many cases, it

simply would be inhumane to subject a victim of severe domestic abuse to the inherent stress that is associated with forced deportation.⁸¹

1. **Judges Must Consider The Existence of and Need for Supportive and Psychological Services**

Many, if not most, victims of domestic abuse need the support of family, community groups, social service organizations, and/or professional counseling to assist them in escaping and recovering from an abusive relationship. Frequently victims of abuse also need assistance from social workers and trained medical personnel in order to recover from the physical and psychological trauma that stems from the abuse. Due to the grave effects of domestic violence, most battered women need professional assistance to recover from the psychological effects of severe, prolonged abuse.⁸² Evidence that the abused immigrant would be deprived of such necessary assistance through forced removal must be considered and should weigh heavily in the extreme hardship analysis.

The circumstances and conditions relating to the treatment of victims of domestic violence in the country to which the battered immigrant would be deported must also be considered in the extreme hardship inquiry. Indeed, there are a number of unique hardships that

⁸¹ Consideration of the extent and impact of past abuse to grant relief on humanitarian grounds would not establish new precedent. For example, in *Matter of Chen*, 20 I. & N. Dec. 16 (BIA 1989) and *Matter of B-*, Interim Dec. 3251 (BIA 1995), the BIA granted relief to individuals who had been subjected to severe physical and psychological abuse in the past but would not likely face such persecution in the future. The relief granted in those cases was for humanitarian reasons in consideration of the severe persecution already suffered.

⁸² See Stark & Flitcraft, *Violence Among Intimates: An Epidemiological Review*, *supra* n.80, at 304 (approximately 25 percent of women using psychological services have a history of domestic abuse); Howard Holtz & Kathleen Furniss, *The Health Care Provider's Role in Domestic Violence*, *Trends in Health Care, Law & Ethics*, Vol. 8, No. 2, 47 (Spring 1993) (nearly one-third of battered women see health care professionals repeatedly); Stark & Flitcraft, *Spouse Abuse*, *supra* n.80 (battered women are almost five times more likely than nonbattered women to require psychiatric treatment).

an abused immigrant woman may face relating specifically to her status as a victim of domestic violence. For example, in Mexico, where Ms. Ramirez and her children would be sent, studies reveal that women are loathe to report incidents of domestic violence and tend to accept them as a part of life.⁸³ Furthermore, Mexico's domestic violence laws are considerably less advanced than those of the United States and provide significantly less protection.⁸⁴ Some countries even have laws, policies, and customs that condone abuse or blame the victims for the abuse and penalize them for reporting it.⁸⁵

2. Judges Must Consider The Immigrant's Need For Access to the United States Courts and Justice System

Consideration of the importance of the abused immigrant's access to the United States courts and criminal justice system is critical to the extreme hardship determination. Deportation of the abused may result in extreme hardship by depriving the abused of legal recourse for

⁸³ See Claudia Diaz Olavarrieta & Julio Sotelo, *Domestic Violence in Mexico*, 275:24 J. AM. MED. ASS'N, 1937, 1937 (June 1996) (describing study of urban Mexico City showing that only six out of 113 victims of domestic violence reported the incident to authorities and only three initiated legal action); *id.* at 1940 (citing a five-year study of hospitals and clinics in Mexico City showing that, of women who requested medical treatment, 78% were injured by their spouse or a male member of the family, and that only 1.5% of the charges filed resulted in sentences).

⁸⁴ See *id.* at 1939 (noting that in 1995 Mexico's penal law required women with domestic violence claims to produce a witness to swear that injuries were the result of domestic violence, as well as evidence of the batterer's motive even when her physical bruises were obvious, and that sanctions for violence were based on whether the resulting wounds required longer than two weeks to heal); see also Anna Alvazzi del Frate & Angela Patrignani, *Women's Victimization in Developing Countries* 8 (1995) (noting Mexico's first rape crisis center was not established until 1987).

