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LIFESAVING WELFARE SAFETY NET ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN: ACCOMPLISHMENTS AND NEXT STEPS

LESLYE ORLOFF*

I. INTRODUCTION

The United States is currently experiencing one of the largest waves of immigration in its history.¹ Contrary to common assumptions, more than half of new immigrants are women.² Despite this fact, U.S. immigration policy and most agencies serving immigrants have remained blind to gender differences and have treated all immigrants alike.

Immigrant women often suffer disadvantages and hardships different from those men endure. Women and men both lack access to resources due to unavailability, misinformation and language barriers; however, women often face additional obstacles in achieving economic and/or social stability in the United States. These obstacles include alienation, loneliness, prejudice, gender and racial discrimination, lack of education and lack of employment opportunities.³

Many immigrant women also face an additional obstacle in achieving safety and stability: domestic violence.⁴ As many as fifty percent of Latina immigrant women are physically abused by a

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1. See *infra* note 24 and accompanying text.

2. Joan Fitzpatrick, *The Gender Dimension of U.S. Immigration Policy*, 9 YALE J.L. & FEMINISM 23, 24 (1997); Pierrette Hondagneu-Sotelo, *Introduction: Gender and Contemporary U.S. Immigration*, 42 AM. BEHAV. SCIENTIST 565, 565 (1999); see also Marion F. Houstoun et al., *Female Predominance of Immigration to the United States Since 1930: A First Look*, 18 INT'L MIGRATION REV. 908, 909-10 (1984) (noting that the large number of women immigrating to the United States is unparalleled in the rest of the world).

3. Edna Erez, *Immigration, Culture Conflict and Domestic Violence / Woman Battering*, in 2 CRIME PREVENTION & COMMUNITY SAFETY: AN INT'L J. NO. 1, at 27, 27-28 (2000).

4. See Giselle A. Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 94-95 (2000). See generally Erez, *supra* note 3 (examining how immigrant status compounds domestic violence).

male partner.⁵ When an intimate partner turns violent, many immigrant women feel they have nowhere to turn for help in the United States.⁶ Congress acknowledged that domestic violence is a severe problem in the United States;⁷ according to congressional reports, three to four million women are abused by their husbands each year.⁸

Recognizing the profound damage that domestic abuse does to both individuals and society as a whole, Congress passed the Violence Against Women Act of 1994 (VAWA).⁹ VAWA attempts to strengthen both the justice system's response to domestic violence and the services available to help domestic violence victims.¹⁰

In VAWA, Congress included immigration provisions designed to protect immigrant women and children who are abused by their U.S. citizen or legal permanent resident spouses or parents.¹¹ These provisions allowed battered immigrants to file their own immigration applications without the cooperation of the abusive spouse or parent.¹² Between January 1997 and November 1999, 9,614 battered immigrants filed self-petitions under VAWA.¹³ Despite the success of VAWA immigration provisions that opened an avenue to legal immigration status, these provisions did not offer a complete solution to battered immigrant women. The Violence Against Women Act of 2000, enacted on October 28, 2000,¹⁴ sought to remedy some of these problems by removing "residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships

5. Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 258 (2000). This statistic may vary depending upon several variables. See *id.* at 262 tbl.2. For example, the percentage of abused immigrant women increases when the women are less educated or in low-wage earning jobs. See *id.*

6. See MARY ANN DUTTON ET AL., DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT: A TRAINING MANUAL FOR ATTORNEYS & ADVOCATES app. C (2000) (highlighting the unique obstacles that battered immigrant women face in trying to find help). See generally Dutton et al., *supra* note 5 (discussing the difficulties faced by battered immigrant Latina women).

7. S. REP. NO. 101-545, at 30 (1990); H.R. REP. NO. 103-395, at 26 (1993); see discussion *infra* Part V.

8. S. REP. NO. 101-545, at 30.

9. Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902-1955 (1994) (codified in scattered sections of 8 U.S.C. & 18 U.S.C.).

10. VIOLENCE AGAINST WOMEN: LAW AND LITIGATION §§ 4:2-4:10 (David Frazee et al. eds., 1998).

11. *Id.* § 21:4.

12. Violence Against Women Act of 1994, § 40701, 8 U.S.C. § 1154(a)(1) (Supp. II 1996)).

13. *Self-Petitions Filed by Battered Immigrants Under VAWA* (Immigration & Naturalization Serv.), Nov. 1999.

14. The Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

that either had not come to the attention of the drafters of VAWA 1994 or have arisen as a result of the 1996 changes to immigration law.¹⁵

Significant obstacles remain that undermine the efforts of VAWA-eligible women to end domestic violence and create safer homes for themselves and their children. These obstacles include fear of retaliation from the batterer, fear of losing their children through custody battles or kidnapping and a lack of economic and social support.¹⁶

Aware of the critical role that welfare plays as a safety net for battered women in their struggle against violence,¹⁷ Congress enacted two pieces of legislation designed to preserve their access to public benefits and enable them to leave abusive relationships. First, Congress designed the Family Violence Option (FVO), included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹⁸ to encourage states to confidentially screen welfare applicants for domestic violence issues, to "make referrals to counseling and supportive services and to grant good-cause waivers for certain welfare program requirements."¹⁹ Second, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)²⁰ granted access to public benefits for certain battered immigrants.²¹ PRWORA and IIRIRA have spurred widespread confusion and misunderstanding on the part of service providers, community members and state welfare workers about the legal rights of battered immigrant women and their children.²² This has inadvertently kept many battered immigrant women and children from accessing the public benefits they are entitled to receive.²³

15. The Battered Immigrant Women Protection Act of 2000, Section-by-Section Summary, 146 CONG. REC. S10195 (daily ed. Oct. 11, 2000).

16. See, e.g., Hass et al., *supra* note 4, at 107-09 (reporting threats used by batterers in the Latino community).

17. Leslye E. Orloff, *Access to Public Benefits for Battered Immigrant Women and Children*, 33 CLEARINGHOUSE REV. 237, 238 (1999).

18. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.).

19. Tanya Broder, *State and Local Policies on Immigrants and Public Benefits: Responding to the 1996 Welfare Law*, 31 CLEARINGHOUSE REV. 503, 517 (1998).

20. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 3346 (codified in scattered sections of 8 U.S.C. & 18 U.S.C.).

21. *Id.* § 501, 8 U.S.C. § 1641(c) (Supp. III 1997).

22. See *infra* Part VIII.B.1.

23. Emily Goldfarb, *Caught at the Public Policy Crossroads: The Impact of Welfare Reform on Battered Immigrant Women* (The Family Violence Prevention Fund, S.F. Cal.), Jan., 1999, at 5.

This Article will provide a demographic overview of female immigration and discuss immigrant experiences unique to women. Next, it will discuss the steps that Congress has taken to provide protection and services to immigrant victims of domestic violence, particularly the emphasis on expanded access to public benefits, including an overview of battered immigrants' access to public benefits in the 1996 welfare reform legislation. It will also describe the social and economic needs of battered immigrants and demonstrate why access to public benefits is crucial to escape violence. Finally, it will discuss the three key problems that battered immigrants face when attempting to access public benefits and will propose alternative means to assist abused women and children.

II. DEMOGRAPHICS OF FEMALE IMMIGRATION

A. Immigration Statistics

Approximately "26.3 million immigrants now live in the United States, the largest number ever recorded in the nation's history, and a 33 percent increase over 1990."²⁴ In the last decade alone, over ten million immigrants, both legal and undocumented, fled from government oppression, economic turmoil and/or high unemployment to the United States; others came to the United States to reunite with family members.²⁵

It is projected that immigrants as a whole will become a larger share of the country's total population over the next fifty years.²⁶ Currently, eighteen percent of the United States population are either foreign-born or the first generation of their family born in the

24. Steven A. Camarota, *Immigrants in the United States—1998, A Snapshot of America's Foreign-born Population*, BACKGROUNDER (Ctr. for Immigration Studies), Jan., 1999, at 1. It is important to note that, although immigrant numbers are at their peak, these numbers do not constitute the highest percentage of the total population in U.S. history. Immigrants account for 9.7% of the total U.S. population today, whereas in 1890 they constituted 14.8%. Michael Fix et al., *Immigration Trends and Integration Policy, Building Immigrant Opportunities: Address at the National Immigration Law Center* (Feb. 27, 2000) (transcript and charts on file with author). Today's ratio of immigrants is similar to that of the early 1940s. *Id.*

25. Katherine M. Donato, *Understanding U.S. Immigration: Why Some Countries Send Women and Others Send Men*, in *SEEKING COMMON GROUND: MULTIDISCIPLINARY STUDIES OF IMMIGRANT WOMEN IN THE UNITED STATES* 159, 164-66 (Donna Gabaccia ed., 1992); see also Karen A. Woodrow-LaField, *Labor Migration, Family Integration, and the New America*, in *ILLEGAL IMMIGRATION IN AMERICA: A REFERENCE HANDBOOK* 2, 16-19 (David W. Haines & Karen E. Rosenblum eds., 1999) (providing an overview of immigration theories).

26. MICHAEL FIX & JEFFREY S. PASSEL, *THE URBAN INST., IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT* 39-40 (1994), at <http://www.urban.org/pubs/immig/immig.pdf>.

United States.²⁷ It is expected that twenty-seven percent of Americans will either be foreign-born immigrants or first generation Americans by 2040.²⁸ Over eighty-five percent of the foreign-born population in the United States are in the country legally; one-third are naturalized citizens and nearly half are legal permanent residents.²⁹ Almost one-third of the 8.8 million legal permanent residents were formerly present in the United States as undocumented immigrants.³⁰

Unlike previous periods of immigration, the majority of modern immigrants come from countries in Asia, Latin America and the Caribbean.³¹ Approximately "77.5 percent of the foreign-born [come] from these areas. Africa and Europe make up a relatively small portion of the immigrant population, accounting for only one in five immigrants."³² This is in contrast to the 1960s, when seven out of the top ten countries of origin were European.³³ In the 1990s, five of the top ten countries of origin were Asian and one was Middle Eastern.³⁴ The only European country on the list was the Soviet Union, principally because of its refugee flow.³⁵ Mexico was the only country to remain on the top ten list from the 1960s to the 1990s.³⁶

As the immigrant population has grown larger and more diverse in recent years, the gender demographic of immigrants has shifted from largely male to largely female.³⁷ Women and children have constituted approximately two-thirds of the legal immigration into the United States since the 1930s.³⁸ The number of undocumented women has also steadily increased since the mid-1980s.³⁹

27. *Id.* at 40.

28. *Id.*

29. *Id.* at 21. The actual number of foreign-born who have become naturalized citizens is estimated to be about 6.5 million. *Id.*

30. *Id.*

31. Camarota, *supra* note 24, at 4. In 1998, the top ten countries from which legal immigrants left for the United States were: Mexico (131,575), China (36,884), India (36,482), Philippines (34,466), Dominican Republic (20,387), Vietnam (17,649), Cuba (17,375), Jamaica (15,146), El Salvador (14,590) and Korea (14,268). *Fast Facts on Today's Newcomers* (Nat'l Immigration Forum, Washington, D.C.), Jan. 2000.

32. Camarota, *supra* note 24, at 4-5.

33. FIX & PASSEL, *supra* note 26, at 25 tbl.3.

34. *Id.*

35. *Id.* at 25.

36. *Id.* at 25 tbl.3.

37. Houstoun et al., *supra* note 2, at 909.

38. 1997 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 24 (1997).

39. See, e.g., PIERRETTE HONDAGNEU-SOTELO, GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION 26 (1994) (identifying why the number of undocumented Mexican women has been increasing in the United States).

Combining both legal and undocumented immigration statistics reveals that more than half of all U.S. immigrants are women.⁴⁰

B. Economic Status of Immigrants

The socioeconomic status of immigrants improves dramatically over time.⁴¹ Immigrants who have been in the United States for at least ten years increasingly resemble natives in socioeconomic status.⁴² Lawful permanent residents, in recent years, have exceeded the average household incomes of native citizens.⁴³ In 1997, the average household income of natives was \$50,100;⁴⁴ the average household income for legal permanent residents who entered before 1988 was \$51,200.⁴⁵ However, immigrants who arrived in the United States after 1988 earned significantly less: the average annual income for legal permanent residents who entered after 1988 was \$44,300 in 1997.⁴⁶

Since 1980, immigration is not only diverse with regard to the countries of origin of the immigrants, but also with regard to their levels of education.⁴⁷ Twenty-eight percent of legal immigrant men and twenty-three percent of legal immigrant women hold college degrees.⁴⁸ In contrast, forty-one percent of all recent immigrants never completed high school.⁴⁹ Both legal and undocumented immigrants with lower educational levels and less English proficiency tend to enter occupations with a high immigrant concentration and those that require less education and English proficiency.⁵⁰ Thus, the two largest occupational categories for these immigrants are laborers and service workers; however, only the service jobs are typically open to women.⁵¹ Forty percent of all foreign-born persons in the United States work in these two occupational groups, compared with thirty percent of native-born persons.⁵²

40. Hondagneu-Sotelo, *supra* note 2, at 565; Houstoun, *supra* note 2, at 911 tbl.1.

41. FIX & PASSEL, *supra* note 26, at 39.

42. *Id.*

43. *Id.* at 36 (noting that immigrants who entered the United States prior to 1980 have a household income ten percent greater than native households).

44. Fix et al., *supra* note 24, at 5 fig.8.

45. *Id.*

46. *Id.*

47. Camarota, *supra* note 24, at 7.

48. Joseph R. Meisenheimer, *How Do Immigrants Fare in the U.S. Labor Market?*, MONTHLY LAB. REV., Dec. 1992, at 3, 5.

49. FIX & PASSEL, *supra* note 26, at 33 fig.11.

50. *Id.* at 49.

51. *Id.* at 36; Meisenheimer, *supra* note 48, at 14-15 tbl.9.

52. FIX & PASSEL, *supra* note 26, at 36.

It is not surprising that the poverty rate for immigrants is fifty percent higher than for natives.⁵³ This can be attributed to the fact that the majority of immigrants presently living in the United States arrived during the 1980s and 1990s and have low levels of education and English proficiency. Gender, racial and ethnic biases also limit work opportunities for many women—who presently comprise the majority of immigrants to the United States.

Since a child's standard of living is a function of his parents' income it is not unreasonable to view poverty among native-born children of immigrants as attributable to their immigrant parents. . . .

Of the 31 million natives living in poverty, 2.5 million (8 percent) are the U.S. born children of immigrant mothers. . . . [I]mmigrants and their U.S.-born children account for 22 percent of the 36.2 million people living in poverty in the United States and 24 percent of the children in poverty.⁵⁴

The poverty rate for immigrants would be even larger if the percentage of immigrants living in poverty included their children who were born in the United States.⁵⁵ Furthermore, in 1995, thirty-nine percent of all foreign-born children of immigrants lived in poverty in the United States.⁵⁶

C. Immigrants Use of Public Benefits

Despite the high percentage of immigrant women and children living in poverty, most immigrants⁵⁷ do not use "welfare" as conventionally defined.⁵⁸ Immigrants overall have only a slightly higher welfare usage rate than natives, and welfare usage is

53. Camarota, *supra* note 24, at 7 (reporting that immigrants account for one in seven persons living in poverty or fifteen percent).

54. *Id.* at 7-8.

55. *Id.*

56. Fix et al., *supra* note 24, at 6 fig.9.

57. For example, in 1993, only six percent of immigrants used welfare programs. Michael Fix et al., *Facts About Immigrants' Use of Welfare*, URBAN INST., at <http://www.urbanorg/immig/borjas.htm> (last updated Apr. 1, 1996). Examining types of welfare programs, a survey conducted among Latino immigrants in Washington, D.C. found extremely low welfare use rates. Dutton et al., *supra* note 5, at 269 tbl.7.

58. *Id.* "Welfare" usually includes such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) or General Assistance (GA). *Id.* Temporary Aid to Needy Families (TANF) subsequently replaced AFDC; TANF limits the overall amount of aid a family may receive. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §§ 401-419, 42 U.S.C. §§ 601-616 (Supp. II 1996).

concentrated mostly among refugees and the elderly.⁵⁹ Examining welfare use by the remaining immigrant population reveals a per capita use lower than that by native-born citizens.⁶⁰ Welfare reform in 1996 did not change welfare use among elderly immigrants or naturalized citizens;⁶¹ however, although non-citizen headed households represented only nine percent of all households receiving benefits in 1994, the 1996 reforms resulted in a twenty-three percent drop in welfare use among that group.⁶²

III. INTERSECTIONALITY THEORY⁶³

Multiple barriers hamper immigrant women's ability to achieve economic and social stability in the United States and, if necessary, to escape domestic violence.⁶⁴ Many battered immigrant women balance triple identities: being new immigrants, victims of domestic violence and women of color.⁶⁵ These multiple identities converge and heighten the massive social barriers that they must overcome to end the violence in their lives and the lives of their children.⁶⁶ The ability of immigrant women to achieve economic and social stability is directly related to their ability to balance the gender expectations of their cultures and communities with their attempts to adapt to a new country.⁶⁷

As women, immigrant women (unlike immigrant men) have to cope with gender boundaries that define them as subordinate,

59. FIX & PASSEL, *supra* note 26, at 63-65.

60. Rebecca L. Clark, *The Costs of Providing Public Assistance and Education to Immigrants* tbl.2 (rev. Aug. 1994) (unpublished manuscript) (on file with author).

