08-6183-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Roy Den Hollander, Sean Moffett, Bruce Cardozo, and David Brannon,

Plaintiffs-Appellants,

--against--

United States of America, Director of the U.S. Citizenship and Immigration Services, Director of the Department of Homeland Security, Director of the Executive Office for Immigration,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

The Southern District Court's Order by Judge William H. Pauley III is reported at 2008 U.S. Dist. LEXIS 99809 and 2008 WL 5191103.

SUBJECT MATTER JURISDICTION

This putative class action was brought for nominal damages and injunctive and declaratory relief for the violation of plaintiffs-appellants' ("Class Representatives") rights to freedom of speech, privacy, freedom of choice in marital relationships, procedural due process, and equal protection under the First and Fifth Amendments to the United States Constitution. The defendants-appellees ("Government") violated and continue to violate the Class Representatives' rights by enforcing certain unconstitutional provisions of the Violence Against Women Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and the Immigration and Nationality Act (collectively the "VAWA provisions"). The challenged provisions, regulations and Federal Registry sections are in **bold.**

The Southern District Court had jurisdiction under 28 U.S.C. § 1331, and the Second Circuit has jurisdiction under 28 U.S.C. § 1291.

The lower court's final Memorandum and Order ("Order"), App. 34, which dismissed the First Amended Complaint ("Amended Complaint"), App. 6, for lack of standing under Fed. R. Civ. P. 12(b)(1), was entered on December 4, 2008, App.

42, the Notice of Appeal was filed on December 19, 2008, App. 43, and the Pre-Argument Statement filed on December 19, 2008.

The Class Representatives **request oral argument**.

ISSUES FOR REVIEW

1. Do the VAWA provisions and their enforcement injure U.S. citizen husbands, such as the Class Representatives, by invading their legally protected interests?

2. Did the lower court violate motion to dismiss standards by finding a false fact, ignoring allegations in the Amended Complaint, and even adopting a false Government allegation so as to dismiss the Amended Complaint for failure to allege standing injury?

3. Do the VAWA provisions exceed Congressional authority by intruding into family relations that are traditionally the area of state concern?

CASE STATEMENT

The Class Representatives, individually referred to by their last names, are all U.S. citizens who married alien females. The marriages did not work out mainly because they were fraudulently entered into by the alien wives. The Federal Government enforced or is enforcing the VAWA provisions against the Class Representatives by making fact-findings that the husbands committed domestic violence against their wives. The fact-findings were or are being made in

proceedings kept secret from the husbands and based on fraudulent evidence from the alien wives and their immigration advocates. The husbands have no opportunity to rebut the fraudulent evidence, to determine what the findings are, to refute the findings, or limit their disclosure to third parties.

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy those men may be; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter J., concurring).

The lower court dismissed the action for lack of standing without ruling on class certification.

STATEMENT OF FACTS

A U.S. citizen male marries an alien female and they set up house in America.[1] The Government allows the wife to live and work here temporarily for two years because she is married to a citizen. After the two years, she can become a permanent resident and then a citizen, if the two are still married. 8 U.S.C. § 1186a(c). Before the two years are up, however, the marriage starts to go sour, either because of incompatibility, or, more likely, the alien wife married just to gain admission to the U.S. and the husband finally realizes he has been deceived. The husband starts considering divorce or annulment and tells his wife. Ending the

[1] This case does not involve marriages between permanent resident aliens and other aliens.

marriage before two years are up means the wife will be placed in deportation proceedings—but she's not worried.

There are three other ways for her to become a permanent resident—a prize cherished another the world. One is very difficult and rarely granted: the hardship waiver. 8 U.S.C. § 1186a(c)(4)(A); 8 C.F.R. § 216.5(e)(1). The second requires an already terminated marriage that is closely scrutinized by immigration authorities to see whether a spouse married just to live in America and whether she was at fault in the breakdown of the marriage. 8 U.S.C. § 1186a(c)(4)(B); 8 C.F.R. § 216.5(e)(2). The third, the easiest and most certain of success, grants the wife permanent residency if she simply accuses her husband of domestic abuse, which includes loud arguing, criticism, kissing her when she does not wanted to be kissed, or felonious assault. No proof is needed, just accusations, and it is best when the accusations are included in an arrest complaint, temporary restraining order ("TRO"), or a complaint about violations of a TRO. **8 C.F.R. § 204.2(c)(2)(iv).** Such documents are easy to come by since they result from statements made solely by the wife to local or state authorities. Other documents, such as a state court judgment, showing that the wife's accusations were false are ignored. This third way is the VAWA path to permanent residency and ultimately citizenship (the "VAWA process or proceeding"). Amend. Compl. ¶¶ 32-39 and

45, App. 10-11.[2] The VAWA process excuses alien wives who were here illegally before marriage; worked as prostitutes; engaged in marriage fraud; and admit to crimes of moral turpitude, such as tax evasion, and violating drug laws. 8 U.S.C. §§ 1182(a)(6)(C)(i) & (iii), **1182(h)(1)(C) & (i)** and **1227(a)(1)(H)(ii)**.[3]

The citizen husband decides to end the marriage and not sponsor his alien wife for permanent residency because it would require perjury by him before the immigration authorities that the marriage is still viable. The danger is that his wife will resort to the VAWA process for permanent residency by using false accusations of domestic violence against him. The husband's right to end his marriage now carries with it the threat of fraudulent police complaints, TROs, arrest, jail, and violation of basic constitutional rights just because he married an alien, the marriage failed, and the Government created a rubber-stamp process for his wife to gain permanent residency. Some husbands will avoid the danger by continuing in a bad marriage and lying to the Government. Others, like the Class Representatives, will end their marriages. (Amend. Compl. ¶¶ 53-125, App. 12-19).

[2] The VAWA process consists of (1) self-petitioning for immediate relative classification, 8 U.S.C. § 1154(a)(1)(A)(iii); (2) applying for cancellation of any pending deportation proceeding, 8 U.S.C. §1229b(b)(2), which is easiest under VAWA, Sanchez, 505 F.3d 641, 642 (7th Cir. 2007); and (3) applying for adjustment of status to permanent residency, 8 U.S.C. § 1255(a).

[3] Ironically, the VAWA provisions have pretty much negated the Government's policy of preventing marriage fraud under the Immigration Marriage Fraud Amendments of 1986, 8 U.S.C. 1186a, by allowing criminally prone foreign females a no-fault route to citizenship.

With divorce or annulment proceedings imminent, the alien wife makes a false report with the local police of domestic violence. The police report will be used as primary evidence in a VAWA proceeding. The husband, as with Moffett and Cardozo, is arrested and jailed. (Amend. Compl. ¶¶ 89, 104, 108, App. 17-18). The arrest results in no conviction, but remains on national databases accessible to government and employers. The arrest also harms the husband's occupation, as is currently happening to Moffett. (Id. ¶ 89, App. 17). The state court's ruling that the husband is innocent of domestic violence is irrelevant to the VAWA process—only the arrest records are used by immigration authorities.

The alien wife also obtains an *ex parte* TRO in a state proceeding to which the citizen husband has no notice. The TRO is granted based solely on the wife's accusations of domestic abuse, as happened to all the Class Representatives. (Amend. Compl. ¶¶ 69, 89, 105, 121, App. 14, 17-19). The TRO requires the husband to keep a certain distance from his wife, so he is evicted from the house he bought with his own money, as happened to Moffett and Brannon. (Id. ¶¶ 89, 120, App. 17, 19). The TRO eventually requires a hearing in which the husband has a chance to present his side. If the TRO is dismissed, as happened to Den Hollander and Brannon, id. ¶¶ 69, 121, App. 14, 19, the dismissal is irrelevant to the VAWA process. Only the *ex parte* TRO is used by immigration authorities, again as primary evidence, to prove the husband abused his wife, unless the state court

okays a permanent restraining order against the husband, then the VAWA process uses that document.

The *ex parte* TRO allows the alien wife to make any allegations she wishes that her husband violated the order. He will face arrest with another entry in national databases, and those allegations will also become primary evidence of abuse in the VAWA proceeding regardless of whether he is exonerated.

Since the immigration authorities only take evidence from the wife's side, she and her immigration advocates do not notify the Government of any findings of the husband's innocence by state courts. The husband is prohibited from providing evidence of his innocence, and the immigration authorities do not bother to look for such. So by simply making false allegations about her citizen husband to the police and state courts, the alien wife assures herself permanent residency and U.S. citizenship. Perjury is rarely punished in such matters.

In a state divorce or annulment proceeding and any criminal action, the wife's credibility is an important issue. The wife's use of the VAWA process infers a motivation to make false accusations in state proceedings because those accusations require no proof by the immigration authorities, only state documents containing her assertions. The secrecy of the VAWA process prevents the husband from acquiring evidence that his wife is using VAWA, so he is unable to use that

to impeach her credibility in state proceedings, as happened to Moffett, Cardozo, and Brannon. (Amend. Compl. ¶¶ 91, 104, 105, 107, 109, 121, App. 17-19).

The Federal Bureau of Investigation ("FBI") keeps track of *ex parte* TROs in its National Crime Information Center that will result in the husband being detained by U.S. Customs when he re-enters the country from overseas, as happened to Den Hollander. The listing also provides a reason for the FBI to deny a security clearance to a Federal employee or applicant for a Federal position, but the husband, as with Den Hollander, will never know why or be able to challenge the denial because VAWA keeps it records sealed from him. Also the husband's application for a job with a private corporation will be denied as a result of a background check, as happened to Cardozo. (Amend. Compl. ¶ 108, App. 18).

The VAWA process, regardless of what a state court does, fines the citizen husband responsible for felonies, misdemeanors, or acts arbitrarily decided wrong by immigration authorities under the overbroad and vague terms of "battery," "extreme cruelty" or an "overall pattern of violence." Although the Government's conclusions are kept secret from the husband, the wife, her immigration lawyer and her social services advocate from a non-governmental organization ("NGO") know about them.[4] Federal, state and local agencies and private NGOs that may or are providing the wife benefits must confirm whether she is applying or received

[4] Often both lawyer and feminist advocates are funded by the Government, which raises a conflict of interest issue.

VAWA status and was abused, so they also learn about the findings. Moffett and Brannon's alien wives receive benefits from NGOs. (Amend. Compl. ¶¶ 93, 122, App. 17, 19). Federal, state and local law enforcement officials also have access to the findings. The husband, however, is unable to determine whether the Government's findings against him have been communicated to any of the above third parties because all such communications are kept secret from him, as are those concerning the Class Representatives.

The husband is also unable through any administrative or judicial proceeding or under the Privacy Act, 5 U.S.C. 552a, to examine the Government's findings of abuse, correct any mistakes, or limit access, which is presently true for the Class Representatives.

The availability to so many people that the Government decided the husband committed domestic violence against his alien wife means it is almost certain the findings are going to leak to the general public. When they do, there is nothing the husband, or Class Representatives, can do. There are no legal proceedings to recover damages or keep the findings from being published further. Of course, the husband, as with the Class Representatives, may not learn about any leaks for years because of VAWA's secrecy. The false information, however, will continue working relentlessly to clandestinely undermine his reputation, career, and inter-

reaction with others until his life collapses—just as the invisible hand of the McCarthy lists in the 1950s destroyed many innocent persons.

In fiscal year 2005, nearly 9,500 alien females used the VAWA process by alleging their citizen husbands abused them. Eduardo Porter, Law on Overseas Brides is Keeping Couples Apart, N.Y. Times, October 17, 2006. Generally over 80% of alien wives applying receive permanent residency under VAWA.

Provisions challenged as unconstitutional.

