UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
Falls Church, VA

In the Matter of: RESPONDENT (formerly RESPONDENT), Respondent	File No. A NUMBER In Removal Proceedings

BRIEF OF *AMICI CURIAE* IN SUPPORT OF IMMIGRATION JUDGE'S DECISION

J. Michael Klise
Bridget E. Calhoun
Rhonda M. Galaz

CROWELL & MORING LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
Phone: (202) 624-2500
Fax: (202) 628-5116

Counsel for Amici Curiae American Immigration Lawyers Association and The National Network to End Violence Against Immigrant Women

TABLE OF CONTENTS

I. INTRODUCTION

This brief *amici curiae*, submitted on behalf of the American Immigration Lawyers Association ("AILA") and the National Network to End Violence Against Immigrant Women ("the Network"), co-chaired by the Family Violence Prevention Fund, Legal Momentum (formerly known as the NOW Legal Defense and Education Fund) and Asista Immigration Technical Assistance Project, is respectfully filed in support of the Immigration Judge's decision in these proceedings. The *amici* are strongly concerned that Immigration and Customs Enforcement (hereinafter "ICE"), under the aegis of the Department of Homeland Security ("DHS") is misinterpreting and misapplying the requirements for cancellation of removal under Section 240A(b)(2) of the Immigration and Nationality Act (hereinafter "INA"). If accepted by the Board, ICE's approach would defeat the purpose of the statute – to protect immigrant survivors of domestic violence, like Respondent, and empower such immigrants to escape abusive relationships. In addition, *amici* are strongly concerned about ICE's blatant disregard for its obligations under Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") (codified at 8 U.S.C. § 1367). ICE's use in this appeal of information furnished solely by the abuser violates Section 384 and perpetuates the abuser's manipulation of the immigration system. The Board must ensure that the Executive Office of Immigration Review apply accurate interpretations of the special laws Congress has created for immigrant survivors of domestic abuse, in light of the realities of domestic abuse and the purpose of the law. The facts of this case and the applicable law require that the Immigration Judge's sound and correct decision be affirmed.

II. STATEMENT OF INTERESTS OF *AMICI*

AILA, the Network, and its member organizations are leading domestic abuse, immigration law, and women's rights organizations. AILA and the Network have substantial knowledge of the problem of domestic violence, the procedures for combating the problem domestically and internationally, and the particular dynamics of domestic violence experienced by immigrant victims. *Amici* have worked with Congress to craft the special adjustment of status methods for immigrant domestic violence survivors and provide assistance to victims of domestic violence in a variety of ways that will be affected by the present proceedings. Thus, AILA and the Network have a direct interest in the outcome of this appeal.

III. STATEMENT OF THE CASE AND FACTS[1]

Respondent RESPONDENT (formerly RESPONDENT) met and married her U.S. citizen former husband, ABUSER, in her native country of Armenia in 1994. (Tr. 236:18). Their courtship was brief, but apparently happy. (Tr. 74:1-4). Almost immediately after their marriage, Mr. ABUSER's formerly loving behavior towards RESPONDENT changed for the worse. (Tr. 74:5-6). For five years, RESPONDENT suffered domestic abuse at the hands of Mr. ABUSER. Nonetheless, she remained with him – in part because his abusive behavior was punctuated with periods during which he seemed to treat her decently, a response typical to the cycle of violence that pervades abusive relationships. (Tr. 77:2-11; 247:10-15). In 1999, after moving to the United States with him and enduring numerous cycles of severe physical and emotional abuse, she was able to escape his psychological and economic restraints and file for

[1] *Amici* hereby adopt and incorporate Respondent's Statement of the Case and Facts in her Brief In Support of the Immigration Judge's Decision and supplement her statement as follows. *See* Respondent's Brief at 2-10.

divorce. (Tr. 115:6-15). The current immigration proceedings are a direct result of Mr. ABUSER's abuse of RESPONDENT, misuse of United States immigration laws to perpetrate this abuse, and retaliation against RESPONDENT for escaping his control.

As the Immigration Judge recognized, Mr. ABUSER's persistent abuse of RESPONDENT manifested in a variety of ways typically seen in cases of domestic violence, including psychological abuse via deception, social isolation, and economic coercion, as well as physical abuse in the form of beating and rape. *See* Oral Decision of the Immigration Judge at 4 (Nov. 17, 2004) (hereinafter "IJ Decision"). RESPONDENT had no reprieve from Mr. ABUSER until the conclusion of his testimony at a November 2001 hearing on ICE's marriage fraud claim. *See* Respondent's Brief at 10. Despite Mr. ABUSER's testimony, the Immigration Judge found that his allegations of marriage fraud were unfounded and that RESPONDENT was eligible for cancellation of removal as an immigrant survivor of domestic violence. IJ Decision, 2, 5.

IV. ARGUMENT

A. Divorced Victims of Domestic Abuse are Eligible for Cancellation of Removal Under INA Section 240A(b)(2).

ICE's opposition to RESPONDENT's qualification for cancellation of removal reflects a profound misunderstanding of domestic violence, the statutes Congress has created for immigrant victims of violence, and the Congressional intent underlying those laws. Contrary to ICE's understanding, Congress drafted the Violence Against Women Act ("VAWA")[2]

[2] VAWA has undergone multiple amendments due to the ongoing and increasing problem of domestic abuse. *Amici* therefore use the term "VAWA" to refer generally to all incarnations of the statutory regime, and identify particular amendments only where relevant.

cancellation of deportation provisions law broadly, to include immigrant victims who are no longer married to their abusers. ICE's erroneous interpretation effectively sanctions the misuse of immigration laws by abusers, like Mr. ABUSER, to prevent their victims from divorcing and escaping them. Therefore, if ICE's view prevails, it will undermine Congress's efforts to protect immigrant victims of domestic abuse and ensure their access to justice.

1. Unlike the Self-Petitioning Option, a Divorced Woman's Eligibility for VAWA Cancellation of Removal Does Not Turn on When the Marriage was Terminated.

