

Unconditional Safety for Conditional Immigrant Women

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I. INTRODUCTION

Domestic violence in the United States continues at epidemic levels. Frightening statistics leap from the morning newspaper and the nightly television newscast. Four million women are battered in the United States every year.¹ A woman is beaten in the United States every eighteen minutes.² Thirty percent of all female murder victims are killed by their husbands or boyfriends.³ Domestic violence can be overwhelming for any woman, but for immigrant women the impact can be particularly devastating. In a new, unfamiliar environment, they are frequently without family and friends, money, or adequate English to learn how to accomplish even the most basic tasks.⁴ In contrast to their American citizen counterparts, battered immigrant women may not realize that domestic violence is against the law in the United States, that they have access to legal measures, or that community resources are available. Conditional immigrant women may be the most in jeopardy because their legal residence depends upon their citizen husbands petitioning the Immigration and Naturalization Service ("INS").⁵ Since their spouses control their residency status, these immi-

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¹ H.R. REP. NO. 395, 103d Cong., 1st Sess. 26 (1993).

² Rachel Morello Frosch & Trinidad Madrigal, *Introduction to DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN I-2* (Deeanna Jang et al. eds., 1991).

³ *Id.*

⁴ K. Connie Kang, *Forum to Focus on Spouse Abuse Among Asians Conference: Little Tokyo Event Today Will Examine Cultural Barriers Faced by Battered Wives*, L.A. TIMES, Aug. 27, 1994, at B3, B8.

⁵ 8 U.S.C.A. § 1186(a)(1) (West Supp. 1995). Conditional permanent residents have the same rights, privileges, and responsibilities as other permanent residents. 8 C.F.R. § 216.1 (1994).

grant women are often unable to escape vicious abuse at the hands of their sponsor-spouse.

In one example, a fifty-four year old South American immigrant confronted a choice between her life and her immigration papers. After her marriage to a United States citizen, she endured verbal insults and physical abuse, which included punches and kicks. Finally, one month short of securing her conditional green card from the INS, she left her husband.⁶ With no papers and no independent legal status, this immigrant woman was forced to become undocumented in order to preserve her life.

Miriam, a Filipina, also was abused by her citizen spouse. She filed reports with the police and obtained restraining orders to stop the violence. After her American husband realized that she would no longer tolerate his abuse, he withdrew his permission to grant her legal residence and requested her deportation. INS agreed, and Miriam was forced to go into hiding. She feared for herself and her fourteen-month old American-born daughter.⁷ "I don't care about myself," Miriam stated, "I just care about this child. I am at the mercy of the INS to get a future for this baby."⁸ Like many other battered immigrant women, she is now undocumented.

An Indian immigrant woman faced abuse after her reunion in the United States with her Indian husband. They had been married in India but were separated for a year following their wedding. When she arrived in New York, her lawyer husband insulted her while she was opening her boxes. He claimed she was "not from a good family" since the dowry was less than he anticipated. The abuse escalated as he began kicking her and pulling her hair, sometimes in front of his parents. She eventually escaped the physical and psychological battery by running away from her husband and moving in with a sister in Queens.⁹

Maria, a woman from the Dominican Republic, came to the United States to fulfill her "American dream" of financial stability. While in the United States, she met and married an American citizen. She was granted a "conditional" two-year residency provided she remained married. However, her husband began abusing her soon after their marriage. After her

Throughout this paper, conditional permanent residents will be referred to as female. While a portion of conditional permanent residents are male, this paper will focus solely on women conditional permanent residents for two reasons. First, the bulk of conditional permanent residents are women. Second, while men are also battered, approximately 95% of all domestic violence victims are women. H.R. REP., *supra* note 1, at 26. As used in this paper, "resident spouse" or "resident husband" encompasses both citizens and legal permanent residents.

⁶ Somini Sengupta, *Abused by the Law, Too? A Dilemma for Some Immigrants*, NEWSDAY, Mar. 11, 1994, at 6.

⁷ Dianne Klein, *Caught in a Deep and Bitter Trap*, L.A. TIMES, Oct. 8, 1993, at A1, A7.

⁸ *Id.*

⁹ Constance L. Hays, *Immigrants Get Help in Domestic Violence; Support Groups Form Among Ethnic Lines*, HOUS. CHRON., Dec. 12, 1993, at A2. Although the news story does not state the Indian woman's residency status, her story still dramatically highlights the domestic violence that immigrant women face.

fifth visit to the local hospital, she obtained a court order of protection.¹⁰ Even after she left her husband, he lured her back to his apartment with the promise of immigration papers. He then once again assaulted her. Afterwards, Maria recounted, "I said, 'No, you're going to hit me.' But I went because I needed the papers. He beat me on the head. He sat on my stomach. He put a knife to my throat and raped me. Then he threw me naked on the street."¹¹

As these examples indicate, many immigrant women are effectively held hostage by American immigration laws that allow their husbands to control their residency status. Although newspapers sporadically report the life-threatening conditions confronting battered immigrant women, their plight rarely captures national attention. Immigration policy has historically been controversial, fluctuating between more and less restrictive regimes.¹² The debate and political rhetoric fueling California's passage of Proposition 187 exemplify the prevalent anti-immigrant sentiment of the moment.¹³ This resurgent xenophobia has driven immigrants further to the margins of our society. This backlash, however, should not obscure the predicament battered immigrant women must face. The non-permanent resident women discussed in this paper are legal immigrants.¹⁴ The constraints imposed by the immigration law's spouse-controlled petitioning system force many of these women to become illegal immigrants.¹⁵

This issue gains additional significance given the rising number of women immigrants. During the 1980s, the number of legal women immi-

¹⁰ Vivienne Walt, *Immigrant Abuse: Nowhere to Hide*, NEWSDAY, Dec. 2, 1990, at 8.

¹¹ *Id.*

¹² See Alan Greenblatt, *History of Immigration Policy*, in 53 CONG. Q. WKLY. REP. 1067 (1995).

¹³ As the debate surrounding Proposition 187 indicates, much of the anti-immigrant sentiment centers on the recent wave of Latino, specifically Mexican, immigrants. The fears of continued Latino immigration revolve around public perceptions regarding immigrants' use of social services and their "un-Americanness." See Mark J. Miller & Demetrios G. Papademetriou, *Immigration Reform: The United States and Western Europe Compared*, in THE UNAVOIDABLE ISSUE: U.S. IMMIGRATION POLICY IN THE 1980s 292-95 (Demetrios G. Papademetriou & Mark J. Miller eds., 1983) (noting and rebuking "Hispanophobia" in the United States); RICHARD D. LAMM & GARY IMHOFF, *THE IMMIGRATION TIME BOMB: THE FRAGMENTING OF AMERICA* 159-85 (1985) (detailing the supposed problem of social service use by aliens).

¹⁴ This paper does not directly discuss illegal immigrants. The current anti-immigration climate, heralded by Proposition 187, has affected social service use by both legal and undocumented immigrants. See Frank Trejo, *Proposition 187 Likely to Spur Protracted Fight: Both Sides Say Measure Already Having Big Effect*, DALLAS MORNING NEWS, Jan. 30, 1995, at A1, A24; Laura McCoy, *Confusion Swirls Around Proposition 187: Immigrants Live in Terror Despite Ruling That Blocks Measure, Critics Say*, SACRAMENTO BEE, Dec. 14, 1994, at A1. While similar services should be available to all domestic violence victims regardless of residency status, this paper's legal analysis of the immigration laws, specifically the current petitioning system for conditional residency, remains limited in scope to legal immigrants. While social services should be accessible to all battered women, this issue is beyond the scope of this paper. For a discussion of the lack of options for undocumented battered women see generally DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES, *supra* note 2.

¹⁵ See Klein, *supra* note 7, at A7. Leslye Orloff, founder of the battered women's program at AYUDA, a legal organization serving the Latino community in the District of Columbia, summed up the situation as "[t]his is not talking about giving new immigration status to anybody." *Id.*

grants to the United States equaled the number of men.¹⁶ Women were the clear majority of immigrants from Central and South American, Caribbean, Southeast Asian, and European countries.¹⁷ This increase in the number of women immigrants reflects the American post-1965 immigration policy emphasis on family reunification. Women comprise a significant percentage of immediate-relative immigrants.¹⁸ Between 130,000 and 140,000 people—predominantly women—marry Americans and become permanent residents every year.¹⁹

While there are no national statistics as to how many conditional permanent residents are battered by their spouses, the numbers provided by organizations working with these immigrant women demonstrate that domestic violence is by no means rare.²⁰ A 1990 study undertaken by the Coalition for Immigrant and Refugee Rights and Services in San Francisco provides at least some indication of the scope of the problem. The organization surveyed 400 undocumented immigrant women in the Bay Area. Thirty-four percent of the Latinas²¹ and twenty percent of the Filipinas in the study reported that they had been victims of domestic violence.²²

This article examines the dilemmas that current immigration law creates for many battered immigrant women. Part II traces the development of immigration law pertaining to conditional permanent residents generally and battered immigrant women specifically. After a brief historical over-

¹⁶ Katherine M. Donato, *Understanding U.S. Immigration: Why Some Countries Send Women and Others Send Men*, in *SEEKING COMMON GROUND: MULTIDISCIPLINARY STUDIES OF IMMIGRANT WOMEN IN THE UNITED STATES* 159 (Donna Gabaccia ed., 1992).

¹⁷ *Id.* at 159-62.

¹⁸ "Immediate relatives" are the "children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age." 8 U.S.C.A. § 1151(b)(2)(A)(i) (West Supp. 1995). This group is not subject to the numerical or worldwide limitations. 8 U.S.C.A. § 1151(b) (West Supp. 1995). Relatives of legal permanent residents are subject to such restrictions. 8 U.S.C.A. § 1153(a)(2) (West Supp. 1995).

¹⁹ Sengupta, *supra* note 6, at 6 (quoting INS spokesperson Duke Austin).

²⁰ The National Network on Behalf of Immigrant Women documented ninety cases of abuse of immigrant wives in 1993. *Id.* In a two-month period, five battered immigrant women contacted the Central American Refugee Center in Hempstead, New York. *Id.* Cameron House, an organization that works with Chinese immigrants, handled an average of 250 cases during both 1989 and 1990. James Leung, *Law Benefiting Immigrant Wives Means More Work for Shelter*, S.F. CHRON., Feb. 20, 1991, at B12. Sakhi, a New York organization catering to the South Asian community, has met with approximately 300 women since its founding in 1989. Sonia Chopra, *Silent No More*, NEWSDAY, May 22, 1994, at 1. "Conditional permanent residents" comprised about half of the 250 battered women who sought assistance from Manhattan's Asian Women's Shelter in 1990. Wendy Lin, *Is INS Hindering Abused Wives?*, NEWSDAY, July 8, 1991, at 21. The program director of the Victims Services Agency office in Jackson Heights, Queens estimated that 70% of their clients were victims of domestic violence and that 90% of these cases involved immigrants. *Id.* (quoting Lilian Rubinsky, program director).

²¹ Within this paper, I use Latinas to indicate the group of women of Latin American origin residing in the United States. They include women of Mexican, Cuban, Caribbean, Central and South American descent. Latinas and/or Latinos can be used interchangeably with the more commonly-used term Hispanic. As broadly defined, the Latinas category encompasses Puerto Rican women; however, they are not included in the group of Hispanic women discussed in this paper since Puerto Rican "immigrants" to the United States mainland are American citizens.

²² Morello Frosch & Madrigal, *supra* note 2, at 1-2. These particular statistics reflect incidents of domestic violence with the partner, either in the couple's country of origin, in the United States, or in both. *Id.*

view of American immigration policy, it outlines and criticizes the evolution of the law from the Immigration Marriage Fraud Amendments of 1986 ("IMFA")²³ through the Immigration Act of 1990 ("IMMACT"),²⁴ up to the 1994 Violence Against Women Act ("VAWA").²⁵ Part III considers both the advances made by VAWA and the additional barriers it erected. Part IV advances several legal and social service solutions to ease the burden on battered immigrant women. This section advocates methods of restructuring the balance between the law's conflicting fraud deterrence and protection from violence objectives to assure that immigrant women receive the full protection of all American laws.

The solutions offered in Part IV also acknowledge the fact that a significant portion of conditional permanent residents are racial and ethnic minorities. The ethnic composition of conditional permanent residents generally coincides with, and contributes to, the dramatic increase in domestic minority groups.²⁶ Therefore, the experiences of many of these women reflect the racial, ethnic, and gender realities of contemporary American society.²⁷

II. THE EVOLUTION OF CONDITIONAL PERMANENT RESIDENCY

Early immigration laws gave male citizens and permanent legal residents the right to control the immigration status of their alien wives²⁸ while women citizens or permanent residents were not given the same entitlement.²⁹ This pattern of male control over women's residency status contin-

²³ Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended in scattered sections of U.S.C.) (governing conditional permanent residency).

²⁴ Immigration Act of 1990, Pub. L. No. 101-649, 101 Stat. 4978 (codified as amended in scattered sections of U.S.C.).

²⁵ Pub. L. No. 103-322, §§ 40701-40703 (codified as 8 U.S.C. §§ 1151, 1154, 1186a, 1254 (West Supp. 1995)) (governing protections for battered immigrant women and children).

²⁶ See Delores M. Mortimer, *Race, Ethnicity, and Sex in the Recent Immigration: Some Preliminary Comments*, in *FEMALE IMMIGRANTS TO THE UNITED STATES: CARIBBEAN, LATIN AMERICAN, AND AFRICAN EXPERIENCES* xl, xliii-xliv (Delores M. Mortimer & Roy S. Bryce-Laporte eds., 1981).

²⁷ While Part IV applies to battered immigrant women of all races and ethnicities, given the fact that it is estimated that Latinos will constitute the largest ethnic minority group in the United States by 2020, this section focuses specifically on Latina needs and issues. A Population Reference Bureau study estimates that there will be 47 million Latinos in the United States by 2020, a greater number than the estimated African-American population by the same year. MICHAEL C. LEMAY, *FROM OPEN DOOR TO DUTCH DOOR: AN ANALYSIS OF U.S. IMMIGRATION POLICY SINCE 1820* 125 (1987). See also ALFREDA P. IGLEHART & ROSINA M. BECERRA, *SOCIAL SERVICES AND THE ETHNIC COMMUNITY* 1 (1995) (noting that the Census Bureau projects that by 2050 Latinos will comprise 21% of the United States population versus 15% for African-Americans). This dramatic growth will result from both continued immigration (both legal and illegal) from Latin American countries and the higher Latino birth rate. Reynaldo Anaya Valencia, *Latinos and the Criminal Justice System: An Overview of the Invisible/Visible Minority*, 1 HARV. LATINO L. REV. 27, 40 n.62 (1994). 1992 figures indicate that the Latino population already numbers 22,096,000. *Id.* at 37 (citing BUREAU OF THE CENSUS, *THE HISPANIC POPULATION IN THE UNITED STATES: MARCH 1992 (REVISED)*, CURRENT POPULATION REPORTS, P-20, No. 465R 2, 12 (1992)).