61. MICHAEL FIX & JEFFREY S. PASSEL, *THE URBAN INST., TRENDS IN NONCITIZENS' AND CITIZENS' USE OF PUBLIC BENEFITS FOLLOWING WELFARE REFORM: 1994-1997*, at 3 (Mar. 1999), at <http://www.urban.org/immig/trends.html>.

62. *Id.*

63. The Intersectional theory examines how multiple identities compound discrimination. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 n.3 (1991) (discussing the intersectional theory and listing sources that explore the intersection of race and gender); see also Leeandra Zarnow, *Access: The Policy Story of How Advocates Persuaded Legislators to Extend Public Benefits Eligibility to Battered Immigrant Women During a Time of Anti-Immigrant and Anti-Welfare Sentiment* 6 (1999) (unpublished research paper, Picker Semester-in-Washington) (on file with author) (exploring the implications of multiple identity discrimination for battered immigrant women).

64. Zarnow, *supra* note 63, at 6.

65. Interview with Nawal Ammar, Ph.D., Associate Dean, Kent State Univ. (Dec. 15, 2000).

66. See generally Dutton et al., *supra* note 5 (describing the difficulties faced by battered immigrant Latina women).

67. *Id.* at 249-56, 278-79.

based on the patriarchal norms and values of both the immigrant and mainstream cultures. As an ethnic immigrant, women (unlike women from the dominant American culture) have to cope with semipermeable boundaries that allow them, as subordinate group members, to partially internalize the norms and values of the dominant culture while being excluded by the dominant group from total membership in the dominant culture.⁶⁸

The inclination to separate out and rank oppression is great. Instead of viewing the barriers associated with being female, being a minority and being an immigrant as separate, unrelated entities, it is more productive to understand how these factors overlap to create the unique dynamics that battered immigrant women experience. Kimberle Crenshaw suggests that "the location of women of color at the intersection of race and gender makes [their] actual experience of domestic violence . . . qualitatively different than that of white women."⁶⁹ Similarly, the experience of battered immigrant women is different than that of both the male immigrant population and that of native-born women of color.⁷⁰

Each facet of a battered immigrant woman's identity hinders her ability to access services, obtain legal protection and acquire the public benefits needed to overcome domestic violence. The intersectionality theory suggests that battered immigrant women's location at the intersection of three identities—gender, race and immigration status—gives rise to, and calls for, collaborative and combined efforts of support and advocacy from both battered women's advocates and immigrant rights' advocates; without their united efforts this vulnerable population cannot be fully served.

IV. GENDER ROLES, CULTURAL ROLES AND DOMESTIC VIOLENCE

Immigrant, welfare and labor policies in the United States historically marginalize female immigrants.⁷¹ The immigration of

68. Margaret Abraham, *Ethnicity, Gender, and Marital Violence: South Asian Women's Organizations in the United States*, 9 GENDER & SOC. 450, 453 (1995); see also Dutton et al., *supra* note 5, at 255-56 ("The attitudes regarding violence toward women embedded in the battered immigrant's cultural, ethnic, and social class are intertwined with the attitudes she encounters in the host society.").

69. Crenshaw, *supra* note 63, at 1245.

70. Sujata Barai, *Negotiating the Intersection: How and Why Provisions for Battered Immigrant Women Have Become a Part of U.S. Immigration Policy 2* (1998) (unpublished B.A. thesis, Woodrow Wilson School of Public and International Affairs, Princeton University) (on file with author).

71. See generally Chris Hogeland, *Immigrant Women in U.S. History*, in DOMESTIC

women into the United States has been referred to as "chain immigration," that is, women emigrating to join husbands already living in the United States.⁷² From some countries, women immigrating today are the first family members to emigrate to the United States and arrange for family members to follow later.⁷³

For a great many immigrant women, however, "immigration is intimately connected with their dependant status as wives and mothers,"⁷⁴ which is only heightened by moving to a foreign country.⁷⁵ Men generally emigrate in search of better employment and education opportunities, while women tend to emigrate because of family ties.⁷⁶ Immigrant women, as wives and mothers, are often seen as the protectors of culture and assigned responsibility for maintaining the customs and mannerism of their families.⁷⁷ Different cultures have varying attitudes with respect to a woman's place in the family and society.⁷⁸

Western culture encourages and, at times, expects a woman's independence and equality, but other cultures may demand female obedience and subservience.⁷⁹ "Family disputes—between husbands and wives or parents and children—occur when wives and children reject old-country (mostly male) authority and attempt to exercise rights and freedoms practiced by their counterparts in the new country."⁸⁰ Cultural clashes and stressful conditions can increase the rate of intimate violence and can also have a significant effect on how a battered woman responds to the violence.⁸¹ Cultural values that dictate gender-specific roles and behavior may require submission to male authority.⁸² It is wrong, however, to assume that cultural practices only foster violence.⁸³

VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 33 (Deeana L. Jang et al. eds., 2d ed. 1997) (reviewing how U.S. immigrant policy has historically addressed women).

72. *Id.* at 35.

73. *See* Donato, *supra* note 25, at 180.

74. Erez, *supra* note 3, at 28.

75. VIOLENCE AGAINST WOMEN: LAW AND LITIGATION, *supra* note 10, § 21:1.

76. Erez, *supra* note 3, at 28.

77. *Id.*

78. *Id.* at 30.

79. Leslye E. Orloff & Nancy Kelly, *A Look at the Violence Against Women Act and Gender-Related Political Asylum*, 1 VIOLENCE AGAINST WOMEN 380, 393-95 (1995).

80. Erez, *supra* note 3, at 38.

81. *See id.* at 29-30.

82. *Id.* at 28.

83. MARIA RAMOS, FAMILY VIOLENCE PREVENTION FUND, CULTURAL CONSIDERATION IN DOMESTIC VIOLENCE CASES: A NATIONAL JUDGES BENCHBOOK § 139 (Michael W. Runner ed., 1999).

V. HISTORY AND PURPOSE OF THE VIOLENCE AGAINST WOMEN ACT AND VAWA IMMIGRATION PROVISIONS

In the United States, beginning in the late 1960s and early 1970s, the women's movement fought to reconceptualize domestic violence as a public issue rather than a private family problem. In 1994, Congress enacted the Violence Against Women Act (VAWA)⁸⁴ to provide greater federal criminal and civil rights remedies for victims of gender-motivated and domestic violence.⁸⁵ Congress acted in part because of overwhelming evidence that domestic violence poses a serious danger to the health and welfare of women across the country.⁸⁶

Domestic violence cuts across socioeconomic levels, education backgrounds, racial and ethnic lines and religious groups.⁸⁷ Domestic violence is not limited to physical abuse; it extends to coercion, threats, intimidation, isolation and emotional, sexual or economic abuse.⁸⁸

Prior to the enactment of VAWA, Congress viewed federalization of domestic violence as "an essential step in forging a national consensus that our society will not tolerate violence against women"⁸⁹ and "the terror that it spawns."⁹⁰ Domestic violence threatens the lives, safety and welfare of millions of women and children in the United States every year.⁹¹

Congress found that spouse abuse is serious, chronic and national in scope.⁹² Congressional reports note that "in 1991, at least 21,000 domestic crimes were reported to the police every week,"⁹³ and that the incidence of unreported domestic crimes was estimated to be more than three times that of reported crimes.⁹⁴ Three-fourths of all physical assaults, one-half of all stalking and

84. Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified in scattered sections of 8 U.S.C. & 18 U.S.C.).

85. See S. REP. NO. 103-138, at 37-42 (1993).

86. E.g., STAFF OF THE SENATE COMM. ON THE JUDICIARY, 102D CONG., VIOLENCE AGAINST WOMEN, A WEEK IN THE LIFE OF AMERICA (Comm. Print 1992) III [hereinafter A WEEK IN THE LIFE].

87. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 807 (1993).

88. RICHARD J. GELLES, INTIMATE VIOLENCE IN FAMILIES 12-16 (3d ed. 1997).

89. S. REP. NO. 103-138, at 41.

90. A WEEK IN THE LIFE, *supra* note 86, at 26.

91. AM. PSYCHOLOGICAL ASS'N, VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 10-11 (1996).

92. S. REP. NO. 101-545, at 37 (1990).

93. S. REP. NO. 103-138, at 37.

94. *Id.* at 30.

one-fifth of all rapes perpetrated against women by intimate partners are not reported to the police.⁹⁵ According to congressional reports, three to four million women in the United States are abused by their husbands or domestic partners each year.⁹⁶ Surgeons General have warned repeatedly that family violence poses the single largest threat to adult women.⁹⁷ Over one million women each year seek medical attention for "injuries sustained by their husbands or other partners."⁹⁸ One-fifth of all reported aggravated assaults involving bodily injury occurred in domestic relationships⁹⁹ and domestic violence against female victims results in injury fifty percent of the time.¹⁰⁰ The U.S. Department of Justice has reported that more than one in three women who seek care in emergency rooms for violence-related injuries are victims of domestic violence.¹⁰¹ If reported, approximately one-third of domestic attacks were classified as felony rape, robbery or aggravated assault.¹⁰² Of the remaining two-thirds, which were simple assaults, almost one-half resulted in serious bodily injury.¹⁰³ "As many as 20 percent of hospital emergency room cases are related to wife beating."¹⁰⁴ Family violence accounts for a significant number of murders: one-third of all women who are murdered die at the hands of husbands or boyfriends.¹⁰⁵

Congress also recognized that the immigration laws were part of a larger failure to confront domestic violence. The failure of laws to meet the individual needs of immigrant women derives from the unequal way in which immigration laws were structured.¹⁰⁶ Historically, Congress constructed laws under the concept that

95. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, at v (2000).

96. S. REP. NO. 101-545, at 30; TJADEN & THOENNES, *supra* note 95, at iii ("4.8 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually . . .").

97. S. REP. NO. 101-545, at 37.

98. *Id.*

99. A WEEK IN THE LIFE, *supra* note 86, at 32.

100. CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 6 (2000).

101. *Health Care Response to Domestic Violence Fact Sheet*, FAMILY VIOLENCE PREVENTION FUND, at <http://www.fvpf.org/health/facts.html> (last visited May 16, 2001).

102. S. REP. NO. 103-138, at 41 (1993).

103. *Id.*; see *infra* Part VII.C.

104. S. REP. NO. 103-138, at 37.

105. *Id.*; RENNISON & WELCHANS, *supra* note 100, at 1.

106. See William R. Tamayo & Gail Pendleton, *The Evolution of United States Immigration Policy*, in DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 23, 24 (Deeana L. Jang et al. eds., 1997).

husbands controlled their wives.¹⁰⁷ Immigration laws in the 1920s gave male citizens and lawful permanent residents control over their wives' immigration status.¹⁰⁸ In 1951, Congress acknowledged that these immigration laws codified the view "that the husband is the head of the household and the woman's nationality and residence follow that of her husband."¹⁰⁹ The House Committee on the Judiciary found that domestic battery problems are "terribly exacerbated in marriages where one spouse is not a citizen and the non-citizens' legal status depends on his or her marriage to the abuser"¹¹⁰ because the citizen or legal permanent resident retains full and complete control over the alien spouse's ability to gain permanent legal status.¹¹¹

Newly published research confirms that an abuser's control over a battered immigrant's immigration status and threats of deportation are powerful tools that lock battered immigrants in abusive relationships, cut them off from help and enhance the lethality of the violence they experience. A survey conducted among Latina immigrants in the Washington, D.C. area found that 49.3% reported physical abuse by an intimate partner, 11.4% reported sexual abuse and 42.1% reported severe physical or sexual abuse.¹¹² For undocumented Latinas married to U.S. citizens or lawful permanent residents, the battering rate rises to 67%.¹¹³ Despite the fact that 50.8% of the battered immigrants in this survey were married to citizens or lawful permanent residents who could file immigration papers for them, 72.3% never file immigration papers for their abused spouses and the 27.7% who do file hold their spouses in the marriage for almost four years before filing the necessary immigration papers for their spouses to obtain lawful permanent immigration status.¹¹⁴ Furthermore, the same research found that immigration-related abuse, including threats of deporta-

107. Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacies of Coverture*, 28 SAN DIEGO L. REV. 593, 596-97 (1991).

108. Tamayo & Pendleton, *supra* note 106, at 24; *see also* Calvo, *supra* note 107, at 601-03 (describing the status of women in immigration law in the 1920s).

109. S. REP. NO. 1515, at 414 (1951). The next year, Congress changed the law to allow female U.S. citizens and lawful permanent residents to confer legal immigration status on their spouses and children for the first time. Calvo, *supra* note 107, at 604. Congress made the immigration law gender-neutral by changing the word "wife" to "spouse." *Id.*

110. H.R. REP. NO. 103-395, at 26 (1993).

111. *Id.*

112. Hass et al., *supra* note 4, at 101, 103.

113. Data from Domestic Violence and Needs Assessment Survey Among Immigrant Latina Women conducted by Ayuda between 1992 and 1995 (unpublished survey, on file with author).

114. Dutton et al., *supra* note 5, at 1-53.

tion against a spouse or intimate partner, almost always exists only when physical or sexual abuse is also present.¹¹⁵ If immigration-related abuse appears in relationships that do not yet include physical or sexual abuse, this factor may predict that the violence in the relationship is likely to escalate.¹¹⁶

This situation may deter battered immigrant spouses from taking action to protect themselves, such as filing for civil protection orders, filing criminal charges or even merely calling the police because of the threat or fear of deportation.¹¹⁷ As a result, many immigrant women lived trapped and isolated in violent homes, afraid to turn to anyone for help. Battered immigrant women fear continued abuse if they stay with their abusers, and deportation if they attempt to leave.¹¹⁸ Battered immigrant women who must support children and who suffer from low income, unemployment or job instability, low employment skills and limited social opportunities are vulnerable to remaining in violent relationships due to their economic dependence on the abusive partner.¹¹⁹ When immigration laws or economic dependence lock battered immigrant women in abusive marriages, they may feel trapped and forced to remain with their children in an abusive home.

The impact of domestic abuse on children was a major concern to Congress. Recent research suggests that children under the age of twelve are present in forty-three percent of abusive households.¹²⁰ Children of batterers are the victims of direct and indirect domestic violence.¹²¹ A child may be the direct victim of violence such as in the sexual assault of a child by a parent.¹²² Unchecked domestic violence is a significant factor contributing to child abuse.¹²³ A child may also be an indirect victim of violence between parents by witnessing one spouse abuse the other.¹²⁴ An estimated three to ten

115. Hass et al., *supra* note 4, at 106-09.

116. *Id.* at 109.

117. *Id.*

118. *Id.*; see also VIOLENCE AGAINST WOMEN: LAW AND LITIGATION, *supra* note 10, § 21:4 ("The U.S. citizen or lawful permanent resident abuser's ability to control his spouse's and children's immigration status through deportation undermined law enforcement efforts to prosecute for domestic violence crimes and the justice system's efforts to protect victims from further abuse.").

119. FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 137-38 (1997); Hogeland, *supra* note 71, at 35.

120. RENNISON & WELCHANS, *supra* note 100, at 6.

121. A WEEK IN THE LIFE, *supra* note 86, at 7-8.

122. *Id.*

123. GELLES, *supra* note 88, at 86.

124. See MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY 97-104 (1981).

million children witness domestic abuse each year, which emotionally and psychologically harms them and continues the cycle of violence.¹²⁵ Children who witness and experience violence in the home exhibit a greater likelihood of aggressive and antisocial behavior, more traumatic stress, depression, anxiety and slower cognitive development than children who grow up in non-violent homes.¹²⁶ VAWA 1994 contained two provisions designed to help children living in abusive homes. First, Congress recognized that an abuser's control of the immigration status of the parent of the abused child would inhibit the reporting of child abuse and the removal of the child from the abuser.¹²⁷ To address this issue in addition to offering VAWA immigration protection to abused immigrant children, Congress extended protection to the immigrant parents of child abuse victims. Second, Congress explicitly authorized battered immigrant mothers to include their undocumented children as derivative applicants in the mother's VAWA self-petition.

In 1996, and again in 2000, Congress passed laws that improved upon VAWA's 1994 immigration protections. In 1996, Congress amended VAWA's immigration provisions to grant confidentiality protections to VAWA proceedings that allowed battered immigrants to file for VAWA relief without their abuser's knowledge and attain lawful immigrant status without their abuser's cooperation.¹²⁸ VAWA 2000 sought to improve upon VAWA's 1994 protections for battered immigrants by removing stringent evidentiary requirements and broadening the categories of battered immigrants who could qualify for VAWA's protections.¹²⁹ VAWA's original extreme hardship requirement would no longer apply to VAWA self-petitioners thereby making it easier for battered immigrants applying for relief pro se.¹³⁰ Abused spouses and children of members of the U.S. military and other U.S. government employees were granted access to VAWA's immigration provisions even if the abuse occurred abroad.¹³¹ Additionally,

125. GELLES, *supra* note 88, at 8-9.

126. *Domestic Violence: National Directory of Public Services*, CTR. ON CRIME, COMMUNITIES & CULTURE, at <http://www.soros.org/crime> (last updated Feb. 26, 2001).