⁸⁵ See *In matter of A and Z*, A 72-190-893 & A 72-793-219 (Dec. 12, 1994) (noting that in Jordan it is considered "culturally unacceptable to highlight what is considered a private family matter i.e. wife beating."); see also Lori Heise, *Violence Against Women: The Hidden Health Burden*, 255 World Bank Discussion Papers, iii (World Bank Washington D.C. 1994) (Papua New Guinea Parliamentarian stating: "Wife beating is an accepted custom . . . we are wasting our time debating the issue.").

crimes committed by the abuser as well as the ability to seek and enforce a protective order.⁸⁶ Additionally, loss of access to United States family courts may result in extreme hardship by depriving the abused of necessary child support and even custody of her children. When battered women receive meaningful help from the legal system, that help often includes custody awards to the non-abusive partner and structured, safe, often supervised visitation between the abuser and the children. The help battered women receive from the court may also include child support orders, monthly rental payments, police assistance, the abuser being ordered to undergo counseling, and other relief necessary to halt violence that the family court may fashion. Each of these factors must be considered in determining whether deportation would result in extreme hardship for the victim and her children.

3. Judges Must Consider With Particular Care The Impact of Removal On Children Who Have Been Subject to Domestic Violence

The extreme hardship analysis must take into account the effect that removal would have on children who have been victims or witnesses of domestic violence. Removal of the abused immigrant could result in a number of traumatic consequences for the children, including leaving children in the care of the abuser or in foster care, or the uprooting of a child who is transported to an unfamiliar country which lacks the services essential to the child's development or psychological needs.

⁸⁶ Mere separation of the battered immigrant from her husband through deportation is unlikely, of itself, to prevent future abuse, since abusers often go to great lengths to locate their victims. See Anne Ganley, *Domestic Violence: The What, Why, and Who, as Relevant to Civil Court Cases*, Chapter 2, 21, 37-39, Family Violence Prevention Fund, *Domestic Violence in Civil Court Cases* (1992). Other authorities have found that battered women who leave their abusive mates are often followed and harassed for years. See A. Browne, *When Battered Women Kill*, *supra* n.47 at 114 (1987).

Numerous studies confirm that there is a significant overlap between spousal abuse and child abuse.⁸⁷ Exposure to domestic violence has been proven to have a devastating psychological impact on children, causing feelings of isolation, loneliness, and depression, and psychologists agree that children fare best in a stable loving environment.⁸⁸ Forcibly removing a child from his or her school, friends, and familiar social network can be extremely traumatizing. Children who have been subjected to the trauma of domestic violence should not be forced to confront the added distress of relocation through deportation.

B. The Immigration Judge Failed to Consider Abuse-Specific Factors When Evaluating Whether Ms. Ramirez or Her Children Would Suffer “Extreme Hardship” Through Removal

Not only did the Immigration Judge apply the wrong standard in his decision, but he failed to consider *at all* the unique factors pertinent to domestic violence cases which the Attorney General mandated for extreme hardship decisions.⁸⁹ For example, immigration judges are required to consider the “nature and extent of the physical or psychological consequences of abuse.”⁹⁰ Here, Ms. Ramirez testified about the psychological difficulties she has encountered since leaving her abusive husband and the contribution that counseling has made to her progress. After separating from her husband she felt isolated and alone and “didn’t want anyone to find out what was going on. . . . I came [to the United States] because I loved him, and I was just very

⁸⁷ Lee H. Bowker, Michelle Arbitell, & J. Richard McFerron, *On the Relationship between Wife Beating and Child Abuse*, Chapter 7, in *Feminist Perspectives on Wife Abuse* (1988) (finding a 70 percent correlation between wife abuse and child abuse in households where children were present).

⁸⁸ Ross Vasta, *et al.*, *Child Psychology the Modern Science*, Chapter 12, 444-83 (2d ed. 1995).

⁸⁹ See 8 C.F.R. § 1240.58(c).

⁹⁰ *Id.* at § 1440.58(c)(1).

embarrassed that would happen.” Tr. at 88-89. Ms. Ramirez’s counselor wrote in a letter provided to the Immigration Court that her client continues to suffer from depression and anxiety resulting from the abuse, and continues to seek counseling to cope with these problems: “The aftereffects of the abuse have manifested themselves in Ms. Ramirez becoming untrusting, defensive and suspicious in her present relationship . . . she still suffers disassociation because of the traumatic experiences which she suffered.”⁹¹

Another factor listed in the regulations but ignored by the Immigration Judge is the need of the applicant or her children “for social, medical, mental health or other supportive services . . . that are unavailable or not reasonably accessible in the home country.”⁹² There was ample evidence in Ms. Ramirez’s case that she is still in need of social and mental health support, and her counselor believes that removing her to Mexico would be detrimental to her progress and recovery.⁹³ The counselor wrote that removal would “pose a hardship in acquiring continued therapy since the location of her hometown is rural and away from a large city in which she may be able to seek therapy.”⁹⁴

The Immigration Judge also failed to consider the impact of the abuse on Ms. Ramirez’s oldest son and his social and psychological needs. The neighbor, Ms. Delgado, testified about

⁹¹ April 17 Fraker Letter.