Secrecy

8 U.S.C. § 1367(a)(2) & (c) make secret Government proceedings that determine whether a citizen husband committed acts of "battery," "extreme cruelty," or an "overall pattern of violence" against his alien wife. Under **8 U.S.C. § 1367(b)(2)(4)(5) & (7)**, the proceedings are kept secret from the U.S. husband but not his alien wife, her immigration attorney, private feminist advisors or Federal, State, and local public or private agencies that provide benefits to the alien wife or any law enforcement agency.

"Democracies die behind closed doors." Detroit Free Press v. Ashcroft, 303 F.3d 681, 683 (6th Cir. 2002).

Turning a blind eye

8 U.S.C. § 1367(a)(1)(A) requires discarding any exculpatory evidence the husband might submit to the Government solely because it passed through his hands. INS Memorandum, 74 Interpreter Releases 795, 797 (1997).

"Facts do not cease to exist because they are ignored."—Aldous Huxley.

Relying on untrustworthy evidence

8 U.S.C. § 1154(a)(1)(J), 8 C.F.R. § 204.2(c)(2)(iv), and **61 Fed. Reg. 13,061, 13,065-13,066** permit the Government to arbitrarily decide the credibility and weight of information provided by the alien wife in finding her husband guilty of "battery," "extreme cruelty," or an "overall pattern of violence."[5] The evidence the Government relies on is often irrelevant, untrustworthy, unauthenticated, and plagued by multiple hearsay and character trait information. Since evidence submitted by the husband is discarded, there is no adversarial process at work, but there is an incentive to suborn perjury.[6] Many centuries have shown the adversarial process to be more effective at reaching the truth than Star Chamber type proceedings.

[5] "Guilty" means responsibility for a crime or civil wrong, Black's Law Dictionary, 8th ed. 1999, and is used interchangeably with "responsible" in this Brief.

[6] Imagine this case went to trial but the Government never showed, did not submit any evidence, and rather than entering a default judgment, the trial court had to make a decision. There would be only one way for the court to decide because there is nothing to support the other side—that is what the VAWA provisions do.

The framers of the Constitution "did not trust any government to separate the true from the false for us." Thomas v. Collins, 323 U.S. 516, 545, 65 S.Ct. 315, 89 L.Ed. 430 (1945)(Jackson, J. concurring).

"Battery," "extreme cruelty," and "overall pattern of violence"

"Self-petitioning" under **8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb) & (II)(aa)(CC)(ccc)**, cancellation of deportation under **8 U.S.C. § 1229b(b)(2)(A)(i) & (C)**, waiver of inadmissibility under **8 U.S.C. § 1182(h)(1)(C) & (i)**, waiver of deportation under **8 U.S.C. § 1227(a)(1)(H)(ii)**, non-disclosure of information under **8 U.S.C. § 1367(a)(2)**, prohibition on evidence from U.S. citizens under **8 U.S.C. § 1367(a)(1)(A)**, and definitions under **8 U.S.C. § 1641(c)(1)(A)**, **8 C.F.R. § 204.2(c)(1)(vi)** and **61 Fed. Reg. 13,061, 13,065-066** all require the husband to be adjudged responsible for "battering" or "extreme cruelty" or an "overall pattern of violence," but nowhere are those terms specifically defined.

Persons cannot know what not to do if there is no way of knowing what not to do.

ARGUMENT SUMMARY

Protecting victims and punishing violators are laudable goals and may actually be the founding principal of civilization—but it cannot be done unless the truth is known. In this case, the truth about whether the citizen husband did what his alien wife accuses him of doing. The truth is hard to find, but in this

democracy, it is done in open proceedings, by an impartial tribunal, listening to both sides—not in secret where the accused has no opportunity to be heard and the adjudicator remains anonymous. Secrecy "'provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.' Appearances in the dark are apt to look different in the light of day." McGrath, 341 U.S. 123, 172, (Frankfurter J., concurring).

This action charges that the fundamental rights of citizen husbands, such as the Class Representatives, were and are being violated by the way the Government provides alien wives permanent residency through the VAWA process. The VAWA provisions ignore the traditional adversarial system for determining the truth when finding facts that a husband committed domestic violence against his alien wife. The secret determinations ignore evidence from the citizen husband and consider as wholly trustworthy and persuasive information from the alien wife that has been manipulated or created by her immigration advocates. The VAWA provisions necessarily assume the husband guilty without allowing him any opportunity to prove otherwise. VAWA simply takes the "he said" out of the "he said, she said."[7]

[7] An alien wife's accusations in state proceedings are likely the same as in the VAWA process because she will file documents containing the state accusations with immigration authorities. Such often leads to the anomalous result of a husband found not to have committed certain acts in state adjudications but to have committed the same acts in Federal VAWA adjudications.

The fundamental rights at stake are fairness in procedure, freedom of choice in marital relations, freedom of speech, privacy, reputation as it relates to a state right, and freedom from invidious discrimination.

The VAWA provisions also act as a bill of attainder. They were enacted knowing that they would punish without trial mostly citizen husbands. "The vice of attainder is that the legislature has decided for itself that certain persons possess certain characteristics and are therefore deserving of sanction…." U.S. V. Brown, 381 U.S. 437, 449 n. 23, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965). It must be remembered that these husbands are not accused of terrorism, they're not planning to blow-up innocent civilians, all they did was fall for alien females.

The VAWA provisions created by the Feminist lobby allow alien wives prone to criminal pursuits to become permanent residents and eventually citizens by simply saying their husbands abused them, and it will not matter that these alien wives are lying, committed crimes of moral turpitude, violated drug laws, worked as prostitutes and procurers, used fraud and perjury to gain entry into the U.S., or are moles for Al Qaeda.

The Government uses VAWA to reshape social relations by coercing private conduct in accordance with the Feminist Establishment's ideology.[8] The conduct

[8] Feminist Establishment refers to the unitary belief system held by a sufficient number of influential persons in this society so that the ideology of post-modern Feminism dominates over other beliefs in the political, governmental, academic, media, and social spheres.

regulated need not amount to criminal or civil wrongs, but even if it does, its prevention and punishment more appropriately falls under family law—an area traditionally reserved for the states, *see* U.S. v.Morrison, 529 U.S. 598, 615-16, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000), and better served by the states' police forces, family courts, legal aid societies, and numerous non-profit and tax-exempt organizations created to assist alien wives. *See* Zablocki v. Redhail, 434 U.S. 374, 389, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978).

ARGUMENTS

1. Do the VAWA provisions and their enforcement injure U.S. citizen husbands, such as the Class Representatives, by invading their legally protected interests?

2. Did the lower court violate motion to dismiss standards by finding a false fact, ignoring allegations in the Amended Complaint, and even adopting a false Government allegation so as to dismiss the Amended Complaint for failure to allege standing injury?

3. Do the VAWA provisions exceed Congressional authority by intruding into family relations that are traditionally the area of state concern?

The standard of review on a Rule 12(b)(1) motion to dismiss is *de novo*.

1. Standing

A party seeking to invoke a federal court's jurisdiction must demonstrate:

(1) Injury-in-fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, but not conjectural or hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). A "particularized" injury is one that affects the plaintiff in a personal and individual way. Lafleur v. Whitman, 300 F.3d 256, 269 (2d Cir. 2002). "Imminent" is determined on a case specific basis where the greater the harm the lower the probability that is necessary. Baur v. Veneman, 352 F.3d 625, 637 (2d Cir. 2003). Probability of the harm occurring can depend on a single event or a chain of third party responses. *See* Wilderness Soc. v. Griles, 824 F.2d 4, 12, 18 (D.C. Cir. 1987).

Lujan denied standing on a summary judgment motion, not at the pleading stage. The Supreme Court stated that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Lujan at 561 (quoting Lujan v. National Wildlife Federation, 497 U.S. 871, 889, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)).

The Class Representatives face a unique obstacle in alleging harm at the pleading stage. The VAWA provisions keep the mechanisms of injury closed to them, but open to others. As a result, all the injuries are not immediately

manifested to the Class Representatives and may remain unknown to them for years, such as employment denied, reputation sullied, privacy invaded, and law enforcement investigations begun as a result of the Government finding a husband committed domestic violence. The unseen, silent hand of government can destroy just as readily as the firearm.

If complaints can be dismissed for failure to adequately allege injury because the Government chooses to keep its conduct and resulting harm secret from those injured, then this country might as well forget about a democracy and go straight to a dictatorship where the Government can do whatever the powerful want, regardless of rights. This case is not about a war on terrorism, but about one group trying to rule over another in domestic affairs by secretly using the power of the Government. In such a situation, standing should at least be determined following discovery of what the Government is hiding.

Furthermore, the Class Representatives should be considered to have standing based on the unidentified but identifiable other citizen husbands harmed by VAWA, since VAWA secrecy makes it difficult if not impossible for any husband to present his grievances before any court. Barrows v. Jackson, 346 U.S. 249, 257, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953).[9]

[9] Secrecy made finding class representatives for this putative class action extremely difficult because most husbands don't even know whether they are the subjects of VAWA proceedings.

(2) Causation, which means the injury is fairly traceable to the challenged action of the defendant, Lujan v. Defenders of Wildlife, 504 U.S. at 560.

(3) Remedial relief, which means "obtaining relief from the injury as a result of a favorable ruling" is not "too speculative." Allen v. Wright, 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)(standing denied because relief would not cure discrimination).

When a "third party's conduct is sufficiently dependent on the incentives provided by the defendant's action, then the resultant injury will be fairly traceable to that action, and a court order binding the defendant will likely cure the plaintiff's harm." Wilderness Soc. 824 F.2d at 17.

The lower court used Raines v. Byrd, 521 U.S. 811, 819-20, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997), to apply an "especially rigorous" standard to this action that concerns individual civil rights. Order p. 5, App. 38. Raines, a summary judgment decision, involved a confrontation of institutional power between the Congress and the Executive branch in which a number of individual Congressmen, opposed to a line-item veto act, filed suit that the act unconstitutionally reduced Congress's power. The Congressmen alleged injury to the institution of Congress as a whole—not to themselves individually. They claimed "loss of political power, not loss of any private right." Raines, 521 U.S. at 821. The Supreme Court denied

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Therefore, standing should also rest on the class as a whole rather than just the four class representatives.

standing because the case concerned the balance of power between the two branches of Government and declined to take on the role of re-distributing that power. The Court stated the role for Article III courts was "well expressed by Justice Powell in his concurring opinion in United States v. Richardson, 418 U.S. 166, 192, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974):

> "The irreplaceable value of the power articulated by Mr. Chief Justice Marshall [Marbury v. Madison, 5 U.S. 137] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests."

Raines at 828.

The action before this Court concerns individual rights of a minority, men—not a political power dispute among the branches of the Government. So the lower court's "especially rigorous" standard does not apply.

Furthermore, when federally protected, individual rights are invaded, the courts may use "any available remedy to make good the wrong done," Bell v. Hood, 327 U.S. 678, 684, 66 S.Ct. 773, 90 L.Ed. 939 (1946)(citations omitted), and protect individual interests from the excesses of the democratic processes, Wright & Miller, Fed. Prac. & Proc., § 3531.4, p. 952 (Supp. 2008). The importance and protection of individual constitutional rights is a central part of the

role under separation of powers assigned to the judiciary where "[t]he touchstone to justiciability is injury to a legally protected right," McGrath, 341 U.S. 123, 140-41(citations omitted), and "traditionally thought to be capable of resolution through the judicial process," Flast v. Cohn, 392 U.S. 83, 97, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). The alleged injuries in this case include past, ongoing, and the threat of future harm to the legally protected interests of individuals, as alleged in the Amended Complaint, which the lower court apparently ignored. (Amend. Compl. ¶¶ 7-13, 15, 20-31, 67, 69-70, 80, 82, 89-90, 93, 103-05, 108, 120, 122, 142-61, 164-176, 179-87, 196-98, 201-04, 212-14, 217, 219(b), (e), (h), App. 7-10, 13-14, 16-19, 21-31).