127. H.R. REP. NO. 103-395, at 38 (1993).

128. Illegal Immigrant Reform & Immigrant Responsibility Act of 1996, § 552, 8 U.S.C. § 1631(f) (Supp. II 1996).

129. The Battered Immigrant Women Protection Act of 2000, Section-by-Section Summary, 146 CONG. REC. S10195-96 (daily ed. Oct. 11, 2000).

130. The Violence Against Women Act of 2000, Pub. L. No. 106-386, §§ 1503(b) & (c) (amending 8 U.S.C. 1154(a)(1)(A)(iii) & (iv) (Supp. II 1996) & 8 U.S.C. 1154(a)(1)(B)(ii) & (iii) (Supp. II 1996)).

131. *Id.*; see also *infra* Part IX.A (discussing public charge ineligibility and its effect on

VAWA applicants who use public benefits were offered some protection from being denied lawful permanent residency due to being designated as a public charge.¹³²

VAWA provides two remedies designed to offer enhanced legal protection for battered immigrant spouses and children.¹³³ First, VAWA allows abused spouses and children of citizens or lawful permanent residents to file self-petitions for lawful permanent residency.¹³⁴ Spouses of U.S. citizens and lawful permanent residents who may not have been abused themselves but whose children have been abused may also file VAWA self-petitions for themselves, as well as their abused children.¹³⁵ Under VAWA, battered immigrants can file their own immigration papers without relying on their abusive spouses or parents to initiate or follow through with the immigration petitioning process.¹³⁶ Second, abused spouses and abused children of U.S. citizen spouses or parents and non-abusive parents of children abused by the child's other parent who is a U.S. citizen or lawful permanent resident who have been in the United States for three years can, if placed in removal proceedings, apply for a VAWA cancellation of removal.¹³⁷ After filing a VAWA petition, a battered immigrant must prove several factors, including battery or extreme cruelty, the validity of the marriage or parent/child relationship, good moral character and the immigration status of the abusive spouse or parent.¹³⁸ Congress designed these remedies to enhance the safety of battered immigrant VAWA applicants and to encourage them to file for VAWA protection regardless of whether they have left their abusers.

VI. IMMIGRANTS AND THE UNITED STATES WELFARE SYSTEM

The welfare safety net in the United States helps many battered women leave violent relationships by providing economic

battered immigrants).

132. The Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1505(f) (amending 8 U.S.C. § 1641).

133. Violence Against Women Act of 1994, §§ 40701-40703, 8 U.S.C. §§ 1154(a)(1) & 1254(a) (Supp. II 1996); *see also* VIOLENCE AGAINST WOMEN: LAW & LITIGATION, *supra* note 10, § 21:4 (discussing the legislative history of VAWA).

134. 8 U.S.C. § 1154(a)(1).

135. *Id.*

136. *Id.*

137. *Id.* § 1254(a). Originally, VAWA provided for a suspension of deportation.

138. *Id.* Prior to the enactment of VAWA 2000, self-petitioners also had to prove that their deportation would cause extreme hardship to themselves or their children. 8 U.S.C. § 1154(A)(1)(a)(iii)(II). After VAWA 2000, only applicants for VAWA cancellation of removal must prove extreme hardship. 8 U.S.C. § 1229(b)(2)(E).

support to battered women. The history of the United States' relationship with its immigrant population has been full of twists and turns. Immigrants' access to welfare programs has changed throughout history as American immigration laws, foreign policy and economic interests have changed.¹³⁹ "The United States government has admitted immigrants into the country to provide asylum to aliens who face persecution in their native land, to reunite foreign relatives of U.S. citizens or lawful permanent residents . . . or to create a less expensive labor force."¹⁴⁰

Unfortunately, economic depression and racial intolerance have often caused U.S. citizens to wrongly blame immigrants for the country's economic problems;¹⁴¹ this led to the passage of many anti-immigration statutes.¹⁴² These anti-immigrant policies, however, are based on inaccurate and incomplete information about immigrants. With the exception of refugees, non-elderly immigrants use public benefits at lower rates than native-born U.S. citizens despite higher poverty rates.¹⁴³ The average immigrant will pay more in taxes over his/her lifetime than he/she will receive in local, state and federal benefits, belying the myth that immigrants gratuitously use public benefits.¹⁴⁴ In fact, research conducted among battered immigrants—sixty percent of whom earned under \$9,000 per year prior to 1996 when there were considerably fewer restrictions on immigrant access to benefits—found that few immigrant women eligible to receive public benefits for themselves and their children actually applied for benefits.¹⁴⁵

In addition, immigrants have played a crucial role in this country's economic prosperity.¹⁴⁶ Immigrant labor has contributed

139. VIOLENCE AGAINST WOMEN: LAW AND LITIGATION, *supra* note 10, § 21:1.

140. *Id.*

141. Barry Edmonston et al., *Perception and Estimates of Undocumented Migration to the United States*, in UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S, at 11, 12-15 (Frank D. Bean et al. eds., 1990).

142. *Id.* For example, in November 1994, California voters passed Proposition 187 to prevent undocumented immigrants from receiving health care and other important social services. 1994 Cal. Legis. Serv. Prop. 187 (West). However, in 1998, a federal court held much of Proposition 187 unconstitutional because it conflicted with federal law; its provisions were blocked pending an appeal. *League of United Am. Citizens v. Wilson*, 908 F. Supp. 755, 768-87 (C.D. Cal. 1995). In May 1999, after a vigorous opposition campaign, the state dropped the appeal and the provisions of Proposition 187 were voided. Exec. Order D-6-99 (May 4, 1999), at <http://www/governor.ca.gov>; Karen Judd, *Opposition Primer: Immigration* (ProChoice Resources Ctr., Port Chester, N.Y.), 1999, at 7-9.

143. FTX & PASSEL, *supra* note 26, at 63.

144. *Id.* at 57-58.

145. Dutton et al., *supra* note 5, at 296.

146. Doris Y. Ng, *From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women* (Equal Rights Advocates, S.F., Cal.), Apr. 1999, at 2.

to the success of United States industry in international markets and helped retain¹⁴⁷ "industries that otherwise would have moved overseas."¹⁴⁸ Immigrants also create a substantial number of jobs through their entrepreneurial activities and have a higher rate of self-employment than the native-born American population.¹⁴⁹

Despite these facts, immigrants have often been victims of discrimination based on race, ethnicity, religion and immigration status.¹⁵⁰ Immigrant women suffer the extra burden of gender discrimination and are often ensnared in a web of immigration, family and labor laws that do not reflect their needs.¹⁵¹

VII. WHY BATTERED WOMEN AND IMMIGRANT WOMEN NEED PUBLIC BENEFITS

To successfully end an abusive relationship, battered women need to be able to establish a home separate from their abusers. They also must be able to support themselves. The services that battered women typically require during their transition to economic independence include the basic human necessities of shelter, food, medical care and an income.

A. *Locating Safe Housing*

Battered women escaping violence must be able to locate safe, secure housing apart from their abusers where they can live with their children.¹⁵² It is always preferable to remove the abuser from the current family home when it is safe to do so.¹⁵³ All states' protection order statutes can evict abusers from the homes they share with battered women and their children.¹⁵⁴ By evicting their abusers, battered women and their children suffer the least amount of disruption to their lives. When abusers are removed from the home, in most states, they may be ordered to pay for a portion of the rent on the dwelling and/or child support to financially assist the battered women.

147. Tamayo & Pendleton, *supra* note 106, at 23.

148. See Ng, *supra* note 146, at 2.

149. *Id.*

150. Judd, *supra* note 142, at 7-19.

151. See VIOLENCE AGAINST WOMEN: LAW AND LITIGATION, *supra* note 10, §§ 21:1-21:3.

152. Judy Berman & Jerel McCrary, *A House Divided: Policies on Housing, Domestic Violence Must Undercut Each Other*, DAILY J. (S.F.), Jan. 4, 1999.

153. Klein & Orloff, *supra* note 87, at 931-36.

154. *Id.* at 931.

Battered women who cannot locate permanent housing apart from their abusers are often forced to return.¹⁵⁵ Although the number of shelters serving victims of domestic violence has increased nationwide, the space and resources that shelters can provide is often very limited.¹⁵⁶ For example, "in Boston, for every two women and children that have access to shelter, there are five battered women and eight children turned away."¹⁵⁷ When battered women must abandon the family home for safety reasons, access to shelter, then to transitional housing and, eventually, federally funded public or assisted housing is crucial. As a matter of federal law, battered immigrant women, including undocumented immigrants, are guaranteed the same access to shelters and transitional housing for up to two years as U.S. citizens.¹⁵⁸

B. Food and Clothing

Some battered women need to rely on food assistance programs to feed themselves and their children temporarily as they flee violence.¹⁵⁹ In Alabama, for example, it is estimated that fifty percent of the women in shelters have absolutely no income, and ninety percent of the women in shelters are living at the poverty line.¹⁶⁰ One-half of all married women with children do not work outside the home and, therefore, have no separate income.¹⁶¹ Even those who are employed full-time earn, on average, only two-thirds the income of their male counterparts.¹⁶² For battered women, access to food stamps, the Women Infant Children Program (WIC), free school meals and other state and local food banks is essential to their success and survival.¹⁶³

155. Klein & Orloff, *supra* note 87, at 993-1002.

156. NAT'L CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, STATISTICS PACKET 209 (3d ed. 1997) (citation omitted).

157. *Id.*

158. Memorandum from Andrew Cuomo, Jr., Secretary, U.S. Dep't of Housing and Urban Development, to HUD Funds Recipients 2 (Jan. 19, 2001) (on file with author) (clarifying that verification of immigrant status is not a prerequisite to obtaining HUD services) [hereinafter HUD Memorandum]; *Fact Sheet: Access to HHS-Funded Services for Immigrant Survivors for Domestic Violence* (Dep't of Health and Human Servs., Washington, D.C.), Jan. 19, 2001, at 1 [hereinafter HHS Fact Sheet].

159. HHS Fact Sheet, *supra* note 158, at 1.

160. Memorandum from Leslye Orloff, Ayuda, Inc., to Bonnie Campbell, Department of Justice (July 10, 1996) (on file with author).

161. Murray A. Straus & Christine Smith, *Family Patterns and Primary Prevention of Family Violence*, 8 TRENDS HEALTH CARE, L. & ETHICS 17, 20 (1993).

162. *Id.*

163. Orloff, *supra* note 17, at 238.

C. Obtaining Medical Care

The U.S. Department of Justice reported that thirty-seven percent of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse or significant other.¹⁶⁴ Battered women spend at least twice as much time in bed due to illness as women who have never been battered.¹⁶⁵ Battered women fleeing violence need access to a variety of medical assistance programs such as hospital emergency rooms, public health nurses and maternal and child health care services.¹⁶⁶ Welfare programs such as Medicaid assist battered women in obtaining much needed medical care. Continuing access to these programs is essential if battered women wish to leave their spouses.

D. Securing Work and Obtaining Economic Self-Sufficiency

Social isolation is a significant problem for many battered women¹⁶⁷ because most of them have limited connections to social or community groups.¹⁶⁸ To leave their abusers, battered women must overcome the feeling of isolation and dependence fostered by their batterers, who may have prevented them from contact with family, friends or life outside of the home.¹⁶⁹ In addition to the isolation common to battered women, social, linguistic, legal and economic obstacles often threaten to trap abused immigrant women and children in violent relationships.¹⁷⁰ The abuser might also have threatened to take "away money intended to support family

164. MICHAEL R. RAND, U.S. DEPT OF JUSTICE, VIOLENCE-RELATED INJURIES TREATED IN HOSPITAL EMERGENCY DEPARTMENTS (1997); see also Sandra Dayaratna, *Social Problems and Rising Health Care Costs in Pennsylvania*, HEALTH POL'Y INT'L SUMMARY (Pa. Blue Shield Inst., Camp Hill, Pa.), Nov. 1992, at 4 (reporting on medical consequences of domestic violence); Terri Randall, *Domestic Violence Intervention Calls for More Than Treating Injuries*, 264 JAMA 939, 939 (1990) ("Several studies have shown that 22% to 35% who visit emergency departments are there for symptoms related to ongoing abuse . . ."). A Report submitted to the Immigration Subcommittee on the Committee for the Judiciary of the U.S. House of Representatives found that between twenty and thirty percent of women seeking medical care are there as a result of domestic violence.

165. JEFFREY L. EDLESON & RICHARD M. TOLMAN, INTERVENTION FOR MEN WHO BATTER: AN ECOLOGICAL APPROACH 7 (1992).

166. Chris M. Sullivan et al., *After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 VIOLENCE & VICTIMS 267, 270-73 (1992).

167. *Id.*

168. *Id.*

169. *Id.*

170. Goldfarb, *supra* note 23, at 2.

members abroad.¹⁷¹ It is common for abusers to prevent their spouses from learning English.¹⁷² For immigrant women who cannot read or write their native language, coupled with their limited English skills, this poses insurmountable barriers to their ability to access services or maintain employment.¹⁷³ Economic hardship as a result of leaving an abusive relationship presents the most pressing concern for a battered immigrant woman. The level of economic resources available to an immigrant woman—or any abused woman—is the best indicator of whether she will permanently separate from her abuser.¹⁷⁴

E. Battered Immigrants' Ability to Flee an Abuser

Battered women in the United States typically make 2.4 to five attempts to leave their abusers before they ultimately succeed.¹⁷⁵ For victims of domestic abuse, both citizen and non-citizen, escaping a violent relationship is difficult and dangerous. Victims face the danger of violent recrimination from their batterers when attempting to flee.¹⁷⁶ Women attempting to leave violent spouses are twice as likely to become victims of homicide than abused women who continue to cohabitate with their abusers.¹⁷⁷ In addition, they will have to become economically self-sufficient.¹⁷⁸

Women's economic dependence upon their abusive partners is one of the *primary* reasons they remain in violent relationships.¹⁷⁹

171. *Id.*

172. *Id.*; see also DUTTON ET AL., *supra* note 6, at 8 ("[T]here is often a disparity between immigrant men and women in terms of command of the English language, with women having less access and opportunity to learn English than their partners.") (footnote omitted).

173. Hogeland, *supra* note 71, at 43-46.

174. Patricia Horn, *Beating Back the Revolution: Domestic Violence's Economic Toll on Women*, DOLLARS & SENSE (Dec. 1992), at 20-22.

175. Lewis Okun, *Termination or Resumption of Cohabitation in Women Battering Relationships: A Statistical Study*, in COPING WITH FAMILY VIOLENCE: RESEARCH AND POLICY PERSPECTIVES 107, 113 (Gerald T. Hotaling et al. eds., 1988).

176. Anne L. Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases*, in DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION 19, 24 (J. Agtuca et al. eds., 1992).

177. Margo Wilson & Martin Daly, *Spousal Homicide Risk and Estrangement*, 8 VIOLENCE & VICTIMS 3, 3 (1993).

178. See Sullivan et al., *supra* note 166, at 272 (reporting that "[w]omen who decided to end their relationships with their assailants" sought resources that would make them more self-sufficient).

179. See Debra S. Kalmuss & Murray A. Strauss, *Wife's Marital Dependency and Wife Abuse*, in PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8145 FAMILIES 369, 369-71 (Murray A. Strauss & Richard J. Gelles eds., 1990); see also Thomas L. Kirsch II, *Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers?*, 7 WM. & MARY J. WOMEN & L. 383, 392-93

Among battered immigrants this factor is an even more significant barrier. Like all battered women, battered immigrants report lack of access to money as the single largest barrier to leaving an abusive relationship.¹⁸⁰ Battered immigrants still living with their abusers report much higher economic barriers to leaving the abusive relationship than the general population of battered immigrant women report.¹⁸¹ The more severe the financial obstacles, the more likely it is that they will remain locked by economics in the abusive relationship.

Research on battered women's need for a welfare safety net as they struggle to end relationships plagued by domestic violence led Congress to grant welfare access to battered immigrants.¹⁸² Congress recognized that the primary reason that women will remain in or return to violent relationships is because they lack the economic resources to support themselves and their children.¹⁸³ When a battered woman leaves her abuser, there is a fifty percent chance that her standard of living will drop below the poverty line.¹⁸⁴ Economic dependence is a critical factor in determining the fate of a woman who leaves an abusive relationship. Women with greater economic dependence on their abusers experience a greater severity of abuse compared to employed women who are abused.¹⁸⁵

Lack of access to economic resources is an obstacle to women contemplating leaving a violent relationship. Abused women often lack access to the cash and bank accounts that their abusers control.¹⁸⁶ The abuser may also control child support or other marital assets. This is particularly true for battered immigrants

(2001) (reporting that prosecutors, judges and victim-witness advocates in Lake County, Indiana responded that financial dependence upon their abusers is the overwhelming reason for battered women's reluctance to cooperate in the prosecution of their batterers).

180. Dutton et al., *supra* note 5, at 295-96.

181. *Id.* at 276-79, 295. For instance, lack of money (67.1% vs. 40%), lack of employment (31.8% vs. 20%) and lack of a place to go if they leave (35.3% vs. 18.3%).

182. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 501, 8 U.S.C. § 1641 (Supp. II 1996) (amending the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 by adding § 431(c)). Congress slanted this relief to VAWA self-petitioners, VAWA cancellation of removal and suspension of deportation applicants and battered spouses and children whose abuser had filed for a family-based visa on their behalf.