²⁸ Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacies of Coverture*, 28 SAN DIEGO L. REV. 593, 600 (1991).

²⁹ *Id.*

ued into the period when the first numerical restrictions on immigration were imposed. In 1924, Congress enacted the first permanent quotas on immigration,³⁰ but left foreign-born wives of United States citizens exempt from these numerical quotas.³¹

Early immigration laws also restricted immigrants based on their national origin, which was then perceived as "race."³² The 1924 quotas reflected a hostility toward Asians and southern and eastern Europeans.³³ In 1965, Congress attempted to rectify the racial inequities in the national quota system.³⁴ While maintaining some limits by imposing "hemispheric ceilings," the 1965 Act shifted the focus away from national quotas to family reunification and occupational needs.³⁵ Under the 1965 Act, "immediate relatives" of American citizens were allowed to immigrate to the United States regardless of the numerical quotas.³⁶ While subject to the quotas, the spouses and unmarried sons or daughters of legal permanent residents were also given preference under the new immigration regime.³⁷ As noted earlier, this policy change dramatically increased the number of female immigrants to the United States.

³⁰ Immigration Act of 1924, ch. 190, § 4(a), 43 Stat. 153, 155, *repealed by* Immigration and Nationality Act, ch. 477, § 403(a)(23), 66 Stat. 163, 279 (1952).

³¹ *Id.* at Ch. 190, § 4(a), 43 Stat. 153, 155.

³² See generally GWENDOLYN MINK, *OLD LABOR AND NEW IMMIGRANTS IN AMERICAN POLITICAL DEVELOPMENT: UNION, PARTY AND STATE, 1875-1920* (1986) (discussing the history and politics of immigration law and anti-immigration sentiment in the United States).

³³ "The 1924 law established national quotas based on the population of that nationality in the United States in 1890." Calvo, *supra* note 28, at 602. This quota system effectively dampened immigration from southern and eastern Europe. The anti-Asian sentiment was even more dramatic. During the nineteenth century, the laws explicitly prohibited Chinese immigration to the United States. Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, Pub. L. No. 199, 57 Stat. 600. Pacific Islander, Indian, Japanese, Siamese, Burmese, and Malaysian immigrants were similarly excluded. Ernest R. Myers, *Immigration: A Changing Force and Changing Face*, in *CHALLENGES OF A CHANGING AMERICA: PERSPECTIVES ON IMMIGRATION AND MULTICULTURALISM IN THE UNITED STATES* 7 (Ernest R. Myers ed., 1994). This codified preference for the "original American type" i.e., English, Scottish, Welsh, and other northern and western Europeans, persisted into this century. See Mortimer, *supra* note 26, at xli-xliii. From 1882 until 1943, Chinese laborers were explicitly prohibited from immigrating to the United States. Act of May 6, 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600. From 1820-1975, 76% of immigrants to the United States were of European origin, 18% were from areas "close to the United States," and 5% were from Asia. *Id.* at xliii (citing Verghese J. Chirayath, *Domestic Implications of the New Immigration for the U.S. and Other Host Societies: Occupations and Services*, in *SOURCEBOOK ON THE NEW IMMIGRATION: BOOK II (SUPPLEMENT)* (Roy Bryce-Laporte, ed., 1979).

³⁴ Mortimer, *supra* note 26, at xliii. See H.R. REP. NO. 745, 89th Cong., 1st Sess. (1965); S. REP. NO. 748, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S.C.A.N. 3328. The Immigration Code now provides that except for such narrow areas as immediate relative, family-sponsored, and employment-based immigration, "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C.A. § 1152(a)(1) (West Supp. 1995); see also Calvo, *supra* note 28, at 606.

³⁵ Mortimer, *supra* note 26, at xliii; see also Calvo, *supra* note 28, at 605.

³⁶ Calvo, *supra* note 28, at 605; see 8 U.S.C.A. § 1151(a)-(b) (West Supp. 1995).

³⁷ 8 U.S.C.A. § 1153(a)(2) (1970) (amended 1990).

A. Immigration Marriage Fraud Amendments of 1986

1. The IMFA Provisions

IMFA created a novel status for alien spouses of American citizens and legal permanent residents. Motivated by INS figures indicating that up to thirty percent of all marriages between immigrants and residents were "sham" marriages,³⁸ Congress created a new category: conditional permanent resident.³⁹ To discourage the allegedly rampant fraudulent marriages,⁴⁰ IMFA established a two-year conditional residence status for alien spouses.⁴¹ This conditional period commences only *after* the citizen or resident spouse files a petition with the INS on behalf of the alien spouse's benefit, for her conditional resident status.⁴² If the resident spouse fails to file this petition, the alien spouse has no legal residence status and is thus deportable.

Shortly before the end of the two-year period,⁴³ the alien and citizen spouses must jointly file a petition with the INS requesting an adjustment in the alien spouse's status.⁴⁴ The 1986 Act required that the petition show both that the marriage had not been entered into for immigration purposes and that it had not been annulled or terminated.⁴⁵ If the couple successfully navigated the petition and subsequent interview phases, the INS granted the alien spouse her permanent resident status. If, for whatever reason, the couple failed to file this petition or to appear for the interview, the alien

³⁸ "Sham" marriages are marriages fraudulently entered into with the purpose of obtaining immigration papers or for a fee. 8 U.S.C.A. § 1255(e)(3) (Supp. 1995) (defining a bona fide marriage for suspension of deportation proceedings). While the accuracy of this 30% figure has been called into question, Congress relied on this inflated number in determining that marriage fraud was a common occurrence. Joe A. Tucker, *Assimilation to the United States: A Study of the Adjustment of Status and the Immigration Marriage Fraud Statutes*, 7 YALE L. & POL'Y REV. 20, 31 (1989) (citing Fraudulent Marriage and Fiance Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the Subcom. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. 35 (1985)). According to an independent study of these INS statistics, the INS did not use cases in which fraud was actually demonstrated; instead it derived its estimate from the personal judgment of INS investigators based on preliminary investigation. *Id.* at 33 (citing *INS Reveals Basis for Fraud Claims*, 65 INTERPRETER RELEASES 26 (1988)).

³⁹ 8 U.S.C.A. § 1186a(a)(1) (West Supp. 1995). Unless otherwise specified, conditional permanent residents have the same rights, privileges, responsibilities, and duties as other lawful permanent residents. 8 C.F.R. § 216.1 (1994).

⁴⁰ Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, § 100 Stat. 3537 (codified as amended in scattered sections of 8 U.S.C.).

⁴¹ 8 U.S.C.A. § 1186(b)(1) (Supp. 1995) (stating that the permanent resident status of a conditional permanent resident will be terminated if, before the second anniversary of the grant of conditional permanent residency, it is determined that the qualifying marriage is improper).

⁴² 8 U.S.C.A. 1186a(a)(1) (West Supp. 1995); *INS Issues Further Instruction on Immigration Marriage Fraud Law*, 63 INTERPRETER RELEASES 1076, 1077 (1986).

⁴³ The petition must be filed during the 90-day period preceding the second anniversary of the alien's grant of conditional permanent residence. 8 U.S.C.A. § 1186a(d)(2)(A) (West Supp. 1995).

⁴⁴ 8 U.S.C.A. § 1186a(d)(1)(A) (West Supp. 1995).

⁴⁵ 8 U.S.C.A. § 1186a(d)(1)(A) (West Supp. 1995).

spouse's conditional permanent resident status would be terminated and she could be deported.⁴⁶

Under the 1986 Act, many separated, divorced,⁴⁷ and battered women were left legally stranded by their husbands. Without their husbands' help, they could not meet the joint petitioning requirements. This failure frequently meant a loss of legal residency, and many of these women found themselves deportable at the end of their two-year conditional residency period.

2. IMFA Hardship Waivers

IMFA did allow for waivers from the petition and interview requirements if there was evidence that (1) deportation would result in an extreme hardship; or (2) the marriage had been entered in good faith and had been terminated by the alien spouse for good cause.⁴⁸ While these waivers presumably were enacted to provide some protection for vulnerable immigrant spouses, in practice they provided little shelter for battered immigrant women.

As the first part of the exception provides, an alien spouse may qualify for a waiver if she can demonstrate that extreme hardship would result from her deportation. However, evidence of "extreme hardship" is limited to circumstances arising after the grant of conditional permanent residence.⁴⁹ Conditions that existed prior to this conditional period, such as pre-existing adverse conditions in the woman's home country or a recurring medical condition, would not be considered by the INS in its determination.⁵⁰ Thus, the extreme hardship waiver remains extremely limited in scope. The INS has indicated that domestic violence does not provide grounds for this waiver since the "hardship from the violence would not be aggravated by

⁴⁶ 8 U.S.C.A. § 1186a(c)(2)(A) (West Supp. 1995). An alien spouse's status may also be terminated within ninety days of the interview if the petition information is determined to be untrue. 8 U.S.C.A. § 1186a(c)(3)(C) (West Supp. 1995).

⁴⁷ Divorced women failed to satisfy the basic requirement that they remain married throughout the two-year period. While the good faith/good cause waiver potentially could have helped these women, the strict interpretation of good cause served as a bar for many women. See *infra* part II(B)(2).

⁴⁸ 8 U.S.C. 1186a(c)(1); 8 U.S.C. 1186a(c)(4) (1988) (amended 1994).

⁴⁹ 8 C.F.R. § 216.5(e)(1) (1994). In *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), the Board of Immigration Appeals articulated ten criteria that it considers relevant in determining whether a deportation would cause "extreme hardship": 1) the alien's age; 2) family ties in the United States and abroad; 3) length of residence in the United States; 4) health conditions; 5) economic and political conditions in the alien's home country; 6) occupation and work skills; 7) immigration history; 8) position in the community; 9) whether the alien is of special assistance to the United States or to the community; and 10) whether there are alternate means to adjust status. Michael Feiner, *IMFA Waivers and Removals: Administrative Process and Jurisdictional Issues in Exclusion and Deportation Proceedings, in 1993-94 IMMIGRATION & NATIONAL LAW HANDBOOK* 345 (R. Patrick Murphy et. al. eds., 1993) [hereinafter *IMMIGRATION LAW HANDBOOK*].

⁵⁰ National Immigration Law Center, *Immigration Law Developments: Relief for Battered Spouses, Widows, and Abused Children*, CLEARINGHOUSE REV. 1151, 1155 (Jan. 1993).

the alien spouse's departure."⁵¹ As a result of this line of interpretation, the extreme hardship waiver offers almost no protection for battered immigrant women.

As outlined in the 1986 Act, the good faith/good cause waiver's requirements were easier to achieve. To qualify for this waiver, the alien spouse needed to demonstrate that she: (1) entered the marriage in good faith;⁵² (2) terminated the marriage for good cause; and (3) was not at fault for failing to file a timely joint application or appear for the personal interview.⁵³ These criteria illustrate two of IMFA's basic presumptions. First, IMFA presumed that fraudulent marriages were common occurrences. Therefore, a divorce during the two-year conditional period necessarily raised serious suspicions. This presumption is demonstrated in the 1986 Act's requirement that in order to ensure that these divorces were legitimate, immigrant wives act first and decisively to terminate their marriages.⁵⁴ Second, the law presumed that these immigrant women, many with limited English skills and different legal, religious, and cultural norms, could maneuver as well in the American legal system as their resident husbands. These flawed background assumptions placed a considerable burden on women applying for the waiver.

The good faith/good cause waiver's availability, as formulated in the 1986 Act, was further restricted by two factors. First, the waiver applied only to those women who had formally initiated or completed divorce proceedings.⁵⁵ Therefore, women who were separated from their husbands could not qualify for this waiver. Second, the requirements created a "race to the courthouse," because if the citizen spouse initiated the divorce, the non-resident spouse could not qualify for the waiver.⁵⁶ This result did little to advance IMFA's professed aim of ferreting out and discouraging fraudulent marriages. Rather than dissuading sham marriages, the good faith/good

⁵¹ Maxine Yi Hwa Lee, *A Life Preserver for Battered Immigrant Women: The 1990 Amendments to the Immigration Marriage Fraud Amendments*, 41 BUFF. L. REV. 779, 791 (1993).

⁵² In determining the validity of a marriage, the INS considers evidence of: 1) documents indicating joint property ownership; 2) leases showing joint tenancy; 3) commingling of financial resources; 4) birth certificates of children born to the marriage; and 5) affidavits of third parties knowledgeable about the relationship. 8 C.F.R. § 216.4(a)(5)(i)-(v) (Jan. 1994). Utility bills, joint income tax returns, phone bills showing phone calls to each other's spouses families, and photographs showing attendance at family events may also serve to prove a bona fide marriage. IMMIGRATION LAW HANDBOOK, *supra* note 49, at 345. Affidavits from psychologists, ministers, or rabbis, and relatives who have personal knowledge of the relationship may also suffice. *Id.*

⁵³ 8 U.S.C. § 1186a(c)(4)(B) (1988), *amended by* 8 U.S.C. § 1186a(c)(4) (Supp. 1995).

⁵⁴ This requirement ignored the fact that many states had adopted no-fault divorce schemes. Anna Y. Park, *The Marriage Fraud Act Revised: The Continuing Subordination of Asian and Pacific Islander Women*, 1 UCLA ASIAN AM. & PAC. ISLANDS L.J. 29, 32 (1993). Unaware of the specific immigration law provisions governing termination of marriages, many conditional permanent residents consented to divorces which later barred them from claiming the waiver. *Id.* See also Mary L. Sfaciotti & Luanne Bethke Redmond, *Marriage, Divorce, and the Immigration Laws*, 81 ILL. B.J. 644, 649 (Dec. 1993) (advising practitioners to seek divorces on specific grounds if one party is a conditional resident).

⁵⁵ 8 U.S.C. § 1186a(c)(4)(B) (1988) (requiring that the conditional resident have initiated divorce proceedings).

⁵⁶ See H.R. REP. NO. 723, 101st Cong., 2d Sess., Pt. 1, 51 (1990).

cause waiver penalized women who had attempted to maintain their marriages.

