

No. 18-62506

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

H [REDACTED] D [REDACTED] H [REDACTED],

Plaintiff,

v.

LAURA B. ZUCHOWSKI, in her official capacity
as Field Office Director, Vermont Service Center,
U.S. Citizenship and Immigration Services;
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Defendant,

**AMICUS BRIEF OF ASISTA IMMIGRATION ASSISTANCE, NATIONAL NETWORK
TO END DOMESTIC VIOLENCE, NATIONAL COALITION AGAINST DOMESTIC
VIOLENCE, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, CATH-
OLIC LEGAL SERVICES, FREEDOM NETWORK USA, AND TAHIRIH JUSTICE
CENTER IN SUPPORT OF PLAINTIFF**

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STATEMENT OF INTEREST OF *AMICI CURIAE*

ASISTA Immigration Assistance is a national non-profit organization that works to advance and protect the rights and routes to status of immigrant survivors of violence, especially those who have suffered gender-based violence inside the United States. ASISTA worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, other and other crimes in the Violence Against Women Act (“VAWA”) and its subsequent reauthorizations. ASISTA serves as liaison between those who represent these survivors and the Department of Homeland Security (“DHS”) personnel charged with implementing the laws at issue in this appeal, including Citizenship and Immigration Services (“USCIS”), Immigration and Customs Enforcement (“ICE”), and DHS’s Office for Civil Rights and Civil Liberties. The proper interpretation of the joint residence requirement is critical to ensuring that all eligible survivors of domestic violence receive VAWA protection.

The **National Network to End Domestic Violence (NNEDV)** is a not-for profit organization incorporated in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence, and their advocates. NNEDV was instrumental in promoting Congressional enactment and implementation of the Violence Against Women Acts. NNEDV has a strong interest in ensuring that immigrant victims can report the crimes they experienced without fear that the disclosure will result in removal proceedings.

The **National Coalition Against Domestic Violence (“NCADV”)** provides a voice to victims and survivors of domestic violence. It strives to foster a society in which there is zero tolerance for

domestic violence by influencing public policy, increasing public awareness of the impact of domestic violence, and providing programs and education that drive that change.

The **Asian Pacific Institute on Gender-Based Violence** is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander survivors and is a leader on providing analysis on critical issues facing victims in the Asian and Pacific Islander communities. The Asian Pacific Institute's vision of gender democracy drives its mission to strengthen advocacy, change systems, and prevent gender violence through community transformation.

Catholic Charities Legal Services, Archdiocese of Miami, Inc. ("CLS") provides professional immigration services to the South Florida's refugee, migrant and immigrant communities. It has grown to be one of largest providers of direct representation and immigration services to these communities in the State of Florida. Almost three thousand individuals seek the services of CLS each month, including battered spouses and their children and victims of crime. CLS works closely with local law enforcement officials, civil and criminal judges, domestic violence and sexual assault advocates, as well as other legal services providers who assist immigrant crime survivors.

Freedom Network USA ("FNUSA") is the largest alliance of human trafficking advocates in the United States. Our 68 members include survivors of human trafficking and those who provide legal and social services to trafficking survivors in over 40 cities, providing comprehensive legal and social services, including representation in immigration cases. In total, our members serve over 2,000 trafficking survivors per year, including adults and minors, survivors of both sex and labor trafficking, over 65% of whom are foreign national survivors. While many trafficking survivors in the U.S. pursue T Visas, others pursue relief under the Violence Against Women Act (for example, a VAWA self-

petition). FNUSA has an interest in ensuring that the full spectrum of abuse and exploitation committed against immigrants is addressed and survivors are fully protected.

The **Tahirih Justice Center** (“Tahirih”) is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant women and girls who survive gender-based violence. Tahirih offers legal and social services to women and girls fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting/mutilation. Since its beginning in 1997, Tahirih has provided free legal assistance to more than 25,000 individuals.