⁹² 8 C.F.R. § 1240.58(c)(4).

⁹³ Another factor to be considered is the “existence of laws and social practices in the home country that punish the applicant . . . because they have been victims of domestic violence.” 8 C.F.R. § 1240.58(c)(5). Ms. Ramirez testified about the social practices in Mexico disfavoring divorced women, as well as the shame and stigma she is likely to suffer if removed to Mexico because of her past abusive relationship. That stigma is so significant that Ms. Ramirez never told her parents what she had experienced. *See* Tr. at 68 (domestic violence victims are treated differently in Mexico) and 88-89 (testifying about the humiliation she felt and her attempts to keep the abuse from her parents)

⁹⁴ March 29th Fraker Letter.

the abuse she saw Enrique suffer when she lived next door. Tr. at 99-100. Enrique himself testified about his father's physical and psychological abuse, which occurred at a young and highly impressionable age.⁹⁵ Tr. at 109-111. He continues to harbor anger towards his father, and has experienced psychological trauma and insomnia at the prospect of being forced to relocate to Mexico. *Id.* Furthermore, Enrique, 13, has lived all of his life in the U.S. attending U.S. schools and growing up like any American child. Uprooting Enrique from the stable environment that his mother has created for him and sending him to Mexico where he lacks friends, teachers, or any kind of support system will have severe psychological impact on his development and likely affect his ability to trust others in the future.

Each of these factors is designed to take into account the emotional, psychological and physical impact of domestic abuse, and it is crucial that immigration judges consider them in order to effectuate Congress's intent in enacting VAWA. The Immigration Judge's failure to consider these domestic violence factors contravenes Congress's intent to protect victims of domestic violence through VAWA's provisions. His decision must therefore be reversed, and all

⁹⁵ Research indicates that even very young children subjected to domestic violence can experience long-lasting effects from that exposure. See National Council of Juvenile and Family Court Judges, *Courts and Communities: Confronting Violence in the Family*, Conference Highlights 27 (March 1993) ("Toddlers are not too young to understand what is happening, and children who do not show adverse effects at the time of the violence may have problems later."); Daniel G. Saunders, *Child Custody Decisions in Families Experiencing Women Abuse*, Social Work 51 (Jan. 1994) ("In one study, three-fourths of the children of battered women exhibited clinically significant behavioral problems, compared with only 13% of those in a control group"); Alan J. Tomkins, Somaia Mohamed, Michael Steinman, Ruthann M. Macolini, Mary K. Kenning, & Jan A Frank, *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 LAW & PSYCH. REV. 137 (1994) ("Research on children who witness violence consistently confirms that these children experience significant emotional trauma."). Congress also has recognized the severe impact of domestic violence on children in the household, Majority Staff of Sen. Comm. on Judiciary, 102d Cong., 2d Sess., *Violence Against Women: A Week in the Life of America* 7-9 (1992).

immigration judges should be instructed to consider and weigh heavily these factors when determining the hardship abuse victims will suffer from removal.

V. UNDER VAWA, “BATTERY” AND “EXTREME CRUELTY” ENCOMPASS PHYSICAL, PSYCHOLOGICAL, AND EMOTIONAL ABUSE, AND MS. RAMIREZ PRESENTED EVIDENCE OF BOTH

Under VAWA’s provisions, Congress has required that an immigrant who “has been battered or subjected to extreme cruelty” be eligible for cancellation of removal.⁹⁶ On its face, the statute protects victims who have experienced “extreme cruelty” without battery. The statute’s implementing regulations confirm 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.”⁹⁷ “Violence” is defined as “[p]sychological or sexual abuse or exploitation,”⁹⁸ and the 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.*”⁹⁹

Experts acknowledge that batterers commonly use a variety of tactics beyond violence to keep women in abusive relationships; in fact, in chronic abusive relationships, physical violence may be used infrequently and as a last resort.¹⁰⁰ Dr. Judith Herman has explained in *Trauma and Recovery* that the methods of establishing abusive control over another person are rooted in “the systematic, repetitive infliction of psychological trauma.” The debilitating effect of this

⁹⁶ INA § 240A(b)(2)(A)(i), 8 U.S.C. § 1229b(b)(2)(A)(i).