B. Immigration Amendments of 1990 and the INS Regulations

Following IMFA's enactment, immigration/refugee agencies and battered women's advocates strongly criticized the Act's sparse legal protection for battered immigrants.⁵⁷ While acknowledging that some battered women could qualify for one of the two available waivers, these advocates championed more specific protections.⁵⁸ Recognizing that IMFA had proven inadequate to ensure the safety of immigrant women, Congress enacted three significant amendments to the 1986 Act: a battered spouse waiver, a modification of the good faith/good cause waiver requirements, and a confidentiality provision to ensure the battered alien spouse's safety.

1. Battered Spouse Waiver

The 1990 Amendments provided that an alien spouse who could demonstrate that she entered her marriage in good faith and was battered or subjected to extreme cruelty by her resident spouse might qualify for the battered spouse waiver.⁵⁹ This language seemingly provided a broad safeguard, but the subsequent INS regulations adopted during the Bush administration substantially limited the waiver's availability.

These INS regulations seemed to implement the intended protections. For example, the regulations appeared to include a broad and inclusive definition of abuse. Promulgated in 1991, they defined an individual who "was battered by or was the subject of extreme cruelty" to include the "victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury."⁶⁰ For purposes of the waiver, "psychological or sexual abuse or exploitation . . . or forced prostitution shall be considered acts of violence."⁶¹ The regulations followed this rather inclusive definition of domestic violence with stringent evidentiary standards for physical battery and mental cruelty claims. An immigrant woman could demonstrate physical abuse through "expert testimony in the form of reports and affidavits from police, judges,

⁵⁷ See, e.g., Margaret M.R. O'Herron, *Ending Abuse of the Marriage Fraud Act*, 7 GEO. IMMIGR. L.J. 549 (1993); Michelle J. Anderson, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401 (1993); Park, *supra* note 54, at 29.

⁵⁸ Following this period of advocacy, INS spokesperson Duke Austin also expressed the need for additional legal protection for these women. He concluded that "[t]he two-year conditional requirement became equated to indentured servitude. . . . We needed to make corrections [in the law]. We hadn't considered this abuse situation." Lin, *supra* note 20, at 21.

⁵⁹ 8 U.S.C.A. § 1186a(c)(4)(C) (West Supp. 1995). This waiver is available even after the battered woman's conditional status has been terminated or while she is in deportation proceedings as long as she has not left the United States. 8 C.F.R. § 216.5(e)(3)(ii) (Jan. 1994).

⁶⁰ 8 C.F.R. § 216.5(e)(3)(i) (1994).

⁶¹ *Id.*

medical personnel, school officials and social service agency personnel.”⁶² The preceding list of acceptable evidence was not exclusive. Rather, the INS would be satisfied by any credible document entered in support of the woman’s application.

A satisfactory demonstration of “extreme cruelty,” however, required more precise proof. This higher standard resulted from the INS’s unnecessarily constricted interpretation of the 1990 Act’s “extreme cruelty” language as “extreme mental cruelty.”⁶³ Since the INS allegedly lacked the ability to evaluate the credibility of testimony from “unlicensed or untrained individuals,” the agency mandated that all claims of extreme mental cruelty “be supported by the evaluation of a professional recognized by the Service as an expert in the field.”⁶⁴ As the regulations specified, the designation of recognized professionals remained limited to “[l]icensed clinical social workers, psychologists, and psychiatrists.”⁶⁵

2. Modification of the Good Faith/Good Cause Waiver

The 1990 statutory changes also converted the good faith/good cause waiver into a simple good faith waiver. In addition to deleting the good cause language, the 1990 Act eliminated the requirement that the non-resident spouse initiate the divorce proceeding in order to qualify for the waiver. The 1990 amendments permitted any non-resident spouse to file for the waiver if she satisfied the good faith marriage requirements.⁶⁶ The only further restriction was that the non-resident could not be at fault in failing to file a timely joint petition.⁶⁷

3. Confidentiality Guarantees

The 1990 Act further ensured the safety of battered immigrant women by ordering the Attorney General to “establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.”⁶⁸ The subsequent INS regulations detailed how the INS must maintain this

⁶² 8 C.F.R. § 216.5(e)(3)(iii) (1994).

⁶³ See 8 C.F.R. § 216.5(e)(3)(i), (e)(3)(iv) (Jan. 1994). See also Martha F. Davis & Janet M. Calvo, *INS Interim Rule Diminishes Protection for Abused Spouses and Children*, 68 INTERPRETER RELEASES 665, 667 (June 3, 1991).

⁶⁴ 8 C.F.R. § 216.5(e)(3)(iv) (1994).

⁶⁵ 8 C.F.R. § 216.5(e)(3)(vii) (1994).

⁶⁶ She must demonstrate that she entered into a good faith marriage which was subsequently terminated other than through the death of the spouse. 8 U.S.C.A. § 1186a(c)(4)(B) (West Supp. 1995).

⁶⁷ *Id.*

⁶⁸ 8 U.S.C.A. § 1186a(c)(4) (West Supp. 1995). A battered woman’s location must be kept confidential to protect her. In many cases, an abuser will continue to search for and harass his former spouse. Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 280-85 (1995). Without confidentiality provisions, a battered immigrant woman may fear that her batterer will find her if she applies for a waiver.

confidentiality. First, the information contained in a waiver application can only be released through a court order or with the applicant's consent.⁶⁹ Second, the information may only be released to the applicant, an authorized representative, an officer of the Department of Justice, or any federal or state law enforcement agency.⁷⁰ Furthermore, battered women gain additional security from the Attorney General's order that agency officials send any written communication to the mailing address provided by the applicant.⁷¹ While the statute generally requires that the application information remain confidential, it may permissibly be used in any criminal proceeding or for "purposes of enforcement of the Act," including deportation proceedings.⁷²

C. Inadequacies in the INS Regulations

The 1990 Amendments increased a battered immigrant woman's options by granting her two alternative routes to adjust her residency status. She could choose to leave her abuser by either pursuing a divorce or remaining married and removing her conditional status through the battered spouse waiver.⁷³ Although the 1990 Amendments corrected the most blatant oversights and inequities, the subsequent INS regulations eradicated many of the improvements.⁷⁴ In practice, the regulations made the battered spouse waiver more difficult to obtain than the divorce/good faith waiver, thereby negating the progress that might have resulted from the 1990 Amendments.⁷⁵

This difficulty results from the different standards of proof required by the two waivers. If a battered conditional resident were divorced, she could

⁶⁹ 8 C.F.R. § 216.5(3)(viii) (1994).

⁷⁰ *Id.*

⁷¹ INS IMMACT Wire #45 (Mar. 20, 1991) in *INS Implements Marriage Fraud Amendments of Immigration Act of 1990*, 68 INTERPRETER RELEASES 435, 437-38 (Apr. 15, 1991).

⁷² *See id.*

⁷³ National Immigration Law Center, *supra* note 50, at 1154.

⁷⁴ This erosion may be related to the varied agendas of the 1990 Administration and Congress. The 1990 Amendments were enacted by a Democratic congress explicitly concerned with how little shelter conditional residency provided battered immigrants. As the legislative history indicates, Congress sought to provide broad legal protection for this group of women. *See H.R. REP.*, *supra* note 56 ("The purpose of this provision is to ensure that when the U.S. Citizen or permanent resident spouse or parent engages in battering or cruelty against the spouse or child, neither the spouse or child should be entrapped in the abusive relationship by the threat of losing legal resident status. . . . The Committee notes that the discretion given to the Attorney General to decide to deny waiver requests under this provision is to be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest."). Yet, the INS regulations undercut this objective. *See 56 FED. REG.* 22636 (1991) ("The Service has balanced the need to make compliance with the evidentiary requirement for the waiver as simple as possible against the need to ensure that unscrupulous aliens do not take advantage of the waiver to obtain immigration benefits to which they are not entitled. This rule allows battered conditional residents to establish eligibility, yet is stringent enough to prevent misuse of the benefit."). This may be partially explained by the fact that the regulations were promulgated under the Bush administration.

⁷⁵ *See* National Immigration Law Center, *supra* note 50, at 1154.

rely on the good faith waiver. If she chose this route, she had to submit evidence of a bona fide marriage and her divorce decree.⁷⁶ These documents sufficed regardless of whether her divorce adjudicated issues of abuse. However, if she chose to rely on the battered spouse waiver, she had to submit the same documents necessary to prove a bona fide marriage as well as gather police reports, court orders, hospital records, affidavits, or an evaluation by a licensed mental health professional.⁷⁷ Since battered immigrant women often lack the ability to obtain these documents, the battered spouse waiver requirements were more burdensome than the good faith waiver standard.⁷⁸

Because the good faith waiver requires fewer, and less specific, substantiating documents, a *divorced* battered woman would presumably opt to pursue the good faith waiver. As a consequence, only women who cannot pursue the good faith waiver, i.e., those still married, would choose to rely on the battered spouse waiver.⁷⁹ Since the INS regulations effectively limited the battered spouse waiver's applicability and usefulness, the 1990 law has proven to provide much weaker protection than envisioned. The underlying suspicion of alien-citizen marriages prohibited lawmakers drafting the immigration amendments from seriously considering the everyday realities that expose these women to abuse. Instead, the law continued to rely on the inaccurate fraudulent marriage statistics that were used to support IMFA's restrictive policies. IMFA's errors, therefore, were in many instances compounded by the 1991 INS regulations. As a result, the post-1990 regime perpetuated several flaws that continued to place battered conditional residents in danger. Each of these weaknesses is discussed in more detail in the subsections below.

1. Injustices in the Spouse-Controlled Petitioning System

Both IMFA and IMMACT maintain the resident spouse-controlled petitioning system. Since IMFA's structure places complete control over the woman's initial residency status in the hands of her husband and the INS, it leaves the alien spouse legally impotent. In fact, the sponsorship

⁷⁶ See 8 C.F.R. § 216.4(c) (1994); 8 C.F.R. § 216.5(e)(2) (1994) (application for good faith waiver).

⁷⁷ See 8 C.F.R. § 216.5(e)(3) (1994) (battered spouse waiver).

⁷⁸ See *infra* part C(3) for a discussion of the difficulties that battered immigrant women face in gathering "credible" evidence. See also Kang, *supra* note 4 (discussing obstacles that battered Asian women confront in seeking help).

⁷⁹ See National Immigration Law Center, *supra* note 50, at 1154. See also Robert N. Tulloch, *A Further Update on the INA § 216*, in *REGULATORY OVERVIEW: PUTTING THE PIECES TOGETHER* 313 (R. Patrick Murphy et al. eds., 1992) ("The significant difference, and the only conceivable reason for not using the good faith waiver, is that there is no requirement for the marriage to have been terminated to obtain the battered spouse waiver. Thus, a battered spouse or child can obtain a waiver without facing the abuser in divorce court.").

system seems to empower abusive resident spouses. It allows them to use the threat of deportation as an additional tool for terrorizing their wives.⁸⁰

In response to this problem, several commentators have advocated a self-petitioning system for battered immigrant spouses.⁸¹ As one commentator noted, only a system that allows a woman to self-petition for her residency status as well as for her adjustment from conditional permanent status would sufficiently shelter battered immigrant women from their husbands' abuse.⁸² Under the current spouse-controlled system, an alien wife derives her initial legal residency status from her husband's actions. However, without this initial grant of conditional residency, an abused alien spouse cannot later rely on the battered spouse waiver to adjust her residency status. She has no legal status to adjust; she essentially has never legally resided in the United States.

The IMMACT regime, therefore, provides incomplete protection for battered alien spouses. The spouse-controlled petitioning system leads to differential treatment of similarly situated women. Absent the cooperation of their husbands during the initial grant of conditional residency, the battered conditional permanent residents would face the same plight as women who have no legal status because their husbands never petitioned for the initial grant of residency. Self-petitioning would eradicate this inequitable result.

As outlined by proponents, a self-petition system would still require women to meet all of the immigration laws' requirements for legal residence.⁸³ They would still need to demonstrate that they had entered their marriages in good faith. Additionally, they would need to satisfy the battered spouse waiver requirements. If they failed to meet their dual burden

⁸⁰ Lilia, a pseudonym for a 48-year-old Dominican woman, married an American citizen from Puerto Rico in 1984. They had three daughters in the 12 years they lived together on the East Coast. Throughout this period, Lilia endured "horrific and almost casual acts of violence." For the first six years of marriage, she believed her husband would fulfill his promise to file for legal residency on her behalf. He began to threaten her with deportation if she reported the abuse she was suffering. Lilia remained in her abusive marriage until 1990 when her father became ill in Santo Domingo. She requested her husband's permission to visit him before his death. Her husband allowed her to go. When she attempted to return to the United States she discovered that her husband had never petitioned for her permanent residency. Since she did not have conditional permanent residency, she was blocked from re-entering the United States. Eventually, her husband filed the petition for Lilia's residency with the INS because he was having difficulty caring for their daughters in the United States. However, due to delay on her husband's and the agency's parts, the process lasted eight months. After this period, Lilia returned home. The violence did not abate upon her return. Unwilling to endure any further abuse, she fled her home and obtained a restraining order against her husband. Lilia's ordeal did not end at this point. A court, noting her "abandonment" of her daughters for eight months while she was in the Dominican Republic, awarded custody of her children to her husband. However, after she found a job and an apartment, the court granted her custody of her daughters in August 1993. Klein, *supra* note 7, at A7.

⁸¹ See, e.g., O'Herron, *supra* note 57, at 560-63; Anderson, *supra* note 57, at 1423. The current system, which grants control over the process to the resident, generally male, spouse, undeniably reinforces sexist presumptions within our society and legal system. For a discussion of the coverage's legacy in the spouse-based petitioning system, see Calvo, *supra* note 28.

⁸² See Anderson, *supra* note 57, at 1423.

⁸³ See *id.*

of proof, they would be subject to deportation. However, if they satisfactorily demonstrated their compliance with immigration laws they would be granted legal residency in the United States.