There are two methods of immigration status adjustment available to victims of domestic abuse: VAWA self-petitioning (INA § 204(a)(1)(B)(ii)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(B)(ii)(aa)(CC)(bbb)) and VAWA cancellation of removal (INA § 240A(b)(2), 8 U.S.C. § 1229b(2)). Because it paralleled the regular family-based process, the self-petitioning provisions initially required that applicants be married to their abuser at the time of filing. Congress corrected this problem in 2000, allowing applicants to file self-petitions within two years of the marriage's legal termination. In contrast, the VAWA cancellation of removal provision has never included language limiting its availability based on marital status. Indeed, it makes eligible certain petitioners who may never have been married to their abusers, such as those with children in common (*see e.g.*, *In re: NAJ*, In Deportation Proceedings (Nov. 29, 2001) (attached)) and children abused by a parent. INA § 240A(b)(2), 8 U.S.C. § 1229b(2).

Basic tenets of statutory construction demonstrate the difference. The self-petitioning statute explicitly references the viability of the marital relationship by implementing the aforementioned two-year statute of limitations. *See* INA § 204(a)(1)(B)(ii)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(B)(ii)(aa)(CC)(bbb). VAWA cancellation of removal does not do anything of the sort. Rather, it provides that cancellation of removal is available where "the alien ***has***

been battered or subjected to extreme cruelty…by a spouse or parent who is a U.S. Citizen or lawful permanent resident…." INA § 240A(b)(2)(A)(i)(I), 8 U.S.C. § 1229b(2)(A)(i)(I) (emphasis added).[3] The Board need not look beyond this language to understand that so long as the victim "has been" battered in the past by someone who was their "spouse," they are within the class of aliens that Congress intended to protect. *Russello v. U.S.*, 464 U.S. 16, 20 ("In determining the scope of a statute, we look first to its language. If the statutory language is

---

[3] The VAWA/IIRIRA cancellation of removal provisions appear in Section 240A(b)(2) of the INA (codified at 8 U.S.C. section 1229(b)(2)), which provides as follows:

> The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that--
>
> (i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);
>
> (II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or
>
> (III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;
>
> (ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;
>
> (iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);
>
> (iv) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title (except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver), and has not been convicted of an aggravated felony; and
>
> (v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'"). In addition, unlike the self-petitioning provisions, which impose a restriction on access to those who remarry before filing their applications (*see* INA § 204(h), prohibiting revocation for those who remarry after approval), Congress did not impose a similar restriction on those who file for VAWA cancellation of removal.[4] ICE's erroneous interpretation would erect an entirely new barrier to relief for battered immigrant women. ICE would supply the abuser with one more means by which to manipulate the victim and induce her to remain in the relationship. These consequences are flatly contrary to the letter of the law.

2. ICE's Interpretation Undermines the Language and Purpose of the Violence Against Women Act.

In passing the Violence Against Women Act of 1994 (VAWA 1994), Congress made clear its commitment to combating domestic abuse, including abuse of immigrants. Congress referred to VAWA as "an essential step in forging a national consensus that our society will not tolerate violence against women" and its harmful consequences. S. Rep. No. 103-138, at 41-42 (1993). The INS General Counsel's office recognized this goal, stating that "VAWA was enacted to end a battering spouse or parent's control over the petitioning process and thus remove the petition as a means of controlling or intimidating an abused spouse or child." Paul Virtue, Office of General Counsel, *"Extreme Hardship" and Documentary Requirements*

[4] Notably, this Board has sustained an appeal by a VAWA suspension applicant (supplanted by cancellation in 1997) who was not married to her abuser at the time of filing. *See In re Orozco-Delgado*, In Deportation Proceedings A73-445 519, at 3 (BIA July 14, 2003) (attached). In that case, INS apparently did not argue the applicant was ineligible because she was no longer married. *See id. See also Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (discussing absence of same requirement from old 8 U.S.C. § 1254(a)(3)(1996) suspension of deportation provisions).

Involving Battered Spouses and Children, Memorandum to Terrance O'Reilly, Director, Administrative Appeals Office (Oct. 16, 1998), at 2, *reprinted in* 76(4) Interpreter Releases 162 (Jan. 25, 1999) (hereinafter "1998 Virtue Memo"). VAWA 1994 provided – for the first time – the opportunity for an immigrant domestic violence victim to apply for lawful permanent resident status through a self-petition or suspension of deportation without the knowledge or assistance of her abuser. *Id*.

Two years later, in IIRIRA, Congress supplanted suspension of deportation with cancellation of removal. Division C. of the Omnibus Appropriations Act of 1996 (H.R. 3610, Pub. L. No. 104-208, 110 Stat. 3009). As noted by INS General Counsel, VAWA cancellation retained the lower suspension standards, including the "any credible evidence" standard and "extreme hardship" to the applicant or the applicant's child or parent (as opposed to "exceptional and extremely unusual hardship" to the applicant's US citizen or lawful permanent resident child or parent). 1998 Virtue Memo at 6-7. *Compare* INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(1)(D) ("exceptional and extremely unusual hardship") with INA § 240A(b)(2)(A)(v), 8 U.S.C. § 1229b(2)(A)(v) ("extreme hardship"). The General Counsel observed that "Congress thus intended to apply a lower standard to battered spouses and children." 1998 Virtue Memo at 7. Also, the use of the past tense in the cancellation of removal provisions but not the self-petitioning provisions (*see supra* at __) underscores the fact that Congress did not intend to restrict the availability of cancellation of removal to abuse victims still married to their abusers. *Russello*, 464 U.S. at 23 (stating that where Congress included certain language in one section of a statute and omits it in another, "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").