Because of their history of advocating on behalf of survivors of domestic violence, sexual assault and other forms of gender-based violence and their familiarity with the statutory framework under which crime victims may seek VAWA self-petitioning relief pursuant to 8 U.S.C. § 1154(a)(1)(A), *Amici* can provide the Court with unique information and a perspective that can help the Court make a decision in this case. *See Resort Timeshare Resales, Inc., v. Stuart*, 764 F.Supp. 1495, 1500-01 (S.D. Fla. 1991). Given their missions and work with advocates nationwide, *Amici* have an interest in ensuring that USCIS complies with all applicable laws and regulations, and in encouraging the proper interpretation of laws and regulations that promote the rights, safety, and well-being of immigrant survivors of domestic violence.

ISSUE PRESENTED

It is undisputed that Plaintiff entered into a good faith marriage with a U.S. citizen, that she suffered battery or extreme cruelty during the marriage, and that she has good moral character. The sole issue in this case is whether USCIS incorrectly concluded that Plaintiff failed to satisfy the “joint residence” requirement at 8 U.S.C. § 1154(a)(1)(A)(iii)(dd) because she only resided with her abuser before their marriage.

INTRODUCTION

Immigrant women are especially vulnerable to domestic violence because their abusers can exploit their lack of lawful or permanent immigration status.¹ Abusers often seek to control their spouses and isolate them from outside resources by threatening to deport them or to withhold status.² In the words of Alice Fernandez, Director of the Victim Services Agency at the Bronx Criminal Court, the message from abusers was: “[I]f you tell anybody what I am doing to you, they are going to ship your a** back home.”³

Recent immigrants may not be well-versed in American laws, especially the complexities of the immigration system. *Id.* This lack of information, combined with isolation, gives abusers immense power to prevent their spouses from seeking help. *Id.* Studies leading up to the passage of VAWA showed that immigrant women were less likely to leave or take legal action against their abusive spouse out of fear of deportation and that organizations providing aid for survivors of domestic violence did not sufficiently reach immigrant communities.⁴ When immigrant women did seek services, they often reported that they were denied services or had poor outcomes. *Id.*

¹ Maia Ingram, et. al., *Experiences of Immigrant Women Who Self-Petition Under the Violence Against Woman Act*, 16 SAGE 858, 859 (2010) (compiling social science research from the 1990s and 2000s to document the hurdles immigrant women face when trying to self-petition). The use of isolation from family, friends and outside resources as methods of control made immigrant women especially vulnerable victims of domestic violence. Anita Raj, *Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 SAGE 367, 371 (2002) (analyzing social science research from the 1990s and 2000s). Not only are many immigrant women isolated after leaving behind family and friends in their home countries, but their abusers often keep them from establishing social ties in the United States. *Id.* at 377-80.

² Raj, *Violence Against Immigrant Women*, *supra* note 1 at 371.

³ Vivienne Walt, *Immigrant Abuse: Nowhere to Hide; Women Fear Deportation, Experts Say*, NEWS-DAY, Dec. 2, 1990.

⁴ *Id.* at 375; Ingram, *Experiences of Immigrant Women*, *supra* note 1 at 860.

In enacting VAWA, Congress intended to provide expansive protections for immigrant abuse victims, including women like “L” who only resided with their abuser prior to marriage.⁵ The experience of L illustrates how an immigrant survivor might come to live apart from her abuser after marriage. L met “Z” in 2011, and together they had three daughters. Z, a U.S. citizen, first tried to control L when they began dating by locking her in his car, driving her around for hours, and grabbed her by the throat if she tried to escape. When she became pregnant with their first child in 2012, the couple moved in together. Z would take L’s phone away and tell her not to work or leave their apartment. After L moved out, Z begged for her return. L gave him another chance and resumed living with him.

After L gave birth to their first child, Z began pulling L’s hair and throwing household objects at her on a daily basis. He told her that he was “the boss.” L became pregnant again, and the abuse escalated. Once time, when L asked Z to buy diapers, he pulled out a gun he kept in their home, held it to her neck, and told her he would kill her if she did not shut up. On another occasion, Z kicked L in the face.

L moved out again. But Z again convinced her to return, promising he would be better. He instead became even more vengeful. Z forbade L from leaving their house, and when she became pregnant again, he accused her of cheating on him. Throughout her pregnancy, Z woke L up early to force her to clean the house. If she sat down or went to the bathroom, he would slap her.