⁹⁷ 8 C.F.R. § 204.2(c)(1)(vi).

⁹⁸ *Id.*

⁹⁹ 61 Fed. Reg. 13061 (1996) (emphasis added).

¹⁰⁰ See K.J. Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Abuse* 17-18 (1997) (listing various forms of economic abuse, sexual abuse, threats, intimidation, isolation, and emotional abuse used by batterers); Judith Herman, *Trauma and Recovery* 77 (1992).

psychological control, which results in the victim's sense of helplessness and loss of self, makes it "unnecessary to use violence often to keep the victim in a constant state of fear."¹⁰¹ It is the batterer's use of occasional physical violence that gives power to the abuser's psychologically abusive acts.¹⁰² This use of intermittent violence accompanied by psychological abuse is typical of domestic violence and is the same control tactic used against prisoners of war.¹⁰³

In Ms. Ramirez's case, the evidence presented to the Immigration Judge unequivocally demonstrates that she satisfies both prongs of the "battery or extreme cruelty" determination. First, Ms. Ramirez's affidavit and testimony detailed numerous violent acts by her husband constituting battery, including pushing, slapping, hitting, dragging her by the hair, and strangling.¹⁰⁴ In addition, she presented independent, *third-party corroboration* of physical battery. Ms. Delgado testified that Ms. Ramirez's husband told her he had hit his wife "a lot" and that two days later, Ms. Ramirez had a black eye and a bruised neck. Tr. at 98-99.

¹⁰¹ Herman, *supra* n.100 at 77. See also Neil Jacobson & John Gottman, *When Men Batter Women: New Insights into Ending Abusive Relationships* 71 (1998) (describing one method of control as "constant scrutiny and attempts at isolation, so that the batterer is always 'in the face' of the battered woman, and *she ends up feeling that she is being battered constantly, even when he is not there.*") (emphasis added); Liz Kelly, *How Women Define Their Experiences of Violence*, in *Feminist Perspectives on Wife Abuse* 123 (1988) (noting that defining battering as "frequent, life threatening violence" is a stereotype that "seldom fit[s] women's experiences"); Barrie Levy, *In Love and in Danger* 34 (1993) ("He beat me, but you know it was the verbal abuse that killed me the most. I just felt like I was no good, I was trash, the things he used to say to me . . .").

¹⁰² See Herman, *supra* n.100 at 77. See also Jacobson & Gottman, *supra* n.101 at 23 (noting that "emotional abuse can act as a proxy for physical abuse by reminding battered women that they can be beaten at any time. In this way, we suspected that emotional abuse can come to serve the same controlling function that physical abuse does.").

¹⁰³ See Dutton, *Understanding Women's Responses to Domestic Violence*, *supra* n.46 at 1191, 1207; Anne Ganley, *Understanding Domestic Violence*, reported in *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* (1995).

¹⁰⁴ See Affidavit of Susana Edit Ramirez ("Ramirez Affidavit") at ¶¶ 6,7,10,13 (included in Exhibit 2 in the proceedings below); Tr. at 45-49.

Second, Ms. Ramirez and Ms. Delgado testified about the husband's acts of psychological abuse and provided descriptions that are "typical of domestic violence."¹⁰⁵ Ms. Delgado testified that Ms. Ramirez's husband "had always been aggressive," and said he would call Ms. Ramirez "a damn broad and . . . a son of a bitch." Tr. at 99-100. Ms. Ramirez testified and wrote in her affidavit about the psychological abuse she endured, stating that Mr. Hernandez frequently called her "fat and ugly," a "son of a bitch," a "stupid bitch," "lazy," and a "pig."¹⁰⁶

VI. VAWA'S GOOD MORAL CHARACTER REQUIREMENT RECOGNIZES THE DIFFICULTIES OF ENDURING AND ATTEMPTING TO ESCAPE FROM VIOLENT RELATIONSHIPS