The likely ramifications of ICE's interpretation are alarmingly contrary to the spirit and intent of the law. As the Ninth Circuit has recognized, "[t]he notion that Congress would require women to remain with their batterers in order to be eligible for the forms of relief established in VAWA is flatly contrary to Congress's articulated purpose…." *Hernandez*, 345 F.3d at 841 (citation omitted). If cancellation of removal turns on whether a battered woman[5] stays with her abuser, she risks continued abuse and possibly even death. Numerous studies show that lethality spikes when victims leave their abusers; abusers may view divorce as the ultimate act of defiance, meriting death. *See* H.R. Rep. 103-395 at 24; 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. Pov. L. & Pol'y 245, 303 (2000); M. Rand & C. Rennison, *How Much Violence Against Women Is There*, Violence Against Women and Family Violence: Developments in Research, Practice, and Policy, Ed. B. Fisher, I-1-8 (2004); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Women's Syndrome*, 21 Hofstra L. Rev. 1191, 1212 (Summer 1993); Klein & Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 816 (1994); M. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation,* 90 Mich. L. Rev. 1 (1991); Minnesota Advocates for Human Rights, *Domestic Violence in Armenia* 40-41 (Dec. 2000) (abusive behavior continues after a divorce); C.R. Block, *Risk Factors for Death or Life Threatening Injury for Abused Women in Chicago*, Violence Against Women and Family Violence: Developments in Research, Practice, and Policy, Ed. B.

[5] Although both adult men and women are victims of domestic violence, approximately 95% are women. Klein & Orloff at 808. Therefore, *amici* refer to victims of domestic violence throughout this brief as women, but argue for the protection of both men and women under these statutory provisions.

Fisher, I-4-6 (2004); A. Ganley, Domestic Violence: The What, Why, and Who, as Relevant to Civil Court Cases, Chapter 2, 21, 37-39, Domestic Violence in Civil Court Cases (1992). [check citation forms]. ICE would require that victims who escape an abusive marriage learn about VAWA's immigration protections and file for VAWA cancellation before taking other legal and social service steps to achieve safety for themselves and their children. Given the lethality spike accompanying any attempt to escape abuse, such a requirement is not only unrealistic, it could prove fatal to those Congress sought to help. *See* National Clearinghouse for the Defense of Battered Women, Statistics Packet, 220 (January 1997) (finding that women are most likely to be murdered when attempting to report domestic violence or to leave an abusive relationship); Angela Browne & R. Flewellyn, *Women as Victims or Perpetrators of Homicide, presented at* The American Society of Criminology Annual Meeting, Atlanta, GA, October 1986 (national study that compared the homicide rates of nearly three quarters of the states for 1976 and for 1980 through 1984, showing that the rate of domestic violence homicide increases after the victim has left the abusive partner). Congress clearly could not have intended that battered women stay with their abusers and that divorce and remarriage have a detrimental effect on the availability of VAWA cancellation to battered immigrants.

B. ICE's Use of the Abuser's Uncorroborated Testimony Violates Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996.

In addition to enhancing VAWA protections and providing new protections and benefits for immigrant survivors of domestic violence, in IIRIRA Congress crafted special protections for VAWA applicants to prevent abusers from manipulating the immigration system and sabotaging

legitimate VAWA claims.[6] *See* H.R. Rep. No. 109-3402, at 122 (2005) ("These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims."). Among other things, these special provisions prohibit the government from making an adverse admissibility or deportability decision using information furnished solely by the abuser. 8 U.S.C. § 1367(a). In its appeal before the Board, ICE presents uncorroborated testimony from Mr. ABUSER to support its contention that RESPONDENT did not meet her burden for cancellation of removal under Section 240A(b)(2). *See generally* Government's Appeal Brief. This blatant disregard for Congress's prohibition is emblematic of ICE counsel's ignorance of domestic violence, VAWA and the congressional intent underlying the law. ICE's unflagging reliance on a known abuser is especially troubling. *Amici* ask the Board to repudiate

---

[6] IIRIRA section 384 states in relevant part:

> (a) In General.
>
> Except as provided in subsection (b), in no case may the Attorney General or any other official or employee of the Department of Justice (including an bureau or agency of such Department)—
>
> > (1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by –
> >
> > > (A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,
> > >
> > > . . . .; or
> >
> > (2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under clause (iii) or (iv) of section 204 (a)(1)(A), clause (ii) or (iii) of section 204 (a)(1)(B), section 216(c)(4)(C), section 101 (a)(15)(U), or section 240A(a)(3) [1] of such Act [8 U.S.C. 1154 (a)(1)(A)(iii), (iv), (B)(ii), (iii), 1186a (c)(4)(C), 1101 (a)(15)(U), 1229b (b)(2)] as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.

8 U.S.C. § 1367(a).

ICE's effort to undermine section 384, a key aspect of Congress's commitment to preventing abuser manipulation of the immigration system.

1. ICE's Approach is Exactly What Congress Seeks to Stymie.

Congress recently restated the purpose Section 384 explaining that it is designed to prevent exactly what ICE is facilitating here – abusers misusing the legal system by feeding ICE officers lies that ICE then uses to place victims of domestic violence in removal proceedings. Specifically, Congress stated:

> These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers . . . interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.
>
> This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault or trafficking, as prohibited by section 384 of IIRIRA.

H.R. Rep. No. 109-3402, at 122. In addition, Representative John Conyers, Jr., co-author of the Violence Against Women Act of 2005 ("VAWA 2005") recognized that:

> Section 817 of this Act contains same [sic] of the most important protections for immigrant victims. This section . . . directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution. In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims.

151 Cong. Rec. E2605 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers).

Congress believed that prohibiting adverse admissibility and deportability determinations based on information solely provided by the abuser was necessary because abusers typically fabricate stories, attempt to undermine the victim's credibility, and vehemently deny the abuse. Abuser evidence alone is therefore highly suspect and unreliable.