183. Horn, *supra* note 174, at 20-21; *see also* Kirsch, *supra* note 179, at 392-93 ("I've had victims come in that have been honest and say, 'Look, he's paying the rent, I can't afford not to have him around.'").

184. *See* NAT'L CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, *supra* note 156, at 213-14 (citing statistics about the high rate of abused women in the homeless population).

185. Michael J. Strube & Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 45 J. MARRIAGE & FAM. 785, 790-92 (1983).

186. DUTTON ET AL., *supra* note 6, at 8-9.

whose spouses use their U.S. citizenship or lawful permanent residency status to control all financial matters.¹⁸⁷ Other means of achieving economic independence, such as work, pension benefits or loans, might be unavailable to women depending on their circumstances. Most importantly, in leaving a relationship, many women feel they are placing their children in financial jeopardy.¹⁸⁸ In another survey, more than half of the women stated that they stayed with their abusers because they did not feel they could support themselves and their children if they left.¹⁸⁹

Welfare provides economic stability during a period of transition and allows women to move more successfully toward self-sufficiency. Immigrant women who disclose violence may be shunned or ostracized by their communities, in which case those communities would also be unavailable as sources of support.¹⁹⁰ Welfare acts as a safety net in place of support from the abuser, friends, family and community institutions. Thus, welfare is critical to ending the cycle of violence.¹⁹¹

Finding employment is often the largest stumbling block for abused women.¹⁹² Abusive relationships can be detrimental to a woman's ability to be gainfully employed.¹⁹³ Beyond the common problem of harassment by abusers, domestic abuse can cause additional adverse consequences, such as chronic employee absenteeism, use of sick time and the impairment of employment opportunities.¹⁹⁴ Their inability to work, a direct consequence of injuries caused by domestic violence, undermines their ability to survive apart from their abusers, forcing them to return to their abusers.¹⁹⁵ A woman's partner might have prevented or sabotaged participation in education and training during the course of their relationship, putting her at an additional disadvantage in the job market.¹⁹⁶

The problem is more severe for immigrant VAWA applicants. For battered immigrant self-petitioners, the inability to legally work exacerbates the problems every battered woman has in

187. *Id.* at 7.

188. *Id.* at 6.

189. Sullivan et al., *supra* note 166, at 272.

190. RAMOS, *supra* note 83, at 1-33.

191. Orloff, *supra* note 17, at 238.

192. See generally Jody Raphael, *Prisoners of Abuse: Domestic Violence and Welfare Receipt*, WOMEN, WELFARE & ABUSE PROJECT (Taylor Inst., Chi., Ill.), Apr. 1996 (describing the difficulty that battered women have in transitioning to the working world).

193. *Id.* at 6.

194. *Id.* at 15.

195. See Sullivan et al., *supra* note 166, at 272-73.

196. Raphael, *supra* note 192, at 6.

becoming economically self-sufficient. VAWA self-petitioners are granted work authorization only after their self-petitions are approved.¹⁹⁷ From the time their VAWA self-petition has been filed, through approval, receipt of deferred action status, filing a separate application for, and receiving, work authorization can take upwards of four months.¹⁹⁸ During the time their application is pending, battered immigrants cannot legally work.¹⁹⁹ Many self-petitioners' only option for economic survival during this time may be reliance on the welfare safety net.²⁰⁰ Welfare gives battered women the opportunity for economic stability while transitioning toward self-sufficiency.²⁰¹ Battered immigrants can obtain access to public benefits once they have received a *prima facie* determination from INS.²⁰²

Battered immigrant women and children need to access social services and public benefits—as part of a package of relief that includes safe housing, food, clothes, medical care, work authorization and the ability to obtain lawful immigration status—to support themselves and their children during the difficult period of transition.²⁰³ Battered immigrants who are authorized to legally work may initially only be able to obtain part-time employment or low-wage employment and may need to partially rely on public benefits to support their children, particularly in cases in which their abusers are not paying court-ordered child support.²⁰⁴

Fear of being deported, or losing their children, is often enough to make battered immigrants endure years of painful abuse in the hope that they will survive.²⁰⁵ Once they garner the courage to leave their abusers, welfare provides a lifeline to a safe and secure future.²⁰⁶ Without access to the welfare safety net, the very

197. Memorandum from the Office of Programs, Department of Justice, to Regional Directors, District Directors, Officers-in-Charge, Service Center Directors 4-5 (May 6, 1997) (on file with author) [hereinafter Memorandum from the Office of Programs].

198. Telephone Interview with Michelle Morales, Immigration Attorney, Ayuda (Dec. 13, 2000).

199. Memorandum from the Office of Programs, *supra* note 197, at 3.

200. *Id.* at 5-6.

201. Dutton et al., *supra* note 5, at 296.

202. *Prima Facie Review of Form I-360 When Filed by Self-Petitioning Battered Spouse/Child*, 62 Fed. Reg. 60,769, 60,772 (Nov. 13, 1997) (to be codified at 8 C.F.R. pt. 204).

203. Dutton et al., *supra* note 5, at 296-98.

204. *Id.* at 296-97.

205. *Id.* at 278, 292-95; see *supra* notes 186-89 and accompanying text; see also Orloff, *supra* note 17, at 239 (describing what a women needs to show for a VAWA self-petition).

206. Leslye E. Orloff & Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women 17-18* (May 1999) (not formally published) (on file with author).

battered immigrants VAWA sought to help would remain locked by economics in abusive relationships.

VIII. THE IMPACT OF THE 1996 WELFARE LEGISLATION

In the last few months of 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)²⁰⁷ and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),²⁰⁸ radically altering the ability of poor women and children to receive public benefits. These laws were particularly harsh on immigrants, imposing significant new legal and procedural barriers that prevented many immigrants from accessing the public benefits safety net.²⁰⁹ Despite reducing access to public benefits for most immigrants, these laws increased access to public benefits for some battered immigrants who had been previously ineligible for assistance.²¹⁰

A. To Further the Goals of VAWA's Immigration Protections IIRIRA Granted Benefits Access to Battered Immigrants

IIRIRA preserved VAWA access to battered immigrant women by including several provisions designed to help battered immigrant women and children. One of the most significant improvements IIRIRA made was to restore some public benefits for battered immigrants whom PRWORA had denied benefits.²¹¹ Further, IIRIRA expanded public benefits access to a group of largely undocumented battered immigrants who had been barred from accessing public benefits. Three groups of battered immigrants benefited from IIRIRA's expanded access to public benefits: (A) VAWA self-petitioners and VAWA cancellation and suspension applicants; (B) battered immigrants who were the beneficiaries of I-130 family-based visa applications filed by abusive U.S. citizen or lawful permanent resident spouses or parents; and (C) battered immigrant conditional or lawful permanent residents who had previously been barred from access to public benefits by deeming.

207. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified in scattered sections of 42 U.S.C.).

208. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered sections of 8 U.S.C. & 18 U.S.C.).

209. Goldfarb, *supra* note 23, at 2.

210. IIRIRA explicitly contains provisions that offer battered immigrants some protections. 8 U.S.C. § 1641(c) (Supp. II 1996); Orloff, *supra* note 17, at 237.

211. 8 U.S.C. § 1641(c).

IIRIRA included three provisions designed to facilitate battered immigrant access to public benefits. First, IIRIRA section 501²¹² expanded the limited groups of qualified aliens PRWORA allowed to access public benefits to include VAWA self-petitioners, VAWA suspension and cancellation applicants and battered immigrant spouses and children who were beneficiaries of I-130 family-based visa applications.²¹³ Battered immigrants who could meet a four-prong eligibility test, which was more stringent than the test for other categories of qualified aliens, were granted access to welfare benefits despite the fact that they would be undocumented at the time they filed for and received benefits.²¹⁴ Section 431(c) allowed this limited group of battered immigrant women and children to become qualified aliens, eligible for public benefits after the filing of their VAWA or family-based visa applications that contained *prima facie* evidence of eligibility.²¹⁵

Second, Congress provided an exemption from deeming rules for all qualified alien battered immigrants.²¹⁶ This protection was designed to help both battered immigrants with pending or approved VAWA cases or family-based visa petitions and battered immigrants who had attained lawful permanent residency as the result of a family-based visa petition that their spouses had filed. The citizen or lawful permanent resident spouse in such instances would have been required to file an affidavit of support promising the INS that he would be responsible for supporting his immigrant spouse.²¹⁷ Absent an exemption from deeming rules, state welfare agencies could consider all of the spouse's income and resources when the abused spouse applied for benefits, effectively rendering her income ineligible.²¹⁸ Third, section 531(c) of IIRIRA²¹⁹ exempted battered immigrants with VAWA cases from the affidavit of support requirement and, arguably, also from public charge inadmissibility.²²⁰

212. *Id.* § 1641.

213. Only cases filed under INS subsections (ii), (iii) or (iv) of section 204(a)(1)(A) or subsections (ii) or (iii) of section 204(a)(1)(B) qualified. *Id.*

214. To be a qualified alien, a battered immigrant must demonstrate that she has a pending or approved VAWA case or a family-based visa application filed with the INS, that she has been battered or subjected to extreme cruelty, that there is a substantial connection between the need for benefits and the abuse and that she is no longer residing with her abuser. 8 U.S.C. § 1641(c).

215. *Id.*

216. *Id.* §§ 1631(e)-(f).

217. *Id.* § 1631(a).

218. For more discussion of deeming *see infra* Part IX.C.

219. 8 U.S.C. § 1182(a)(4) (Supp. II 1996).

220. *See* Memorandum from Leslye Orloff, Director, National Policy Project, Ayuda, Inc.

Congress included these public benefits provisions in IIRIRA because it recognized that battered immigrants would be unable to leave their abusers, cooperate in their prosecution or seek protection from the courts if they could not sever the economic control their abusers held over them. Without access to the public benefits safety net, the congressional purposes of VAWA 1994 would be thwarted. Battered immigrants who qualified for the stable immigration status offered them by VAWA 1994 were not applying because they continued to be locked by economics in the very abusive relationships from which Congress hoped to offer them freedom.

B. Federal Public Benefits Defined

A program is considered a federal public benefit only when a payment is made directly to an individual, a household or a family unit.²²¹ The statutory definition includes U.S. agency-provided or funded grants, contracts, loans and professional or commercial licenses, as well as U.S. agency-provided or funded benefits for retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance and unemployment benefits.²²² If federal funds are paid through a state in the form of block grant money to a shelter, hospital or other entities, these payments are not considered "federal public benefits" as they are not being paid to an individual family or household, and not subject to restrictions on immigrant access.²²³

No government-wide definition of a federal public benefit exists. Each federal agency must publish its own list of programs deemed federal public benefits.²²⁴ The lists include all the major

and Janice Kaguyutan, Staff Attorney, National Policy Project, Ayuda, Inc., to Commissioner Doris Meissner 3-4 (Nov. 3 1998) (on file with author) [hereinafter Memorandum to Commissioner Doris Meissner]. Both Leslye Orloff and Janice Kaguyutan currently work for the Immigrant Program of NOW Legal Defense and Education Fund.

221. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 401(c)(1), 8 U.S.C. § 1611(c)(1); Interpretation of Federal Means-Tested Public Benefits, 62 Fed. Reg. 45,256, 45,257 (Aug. 26, 1997).

222. Interpretation of Federal Means-Tested Public Benefits, 62 Fed. Reg. at 45,257.

223. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411, 8 U.S.C. § 1621 (Supp. II 1996).

224. Health and Human Services (HHS) has issued a list of benefits administered by HHS that are federal public benefits. Interpretation of Federal Means-Tested Public Benefits, 62 Fed. Reg. at 45,256. Any HHS-funded program not on the list is not a federal public benefit and, therefore, may be freely accessed by all persons without regard to immigration status.

federal benefit programs: Social Security,²²⁵ Head Start,²²⁶ Temporary Assistance for Needy Families (TANF),²²⁷ non-emergency Medicaid,²²⁸ post-secondary education loans and grants, subsidized public and assisted housing programs,²²⁹ Title XX social service block grants,²³⁰ SSI²³¹ and Food Stamps.²³²

225. Title II of the Social Security Act provides a federal insurance program that grants benefits to qualified workers and, in some cases, their dependents who are elderly, blind or disabled. Social Security Act, 42 U.S.C. §§ 401-402 (1994). Eligible persons over sixty-two can begin receiving partial retirement benefits; those over sixty-five, full benefits. *Id.* § 402(a). A worker's surviving spouse and children can also receive "auxiliary benefits." *Id.* §§ 402(a)-(e).

226. The Head Start program's mission is to improve the lives of low-income children by providing quality, comprehensive child development services that are family focused, including education, health, nutrition and mental health services. *Homepage, SETA HEAD START*, at <http://www.headstart.seta.net> (last visited Apr. 4, 2001).

227. TANF, formerly Aid to Families with Dependent Children (AFDC), provides cash payments, vouchers, social services and other forms of assistance to low-income families with children. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103(a), 110 Stat. 2105, 2113 (codified in scattered sections of 42 U.S.C.).

228. Medicaid provides reimbursement for doctors' services, hospital care and prescription drugs to participating providers who care for low-income persons. 42 U.S.C. § 1369(a) (1994).

229. Federal housing programs provide tenants and homebuyers with a variety of subsidized benefits, including public housing, vouchers and rental payments to landlords and rural housing for farm workers. Eligibility is based on financial status and priority is given to certain persons, such as those who are homeless or displaced by a disaster, who currently live in substandard housing or who pay more than fifty percent of their income in rent. The new immigration law imposes further restrictions on alien access and continued receipt of most federal housing programs. Nevertheless, PRWORA and IIRIRA clearly granted access to "qualified alien" battered immigrant women to receive public or assisted housing. 8 U.S.C. § 1621 (Supp. II 1996). Despite this statutory grant of access, the U.S. Department of Housing and Urban Development has not yet amended its regulations to reflect these laws. State or local housing administrators may be unaware that certain battered immigrants are newly eligible for housing benefits. Some immigrants already receiving public or assisted housing benefits on August 22, 1996 may be able to continue receiving benefits, as PRWORA affects only present applicants requesting benefits after August 22, 1996. National Housing Act, 12 U.S.C. §§ 1701-1735 (1994); Federal Housing Assistance Programs, 24 C.F.R. §§ 200-266, 800-999 (2000); Rural Housing Service, Rural Business-Cooperative, Rural Utilities Service and Farm Service Agency, Department of Agriculture, 7 C.F.R. pts. 1804-1899 (2001). Advocates and attorneys working with qualified alien battered immigrants having difficulty accessing public and assisted housing should call NOW Legal Defense and Education Fund for technical assistance at (202) 326-0040.

230. Title XX of the Social Security Act provides block grants to the states for a wide variety of purposes, including childcare, in-home care for disabled persons, programs to combat domestic violence, programs for abused and neglected children and many more programs. Social Security Act, 42 U.S.C. § 1397(a) (1994). Title XX block grant funds are only considered federal public benefits if payments from those funds are made to an individual, a household or a family-eligibility unit.

231. SSI is a need-based program available to low-income persons who are either sixty-five years or older, blind or disabled. Social Security Act, 42 U.S.C. §§ 401-434 (1994). A finding of disability is conditioned on establishing a physical or mental impairment that has prevented or will prevent the person from substantial gainful employment for twelve continuous months. *Id.* § 423. SSI payments consist of a monthly check; the amount varies depending upon the basis for SSI eligibility and whether the state supplements the basic

1. Eligibility for Federal Public Benefits

To protect immigrant families from discrimination and to ensure that their citizen children could continue to access the benefits they need, the U.S. Attorney General dictated a four-step procedure for benefits providers' use in verifying eligibility for public benefits under PRWORA.²³³ This procedure facilitates access to benefits for those who qualify, protects immigrants against discrimination and protects against disclosure of immigration status when disclosure is not specifically required by law.²³⁴

Benefit-granting agencies are required to process all applications following this procedure.²³⁵ If an agency routinely reverses the order of the inquiry, it risks violating anti-discrimination laws.²³⁶ However, as of Spring 2001, few welfare offices were knowledgeable about battered women's right to receive benefits and many are unfamiliar with the U.S. Attorney General's *Interim Guidance*.²³⁷ This fact has effectively barred many battered

federal grant. Amount of Benefits, 20 C.F.R. §§ 416.401-416.586 (2000).

232. The Food Stamp program is the food assistance program for the poor, providing coupons to low-income persons with which to buy food at participating stores. Food Stamp Act, 7 U.S.C. §§ 2011-2032 (1994); Food Stamp and Food Distribution Program, 7 C.F.R. pt. 271 (2000).

233. Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662, 41,665-41,669 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104). The procedure for verifying eligibility for public benefits under PRWORA consist of four steps. First, a federal public provider must determine whether the benefit program actually provides a federal public benefit subject to PRWORA's verification requirement; taking into consideration whether the benefit comes within the statutory definition of federal public benefit and whether it falls within one of the PRWORA's enumerated exceptions. *Id.* at 41,664. Second, the benefit provider must determine whether the applicant is otherwise eligible for benefits under general program requirements; making all other program eligibility determinations before verifying immigration status. *Id.* at 41,666. If the applicant does not otherwise qualify, there is no need to verify status. *Id.* Third, the federal public benefit provider must verify the applicant's immigration status; verification should be made only of the person who will actually be receiving benefits. *Id.* at 41,669. Finally, the provider must verify the applicant's eligibility for benefits under PRWORA. *Id.* A number of federal public benefits impose more stringent immigrant eligibility requirements; each of these programs requires immigrants to meet additional tests to receive assistance. *Id.*

234. *Id.*

235. *Id.*

236. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,346-61,347 (Nov. 17, 1997).