L moved to her mother’s house. Z proposed, claiming it would solve their problems. He had proposed before, but marriage had been impossible, since he had been married to another woman. L was nervous he would use their matrimony to control her more. But she loved him and had three children with him, so she held onto hope and agreed to marry him.

⁵ Interview with Benis Guzman, attorney for “L” (Oct. 22, 2019). The names of “L” and her husband are not used for “L”’s protection.

The couple married on December 15, 2016. They began looking for apartments to rent together while each lived at their respective mother's houses and visited each other. But in March of 2017, Z again accused L of infidelity. He burst into L's bedroom at her mother's house by entering through an upstairs window. Locking her door, he pulled her hair, slapped her, and threatened to kill her. After the attack, L feared that he would return, so she fled—first to friends' houses and then to a shelter.

Despite her lengthy history of abuse, USCIS recently denied L VAWA relief, claiming she lacked evidence that the couple resided together during the marriage. As a result, L continues to live in a shelter, terrified for her life.

As the case of L illustrates, domestic violence is not limited to couples who share a residence but can affect couples who reside separately, as well as former couples who have separated. Even when domestic violence occurs in a home, the home may not be a joint residence. Non-cohabitating marriages started to gain popularity in the 1970s and became increasingly prevalent in the years leading up to 1994, when Congress passed the first version of VAWA. *Id.* at 1424. In 1994, census data shows that 2.612 million spouses lived in separate households.⁶ Commuter marriages, or marriages in which couples live separately due to work obligations or personal choice, are becoming more common.⁷

A home is not the only setting in which abusers harm their spouses. *Id.* Domestic violence occurs publicly through humiliation at family gatherings, controlling what a spouse may or may not

⁶ See Steve Rawlings, U.S. Department of Commerce Economics and Statistics Administration, Household and Family Characteristics: March 1994. *available at* <https://www.census.gov/prod/1/pop/p20-483.pdf>

⁷ Danielle J. Lindemann, *Going the Distance: Individualism and Interdependence in the Commuter Marriage*, 79 JOURNAL OF MARRIAGE AND FAMILY 1419, 1419 (2017) (analyzing social science from the 1980s until the 2000s about married couples living in separate residences).

buy at the grocery store, and harassing the spouse at work.⁸ In addition, due to advances in technology, “[t]he concept of ‘feeling safe’ from an abuser no longer has the same geographical and spatial boundaries as it once did.”⁹ Technology such as iPhones, cameras with internet ability, and remotely accessible social media outlets enables domestic violence across great distances.¹⁰ Abusers have been shown to use GPS monitoring; gain access to call log, text messages, and e-mails; and even look through their partners’ browsing history, in some cases seeing searches for domestic abuse help that trigger fatal violence. *Id.* at 4.

Expressions of autonomy, including the action of maintaining a separate residence, increases the risk of violence, as abusers can use violence to regain control over their victims.¹¹ Using data and studies from the 1990s, the World Health Organization has documented how domestic violence follows expressions of autonomy.¹² USCIS’s interpretation of the joint residence requirement punishes victims who have chosen to express autonomy by living apart from their abusers--the exact opposite of Congress’ intent in passing VAWA.

SUMMARY OF THE ARGUMENT

U.S. Citizenship and Immigration Services’s (“USCIS” or “the Agency”) excessively narrow interpretation of “spouse” in the joint residence requirement at 8 U.S.C. § 1154(a)(1)(A)(iii)(dd) is

⁸ See Arizona Coalition to End Sexual & Domestic Violence, *Types of Domestic Violence*, available at <https://www.acesdv.org/domestic-violence-graphics/types-of-abuse/>; Laura Samuel, *Employers’ Perceptions of Intimate Partner Violence Among a Diverse Workforce*, 2 SAF HEALTH WORK 250, 252-53 (2011).

⁹ Tammy Hand, *The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation*, 6 Australian Domestic & Family violence Clearinghouse 1, 2 (2009) (citing to and compiling international studies from the 1990s and 2000s).