The protections found in IIRIRA Section 384 were first introduced in Congress in 1995 by Representative Pat Schroeder (D-CO) as an amendment to the an earlier incarnation of IIRIRA. *See* Full Committee Mark Up: Hearing on H.R. 2202 Before the House Judiciary Committee, 104th Cong. (September 19, 1995) *reprinted in* Federal News Service. In presenting the amendment, Representative Schroeder explained:

> [This amendment] deals with the very essential issue of confidentiality vis-à-vis battered women and children. I think we all know confidentiality is a matter of life and death whether or not they are citizens or whether they are immigrants. And that we must make sure that if there's some kind of battering going on, that the INS is not breaching confidentiality. As you know abusers can be anyone and basically *what we're doing here is making sure that decisions affecting a battered woman's immigration couldn't be based on statements of the abuser. That giving the abuser the ability to influence the INS would give the abuser control over the victim's status.*

Id. (emphasis added); *cf*. S. Rep. No. 545 101st Cong. 2d Sess. 38 (1990); H.R. Rep. No. 395, 103d Cong., 1st Sess. 25 (1993) (evidencing that IIRIRA § 384 was merely the latest in a series of federal legal reforms aimed at protecting battered immigrants and preventing abusers from using the immigration processes to control and manipulate their victims). The only concerns raised in response to the introduction of Representative Schroeder's amendment related to the scope of its "absolute language." Representative Lamar Smith (R-TX), a principal author of IIRIRA and the Chairman of the Immigration and Claims Subcommittee of the Judiciary Committee, noted:

> In the first line there's language that "in no case may the Attorney General or any other official use information furnished by an abusive spouse or family member" I'm just wondering if that should be somewhat modified . . . we might need to write in certain exceptions to the ***absolute language*** that the amendment contains.

Id. (emphasis added). The amendment was temporarily withdrawn, exceptions were added, and the revised amendment was reintroduced on March 19, 1996 as part of an amendment package introduced by Representative Smith himself; the language, as re-introduced and without subsequent change, eventually became Section 384 of IIRIRA. *See* H.R. 2202 § 364; 143 Cong. Rec. H2378 (daily ed. March 19, 1996). This history makes clear the purpose of the statute evident in its language: to protect immigrant victims of domestic violence and to thwart efforts by abusive spouses to use the INS to manipulate and control them.

Congress's reasoning is supported by sociological experts on domestic abuse, who recognize that:

> Persons who are not trained to recognize the dynamics of domestic violence may be easily lulled by men who batter their wives who often do not come across to those outside the family as abusive individuals. Often, the abusive man maintains a public image as a friendly, caring person who is a devoted "family man." . . .

David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge*, 33 Boston G.J. 23, 23 (1989). Many batterers effectively use this suave exterior to maintain continued control over their victims by successful manipulation of the court process. *Id*. Those who have studied domestic abusers know that batterers can be very effective at putting on a convincing "Mr. Nice Guy" persona to attempt to influence immigration proceedings. *Id.* ICE should have known Mr. ABUSER had problems with the law and was a known domestic abuser when faced with the following mountain of objective evidence:

- Dr. Susannah Smith's statement that both the Respondent and her son were victims of domestic violence by Mr. ABUSER.." (Exhibit _, Statement of Dr. Susannah Smith.)
- A U visa certification form, certified by the Ouray County Sheriff, stating that RESPONDENT was a primary victim of human trafficking, domestic abuse and sexual exploitation. (Exhibit __, Certification Form from David J. Scott.)
- A U visa certification form, certified by Ridgway Marshall, stating that RESPONDENT was a victim of domestic violence. (Exhibit __, Certification Form from Dominic Mattavi.)
- A permanent restraining order entered in August 2000 by a Montrose County Judge against Mr. ABUSER for harassing another woman, Maureen Williams. (Exhibit __, Permanent Civil Restraining Order Issued Against ABUSER.)
- [Respondent's restraining order- Paige where can we find a cite to this in the record? EXHIBIT 8 – SEE SCANNED IN DOCS – THERE ARE A BUNCH OF DOCS ON THIS]
- Mr. ABUSER's failure to pay child support for over three years. (Exhibit __, Notice dated February 25, 2003, from the Montrose County Child Support Enforcement Unit to RESPONDENT.)
- Dr. DOCTOR-2's, psychologist's decision to require that any parental visitation time by Mr. ABUSER with his son be supervised. (See Exhibit _, Psychological Assessment of Dr. DOCTOR-2.)

Given this evidence of ABUSER'S criminal behavior and clear history as a domestic abuser, ICE's reliance and belief in his testimony is particularly problematic.

Mr. ABUSER's testimony is precisely the kind of unreliable evidence that Section 384 is designed to preclude. The family court judge who issued a domestic violence restraining order against Mr. ABUSER found he was an abuser. I'M NOT SURE THIS IS ACCURATE. THERE IS NO SUCH FINDING IN THE ORDERS - PG The Immigration Judge in this case found that Mr. ABUSER was an abuser. IJ Decision at 4-5. Mr. ABUSER's own counselor testified that he is an abuser. DR. DOCTOR TESTIFIED – SHE WAS NOT EXACTLY ABUSER'S COUNSELOR, BUT RATHER RESPONDENT'S COUNSELOR – SHE EXPLAINS IN HER TESTIMONY THAT ABUSER CAME TO SEE HER TO "GIVE HIS SIDE OF THE STORY" – SEE TR. AT 317. DR. DOCTOR-2 EVALUATED RESPONDENT, ABUSER, AND SON SONS NAME, BUT SHE MADE NO FINDING THAT ABUSER WAS AN ABUSER – HOWEVER, DR. SMITH DID CHARACTERIZE ABUSER AS A "SOCIOPATHIC CON MAN" – SEE TR AT P. 317 - PG Despite this overwhelming evidence that he was an unreliable (and legally impermissible) source of information, ICE includes pages and pages in its appeal brief recounting Mr. ABUSER's testimony, provided to support its unsuccessful marriage fraud allegation. *See* Government's Brief, at 14-20, 46-47. Most of Mr. ABUSER's testimony is self-serving and irrelevant, and none of it is corroborated. Purposefully using it violates the law and should be sanctioned as such. *See* 8 U.S.C. § 1367(c) ("Penalties for Violations. Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.")[7]

[7] In addition, because the Immigration Judge found ABUSER'S testimony unbelievable and denied ICE's marriage fraud claim, Respondent was not given an opportunity to cross-examine ABUSER. The use of (continued…)

2. ICE's Evasions of Section 384's Prohibitions Violate Both the Law and DHS Guidance in Implementing the Law.

ICE's attempts to do an end-run around Section 384 by (1) arguing lack of notice of VAWA claims and (2) misquoting two of the provisions of Section 384. The notice argument is ludicrous on its face. ICE was on notice as early as August 2001 that RESPONDENT might have a VAWA claim when her counsel indicated she was eligible for benefits as a victim of domestic violence. (Tr. 184:1-2). The agency's section 384 implementing memo, which should have governed ICE's actions from this point on says:

> These provisions, and the Congressional and public scrutiny which accompany them, warrant particular care whenever and INS officer or employee suspects that an alien with whom they are dealing might have been subject to domestic violence.

Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service, Department of Justice, *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA §384*, *reprinted in* 74 Interpreter Releases 795, 797 (May 12, 1997) (hereinafter "1997 INS Memorandum"). By the time ICE wrote its appeal it had ample evidence that its preferred source was an abuser, and a criminal fleeing prosecution.

In addition, ICE confuses the confidentiality protections with the evidentiary admission prohibitions when it argues that RESPONDENT waived Section 384's application. *See* Government's Reply Brief, at 5-6. If RESPONDENT had, in fact, agreed to a waiver, it would apply only to the prohibition on sharing information in her file, not on using abuser information.

(…continued)

ABUSER'S untested testimony in a removal proceeding therefore also violates RESPONDENT'S Fifth Amendment right to due process. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (recognizing that aliens are afforded due process of law with in immigration proceedings); *Michelson v. INS*, 897 F.2d 465, 468 (10th Cir. 1990) (same).

Secondly, ICE misquotes the statute's "sole source" exception. The statute prohibits using evidence whose sole source is the abuser, not using ***only*** evidence from the abuser as stated by ICE. *Compare*, 8 U.S.C. § 1367(a)(1) (prohibiting the government from "using information furnished ***solely by*** [the abusive spouse]" (emphasis added)) with Government's Reply Brief at 4 (claiming ICE "did not rely solely on information furnished by the respondent's alleged abuser"). Regardless of what other evidence it provides, ICE may not use any evidence from an abuser unless it has statutorily acceptable sources that specifically corroborate the abuser's allegations. Providing other, unrelated, evidence does not vitiate the prohibition; the evidence must corroborate the evidence Congress has found to be inherently unreliable.

> DHS's 384 internal guidelines have long stressed the corroboration requirement:
>
> If an INS employee receives information adverse to an alien from the alien's U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, the INS employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.

1997 INS Memorandum at 797.[8]

None of the additional evidence ICE submitted meets Section 384's requirements. The letter from RESPONDENT's mother does not corroborate the marriage fraud allegation. Stating that she is glad her daughter and Mr. ABUSER are getting along well together supports the opposite conclusion: she thought it was a real marriage and was sadly unaware or purposefully ignoring the domestic violence occurring in it. Even if she wrote an affidavit that ICE argues supports her daughter's abuser, she is a prohibited source. 1997 INS Memorandum, at 795

[8] The memorandum warns that violation of section 384's two prohibitions "can result in disciplinary action or in civil penalties of up to $5,000 for each violation." *Id*. at 795.

(requiring INS officers who receive "information adverse to an alien from the alien's U.S. citizen or lawful permanent resident spouse . . . ***to obtain independent corroborative information from an unrelated person***" (emphasis added). Similarly, the four other pieces of evidence ICE offers, even if accepted as true for the propositions for which they are proffered, do not corroborate Mr. ABUSER's statements:

- The statement from Police Officer COP that "there was no evidence of a domestic disturbance in response to a phone call from Mr. ABUSER requesting emergency assistance." (Government's Reply Brief at 4-5; Exhibit _, Letter from COP, Deputy Sheriff of Ouray County). – The government's attempt to claim that this report corroborates Mr. ABUSER's testimony is again symptomatic of its failure to recognize that domestic abuse is not a one time incident. Even if Officer COP did not find an active dispute when she arrived, that does not mean RESPONDENT was not being abused by Mr. ABUSER. In fact, what ICE failed to mention was the fact that Officer COP left RESPONDENT with the phone number for the local domestic violence hotline. (Tr. 252:19-18. Exhibit __, Affidavit by COP.) Clearly, Officer COP recognized that RESPONDENT was in an abusive relationship.
- A psychological evaluation written by Dr. DOCTOR-2 concluding that Mr. ABUSER is not a psychopath and should be granted visitation rights with his son. (Government's Reply Brief at 5; Exhibit __, Psychological Assessment of Dr. DOCTOR-2.) – Again, this is one psychological opinion that Mr. ABUSER is not a psychopath hardly corroborates the testimony ICE seeks to use in this case.

Additionally, while Dr. DOCTOR-2 permitted Mr. ABUSER to have visitation rights, she required that they be supervised as a safety precaution suggesting that she believed Mr. ABUSER was dangerous. (Exhibit __, Psychological Assessment of Dr. DOCTOR-2.)

- A court order indicating that ABUSER could share parenting time with RESPONDENT. (Government's Reply Brief at 5) – As with Dr. DOCTOR-2's conclusion discussed above, the court order of ***supervised*** visitation with his son in no way corroborates Mr. ABUSER's testimony or proves that he did not abuse RESPONDENT.
- An acquittal of Mr. ABUSER on a charge of stalking and harassing RESPONDENT after termination of their marriage. (Government's Reply Brief at 5.) – Even if Mr. ABUSER was acquitted of stalking and harassment after the termination of his marriage, it does not prove that he did not abuse RESPONDENT ***during*** their marriage.

ICE's after-the-fact attempt to grasp for evidence that it deliberately twists in support of its appeal demonstrates the severity of ICE's disregard and/or misunderstanding of the law and the problems facing immigrant women of domestic violence. ICE's use of Mr. ABUSER's testimony patently violates both Section 384 and the agency's implementing guidance. It is, in fact, the quintessential example of why Congress thought the prohibition necessary: Mr. ABUSER is a liar, he lied to ICE and, instead of disregarding his lies, ICE is using them against a legitimate VAWA applicant. *Amici* ask the Board to repudiate ICE's actions.

C. The Judge was Correct that RESPONDENT Merits the Relief Intended by Congress.

The Immigration Judge correctly found the RESPONDENT met VAWA's cancellation of removal requirements. She suffered battery and extreme cruelty at the hands of a spouse or former spouse who is a U.S. citizen; she meets the tests for good moral character and three years' presence in the United States; and she has shown that she and her child will suffer extreme hardship if deported to the homeland. We review her eligibility in reverse order of the listed requirements.