237. To address this issue, the Administrator on Children and Families of the U.S. Department of Health and Human Services funded the development of a training manual that state-based advocates and state welfare agencies could use to train public benefits workers on battered immigrant eligibility for public benefits.

immigrants from much needed public benefits for which they or their children qualify.²³⁸

2. *Non-Profit and Charitable Organization Exemption*

Federal funds provided to local social service programs or to states for state-based programs, including shelters, hospitals or battered women's programs, are not "federal public benefits" and immigrant access to these programs is not restricted.²³⁹ As the program receiving the payment from federal government funds is not an individual, household member or family unit, the funds do not fall within the definition of federal public benefits.²⁴⁰ PRWORA does not "prohibit governmental or private entities from receiving federal public benefits that they might then use to provide assistance to aliens, so long as the benefit ultimately provided to that non-qualified alien does not itself constitute a 'federal public benefit.'"²⁴¹

Further, both non-profit and charitable organizations are exempt from immigration status verification and reporting, regardless of whether they receive federal, state or local funding.²⁴² IIRIRA eliminated the requirement that non-profit charitable organizations seek confirmation that an applicant is a qualified immigrant, thereby allowing all immigrants to access benefits provided by these organizations.²⁴³ This exemption is not all-encompassing, however. Non-profit service agencies are barred from providing federal public services when another agency that is not exempt from verification requirements, such as a state government agency, has performed a verification.²⁴⁴

238. Orloff, *supra* note 17, at 253.

239. Leslye Orloff et al., *Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers* (NOW Legal Defense & Educ. Fund, Washington, D.C.), 2000, at 42-43.

240. *Id.*

241. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg., at 61,361.

242. *Id.* at 61,345-61,346.

243. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 508, 8 U.S.C. § 1642(d) (Supp. II 1996).

244. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg., at 61,345-61,346.

3. Federal Means-Tested Public Benefits

The term "federal means-tested benefit" is not defined in the final version of PRWORA. This omission makes the already difficult regulatory process of determining which programs will be affected even more complicated.²⁴⁵

The Department of Health and Human Services (HHS) has published an interpretation of "federal means-tested public benefit," clarifying that this definition only applies to mandatory HHS spending programs.²⁴⁶ HHS considers a program "means-tested" if the eligibility for the program and/or the amount of benefits is determined on the basis of the income or resources of the applicant.²⁴⁷ Medicaid, Food Stamps, SSI and TANF are the primary examples of federal means-tested public benefits.²⁴⁸

4. State-Funded Benefits

Moreover, states have the option to offer state-funded benefits to persons who are not qualified immigrants.²⁴⁹ States can choose to provide state-funded Food Stamps to immigrants ineligible under welfare law, legal immigrants, as well as certain categories of undocumented immigrants.²⁵⁰ Several states have passed laws that

245. The legislation only specifies that the term federal means-tested program does not include the following programs: Emergency Medical Aid; short-term, non-cash, in-kind emergency disaster relief; school lunch, school breakfast and other child nutrition programs; benefits under the Job Training Partnership Act (JTPA); Head Start; immunizations and testing and treatment of symptoms of communicable diseases; Title IV foster care and adoption assistance (but only if the foster or adoptive parent is a qualified alien); most federal school loans and grants for higher education; means-tested programs under the Elementary and Secondary Education Act of 1965 and community-based programs, services or assistance designated by the Attorney General. 8 U.S.C. § 1621 (1994); see also Charles Wheeler & Josh Bernstein, *New Laws Fundamentally Revise Immigration Access to Government Programs: A Review of the Changes* (Nat'l Immigration Law Ctr., L.A., Cal.), Nov. 8, 1996, at 15-16 (listing programs not included in federal means-tested programs).

246. Interpretation of "Federal Means-Tested Public Benefit," 62 Fed. Reg. 45,256, 45,257 (Aug. 26, 1997).

247. *Id.*

248. *Id.*

249. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411(d), 8 U.S.C. § 1621(d) (Supp. II 1996).

250. NAT'L IMMIGRATION LAW CTR., IMMIGRANTS AND WELFARE: STATUTES, REGULATIONS & ADMINISTRATIVE SOURCE MATERIALS 19-22, tbl.3A (1998). Sixteen states allocate food assistance in this manner: California, Colorado, Illinois, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Rhode Island, Texas, Washington and Wisconsin. *Id.* PRWORA restricted the ability of state and local governments to provide benefits to immigrants who do not fall into one of the following categories: qualified immigrants, non-immigrants as defined by the INA or parolees for less than one year under section 212(d)(5) of the INA. Personal Responsibility and Work

authorize state-funded benefit programs for certain categories of immigrants.²⁵¹ Others provide food assistance for specified categories of immigrants: children, the elderly and the disabled.²⁵² Additionally, states can elect to provide a lower level of benefits to immigrants.²⁵³ Although PRWORA eliminated access to federal public benefits for undocumented immigrants who were residing in the United States with the knowledge and acquiescence of the Immigration and Naturalization Service (INS),²⁵⁴ several states have passed laws providing them access to state-funded TANF.²⁵⁵

IIRIRA provisions offer protection for battered immigrants and expand access to public benefits for some battered immigrants who had been previously ineligible for assistance.²⁵⁶ Despite this fact, PRWORA and IIRIRA have severely undermined access to services and benefits for battered immigrant women.

C. Classification of Immigrants for Welfare Purposes

PRWORA allows public benefits programs to make distinctions between U.S. citizens and immigrants and between different categories of immigrants, creating the category of "qualified alien."²⁵⁷ After PRWORA, for the purpose of welfare eligibility,

Opportunity Reconciliation Act of 1996, § 411(a), 42 U.S.C. § 611 (Supp. II 1996). Prior to PRWORA, local governments could grant access to general assistance and state-funded benefit programs to undocumented battered immigrants who were not qualified to receive federal benefits. NAT'L IMMIGRATION LAW CTR., *supra*, at 51. Now states may grant benefits to undocumented and non-qualified immigrants only if the state legislature passed a law after August 22, 1996 that authorizes immigrant access to these benefits. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411(d), 8 U.S.C. § 1621(d). PRWORA defines state benefits as benefits provided by an agency of a state or local government to an individual, household or family eligibility unit. *Id.* § 1621(c). This definition is similar to that of federal public benefits; however, the terms are mutually exclusive: a state public benefit may be a grant or loan, a contract, a professional or commercial license, public or assisted housing, post-secondary education, food assistance, a retirement, welfare, health, disability or unemployment benefit or any other similar benefit. *Id.*

251. NAT'L IMMIGRATION LAW CTR., *supra* note 250, at 3.

252. *Id.*

253. *Id.*

254. *Id.* at 5. This group was formerly eligible for federal public benefits under a program called PRUCOL. *Id.* The INS did not actively seek to remove these immigrants from the United States for public policy or humanitarian reasons. *Berger v. Heckler*, 771 F.2d 1556, 1558-60 (2d Cir. 1985).

255. NAT'L IMMIGRATION LAW CTR., *supra* note 250, at 1-14, tbl.2.

256. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, §§ 501, 552, 8 U.S.C. § 1641 (Supp. II 1996); Memorandum to Commissioner Doris Meissner, *supra* note 220, at 3.

257. Previously, the law forbade states, in most cases, from making distinctions between lawful permanent residents and United States citizens in welfare eligibility. *Graham v.*

there are three categories of immigrants: qualified immigrants who entered the United States before August 22, 1996, qualified immigrants who entered the United States on or after August 22, 1996 and immigrants who are not qualified.²⁵⁸

1. *Qualified Immigrants*²⁵⁹

PRWORA mandated that only qualified aliens are eligible for public assistance.²⁶⁰ The definition of qualified aliens includes the following groups of immigrants: lawful permanent residents,²⁶¹ refugees, asylees,²⁶² persons granted withholding of removal²⁶³ or cancellation of removal,²⁶⁴ Cuban/Haitian entrants,²⁶⁵ veterans,²⁶⁶ persons granted conditional entry,²⁶⁷ Amerasians,²⁶⁸ persons paroled

Richardson, 403 U.S. 365, 376 (1971).

258. August 22, 1996 is the date PRWORA was signed. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

259. In this Article, the terms "qualified immigrant" and "qualified alien" are used interchangeably. Qualified alien is the legal term used in PRWORA. Advocates and attorneys working with immigrants use the preferred term qualified immigrant.

260. § 411, 8 U.S.C. § 1621 (Supp. II 1996).

261. A lawful permanent resident is a person who is not a citizen of the United States, but who has the right to live permanently in the United States. Lawful permanent residents may apply to become citizens after a specified number of years if they meet certain requirements. NAT'L IMMIGRATION LAW CTR., *Immigrant Eligibility for Public Benefits*, in IMMIGRANTS & WELFARE RESOURCE MANUAL: 1998 EDITION 47, 48 (1998).

262. Refugee/asylee: person who fears persecution in his/her country. *Id.* at 47, 49. Refugees apply for status to live in the United States from outside the United States. *Id.* Asylees apply for permission to remain in the United States from inside the United States. *Id.* After a year, refugees and asylees may apply to become lawful permanent residents. *Id.*

263. Withholding of Removal (formerly Withholding of Deportation) may be granted to a person whose life or freedom would be threatened in his/her country. Immigration and Nationality Act, § 241(b)(3), 8 U.S.C. § 1231 (1994). Persons granted withholding of deportation are not intrinsically eligible to become lawful permanent residents and may be sent to a country other than one in which the person's life or freedom would be threatened. *Id.*

264. Cancellation of Removal is a form of relief in which immigration courts in deportation proceedings (now called removal proceeding) may exercise discretion by waiving the grounds for removal and granting lawful permanent residency. DOMESTIC VIOLENCE & IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT 38 (Bette Garlow et al. eds., 2000-2001). It replaces suspension of deportation proceedings for most (but not all) cases. *Id.*

265. "Cuban and Haitian Entrant[.]: Person paroled into the U.S. as a Cuban or Haitian Entrant or any other national from Cuba or Haiti who is the subject of exclusion or removal proceedings or who has an application for asylum pending." NAT'L IMMIGRATION LAW CTR., *supra* note 261, at 47.

266. A veteran is a person who served on active duty in the military and received an honorable discharge or a release not based on immigration status. *Id.* at 49.

267. Conditional entry is a "[s]tatus conferred on an alien spouse and child(ren) at the time of obtaining lawful permanent residence, such status having been obtained: (1) on the basis of a marriage to a U.S. citizen or permanent resident spouse entered into less than two years prior to obtaining said status, or (2) as an immigrant investor" AM. IMMIGRATION

in the United States for one year or more²⁶⁹ and certain persons who have been battered or subjected to extreme cruelty.²⁷⁰ Although battered immigrants were omitted from the original definition of qualified alien,²⁷¹ IIRIRA amended PRWORA by adding certain documented and undocumented battered immigrants to the list of qualified aliens.²⁷² Recognizing the important role that economic resources play in enabling a battered woman to successfully extract herself from an abusive relationship,²⁷³ Congress added battered immigrants to the qualified alien list. Congress intended this eligibility provision to allow immigrant victims of violence and their children to access services needed to establish lives free from violence.²⁷⁴ Immigrant mothers of abused children are included in this category, whether or not they are battered themselves, to parallel congressional goals in VAWA that sought to guarantee that mothers are able to protect their children from abuse without threat of deportation.²⁷⁵

The *Interim Guidance* issued by the U.S. Attorney General clarifies eligibility and verification of qualified immigrant status under PRWORA with regard to battered immigrants.²⁷⁶ The guidance articulated four requirements to be met for a battered immigrant to be declared a qualified immigrant: (1) the INS or the Executive Office for Immigration Review (EOIR) must have approved a self-petition for permanent residency or a family based petition, granted cancellation of removal, granted suspension of

LAWYERS ASS'N, IMMIGRATION & NATIONALITY LAW HANDBOOK: 2000-2001 EDITION 17 (2000).

268. "Amerasian[:] Child fathered by a U.S. citizen in certain Southeast Asian countries during the years of U.S. conflict in that region. Amerasians were granted lawful permanent resident (LPR) status under special provisions of the immigration law" NAT'L IMMIGRATION LAW CTR., *supra* note 261, at 47.

269. "Parolee for one year or more[:] Person who has been paroled into the U.S. for at least one year. *Id.* Parole is the authority given by the INS for anyone to come to the United States without being admitted in any status. AM. IMMIGRATION LAWYERS ASS'N, *supra* note 267, at 23.

270. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 431(b), 8 U.S.C. § 1641 (Supp. II 1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 501, 8 U.S.C. § 1641(c) (Supp. II 1996).

271. Pub. L. No. 104-193, § 431(b), 8 U.S.C. § 1641.

272. Pub. L. No. 104-208, § 501, 8 U.S.C. § 1641.

273. Horn, *supra* note 174, at 20-22.

274. Memorandum to Commissioner Doris Meissner, *supra* note 220, at 8-10.

275. Erez, *supra* note 3, at 31.

276. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997). Once the final verification regulations were issued, those regulations specifically directed that as to issues of battered immigrants, provisions contained in the *Interim Guidance* would continue to control. Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662, 41,663 (Aug. 4, 1998).

deportation, or found that the applicant's pending petition or application sets forth a prima facie case for approval;²⁷⁷ (2) the immigrant must have been battered or subject to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent or a member of the spouse's parent's family residing in the same household (if the spouse or the parent consents to or acquiesces in such battery or cruelty and, in case of a battered child, if the immigrant did not actively participate in the battery or cruelty);²⁷⁸ (3) the immigrant must demonstrate a substantial connection between the battery and the need for the public benefit;²⁷⁹ and (4) the immigrant must no longer reside in the same household as the abuser.²⁸⁰

Examples of circumstances that demonstrate substantial connection include showing that the immigrant needs the public benefit: to become self-sufficient following separation from the abuser; escape the abuser and his community; ensure her safety and the safety of her child or parent; compensate for the loss of financial support resulting from the separation; alleviate nutritional risk resulting from the abuse or following separation; provide medical care for a pregnancy resulting from the abusive relationship or replace medical coverage or health care services lost following separation from the abuser.²⁸¹ In addition, a battered immigrant may demonstrate her need for benefits to compensate for her lost job or reduced earnings caused by the abuse itself, related

277. *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 62 Fed. Reg. at 61,366.

278. *Id.* Battery or extreme cruelty is defined as, but not limited to: "[b]eing 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." *Id.* It also includes psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution. *Id.* Other abusive actions may also be acts of violence under this rule, including acts or threatened acts that, in and of themselves, may not initially appear violent, but may be part of an overall pattern of violence. *Id.* This definition is parallel to the definition of battering and extreme cruelty contained in the immigration regulations governing VAWA self-petitions and battered spouse waivers. It is broader than the definition of domestic or family violence contained in many state domestic violence statutes in that it includes emotional abuse; in many states emotional abuse would not entitle a person to a protective order. *Id.*

279. *Id.* at 61,370.

280. *Id.* However, the *Interim Guidance* recognized that "applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently." *Id.* It suggests that whenever possible the state benefit provider complete the eligibility determination process and approve the applicant for benefits before she has separated from her abuser, ensuring that the applicant will be able to receive benefits as soon as she leaves her abuser. *Id.*

281. *Id.*

involvement in legal proceedings, safety reasons, medical or mental health issues or disability.²⁸² She may also demonstrate substantial connection by showing that she will lose a source of income following separation, that her fear of the abuser jeopardizes her ability to take care of her children or that she needs benefits for other similar reasons.²⁸³

PRWORA also distinguished between qualified immigrants who entered the United States before August 22, 1996 and those who entered the United States on or after August 22, 1996. It established different welfare access based upon the date the law became effective.²⁸⁴

2. *Qualified Immigrants Who Entered the United States Before August 22, 1996*

This group of immigrants is eligible for the same federal public benefits and federal means-tested public benefits²⁸⁵ available to U.S. citizens; however, it bars most qualified immigrants from receiving Supplemental Security Income (SSI) and Food Stamps.²⁸⁶ Only three categories of qualified aliens continue to be eligible for these programs:²⁸⁷ refugees and people granted asylum or withholding of deportation,²⁸⁸ qualified aliens who are either active duty service members or veterans, as well their spouses and unmarried dependent children under age twenty-one²⁸⁹ and qualified immigrants who have worked at least forty qualifying quarters for social security purposes or who can be credited with those quarters under new procedures.²⁹⁰

282. *Id.*

283. *Id.*

284. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 402, 8 U.S.C. § 1612 (Supp. II 1996).

285. See discussion *supra* Part VIII.B.3.

286. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 401(a), 8 U.S.C. § 1611(a).

287. *Id.* § 1612 (a)(2)(A).