When enacting VAWA, Congress preserved the requirement that an applicant for special cancellation be "of good moral character," but created an exception for actions that could otherwise bar relief if those actions flowed from the abusive relationship. Thus, although cancellation applicants are generally barred from being considered of good moral character for certain acts set out in INA § 101(f),¹⁰⁷ spouses in abusive relationships may still be considered of good moral character if such actions were "*connected to the alien's having been battered or subjected to extreme cruelty.*"¹⁰⁸ A memorandum issued by legacy INS to clarify the good moral character requirement in VAWA self-petitions notes that this exception allows a finding of good

¹⁰⁵ See Dutton, *Understanding Women's Responses to Domestic Violence*, supra n.45 at 1191; A. Ganley, *Understanding Domestic Violence, reported in Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers*.

¹⁰⁶ Ramirez Affidavit at 7-8, 10. Such verbal abuse can be more harmful than physical violence. See Levy, *In Love and in Danger*, supra n.101.

¹⁰⁷ 8 U.S.C. § 1101.

¹⁰⁸ INA § 240A(b)(2)(C), 8 U.S.C. § 1229b(b)(2)(C) (emphasis added).

moral character for *any* act “that would otherwise adversely reflect upon a self-petitioner’s moral character.”¹⁰⁹

Given VAWA’s history and the purpose intended by Congress, Immigration Judges must construe this waiver provision liberally. When determining what actions may be “connected to” abuse, they should consider the applicant’s personal experience and the realities she faced when trying to escape the abusive relationship. A battered immigrant’s good moral character should be evaluated on a case-by-case basis, and under VAWA, Immigration Judges should err on the side of the battered immigrant when considering a cancellation application.

A. Judges Must Consider the Distinct and Pressing Economic Needs of Domestic Violence Victims When Making a Good Moral Character Determination

For many victims of domestic violence, economic dependence upon their abusive partners is one of the primary reasons they remain in a violent relationship. Among battered immigrants, lack of access to money is considered the *single largest barrier* to leaving a domestic violence situation.¹¹⁰ To successfully end an abusive relationship, battered women need to be able to establish a home separate from their abusers, and must support themselves when they may never have done so.¹¹¹ For battered immigrants, the only option for supporting themselves after leaving an abusive relationship may be working without documents. Those immigrants

¹⁰⁹ William R. Yates, *Re: Determination of Good Moral Character in VAWA-Based Self-Petitions*, January 19, 2005 (“Yates Memorandum”) at 4.

¹¹⁰ Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WILLIAM AND MARY J. OF WOMEN AND THE LAW 597, 617-18 (2001).

¹¹¹ *Id.* at 617.

have limited choices. If they choose to free themselves from the economic confines of their abusive spouses by getting jobs, they . . . risk criminal conviction or deportation. But, if these illegal immigrants remain economically tied to their abusive spouses, they likely will not have the resources to leave the relationship or report their abusers.¹¹²

According to INS instructions to adjudicators, “the adjudicating officer should consider the full history of the domestic violence in the case, *including the need to escape an abusive relationship,*” when determining whether a sufficient connection exists.¹¹³ The economic hardship that results when a woman leaves an abusing spouse is a direct result of the isolation and dependence typical of abusive relationships. Thus, the need to support oneself after ending the abuse creates economic necessity that is “connected” to the abuse itself, and actions in furtherance of that economic necessity should not be considered a bar to finding an applicant is of good moral character.

B. The Immigration Judge’s Failure to Broadly Construe Actions Related to Abuse Undermines Congressional Intent to Assist Immigrant Domestic Violence Victims

The Immigration Judge determined that Ms. Ramirez was not a person of good moral character because she did not know whether her ex-husband filed taxes. He noted that “[s]he ‘thinks’ that her husband filed taxes during their marriage, but cannot remember, and could not testify that she ever signed any form of joint return.” I. J. at 8. He also cited her failure to file income taxes during the years after she left her abusive situation. *Id.* Finally, the Immigration Judge noted that Ms. Ramirez “obtained several jobs in the United States through the use of false immigration documents and a false social security number.” He determined that those acts

¹¹² Laura Jontz, *Eighth Circuit to Battered Kenyan: Take a Safari – Battered Immigrants Face New Barrier when Reporting Domestic Violence*, 55 DRAKE L. REV. 195, 199-201 (2006) (hereinafter Jontz, *Battered Immigrants Face New Barrier*).