2. Insufficient Definition of Abuse

The INS regulations include a list of abuse "types." While expansive in the sense that it moves beyond a purely physical definition of abuse, the list omits several potential categories of abuse. For example, the regulation definition fails to mention neglect and deprivation,⁸⁴ the inclusion of which would allow women who were denied proper care, medical attention, or economic resources to rely on the battered spouse waiver.⁸⁵ It is true that the INS regulations do not claim to be the exclusive definition of abuse, and therefore, many unenunciated acts of violence or cruelty may satisfy the waiver requirements. However, an explicit recognition of neglect and deprivation as forms of abuse may prompt more immigrant women to recognize and act against the mistreatment in their relationships.⁸⁶

A second problem arises from the regulations' failure to differentiate between the types of abuse that fall within the physical abuse category and those which belong in the extreme mental cruelty classification.⁸⁷ Given the varied standards of proof depending on this physical-mental distinction, this oversight unnecessarily confuses the application process. For example, forced prostitution, an abuse type included in the regulations, has both physical and psychological repercussions.⁸⁸ A battered immigrant woman may not know whether to submit a police report or a professional mental health worker's evaluation. If she submits sufficient evidence to demonstrate physical battery, but the INS determines that she faced extreme mental cruelty and failed to meet those requirements, she could face loss of

⁸⁴ Davis & Calvo, *supra* note 63, at 668.

⁸⁵ *Id.*

⁸⁶ An explicit statement that neglect or deprivation of care is unacceptable in American society will convey the message that such behavior will not be tolerated. This pronouncement may override the norms in various cultures that discourage or prohibit any criticism or contradiction of a husband's decision-making for the family. For example in some Latino households, the ideology of *machismo* results in severe sex-role socialization. As a result, women often defer to male decisions regarding financial or medical resources. These women may not consider economic deprivation as a form of abuse; rather, it may seem a male prerogative to allocate these resources. See MYRNA M. ZAMBRANO, *MEJOR SOLA QUE MAL ACOMPAÑADA: FOR THE LATINA IN AN ABUSIVE RELATIONSHIP* 152 (1985); Denis Lynn Daly Heyck, *The Ties That Bind: La Familia, in BARRIOS AND BORDERLANDS: CULTURES OF LATINOS AND LATINAS IN THE UNITED STATES* 18 (Denis Lynn Daly Heyck ed., 1994). There is some indication, however, that this stereotypical view of the strictly patriarchal Hispanic family may be outdated, particularly with respect to more "assimilated" and/or non-immigrant Latinos. See generally Lee Ybarra, *Marital Decision-Making and the Role of Machismo in the Chicano Family, in LATINA ISSUES: FRAGMENTS OF HISTORIA (ELLA) (HERSTORY)* 252, (Antoinette Sedillo Lopez ed., 1995). For a more in-depth discussion of the impact of culture and ethnicity on battered immigrant women, see *infra* part III.

⁸⁷ Davis & Calvo, *supra* note 63, at 668.

⁸⁸ *Id.*

her legal status and deportation.⁸⁹ Admittedly, a battered immigrant woman could avoid this bureaucratic tangle by initially submitting sufficient documents to satisfy both the physical and extreme mental cruelty evidentiary standards. However, given the financial and access barriers to licensed mental health professionals' services, this double burden would effectively prohibit many battered spouses from applying for the waiver. The definitional ambiguity between physical battery and extreme mental cruelty may therefore discourage use of the battered spouse waiver.

3. Unreasonable Evidentiary Requirements

The evidentiary standards for the two waivers are almost impossible for most immigrant women to meet, particularly because they fail to account for the different racial, cultural, linguistic, and economic backgrounds of domestic violence victims.⁹⁰ Many immigrant women find it difficult to satisfy even the more lenient physical battery requirements. While the regulations list a variety of acceptable affidavits and reports, they presume that battered immigrant women will respond to their abuse in a manner similar to battered white citizen women. Since the 1960s, the movement against domestic violence has successfully championed the establishment of shelters, mandatory police action, legal remedies, and legislative responses.⁹¹ However, like the feminist movement generally, the domestic violence awareness campaign emanates from a white middle-class model.⁹² The resulting legal and policy solutions often ignore the different racial, cultural, economic, and linguistic realities of immigrant women. The INS regulations suffer from a similar deficiency.

First, the regulations implicitly assume that immigrant women would choose to turn to a state entity. Based on this assumption, the regulations favor evidence of physical battery from various "state actors" such as the

⁸⁹ *Id.* This pitfall could be escaped by allowing the battered immigrant woman to amend her application and submit the relevant evidentiary documents.

⁹⁰ *Id.* at 668-69.

⁹¹ Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 979-81 (1991).

⁹² For a discussion of how the mandatory arrest policies advocated by many feminists work to reinforce racial oppression, see generally Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U.J. GENDER & L. 171 (1994). Ruttenberg argues that the "conceptualization of privacy . . . and its implications for women in the family" vary for white and Black women. *Id.* at 185. Black and white women, therefore, differ in their views of the value of state intervention. The history of state-sanctioned racism, as well as the racism in the current criminal justice system, influence Black women's responses to mandatory arrest policies. Since Black women confront the dual oppression of race and gender, and often emphasize racial discrimination over gender discrimination, they have considerably less faith in state intervention than their white counterparts. *See id.* at 182-84. Ruttenberg concludes by calling for a more inclusive and race-sensitive domestic violence policy. *Id.* at 198-99. *See also* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245-46 (1991).

police, courts, social service agencies, and school officials.⁹³ This evidentiary preference ignores battered immigrant women's support networks. Many immigrant women prefer to rely on their extended family, religious leaders, and other community organizations.⁹⁴ If the battered woman turns to these alternative groups for support, she will have failed to accumulate the requisite "paper trail."⁹⁵ Furthermore, some immigrant women possess an inherent distrust of government. Many fled countries where the national government failed to protect their rights.⁹⁶ These women cannot be expected to erase their perceptions of state agencies and bodies as being untrustworthy.⁹⁷ Finally, many battered immigrant women possess a shaky understanding of their residency status which reinforces their wariness of state intervention.⁹⁸

Even if these women overcome their fears of state involvement, they must face additional language and economic barriers en route to a satisfactorily completed waiver application. Many shelters deny battered immigrant women assistance because they lack adequate bilingual or multilingual staff.⁹⁹ Furthermore, a battered woman may have difficulty locating a bilingual attorney and navigating the judicial process which occurs in a language she cannot speak or understand.¹⁰⁰

Financial constraints also bar many women from obtaining the necessary documentation for an extreme mental cruelty claim. Like her citizen counterpart, a battered immigrant woman's decision to leave her batterer often results in financial hardship.¹⁰¹ Frequently, their economic situation effectively prohibits them from consulting the mental health professionals

⁹³ "Evidence of physical abuse may include, but is not limited to, expert testimony in the form of reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel. The Service must be satisfied with the credibility of the sources of the documentation submitted in support of the application." 8 C.F.R. 216.5e(3)(iii) (1994).

⁹⁴ See PIERRETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* 116-17 (1994) (detailing the value of women's networks and community organizations in a Mexican *barrio* in Oakview, California).

⁹⁵ See Sfasciotti & Redmond, *supra* note 54, at 648-49.

⁹⁶ "Many immigrants come from countries where the judiciary is an arm of a repressive government and does not function independently. They expect that persons who will prevail in court are persons with the most money or the strongest ties to the government." Catherine F. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1021 (1993).

⁹⁷ See Deborah Weissman, *Protecting the Battered Immigrant Woman*, FLA. B.J. 81, 82 (Oct. 1994); see also Leland K. Hall, Sr., *A Challenge to the Mental Health Systems: Central American Refugees*, in CHALLENGES OF A CHANGING AMERICA, *supra* note 33, at 87, 91 (discussing how many Central American refugees are reluctant to turn to the public health and social service systems in the District of Columbia because of "their negative perceptions of public authorities in their own countries").

⁹⁸ Many immigrant women refuse to turn to any type of agency because of their fear of deportation. See Leslye Orloff, Deanna Jang, and Catherine Klein, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 314-15 (1995); Klein, *supra*, note 7.

⁹⁹ See Crenshaw, *supra* note 92, at 1249 (noting that some battered women's shelters turn non-English-speaking women away because they lack bilingual resources). See also Weissman, *supra* note 97, at 82.

¹⁰⁰ Weissman, *supra* note 97, at 82.

¹⁰¹ See Klein & Orloff, *supra* note 96, at 1233-34.

designated by the regulations.¹⁰² Even if a woman is somehow able to gather sufficient funds to visit these professionals, she may find to her dismay that they are unable to communicate in her language or to comprehend her cultural norms.¹⁰³

4. Incomplete Protection of the Battered Woman's Confidentiality

By explicitly recognizing battered women's need for confidentiality, the regulations work to increase the safety of this group of women. Although the regulations represent significant progress, the provisions governing the release of confidential information leave room for improvement. Several commentators recommend that the files of women applying for the battered spouse waiver be segregated and sealed within each individual INS office.¹⁰⁴ Access to this information would be limited to immigration officials with a legitimate need to use the file.¹⁰⁵

Undeniably, the 1990 Amendments represented a significant step forward. For the first time, battered conditional permanent residents had an explicit legal hook on which to hang their adjustment claims. Yet as the confidentiality provision demonstrates, the 1990 Amendments simply corrected IMFA's most troubling features. These amendments and the subsequent regulations retained the suspicions of immigrant spouses that underlay IMFA. These unjustified suspicions prohibited lawmakers from sufficiently revamping the original framework to guard against the battery of conditional residents. As a result, the battered spouse waiver left several holes in the protection afforded conditional residents. Congress re-examined these interstices in 1994 when it considered and enacted the Violence Against Women Act.

III. THE CURRENT LAW: VIOLENCE AGAINST WOMEN ACT OF 1994

Congress elected to fill many of the gaps in federal protection for battered immigrant women as part of the Violence Against Women Act of 1994.¹⁰⁶ The act represents a comprehensive effort to combat the problems of violent crime against women, including sexual assault and domestic battery. Recognizing the "rising tide of violence" against American women,¹⁰⁷ VAWA takes a multi-prong approach to the problem of violent crimes against women. First, it allocates funds to improve public awareness, with

¹⁰² Lin, *supra* note 20, at 21 (quoting Martha Davis, staff attorney at the National Organization for Women Legal Defense and Education Fund).

¹⁰³ Park, *supra* note 54, at 37.

¹⁰⁴ See Davis & Calvo, *supra* note 63, at 670; Lee, *supra* note 51, at 800.

¹⁰⁵ See Lee, *supra* note 51, at 800.

¹⁰⁶ VAWA is part of the Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 8 U.S.C., 16 U.S.C., 18 U.S.C., 28 U.S.C., and 42 U.S.C.).

¹⁰⁷ H.R. REP., *supra* note 1, at 25.

a particular focus on underserved minority communities.¹⁰⁸ Second, it provides financial support to train police, prosecutors, and judges to better respond to these violent crimes.¹⁰⁹ Third, VAWA enacts specific protections for battered women, including confidentiality guarantees,¹¹⁰ a nationwide toll-free hotline,¹¹¹ grants for shelters,¹¹² and improved arrest policies.¹¹³ Fourth, it allows victims of violent felonies motivated by gender bias to file civil suits against their attackers.¹¹⁴ Finally, VAWA addresses the predicament of battered immigrant women by granting them the right to self-petition to adjust their residency status.¹¹⁵

The available statistics on domestic violence emphasize the urgent need for the sweeping measures enacted in VAWA. An estimated four million women in America are physically abused every year by their husbands or partners.¹¹⁶ Approximately thirty-five percent of women visiting hospital emergency rooms are attending to injuries inflicted by domestic violence.¹¹⁷ The statistics are equally jarring for immigrant women. Seventy-seven percent of the immigrant Latinas surveyed in an AYUDA study reported being subjected to abuse.¹¹⁸ Many of these women were vulnerable to additional abuse because of their uncertain or unfinalized residency status. The AYUDA survey revealed that in sixty-nine percent of these cases, the abusive resident spouse had never filed a petition for conditional permanent status on his wife's behalf.¹¹⁹ In these cases, the threat of deportation may have helped to trap these women in their violent relationships.

In the enactment of VAWA, Congress finally acknowledged that the spouse-controlled petition and adjustment system placed many immigrant women in danger. A House report accompanying the Act recognized that:

the current law foster[ed] domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal

¹⁰⁸ Under VAWA, public awareness and education are focused on two groups: children in school and minority and other "underserved communities." See 42 U.S.C.A. § 10417 (West Supp. 1995) (providing for four model programs for youth education on domestic violence); 42 U.S.C.A. § 10418 (West Supp. 1995) (emphasizing establishment of community programs on domestic violence). See also Marcia Greenberger, *Judicial System Must End Gender Bias*, CHI. TRIB., Nov. 6, 1994, at Womanews 11.

¹⁰⁹ 42 U.S.C.A. §§ 3793, 3796gg, 13991-13994 (West Supp. 1995).

¹¹⁰ 42 U.S.C.A. § 13942 (West Supp. 1995) (providing confidentiality for communications between counselors and victims of domestic violence and sexual assault); 42 U.S.C.A. § 13951 (West Supp. 1995) (protecting the confidentiality of the abused person's address).

¹¹¹ 42 U.S.C.A. § 10416 (West Supp. 1995) (providing a grant for a national domestic violence hotline).

¹¹² 42 U.S.C.A. § 10409 (West Supp. 1995) (granting funds for battered women's shelters).

¹¹³ 42 U.S.C.A. § 3796gg (West Supp. 1995) (encouraging the development of more effective arrest policies through federal grants).

¹¹⁴ 42 U.S.C.A. § 13981 (West Supp. 1995) (establishing a federal civil rights cause of action for victims of gender-motivated violent crimes).

¹¹⁵ 8 U.S.C.A. § 1154 (West Supp. 1995) (specifying alien petitioning rights for immediate relatives of U.S. citizens or individuals with second-preference immigrant status).

¹¹⁶ H.R. REP., *supra* note 1, at 26.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 26-27.

status in the hands of the citizen or lawful permanent resident, . . . [it] deterred [the battered spouse] from taking action to protect . . . herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation.¹²⁰

The 1994 Act denies the abusive spouse complete control over his wife's residency status. For the first time, the act allows a battered woman to self-petition. It also decreases her evidentiary burden and potentially permits her to avoid deportation. Each of these three provisions is detailed more fully later in this article.