288. *Id.* This eligibility is limited to the first five years after entry as refugee or after the grant of asylum or withholding. *Id.*

289. *Id.* Qualified immigrant spouses of veterans and active duty service members remain eligible for SSI and food stamps as long as they remain married to the active duty service member or veteran. *Id.*

290. *Id.* A qualifying quarter calculates how much a person earns in a calendar year. Each year the required amount is determined by the Social Security Administration. A worker can earn a maximum four quarters of coverage for that year. 42 U.S.C. § 413 (1994). All work done in the United States is counted toward qualifying quarter credits. An immigrant may even count work done without authorization. She also may count work done during the five-year bar. When an immigrant wishes to count quarters in which he/she

The only battered immigrants currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996²⁹¹ and those who qualify under one of the other categories of eligible immigrants.²⁹² If the applicant qualifies for the category of forty quarters work credit, she has the highest likelihood of eligibility for SSI and Food Stamps.²⁹³

3. *Immigrants Who Are Not Qualified*

a. *Arrived After August 22, 1996*

Congress barred immigrants who otherwise met the definition of qualified aliens, but who entered the United States after August 22, 1996, from any federal means-tested program for the first five years after their arrival and receipt of qualified alien status.²⁹⁴ A limited number of qualified immigrants are exempt from the five-year prospective bar: refugees, asylees, persons granted withholding of deportation, veterans, active duty military and their family members and certain Cuban and Haitian entrants.²⁹⁵

b. *Services Necessary to Protect Life and Safety*

PRWORA makes unqualified immigrants ineligible for most federal, state and local public benefits.²⁹⁶ However, the Attorney General's order entitled *Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform*

worked illegally, however, the immigrant may be required to share information with both the INS and the Internal Revenue Service, risking tax and immigration consequences. Any work performed by a parent prior to the applicant's eighteenth birthday may be counted by the child. Similarly, if the immigrant is married or widowed, any work done by the spouse during the marriage may be counted. After divorce, however, immigrant spouses lose the ability to count quarters earned by their spouses during the marriage. If they divorce after qualifying for benefits, they will be able to continue receiving benefits only until they are required to certify their on-going qualification for benefits. At re-certification they may no longer count their husbands' forty quarters. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,413 (Nov. 17, 1997).

291. Re-certification of program eligibility began on April 1, 1997 and continued until August 22, 1997. Wheeler & Bernstein, *supra* note 245, at 4. The authorities established this period of time, calculating that by this time all ineligible immigrants would have been terminated from the program. *Id.*

292. *Id.*

293. Broder, *supra* note 19, at 511.

294. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 403(a), 8 U.S.C. § 1612(a) (Supp. II 1996).

295. *Id.* § 1612(b)(2).

296. *Id.* § 1612(a)(1).

Legislation lists essential services to which every person is eligible, regardless of his/her immigration status.²⁹⁷ The Attorney General has clarified that no immigrant is to be barred from receiving police, fire, ambulance transportation or sanitation services.²⁹⁸ Other services available regardless of immigration status include emergency Medicaid,²⁹⁹ short-term, non-cash, in-kind emergency disaster relief programs, public health assistance for immunizations and the testing and treatment of communicable diseases, and school breakfast and lunch programs.³⁰⁰

In addition, the Attorney General designated the following programs as available to all without regard to immigration status:³⁰¹ crisis counseling and intervention programs; services and assistance relating to child protection; adult protective services, violence and abuse prevention; services for victims of domestic violence and other crimes; treatment of mental illness or substance abuse; medical and public health services and mental health disability or substance abuse assistance necessary to protect the life and safety of workers, children and youths or community residents; short-term shelter for the homeless, victims of domestic violence, runaways and abused or abandoned children;³⁰² programs to help individuals during periods of adverse weather conditions; soup kitchens and community food banks; senior nutrition programs and other nutritional programs for persons requiring special assistance.

IX. ANALYSIS OF THE WELFARE SYSTEM

When Congress reforms welfare laws in response to an incorrect perception that immigrants disproportionately consume welfare, immigrant women suffer, particularly battered immigrant women. Denying battered immigrant women the welfare safety net that could help their transition from dependence on their abusers to independence undermines the purposes of VAWA's immigration

297. Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 61 Fed. Reg. 45,985, 45,985 (Aug. 30, 1996).

298. *Id.* at 45,985-45,986.

299. *Charts of Major Federal Benefit Programs Available to Immigrants—February 2000*, BUILDING IMMIGRANT OPPORTUNITIES 2000 (Nat'l Immigration Law Ctr., Washington, D.C.), Feb. 27, 2000, at 3. Emergency Medicaid is defined to include only treatment for medical conditions with acute symptoms that could place the patient's health in serious jeopardy, result in serious impairment to bodily functions or cause dysfunction of any organ. Social Security Act, 42 U.S.C. § 1396b(v)(3) (1994).

300. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 401(b)(1), 8 U.S.C. § 1611(b) (Supp. II 1996).

301. *Id.*

302. HUD Memorandum, *supra* note 158, at 2; HHS Fact Sheet, *supra* note 158, at 1.

provisions. Welfare reform legislation has affected battered immigrant women's ability to rely upon the welfare safety net in three significant ways.

First, welfare "[i]mplementation is inconsistent, often arbitrary and differs markedly from locale to locale."³⁰³ Every state implemented a different version of welfare reform.³⁰⁴ Devolution of control over welfare programs exacerbated battered immigrants' difficulty in accessing benefits. The numerous distinct service delivery models make training welfare workers more complex.³⁰⁵

Second, there is widespread confusion and misunderstanding on the part of social service system providers, battered women's advocates, community members and state welfare workers about the legal rights of many battered immigrant women and their children under welfare reform. The regulations and procedures for implementing public benefits laws, particularly with regard to immigrants, has become extremely complicated.³⁰⁶ There seems to be great fear and misunderstanding about what PRWORA and IIRIRA actually mean. Their anti-immigrant nature, and the fervor that led to their passage, has left some service providers feeling free to act on their own prejudices and anti-immigrant sentiment.³⁰⁷ A few social service providers and justice system personnel have reportedly turned battered women away from shelters based on their immigration status or language barriers.³⁰⁸ In other instances, judges, police and prosecutors have reported battered immigrant women to the INS instead of prosecuting their abusers.³⁰⁹

Third, many of the provisions of IIRIRA and PRWORA undermine the progress of VAWA toward protecting the rights of battered immigrants.³¹⁰ These provisions, in conjunction with the eligibility criteria in the Immigration and Naturalization Act

303. Goldfarb, *supra* note 23, at 3.

304. *Id.*

305. *See id.* at 6-7.

306. *See id.* at 6-8.

307. *See id.* at 7-8. The above statement is also based upon technical assistance calls from battered immigrant women's advocates that were received by the Immigrant Women Program of the NOW Legal Defense and Education Fund between September 1999 and December 2000.

308. *See id.* at 8; *see also* Letter from Thomas P. Brown, NOW Legal Defense and Education Fund and Leslye Orloff, Director, Immigrant Women Program, NOW Legal Defense and Education Fund, to Thomas Perez, Director, Office for Civil Rights, U.S. Dep't of Health and Human Services 2 (Oct. 20, 2000) (noting the problem of battered women being turned away from shelters based on immigrant status).

309. *See* Goldfarb, *supra* note 23, at 8-9.

310. *Id.* at 2.

(INA),³¹¹ undermine Congress' express authorization of undocumented VAWA-eligible battered women and children to access public benefits so they could escape domestic violence.³¹² Eligibility and, therefore, access limiting provisions include classification as a public charge, deeming rules and the five-year bar.³¹³

A. Public Charge

Congress recognized that battered immigrants would not be able to leave their abusers, cooperate in their prosecutions or seek protection from the courts if they could not sever the economic control their abusers held over them.³¹⁴ To facilitate battered immigrants' financial independence from their abusers, Congress enacted section 501 of the IIRIRA.³¹⁵ Congressional intent was to provide access for battered immigrant qualified aliens to public benefits.³¹⁶ Battered immigrants will have no meaningful access to public benefits unless INS ensures that accessing benefits will not result in a denial of adjustment based on being deemed a public charge.³¹⁷ INS should exempt battered immigrants who are qualified aliens³¹⁸ from public charge restrictions for purposes of adjustment inadmissibility and deportation determinations. The lack of INS regulations ensuring this access is hampering the efforts of law enforcement personnel and prosecutors to attain cooperation from VAWA-eligible battered immigrants in the criminal prosecution of their abusers because battered immigrants who cannot survive economically living separate from their abusers

311. Battered immigrant women and children are excepted from public charge inadmissibility. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1182 (a)(4)(C)(i)(I)&(II).

312. *Id.* § 1183.

313. Goldfarb, *supra* note 23, at 8-9.

314. Orloff, *supra* note 17, at 238.

315. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 501, 8 U.S.C. § 1641(c) (Supp. V 1999). Section 501 of IIRIRA added section 431(c) to PRWORA, which authorizes VAWA-eligible undocumented immigrant battered women and children who are in the country illegally to access public benefits on their own behalf. 8 U.S.C. § 1641(c)(1)(B). VAWA-eligible battered immigrants have received prima facie determinations or are battered immigrant spouses or children of U.S. citizens or lawful permanent residents with INS-approved family-based petitions. 8 U.S.C. § 1641(c)(1)(B). Congress clearly intended for immigrant spouses and children abused by U.S. citizens or lawful permanent resident spouses to have access to the public benefits safety net.

316. Memorandum to Commissioner Doris Meissner, *supra* note 220, at 3; Orloff, *supra* note 17, at 238.

317. See discussion *infra* Part IX.A.2.

318. See discussion *supra* Part VIII.B.1.

are forced to return to their homes.³¹⁹ To help ensure that that public charge would not undermine access to VAWA's immigration protections, Congress clarified in section 1505 of VAWA 2000 that IIRIRA authorized benefits used by VAWA-eligible battered immigrants could not be considered when INS or consular officials made public charge determinations.³²⁰

1. Definition and Determination

A "public charge" is an immigrant "who is likely to become . . . primarily dependent on the government for subsistence."³²¹ An immigrant is classified as inadmissible if, at the time of her application for admission or adjustment of status, the consular officer or the Attorney General believes she is likely—at any time—to become a public charge.³²²

The vagueness of the definition of public charge gave the INS and consular officers very little guidance. Until 1999, there were few standards to constrain the information INS officers or consular officials could request or consider.³²³ Public charge determinations were, therefore, extremely discretionary judgments, made based on the age, health, education, job skills, income and assets of the immigrant, as well as any money available to the immigrant from family members.³²⁴ The current or prior receipt of public benefits may be deemed relevant to this determination and may render an applicant inadmissible because of his/her likelihood to become a public charge.³²⁵

After Congress enacted PRWORA, some INS and consular officers aggressively interpreted the foregoing factors, leading to significant problems with public charge determinations.³²⁶ In May 1999, the INS issued a proposed public charge guidance³²⁷ to alleviate this situation. The *Public Charge Guidance* was also

319. See discussion *supra* Part VII.

320. The Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464 (2000) (amending 8 U.S.C. § 1182).

321. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,676 (May 26, 1999) (to be codified at 8 C.F.R. pts. 212, 237).

322. Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4)(A) (Supp. II 1996).

323. See Shawn Fremstad, *The INS Public Charge Guidance: What Does It Mean for Immigrants Who Need Public Assistance?* (Ctr. on Budget & Policy Priorities, Washington, D.C.), Jan. 3, 2000, at 4.

324. See *id.*

325. Memorandum to Commissioner Doris Meissner, *supra* note 220, at 4.

326. Fremstad, *supra* note 323, at 1.

327. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,676 (May 26, 1999) (to be codified at 8 C.F.R. pts. 212, 237).

intended to allay the growing public confusion over the meaning of the term "public charge" in immigration law and its relationship to the receipt of federal, state or local public benefits.³²⁸ The public charge guidance and the accompanying proposed regulations set out a definition of public charge that was designed "to reduce the negative health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations."³²⁹

2. Public Charge Guidance

The new regulations define public charge and enumerate which benefits a non-citizen may receive without risking negative immigration consequences.³³⁰ Under the new guidance there are two types of public benefits relevant to a public charge determination: "public cash assistance for income maintenance"³³¹ and "institutionalization for long-term care at government expense."³³² Only these factors are to be considered in determining whether an immigrant is likely to become primarily dependant on public assistance and, therefore, a public charge.³³³

The *Public Charge Guidance* explicitly rejects the receipt of non-cash public benefits as a factor in making a public charge

328. In addition, the U.S. Department of State issued a similar guidance based upon the proposed INS rule to apply in visa applications outside of the United States. Public Charge, 22 C.F.R. § 40.41 (2000).

329. *Questions and Answers: Public Charge*, IMMIGRATION AND NATURALIZATION SERV., Mar. 25, 1999, at http://www.ins.gov/publicaffairs/questans/public_cqua.htm [hereinafter *Questions and Answers*].

330. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,676.

331. Fremstad, *supra* note 323, at 5-6. Not all cash benefits are significant to a public charge determination; the *Guidance* made a clear distinction between "cash assistance for income maintenance" and other cash programs. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,684-28,685. These programs include: SSI, TANF-funded cash assistance and state and local cash assistance programs for income maintenance. *Id.* Cash benefits programs that provide "special purpose" or "supplemental benefits" not intended for income maintenance are not considered cash assistance for income maintenance. *Id.* Also, non-recurrent cash payments for specific crisis situations and cash payments earned through employment or service in the military, including Social Security, government pensions and veterans' benefits, are not included in the category of cash assistance for income maintenance. *Id.*

332. Fremstad, *supra* note 323, at 5-6. Short-term stays for rehabilitation purposes at long-term care facilities are not relevant in a public charge determination. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,682, 28,684-28,685.

333. Fremstad, *supra* note 323, at 5 ("No other public benefits are relevant to a public charge determination.").

determination.³³⁴ The regulations do not provide an exhaustive list of non-cash benefits, but list several types of benefits that may not be considered for public charge purposes. These include health insurance and health services, as well as Medicaid and Children's Health Insurance Programs that do not provide for long-term care; Food Stamps, WIC and other nutrition programs; housing benefits; child care services; energy assistance; job training; educational assistance and similar state and local programs.³³⁵ This clarification helps many battered immigrants overcome on-going concerns over the forms of public benefits they can use to escape an abusive relationship without being considered a public charge. However, questions about the effect of using cash benefits like TANF remain.

In addition, the INS *Public Charge Guidance* deems receipt of cash assistance for income maintenance purposes only one factor among many that must be considered in making a public charge determination.³³⁶ The INS and the offices of the U.S. Department of State must consider the totality of the applicant's circumstances, including the amount of benefits received, the duration that benefits are received and the length of time that has passed since the immigrant relied upon cash assistance.³³⁷ This requirement ensures that each determination gets made on a case-by-case basis.³³⁸ The *Public Charge Guidance* also requires that every order denying admission or adjustment of status reflects a consideration of the totality of the circumstances and expressly articulates the reasons for the denial.³³⁹ These requirements should prevent

334. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,682, 28,685.

335. *Id.*; see also Fremstad, *supra* note 323, at 5 (listing types of benefits that may not be considered for public charge purposes).

336. See Fremstad, *supra* note 323, at 8.

337. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,682, 28,684.

338. Fremstad, *supra* note 323, at 8; see also Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,682-28,685 (describing factors for a case-by-case determination).

339. See Fremstad, *supra* note 323, at 8; see also Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,682, 28,684 (requiring consideration of the totality of circumstances). Section 1182(a)(4)(C) applies to any person seeking admission or adjustment of status under section 1151(b)(2) or 1153(a). 8 U.S.C. § 1182(a)(4)(C) (Supp. II 1996). Section 1151(b)(2) persons include immediate relatives of U.S. citizens. *Id.* § 1151(b)(2). Section 1153(a) persons are spouses and unmarried sons or daughters of lawful permanent residents, married or unmarried sons or daughters of U.S. citizens and siblings of U.S. citizens. *Id.* § 1153(a). The language of the statute indicates that a person seeking admission or adjustment of status is excludable if declared a public charge *unless* the person is: (1) an INS-approved family member or permanent resident, 8 U.S.C. § 1641(c) (Supp. V 1999), (2) is a battered immigrant with an INS approved self-petition, 8 U.S.C. §§ 1182(a)(4)(C)(i)(I) & (II), or (3) has an affidavit of support executed by the petitioner on behalf

summary denials based only on an immigrant's receipt of cash assistance.³⁴⁰

Finally, the *Public Charge Guidance* addresses the case of "mixed-status" households.³⁴¹ Often, some family members are eligible for benefits while others are ineligible because of their different immigration status.³⁴² Typically, citizen children may receive some benefits, while their non-citizen parents may be ineligible.³⁴³ The INS rule states that cash benefits received by an immigrant's family member are not attributable to her for public charge purposes unless the benefit constitutes the sole support for the family.³⁴⁴ Thus, receipt of public benefits by a battered immigrant on her citizen child's behalf would not count against her in a public charge evaluation, unless welfare was the sole source of support for that battered immigrant and her children.

3. VAWA 2000's Public Charge Amendments

The INS issued the *Public Charge Guidance* and proposed regulations on public charge in May 1999. However, several outstanding public charge related questions remained for qualified alien battered immigrants who had been granted access to a broad range of public benefits, including cash assistance and long-term Medicaid, by PRWORA as amended by IIRIRA. The lack of direction from the INS on the extent to which self-petitioners under VAWA and other battered immigrant qualified aliens will be subject to public charge requirements has remained a problem for battered immigrants.³⁴⁵ Many remain reticent to access desperately needed TANF benefits to help them escape from their abusers' economic control.