The lower court also mistakenly assumed that standing injury can only occur to persons who are the defendants in civil or criminal proceedings brought by the Government.[10] Order p. 6, App. 39. If that were true, then all those people who sued over environmental, equal protection, and other harm would have been thrown out of court because those cases did not involve civil or criminal proceedings brought by the Government against them. *E.g.* Bryant v. Yellen, 447 U.S. 352, 100 S.Ct. 2232, 65 L.Ed.2d 184 (1980)(non-landowners had standing to

[10] The lower court relies on Linda R. S. v. Richard D., 410 U.S. 614, 619, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973), to find the Class Representatives have no standing because they were "neither prosecuted not threatened with prosecution." Order p. 6, App. 39 (quoting Linda R. S.). Actually, VAWA often results in prosecution in state courts while the VAWA process acts as a *de facto* prosecution finding that a citizen husband committed felonies, misdemeanors, or other wrongs. Prosecution, however, is not a requirement for standing. It can help, but without it, the courts still find standing.

sue for the upholding of a regulation that barred irrigation water to land ownership of over 160 acres); Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978)(people near proposed nuclear power plants had standing to challenge Government rule limiting nuclear accident liability); Evers v. Dwyer, 358 U.S. 202, 79 S.Ct. 178, 3 L.Ed.2d 222 (1958)(standing for man who was not arrested to sue city for requiring people of darker skin color to sit in the back of buses); Baur v. Veneman, 352 F.3d 625 (2d Cir. 2003)(standing to sue over Food and Drug Administration procedures).

Further, the Class Representatives' standing is unaffected by the VAWA provisions not specifying jail time or fines against them. Columbia Broadcasting System v. U.S., 316 U.S. 407, 422, 62 S.Ct. 1194, 86 L.Ed. 1563 (1942). It is enough that the provisions adversely affect their legal rights. Id. The Supreme Court has "long … granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them." McGarth, 341 U.S. 123, 141 (citations omitted). In McGarth the Government made determinations in secret that organizations were Communistic, just as here the Government makes determinations in secret that citizen husbands committed domestic violence.

Contrary to the Order at p. 6, App. 39, the VAWA process is not just a mechanism for granting permanent residency to an alien, but an adjudication that

her husband committed abuse. Without a finding of domestic abuse, there is no permanent residency under VAWA. If standing can be found in situations where the terms of Government regulations are not addressed to those whose rights are affected, Columbia, 316 U.S. 407, 420, then here, where the provisions actually aim at those whose rights are violated, standing must logically, although not politically correctly, exist.

The lower court also misinterpreted Laird v. Tatum, 408 U.S. 1, 13-14, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972), by holding that allegations of "subjective chill" are insufficient for an injury. Order p. 5, App. 38. Laird actually stated, "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." Laird at 11. Here the VAWA provisions were not "chilling" but censoring Den Hollander, Moffet, and Brannon from speaking on their own behalf in proceedings adjudging whether they committed domestic violence. (Amend. Compl. ¶¶ 84, 95, 125, 143, 144, App. 16-17, 19, 21). The lower court also wrongly analogized the alleged facts of this action to Laird. In Laird the plaintiffs challenged an Army intelligence gathering system that never gathered nor was gathering any information on them. Here the Government was

receiving and shifting information for making factual decisions about the Class Representatives' conduct.[11]

A certainty of continuing and future injuries persist against the Class Representatives because the Government is not about to halt enforcement of the VAWA provisions as they pertain to them. *See* Evers, 358 U.S. at 204. The Class Representatives already have had some of their rights violated and are facing the threat of more harm. (Amend. Compl. ¶¶ 21-25, App. 8-9). "Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury," O'Shea v. Littleton, 414 U.S. 488, 496, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974).

The lower court criticized the Amended Complaint for not being a "model of … a 'short and plain statement' as envisioned by Rule 8," Order p. 2, App. 35. The lower court, however, failed to take into account the "[c]onsiderable uncertainty concerning the standard for assessing the adequacy of pleadings … created by the Supreme Court's decision in Bell Atlantic v. Twombly, 550 U.S. 544 (2007) …." Iqbal v. Hasty, 490 F.3d 143, 155 (2d Cir. 2007). Iqbal itself is a case that does not offer much guidance to plaintiffs regarding when factual

[11] The Order at p. 7, App. 40, relied on another factually dissimilar case to find no direct injury. In Ex parte Levitt, 302 U.S. 633, 58 S.Ct. 1, 82 L.Ed. 493 (1937), a lawyer challenged the appointment of Justice Black to the Supreme Court. The only interest the lawyer had in the appointment was that he was a citizen and member of the Supreme Court bar. Here the appellants interests include freedom of speech, privacy, marital and divorce decisions, procedural due process, equal protection, reputation, and financial.

"amplification [is] needed to render [a] claim plausible." Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008). After Twombly, a cautious pleader will include more pertinent factual allegations, which is what the Amended Complaint does. The lower court's criticism probably stems from its failure to realize that Twombly, 550 U.S. at 563, changed the motion to dismiss standard by eliminating the very sentence from the law that the lower court used: "[d]ismissal is inappropriate unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him or her to relief." Order p. 5, App. 38.

Injury-in-Fact

"[A]" person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation," Barrows v. Jackson, 346 U.S. 249, 255, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953); that is, when a finding of constitutionality or unconstitutionality will directly affect the party raising the challenge. Antieau & Rich, Modern Constitutional Law, § 48.37, 2d ed. 1997. The purpose of this requirement is that "a personal stake in the outcome of the controversy … assure[s] that concrete adverseness … sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. This is the gist of the question of standing." Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962).

The Class Representatives have been arrested, jailed, subjected to TROs and false police complaints. They have lost houses, jobs, bank accounts, and were or are having their rights to freedom of speech, freedom of choice in marital relationships, procedural due process, and equal protection trampled by VAWA's Star Chamber provisions. They face ongoing non-compensable harm from defamations and invasions of privacy. Barriers prevent them from correcting false Government fact-findings about them or limiting dissemination of such. Few, if any, would argue a more sincere concern for zealous advocacy in finding the challenged sections of VAWA unconstitutional.

In Singelton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976), the Court held that if physicians prevailed to remove the Medicaid limit on abortions, they would benefit financially while the state and federal government would be out of pocket the amount of additional payments. "The relationship between the parties is classically adverse, and there clearly exists between them a case or controversy in the constitutional sense." Id. at 113 (citations omitted). Finding the VAWA provisions unconstitutional will allow the Class Representatives to not only correct the miscarriages of justice against them but also the continuing harm that being branded a perpetrator of domestic violence causes. The Government will incur the time and cost of providing not only procedures for correcting its decisions but procedures engineered to find the truth rather than

rubber stamping allegations as facts just because of the status—alien and female—of the person who makes them. The parties here are "classically adverse."

Injury from State Criminal and Civil Proceedings

Real and immediate injuries can result from a Federal statute that encourages third parties to act in a way that harms others. For example, a statute limiting the liability for potential accidents at nuclear power plants encourages the construction of plants that when finally completed would create an apprehension in those near the plants of increased radioactivity, reduced property values, and increased water temperature. Duke Power, 438 U.S. 59, 73. Or, where the Government makes a decision to raise transportation rates. U.S. v. SCRAP, 412 U.S. 669, 688, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). The decision leads one group of third parties, the recycling industry, to reduce the availability of recyclable goods because the higher rates have made them less profitable. The public buys less recyclable goods but more of the cheaper non-recyclable goods, which are discarded as refuse in national parks. Another group, manufacturers, then uses more natural resources to meet the demand for the non-recyclable goods. All of which taken together will harm the use and enjoyment of nature by the plaintiffs. Id. at 686-88.

Here third parties, alien wives, in order to acquire permanent residency through VAWA, make fraudulent assertions causing arrests, police complaints, and TROs. (Amend. Compl. ¶¶ 9-12, 179, Den Hollander ¶¶ 67, 69, 70, Moffett ¶¶

89-90, Cardozo ¶¶ 104-05, 109, Brannon ¶¶ 120-21, App. 7-8, 13-14, 17-18, 26). The injuries from such to the Class Representatives have not ended. "It is common knowledge that a man with an arrest record is much more apt to be subject to police scrutiny—the first to be questioned and the last eliminated as a suspect." Utz v. Cullinane, 520 F.2d 467, 481 n. 35 (D.C. Cir. 1975)(quoted citation omitted). An arrest may impair a person's reputation, as with Moffett and Cardozo, Amend. Compl. ¶¶ 89, 104, App. 17-18, and "even to be acquitted may damage one's good name if the community receives the verdict with a wink and chooses to remember defendant as one who ought to be convicted." Michelson v. United States, 335 U.S. 469, 482, 69 S.Ct. 213, 93 L.Ed.168 (1948). Just like the modern-day opprobrium caused by mere accusations of domestic violence.

Arrest records also interpose considerable barriers to employment, education, and professional licensing opportunities, Utz, 520 F.2d 467, 480, as with Moffett and Cardozo, Amend. Compl. ¶¶ 89, 108, App. 17-18. The regrettable fact is that "'so long as there exists an employable pool of persons who have not been arrested, employers will find it cheaper to make an arrest an automatic disqualification for employment'" and "'will not distinguish between arrests resulting in conviction and arrests which do not.'" Utz at 480 (quoted citations omitted).

The lower court dismissed the injury allegations from arrests, police complaints, and TROs by stating, "that prospective harm can be addressed in state court proceedings." Order p. 6, App. 39. That is inaccurate.

The Identification Division of the FBI collects and maintains fingerprint information that lists an individual's arrest and issuance or violation of a TRO. [12] 28 U.S.C. § 534; 28 C.F.R. 0.85(b). The information is gathered from Federal, state and local agencies, and the FBI disseminates it to law enforcement agencies, officials of state and local governments for employment and licensing purposes, and to private contractors. 28 C.F.R. §§ 20.21(b)(2)-(3); 20.33(a); 50.12(a). TROs are also entered into the FBI's National Information Crime Center. All of the information concerning arrests and TROs are available for FBI security clearance checks.

The only way to expunge these records requires the equity power of a Federal, not state, court, but that power "is a narrow one, and should not be routinely used whenever a criminal prosecution ends in an acquittal, but should be reserved for the unusual or extreme case." U.S. v. Schnitzer, 567 F.2d 536, 539 (2d Cir. 1977)(quoted citation omitted). Extreme cases have been found in situations of mass arrests, arrests based on an unconstitutional statute, harassment of civil

[12] A female viewer of David Letterman actually obtained a TRO against him in New Mexico by claiming Letterman, who never met the lady, abused her by sending secret signals "in code words" over the TV. G. A. Hession, Esq. Restraining Orders Out of Control, The New American, Aug. 4, 2008.

rights workers, and misuse of police records, id. at 540: none of which apply to the Class Representatives.

Even if the Class Representatives did succeed at expunging their Federal records, private investigatory firms still maintain the information. Corporations check with those firms to determine whether employment applicants were arrested or the subject of a police complaint or TRO. If so, the companies usually deny the applicant a job, which happened to Cardozo and continues to happen to Moffett, Amend. Compl. ¶¶ 89, 108, App. 17-18.