¹¹³ Yates Memorandum, *supra* n.109 at 4 (emphasis added).

precluded a finding of good moral character because they “were clearly committed and continued after the respondent had separated entirely from her husband.” *Id.* at 9.

The Immigration Judge’s finding that Ms. Ramirez lacks good moral character must be reversed. First, neither failure to pay taxes nor using false documents to obtain employment are considered bars to good moral character under INA § 101(f), making the Immigration Judge’s determination that a waiver was necessary in Ms. Ramirez’s case improper.¹¹⁴ Second, the judge erred in finding that the designated actions were not connected to Ms. Ramirez’s abuse because she “had separated entirely from her husband.” I. J. at 9. As discussed above, Immigration Judges are instructed to consider the entirety of a battered immigrant’s abusive situation, including the need to escape that abusive relationship, when making a good moral character determination.

Here, the Immigration Judge penalized Ms. Ramirez for using a fake legal permanent resident card and social security number to gain the employment necessary to support herself and her son after leaving her abusive husband. Ms. Ramirez, an undocumented immigrant, had no choice but to use false papers to obtain employment, and only needed to find employment after escaping a violent relationship with the man that had formerly supported her and her child.¹¹⁵

¹¹⁴ See Paul Stultz, *Legal Opinion: Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9)* (April 30, 1991) at 2 (finding that falsifying an I-9 form is not making false statements before a government official and that an employer’s decision to hire an individual involves a private employment contract). See *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858, 870 (9th Cir. 2003) (noting BIA upheld I. J.’s determination that applicant established good moral character despite using false documents to secure employment and failing to file income tax forms).

¹¹⁵ Ms. Ramirez testified that she used a “false residence [card] and the social security number was invented,” but never told any of her employers that she was a United States citizen. Tr. at 122-24.

These actions were therefore “connected to” the abuse Ms. Ramirez suffered and should not be held against her when determining good moral character.¹¹⁶

Immigration Judges should err on the side of finding battered immigrants to be of good moral character in order to effectuate the purpose Congress intended when enacting the VAWA, and the Immigration Judge’s findings are yet another example of his lack of understanding of domestic abuse. His decision directly contravenes VAWA’s provisions and the Attorney General’s instructions for implementing them, and must be reversed.

¹¹⁶ The Immigration Judge also improperly punished Ms. Ramirez for not knowing whether her controlling and abusive husband filed tax returns and for failing to insist to him that she sign the returns or file tax returns jointly. The Immigration Judge penalized Ms. Ramirez for failing to file tax returns once she was single. However, that failure is not conduct that would bar a finding of good moral character under Section 101(f), and is of minor consequence when weighed against the violence perpetrated on Ms. Ramirez.

CONCLUSION

For the reasons stated above, the Board should reverse the Immigration Judge's decision and grant Ms. Ramirez's cancellation of removal and adjustment of status request under the VAWA provisions of the immigration law. Alternatively, the BIA should vacate the decision and remand the case for further fact-finding and potential expert testimony about domestic violence.

Respectfully submitted,


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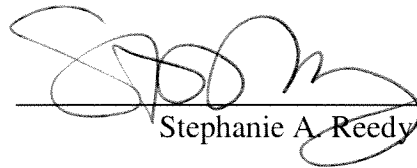
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I hereby certify that a copy of the foregoing Brief *Amici Curiae* was served by first class mail, postage prepaid, this 26th day of January, 2007, on the following counsel:

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Name: RAMIREZ-AVILA, SUSANA EDITH

A74-572-016

Type of Proceeding: Removal

Date of this notice: 11/01/2006

Type of Appeal: Case Appeal

Appeal filed by: Alien

Date of Appeal: 05/25/2006

NOTICE -- BRIEFING SCHEDULE

- o Enclosed is a copy of the decision of the Immigration Judge.
- o Enclosed is a copy of the transcript of the testimony of record.
- o Appealing party is granted until 11/22/2006 to submit a brief to the Board of Immigration Appeals. The brief must be **RECEIVED** at the Board on or before this date.
- o Opposing party is granted until 12/13/2006 to submit a reply brief to the Board of Immigration Appeals. The brief must be **RECEIVED** at the Board on or before this date.