A. Statutory Provisions

As mentioned, in VAWA a self-petitioning system for battered immigrant women is finally enacted. Subtitle G of the Act, entitled Protections for Battered Immigrant Women and Children, details the changes in the law governing conditional permanent residency. The new law allows battered spouses and parents of abused children to self-petition.¹²¹ A battered woman may use this alternative either to obtain her initial residency classification or to adjust her resident status.¹²² To be eligible, she must adequately demonstrate to the Attorney General that she: 1) entered her marriage in good faith; 2) was the victim of battery or extreme cruelty during the marriage; *and* 3) would suffer an extreme hardship if deported.¹²³

The self-petitioning system still demands that battered women satisfactorily demonstrate physical battery or extreme mental cruelty. However, the Violence Against Women Act eases this burden on self-petitioning battered spouses by relaxing the evidentiary requirements that existed before the Act. VAWA does not explicitly repudiate the standards established in the 1991 INS regulations; rather, it broadens the standard by ordering the Attorney General to "consider *any* credible evidence relevant to the petition."¹²⁴ VAWA provides a further safeguard by allowing the suspension of deportation of battered women.¹²⁵ The 1994 revisions themselves specify that the Attorney General has sole discretion in determining the sufficiency

¹²⁰ *Id.* at 26.

¹²¹ 42 U.S.C.A. § 1154(a)(1)(C)(iii) (West Supp. 1995). The abused child may also directly petition. *Id.* at § 1154(a)(1)(C)(iv).

¹²² 42 U.S.C.A. § 1154(a)(1) (West Supp. 1995).

¹²³ Eligibility depends on whether the self-petitioner resided in the United States with her resident spouse. The statute also requires that the alien be "a person of good moral character." *Id.* Immigration law requires "good moral character" during the "statutory period." 8 C.F.R. § 316.10 (1995). The INS may consider conduct during the five-year period preceding the filing of an application, but it is not limited to this time period. The INS regulations state that an individual lacks good moral character if he has committed certain crimes, such as murder or an aggravated felony. Other prohibited conduct includes prostitution, illegal gambling, habitual drunkenness, and polygamy. For a complete list, see *id.*

¹²⁴ 8 U.S.C.A. § 1186a(c)(4) (West Supp. 1995) (emphasis added).

¹²⁵ 8 U.S.C.A. § 1186a(d)(2)(C) (West Supp. 1995).

and credibility of the evidence submitted.¹²⁶ This new evidence “standard” has both prospective and retroactive effect.¹²⁷ Thus, the Attorney General maintains broad discretion in determining which, if any, battered women may rely on this legislative provision. As a result, the law does not guarantee that a battered woman will avoid deportation; rather, it simply opens the door to her case.

B. Improvements

1. Self-Petitioning System

The most dramatic advance from prior law involves the self-petitioning feature. As mentioned in Part II(D), commentators had long advocated this alternative for battered immigrant spouses.¹²⁸ While novel to the battered spouse situation, self-petitioning is not an unprecedented concept in American immigration law. The option to self-petition has long been permitted in situations where the applicant made a good-faith effort to comply with the regular sponsor application process but some unforeseen event prevents completion of the process.¹²⁹ For example, an immigrant woman whose citizen spouse dies before she becomes a finalized permanent resident may self-petition to adjust her status.¹³⁰ Since the alien spouse has not attempted to circumvent the normal application process, immigration law allows her to continue the process unimpaired by the loss of her sponsor.

In contrast to widowed immigrants, other individuals who unintentionally fail to comply with immigration laws are “punished” and deported. In the past, the immigration law viewed battered conditional permanent residents as the equivalent of willful non-compliers. VAWA finally categorizes battered immigrant women with other women allowed to self-petition because their spouses do not complete the application process. In cases in which spouses are either unable or unwilling to complete the process, women should not be penalized for their spouse’s inaction.

The new self-petitioning system brings with it several benefits. For example, under prior law, a citizen or resident spouse was permitted to place his wife in a legal limbo. If her husband refused to file the initial petition, a woman went unrecognized under immigration law. By granting such a woman control over her residency status, self-petitioning theoretically frees her from her husband’s abusive grasp. The new petitioning system seeks to ensure that, even if a woman is mistreated by her husband, she will not be abandoned by the immigration law. VAWA, therefore, furnishes battered immigrant women with a safety net. If a woman chooses to remain

¹²⁶ *Id.*

¹²⁷ Pub. L. No. 103-322 § 40702(b) (1994) (effective date provision).

¹²⁸ See, e.g., Weissman, *supra* note 97, at 83; Anderson, *supra* note 57, at 1422-23.

¹²⁹ See O’Herron, *supra* note 57, at 562.

¹³⁰ See *id.* at 561.

in her marriage, her independent status in the application process guards against the psychological abuse resulting from threatened deportation.¹³¹ Furthermore, self-petitioning decreases the length of time during which she remains vulnerable due to her uncertain residency status. This independence and security may provide some women with the necessary cushion to leave their abusive relationships. At a minimum, the self-petition system may decrease the hesitancy of battered immigrant women in dealing with immigration authorities.

2. Relaxed Evidentiary Standards

The recent legislation intimates that the 1991 INS regulations were unnecessarily restrictive. While not explicitly overriding the INS's licensed mental health professional requirement, Congress did mandate that the Attorney General consider *any* credible evidence in evaluating spousal waiver applications. Assuming that Congress implicitly repudiated INS's prior stringent standards for extreme mental cruelty claims, the Violence Against Women Act makes the immigration law more hospitable to these claims. In addition, the 1994 Act's open-ended language may decrease the earlier preference given to evidence of physical abuse provided by "state actors" such as police and courts.

However, the actual effect of the Act's evidence remains uncertain until the new INS regulations become available. While the 1994 Act implicitly rejects the prior INS evidentiary restrictions, it stops short of an explicit disavowal. An earlier House version of the Violence Against Women Act included just such a repudiation by directing the Attorney General to consider, "any credible evidence submitted in support of hardship waivers based on battering or extreme cruelty whether or not the evidence is supported by an evaluation of a licensed mental health professional."¹³²

This language indicates that the House Committee on the Judiciary intended to override the INS regulations. While the subsequent deletion of this language does not erase the possibility that the licensed mental health professional requirement will be abolished, evaluation by a licensed professional is no longer a Congressional mandate. Until the new INS regulations are promulgated, there is little guidance for battered immigrant women and their legal counsel.¹³³

¹³¹ In addition to federal legislation, judges may also interpret state or local statutes to define husbands' threats of withdrawing immigration petitions as elements of domestic violence. See Letter from Wendy Patten, Staff Attorney, AYUDA, to author (Mar. 22, 1995) (on file with author) (describing such a case in the District of Columbia) [hereinafter AYUDA letter]. AYUDA hopes that the husband will fear being found in contempt of the court order and therefore will not withdraw the petition. *Id.*

¹³² H.R. REP., *supra* note 1, at 38.

¹³³ At the time this article went to press, an INS spokesperson was unable to say when the new regulations would be issued. Telephone conversation with Rita Arthur, United States Immigration and Naturalization Service (Feb. 1, 1996).

C. New Barriers

Despite the improvements VAWA brings to immigration law for battered women, the ambiguities in its language erect some new hurdles. Much of this ambiguity results from the continuing tension between the conflicting desires to protect battered immigrant women and to deter immigration fraud. While VAWA enacts many promising protections, the positive changes are once again weakened by the residual suspicion of sham marriages. The new law perpetuates the view that if all alien-citizen marriages are suspect, those in which the spouse fails to petition on his wife's behalf are presumptively fraudulent, and the wife presumptively deportable. VAWA fails to renounce this view, but rather assumes its validity, resulting in the more demanding standard of proof for self-petitioning battered women and undermining VAWA's articulated protective goal.

1. A Demanding Standard of Proof

The unnecessary grafting of the extreme hardship language to the battered spouse waiver produces one of the most significant barriers in the Violence Against Women Act. The extreme hardship language in the immigration statute reinforces the notion that a battered woman without conditional permanent residency is presumptively deportable.¹³⁴ The immigration law continues to place control in the abusive husbands' hands. This extreme hardship provision denies women without conditional residency any legal avenues to obtain conditional permanent residency. They are, in a very tangible sense, at their husbands' mercy. Their husbands often brought them to the United States,¹³⁵ maintain their power through isolation and abuse, and ultimately fail to file immigration petitions. The immigration law castigates battered immigrant women for their non-status, even though its own requirements have placed them in this dilemma. They did not fail to abide by American immigration law; they were denied the basic legal power to comply with its provisions. VAWA, therefore, continues to place the blame for non-compliance on women rather than on their legally empowered husbands. This misplacement is used to justify the continued reliance on the presumptive deportation model.

Relying on this skewed view of the battered woman's accountability, VAWA places a greater burden on the battered immigrant woman, forcing

¹³⁴ See 8 U.S.C.A. § 1186a(c)(4) (West Supp. 1995).

¹³⁵ The most dramatic, and perhaps troubling, example of men "bringing" women to the United States involves mail-order brides. See Anderson, *supra* note 57, at 1407-11 (describing mail-order-bride catalogs and relating stories of abuse). The mail-order-bride business has flourished in recent years. See Diedra Henderson, *Mail-Order Brides: Industry Thrives*, SEATTLE TIMES, Mar. 4, 1995, at A8; Anderson, *supra* note 57, at 1408; Park, *supra* note 57, at 43-47. The extreme danger many mail-order brides find in the United States is illustrated by Susana Blackwell's murder. When Blackwell, while pregnant, chose to leave her abusive American husband, he murdered her and two of her friends. Henderson, *supra*.

her to demonstrate both extreme hardship and battery. If a battered immigrant seeks to self-petition, she must satisfy the stringent battered spouse waiver evidentiary standard. If she succeeds in collecting sufficient evidence of abuse, VAWA then forces her to confront the more exacting extreme hardship criteria. The merger of these formerly distinct waivers places self-petitioning battered women in a more difficult legal situation than their spouse-petitioned sisters who need only satisfy the battery criteria. Perversely, the women whom VAWA was intended to benefit, the self-petitioners, face the heightened standard.

As detailed in Part II's discussion of the IMFA provisions, the extreme hardship waiver has been narrowly construed. As currently defined, an extreme hardship determination considers "circumstances occurring only during the period that the alien was admitted for residence on a conditional basis."¹³⁶ The application of this standard to the self-petition process naturally presents problems, since the women relying on this new law often do not have conditional status. Thus, the applicable time period remains undefined.

Assuming the established considerations in an extreme hardship determination will be imported into the self-petition clause, a battered woman would need to show special characteristics and conditions that justify her continued residency in the United States.¹³⁷ This additional "extreme hardship" language, therefore, debilitates the self-petition protection. A self-petitioner must demonstrate good faith, battery, and extreme hardship; if a battered woman who obtained her conditional permanent residency through her spouse satisfactorily meets only *one* of these conditions, the law permits her to adjust her status.¹³⁸ In fact, as the extreme hardship waiver has been previously defined, a showing that marriage was in good faith is not required.¹³⁹ The battered spouse waiver only mandates proof of battery and a good faith marriage.¹⁴⁰ The self-petitioning clause blends these two waivers together with their accompanying criteria. The union of the formerly distinct "extreme hardship" and "battered spouse" language creates an unwarranted burden for self-petitioning battered women.

2. Pitfalls from Divorce

The self-petitioning mechanism also perpetuates many of the problematic features of the original 1986 good faith/good cause waiver. VAWA

¹³⁶ 8 U.S.C.A. § 1186a(c)(4)(C) (West Supp. 1995).

¹³⁷ 8 C.F.R. § 216.5(e)(1) (1994). These factors include age, family ties, health conditions, skills, and community position. A complete set of factors is listed in note 49, *supra*.

¹³⁸ 8 U.S.C.A. § 1186a(c)(4) (West Supp. 1995). In this latter situation, the good faith requirement allows her to qualify for the divorce waiver. 8 U.S.C.A. § 1186a(c)(4)(B) (West Supp. 1995). As the next section details, the "good faith" language in the self-petition provision does not necessarily permit application by a divorced battered woman.

¹³⁹ IMMIGRATION LAW HANDBOOK, *supra* note 49, at 345.

¹⁴⁰ 8 U.S.C.A. § 1186a(c)(4)(C) (West Supp. 1995).

requires that a self-petitioning battered woman demonstrate that she entered her marriage in good faith, but does not specify whether this clause applies to divorced women. As a result, the self-petitioning clause may only apply to women who remain married to their abusive husbands. While the VAWA language remains ambiguous, other provisions of the immigration law appear to promote this narrower scope. For example, if a battered woman divorces prior to her initial grant of conditional residency, she lacks legal status.¹⁴¹ Since she is not even a conditional permanent resident, she cannot rely on the good faith waiver to obtain permanent residency following a divorce. Because the Violence Against Women Act does not amend the good faith waiver, it apparently remains applicable only to women who already possess conditional permanent residency. Moreover, the self-petition feature does not explicitly mention divorced applicants and could therefore be interpreted to apply only to still-married battered women. If these two provisions are strictly interpreted in this manner, divorced battered women who lack an initial grant of residency possess no options for legal residency.

Furthermore, if a divorce blocks any future self-petition, a husband can maintain control by "racing to the courthouse" to terminate the marriage. Just as with the 1986 formulation of the good faith/good cause waiver, the abusive husband's prompt action in seeking a divorce allows him to manipulate the ultimate outcome. The upcoming INS regulations must ultimately articulate the complex interaction of the good faith and battered spouse waivers with the self-petition clause and outline the ramifications. The present uncertainty, however, denies battered women the "luxury" of escape from their abusive marriages through divorce. Since divorce may be lethal to a self-petition application, many immigration agencies have advised women to wait for the release of the INS regulations before filing for a divorce.¹⁴²

IV. LEGAL AND POLICY SOLUTIONS

The immigration law's provisions consistently underprotect battered immigrant women because they fail to take into account the realities of their lives in the United States. Many of these women remain linguistically and socially isolated. They are often unaware of rights and options in their new home country. The current law insufficiently compensates for these disadvantages. The present immigration regime assumes that immigrant women will respond to domestic violence as their white citizen American counter-

¹⁴¹ 8 U.S.C. § 1186(a). A citizen or legal permanent resident must petition for the conditional resident status of his spouse. Therefore, a divorce would prohibit the citizen spouse from petitioning.

¹⁴² Jennifer McKim, *Wives May Endure Abuse If Faced With Deportation*, BOS. GLOBE, Mar. 6, 1995, at Metro 13 (discussing the recommendations of national and Boston-area agencies); Thomas Huang and Frank Trejo, *Immigrant Spouses Put Hopes in New Law: Wives Can Remain in U.S. If They Can Prove Abuse*, NEW ORLEANS TIMES-PICAYUNE, May 11, 1995, at A28.

parts would. The law's failure to adequately factor in these varying responses, coupled with its heightened suspicion of alien-resident marriages, places these women in an arduous position.