¹⁰ See *Id.*

¹¹ See Mukesh Eswaran, *Domestic Violence and Women’s Autonomy in Developing Countries: Theory and Evidence*, 44 CANADIAN JOURNAL OF ECONOMICS 1222, 1249-50.

¹² World Health Organization, *World Report on Violence and Health*, Chapter 4 Violence by Intimate Partners 89, 95 (2002).

inconsistent with the plain text of the statute, settled principles of statutory interpretation, and the legislative history underlining the Congressional intent behind the VAWA self-petitioning statute. The practical effect of USCIS's interpretation is to create a loophole that empowers abusers to further harm their victims and to jeopardize the safety of victims who are perversely incentivized to remain with their abusers.

The Agency relies on the term "spouse" in the joint residence requirement at 8 U.S.C. § 1154(a)(1)(A)(iii)(dd) as support for its view that cohabitation must take place "during the marriage." This reading of the joint residence requirement is contrary to a plain language reading of the statute, which requires only that the self-petitioner "ha[ve] resided with the alien's spouse." Contrary to the Agency's interpretation, the use of the word "spouse" in the statute is a general term referring to the abuser and does not impose a temporal limitation. The term "spouse" appears in other areas of VAWA as a synonym for either the abuser or self-petitioner, without a temporal connotation. For example, the statute uses the word "spouse" to refer to the abuser even "after divorce."¹³ The plain language of the joint residence requirement only requires the self-petitioner to have resided with the abuser who was at some point her spouse.

Established canons of statutory interpretation support this reading of the joint residence provision. The "disparate inclusion" canon (that Congress acts intentionally when excluding language from one section of a statute that it includes in another) dictates that Congress extended protection to battered immigrants who cohabited with their abusers at any point, including but not limited to during their marriage. While the statute requires that the abuse have occurred "*during the marriage or*

¹³ See, e.g., 8 U.S.C. § 1154(a)(1)(B)(v)(II) ("Upon the lawful permanent resident *spouse* . . . becoming or establishing the existence of United States citizenship . . . any petition filed with the Immigration and Naturalization Service . . . shall be deemed reclassified . . . *even* if the acquisition of citizenship occurs *after divorce* or termination of parental rights.") (emphasis added).

relationship intended by the alien to be legally a marriage,” no such requirement exists for the separate joint residence requirement. 8 U.S.C. § 1154(a)(1)(A)(iii)(bb) (emphasis added). Under 8 U.S.C. § 1154(a)(1)(A)(iii)(dd), the self-petitioner need only “ha[ve] resided with the alien's spouse or intended spouse.” Under the canon that Congress means to exclude language from one section it includes in another, Congress acted intentionally when it included “during the marriage” in the abuse provision but excluded this language in the joint residency provision.

The reenactment canon further supports this reading of the joint residence statute. Under the reenactment canon, when Congress updates a statute leaving in place administrative guidance, it ratifies that interpretation of the law. *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). Department of Justice (“DOJ”) regulations interpreting the version of the joint residence requirement passed in 1994 did not require cohabitation during marriage. Congress ratified this agency interpretation when reenacting VAWA three times subsequent to the publication of the DOJ regulations without altering the statute’s reference to when the joint residence must have occurred.

The legislative history of VAWA and its subsequent reauthorizations also comport with this reading of the statute. When Congress first passed VAWA in 1994, it reacted to what it dubbed an “epidemic” of domestic violence by enacting sweeping legislation designed to empower and protect a broad class of survivors, including immigrants battered by U.S. citizen or lawful permanent resident spouses.¹⁴ Congress recognized that abusers often use immigration status as a tool of abuse and that immigrant victims may not be willing to reach out for help because of the threat or fear of deportation.¹⁵ For this reason, a bipartisan majority in Congress enabled certain family members of abusive

¹⁴ 140 CONG. REC. 84, H5173, 5180 (1994).

¹⁵ See H.R. REP. NO. 103-395, at 26-27 (1993) (stating “Consequently, a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant

U.S. citizens and legal permanent residents to self-petition so that they could be liberated from the power and control of their abusers. The agency's flawed interpretation of the joint residency requirement runs counter to this intent, as it gives abusers power to continue to control their victims.