Subsequent to issuance of the *Public Charge Guidance*, the outstanding issues that remained for battered immigrants, who are qualified aliens under PRWORA and IIRIRA, are how the INS will process cases of battered immigrants who: (A) are currently using

of the person seeking admission or adjustment of status, 8 U.S.C. § 1154 (1994 & Supp. V 1999).

340. Fremstad, *supra* note 323, at 8.

341. *Id.* at 9; see Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,683, 28,685-28,686.

342. See Fremstad, *supra* note 323, at 9; see also Michael Fix & Wendy Zimmerman, *All Under One Roof: Mixed-Status Families in an Era of Reform* (The Urban Inst., Washington, D.C.), June 1999, at http://www.urbanorg/immig/all_under.html.

343. See Fremstad, *supra* note 323, at 9.

344. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,683, 28,685-28,686; see Fremstad, *supra* note 323, at 10.

345. *Questions and Answers*, *supra* note 329.

cash benefits;³⁴⁶ (B) are or have been institutionalized for long-term care; and/or (C) are relying or have relied solely on benefits for which their citizen, lawful permanent resident or qualified alien children qualify or qualified.

Concerned about this gap and the effect it had in creating a perverse incentive that forced battered immigrants who qualified for VAWA immigration relief to return to their abusers, Congress further amended the INA's public charge provisions in VAWA 2000.³⁴⁷ Congress crafted VAWA 2000 to continue the work of VAWA 1994. VAWA 2000's immigration provisions were specifically designed to "improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant from [sic] reporting abuse or living [sic] the abusive relationship."³⁴⁸ The goal was to interfere with the abusive spouses' or parents' ability to "blackmail and control"³⁴⁹ immigrant spouses and children and allow battered immigrants "to free themselves of abusive relationships and report abuse without fear of immigration law consequences controlled by their abusive citizen or lawful permanent resident spouse or parent."³⁵⁰

The battered immigrant amendments included in VAWA 2000 were specifically designed to address the "residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law."³⁵¹ Congress crafted the VAWA 2000 immigration law

346. The test for public charge purposes is a prospective future test. The question is whether an applicant is "likely to become a public charge" or in the case of applicants who have in the past received benefits whether it is "likely that you will continue to be, or become again, a public charge in the future." Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. at 28,676, 28,681, 28,683. For battered immigrant self-petitioners, current use of public benefits cannot be considered for public charge purposes and, in these cases, past use of public benefits is also barred from consideration.

347. Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464 (2000). In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to the status of a permanent resident by reason of subsection (a)(4), the consular officer of the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1641(c) (Supp. II 1996).

348. The Battered Immigrant Women Protection Act of 2000, Section-By-Section Summary, 146 CONG. REC. S10195 (daily ed. Oct. 11, 2000).

349. *Id.*

350. *Id.*

351. *Id.*

amendments to remove incentives that existed in immigration law that could lead a battered immigrant, who qualifies for immigration relief under VAWA, to choose to stay with her abuser rather than file for immigration status on her own.

Under pre-VAWA 2000 immigration law there continued to be instances in which a battered immigrant would have better access to legal immigration status if she remained with her abuser than if she separated from him and filed for immigration status on her own under VAWA. Examples of incentives to remain with abusers include: public charge, the self-petitioning extreme hardship requirement, battered immigrants not benefiting from upgrades in the abuser's immigration status, protection for children of battered immigrant cancellation applicants and allowing naturalization of divorced battered immigrants in three as opposed to five years. Each of these immigration provisions created "obstacles inadvertently interposed by our immigration laws that many [sic] hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related to the abused spouse's immigration status."³⁵² VAWA 2000 addressed each of the above issues.

Fear that using public benefits when escaping an abusive relationship would lead to denial of lawful permanent residency status because of public charge kept battered immigrants from seeking the help they needed and led many to choose to remain with their abusers. To be able to leave an abuser, some battered immigrants need to rely on the public benefits safety net so that they and their children can survive the transition away from economic dependence upon their citizen or lawful permanent resident abusers. Others struggle to provide for their children on their own without reliance on public benefits. In order to facilitate battered immigrant access to benefits, IIRIRA included battered immigrants with pending VAWA cases or family-based visa cases among those qualified aliens eligible to receive public benefits.

Some of the most important benefits battered immigrants need are cash benefits for income maintenance, including TANF and state-funded cash assistance. However, accessing these benefits even after issuance of the public charge field guidance continues to raise public charge issues for battered immigrants. The INS had failed to adequately address the concerns of battered immigrant self-petitioners in the field guidance and the proposed regulations;

352. *Id.* at S10192 (statement of Sen. Hatch).

therefore, Congress intervened by including section 1505(f) in VAWA 2000, which “[c]larifies that a battered immigrant’s use of public benefits specifically made available to battered immigrants in PRWORA does not make the immigrant inadmissible on public charge ground [sic].”³⁵³

4. Recommendations

If the provisions of PRWORA and IIRIRA are to truly help battered immigrants access public benefits, the INS must confirm that battered immigrant women and children who access the public benefits safety net to escape or survive abuse will not be denied adjustment of immigration status due to a public charge determination. The group of battered immigrants that Congress sought to protect is currently caught in a dangerous dilemma. Battered immigrants can file for relief under VAWA and receive the full range of public benefits, including cash benefits, that have saved the lives of other battered women in the United States for years.³⁵⁴ However, if they access these life saving benefits, they are being denied admissibility based on a public charge determination. This was clearly not the intended result when Congress included in IIRIRA and VAWA 2000 provisions designed to improve the ability of qualified alien battered immigrants to access benefits. For the access to benefits granted to battered immigrants to have meaning, any battered immigrant who has received an approved self-petition³⁵⁵ should be not be denied adjustment of status because she relied on public benefits, including reliance on cash benefits, due to public charge inadmissibility.

Advocates for battered immigrant women across the country report that the lack of clarity about public charge inadmissibility is preventing battered immigrants from seeking the relief that was intended for them.³⁵⁶ As a result, they face heightened danger to

353. *Id.* at S10196.

354. Memorandum to Commissioner Doris Meissner, *supra* note 220, at 3.

355. In order to receive a self-petition, the battered immigrant woman must prove to the INS’s satisfaction that she is married in good faith to a U.S. citizen or lawful permanent resident, that she or her children have been battered or subjected to extreme cruelty, that she is a person of good moral character and that her deportation would cause extreme hardship to her or her children.

356. Advocates reported their findings to the National Network on Behalf of Battered Immigrant Women, which is co-directed by the Immigrant Women Program of the NOW Legal Defense and Education Fund, the Family Violence Prevention Fund and the National Immigration Project of the National Lawyer’s Guild. The Immigrant Women Program and the Family Violence Prevention Fund are responsible for most of the Network’s work on welfare issues.

themselves and their children.³⁵⁷ This problem undermines access to the life-saving public benefits that Congress intended for these battered immigrants.

Battered immigrants' refusal to apply for the welfare benefits they desperately need, because they fear accessing those benefits will lead to their denial of green cards on public charge grounds,³⁵⁸ may lead them to suffer on-going abuse. Their economic dependency may compel them to return to their abusers and wait until they can attain lawful permanent residency under VAWA.³⁵⁹ Other battered immigrants are forced to trade the danger of living with their abusers for the dangers of the streets, or they are forced by economic pressures into substandard housing, where they try to feed, clothe and care for their children by any means possible.³⁶⁰

On the other hand, when battered immigrants receive public benefits, many of these women successfully separate from their abusers.³⁶¹ The public benefits available to them under VAWA as battered immigrants provide economic resources that enable them to obtain secure, safe housing, food and clothing for themselves and their children.³⁶² Although the *Public Charge Guidance* and proposed rule help answer some concerns about public charge determinations in cases of battered immigrants and VAWA 2000's amendments offer further clarification, battered immigrants need the INS to include in its final public charge regulations clear directives on how public charge will be addressed in cases of battered immigrants in light of IIRIRA, VAWA 2000 and the *Public Charge Guidance*.

B. VAWA 2000 Public Charge Amendments Implementation Recommendations

VAWA's immigration provisions provide battered immigrants with the ability to file a self-petition, thereby destroying the control their U.S. citizen or lawful permanent resident spouses previously had over their immigration status.³⁶³ IIRIRA's welfare provisions provide these needy battered immigrants with vital economic support when they flee and sever their financial dependence on

357. Memorandum to Commissioner Doris Meissner, *supra* note 220, at 3-5.

358. *Id.* at 2.

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. See discussion *supra* notes 108-12, 134-39 and accompanying text.

their abusers and when they can demonstrate that there is a substantial connection between the need for benefits and the abuse.³⁶⁴ VAWA 2000's public charge amendments go one step further and help clarify that battered immigrants who can attain immigration relief under VAWA, and were granted welfare access under IIRIRA, will not ultimately be denied their lawful permanent residency due to public charge inadmissibility.³⁶⁵

VAWA's public charge amendments offer additional support to the view that battered immigrants with approved VAWA cases should be exempt from public charge inadmissibility. If the INS adopts this approach in its regulations implementing VAWA's new public charge provisions, it would guarantee that no battered immigrant eligible for VAWA immigration relief would be prevented from accessing the benefits she needs to survive because she fears that doing so will ultimately affect her ability to obtain lawful permanent residency.

If, however, the INS determines that it cannot grant battered immigrants a full exemption from public charge despite VAWA's provisions, in the alternative the INS must include provisions in the VAWA 2000 public charge rule that specifically implement VAWA 2000's public charge amendments. Any scheme implemented by the INS must be designed to assure that it does not undermine the overarching goals of VAWA's immigration protections for battered immigrants.

The Violence Against Women Act of 2000 section 1505(f) states as follows:

In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of a permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized

364. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 501, amending the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 431 (codified at 8 U.S.C. § 1641 (Supp. II 1996)); Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,285, 65,286 (Dec. 11, 1997); Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,348 (Nov. 7, 1997).

365. The Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464 (2000) (amending 8 U.S.C. § 1641 (Supp. II 1996)).

under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).³⁶⁶

This statutory language guarantees that in the case of battered immigrant women and children protected by VAWA 1994, neither INS nor any consular official can consider any benefits battered immigrants were specifically authorized to receive as qualified alien battered immigrants for purposes of public charge inadmissibility.³⁶⁷ To implement VAWA's statutory prohibition against considering IIRIRA authorized benefits usage consistent with congressional intent, the VAWA 2000 public charge regulations should clarify that, in cases of VAWA self-petitioners, no benefits usage specifically authorized by IIRIRA can be considered. For a public benefit to be IIRIRA authorized first it must have been awarded after the battered immigrant had a self-petition or family-based visa application filed with INS. Second, the benefit must have been provided after August 22, 1996, the effective date of PRWORA.

1. No Post-August 22, 1996 Public Benefit Received by a Self-Petitioner Can Be Considered

VAWA 2000's public charge requirements can be summarized as follows. If an applicant for an immigrant visa or adjustment has an approved VAWA self-petition and that applicant has received or is receiving post-August 22, 1996 benefits, the INS and consular officials are barred from considering the receipt of benefits for public charge purposes.³⁶⁸ Evidence of use of IIRIRA authorized benefits, including cash benefits or the costs of institutionalization, must not be solicited, accepted or considered by INS officers or consular officials adjudicating adjustment of status or visa applications from approved self-petitioners.³⁶⁹

366. *Id.*

367. The Battered Immigrant Women Protection Act of 2000, Section-by-Section Summary, 146 CONG. REC. S10196 (daily ed. Oct. 11, 2000).

368. It is the responsibility of state benefits providers, not the INS or consular officials, to make the determination of whether a battered immigrant can receive benefits. The only question for the INS or consular officials is whether the battered immigrant is receiving benefits.

369. The issue is whether the applicant for an immigrant visa or adjustment has an approved self-petition at the time that her application for an adjustment or immigrant visa is adjudicated. If so, then any IIRIRA-authorized benefits she received may not be considered at all by the adjudicator. As IIRIRA granted public benefits access both to battered immigrant self-petitioners and to battered immigrants who were the beneficiaries of family-based visa applications filed by their abusive spouse or parent, some battered

2. *INS and Consular Officers Must Be Bound by Substantial Connection Determinations Made by States*

Public assistance is only available to battered immigrant self-petitioners who successfully demonstrate a substantial connection between the need for benefits and the abuse.³⁷⁰ On December 11, 1997, the Attorney General issued an order providing standards and methods that benefits providers are to use in determining whether there is a substantial connection between the need for benefits and the abuse.³⁷¹

The legislative history of PRWORA is abundantly clear that INS officials are not to make or revisit substantial connection determinations. PRWORA, as originally enacted, vested in the Attorney General the responsibility for determining whether battered immigrant applicants for benefits could meet the substan-

immigrants will have received IIRIRA benefits as qualified alien battered immigrants with pending visa applications before their self-petition had been filed or approved. So long as the receipt of public benefits was authorized by IIRIRA, and so long as the battered immigrant has an approved self-petition at the time of the adjudication of their visa or adjustment case, the statutory bar against consideration of these benefits for public charge purposes applies.

370. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997).

371. Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Benefits, 62 Fed. Reg. 65,285, 62,287 (Dec. 11, 1997). The Attorney General issued an order providing examples of the types of circumstances that demonstrate a substantial connection between the need for benefits and battering or extreme cruelty. *Id.* at 65,287. That order includes examples of substantial connection circumstances when benefits are needed: to enable the applicant to become self-sufficient following separation from the abuser; to enable the applicant to escape the abuser and/or the community in which the abuser lives or to ensure the safety of the applicant; due to a loss of financial support resulting from the applicant's separation from the abuser; because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty cause the applicant to lose her job for safety reasons; because the applicant requires medical attention or mental health counseling, or has become disabled as a result of the battery or extreme cruelty; because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's ability to care for her children; to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser; to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse or where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant had when living with the abuser. *Id.* The Attorney General's *Interim Guidance* also recognized that battered immigrant women need access to public benefits to be able to survive economically apart from their abuser. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. at 61,316, 61,370.

tial connection test.³⁷² The Attorney General did not delegate this authority to the INS or to any other division of the Department of Justice.

Subsequently, in the Balanced Budget Act of 1997, Congress amended PRWORA section 431(c) to transfer the authority to make the substantial connection determination from the Attorney General to benefits providers at the state level.³⁷³ Congress authorized the Attorney General to promulgate guidance on the manner and standards to make this determination.³⁷⁴ Thus, all determinations made at the state level regarding substantial connection are binding on the INS and the regulations implementing VAWA 2000's public charge amendments must instruct that no inquiry into substantial connection or separation of the parties is to be made by INS adjudicators and consular officials, as that determination must be made by state officials.

3. Self-Petitioners Cannot Be Subjected to Any Specific Public Charge Percent of Poverty Test

Section 531(c) of IIRIRA³⁷⁵ exempts battered immigrant self-petitioners from the affidavit of support requirement that applies to all other family-based visa applicants.³⁷⁶ Other family-based immigrant applicants must supply an affidavit of support in which the sponsor must demonstrate that he/she has an annual income 125% above poverty.³⁷⁷ The current INS *Public Charge Guidance* does not require an independent poverty line test and the test is not included in the list of factors contained in the proposed public charge regulations.³⁷⁸ No such percent of poverty statutory requirement exists in cases of VAWA self-petitioners, who are

372. Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Benefits, 62 Fed. Reg. at 65,286. The Attorney General exercised this authority by issuing AG Order No. 2097, in which she provided specific directives to states about how to make substantial connection determinations. See *Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Benefits*, 62 Fed. Reg. 39,874, 39,875 (July 24, 1997).

373. *Id.*

374. *Id.* The Attorney General exercised this authority via AG Order No. 2131-97. *Id.*

375. Illegal Immigration Reform & Immigrant Responsibility Act of 1996, § 531(c), 8 U.S.C. § 1182(a) (Supp. II 1996).

376. *Id.* § 1182(a)(6).

377. *Id.* § 1183a(f)(1)(E).

378. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,681 (May 26, 1999) (to be codified at 8 C.F.R. pts. 212 & 237).

exempt from affidavit of support requirements.³⁷⁹ The VAWA 2000 public charge regulations must include a provision clarifying that battered immigrants are exempt from any percent of poverty test, and are subject only to a totality of the circumstances test that takes into account the history of domestic violence they have experienced and the consequences of that abuse.

4. Domestic Violence Must Be Taken into Account When Applying the Totality of the Circumstances Test

To further the legislative purpose of the protections offered battered immigrants in VAWA 1994, IIRIRA and VAWA 2000, the regulations implementing VAWA 2000's public charge provisions must clarify that domestic violence factors are to be part of the totality of the circumstances test for battered immigrants. A totality of the circumstances test that includes domestic violence factors would apply both in cases of battered immigrant self-petitioners who had never used public benefits and in cases of battered immigrants who had used benefits that were not authorized by IIRIRA. The proposed VAWA totality of the circumstances factors would also be useful in cases of battered immigrant self-petitioners who, for a period of time, relied on public benefits received by their children as their sole source of income.

In addition to a consideration of the minimum factors,³⁸⁰ when the INS makes a public charge determination in any case in which the INS has or is presented with information that the applicant for an immigrant visa or adjustment has been battered, or subjected to extreme cruelty, the INS should also consider special domestic violence related factors.³⁸¹ The INS should specifically consider the

379. *Id.* at 28,679.