The Sixth Amendment's Confrontation Clause requires that a criminal defendant be afforded a full and fair opportunity to cross-examine adverse witnesses in order to show bias or improper motive for their testimony. Brinson v. Walker, 547 F.3d 387, 392-93 (2d Cir. 2008)(citing *see* Pa. v. Ritchie, 480 U.S. 39, 51, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987)). The reason is that "this type of evidence can make the difference between conviction and acquittal." Pa. v. Ritchie, 480 U.S. at 52 (1987)(citation omitted). In a state criminal proceeding, VAWA secrecy prevents the citizen husband, as happened to Moffet, from impeaching his wife's criminal accusations by showing she has a motive to lie in order to win permanent residency through VAWA. (*See* Amend. Compl. ¶ 89, App. 17 (Moffett prevented in assault hearing from pursuing issue that wife's complaint was motivated by VAWA)).

State prosecutors have the obligation to turn over evidence in their possession that is both favorable to the accused and material to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The obligation includes the disclosure of impeachment evidence. Youngblood v. W. Va., 547 U.S. 867, 869, 126 S.Ct. 2188, 165 L.Ed.2d 269 (2006)(citation omitted). In state criminal proceedings against the citizen husband, the prosecution's key witness is his alien wife. Since she knows whether she is using the VAWA process, the prosecution is in possession of that impeachment information and should disclose it to the husband. The VAWA secrecy provision, however, prevents disclosure and thereby violates the husband's due process. The prosecutor in Moffett's assault proceeding failed to disclose that Moffett's wife was using VAWA for permanent residency.

Procedural Due Process Injuries

> "VAWA cases are pretty much a joke, most of them are approved because there is only one side. There's a ring of groups that know what to tell the officials at the Vermont Service Center. There's an extremely high approval for VAWA cases." Dean Hove, former U.S. Citizenship & Immigration Services, Upper Midwest Deputy District Director.

When the power of government is used against a person, there is a right to fair procedure to determine the factual basis and legality of the government's decision. "[I]n the development of our liberty, insistence upon procedural regularity has been a large factor." Burdeau v. McDowell, 256 U.S. 465, 477, 41

S.Ct. 574, 65 L.Ed. 1048 (1921)(Brandeis, J. dissenting). Due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner" before government burdens life, liberty or property. Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

In determining what process is due, it need be remembered that due process is unlike some other legal rules. Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (citations omitted). It is not a technical conception with a fixed content unrelated to time, place, and circumstances, but rather it is flexible and calls for such procedural protections as the particular situation demands. Id. The dictates of due process generally require looking at three factors: (1) whether existing procedures create an unreasonable risk of an erroneous deprivation, (2) the private interest affected by official action, and (3) the Government's interest in the existing procedures. Mathews at 335. When procedures limit fundamental constitutional rights, the laws creating them must serve compelling governmental interests. Rotunda & Nowak, Treatise on Constitutional Law, § 15.7, 4th ed. 2007.

Three VAWA procedures violate procedural due process: Secrecy, **8 U.S.C. § 1367(a)(2) & (c)**, provides no notice and no opportunity for citizen husbands to be heard at proceedings that find them responsible for "battery," "extreme cruelty" or an "overall pattern of violence"; and two evidentiary provisions referred to as Turning a blind eye, **8 U.S.C. § 1367(a)(1)(A)**, and Relying on untrustworthy

evidence, **8 U.S.C. § 1154(a)(1)(J), 8 C.F.R. § 204.2(c)(2)(iv), and 61 Fed. Reg. 13,065-66**, ignore evidence from citizen husbands but rely on incompetent evidence from alien wives. All three corrupt the truth finding function and violate fundamental constitutional rights in determining whether the citizen husband abused his alien wife.

Den Hollander, Moffett and Brannon, on information and belief, were or are being found responsible for felonies, misdemeanors, or wrongful acts in what the Justice Department ("DOJ") considers law enforcement proceedings, Addendum 92. They have no notice, no access, no impartial adjudicator, and no chance to rebut evidentiary presumptions. (Amend. Compl. ¶¶ 20, 26, 49, 50, 51, 52, 84, 95, 125, 142, 148, 164, 179-183, App. 8-9, 11-12, 16-17, 19, 21-22, 24, 26). The lack of notice and opportunity to be heard is an injury. Carey v. Piphus, 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).

The Amended Complaint requested nominal damages for violations of procedural due process but the lower court completely ignored that request and the following holding by the Supreme Court:

> "Because the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, see Boddie v. Connecticut, 401 U.S. 371, 375 (1971); Anti-Fascist Committee v. McGarth, 341 U.S. 123, 171-72 (1951)(Frankfurter, J., concurring), we believe that the denial of procedural due process should be actionable for nominal

> damages without proof of actual injury." Carey v. Piphus, 435 U.S. 247, 266.

Standing should have been granted based on the allegation of nominal damages alone.

Speech

The secrecy and evidentiary provisions prevented the Class Representatives from speaking or hiring attorneys to speak for them and from presenting evidence on their behalf. These bars to procedural due process infringed the Class Representatives' speech by preventing speech before it occurs—censorship. The lower court's finding that "[t]he Amended Complaint is bereft…." of injury allegations as to "First Amendment … claims," Order p. 7, App. 40, ignores the allegations of censorship, Amend. Compl. ¶¶ 143-145, 165, 195-198, 200-01, App. 21, 24, 28-29, which occurred to Cardozo, and, on information and belief, were or are occurring to Den Hollander, Moffett and Brannon, Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19.

The lower court also ignored that in the First Amendment context, "[l]itigants . . . are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." Va. v. American Booksellers Ass'n, 484 U.S. 383, 392-93, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988)(quoted citation

omitted). This exception applies here, since the Class Representatives also allege infringement of speech of other husbands. (Amend. Compl. ¶ 3, App. 6).

Marriage

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967)(Warren, C. J.). "Choices about marriage, family life, … are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society.'" M.L.B. v. S.L.J., 519 U.S. 102, 116, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996)(citation omitted).

Since the Class Representatives did not have the freedom of choice to challenge the VAWA findings of marital abuse, they were boxed-in between two equally harmful alternatives: the Government finding they committed domestic violence or committing perjury that their marriages were viable in sponsoring their wives for residency. A dilemma that effectively chilled their rights to choose to seek an annulment or divorce. (Amend. Compl. ¶¶ 146, 166, App. 22, 24). "In assessing the possible hardship to the parties resulting from withholding judicial resolution, [the Second Circuit] ask[s] whether the challenged action creates a direct and immediate dilemma for the parties." Marchi v. Board of Coop. Educ. Servs., 173 F.3d 469, 478 (2d Cir. 1998).

The dilemma is further exacerbated in that by choosing to end their marriages, the Class Representatives could not submit their alien wives' use of the VAWA process as evidence of a motivation for fraud in obtaining TROs or filing false police complaints. Nor can they presently use VAWA records to reopen prior state criminal or civil cases all because of VAWA secrecy.

Since the Class Representatives were and still are subject to special disabilities created by VAWA, they have a substantial, immediate, and real interest in whether the provisions are valid. Evers, 358 U.S. at 204. The VAWA provisions not only chilled their freedom of choice on whether to terminate their marriages but continue to deter them from again marrying a foreigner in order to avoid a repeat of the VAWA hell they went through. (Amend. Compl. ¶¶ 30, 137, 204, 214, App. 9, 21, 29-30). In Evers, the black class representative, who boarded a bus once and then got off when told he could not sit in the front, was not about to board a bus again and sit in the front unless the segregation statute was nullified. Id. The Supreme Court found that such a government imposed disability was a sufficient injury to give the man standing to challenge the segregation statute, id., as does the ongoing deterrence of future marriages to aliens constitute injury to the Class Representatives.

When the Class Representative sponsored their alien wives for the two-year conditional marriage residency, they were required to enter into contracts with the

Government under 8 U.S.C. § 1183a. The enforceable agreement obligates them to support their alien wives to the amount of 125% of the poverty level or reimburse public benefits the wives receive. These obligations may last for 10 years and divorce does not end them. However, a finding that an alien wife is inadmissible or deportable would end a husband's obligation, since the wife would no longer be in the U.S. legally. But VAWA prevents this by providing waivers for conduct that would normally result in inadmissibility or deportability, 8 U.S.C. §§ 1182(h), 1227(a)(1)(H), 1229b(b)(2), thereby assuring an alien wife legally remains in the U.S. and her husband saddled with a vested contingent obligation to support her. (Amend. Compl. ¶ 25, App. 9).

Brannon brought his wife to America on a K-1 fiancée visa. (Amend. Compl. ¶ 116, App. 19). Under VAWA, he is limited to sponsoring just one more wife for a K-1 visa because all citizens are limited to two such visas unless a waiver is obtained. 8 U.S.C. § 1184(d); USCIS Memorandum, International Marriage Broker Regulation Act Implementation Guidance, Michael Aytes, HQOPS Docket # USCIS-2008-0070, 07/21/2006, www.uscis.gov.

One factor in considering a waiver is whether a prior spouse was adjudged inadmissible or deportable, but the VAWA provisions effectively prevent that, so waivers are unlikely for any citizen with a former alien spouse who accused him of abuse, as did Brannon's. This VAWA section counters the very reason for the

fiancée visa: to allow citizens to spend time with their fiancées in America, rather than making numerous, expensive trips overseas to determine whether the relationship will work. In effect, American citizens, usually men with limited resources, are hamstrung to two bites of the apple before resigning themselves to forming families with the domestic pool of females.

The VAWA process casts a continuing and brooding presence of risk and fear that threatens any American man's right to marry an alien female when considering the high failure rate of marriages, the intense desire of aliens to gain admission to the U.S., and that marriage is fundamental to the very existence and survival of mankind, Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). Such risks are sufficient for standing.

Privacy & Reputation

All the Class Representatives presently face an insurmountable wall to determining whether the Government's findings of abuse invade their privacy or defame them. VAWA secrecy prevents citizens from accessing such records, correcting them, limiting their disclosure, or obtaining damages as a result of dissemination.

The right to privacy protects one's private life from government intrusion, Olmstead v. United States, 277 U.S. 438, 478-79, 48 S.Ct. 564, 72 L.Ed. 944 (1928)(Brandeis, J. dissenting), and the right to privacy regarding family matters is

inherent in the concept of liberty, Rotunda, Constitutional Law, § 18.26. The VAWA provisions result in the wholesale intrusion by the Government into private matters. Intimate matters of the Class Representatives lives are revealed to third parties without their consent and without any procedures for objecting. (Amend. Compl. ¶¶ 147, 149, 151, 152, 154, 157, App. 22-23).

Because the Justice Department considers the fact-findings in the VAWA process as compiled for law enforcement purposes, they cannot be released to a citizen husband because it would constitute an "unwarranted invasion of the personal privacy of third parties [his wife]" under 5 U.S.C. § 552(b)(7)(C). Den Hollander tried to use the Privacy Act, 5 U.S.C. 552a, to access records about him but was denied. Addendum at 92. VAWA, however, permits the release of its findings to Federal, state and local law enforcement officials and Federal, State, local and private organizations providing benefits and victims services. **8 U.S.C. § 1367(b)(2)(5) & (7)**.

The government and private organizations providing benefits learn of private and defamatory matters concerning a husband because they must determine whether his alien wife was abused and whether there is a connection between the abuse and the need for a benefit. **8 U.S.C. § 1641(c)(1)(A)**; Qualified Alien Status and Eligibility Under Title IV, 62 Fed. Reg. 61344, 61366-67, 61371.

Once privacy information is disclosed to these third parties, the husband will have no legal recourse for damages because "false light" requires the information be used for commercial purposes while a "*prima facie"* tort requires the primary purpose of disclosure is to harm the husband.