1. Removal Would Result in Extreme Hardship to RESPONDENT and Her Son.

SEE IJ'S STATEMENT REGARDING HARDSHIP IN TR. AT P. 233, WHERE HE BASICALLY FINDS THAT HARDSHIP EXISTS SO DON'T EVEN NEED TESTIMONY ON IT.

RESPONDENT has shown eligibility under both basic factors articulated in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); and the special VAWA extreme hardship factors, 8 C.F.R. § 240.58(c).

The *Anderson* factors include:

1. family ties in the United States and abroad;

2. length of residence in the United States;

3. condition of health;

4. conditions in the country to which the alien is returnable -- economic and political;

5. financial status -- business and occupation;

6. the possibility of other means of adjustment of status;

7. special assistance to the United States or community;

8. immigration history;

9. position in the community.

Matter of Anderson, 16 I&N Dec. 596 (BIA 1978). In addition, the VAWA regulations state:

> (c) For cases raised under section 244(a)(3) of the Act, the following factors should be considered in addition to, or in lieu of, the factors listed in paragraph (b) of this section.
>
> (1) The nature and extent of the physical or psychological consequences of abuse;
>
> (2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);
>
> (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
>
> (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
>
> (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
>
> (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.

8 C.F.R. § 240.58(c).

In its Appeal Brief, ICE fails to consider that under Section 240A(b), an applicant for cancellation of removal must show that her "removal would result in extreme hardship to the alien, ***the alien's child***, or the alien's parent." As set forth more fully in her appeal brief, RESPONDENT has shown that cancellation of removal would cause extreme hardship to both

her and her son, SONS NAME, under both the *Anderson* and the VAWA extreme hardship factors for the following reasons:

- RESPONDENT and her family have been threatened by people to whom Mr. ABUSER owes great sums of money. (Tr. 39:23-25; 40:7-25.) Were she to return to Armenia, RESPONDENT would face a certain danger in a country where there is no rule of law. (Exhibit __, Affidavit of EXPERT.)
- RESPONDENT's son, SONS NAME is a young child who was born in the United States and has never been to Armenia. He does not speak the language or have any ties to Armenia other than heritage. To uproot SONS NAME from the stable home environment RESPONDENT has finally been able to provide since leaving Mr. ABUSER would be psychologically devastating to him. In addition, Mr. ABUSER is apparently on the run. CITE – THIS IS TAKEN DIRECTLY FROM MY APPEAL BRIEF AT P. 10: " ABUSER has not been seen or heard from since he testified at RESPONDENT's hearing November 27, 2001. His child support debt continues to soar, as he has not made any of his court-ordered child support payments to RESPONDENT since 2001. (Tr. 276:20-21. Recent reports of Mr. ABUSER's whereabouts put him in Germany. (Tr. 276:25. Tr. 277:1-11.)" - PG
- He has threatened to take SONS NAME away from RESPONDENT on numerous occasions, violated restraining orders, and failed to pay court ordered

child support. CITE – SEE REPORT BY DOCTOR-2, ARREST REPORTS, U VISA CERT FORMS – PG. Were RESPONDENT and SONS NAME to be sent to Armenia, they would no longer have the protection of the United States laws and the medical and social services available. They most certainly would be vulnerable to future abuse by Mr. ABUSER. Clearly, forcing RESPONDENT to return to Armenia with SONS NAME is not in the best interest of the child.

- RESPONDENT's entire family resides in the United States. She no longer has any immediate family in Armenia. CITE Requiring her to return to Armenia would mean removing her from the only family she has as well the supportive and embracing STATE community. RESPONDENT has been living in the United States for nine years and since her escape from the abusive marriage to Mr. ABUSER she has established positive relationships and ties to her community in STATE. This is evidenced by the numerous affidavits of good moral character submitted by community members and friends. CITE

Without repeating the abundance of evidence on the record and cited by RESPONDENT in her in Support of the Immigration Judge's Decision, *amici* believe that RESPONDENT is exactly the type of immigrant victim of domestic abuse who satisfies the requirements of extreme hardship.

2. RESPONDENT Has Established Her Good Moral Character and Continuous Presence in the United States.

RESPONDENT has established through numerous witnesses and documentary evidence that she has lived continuously in the United States for 9 years. CITES In addition, there is no question that she has established her good moral character. She is a law abiding woman living in

STATE with her family. [Paige- Can you help us with a few examples of her good moral character?]

3. RESPONDENT Has Been Battered and Subjected to Extreme Cruelty by a Spouse Who Was a United States Citizen.

Those uneducated in domestic violence often question victims' veracity because they stay with their abusers. As recognized by DHS, persons of different ethnic backgrounds respond to domestic abuse in varying ways. *See* 1998 Virtue Memo (noting that INS officials should consider the view of domestic violence by persons of certain cultural backgrounds in an extreme hardship analysis). For example, RESPONDENT's seeming tolerance of Mr. ABUSER's abuse was a function of her Armenian heritage, as well as a feature common to domestic violence relationships. The Armenian family structure is very important to the Armenian identity. Minnesota Advocates for Human Rights, *Domestic Violence in Armenia* 7 (Dec. 2000). Extended family circles are closely knit, sometimes with 20 to 50 relatives residing close to one another. *Id*. Armenian culture is structured with strong patriarchal controls, which Mr. ABUSER (though not himself Armenian) exploited in his relationship with RESPONDENT. *Id*. Traditionally, the ideal Armenian woman is "chaste, restrained, and passive." *Id*. The wife obeys her husband and becomes part of his family. *Id*. Women are expected to be peacekeepers within the family, raising the children and enduring domestic violence as though it is their duty. *Id*. Indeed, Armenian society views certain violence, like slapping, as less serious and therefore acceptable. *Id*. at 25. The Armenian culture discourages women from reporting domestic violence to government authorities. *Id*. Family, friends, and neighbors discourage them from doing so and do not provide the social support structure typically needed for a woman to leave

her abuser. *Id*. Armenian women who do leave their husbands are often shunned for breaking up their family regardless of the reason that they leave. *Id*.