In an effort to deter the exaggerated number of sham marriages, the law establishes a maze of immigration requirements that are often incomprehensible and unmanageable for these battered women. The current conditional permanent resident system discourages many battered women who entered their marriages in good faith from relying on the battered spouse waiver and self-petition provision. In response, Congress must reexamine the entire conditional permanent resident structure. In the past, Congress has responded to problems that arise by correcting the most blatant injustice while maintaining many other provisions that debilitate the intended protection. Lawmakers must reconcile the immigration law provisions to ensure that these battered women can no longer be legally abandoned. An important first step is an understanding of the everyday lives of these women.

A. Understanding the Battered Immigrant Woman's Reality

Many immigrant women are cultural, racial, and linguistic minorities in the United States. These differences work to isolate them from the available support system for domestic violence victims. For example, many immigrant women find battered women's shelters inhospitable. For many, their minimal English skills prevent them from participating in shelter programs.¹⁴³ The cultural differences alienate some of these women and cause them to return to their husbands.¹⁴⁴

In addition, many lack what they would consider their "natural" support network. In immigrating to the United States, they left their families in their countries of origin.¹⁴⁵ For many, their families would have insulated them against additional violence. They could have reprimanded the batterer¹⁴⁶ or provided shelter, support, and advice for the battered wife.¹⁴⁷ These women often replace their long-distance families with their ethnic communities in the United States. However, this is an imperfect substitute since the cultural norms reinforced by some ethnic communities often con-

¹⁴³ See Jorge Banales, *Abuse Among Immigrants: As Their Numbers Increase So Does the Need for Services*, WASH. POST, Oct. 16, 1990, at E5; Lily Eng, *Refuge For Battered Asian Wives: Shelter Helps Overcome Language, Cultural Barriers*, L.A. TIMES, Oct. 10, 1986, at View 2.

¹⁴⁴ See Lin, *supra* note 20, at 21.

¹⁴⁵ *Id.*

¹⁴⁶ See Alice J. Gallin, *The Cultural Defense: Undermining the Policies Against Domestic Violence*, 35 B.C. L. REV. 723, 730 (May 1994) (detailing how a tight-knit community in China would reinforce norms to prevent wife-murder and domestic violence).

¹⁴⁷ See Charles Kouri, *Shelter Aid Immigrants in Domestic Trouble*, CHI. TRIB., Sept. 5, 1993, at Womanews 1 (Gina, a young South American immigrant, says, "I knew what was happening was not right, but I did not understand that I had rights. If I was in my own country, I would go visit my family for a few days and they would comfort me. Here I had no one. I did not have the courage to leave."); Banales, *supra* note 143, at E5 (noting that Ethiopian couples that fight leave their conjugal home and go to their respective families).

tinue to place these women in jeopardy rather than guard them against further abuse.

These norms vary from culture to culture. However, many cultures advise women to remain in their marriages, regardless of the abuse inflicted on them.¹⁴⁸ In these cultures, family maintenance and reputation are paramount, which may discourage a battered immigrant woman from leaving her batterer.¹⁴⁹ For example, in many traditional Asian cultures, terminating a marriage is treated as a taboo which brings personal and familial embarrassment.¹⁵⁰ Battered immigrant women may also face cultural and religious values which do not condone discussing personal problems outside the family.¹⁵¹ As a result, these immigrant women find the idea of "telling their very intimate situation to someone they feel no connection to," a basic tenet of American domestic violence shelters and counseling, inherently troubling.¹⁵² This discomfort particularly hampers Asian and Latina immigrants who may be accustomed to only confiding in close relatives.¹⁵³

An additional problem arises from the fact that many cultures do not recognize domestic violence as a problem. In these cultures, battered women often have been indoctrinated to believe that such violence must be tolerated.¹⁵⁴ As an old Korean saying advises, "A wife and salted fish are

¹⁴⁸ Enrique Rangel and Steve Scott, *Climate of Fear: Cultural Isolation Compounds Abuse for Refugee Women*, DALLAS MORN. NEWS, Jan. 21, 1993, at 1A ("Traditional Vietnamese culture . . . often regards wife-beating as a private matter and even acceptable behavior by men.").

¹⁴⁹ See ZAMBRANO, *supra* note 86, at 227 (noting the Latino cultural value of "family unity and strength" which discourages divorce and often leads battered Latinas to tolerate abuse for the "sake of family pride and preservation.").

¹⁵⁰ See, e.g., Eng, *supra* note 143, at 5; Constance Hays, *Enduring Violence in a New Home*, N.Y. TIMES, Dec. 6, 1993, at B3 (discussing the idea of the woman as guardian of the family honor in South Asian culture). For example, a Vietnamese immigrant shot his Vietnamese wife and then himself outside a Dallas courthouse because his wife was seeking a divorce after years of abuse. His brother felt that the requested divorce may have led to the tragedy. He commented, "I think he would have felt very shamed with his family. What would society say?" Rangel and Scott, *supra* note 148, at 16A.

¹⁵¹ See, e.g., Lin, *supra* note 20, at 21.

¹⁵² See Hays, *supra* note 9, at A2 (quoting Grace Perez, Executive Director of the Violence Intervention Program); Abby Goodnough, *Battered Immigrants Find A Haven*, N.Y. TIMES, Jan. 30, 1995, at B3 (citing battered Russian immigrants' reluctance to discuss problems outside their immediate family).

¹⁵³ See ZAMBRANO, *supra* note 86, at 207 (noting that Latinas may be socialized to keep problems in the home or to only confide in priests or other respected authorities).

¹⁵⁴ While culturally tolerated, domestic violence is still against the law in many foreign countries. See Eng, *supra* note 143, at 2 (discussing Pacific-Asian nations). As a result the increased dependence on the "cultural defense" to justify domestic violence rings hollow. The danger in focusing on culture to understand a battered immigrant woman's action is that the same cultural framework can be used to justify the abuse or murder. See generally Gallin, *supra* note 146; Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (July 1991). Culture should not be used to excuse criminal conduct. Immigrants to the United States have a right to maintain their culture, language, and traditions. However, when these claimed "customs," such as murdering a wife who commits adultery, ignore American criminal laws, they can no longer be tolerated. See Alexis Jetter, *Fear Is Legacy of Wife Killing in Chinatown: Battered Asians Shocked by Husband's Probation*, NEWSDAY, Nov. 26, 1989, at 4.

alike. They have to be beaten once a day to keep them good."¹⁵⁵ This attitude is reflected in the court testimony of a battered Latin American woman. She recounted how her husband had punched and kicked her, dragged her by the hair, and restrained her with knives and guns in a bedroom.¹⁵⁶ She concluded her testimony by stating that domestic violence is "natural when marriages have a dispute and, anyway, it wasn't that bad as on other occasions."¹⁵⁷ Religion may strengthen this acceptance message. The Koran advises that "good women are obedient" and instructs men to "admonish [rebellious women], banish them to beds apart and scourge them."¹⁵⁸ Catholicism encourages sacrifice and devotion for the preservation of family values,¹⁵⁹ which may lead to the subjugation of women.

These linguistic, cultural, and religious factors intersect to shape the battered immigrant woman's assessment of her options. Yet the current immigration law virtually ignores these considerations and their effects. For example, in order to accumulate evidence of battery, these women must leave their cultural and social isolation to navigate through a foreign legal system, effectively mastering the unknown. As an immigrant advocate questioned, "[h]ow do they know to look in the Yellow Pages? How do they know how to get services?"¹⁶⁰ Even if these women understand the service support system, they may remain reluctant to enter the American criminal justice system. One advocate expressed the sentiment of these women: "For them, anything to do with the courts or the police has to do with repression."¹⁶¹ Lawmakers and advocates must seriously consider these real barriers to battered women's effective use of immigration law protections. They must reevaluate their working presumptions regarding immigrants, domestic violence, and fraudulent marriages. The legal and policy solutions detailed below provide an important first step toward both of these goals. Given the continued flow of immigrants from Latin America, the recommended solutions place a special emphasis on Latino culture and Latina needs.

The *Chen* case provides a vivid example. The Chinese community in New York was outraged when a judge sentenced a Chinese immigrant to five years probation for murdering his wife. The immigrant smashed his wife's skull with a claw hammer after she allegedly admitted to having an affair. The judge justified his sentence by noting that the husband was "driven to violence by traditional Chinese values about adultery and loss of manhood." Gallin, *supra* note 146, at 730-31. The law should strive to take into account an individual's cultural responses and traditions to the degree that they comport with American criminal laws. This standard allows immigration law to factor in culture and language in formulating realistic evidentiary requirements, while barring a reliance on culture to justify murder.

¹⁵⁵ See Eng, *supra* note 143, at 2.

¹⁵⁶ Banales, *supra* note 143, at E5.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* (citing the Koran's Sura IV.34).

¹⁵⁹ GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 17 (1987).

¹⁶⁰ Elaine Rivera, *The New New Yorkers: Abused Women Have Options*, *NEWSDAY*, May 22, 1994, at 5.

¹⁶¹ *Id.* (quoting Joan Zorza, an attorney with the National Center on Women and Family Law in Manhattan).

B. Regulatory and Statutory Changes

The ideal solution to the plight of battered immigrant women would be the abandonment of all provisions of IMFA.¹⁶² IMFA has done little to accomplish its stated goal of deterring sham marriage. IMFA's two year conditional period *has* probably reduced the INS's caseload. By using the two-year period as a proxy for legitimate marriages, the INS has reduced the number of individual determinations it must make. Similarly, the stringent evidentiary standards, particularly the licensed mental health professional requirement, serve to lessen the INS's bureaucratic burden. But administrative convenience cannot justify the danger in which the IMFA, IMMACT, and VAWA provisions continue to place battered women. Given the fact that the INS has admitted that it gave exaggerated and unreliable figures to Congress during the drafting of the Immigration Marriage Fraud Act, maintaining the system is theoretically indefensible.¹⁶³

Ideally, Congress would repeal the faulty IMFA framework and replace it with a new section that rejects the conditional permanent resident status and takes into account the realistic responses of battered immigrant women. Such a comprehensive framework would solve many more problems than the current stop-gap approach. However, given the realities of the legislative process and the current political climate in the United States, this solution is likely to be politically infeasible. As a result, the immigration regime must continue to rely on solutions that build on the current framework and smooth its hurdles for battered women. The following subsections provide some of these possible solutions to the excessive burdens imposed under the current system.

1. Realistic Evidentiary Standards

A critical first step in any reform involves the easing of the battered woman's burden of proof. The INS regulations must be amended to allow explicitly for a broader range of acceptable evidence. Undeniably, the INS must rely on some identifiable standard for the assessment of an individual's application for a waiver or suspension of deportation. The current "any credible evidence" standard provides little guidance for agency workers or battered women. An expansion of the current evidentiary list would make the INS's application determination process more workable.

First, the list of acceptable evidence in support of a physical battery must be amended to include non-state sources such as religious leaders and community organization workers. By failing to include these alternative sources in the physical battery evidence list, the current INS regulations suggest that evidence from these sources is less reliable than that derived

¹⁶² See O'Herron, *supra* note 57, at 565-67.

¹⁶³ See *id.*

from "official sources." Yet, the "reliable" sources are inaccessible to many battered women. A survey of 400 immigrant women in the Bay Area uncovered that approximately thirty-four percent of them had been abused.¹⁶⁴ This thirty-four percent figure equals approximately 136 women, of which only six had ever called the police for help.¹⁶⁵ A woman uncertain of her immigration status will also be unlikely to pursue a court order of protection or seek medical services.¹⁶⁶ Many battered women, therefore, will lack sufficient credible documentation to prove their battery claim.

It is possible that a secondary goal of the current INS regulations is to encourage women to seek help from state authorities. If so, it is not clear that the regulations have achieved this objective. There is some indication that applications for the battered spouse waiver have included a substantial amount of documentation from the acceptable "official" authorities.¹⁶⁷ However, this does not necessarily reflect a greater reliance on these sources than others. The regulations simply encourage women who have accumulated this type of evidence to avail themselves of the waiver. By ignoring a battered immigrant woman's natural support network, the regulations dissuade women who rely on these alternative sources of support from applying. Many women, specifically Latinas, prefer to turn first to extended family. If this recourse is not possible, they may turn to an active community organization with extensive outreach and Spanish-language services. Yet if a Latina requests an affidavit from any of these sources, there are no guarantees that the INS will consider it to be sufficient evidence. Since the battered Latina immigrant remains unsure whether the "alternative" type of evidence will be acceptable, she may hesitate to apply for the waiver.

To correct this problem, the forthcoming INS regulations must move away from the restrictive view of credible evidence. They must encompass the broad range of sources to which immigrant women turn for support in

¹⁶⁴ Debbie Lee, *Identifying Immigrant Battered Women*, in DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES, *supra* note 2, at II-1, II-2. The survey involved undocumented women. However, it is unclear if all of these women entered the country illegally or if some of them had entered legally under the marriage provisions or a now expired visa.

¹⁶⁵ *Id.*

¹⁶⁶ According to one agency:

An abusive husband typically threatens either to withdraw his immigration petition filed on [the immigrant wife's] behalf, or, if he has not filed any petition for her, he threatens to report her to INS and to have her deported and separated from her children. These threats prevent many immigrant women from reporting violence to the police, seeking medical treatment, and requesting protective orders from local courts.

AYUDA letter, *supra* note 131 (detailing the organization's efforts at making the civil court order of protection process more immigrant-friendly).

¹⁶⁷ See Park, *supra* note 54, at 34-35. An IMFA questionnaire distributed by the Asian Pacific American Legal Center in Los Angeles found that the 26 successful waiver applications included substantial amounts of documentation to support a battery claim. Nearly all of them included a police report and a medical report. Many included affidavits from battered women's shelters and copies of temporary restraining orders. *Id.* Only 27 women responded to the survey. The noticeable lack of women who applied without extensive documentation is not explained. See *id.*

times of crisis. An explicit list, including affidavits from religious leaders, community activists, or family members, should be added to encourage these women to apply for the waiver that was intended to protect them. As always, the INS can exclude evidence that lacks sufficient weight and credibility. The INS should not be allowed to shun its responsibility to determine legal residency status by promulgating regulations that deter women from even applying.