WARNING: If you indicated on the Notice of Appeal (Form EOIR-26) that you will file a brief or statement, you are expected to file a brief or statement in support of your appeal. If you fail to file the brief or statement within the time set for filing in this briefing schedule, the Board may summarily dismiss your appeal. See 8 C.F.R. § 1003.1(d)(2)(i)(E).

FILING INSTRUCTIONS -- In General.

IMPORTANT: The Board of Immigration Appeals has included two copies of this notice. Please attach one copy of this notice to the front of your brief when you mail or deliver it to the Board, and keep one for records. Thank you for your cooperation.

A fee is not required for the filing of a brief. Your brief must be RECEIVED at the Clerk's Office at the Board of Immigration Appeals within the prescribed time limits. It is NOT sufficient simply to mail the brief and assume your brief will arrive on time. We strongly urge the use of an overnight courier service to ensure the timely filing of **davisag**

Use of an over-night courier service is strongly encouraged to ensure timely filing.

If the alien is represented by counsel at the appeal level, a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) must be filed with the Board.

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual and Questions and Answers at www.usdoj.gov/eoir.

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Unless you receive a Board Notice granting your extension request, your brief will remain due on the date stated above.

Extensions of briefing time will only be granted for good cause. All extension requests must be in writing. Telephonic or fax requests will not be accepted.

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EXHIBIT A

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CERTIFICADO DE NACIMIENTO

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NEW MEXICO**

DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION
BUREAU OF VITAL RECORDS
AND HEALTH STATISTICS



**ESTADO DE
NUEVO MEXICO**

DEPARTAMENTO DE SALUD
DIVISION DE SALUD PUBLICA
OFICINA DE REGISTROS VITALES
Y ESTADISTICAS DE SALUD

I certify that the following birth is registered in the Bureau of Vital Records and Health Statistics
Certifico que en la Seccion del Registro de Nacimientos a mi cargo aparece la siguiente inscripcion

File No. <i>Numero de Archivo</i> 92-0165-210	Request No. <i>Numero de Solicitud</i> 29A-0861	County of Birth <i>Condado de Nacimiento</i> TAOS
Date of Birth <i>Fecha de Nacimiento</i> DECEMBER 06, 1992	Date of Registration <i>Fecha de Inscripcion</i> DECEMBER 15, 1992	
Name of Person Registered <i>Nombre del escrito</i> ENRIQUE MISAEL HERNANDEZ		Sex <i>Sexo</i> MALE
Name of Father or Parent One <i>Nombre del Padre</i> JOSE E. HERNANDEZ	Birth Name of Mother or Parent Two <i>Nombre de Soltera de la Madre</i> EDITH RAMIREZ	

No. 727944



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**STATE OF
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PUBLIC HEALTH DIVISION
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AND HEALTH STATISTICS**



**ESTADO DE
NUEVO MEXICO**

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DIVISION DE SALUD PUBLICA
OFICINA DE REGISTROS VITALES
Y ESTADISTICAS DE SALUD**

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Certifico que en la Seccion del Registro de Nacimientos a mi cargo aparece la siguiente inscripcion

File No. <i>Numero de Archivo</i>	Request No. <i>Numero de Solicitud</i>	County of Birth <i>Condado de Nacimiento</i>
98-0708-040	2-989741	BERNALILLO
Date of Birth <i>Fecha de Nacimiento</i>	Date of Registration <i>Fecha de Inscripcion</i>	
MARCH 16, 1998	APRIL 30, 1998	
Name of Person Registered <i>Nombre del escrito</i>	Sex <i>Sexo</i>	
KEVIN GARCIA	MALE	
Name of Father or Parent One <i>Nombre del Padre</i>	Birth Name of Mother or Parent Two <i>Nombre de Soltera de la Madre</i>	
ALEJANDRO GARCIA	SUSANA E RAMIREZ	

No.1062450



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STATE OF NEW MEXICO

New Mexico Vital Records and Health Statistics
Public Health Division



ESTADO DE NUEVO MEXICO

Registros Vitales y Estadísticas de Salud de Nuevo Mexico
Division de Salud Publica

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Certifico que en la Seccion del Registro de Nacimientos a mi cargo aparece la siguiente inscripcion