Within this context, the Immigration Judge found that Mr. ABUSER used a number of methods typically employed by perpetrators of domestic violence, including extreme cruelty in the form of social isolation, and economic coercion, as well as physical abuse in the form of beating and rape. Mr. ABUSER's abuse included:

Physical Violence and Rape. RESPONDENT endured physical abuse throughout her marriage to Mr. ABUSER. On one occasion in Armenia, Mr. ABUSER dragged her to the bathroom by the throat, yelled at her, and raped her. (Tr. 75:13-14, 75:23-25, 76:1-5). The rapes continued throughout the marriage as he used blackmail to elicit sex from her. (Tr. 75:8-14, 248:21-25, 249:1-3). As she was attempting to leave the marriage, he raped her after coercing her to meet with him to discuss their separation. (Tr. 98:1-8). The sexual abuse continued after their separation because he agreed to it only if she would continue to "satisfy him sexually" for three months. (Tr. 98:9-15, 256:20-25).

Threats and Degradation. The Immigration Judge recognized that "[t]he evidence in this record is quite clear that Mr. ABUSER subjected [RESPONDENT] to psychological cruelty." IJ Decision at 4. RESPONDENT "provided the testimony and other evidence from a treating psychotherapist to indicate that in her opinion, Mr. ABUSER kept the respondent in virtual 'slavery'." *Id*. Mr. ABUSER frequently insulted RESPONDENT, telling her that she was "stupid," that her English was bad, and that she had mental problems. (Tr. 97:13-18). Mr. ABUSER's threatened their child in front of RESPONDENT and threatened to take the child from RESPONDENT, both forms of extreme cruelty. IJ Decision at 5. This cruelty followed multiple cycles of manipulation and abuse followed by kindness and apologies. (Tr. 245-247).

Mr. ABUSER's psychological abuse of RESPONDENT caused her to suffer related physical maladies, including depression, an eating disorder, a sleep disorder, and post traumatic stress disorder. (Tr. 313:13-25).

Social Control and Isolation. Mr. ABUSER repeatedly blocked RESPONDENT's attempts to establish and maintain a social support system. Early in their marriage, he induced RESPONDENT to move to the United States with the promise that they would return to her native Armenia, effectively removing her from everyone and everything she had ever known. **CITE?** (Tr. at 143:17-21.) (also, see Paige's appeal brief at 3 and 35).

Mr. ABUSER would not permit RESPONDENT to leave the house in OLD TOWN without him or his daughter. (Tr. 240: 24 – 241:2). Upon Mr. ABUSER's decision to leave OLD STATE for STATE, any social relationships RESPONDENT had developed were severed without notice. (Tr. 94:25 – 95:3). While living in STATE, Mr. ABUSER terminated her only job when he felt threatened by the relationships she was building; he revealed her immigrant status to her employer. (Tr. 252:6-16). These are typical ploys used by a domestic abuser to isolate his victim from her community and ensure that her social existence is subject to his will. Klein & Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 871-72 (1994).

Economic Control. For two years Mr. ABUSER failed to file a family-based adjustment application for his wife, so RESPONDENT was legally unable to find employment. She did not obtain a job in the United States until Mr. ABUSER instructed her to use his Social Security number. (Tr. 247:1-21, 248:6-16). All of her earnings went directly to Mr. ABUSER and were subject to his control. (Tr. 97:8-9). Despite this financial contribution, Mr. ABUSER called her

employer and reported that she was using a false Social Security number as retribution for challenging his authority. (Tr. 247:1-21). She was immediately thereafter fired from her job. (*Id.*)

Deportation Threats. Immigration-related abuse is a good predictor of escalating abuse and lethality. Orloff & J.V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol'y 95, 136 (2001). The record demonstrates that Mr. ABUSER consistently used RESPONDENT's immigration status as a tool to manipulate her and induce her to remain in the relationship. She did not know what would happen with regard to her immigration status if she left him, so she was afraid to report Mr. his abuse to local authorities. (Tr. 275:7-12). She asked him on numerous occasions to file adjustment of status papers with the U.S. Government. (Tr. 243:17-25, 244:1-8). He refused and threatened her with deportation. (Tr. 97:18-20, 248:15-21). She believed he would make good on these threats, and felt trapped, eventually attempting suicide. (Tr. 123:22-25, 124:1-7, 250:15-25, 251:1-16). In RESPONDENT's words, "I couldn't get away....[H]e put me in a situation where if I would have leave him or if I would have file for divorce, he would have deport me back." (Tr. 250:23 – 251:1).

When Mr. ABUSER eventually did file an application for his wife, he filed it at the wrong office, giving INS his daughter's address in OLD STATE as his own. This ensured that RESPONDENT would never get notices or requests for evidence from CIS and allowed Mr. ABUSER to maintain control over her immigration application. When his wife raised the issue of a divorce, he told her that she should wait "a couple of years" because it would look bad for her immigration application. (Tr. 169:10-16). He would withdraw the I-130 application if she divorced him. *Id*.

Mr. ABUSER made good on his threats by withdrawing the application and alleging marriage fraud instead. Her abuser's behavior, as the Immigration Judge noted, has made the possibility that RESPONDENT will be able to obtain legal permanent residency through an I-130 petition filed by a different spouse remote if not hopeless. IJ Decision at 6; (Tr. 226:6-13). Unfortunately, since she didn't realize she was eligible to self-petition until after the two-year statutory deadline or self-petitioning, she is ineligible for that affirmative form of relief.

As the Immigration Judge recognized, RESPONDENT undoubtedly has been battered and subjected to extreme cruelty, qualifying her for cancellation of removal under INA Section 240A(b)(2)(A). IJ Decision at 4.