INS evidentiary standards should also allow for alternative evidence of extreme mental cruelty. The current regulations explain that “[t]he Service is not in a position to evaluate testimony regarding a claim of extreme mental cruelty provided by unlicensed or untrained individuals.”¹⁶⁸ Therefore, the regulations require that all waiver applications based on extreme mental cruelty claims must be accompanied by an evaluation of a licensed mental health professional.¹⁶⁹ This justification is disingenuous. The INS repeatedly evaluates testimony in making individualized initial residency and deportation determinations. It does not require additional testimony to evaluate claims of “extreme hardship.”¹⁷⁰ Similarly, INS officials evaluate the credibility of information submitted to support a “well-founded fear of prosecution” application without relying on licensed professionals to verify the fear’s validity.¹⁷¹ Once again, administrative ease should not be used to justify excluding a group of immigrant women from the intended protection of the battered spouse waiver.

The restrictive extreme mental cruelty requirement also proves problematic because it ignores the battered woman’s financial restrictions and cultural differences. She may be unable to consult a licensed mental health professional because she lacks the financial resources or requisite language skills.¹⁷² Even if she overcomes these barriers, she may find that the licensed mental health professional lacks an understanding of her cultural and/or religious experience.¹⁷³ Some Latinas may be highly influenced by Catholic beliefs that value suffering and service to others.¹⁷⁴ These virtues are seen as central to good behavior and happiness. If a non-Latino therapist disregards these beliefs and attempts to impose a more individualistic Anglo-American model, he or she risks alienating the battered woman.

By preferring licensed mental health professionals, the INS regulations assume that these professionals will be able to ferret out fraudulent extreme mental cruelty claims. IMFA’s recurring suspicion of a battered immigrant

¹⁶⁸ 8 C.F.R. § 216.5(e)(3)(iv) (1995).

¹⁶⁹ 8 C.F.R. § 216.5(e)(3)(iv)-(v) (1994).

¹⁷⁰ See Davis & Calvo, *supra* note 63, at 669.

¹⁷¹ *Id.*

¹⁷² See Park, *supra* note 54, at 37 (noting that the Asian and Pacific Islander population in Los Angeles speaks 40 different languages).

¹⁷³ See Valli Kanuha, *Women of Color in Battering Relationships*, in *WOMEN OF COLOR: INTEGRATING ETHNIC AND GENDER IDENTITIES IN PSYCHOTHERAPY* 428, 435-38 (Lillian Comas-Diaz & Beverly Greene eds., 1984).

¹⁷⁴ *Id.*

spouse's motivations reappears to prohibit the development of a more culturally-responsive and accessible list of potential evidentiary sources. The forthcoming regulations governing "credible evidence" for battered spouse waiver and self-petition applications must consciously reject this unwarranted restriction to licensed mental health professionals. In place of the former standard, the forthcoming regulations should acknowledge the alternative support networks on which these battered immigrant women rely by expanding the "credible evidence" definition to include "any health worker or counselor who is licensed in the alien's home jurisdiction, any worker who provides health or counseling services within an organization (such as a domestic violence shelter) that is itself licensed, and clergy and religious workers."¹⁷⁵ This more inclusive definition might embolden battered women to apply for the waiver or self-petition option that Congress passed for their benefit.

2. Rejection of the Presumptive Deportation Framework

INS regulations should grant permanent residency to any spouse who can show good faith marriage and spouse abuse, regardless of her current marital status. Although this may be legally correct because these women lack conditional permanent residency, the deportation presumption must be discarded. As enacted, VAWA gives some women the opportunity to self-petition if they can gather sufficient evidence of battery and extreme hardship to avoid deportation. Some women will be able to use this new feature to obtain permanent residency or suspend their deportation. However, as detailed in the preceding section, many women lack the "credible evidence" needed to demonstrate battery and will be blocked from self-petitioning.

The deportation presumption underlying VAWA creates this differential result. VAWA continues to punish battered immigrant women by deporting them from the country where they have lived for years, established a home, and borne children. VAWA thus metes out its "punishment" to the wrong group. If anyone deserves blame for the battered woman's failure to comply with immigration laws, it is the abusive husband whose inaction denied his wife legal status and protection. The husband's failure may be defended by noting that no immigrant has an absolute right to permanent residency. Control over permanent residency grants, however, belongs in the hands of the government, not the husband. The government, therefore, cannot simply forfeit its responsibility to this battered legal immigrant by allowing the husband to "bring" a wife into this country and abandon her. His inaction does not erase the government's duty.

¹⁷⁵ Lee, *supra* note 51, at 799 (quoting National Immigration, Refugee and Citizenship Forum, Action Alert, at 2-3 (May 24, 1991)). This definition would encompass the broad range of workers an immigrant may encounter at community-based mental health and social service agencies.

The government must accept all the ramifications of its current petitioning system, which places many of these battered women in additional danger. Such an acknowledgment may finally stop the legal punishment of this battered group of women for their alleged non-compliance with American immigration law. These women must no longer be viewed as presumptively deportable. To ensure this result, the "extreme hardship" language should be deleted from VAWA's self-petition provision. Self-petitioning should provide women with a real substitute for their husbands' actions. Rather than being forced to rebut the deportation presumption, these women should be given an opportunity to prove that they entered their marriages in good faith. If they are able to demonstrate good faith and battery, they should be granted permanent residency.¹⁷⁶ Finally, the forthcoming INS regulations should ensure that the self-petition protection becomes available to all the intended recipients by including divorced women among those who can rely on the new law.

C. Policy Solutions: Moving Beyond the Law

The Violence Against Women Act establishes a multi-faceted and comprehensive plan to tackle the epidemic of domestic violence in the United States. The preferred approach involves community-based efforts focusing on many underserved racial and ethnic communities. VAWA funding grants therefore provide an avenue to reach out to battered immigrant women. Even if in practice VAWA's provisions continue to exclude a battered woman's claim or discourage her from applying, VAWA grants may counteract this effect by providing much-needed access to shelters and increased public awareness. Efforts under VAWA, coupled with a greater awareness of the plight of battered women, may finally loosen the constraints on these battered immigrants.

1. Multilingual/Multicultural Family Violence Shelters

The majority of battered women's shelters continue to cater to white, middle-class, English-speaking American women. Although many domestic violence victim advocates recognize that domestic violence transcends socio-economic, racial, ethnic, cultural, linguistic, and gender lines, battered women's shelters fail to reflect this understanding.¹⁷⁷ Slowly, some organizations have moved to fill in this gap. Within the past decade, shel-

¹⁷⁶ If proof of good faith and battery suffices for an initial grant of conditional permanent residency, the amended self-petition system may eliminate the need for a second interview and application. Because the hypothetical battered woman would have provided sufficient documentation to obtain the battered spouse waiver, the Congressional and INS fears of a sham marriage may be allayed. See O'Herron, *supra* note 57, at 560.

¹⁷⁷ See, e.g., Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who Are Victims of Domestic Violence: Past, Present and Future Perspectives*, 6 MD. J. CONTEMP. LEGAL ISSUES 129, 136 (1994-1995).

ters have opened that address the unique needs of immigrant and minority women. Sakhi, a New York organization catering to the Indian, Pakistani, Bangladeshi, Nepalese, and Sri Lankan communities, provides an example of success.¹⁷⁸

In developing its community outreach, Sakhi considers how cultural factors make it extremely difficult for battered South Asian women to seek help. The organization recognizes that because South Asian culture views marriage as a relationship between families, there is a great deal of pressure on married women to maintain the relationship regardless of abuse.¹⁷⁹ To assist women in breaking away from violence, Sakhi maintains a domestic violence hotline staffed by volunteers who speak seven South Asian languages: Hindi, Urdu, Bengali, Marathi, Tamil, Malayalam, and Gujrati.¹⁸⁰ Recognizing that the South Asian community "is not a big [one]," the organization places a high premium on confidentiality of information obtained from the hotline.¹⁸¹ Once the battered women make the initial contact, the Sakhi volunteers assist them by attending court hearings, translating testimony, and "generally guid[ing] victims, many of whom are recent immigrants, through the maze of bureaucracy that leads to an order of protection or a period in a city-run shelter for battered women."¹⁸²

Sakhi looks beyond simply getting women away from violence. The organization also provides job referral services and advice.¹⁸³ A monthly support group provides additional guidance to battered women. Sakhi's efforts have been buoyed by community support. Although once reluctant to confront the domestic violence problem in their community, South Asian community leaders have slowly accepted Sakhi's contribution.¹⁸⁴ Sakhi volunteers distribute leaflets at South Asian business areas in Manhattan, Brooklyn, and Queens. Religious leaders have allowed Sakhi to be represented at community fairs and gatherings for such community holidays as Diwali (the Festival of Lights) and Independence Day.¹⁸⁵ In addition, Sakhi volunteers have held discussions about domestic violence at community gatherings, temples, mosques, and churches. The comprehensive and culturally-sensitive approach Sakhi advocates, bolstered by support from community and religious leaders, has allowed the organization to meet with

¹⁷⁸ See Chopra, *supra* note 20, at 1.

¹⁷⁹ Hays, *Enduring Violence in a New Home*, *supra* note 150, at B3.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Chopra, *supra* note 20, at 1.

¹⁸⁴ Some community members remain hostile. Annanya Bhattacharjee, a Sakhi co-founder, comments that "there are many . . . who feel we are doing something that is none of their business, or that we are homebreakers." Hays, *supra* note 150, at B3. Some anonymous letters have accused Sakhi of "being a society of frustrated spinsters." *Id.*

¹⁸⁵ Chopra, *supra* note 20, at 1.

200 battered South Asian women since its founding.¹⁸⁶ Sakhi provides a potential national model for culturally-sensitive services.¹⁸⁷

Latinas may have the easiest time finding these linguistically- and culturally-compatible battered women's shelters. Since Latinas are often the largest and most linguistically homogeneous immigrant group in any particular city,¹⁸⁸ many shelters have responded to their needs. For example, because Latinos are the largest immigrant group on Long Island, some shelters have Spanish-speaking staff.¹⁸⁹ Yet the growing number of Asian and Arab immigrants to Long Island lack shelters with staff that can speak their language.¹⁹⁰ In fact, none of Long Island's domestic violence agencies have staff who can speak Asian languages.¹⁹¹ Asian immigrants face similar difficulty at California domestic violence shelters. Although approximately half of the thirty-eight women's shelters in Southern California have bilingual counselors, almost all of them speak Spanish.¹⁹² Every Women's Shelters, a Southern California shelter which houses almost 300 women and children each year, addresses this problem by employing six counselors who speak Japanese, Chinese, Filipino (Tagalog), Korean, Vietnamese, and other South Asian languages.¹⁹³

Shelters should make every effort to secure multilingual and multicultural staff. Every shelter will not be able to have counselors able to speak the complete diversity of languages necessary to assist the surrounding immigrant communities. However, these shelters should strive to find lin-

¹⁸⁶ Hays, *supra* note 150, at B3. Many other shelters rely on similar community outreach to service local immigrant communities. Greenhouse, a battered women's shelter assisting immigrant women in Chicago, employs a multilingual and multicultural staff. Kouri, *supra* note 147, at 1. The Travelers and Immigrants Aid battered women's program also relies on a comprehensive solution to domestic violence. The program's immediate focus remains on the basic necessities: shelter, food, and clothes. However, the program also addresses long-term issues such as counseling, financial aid, divorce, child custody, and other legal matters. *Id.* Other shelters address long-range issues by easing the transition to the United States by offering English language and other courses. *See Eng, supra* note 143, at 2.

¹⁸⁷ Recognition of the need for culturally-sensitive services should extend beyond the shelter system. For example, the District of Columbia has reached beyond the traditional public mental health center to reach the new influx of Latino, predominantly Central American refugee, immigrants. The District has contracted with two small, Spanish-speaking, Latino community-based mental health and social service agencies. The contract requires these agencies to "develop and implement mental health services and programs that are relevant to the mental health needs of the Latino population." Hall, Sr., *supra* note 97, at 93. These programs presumably will better serve the Latino community by taking into account its cultural norms, language needs, and immigration/refugee experiences.

¹⁸⁸ The diversity within the Latino community should not be overlooked, however. While Latina immigrants share a common language, there are often significant cultural differences between nationalities. According to the Census Bureau, Mexicans currently comprise 63.6% of the Latino population; Puerto Ricans comprise 10.6%; Cubans, 4.7%; Central and South Americans, 14%, and other Hispanic, 7%. Valencia, *supra* note 27, at 38 (providing the 1991 U.S. Hispanic Composition by Origin). These national and accompanying cultural differences should be taken into account when developing programs to service these particular communities.

¹⁸⁹ Sengupta, *supra* note 6, at 6.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Eng, *supra* note 143, at 2.

¹⁹³ *Id.*

guistically-compatible counselors or volunteers. Many of these shelters should train former domestic violence victims from the ethnic community to serve as counselors. These women would share a common experience, culture, and language.¹⁹⁴ At a minimum, other shelters should work to secure volunteers who speak the languages of the battered immigrant women to serve as translators.

In addition, the shelters should view themselves not just as battered *women's* shelters but as battered *family* shelters to recognize fully the effect of abuse on a family. These ethnic community shelters' efforts should be given preference for VAWA grants. Finally, these shelters should continue to accommodate all the battered immigrants' needs. Given their unique situation, these women are in special need of both short-term and long-range help. Programs for battered women must not only provide counseling, advocacy, shelter and food; they must also serve as their initial springboard to the American legal system, the job market, and the general society.

2. Public Awareness Campaigns and Community Outreach

Additional funding for linguistically-compatible and culturally-sensitive shelters is a wasted expenditure if battered women fail to realize that the resources are available. One of the most troubling hurdles for domestic violence advocates to overcome is the lack of education in immigrant communities regarding domestic violence. Many immigrant communities do not consider domestic violence a problem.¹⁹⁵ A significant number of immigrant women do not even realize that domestic violence is a crime in the United States.¹⁹⁶ Public awareness campaigns are invaluable in dispelling these myths and misinformation.

On the bureaucratic level, INS should be required to distribute pamphlets that provide information about immigrant women's legal rights.¹⁹⁷ A special emphasis should be placed on reaching battered immigrant women. One commentator has suggested that these pamphlets should be available through immigrant rights organizations, battered women's shelters, places

¹⁹⁴ These steps would comport with the ethnic-sensitive practice ideal. The ethnic-sensitive practice is an on-going process during which the agency: "1) [a]dopts an ideology of mutuality with the client . . . [by utilizing] same-ethnic/race workers[;] 2) [i]mplements a technology of empowerment[;] 3) [b]uffers clients from agency bureaucracy[;] 4) [p]romotes and utilizes input from clients and the ethnic community[; and] 5) [r]emains accountable to its ethnic community." IGLEHART & BECERRA, *supra* note 27, at 207.

¹⁹⁵ Eng, *supra* note 143, at 2 (discussing Pacific-Asian culture).