As for defamation, Government harm to reputation in connection with the denial of a right recognized by state law infringes a liberty interest that triggers due process. Neu v. Corcoran, 869 F.2d 662, 669-670, & n. 2 (2d Cir. 1989). VAWA secrecy prevents the Class Representatives from correcting or preventing the disclosure of defamatory findings by the Government. The Government's conclusions of domestic violence are *per se* defamatory because they impute criminal activity. Angio-Medical Corp. v. Eli Lilly & Co., 720 F.Supp. 269, 272 (1989). Those conclusions are available to third parties: Federal, state and local law enforcement officials and Federal, State, local and private organizations providing benefits and victims services.[13] **8 U.S.C. § 1367(b)(2)(5) & (7)**.

Since the Government defamations result from official proceedings, the defamations are privileged under state law in defamation actions. *E.g.*, Andrews v. Gardiner, 224 N.Y. 440, 446, 121 N.E. 341, 343 (1918); N.Y. Civil Rights Law § 74. The result is that the one-sided, secret VAWA proceedings eliminate the right

[13] Any findings, even false ones, may be used in any criminal proceeding against the husband. 8 C.F.R. 216.5(e)(3)(viii).

to a state cause of action for *per se* defamation brought by a citizen husband in which damages are presumed—that is an injury. (Amend. Compl. ¶¶ 151-55, App. 22-23).

The lower court found privacy and reputation injuries speculative by mistakenly claiming the Class Representatives did not allege injury from the disclosure or threatened disclosure of privacy information and defamations to third parties as a result of VAWA. Order p. 6, App. 39. The Amended Complaint at ¶¶ 93, 122, App. 17, 19, does allege, to the extent possible, that Moffett and Brannon's wives are receiving benefits from private NGOs. The providing of those benefits requires the Government to communicate with third parties in those organizations whether the wives made out a *prima facie* case of abuse or were found to have been abused and that there was a "substantial" connection between the nature of the abuse and each wife's need for benefits. Logically, the defamations concerning Moffett and Brannon were or are being communicated to these third parties.

The Class Representatives, however, face a Catch-22 on this issue. VAWA secrecy prevents them from determining what the Government and agencies are doing with privacy and defamatory information while the lower court demands allegations of actual or threatened disclosure that are impossible to make because of Government secrecy. The law in the Second Circuit, however, provides for a

solution: "in resolving claims that [courts] lack jurisdiction, … [the courts] have required that the party asserting jurisdiction be permitted discovery of facts demonstrating jurisdiction, at least where the facts are peculiarly within the knowledge of the opposing party." [14] Kamen v. American Tel. & Tel. Co., 791 F.2d 1006, 1011 (2d Cir. 1986).

Unless VAWA's Catch-22 is eliminated, the Class Representatives will never be able to confirm or adequately allege for the lower court whether any failure to obtain a government job, denial of security clearance, harmful publicity, invasion of privacy, or institution of subsequent government proceedings against them resulted from the communication of VAWA information to third parties.

A heightened risk of prospective harm can be sufficient for standing, La Raza v. Gonzales, 468 F.Supp.2d 429, 439 (E.D.N.Y. 2007).[15] The likelihood of prospective harm in this case, Amend. Compl. ¶¶ 21-24, 148-49, 151-55, App. 8-9, 22-23, is greater than other cases. Farm workers had standing to uphold regulation that limited water to large land parcels because without water the landowners would likely sell some land, and it did not matter that the farm workers couldn't presently afford the land. Bryant, 447 U.S. 352, 366-68. Low-income residents had standing to challenge a city's use of Federal block grants as collateral for a

[14] The extent of the threat of disclosure of records by the Government is unknown because the one source that knows how often that happens, the Government, has denied a Freedom of Information Request for statistics on disclosures.

[15] The Raza Court denied standing, in part, because any prospective harm depended on the plaintiffs' own acts. Here the prospective harm is dependent on the acts of others.

hotel because it might put block grant funds at risk. De Rosa v. United States Dep't of Housing & Urban Dev., 787 F.2d 840, 842 n. 2 (2d Cir. 1986). Aliens had standing when they alleged a reduction in employment opportunities because the Government seized green cards in deportation proceedings even though the aliens failed to identify anyone who suffered such as injury. Loa-Herrera v. Trominski, 231 F.3d 984, 987-88 (5th Cir. 2000). Oregon residents had standing to challenge state statute allowing use of pesticides even though state officials did not intend to use pesticides. Oregon Environmental Council v. Kunzman, 817 F.2d 484, 491-92 (9th Cir. 1987).

The lower court found "a present fear that the ultimate harm might occur" is insufficient for injury. Order p. 7, App. 40, (quoting La Raza, 468 F.Supp.2d at 441). However, the lower court ignored the Second Circuit case N.Y.P.I.R.G. v. Whitman, 321 F.3d 316 (2d Cir. 2003), which held that "uncertainty" over future harm is sufficient for an injury-in-fact:

> "NYPIRG alleges personal and economic injury caused by uncertainty. We think … [any] distinction [from actual exposure] is a superficial one that does not change the injury-in-fact analysis. In other words, the distinction between an alleged exposure to excess air pollution and uncertainty about exposure is one largely without a difference since both cause personal and economic harm.... [and] the injury-in-fact necessary for standing 'need not be large, an identifiable trifle will suffice.'" Id. at 325-26 (citing LaFleur, 300 F.3d 256, 270-71).

The Amended Complaint alleges such uncertainty at ¶¶ 22-24, App. 9.

No American would trust that the dissemination of destructive fact-findings will not occur when they are available to (1) his alien wife, (2) Federal agencies that provide her benefits, (3) state agencies that provide her benefits, (4) local agencies that provide her benefits, (5) private agencies that provide her benefits, (6) Federal law enforcement officials, (7) state law enforcement officials, (8) local law enforcement officials, (9) Interpol, and (10) nonprofit, nongovernmental groups that provide other services to her. And no American would feel secure that the leaking of such injurious information by third parties to the general public never happens.

Impartiality

Due process requires an impartial decision maker to help guarantee that liberty interests will not be impaired on the basis of an erroneous or distorted conception of the facts. Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). Impartial adjudicators also preserve both the appearance and the reality of fairness by engendering the belief, "so important to a popular government, that justice has been done." McGrath, 341 U.S. 123, 172 (Frankfurter, J., concurring). Impartial means treating both sides alike, Webster's Third New International Dictionary, 1993, which the Government's findings of domestic violence do not do because they only consider information from one side.

Evidentiary Proof

Where the reasonableness of the Government's decisions depend on findings of fact, the evidence used to prove those findings must be disclosed to the adverse party so that he can show the evidence untrue. Greene v. McElroy, 360 U.S. 474, 496-97, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959). This is especially important when the evidence consists of testimony by those who "might be perjurers or … motivated by malice, vindictiveness, intolerance, prejudice or jealousy." Id. When one person accuses another of crimes and wrongful acts, the adversity exists between the accuser and the accused—not between the accuser and the adjudicator. And when domestic conflicts are involved, often the worst in human nature comes forth.

Under VAWA, "credible evidence" means whatever the defendants decide it to mean. **8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(iv); 61 Fed. Reg. 13,065-66**; INS Memorandum, 76 Interpreter Releases 162, 168-169 (1999). The Government has no clear-cut standards for determining credible evidence, and the only discernible rule for allocating weight is that documents filed in court or with the police, medical reports, and other documents in government files receive more weight. Id. at 168. VAWA has confused authentication of official documents with the truth of the matters asserted in them. All too often falsehoods are inserted into court documents submitted by parties, lies told to medical personnel, and

misrepresentations made to the police. Giving additional weight to the contents of such documents is bootstrapping, since the source of information mainly comes from the accuser—the alien wife.

The evidentiary benefits of such documents are not lost on immigration lawyers, Feminist advocacy groups (some of which advise withholding information from the police and courts), and alien wives. They intentionally create a trail of official documents filled with false charges against husbands so that those documents can be used as "primary evidence" in the VAWA process. Id. Of course, another foreseeable result is that the false charges will result in jail, TROs, harm to occupation, lost of employment, and pink-listing—reminiscent of the McCarthy era. As back then, lives are destroyed based on unsubstantiated accusations.

The VAWA evidentiary provisions mock the due process policy for standards of proof. "[A] standard of proof represents an attempt to instruct the fact-finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." In re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(Harlan, J.)(concurring). Under VAWA, however, the only proof proffered comes from the alien, so whatever standard the adjudicators choose in finding mistreatment will be met—whether clear and convincing, preponderance or other.

As to the persuasiveness of proof, the evidentiary provisions treat an alien's affidavit as *prima facie* evidence of the ultimate fact of abuse. Normally, such a presumption requires the party against whom the evidence applies to present evidence disproving the ultimate fact. But evidence submitted by a citizen is discarded, so he has no opportunity to repel the presumption—and that violates due process. In effect, the provisions insist on presuming rather than proving abuse by the husband solely because it is more convenient to presume than to prove. *See* Stanley v. Ill., 405 U.S. 645, 658, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

The Alice in Wonderland nature of the VAWA evidentiary determination of abuse is best illustrated by **8 U.S.C. § 1367(a)(1)(A)**. The Government cannot make any decision to find an alien wife inadmissible or deportable solely from information provided by her citizen husband if he abused her. So the threshold question is whether the husband abused her. The Government, however, cannot accept any evidence from the husband as to his innocence because such evidence may result in finding no abuse. That means the wife would be ineligible under VAWA. Ineligibility means the wife would be inadmissible or deportable because VAWA's waivers would not apply. So evidence of innocence from the husband results in inadmissibility or deportation, which the law forbids. Therefore, such evidence from the husband is rejected. That is no way to find the truth, but it is in

the tradition of every kangaroo trial, witch-hunt or "French Reign of Terror" that ever occurred.

VAWA's evidentiary standards were or are being used against Den Hollander, Moffett, and Brannon. (Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19).

Equal Protection

The Government may not "bolt the door to equal justice." Griffin v. Illinois, 351 U.S. 12, 17, 76 S.Ct. 585, 100 L.Ed. 891 (1956). The VAWA provisions classify persons so as to prevent the exercise of fundamental rights on equal terms: (1) Americans v. different nationalities, (2) U.S. citizens v. non-permanent aliens, (3) citizens married to non-permanent aliens v. citizens married to citizens, and (4) males v. females.[16] Under VAWA, the Government affords others more fundamental rights than the Class Representatives who are American citizens, married an alien, and are men. (Amend. Compl. ¶¶ 5, 127, 129, 130, 137, 139, 158 –161, 169-176, 185-187, 196-98, 201, 207, 211-14, 216-17, App. 7, 19-21, 23-25, 27-30). "[W]here fundamental rights and liberties are asserted under … Equal Protection … classifications which might invade or restrain them must be closely scrutinized and carefully confined. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 670, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

[16] VAWA's classifications in (1), (2), and (4) also burden suspect groups in addition to invading their fundamental rights.

Discrimination

Nationality & Alienage: Nationality arises from a person belonging to a nation. Alienage means a foreign born person who has not yet qualified for citizenship. The aliens concerned with in this action are not permanent residents but conditional residents. Nationality and alienage are two different classifications but both are suspect. Frontiero v. Richardson, 411 U.S. 677, 682, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973)(citations omitted).

The VAWA provisions aim to keep American citizens who abuse their non-American, alien spouses from opposing the alien's application for permanent residency. Hernandez v. Ashcroft, 345 F.3d 824, 827, 840-41 (9th Cir. 2003). The Government, therefore, must find that a citizen abused his or her alien spouse. It is in reaching such a finding that the Government treats an American citizen differently than a non-American alien. The alien knows that a proceeding to determine abuse is occurring and can submit evidence—the citizen is kept in the dark, and, even if he knows, his evidence is discarded.