380. These factors include age, health, family status, assets, resources, financial status, education and skills. *Id.* (citation omitted).

381. These special factors should include, but not be limited to, the following: the history of violence in the relationship; the effect that the domestic violence has had on any children; attempts the battered immigrant has made to bring an end to her abuser's violence; attempts the battered immigrant has made to separate from her abuser; the abuser's reactions to the victim's attempts to separate, end the relationship or end the violence in the relationship; the effect that the domestic violence has had on the victim's earning capacity; stalking behavior of the abuser; whether and how the abuser has used control over the victim's immigration status and threats of deportation to keep the battered immigrant from seeking help, calling the police, obtaining a protection order or cooperating in the abuser's prosecution; whether the abuser has withdrawn an I-130 visa petition he filed on the victim's behalf and whether the withdrawal of that petition resulted in revision of the victim's work permit; whether denial of adjustment or an immigrant visa on public charge grounds will contribute to the battered immigrant's return to her abuser; whether denial of adjustment or an immigrant visa will enhance the possibility of ongoing future domestic violence;

effect that denying lawful permanent residency may have on the battered immigrant and her children.

5. VAWA 2000 Public Charge Implementation Regulations Must Require That Denial of an Immigrant Visa or Adjustment Due to a Public Charge Determination in Domestic Violence Cases Can Only Be Made if Particularized Domestic Violence Related Findings Are Made

Congress clearly explained that the purpose of the VAWA 2000 immigration amendments was to remove barriers that "hindered or prevented battered immigrants from fleeing domestic violence safely."³⁸² Each denial of an immigrant visa or adjustment to an otherwise qualified battered immigrant on public charge grounds will have a chilling effect on other battered immigrants and will send battered immigrants and their children back to their abusers with the hope that, if they can convince the abusers to file immigration papers on their behalf, they will have their spouses' affidavits of support and will not be denied lawful permanent residency due to public charge determinations. This is precisely the result Congress sought to avoid in VAWA 2000.

In issuing regulations, the INS should follow the lead of family courts and require a written summary of the reasons for any denial of an immigrant visa or adjustment of status to a battered immigrant.³⁸³ The INS should be required to document the domestic violence and how it was considered in making the public charge determination. The Department of State should impose similar requirements for denials of immigrant visas to battered immigrants

whether denial of adjustment or an immigrant visa will undermine prosecution or punishment of a citizen or lawful permanent abuser; whether denial of adjustment or an immigrant visa unfairly penalizes individuals for being a present or past victim of domestic violence or for being at risk of future violence. This language parallels the Family Violence Option of PRWORA, 42 U.S.C. § 602(a)(7) (Supp. II 1996), which urges states to fully address domestic violence issues that arise for state welfare recipients.

382. 46 CONG. REC. S10192 (daily ed. Oct. 11, 2000) (statement of Sen. Hatch).

383. The National Council of Juvenile and Family Court Judges issues recommendations to family courts and local jurisdictions regarding model practices that have proven to be successful in countering problems that arise in domestic violence cases across the country. Many of their recommendations are contained in FAMILY VIOLENCE PROJECT, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE: RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (1990). Among the recommendations that the National Council made is that state domestic violence statutes require written findings with specification of reasons any time a court denies a protection order, fails to order a domestic violence perpetrator into treatment, allows an abuser unsupervised visitation or grants custody of children to a perpetrator of domestic violence. *Id.* at 5.

based on public charge in admissibility. The denials should address all of the VAWA totality of the circumstances factors the visa or adjustment applicant raised. Regulations should also require adjudicators to articulate why denying the battered immigrant applicant lawful permanent residency status based on public charge inadmissibility is not contrary to congressional intent to offer stable immigration status and protection to battered immigrants.

Providing applicants the opportunity to rebut written particularized findings before an adjustment or consular officer denies their applications and requiring that supervisors review all denials and articulate specific reasons for either upholding or reversing the subordinate's findings would facilitate congressional intent. This system of checks and balances would ensure that local INS and Department of State offices, which may have little experience with VAWA or domestic violence, would implement the new law as Congress intended.

C. Deeming Rules

Although battered immigrants abused by citizen or lawful permanent resident spouses or parents could file self-petitions under the Violence Against Women Act after 1994, battered immigrants could also still obtain lawful permanent resident status if their spouses filed for them and followed through on the application. These battered immigrants never learned about VAWA's immigration protections because their abusive spouses filed immigration papers on their behalf. When a citizen or lawful permanent resident spouse filed a family-based petition for his immigrant spouse and/or child, he would be required by the INS to file an affidavit of support in order for the immigrant spouse or child to receive lawful permanent residency.³⁸⁴ In this affidavit he would be required to affirm that he would assume financial responsibility for his immigrant spouse and/or child.³⁸⁵ Family members who have become lawful permanent residents and had affidavits of support filed on their behalf can be subjected to deeming rules if the immigrant spouse or child applies for public benefits.

These sponsor deeming rules obstructed battered immigrant women's escape from their abusers prior to 1996. Under the deeming rules a sponsored abused immigrant woman is deemed to

384. Immigration and Nationality Act, 8 U.S.C. § 1184(a)(4)(C) (1994).

385. *Id.* § 1183a(a)(1).

have full access to the income and resources of her sponsor even if she has absolutely no access to those funds.³⁸⁶ Under sponsor deeming, in order to qualify to receive public benefits, a state or federal benefit-granting agency examines the income and resources of the immigrant's sponsor to determine whether the applicant is "income eligible."³⁸⁷ Sponsor deeming would disqualify a battered woman from receiving public benefits if the sponsor earns too much money, cannot be located or refuses to cooperate in providing information.³⁸⁸

Deeming rules pose a grave problem for battered immigrants when their sponsors are also their abusers. These rules threaten battered immigrants' ability to escape violence by destroying their access to the public benefits, which ensure transitional economic survival.

It was unconscionable to require that immigrant women who were abused by their U.S. citizen or lawful permanent resident sponsors remain dependent on the financial status and cooperation of an abusive sponsor. IIRIRA sought to clarify that sponsor deeming did not apply to cases of battered immigrant women.³⁸⁹ IIRIRA created an exemption to the sponsor deeming rules for battered immigrant spouses and children when: (1) the battery or extreme cruelty took place in the United States, (2) the abuser was a spouse, parent or a member of the spouse's or parent's family, (3) when there is a substantial connection between the battery and the need for the public benefit and (4) if the victim no longer resides with the abuser.³⁹⁰

386. Goldfarb, *supra* note 23, at 5.

387. See Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(4)(C)&(D); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 531, 8 U.S.C. § 1182 (a)(4) (amending the INA to allow certain sponsors to file affidavits to support and prevent an alien's inadmissibility for being a potential public charge). When an immigrant who has a sponsor affidavit filed on her behalf applies for public benefits, sponsor deeming rules require that the benefit-granting agency assumes, for the purpose of determining income eligibility, that the immigrant has full access to the income and assets of her sponsor. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 421, 8 U.S.C. § 1631(a) (Supp. II 1996).

388. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 421, 8 U.S.C. § 1631(a). A Sponsor is the person who signs an affidavit of support as part of an alien's application for permanent residency, stating that he/she is willing to be financially responsible for that immigrant. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 551(f), 8 U.S.C. § 1182(a)(4)(C)(D). Sponsors are frequently the alien's U.S. citizen or lawful permanent resident spouse, a member of the alien's or her spouse's family or an employer. See *id.*

389. *Id.*

390. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 552, 8 U.S.C. § 1631(f)(1)(A). The following groups of immigrants are also exempt from deeming: refugees, asylees, those granted withholding of deportation under the Immigration and Nationality

IIRIRA expressly states that victims of domestic violence who meet this four-prong test are exempt from deeming requirements for twelve months.³⁹¹ After the expiration of the first twelve months, they may continue be exempted if they demonstrate that such battery or cruelty has been recognized in an order of a federal or state court judge, in an order issued by an administrative law judge or in a prior determination by the INS, provided there continues to be a substantial connection between the need for benefits and the abuse.³⁹²

IIRIRA included a battered immigrant deeming exception for two reasons:³⁹³ (1) affidavits of support are explicitly not required by IIRIRA in VAWA cases³⁹⁴ and (2) failure to exempt battered immigrants from deeming would nullify the welfare access IIRIRA offered by IIRIRA to non-VAWA battered immigrants with pending or approved family-based I-30 petitions and battered lawful permanent residents.³⁹⁵

Despite the express provisions of IIRIRA, the Balanced Budget Act of 1997³⁹⁶ raised a question about how battered immigrants with old affidavits of support³⁹⁷ should be treated with regard to their exemption from the deeming rule. The Balanced Budget Act created a distinction between how welfare agencies were to treat cases with new affidavits of support and those with old affidavits of support, creating ambiguity and uncertainty.³⁹⁸ The goal of the Balanced Budget Act was to continue to treat lawful permanent

Act, § 243(h), 8 U.S.C. § 253 (1994), lawful permanent residents who have earned or can be credited with forty quarters of employment, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 402, 8 U.S.C. § 1612(a)(2).

391. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 552(f)(B), 8 U.S.C. § 1631(f)(1)(B).

392. *Id.*

393. *Id.*

394. *Id.* § 1154(a).

395. *Id.* § 1631(f)(1)(B).

396. Balanced Budget Act of 1997, § 5505(e), 42 U.S.C. § 608(f) (Supp. IV 1998).

397. In 1997, a new type of affidavit of support (I-864) replaced I-134 affidavits of support. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 551(a), 8 U.S.C. § 1183(a) (amending Immigration and Nationality Act § 213(A), 8 U.S.C. § 1183(a) (1994)). Affidavits of Support on Behalf of Public Immigrants, 8 C.F.R. § 213a.2 (2000). The new affidavits complied with IIRIRA's much harsher income deeming rules. *Id.* However, IIRIRA section 552 explicitly exempts battered immigrants from deeming rules and from the requirements of this new affidavit of support. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §§ 402, 421(c), 8 U.S.C. § 1631(e). Refugees and asylees are exempted from submitting any affidavit of support, but lawful permanent residents who have earned forty qualifying quarters and indigents are exempted from deeming only under the new affidavits of support. *Id.*

398. Balanced Budget Act of 1997, § 5505(e), 42 U.S.C. §§ 608 (e) & (f) (Supp. IV 1998).

residents who had old affidavits of support under the old welfare rules that afforded them better access to public benefits.³⁹⁹

Notwithstanding the fact that applying pre-1996 welfare rules to persons with old affidavits of support enabled some battered immigrants greater access to public benefits, this distinction created ambiguity as to whether there were to be two disparate classes of battered immigrants. Every battered immigrant who is either a lawful permanent resident or who has a *prima facie* determination on an approved VAWA or family-based petition filed by her spouse or parent must be equally eligible to be exempt from deeming without regard to the type or date of her affidavit of support.⁴⁰⁰ Any other interpretation is contrary to what Congress intended when it enacted section 5505(e) of the Balanced Budget Act. That provision aimed to help, not hurt, immigrant welfare recipients.⁴⁰¹ The Balanced Budget Act and IIRIRA should be read together to exempt battered immigrants from deeming to allow them to access to the services and benefits essential to escape from financial dependence on their abusive spouses or parents.

Advocates and attorneys should emphasize to state welfare agency workers that to apply the deeming rule to battered immigrant cases is inconsistent with the spirit and intent of both IIRIRA and the Balanced Budget Act amendments. This approach would be particularly persuasive on behalf of lawful permanent resident battered immigrants who have old affidavits of support in states that have adopted the Family Violence Option (FVO). In these states, welfare agencies may use FVO to waive deeming in cases of battered immigrants.⁴⁰²

In addition, it appears that PRWORA section 402(b) granted states the discretion to apply or override sponsor deeming rules.⁴⁰³ This section provides that the state's authority over immigrants' eligibility for TANF assistance and Medicaid is limited by the five-year bar provision with which states must comply unless they use state funds to offer assistance to immigrants.⁴⁰⁴ However, section 402(b) does not contain any similar language restricting the states authority over immigrants' eligibility for these programs under the

399. *See id.*

400. *See* Balanced Budget Act of 1997, § 5505(e), 42 U.S.C. § 608(f).

401. *Id.*

402. For a complete, up-to-date list of the states that have adopted the FVO, contact Jody Raphael, Taylor Institute, telephone: (773) 342-5510; fax: (773) 342-0149; e-mail: taylorinstitute@worldnet.att.net.

403. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 402(b), 8 U.S.C. § 1612(b) (Supp. II 1996).

404. *Id.* § 1613(b)(ii).

sponsor deeming rules.⁴⁰⁵ Therefore, without explicit language limiting the state's authority to determine immigrants' eligibility for these programs, states may choose to apply or to dispense with sponsor deeming rules.⁴⁰⁶

Thus, states may choose not to apply sponsoring deeming rules to battered immigrants applying for public benefits and they may do this whether or not the state has adopted the Family Violence Option. State welfare eligibility workers should be trained to exercise their discretion to grant access to battered immigrants who qualify for benefits whether or not there has been a sponsor affidavit filed on their behalf. For those who do have sponsor affidavits, deeming should not be used to make a battered immigrant income ineligible if they otherwise qualify to receive benefits.

D. The Five-Year Bar's Harmful Effect on Battered Immigrants

PRWORA created a distinction between the level of access immigrants had to welfare based upon when they entered the United States.⁴⁰⁷ Generally, immigrants who arrived in the United States before August 22, 1996 were granted greater access to welfare benefits than those who arrived after August 22, 1996.⁴⁰⁸ The latter were barred from accessing public benefits for five years from the date of their arrival.⁴⁰⁹ Under current law, battered immigrants who first entered the United States after August 22, 1996 are barred from the welfare safety net,⁴¹⁰ unless they meet the stringent criteria necessary for the limited exceptions to this rule.⁴¹¹ Although this poses a problem for all immigrants, the harm to battered immigrants is more severe.

Congress' goal in enacting VAWA was to help battered immigrant women married to U.S. citizens or lawful permanent residents and their children escape abuse, obtain legal protection and free them to cooperate in their abusers' prosecution.⁴¹² VAWA

405. *Id.* § 1612(b).

406. *Id.*

407. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §§ 402-403, 8 U.S.C. § 1612(b).

408. *See id.*; Judd, *supra* note 142, at 7-4.

409. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 403, 8 U.S.C. § 1612.

410. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,349 (Nov. 17, 1997).

411. *See supra* notes 133-35 and accompanying text; discussion *supra* Part VIII.

412. *See* Battered Immigrant Women Protection Act of 1999, H.R. 3083, 106th Cong. § 2 (1999); H.R. REP. NO. 103-395, at 26, 38 (1993).

applicants are one of the limited groups of undocumented immigrants who are granted access to work authorization after approval of their self-petitions.⁴¹³ However, VAWA applicants must often wait a substantial period of time before they can attain lawful work authorization under VAWA.⁴¹⁴ Furthermore, many battered immigrants have trouble securing jobs or lose their jobs due to their abusers' harassment at their workplace.⁴¹⁵ Applying the five-year bar denies access to the welfare safety net; thus, these battered immigrant women remain locked in homes with abusive spouses, exacerbating harm battered immigrant women and their children suffer. If battered immigrants who entered the United States after August 22, 1996 are to be able to flee their U.S. citizen or lawful permanent resident abusers, they must be ensured the same access to public benefits as are all other battered immigrants that Congress intended VAWA to protect.

X. CONCLUSION

Although Congress enacted several pieces of legislation that significantly enhance protections for battered immigrants between 1994 and 2000, legislative reforms are still needed to ensure that battered immigrants abused by citizen and lawful permanent resident spouses or parents have full access to all of the life saving programs that make up the public benefits safety net. Battered immigrants who are qualified aliens⁴¹⁶ must be exempted from the five-year bar and must be granted access to Food Stamps and SSI. Both of these provisions would further VAWA's original goal of freeing battered immigrant spouses and children from abusive relationships with U.S. citizen and lawful permanent resident abusers. Further, INS must implement VAWA 2000's immigration provisions in a manner that facilitates access to benefits for VAWA-eligible battered immigrants and that takes into account the effect that denying lawful permanent residency will have on the battered immigrant and her children.

Battered immigrant women and abused children must be ensured access to public benefits and other social services as part of a package of relief that includes safe shelter, civil protection orders and immigration relief, all of which help them escape their

413. Orloff & Kelly, *supra* note 79, at 388; Memorandum from the Office of Programs, *supra* note 197, at 3.

414. Memorandum from the Office of Programs, *supra* note 197, at 3.

415. Goldfarb, *supra* note 23, at 2.

416. See *supra* Part VIII.C.

abusers. One of the most dangerous times for a battered woman is the time following her decision to leave her batterer. For battered women who find the courage to flee their abusers, access to public benefits is the safety net that enables them to succeed in escaping violence and creating safe and secure lives for themselves and their children apart from their abusers. Impediments like public charge, the five-year bar and lack of access to food stamps and SSI, which preclude battered immigrant women and children who are qualified aliens from fully accessing public benefits, must be removed. The INS and Congress must ensure that *all* women, including battered immigrant women, have access to public benefits assistance when they attempt to separate from their abusers. If not, instead of providing women a way out, they will be condemning them to a life of danger, violence and even death, while immigrant victims' abusers go free.