¹⁹⁶ *See id.*; Kouri, *supra* note 147, at 11 (noting that many immigrant women fail to realize that both physical and mental abuse constitute crimes in the United States).

¹⁹⁷ One commentator has advocated that Congress amend the immigration statute to require such INS action. Since the law presently requires that INS inform conditional permanent residents of the joint petition requirements to adjust their status, information about the battered spouse waiver could be included in this packet. Anderson, *supra* note 57, at 1425; 8 U.S.C.A. § 1186a(2)(A) (Supp. 1995) (requiring the Attorney General provide notice to the alien spouse or alien son and daughter regarding the conditional permanent resident period and the adjustment of status process).

of worship, cultural centers, hospitals, legal services centers, schools, and other institutions where immigrant women interact with the more general American society.¹⁹⁸

In addition to these more traditional outlets, information should be distributed through popular culture. One battered South American immigrant learned about American attitudes toward domestic violence through television.¹⁹⁹ After seeking help from a shelter, she stated that she "learned a lot by watching TV . . . I could see that women were getting help."²⁰⁰ Public service announcements that include information about local support services and shelters, broadcast on Spanish-language television stations such as *Univision* or *Telemundo*, would reach a significant number of Latina immigrants, particularly given the popular addiction to *telenovelas* (Latin American soap operas).²⁰¹

Public affairs talk shows on Spanish-speaking television and radio stations provide another outlet. In addition, encouraging Spanish-speaking deejays on local *salsa*, *merengue*, or *banda* radio stations to mention available resources on the air could reach more battered women than pamphlets available at a community hospital, where Latinas might be forced to publicly acknowledge the problem.²⁰² Other options include distributing educational materials in the form of *fotonovelas*, or comic books, at churches, ethnic festivals, English-as-a-second-language classes, and local *bodegas* (small community-based stores).²⁰³

Similar avenues may be developed to reach Asian, Middle-Eastern, and other recent immigrants. This more grass-roots approach would avoid forcing these immigrant women to interact with official institutions before they felt sufficiently versed in their rights and options. An additional benefit of the popular culture route is that it almost certainly reaches a greater number of people than the more traditional approaches. By sweeping broadly, the popular media can educate friends and family of the battered woman who can themselves serve as an additional source of support.²⁰⁴

3. Making Children Part of the Solution

The children of battered immigrant women should also be made part of the equation and solution. Many immigrant women remain in physically

¹⁹⁸ Anderson, *supra* note 57, at 1425.

¹⁹⁹ Kouri, *supra* note 147, at 11.

²⁰⁰ *Id.*

²⁰¹ It is estimated that 74% of Latino households watch *Univision*. *Ray Rodriguez Leads Univision To New Heights*, BROADCASTING & CABLE, Jan. 9, 1995, at 40.

²⁰² There are currently 420 Spanish-language AM/FM stations in the United States. Donna Petrozello, *Spanish Radio Coming Into Its Own*, BROADCASTING & CABLE, Jan. 9, 1995, at 40.

²⁰³ *Mujeres Unidas and Activas* has implemented this strategy to reach undocumented immigrant women in California. Debbie Lee et al., *Community Organizing: Action Outside the Court*, in DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES, *supra* note 2, at X-9-X-10.

²⁰⁴ See ZAMBRANO, *supra* note 86, at 210-12.

and/or psychologically abusive relationships because they fear that leaving their husbands will mean losing their children.²⁰⁵ This concern can be directed to protect both the mother and the children. Carmen, a twenty-three year old Guatemalan immigrant, finally left her abusive husband because she realized the damage the relationship was causing her American-born two-and-a-half year old daughter. With the help of a Spanish translator, Carmen recounted the critical considerations in deciding to leave her violent marriage:

My husband beat me almost every day, . . . My daughter would see this, and she would start crying, and grab a belt or a shoe and hit her father and tell him not to hurt me. And I thought, 'What is this?' I didn't want my daughter to see this or grow up like this.²⁰⁶

Carmen's statement indicates a recognition of the destructive effect of abuse on her daughter. Many other women do not realize that their children become victims of domestic violence, even if the children themselves are not abused. Children raised in homes where abuse occurs are at increased risk of serious abuse and neglect.²⁰⁷ These children may learn that violence is an acceptable form of conflict resolution.²⁰⁸ One study of batterers uncovered that 63% of batterers came from families where the father had battered the child's mother.²⁰⁹ Continued exposure to domestic violence may leave children with "learning, developmental, language, speech or stress-related problems."²¹⁰

Children also become victims in other ways. Like Carmen's daughter, they may become the center of a child custody dispute. An immigrant mother, fearful of deportation, may opt not to contest a divorce or child custody arrangement. Even if she chooses to contest these proceedings, a battered immigrant woman with unfinalized residency status may be disfavored by American courts' "best interests of the child" standard. As a result, the immigration law's provisions may leave children in the care of an abusive father and deprive them of their mother. Confronted with these options, the battered immigrant mother may choose to go into hiding with

²⁰⁵ Goodnough, *supra* note 152, at B3 (recounting this fear in the Russian immigrant community); *see also* Weissman, *supra* note 97, at 82.

²⁰⁶ Klein, *supra* note 7, at A7. Carmen's husband withdrew the residency petition he had filed on her behalf. As a result, she lost her legal residency and was deemed a "deportable alien." When Carmen called him and begged him to change his mind, her husband agreed as long as she signed over custody of their daughter. Carmen refused. She decided to become an illegal immigrant. She hoped it would be temporary since she was finishing an application for a battered spouse waiver. *Id.*

²⁰⁷ Lee, *supra* note 164, at II-3-II-4. A study of more than 900 children at a battered women's shelter found that nearly 70% of these children were victims of physical abuse and neglect. Nearly 50% had been physically or sexually abused. Other children had been harmed because they were in between their mothers and her batterer when objects were thrown or weapons used. Finally, many infants had been injured because they were in their mothers' arms when the batterer attacked. *Id.*

²⁰⁸ *Id.* at II-4.

²⁰⁹ *Id.*

²¹⁰ *Id.*

her children²¹¹ or return to her country of origin with them. In any of these situations, conditional residency places both the battered immigrant woman and her children in an untenable position.

Any response to this dilemma must address the battered mother's cultural and legal quandary. First, agencies and lawyers working with these women must redirect the cultural messages absorbed by these battered women. Women from many different cultures are willing to suffer for the sake of family preservation.²¹² Like many other women, Latinas are counseled by their religion, extended family, and cultural norms to sacrifice for and protect their families. By informing these women of the harmful effects on children of merely witnessing domestic violence, many women may be able to reshape these cultural messages to justify leaving their batterer. Cultural norms should be used to explain why domestic violence is a problem. Given battered immigrant women's concern for their families, solutions should be constructed to allow the women to realize that by leaving their batterers they are *protecting* their families. By reframing the issue within the women's cultural norms, the psychological and cultural trauma that divorce often imposes on these women may be eased. The cultural norms that have for so long been used to subordinate women could now be redirected to liberate them.

In addition, these women must be able to turn to programs that address and counsel the *family*. Battered women's shelters continue to funnel their resources toward women as individuals. These shelters, therefore, fail to target battered immigrant mothers, many of whom will not leave their abusive homes without an alternative, safe place for their children to live. An increased focus on the family, in tandem with more culturally-sensitive programs, will make these shelters a more viable option for battered immigrant women.

Finally, the threat of deportation should not be allowed to bar women from acting in their children's best interests. As the law currently stands, many battered immigrant mothers are reluctant to pursue a civil order of protection, divorce, custody, or child support proceeding for fear that their husbands will revoke their immigration status. Since their mothers are legally incapacitated, these children lose their natural advocates. In order to reassure these women and encourage them to rely on the legal system, local governments should follow the District of Columbia's non-inquiry model.²¹³ Under a general order issued by Mayor Marion Barry during his previous administration, District employees cannot inquire into the immigration status of any person seeking benefits from a government agency.²¹⁴

²¹¹ See *supra* text accompanying notes 7-8.

²¹² See Eng, *supra* note 143, at 30 (discussing Asian cultures); Klein, *supra* note 7, at A7 (discussing Filipina culture); Rangel & Scott, *supra* note 148, at 16A (discussing Vietnamese culture).

²¹³ See AYUDA letter, *supra* note 131.

²¹⁴ *Id.*

As a result, battered immigrants seeking court protection are assured that they will not be reported to the INS. Regardless of a battered woman's immigration status, this blanket guarantee would ease many of her fears. With this legal buffer, a battered mother may feel safe enough to rely on the legal system to protect her children.²¹⁵ Needless to say, these recommended responses provide only an initial step in addressing the needs of the family. While many other solutions remain to be developed and articulated, any future responses must similarly take into account the cultural norms and legal limitations under which these women operate.

V. CONCLUSION

Are we in favor of men beating women? That is the threshold question. I don't care if the woman is a Martian. Hopefully, we are big enough to look beyond that and say, 'Look, we don't allow this in this country.'²¹⁶

Unfortunately, the American government's immigration policies have not been able to look beyond residency status in protecting against abuse. Unable to strike the proper balance between deterrence of immigration fraud and protection against domestic violence, Congress and the INS have erred repeatedly on the side of fraud prevention. As a result, the conditional residency period continues to place women at risk of violence. The immigration laws and regulations form part of the framework that makes women vulnerable to violence. Only after Congress and the INS fully recognize their complicit role in perpetuating this criminal violence will battered conditional residents be adequately protected from such abuse.

Yet government institutions have few incentives to reconsider and reweigh the deterrence and protection interests. The political process remains under the control of the stronger and more vehement voices that clamor for tighter immigration controls at any cost. The resulting immigration policy renders battered conditional residents politically silent and legally impotent. The constraints imposed by the spouse-controlled petitioning system drown the multilingual voices of these women. Consequently, the violence inflicted on them remains masked by their conditional residency.

Congress must uncloak the violence perpetuated under its conditional residency scheme. Both Congress and the INS must finally reject the unwarranted sham marriage presumption. In doing so, Congress should recognize its previous failures and restrike the balance in favor of protec-

²¹⁵ *Id.* The District system apparently continues to function well. While AYUDA reports that a few judges have inquired about a woman's status or forced her to reveal her status during discovery in a permanent custody action, they are unaware of any judge subsequently reporting any of these women to the INS. *Id.* See also Lee et al., *supra* note 203, at X-5 (discussing similar "city of refuge" ordinances).

²¹⁶ Klein, *supra* note 7, at A7 (quoting Lydia Bodin, the deputy in charge of the domestic violence unit at the Los Angeles County district attorney's office).

tion. An important first step is to recognize how conditional residency functions in practice. The law can no longer ignore the practical effects of the linguistic, cultural, and financial barriers these women confront. Rather, the immigration law must reflect battered immigrant women's reality. The options granted to conditional residents on paper must be genuinely accessible to these battered women. This goal requires a comprehensive approach that addresses the many needs of these women: legal, social, cultural, and familial. The following list of recommendations provides some important features in developing such a multi-faceted response.

Statutory

1. The "extreme hardship" language in VAWA must be deleted to avoid placing a double evidentiary burden on self-petitioning battered immigrant women.
2. The licensed mental health professional requirement must be explicitly rejected to finally provide a clear signal that the INS will consider all evidence of extreme mental cruelty.
3. Congress should mandate that the INS distribute pamphlets on conditional residents' rights and options.

Regulatory

1. Future regulations should adopt an expansive definition of abuse. A broad definition could encompass the numerous ways that batterers can control their spouses.
2. The battered spouse waiver's credible evidence categories must be widened. If this happens, many battered immigrant women may finally be able to gather sufficient evidence to be granted a waiver by the INS.
3. The new regulations should also repudiate the licensed mental health professional requirement. If the regulations conveyed that documents submitted from more accessible sources would be considered credible and acceptable, battered conditional residents could turn to more ethnic-sensitive services and still gather the required documentation.
4. The confidentiality guarantees must also be reinforced. Battered immigrant women must be assured that they are not endangering themselves by revealing their location and status.
5. The forthcoming regulations must explicitly allow divorced women to self-petition. Without an explicit guarantee, divorced women will remain uncertain whether they can avail themselves of the waiver. Many may prefer to continue residing in the United States with an unknown residency

status than attempt to solidify their status, have their application rejected, and risk deportation.

Legal Advocates

1. The AYUDA civil protection order model must be championed. This system will remove the threat of deportation and allow battered conditional residents to advocate their children's interests, as well as their own.
2. Practitioners must also educate their clients on the laws' requirements to ensure that these women gather the necessary "paper trail." By this means, a greater number of women will be enabled to apply for the waiver since they will have sufficient evidence of abuse.
3. Family law attorneys must also educate themselves. Without an understanding of immigration provisions and regulations, an attorney will not be able adequately to advise a conditional permanent resident on the consequences of a divorce or other matters related to her residency status.

Grass-Roots Work

1. Social service agencies must implement an ethnic-sensitive practice model. Until they do so, many battered immigrant women will continue to feel uncomfortable seeking assistance.
2. Battered women's shelters must invest resources in creating multi-lingual/multicultural shelters. A safe haven must be available to all battered women, regardless of language or ethnicity.
3. Shelters must also be able to accommodate families. Battered immigrant women must not be forced to choose between personal safety and family preservation. To ensure that battered mothers have shelter if they choose to leave their batterers, shelters must welcome and create programs for families.
4. Agencies and shelters must begin to reach out to surrounding ethnic communities. Battered immigrant women cannot rely on resources they do not know exist.
5. As part of this outreach, organizations that serve immigrant communities should provide brochures explaining immigration and family law. Since many battered immigrant women possess an imperfect understanding of American law, such brochures would provide necessary information without requiring women to interact with a government agency.
6. Organizations must also advocate for local policies that prevent service agencies from requiring citizenship documentation. Battered women, whether legal or undocumented, must not fear deportation if they seek assistance.

Funding

Unfortunately, none of the suggestions listed above can be implemented without financial support. Therefore, private funding has a special role in insuring that battered immigrant women find shelter.

1. Funds are desperately needed to create ethnic-sensitive social services and shelters.
2. Naturally, battered conditional residents must be made aware that this help is available. Funders should promote public awareness campaigns, with a special emphasis on Spanish-language, and other language, media. Educational programs, targeted to advocates and conditional residents, should be supported to help decipher the immigration law and explain its ramifications.
3. Finally, funding must support lobbying by community activists and grass-roots workers to amend the conditional residency laws. These efforts to guarantee the unconditional safety of all women and children residing in the United States must be a first priority.