File No. / Numero de Archivo 20040733775	Request No. / Numero de Solicitud 26201290256	County of Birth / Condado de Nacimiento BERNALILLO
Date of Birth / Fecha de Nacimiento SEPTEMBER 19, 2004 1449 HRS	Date of Registration / Fecha de Inscripcion SEPTEMBER 28, 2004	Sex / Sexo MALE
Name of Person Registered / Nombre del Escrito >>> XAVIER GARCIA <<<		
Name of Father or Parent One / Nombre del Padre >>> ALEJANDRO GARCIA <<<		
Birth Name of Mother or Parent Two / Nombre de Soltera de la Madre >>> SUSANA EDITH RAMIREZ <<<		

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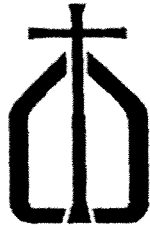
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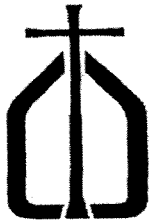
6001 Marble NE
Albuquerque, NM 87111

DATE: April 17, 2006
TO: Whom It May Concern
FROM: Myrna B. Fraker, LPCC; 724-4617
RE: Susana Ramirez

Susana Ramirez continues to attend counseling for the effects that the domestic violence from her marriage has affected her present relationship and her children. Ms. Ramirez was in the abusive marriage for three years. This is in reality a short-lived domestic violence experience. The average victim of domestic violence finds it extremely difficult to leave an abusive situation due to the financial dependence, the familial and societal stigma of shame and humiliation as well as the expectation that the situation will improve. This is the normal cycle of violence, explosive incident, honeymoon period during which there is hope in the victim that this will be the last time and that the situation will improve, building of tension during which the victim tries to appease the perpetrator and then the explosive incident is repeated. Victims can perpetuate in this cycle for several years and many leave an average of 11 times before they are finally able to become independent of the abuse. Ms. Ramirez was able to do so in three years. I believe that the abuse was of such a degree that she was able to quickly realize the danger. She suffered repeated physical incidents and infidelities as well as continual emotional and verbal abuse. The aftereffects of the abuse have manifested themselves in Ms. Ramirez becoming untrusting, defensive and suspicious in her present relationship. For several years she still suffers disassociation because of the traumatic experiences which she suffered. She continues to suffer the effects due to the effect of her husband's continued relationship with her cousin. She continues to deal with these issues in counseling.

Her children are living with the anxiety of the possibility of having to move to Mexico. For them, this would be a tremendous hardship, since the children have never attended schools in Mexico. They lack the language and especially the ability to read Spanish. The children would be victimized by this experience. They have formed long lived relationships in school and are performing well academically.

EXHIBIT C



Catholic Charities

6001 Marble NE
Albuquerque, NM 87111

DATE: March 29, 2006
TO: To Whom It May Concern
FROM: Myrna B. Fraker, LPCC; 724-4617
RE: Susana Ramirez

Ms. Susana Ramirez has attended counseling since 12/8/05 for anxiety and depression as a consequence of being a victim of her ex-husband's domestic violence. She continues to be concerned about the effects that the violence had on herself and her children. This client discussed her former abusive marriage. She is concerned about whether harmful negative information about her ex-husband can affect her son. It appears that her ex-husband continues to act in ways that are vindictive towards her. This client appears to be dealing with some contamination from the abusive marriage in her present relationship especially with jealousy and mistrust issues. She will continue to seek counseling for this trauma. If she is removed to Mexico, this will pose a hardship in acquiring continued therapy since the location of her hometown is rural and away from a large city in which she may be able to seek therapy.

This client strives to maintain the stability of her family and to safeguard her children from more harm. Removing this client from the U.S. to Mexico will pose extreme hardship and suffering to her and her children. This has caused anxiety and much emotional distress for her children as well as for herself. Her children have been born in the U.S. and are limited in their ability to speak Spanish. They have never attended school in Mexico and would not be able to read the material at the level that they have achieved in the U.S. Her oldest son is a good student and is involved in athletics at his school. If removed he believes that he will not be able to continue his education as he had hoped, due to the rural location of his mother's home town. He suffers now from insomnia at the prospect of being mandated to relocate. He threatens to not attend school in Mexico, and is too young to be allowed to stay here on his own. This alone causes much distress for his mother.

They hope to be able to continue in their schools and are very involved with their academics as well as with sports activities. They appear to be a family that has persevered to stabilize and be a healthy family.