D. ICE's General Allegations About RESPONDENT'S Ineligibility are Grounded in Profound Ignorance of Domestic Violence.

ICE's appeal brief calls to mind one of the primary concerns addressed by Congress when enacting VAWA: that "lay understandings of domestic violence are frequently comprised of 'myths, misconceptions, and victim blaming attitudes,' and that background information regarding domestic violence may be crucial to understand its essential characteristics and manifestations." *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (internal citations omitted). As demonstrated in the instant appeal, this concern is still well founded. In an attempt to undermine RESPONDENT's credibility, ICE's brief improperly sets forth a "greatest hits list" of misunderstandings and assumptions regarding domestic abuse victims that is easily refuted:

FACT: RESPONDENT's hazy memory is characteristic of domestic violence victims, and in fact is a telltale sign of abuse. *See generally* J.S. Meier, "Notes from the Underground,

Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice," 21 HOFSTRA L. REV. 1295, 1312-14 (1993).

FALSEHOOD: RESPONDENT's inability to recall minute details regarding her time with Mr. ABUSER undermines her credibility as an abuse survivor. Government's Brief at 8.

FACT: With ongoing domestic violence, a relationship undergoes peaks and valleys, with periods of relative "happiness" in between periods of physical and emotional abuse. *Id.*- ? at __. It may therefore take from two to five attempts for a victim of domestic abuse to leave her abuser. *See* Klein & Orloff at 1112.

FALSEHOOD: The fact that RESPONDENT traveled to the United States with a husband who physically abused her and remained in the relationship thereafter despite the abuse suggests that she was not a victim of abuse by Mr. ABUSER. Government's Brief at 12, 37.

FACT: Out of fear of the repercussions of leaving her abuser, it is common for a victim to wait to report domestic abuse until after she leaves or divorces him. *See* Dutton at 293 (noting that one study found that battered immigrant women rated fear of deportation as the first or second most intimidating factor in escaping an abusive relationship, thereby preventing them from obtaining the assistance they need to survive outside of the relationship).

FALSEHOOD: RESPONDENT's delay in reporting Mr. ABUSER's abusive behavior indicates that it never happened. Government's Brief at 13-14, 26, 37.

FACT: Those who are familiar with the cycles of domestic abuse know well that domestic violence victims often put on a happy façade to the outside world because of shame, embarrassment, or denial. *See* Alyce D. LaViolette and Olg W. Barnett, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY, __ (2d. ed. date). [We do not have a paginated version of this!] Women from certain conservative, male-dominated cultures are even more likely to put forth this façade. ADD CITE RE ARMENIAN CULTURE.

FALSEHOOD: Because the Sheriff's report stated that there was no immediate evidence of domestic abuse (Government's Brief at 27) and her family perceived their marriage as happy, Mr. ABUSER did not abuse RESPONDENT. *Id.* at 40.

FACT: Often, the abusive man maintains a public image as a friendly, caring person who is a devoted "family man." David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge*, 33 Boston G.J. 23, 23 (1989). Many batterers effectively use this suave exterior to maintain continued control over their victims by successful manipulation of the court process. *Id*. Domestic abusers can be very effective at putting on a convincing "Mr. Nice Guy" persona to attempt to influence immigration proceedings. *Id.*

FALSEHOOD: Despite the evidence of Mr. ABUSER's deceptive, criminal and abusive behavior, Mr. ABUSER's representations to ICS during the course of the alleged marriage fraud proceedings as a therapist, a religious man, and a loving husband give him credibility as a witness. Government's Brief 14-20, 45.

FACT: The risk of domestic abuse does not decrease upon separation from a women's abuser. To the contrary, the risk of violence increases upon threat of separation. *See*

National Clearinghouse for the Defense of Battered Women, Statistics Packet, 220 (January 1997) (finding that women are most likely to be murdered when attempting to report domestic violence or to leave an abusive relationship); Angela Browne & R. Flewellyn, *Women as Victims or Perpetrators of Homicide, presented at* The American Society of Criminology Annual Meeting, Atlanta, GA, October 1986 (reporting that nearly three quarters of the states have documented that the rate of domestic violence homicide increases after the victim has left the abusive partner); Klein & Orloff at 838 (explaining that domestic battering often reaches heightened levels after the separation); Minn. Adv. at 40-41 (stating that "[i]nternational research shows that abuse continues or even intensifies when a woman tries to leave her husband" and continues after divorce); A. Ganley, *Domestic Violence: The What, Why, and Who, as Relevant to Civil Court Cases*, Chapter 2, 21, 37-39, Domestic Violence in Civil Court Cases (1992) (noting that separation, through divorce or otherwise, often does not prevent abusers from going to great lengths to find and harass their victims. *See*; Minn. Adv. at 41 (abusive behavior continues after a divorce); A. Browne, When Battered Women Kill 114 (1987) (stating that abusers are known to continue stalking behavior for years after the separation).

FALSEHOOD: RESPONDENT was safe from Mr. ABUSER's abuse upon her divorce. Government's Brief at 30-32.

ICE's failure to consider "the psychological, economic, and social realities of domestic violence victims" (S. Rep. No. 103-138 at 46 (1993)) underscores its need to undergo the domestic abuse training mandated by Congress in VAWA 2005. These falsehoods would easily be disproved through a basic "Domestic Violence 101" course. In the interim, *amici* rely on the Board to

support immigration judges who implement the VAWA laws as Congress intended, and repudiate ICE efforts to undermine those laws.

VI. CONCLUSION

RESPONDENT and her son now live a life free of the harassment from their abuser. This is the result Congress envisioned. *Amici* ask the Board to preserve this desired outcome and repudiate ICE's violation and misinterpretation of the special protections Congress has created for immigrant survivors of domestic abuse.

Respectfully submitted,

Date : _____

_____

J. Michael Klise
Bridget E. Calhoun
Rhonda M. Galaz

CROWELL & MORING LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
Phone: (202) 624-2500
Fax: (202) 628-5116

Counsel for Amici Curiae

PROOF OF SERVICE

I hereby certify that a copy of the foregoing submission was served via First Class Mail, postage prepaid, this __ day of January 2006, upon the following:

Leila Cronfel, Esq.
Assistant Chief Counsel
U.S. Department of Homeland Security
4730 Paris Street
Denver, CO 80239

Counsel to the Government

C. Paige Gardner, Esq.
SONS NAME Law Firm, P.C.
One Broadway
Building A, Suite 235
Denver, CO 80203

Counsel to Respondent

_____
Rhonda M. Galaz

2703748v1