VAWA's classifications do not remotely serve the interest of truthfully determining abuse because participation and evidence from citizens are lacking due to their American nationality and citizenship. The denial of fundamental rights to American citizens but allowed to aliens is so disconnected with finding the truth that the provisions are inexplicable by any motive other than animus toward

American citizens, mainly men, who marry foreigners. *See* Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

Long ago the Supreme Court found that rights to equal protection "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences …." Yick Wo v. Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). The Constitution "neither knows nor tolerates classes among citizens," Plessey v. Ferguson, 163 U.S. 537, 559, 16 S.Ct. 1138, 41 L.Ed. 256 (1896)(Harlan, J. dissenting). Those words are now understood to state a commitment to the law's neutrality where the rights of persons are at stake, whether citizens, legal or illegal aliens. Romer v. Evans, 517 U.S. 620, 623, 116 S.Ct. 1620, 134 L. Ed.2d 855 (1996). How ironic that today, America, which has consistently granted aliens within its borders rights similar to citizens, now deprives those citizens of rights granted aliens. The Constitution does not allow for such; if anything, citizens still have more rights. *See* Bernal v. Fainter, 467 U.S. 216, 221, 104 S.Ct. 2312, 81 L.Ed.2d 175 (1984).

Citizen & Citizen: VAWA's determinations of a citizen committing abuse against the citizen's spouse only applies to citizens who marry aliens—not citizens who marry other U.S. citizens. The Act treats two groups of citizens differently when it comes to the fundamental right of choice in marriage, which indicates animus for those who marry foreigners.

Sex: The Congressional history of VAWA is not sex-neutral but shows a motivation to burden men. Further, the challenged provisions are presently applied disproportionately against men.

A discriminatory purpose exists when one of the motivating factors behind a law was to treat similarly situated persons differently. Arlington Heights, 429 U.S. 252, 266. The purpose of an act is found in its operation and effect and can be plainly shown in its provisions and frankly revealed in its title. Truax v. Raich, 239 U.S. 33, 40, 36 S.Ct. 7, 60 L.Ed.131 (1915)(citations omitted). The purpose of VAWA is not only plainly shown by its history, but frankly revealed in its title: The Violence Against Women Act—not the Violence Against "Persons" Act.

Congress's purpose in passing VAWA was to protect "immigrant women," from their citizen husbands, Hernandez, 345 F.3d at 827:

> "With the passage of VAWA, Congress provided a mechanism for **women** who have been battered or subjected to extreme cruelty to achieve lawful immigration status independent of an abusive spouse.... Congress's goal of protecting battered **immigrant women** and recognition of past governmental insensitivity regarding domestic violence.... Congress's goal in enacting VAWA was to eliminate barriers to **women** leaving abusive relationships.... The INS conceded at oral argument that [VAWA] was a generous enactment, intended to ameliorate the impact of harsh provisions of immigration law on **abused women**.... By defining extreme cruelty to encompass 'abusive actions' that 'may not initially appear violent but that are part of an overall pattern of violence, 8 C.F.R. § 204.2(c)(1)(vi) protects **women** against manipulative tactics aimed at ensuring the **batterer's** dominance and control." (Emphasis added).

The legislative history at U.S. Code Cong. Admin. News. P.L. 103-322, pp. 381-87 (1994), exclusively uses the term "women" to denote the victims the Act intends to protect. Such an archaic, stereotype distinction of females as innocent victims and males as batterers is the classic illustration of discriminatory purpose. *See* Craig v. Boren, 429 U.S. 190, 198-99, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976). While in 2005 the statute, enacted in 1994 and repeatedly amended, specifically included men as beneficiaries, VAWA continues to this day with a discriminatory motive. *See* Hunter v. Underwood, 471 U.S. 222, 233, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985)(original enactment was motivated by a desire to discriminate against blacks and the section continued to have that effect). VAWA continues to enforce the outmoded generalization of men as batterers when the reality is that over 200 studies have shown that females are as physically aggressive, or more so, in their relationships. Prof. Martin S. Fiebert, Department of Psychology, California State University, Long Beach, www.csulb.edu/~mfiebert/assault.htm.

Even if VAWA's sex classification was not written in its title and the legislative history, laws may be applied in such a way as to create classifications that are used to allocate burdens and benefits unequally, *see* Yick Wo v. Hopkins, 118 U.S. at 373-74.

The Amended Complaint alleges at ¶¶ 126-39, App. 19-21, the discriminatory application of the law by the VAWA Unit at the Government's

Vermont Service Center.[17] Gordon's treatise on Immigration Law and Procedure, § 41.05(1), and feminist advocates, such as Gail Pendleton of the National Immigration Project, admit that VAWA is primarily used by alien wives for whom the process was intended.

In addition, DOJ's Office on Violence Against Women, which administers VAWA funds, has instructed the Delaware Domestic Violence Coordinating Council that "states must fund only programs that focus on violence against women." The victims served under VAWA programs are 90% female. DOJ's National Institute of Justice specifically prohibits "proposals for research on intimate partner violence against … males of any age." These are just some of the many examples of the discriminatory application of VAWA against men as detailed by R.A.D.A.R. in VAWA Programs Discriminate Against Male Victims, Dec. 2007, www.mediaradar.org.

The VAWA process is a device motivated and applied to impose burdens on males and benefits on females.

Equal Protection Injuries

The Supreme Court found a real and immediate equal protection injury to contractors from a city set-aside program for female and minority owned

[17] Adjudicators at the VAWA Unit are trained by feminist advocates who push their one-side, anti-male agenda that furthers their domestic-abuse industry, which has become a multi-billion dollar business with large influxes of Federal money. *Cf.* 74 Interpreter Releases 971, 977 (1997).

businesses without the plaintiff showing it would have received a contract absent the program. Northeastern Fla. Assoc. Gen. Contractors Am. v. Jacksonville, 508 U.S. 656, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993). It did not matter that success in winning a contract remained hypothetical because the city had erected barriers to the plaintiffs' ability to "compete on an equal footing in the bidding process." Id. at 666. A plaintiff need only allege that a discriminatory policy, whether based on sex or ethnicity, erected a barrier making it more difficult to obtain a benefit than the more favorably treated group. Id. "The 'injury-in-fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of [a] barrier...." Id.

The Class Representatives allege the Government erected and enforces unconstitutional barriers—secrecy, evidentiary, and arbitrary definitions—that make it impossible for them to obtain the same benefits of procedures in defending against accusations as their alien wives have in prosecuting those accusations. (Amend. Compl. ¶¶ 140-41, 162-63, 177-78, App. 21, 23-25). The husbands not only face obstacles in defending against a finding of abuse but ongoing obstacles afterward. They cannot access records, correct inaccuracies, prevent or challenge unfair or arbitrary disclosure to third parties, and when disclosed, they have no legal remedy for the harm caused. (Amend. Compl. ¶¶ 12, 21-24, 148-49, 151-57, App. 8-9, 22-23). The only player not allowed in the stadium is the one being

scored against—the citizen husband. In fact, he is not even told where the stadium is or the scheduled time for his defeat, which is non-appealable.

The harm is the Class Representatives were or are not being considered equally without the discriminatory obstacles. *See* Northeastern at 666. The VAWA provisions have already prevented Cardozo from defending against findings of domestic violence, Amend. Compl. ¶ 110, App. 18, and were or are, on information and belief, preventing Den Hollander, Moffett, and Brannon from defending against similar findings, Amend. Compl. ¶¶ 84, 95, 125, App. 16-17, 19. The VAWA provisions are currently stopping all the Class Representatives from accessing, correcting, challenging disclosure, or reopening fact-findings of abuse. Standing exists because the Class Representatives are able and ready to do such, but the VAWA provisions prevent them. Northeastern at 666. The remedy is restoring equality, such as extending to the excluded husbands the same procedures available to the wives. Heckler v. Mathews, 465 U.S. 728, 740, 104 S.Ct. 1387, 79 L.Ed.2d 646 (1984)(citation omitted).

The VAWA provisions are also under-inclusive in that they provide on their face procedural due process for aliens but not U.S. citizens and, as applied, for alien females but not citizen males. When a law is challenged for violating equal protection by being under-inclusive, the Supreme Court allows either the included or excluded parties standing, otherwise, underinclusive statutes could never be

challenged. Rotunda, Constitutional Law, § 2.13, pp. 373-74, *see* Orr v. Orr, 440 U.S. 268, 272, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979). "A [standing] rule that would prohibit members of a disfavored group from attacking classifications benefiting others because the plaintiff would never be included in the class would insulate unequal treatment from constitutional attack under the equal protection clause and perpetuate the stigmatizing of members of an unconstitutionally disfavored group." Rotunda at § 2.13, p. 374.

Overbroad and Vague Injuries

Enactments are facially overbroad when their reach is so sweeping that they could deter persons from engaging in protected speech, and standing even exists when a statute "may cause others not before the court to refrain from constitutionally protected speech or expression." Broadrick v. Okla., 413 U.S. 601, 611-12, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

Statutes regulating fundamental rights are void for vagueness when "men of common intelligence must necessarily guess at [their] meaning[s] and differ as to [their] applications," Connolly v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926)(citation omitted). Uncertain meanings inevitably "delegate basic policy matters to [government employees] for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory

application." Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)(citations omitted).

The VAWA process requires that the citizen husband engaged in "battering," "extreme cruelty," or an "overall pattern of violence." (Amend. Compl. ¶ 188, App. 27). These terms regulating speech and choices in marital conduct, fundamental rights, are open-ended and nebulous. (Amend. Compl. ¶¶ 27, 36, App. 9-10). Battery includes anything from verbal threats to attempted murder. *See* **61 Fed. Reg. 13,065-66**. Extreme cruelty includes the verbal infliction of emotional distress without any physical manifestations, verbal and other acts against third parties, and behaviors, including speech, intended to control and exercise power over an alien wife. Pendleton, Immigration and Nationality Law Handbook, p. 2 n. 5, p. 6, ed. 2001-02, www.asistahelp.org/vawa.htm. Overall pattern of violence, which is a catch-all provision, includes "name calling," "criticizing, insulting, belittling," "false accusations," "blaming," "ridiculing," "lying," "comments about women's bodies," "accusing [wife] of having a lover," "reminding [wife] of her duties," "threatening to leave [wife]," "calling [wife] to make sure she is okay," etc. DOJ funded studies: 1999 National Victim Assistance Academy, chap. 8, www.ovc.gov/assist/nvaa99/chap8.htm; Family Violence Prevention Fund, Breaking the Silence - Training Manual, pp 55-58 (2006), http://endabuse.org/section/programs/immigrant_women.

The words that rise to the level of abuse under VAWA are so overbroad as to include protected and unprotected speech, thereby prospectively deterring any citizen husband not before this Court from engaging in protected speech with his alien wife. That is sufficient for the Class Representatives to have standing. Broadrick at 612.

The vagueness of VAWA terminology trap the innocent by not providing fair warning, allow for arbitrary and discriminatory enforcement, and inhibit the exercise of speech and marital choices. Grayned, 408 U.S. at 108-09. Any marital quarrel or effort to make-up in which the citizen husband dares open his mouth or touch his wife can and will be used against him by the Government, as it was against the Class Representatives.

Bill of Attainder Injuries

U.S. Const. I. § 9 cl. 3 prohibits acts of Congress "that apply to … easily ascertainable members of a group in such a way as to inflict punishment…" without the safeguards of a trial. U.S. v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 90 L.Ed. 1252 (1946). The severity of the punishment is irrelevant. Brown, 381 U.S. 437, 447. It "may affect the life of an individual, or may confiscate his property, or may do both," Fletcher v. Peck, 10 U.S. 87, 138 (1810), and "[t]he deprivation of any rights, civil or political previously enjoyed, may be punishment…," Cummings v. Missouri, 71 U.S. 277, 320 (1867).