The plain text of the joint residency requirement, canons of statutory construction, and the legislative history of VAWA compel the conclusion that Congress did not intend to exclude abused immigrants who only resided with their spouses before marriage from self-petitioning eligibility. To insert such a restriction would contravene Congress' intent to ensure that immigrant survivors of domestic violence need not remain in abusive relationships in order to secure their immigration status.

APPLICABLE LAW AND BACKGROUND

In relevant part, an abused noncitizen may be classified as a VAWA self-petitioner under 8 U.S.C. § 1154(a) if USCIS determines that:

- (I)(aa) the marriage . . . was entered into in good faith by the alien; and
 - (bb) during the marriage. . . , the alien . . . has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse. . . .
- (II) For purposes of subclause (I), an alien described in this subclause is an alien-
 - (aa)(AA) who is the spouse of a citizen of the United States;
 - . . .
 - (bb) who is a person of good moral character;
 - (cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title . . . ; and
 - (dd) who has resided with the alien's spouse or intended spouse.**

8 U.S.C. § 1154(a) (emphasis added). The self-petitioning provisions of VAWA represent a significant departure from the standard procedures for granting lawful immigration status to foreign national spouses of U.S. citizens and lawful permanent residents ("LPR"). Under the typical spousal petition

women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave").

process, the foreign national spouse is entirely dependent on the U.S. citizen or LPR spouse to file a family petition for the foreign national, and the foreign national spouse can only become a lawful permanent resident after the spousal petition has been approved. This process facilitates abuse because the U.S. citizen or LPR spouse wields complete power over the foreign national spouse's access to lawful immigration status. In contrast, the VAWA self-petitioning procedure allows an abused spouse to file a petition on her own behalf ("self-petition") without relying on the cooperation of her abuser. After the self-petition is approved, the abused spouse is eligible to file for permanent residence.

ARGUMENT

I. The Plain Language of the Statute Does Not Require the Self-Petitioner to Reside with the Abuser During the Marriage.

The plain language of the VAWA statute imposes no temporal limitation on the joint residency requirement. USCIS erred in concluding that the use of the word "spouse" in the joint residency statute requires self-petitioners to have lived with their abusers during marriage. Contrary to the Agency's contention, the word "spouse" in VAWA is used only as an identifier to refer to the abuser or the self-petitioner. As a court recently decided, the joint residence requirement does not require that the self-petitioner and abuser have lived together after marriage. *Bait It v. McAleenan*, 2019 WL 4601727 (N.D. Ill. 2019). In interpreting the word "spouse" in the joint residence requirement, the court found that the term 1) appears throughout the statute to refer to the self-petitioner or the abuser, regardless of death or divorce; and 2) is used as an identifier in everyday language. *Id.*

VAWA's use of the word "spouse" does not "demand that the person have that legal status at every moment in time referring to that person." *Id.* at 3. One section of the VAWA uses "spouse" to refer to the abuser even if the spouse is dead or the couple is divorced. *Id.* (citing 8 U.S.C. §§ 1154 (a)(1)(A)(iii)(II)(aa)(CC)(aaa), (ccc)). Another provision uses "spouse" to refer to a widow who has remarried after the abuser's death. *See* U.S.C. §1151(b)(2)(A)(i) ("the alien ... shall be considered, ...

to remain an immediate relative after the date of the citizen's death but only if the *spouse* files a petition under section 1154(a)(1)(A)(ii) within two years after such date and only until the date the *spouse* remarries") (emphasis added). The language of this widow provision demonstrates that the word "spouse" is a general synonym for abuser or self-petitioner and is not limited someone who was in a spousal relationship at a particular time.

The court also found that "spouse" is ordinarily used as an identifier in everyday language. It is common to ask the question "How did you meet your spouse?" not "How did you meet your not-at-the-time spouse?" or "How did you meet your then-future spouse?" As the court noted, the sentence "[S]he lived with her spouse before they married" causes no confusion to the listener or reader. *Id.* "Spouse" is a well-understood as identifying someone before or after they have been married. To suggest otherwise would confuse laypeople and attorneys alike. USCIS has thus stretched the joint residence requirement beyond the bounds of the plain meaning of "spouse" to create a requirement that does not exist.