As the legislative history shows, the VAWA provisions are aimed primarily at citizen husbands, such as the Class Representatives, because Congress determined husbands to be the ones responsible for domestic violence in marriages involving aliens. The VAWA provisions injured or are injuring the Class Representatives' rights to due process, freedom of speech, freedom of choice in marital decisions, privacy, and protect their reputations, *see* Foretich v. United States, 351 F.3d 1198, 1213 (Cir. D.C. 2003)(Congressional Act harmed person's reputation by depicting him as a child abuser).

The fact that the punishments are inflicted through the instrumentality of immigration proceedings make them no less effective or invalid. *Cf.* Lovett, 328 U.S. at 316. Power over the conduct of aliens does not translate into power over citizens just because Congress fears the Feminist Establishment or believes men who marry foreign wives should be subject to sanctions. "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular … persons, because the legislature thinks them guilty of conduct which deserves punishment." Lovett, 328 U.S. at 317.

The lower court, Order p. 7, App. 40, simply ignored most of the allegations of bill of attainder injuries. (Amend. Compl. ¶¶ 206-07, 212, 215-217, App. 29-30).

Causation and Remedies

Standing causation requires that the asserted injuries are the consequences of or fairly traceable to the Government's conduct. Duke Power, 438 U.S. 59, 72 (citations omitted). The VAWA provisions are the instruments of harm for without them there would be no secrecy, incompetent and ignored evidence, arbitrary definitions of abuse, disclosure of private matters and falsehoods, and the violation of rights.

The Class Representatives were or are subject to ongoing VAWA determinations of abuse. Further, without the VAWA provisions, there would likely not have been the fraudulent complaints to police, arrests, and TROs that continue to invade privacy, harm reputations, and threaten employment prospects of the Class Representatives—a more direct causation than in Bryant, 447 U.S. 352, 366-68 or SCRAP, 412 U.S. 669, 688.

Causation is also satisfied by showing there is a substantial likelihood that the requested relief will redress the injuries. Duke Power, 438 U.S. at 75 n. 20. The remedies requested in the Amended Complaint at ¶ 219(a)-(j), App. 31-32, will prevent or at least alleviated the injuries caused and threatened by the VAWA provisions. Any remedy may constitute no more than a small and incremental step toward limiting future damages. Massachusetts v. EPA, 549 U.S. 497, 524, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007).

2. Lower court's non-adherence to (12)(b)(1) standards.

The lower court's Order at pp. 4-5, App. 37-38, states that "[i]n considering a Rule 12(b)(1) motion, all facts alleged in the complaint are taken as true and all reasonable inferences are drawn in the Plaintiffs' favor." Bldg. & Const. Trades Council Buffalo N.Y. & Vicinity v. Downtown Dev., Inc., 448 F.3d 138, 144 (2d Cir. 2006)(citations omitted). But the Order found key allegations in the Amended Complaint as false, ignored others, and adopted an allegation by the Government as true.

The Order found that in the VAWA process "[n]o determination is made regarding Plaintiffs' alleged conduct and, contrary to the Amended Complaint, they are not 'adjudged responsible.'" Order p. 6, App. 39. That's plain false as Government memoranda show: "a finding that the spouse ... has been 'battered or subjected to extreme cruelty' is one of the threshold elements of the VAWA claim," 76 Interpreter Releases 162, 163 (1999); the self-petitioner is required to "establish that 'abuse' exists," id.; and the process involves "adjudication," "adjudicated-cases," "cases" with one task of the Vermont Service Center as "adjudicating ... self petitions," 74 Interpreter Releases 971, 972, 976 (1997). Determining abuse is the key part of the Government's adjudications; otherwise, there would be no need for the VAWA provisions to require that the alien be "battered," or subjected to "extreme cruelty," or an "overall pattern of abuse."

Moreover, the Class Representatives alleged such determinations. (Amend. Compl. ¶¶ 13, 14, 18, 47, 49, 51, 132, 142, 145, 153, 164, 179, 187, 219(f), App. 8, 11-12, 20-22, 24, 26-27, 31).

The lower court also relied on an allegation created by the Government: "[t]hat each of the plaintiffs may desire to see his former spouse deported is not a cognizable interest sufficient to confer standing." Order p. 6, App. 39. The Class Representatives never alleged and never argued that. For the lower court to raise such an archaic, stereotypical insinuation about America husbands evinces a prejudicial view of all those innocent men who have had their lives destroyed by alien wives fraudulently exploiting VAWA.

The Order at p. 6, App. 39, also states "[p]laintiffs point to no element of the VAWA statutory scheme that results in any actual detriment to them." The lower court apparently ignored the allegations in the Amended Complaint at ¶¶ 9-12, 15-31, 49-52, 129, 137, 142-149, 151-157, 158-161, 164-176, 179-187, 194-199, 201-204, 206-207, 212, App. 7-10, 11-12, 20-30.

In effect, the Order re-writes the Amended Complaint to fit a finding of no injury so as not to violate the rule that determining standing based on the pleadings requires construing the complaint in favor of the complaining party.

3. Matter of State Power

Long ago the Supreme Court observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." In re Burrus, 136 U.S. 586, 593-94, 10 S.Ct. 850, 34 L.Ed. 500 (1890); *see also* Morrison, 529 U.S. 598, 615-16 (section of VAWA unconstitutional for exceeding Congressional authority).

The VAWA provisions interfere with the states traditional jurisdiction over domestic relations without serving Federal interests. Just because an alien wife is mistreated doesn't mean America has to give her permanent residency. What if she's an associate of the Russian and Chechen mafias or Al Qaeda? There is no necessary connection between domestic discord and granting residency.

Even assuming that protecting against domestic abuse falls under Federal and not state authority, allowing citizen husbands to rebut accusations against them would make such determinations fair. Violating the constitutional rights of citizens through secret proceedings with nonexistent evidentiary standards does not serve the truth, but gratuitously punishes those this culture of late depicts as either buffoons or incarnates of evil—husbands.

CONCLUSION

The medieval, British Star Chamber acted as a court that imposed punishment for actions it deemed to be morally reprehensible. The Chamber's

decisions were arbitrary and subjective which allowed it to become an instrument of oppression. Hearings were held in secret, no juries, and no appeals. With each embarrassment to arbitrary power, the Star Chamber became emboldened to undertake further usurpation. It spread terror among those who did constitutional acts.

The lower court's decision upheld VAWA's modern day Star Chamber. That left the Class Representatives with no other legal option but to appeal to a court that subsequently threatened them with "summary affirmance" of the lower court's decision, "imposition of costs," and, their attorney, with punishment from "some other disadvantageous action." Stanley A. Bass, Staff Counsel, Second Circuit Court of Appeals, February 13, 2009 email to Den Hollander, Addendum p. 91. The only cause for such intimidation was that the four citizen husbands chose to play by the rules of this democracy and appeal through the judicial system "to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 357, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995).

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/S/

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) by containing 13,980 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) by using Microsoft Word Times New Roman in font size 14.

ADDENDUM

ADDENDUM OF CONSTITUIONAL PROVISIONS, STATUTES, REGULATIONS, AND FEDERAL REGISTRY

U.S. Constitution

Article I, Section 9, Clause 3

No Bill of Attainder or ex post facto Law shall be passed.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be … deprived of life, liberty, or property, without due process of law….

Statutes

5 U.S.C. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(b) This section does not apply to matters that are—

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy ….

5 U.S.C. § 552a

§ 552a. Records maintained on individuals

(b) Conditions of disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or

to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains....

8 U.S.C. § 1154

§ 1154. Procedure for granting immigrant status

(a) Petitioning procedure.

(1) (A) (i) [A]ny citizen of the United States claiming that an alien is entitled to classification by reason of a relationship … or to an immediate relative status … may file a petition with the Attorney General for such classification….

(iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien … if the alien demonstrates to the Attorney General that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien … has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa) (AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and--

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section … or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse….

(C) [A]n act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility … or deportability …] shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), … if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty….

(J) In acting on petitions filed under clause (iii) … of subparagraph (A) … or in making determinations under subparagraph (C) …, the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

8 U.S.C. § 1182

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission. Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States: …

(2) Criminal and related grounds.
(A) Conviction of certain crimes.
(i) In general. Except as provided in clause (ii), any alien convicted of, or who admits having committed or who admits committing acts which constitute the essential elements of--
(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance …), is inadmissible.
(ii) Exception. Clause (i)(I) shall not apply to an alien who committed only one crime if--
(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions. Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers. Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical …), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(D) Prostitution and commercialized vice. Any alien who--

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. Any alien--

(i) who has committed in the United States at any time a serious criminal offense ….

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) Waiver authorized. For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h)….

(6) Illegal entrants and immigration violators.

(A) Aliens present without admission or parole.

(i) In general. An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women …. Clause (i) shall not apply to an alien who demonstrates that--

(I) the alien is a VAWA self-petitioner;

(II) (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, … and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States….

(C) Misrepresentation.

(i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible….

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (i)….

(h) Waiver of subsec. (a)(2)(A)(i)(I), (II), (B), (D), and (E). The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if--

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than

15 years before the date of the alien's application for a visa, admission, or adjustment of status, and

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States,

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse … of a citizen of the United States … if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen … spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i) Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact.

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse … of a United States citizen … if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen … spouse … or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, …, or qualified … child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

§ 1183a. Requirements for sponsor's affidavit of support

(a) Enforceability.

(1) Terms of affidavit. No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge … unless such affidavit is executed by a sponsor of the alien as a contract--

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2).

(2) Period of enforceability. An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) Termination of period of enforceability upon completion of required period of employment, etc.

(A) In general. An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage … or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit … during any such period.

(B) Qualifying quarters. For purposes of this section, in determining the number of qualifying quarters of coverage … an alien shall be credited with--

(i) all of the qualifying quarters of coverage … worked by a parent of such alien while the alien was under age 18, and

(ii) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable … for any period beginning after December 31, 1996, may be credited to an alien under clause (i) or (ii) if the ... spouse ... of such alien received any Federal means-tested public

benefit … during the period for which such qualifying quarter of coverage is so credited.

(C) Provision of information to save system. The Attorney General shall ensure that appropriate information regarding the application of this paragraph is provided to the system for alien verification of eligibility (SAVE) ….

(b) Reimbursement of Government expenses.

(1) Request for reimbursement.

(A) Requirement. Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(2) Actions to compel reimbursement.

(A) In case of nonresponse. If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

(B) In case of failure to pay. If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions. No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) Use of collection agencies. If the appropriate entity under paragraph (1)(A) requests reimbursement from the sponsor or brings an action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire an individual or other person to act on behalf of such entity acting under the authority of law for purposes of collecting any amounts owed.

(c) Remedies. Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section …..

8 U.S.C. § 1184

§ 1184 (d). Issuance of visa to fiancee or fiance of citizen.

(1) A visa shall not be issued … until the consular officer has received a petition filed in the United States by the fiancee or fiance of the applying alien and

approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed ….

(2) [A] consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C) (i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that--

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that

evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms "domestic violence", "sexual assault", "child abuse and neglect", "dating violence", "elder abuse", and "stalking" have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term "specified crime" means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

8 U.S.C. § 1186a

§ 1186a. Conditional permanent resident status for certain alien spouses …

(a) In general.

(1) Conditional basis for status. Notwithstanding any other provision of this Act, an alien spouse … shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section….

(c) Requirements of timely petition and interview for removal of condition.

(1) In general. In order for the conditional basis established under subsection (a) for an alien spouse … to be removed--

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General … a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) … the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) Termination of permanent resident status for failure to file petition or have personal interview.