II. Established Canons of Statutory Interpretation Demonstrate that USCIS's Interpretation is Contrary to Law.

Two canons of statutory construction affirm that Congress did not exclude from protection women who cohabitated with their spouses before marriage rather than during it. First, Congress is presumed to act intentionally when omitting language in one provision of a statute while including it elsewhere. For VAWA self-petitions, Congress required that the abuse have occurred "during the marriage" by including the phrase "during the marriage" in the relevant provision. In contrast, Congress did not include any reference to *when* the joint residence had to occur, much less "during the marriage." Second, Congress amended the joint residence statute while leaving in place Department of Justice regulations that did not require cohabitation during marriage. Under the reenactment canon, Congress ratified the agency's reading of the law. These canons support Plaintiff's arguments that 1)

the phrase “during the marriage” is purposefully absent from the joint residence provision; and 2) the term “spouse” is used as an identifier only, not to impose a temporal requirement on cohabitation.

A. Congress Intentionally Omitted Any Temporal Requirement Regarding the Joint Residence Provision.

The statutory canon that Congress acts intentionally when it omits language included elsewhere in a bill affirms that Congress purposely excluded any temporal criteria from the cohabitation requirement. Under this canon, the presence of words or a phrase in one provision and the absence of the same words or phrase in another is significant. *See Department of Treasury, IRS v. FLRA*, 494 U.S. 922, 932 (1990) (holding that a statute that referred to “laws” in one section and “law, rule, or regulation” in another “cannot, unless we abandon all pretense at precise communication, be deemed to mean the same thing in both places”). That canon applies with “particular force” when the disputed clauses fall “in close proximity.” *Dep’t of Homeland Security v. MacLean*, 574 U.S. 383 (2015). When Congress includes language in one provision but not another, the Court must “resist the temptation to read that language into” the latter provision. *Republic of Sudan v. Harrison*, 139 S.Ct. 1048 (2019); *see also Wollschlaeger v. Governor of Florida*, 848 F.3d 1298 (11th Cir. 2017) (holding that a Florida statute’s inquiry provision for doctors explicitly did not apply to the anti-harassment section because adding language absent from one clause but present in another “stands in stark contrast against the plain language of the statute.”).

Here, Congress included the requirement that the battery or extreme cruelty have occurred “during the marriage” yet excluded any reference to a temporal requirement in the joint residence provision. That, coupled with the close proximity of the two provisions, signifies that the lawmakers did not intend to impose any temporal requirement on the joint residence provision of VAWA self-petitions

B. The Reenactment Canon Further Supports That Congress Intended No Cohabitation During Marriage Requirement.

Congress' amendment of VAWA in 2000 left unchanged administrative guidance not requiring cohabitation during marriage, proving that Congress intended no such exclusion. When Congress updates a statute leaving in place a provision that has received definitive administrative interpretation, the court assumes Congress ratified such a reading. *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). Under this reenactment canon, Congress is "presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change." *Id.* This canon applies with particular force when Congress undertakes a comprehensive review of the statute and elects to change certain provisions but not others. *Id.* at 582.

Congress undertook such a comprehensive review when amending VAWA in 2000. As explained below, Congress changed many provisions in VAWA, including the joint residence clause, to remove the requirement that the joint residence occur "in the United States". Yet Congress did not add the phrase "during the marriage" to the joint residence requirement, despite widely published regulations that expounded upon what the joint residency statute required but did not require cohabitation during marriage.

In 1996, the Agency (then called Immigration and Naturalization Service and part of the Department of Justice) published interim regulations that clarified at length what the joint residence requirement requires. The joint residence rule "does not require the self-petitioner to have lived in the United States or with the abuser in the United States for any specific length of time," and that the self-petitioner "may have moved to the United States only recently, made any number of trips abroad, or resided with the abuser in the United States for only a short time." 61 FR 13062 (Mar. 26, 1996). The self-petitioner can provide one or more documents establishing the couple had lived together, or two or more documents that, "when considered together, establish that the self-petitioner and the abuser

were residing at the same location concurrently.” *Id.* Despite this lengthy explanation of what joint residence requires, the regulation nowhere mentions, or alludes to, a requirement that cohabitation take place during marriage.