(A) In general. In the case of an alien with permanent resident status on a conditional basis under subsection (a), if--

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent

residence.

(B) Hearing in removal proceeding. In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B)….

(4) Hardship waiver. The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that --

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1); or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse … was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen … and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse … including information regarding the whereabouts of such spouse ….

(d) Details of petition and interview.

(1) Contents of petition. Each petition under subsection (c)(1)(A) shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process. The facts are that--

(i) the qualifying marriage--

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for

the filing of a petition …with respect to the alien spouse ….

8 U.S.C. § 1227

§ 1227. Deportable aliens

(a) Classes of deportable aliens. Any alien … in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:
(1) Inadmissible at time of entry or of adjustment of status or violates status….

(H) Waiver authorized for certain misrepresentations. The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission … whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien … who--…
(ii) is a VAWA self-petitioner.
A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

8 U.S.C. § 1229b

§ 1229b. Cancellation of removal; adjustment of status….

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents.
(1) In general. The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien--
(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;
(B) has been a person of good moral character during such period;
(C) has not been convicted of an offense ….; and
(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, … or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.
(2) Special rule for battered spouse ….
(A) Authority. The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is

inadmissible or deportable from the United States if the alien demonstrates that--

(i) (I) the alien has been battered or subjected to extreme cruelty by a spouse … who is or was a United States citizen …; or…

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen … whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's … bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of 8 U.S.C. § 1182a, is not deportable under paragraphs (1)(G) or (2) through (4) of 8 U.S.C. § 1227(a), subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, ….

(B) Physical presence. [A]n alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph ….

(C) Good moral character. [A] act or conviction that does not bar the Attorney General from granting relief under this paragraph … shall not bar the Attorney General from finding the alien to be of good moral character … if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to

be given that evidence shall be within the sole discretion of the Attorney General.

8 U.S.C. § 1255

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa. The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

8 U.S.C. § 1367

§ 1367. Penalties for disclosure of information

(a) In general. Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)--

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by--

(A) a spouse … who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's … family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse … consented to or acquiesced in such battery or cruelty, …; or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief ….

The limitation under paragraph (2) ends when the application for relief is denied

and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions.
(1) The Attorney General may provide, in the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce ….
(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.
(3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.
(4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.
(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. § 1641(c).
(6) Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).
(7) Government entities adjudicating applications for relief under subsection (a)(2) … may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(c) Penalties for violations. Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section … shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $ 5,000 for each such violation.

(d) Guidance. The Attorney General and the Secretary of Homeland Security

shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

8 U.S.C. § 1641

§ 1641. Definitions

(a) In general. Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 8 U.S.C. § 1101(a).
(b) Qualified alien. For purposes of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,

(2) an alien who is granted asylum…,

(3) a refugee who is admitted to the United States …,

(4) an alien who is paroled into the United States … for a period of at least 1 year,

(5) an alien whose deportation is being withheld …,

(6) an alien who is granted conditional entry …, or

(7) an alien who is a Cuban and Haitian entrant …. .

(c) Treatment of certain battered aliens as qualified aliens. For purposes of this title, the term "qualified alien" includes--

(1) an alien who--

(A) has been battered or subjected to extreme cruelty in the United States by a spouse …, or by a member of the spouse's … family residing in the same household as the alien and the spouse … consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for--

(i) status as a spouse … of a United States citizen pursuant 8 U.S.C. 1154 (a)(1)(A)(iii) …,

(v) cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(2)….

This subsection shall not apply to an alien during any period in which the

individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

28 U.S.C. § 534

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall--
(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; …

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.
(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies….

(e) For purposes of this section, the term "other institutions" includes--
(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and
(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.
(f) (1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.
(2) Federal and State criminal justice agencies authorized to enter information into criminal information databases may include--
(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection--

(A) the term "national crime information databases" means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(B) the term "protection order" includes--

(i) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(ii) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

8 C.F.R. § 204.2

§ 204.2
(c) Self-petition by spouse of abusive citizen or lawful permanent resident –

(1) Eligibility….

(vi) Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being 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. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen … spouse, must have been perpetrated against the self-petitioner … and must have taken place during the self-petitioner's

marriage to the abuser….

(2) Evidence for a spousal self-petition –….

(iv) Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

8 CFR § 216.5

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse….

(e) Adjudication of waiver application.
(1) Application based on claim of hardship. In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.
(2) Application for waiver based upon the alien's claim that the marriage was entered into in good faith. In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include --
(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;
(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and
(iv) Other evidence deemed pertinent by the director.
(3) Application for waiver based on alien's claim of having been battered or subjected to extreme mental cruelty. A conditional resident who entered into the qualifying marriage in good faith, and who was battered or was the subject of extreme cruelty … by or was the subject of extreme cruelty perpetrated by the United States citizen … spouse during the marriage, may request a waiver of the joint filing requirement….

(viii) As directed by the statute, the information contained in the application and supporting documents shall not be released without a court order or the written consent of the applicant; …. Information may be released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any criminal proceeding.

28 CFR § 0.85

§ 0.85 General functions.

The Director of the Federal Bureau of Investigation shall:…

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprints and identification records from criminal justice and other governmental agencies ….

28 CFR § 20.21

§ 20.21 Preparation and submission of a Criminal History Record Information Plan….

(b) Limitations on dissemination. Insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:
(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;
(3) Individuals and agencies pursuant to a specific agreement with a criminal

justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof….

28 CFR § 20.33

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment pursuant to [28 U.S.C. § 534] … or other federal legislation, and for other uses for which dissemination is authorized by federal law …;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

28 CFR § 50.12

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing ….

61 Fed. Reg. 13,061, 13,065-66

Battery or Extreme Cruelty

[13,065] Section 40701 of the Crime Bill requires a self-petitioning spouse to have been battered by, or been the subject of extreme cruelty perpetrated by, the citizen … spouse … or who was the subject of extreme cruelty perpetrated by, the citizen … during the marriage…. This rule reflects the statutory requirements by specifying that only certain types of abuse will qualify a spouse … to self-petition. "Qualifying abuse" under this rule is abuse that meets the criteria of section 40701 of the Crime Bill concerning when, by whom, to whom, and to what degree the domestic abuse occurred.

The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser.… Battery or extreme cruelty that happened at other times is not qualifying abuse. There is no limit on the time that may have elapsed since the last incident of qualifying abuse occurred.

The qualifying abuse also must have been committed by the abusive citizen … spouse …. Battery or extreme cruelty by any other person is not qualifying abuse, unless it can be shown that the citizen … willfully condoned or participated in the abusive act(s).

Only abuse perpetrated against the self-petitioning spouse … will be considered qualifying. Acts ostensibly aimed at some other person or thing may be considered qualifying only if it can be established that these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner …. Battery or extreme cruelty committed solely against a third party and in no way directed at or used against the

spouse … is not qualifying abuse.

The qualifying abuse also must have been sufficiently aggravated to have reached the level of battery or extreme cruelty. Service regulations at 8 C.F.R. 216.5(e)(3)(i) currently define the phrase "was battered by or was the subject of extreme cruelty." This definition was initially developed to facilitate the filing and adjudication of requests to waive certain requirements for removal of conditions on residency. These waivers are based on the applicant's claim of battery or extreme cruelty perpetrated by the citizen … spouse …. Since the regulatory definition has proven to be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty, this rule adopts an identical definition for evaluating claims of battering or extreme cruelty under section 40701 of the Crime Bill. The definition reads as follows:

For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being 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. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. [13,066]

The acts mentioned in this definition-rape, molestation, incest if the victim is a minor, and forced prostitution-will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase "was battered by or was the subject of extreme cruelty."

This rule requires a self-petitioner to provide evidence of qualifying abuse…. Available relevant evidence will vary, and self-petitioners are encouraged to provide the best available evidence of qualifying abuse. A self-petitioner is not precluded from submitting documentary proof of non-qualifying abuse with the self-petition; however, that evidence can only be used to establish a pattern of abuse and violence and to bolster claims that qualifying abuse also occurred.

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

Self-petitioners who can provide only affidavits are encouraged to submit the affidavits of more than one person. The Service is not precluded from deciding, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant evidence of sufficient weight to meet the self-petitioner's burden of proof.

62 Fed. Reg. 61344, 61366-67, 61371

Interim Guidance on Verficiation of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

[61366] ....

I. PROCEDURES FOR DETERMINING QUALIFIED ALIEN STATUS

An alien is a "qualified alien" eligible for public benefits ... if he or she meets the following four requirements:
(1) the INS or the EOIR has granted a petition or application filed by or on behalf of the alien ... or has found that a pending petition sets forth a prima facie case;
(2) the alien ... has been abused in the United States as detailed below:
(a) in the case of the abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse ... or by a member of the spouse or parent's family residing in the same household as the alien, if the spouse ... consents to or acquiesces in such battery or cruelty; ...
(3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and
(4) the battered alien ... no longer resides in the same household as the abuser….

[61,367] .... A benefit provider must determine that an applicant satisfies all four requirements. If an applicant presents documentation indicating ... that the applicant has filed an INS I-360 petition [VAWA self-petition] ... the benefit provider should determine whether the applicant meets the other three requirements for qualified alien status (including battery or extreme cruelty) before verifying his or her immigration status with the INS. If an applicant presents documentation indicating that he or she has filed an INS I-360 petition [based on abuse by U.S. citizen spouse] ... INS ... will make the determination as to battery or extreme cruelty. In such cases, the benefit provider may contact the INS ... as applicable to initiate the verification process prior to determining if the applicant meets the other two requirements for qualified alien status. After contacting the INS ... the benefit provider should continue reviewing the applicant's eligibility for qualified alien status ... and should not delay this evaluation while awaiting a response from the INS ....

II. EXEMPTION FROM DEEMING REQUIREMENTS

A. *Battered Aliens*….

[61,371] [U]pon the effective date of the newly required affidavit of support and subject to the exceptions described below, when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien applicant is entitled, agencies must include as income and resources of the alien, the income and resources of the spouse of the alien and any other person executing an affidavit of support on behalf of the alien. An alien is exempt from these "deeming" requirements for a period of one year, however, if

(1) in the case of an abused alien,
(a) the alien has been battered or subjected to extreme cruelty in the United States by a spouse ... or by a member of the spouse ... family residing in the same household as the alien if the spouse ... consents to or acquiesces in such battery or cruelty;
(b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and
(c) the battered alien no longer resides in the same household as the abuser ….

Stanley A. Bass Email

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Hollander v. U.S.A., 08-6183-cv

Stanley_Bass@ca2.uscourts.gov <Stanley_Bass@ca2.uscourts.gov> **Fri, Feb 13, 2009 at 5:56 PM**
To: rdhhh@yahoo.com
Cc: natalia.oeltjen@usdoj.gov

To: Den Hollander, Esq.

In thinking further about this pro se appeal, I can see no point in your further wasting the resources of yourself, the Department of Justice, and the judges of this Honorable Court. The idea that a non-party has a legal right to be a spoiler witness in a claimant's administrative hearing seeking immigration benefits seems not only absurd, but also offensive and mean-spirited. It's one thing for you to offer relevant testimony to the agency if they want it. It's quite another to assert a constitutional right to inject yourself into a proceeding where neither the claimant nor the agency welcomes you.

There is no precedent supporting your position. Common sense and fairness warrant its rejection. Apart from a summary affirmance, you may be subject to imposition of costs or some other disadvantageous action. And, importantly, by persisting in arguing a meritless case, you risk losing credibility when dealing with an truly arguable subject, such as the meaning of "state action".

I recommend that you promptly submit to me a stipulation withdrawing this groundless appeal.