The preamble to the interim rule provides additional context and explanation of the Agency’s interpretation of the joint residence requirement, stating in relevant part: “A self-petitioner cannot meet the residency requirements by merely visiting the United States or visiting the abuser’s home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere.¹⁶ The rule nowhere requires the self-petitioner to have lived in the United States or with the abuser in the United States for any specific length of time. It also does not mandate continuous physical presence in the United States. A qualified self-petitioner may have moved to the United States only recently, made any number of trips abroad, or resided with the abuser in the United States for only a short time.” *Id.*

By contrast, the regulations do specify that the abuse must have happened “during the marriage.” The regulation stresses that the abuse must have occurred “at the statutorily required time ... during the marriage.” *Id.* To emphasize this point, the regulation restates the point in a different way: “battery or extreme cruelty that happened at other times is not qualifying abuse.” *Id.* Thus, the Agency has interpreted the abuse provision to have a “during the marriage” requirement but has not interpreted the joint residency statute as having this same requirement. Under the reenactment canon, Congress ratified this regulatory interpretation when it amended the joint residency requirement in 2000.

¹⁶ Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children Interim Rule, 61 Fed. Reg. 13065 (Mar. 26, 1996).

III. USCIS' Interpretation of Joint Residence Undermines Congressional Intent in Creating the VAWA Self-Petition.

A. Congress Intended to Protect Vulnerable Immigrant Spouses by Passing VAWA.

In 1994, a bipartisan Congress passed VAWA as “the first comprehensive approach to fighting all forms of violence against women” after finding that the U.S. legal system and society had failed to treat domestic violence as a real problem.¹⁷ Congress’ inclusive intent and comprehensive approach were apparent in VAWA's immigration provisions, which served to counteract the particular vulnerability of immigrants married to U.S. citizens and permanent residents. Lawmakers found that foreign-born women faced abuse at rates even higher than their US-born counterparts, partly due to immigration laws.¹⁸ The House of Representatives Committee on the Judiciary found that domestic abuse problems are “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser.” *Id.* This vulnerability stemmed from the structure of the spouse-based petitioning process itself. The spouse was not required to file a visa petition for the immigrant and could revoke it at any time at their discretion.¹⁹ Research showed 72% of abusive spouses never filed immigration petitions for their wives.²⁰

Congress sought to end this egregious abuse through VAWA. VAWA amended the Immigration and Nationality Act to allow immigrants who had experienced abuse in their marriages to self-petition for lawful permanent resident status. 8 U.S.C. 1154. As Congress explained, “[t]he purpose

¹⁷ Joe Biden, *20 Years of Change: Joe Biden on the Violence Against Women Act*, Time, Sept. 10, 2014, *see also* 140 CONG. REC. 84, H5173, 5176 (1994); VAWA; Title IV of P.L. 103-322; The Violence Against Women Act: Historical Overview, Funding, and Reauthorization, Congressional Research Service, Apr. 23, 2019.

¹⁸ Rep. John Conyers, *The 2005 Reauthorization of the Violence Against Women’s Act*, 13 Violence Against Women 5, 457-468 (May 2007).

¹⁹ Report on the Violence Against Women Act of 1993, House of Representatives Committee on the Judiciary, 1993.

²⁰ Raj, *Violence Against Immigrant Women*, *supra* note 1 at 375.

of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.” Report on the Violence Against Women Act of 1993, House of Representatives Committee on the Judiciary, 1993. Through VAWA, battered spouses finally had a way to escape the shackles of their abusive relationships.

B. Congress Has Never Amended the Joint Residence Provision to Include a Temporal Requirement Despite Numerous Opportunities

Congress has reauthorized and amended VAWA multiple times but has never added any requirement that the joint residence for self-petitioners occur during a specific time. The self-petitioning provisions under VAWA have undergone several amendments at each reauthorization of the statute in 2000, 2005, and 2013. In the original VAWA self-petition statute, the self-petitioner had to demonstrate that she had shared a residence with the abuser in the United States. The 2000 reauthorization, however, removed the requirement that the shared residence have taken place in the United States. The 2005 and 2013 reauthorizations did not amend the “joint residence” requirement.

The first expansion in 2000 was intended to “to address the gaps, errors, and oversights in current law that impede the ability of battered immigrant women to flee violent relationships and survive economically,” said Rep. Janice Schakowsky, who proposed the bill.²¹ Congressional discussions reflected the concern that VAWA had failed to end the epidemic, with domestic violence remaining the leading cause of injury for women age 15 to 44.²² Lawmakers looked to carry out the “spirit and intent of the 1994 law,” by amending VAWA to fix the unintended hurdles that abused immigrants continued to face.²³

²¹ Hearing on the Battered Immigrant Women’s Protection Act, House of Representatives, Oct. 21, 1999.

²² 146 CONG. REC. 22041, 22048 (2000)

²³ Battered Immigrant Women Protection Act of 1999: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, One Hundred Sixth Congress, second session, on H.R. 3083, July 20, 2000.

The immigration agency at the time, Immigration and Nationality Service (“INS”), supported VAWA 2000. INS Acting Executive Associate Commissioner for the Policy Planning, Barbara Strack, testified that the agency had found “gaps in the law that we believe are unintended but that prevent many battered immigrants with approved self-petitions from completing the process and becoming lawful permanent residents” and that “the INS believes that such improvements to VAWA are consistent with its purpose of giving battered aliens the same immigration opportunity as similarly situated aliens who have not been battered.”²⁴

C. Congress Specifically Amended the Joint Residence Provision to Include More Self-Petitioners.

Congress amended the joint residence requirement in two ways as part of its effort to give effect to its original, inclusive intent. This expansion is inconsistent with USCIS’s view that Congress intended under the same statute to exclude women like Plaintiff who are living apart from their spouses. First, Congress removed the joint residency “in the United States” provision upon finding that “abused children of spouses married to members of the U.S. Armed Forces and U.S. Government employees living abroad are trapped overseas, unable to escape and seek assistance.”²⁵ Second, Congress removed the clause mandating that children suffer abuse “during the period of residence with the citizen parent.”²⁶ By removing the temporal requirement that children be living with their parents at the time of the abuse, Congress sought to expand protection. These expansions of eligibility in 2000

²⁴ *Id.*

²⁵ Rep. Jackson Lee testimony, Battered Immigrant Women Protection Act of 1999: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, One Hundred Sixth Congress, second session, on H.R. 3083, July 20, 2000.

²⁶ 8 U.S.C. 1154(a)(i)(A). Congress’ initial inclusion of such a temporal requirement for children shows they knew how to create such a provision, further establishing that Congress did not intend for the joint residency requirement to be limited to cohabitation during the marriage.

contradict the restrictive understanding of Congressional intent that underlies USCIS's narrow interpretation of the joint residence requirement.

As discussed above, the Agency has not amended the 1996 regulations relating to the "joint residence" requirement, despite subsequent statutory amendments, including the 2000 amendment removing the requirement that the self-petitioner have resided with the abusive spouse in the United States. The Agency's 1996 regulatory interpretation of the "joint residence" requirement, therefore, remains in force. The regulations require only that the self-petitioner "[h]as resided in the United States with the citizen or lawful permanent resident spouse."²⁷ The fact that the Agency at no point issued a regulation interpreting the joint residence statute as containing a temporal requirement establishes that the Agency itself believed that Congress never intended such a restriction.

CONCLUSION

In passing VAWA, Congress lifted immigrant survivors of domestic violence out of the shadows and empowered them to assert their independence from their abusers. The language of the statute and Congress's inclusive intent make it implausible that Congress intended to exclude from protection otherwise eligible women like the Plaintiff based on the technicality of whether their cohabitation with their spouse occurred before or after their marriage. USCIS's narrow reading of the statute contravenes both the language of the statute and Congress's inclusive intent and must be reversed.

²⁷ 8 C.F.R. § 204.2(c)(1)(i)(D); *see also* 8 C.F.R. § 204.2(c)(1)(v) ("A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past."); 8 C.F.R. § 204.2(c)(2)(iii) ("One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.").

Respectfully submitted,

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