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## Justice Denied for Battered Immigrant Women

The Department of Homeland Security is considering a policy change that would harm immigrant women who are abused by husbands who are U.S. citizens.

Anabel Lee | March 10, 2008 | web only

Monica Bejar, 37, lived in fear for over a decade. She came to the U.S. from Mexico illegally in 1989, and shortly thereafter married a permanent resident who turned violent and started drinking heavily during their first year of marriage. Over the years, her husband would offer to set her immigration papers straight, only to rip up the forms during bouts of rage.

"He would betray me all the time so I was afraid, not so much to go back to Mexico because I have family there, but to lose my children," Bejar recalled. "I was always afraid that because he was legal here that he would take them away from me." Finally in 2004, Bejar began petitioning for lawful immigration status under the Violence Against Women Act (VAWA), and was approved. She now owns her own business, and her three daughters feel more secure knowing their mother will always be nearby.

But in the future, women with Bejar's experience might not be able to seek the same relief under VAWA. In yet another example of how pervasive anti-immigrant rhetoric has gotten over the past year, the Department of Homeland Security is currently reconsidering how VAWA applies to certain undocumented immigrants. U.S. Citizenship and Immigration Services (USCIS) is pushing for a narrower reading of the act, which would have draconian consequences for some

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in one of the most vulnerable groups within the undocumented immigrant population: women abused by husbands who are U.S. citizens or lawful permanent residents.

The anticipated policy change will affect undocumented women who entered the U.S. without permission but not specifically to flee abuse, preventing them from applying for permanent residency from within the U.S. Rather, they will be deported to their native country and will have to apply for residency from there. (Undocumented women who entered the U.S. illegally in order to escape abuse and those who overstayed visas and subsequently found themselves in abusive relationships will remain protected by VAWA and will continue to be able to adjust their status to permanent residency without leaving the country.) USCIS will issue its final decision via a memorandum, and a policy determination is expected soon.

Requiring undocumented women who are victims of domestic violence to prove a nexus between their unlawful entry and abuse means these women will have to meet a narrow exception that will leave many of them -- and their children -- trapped in violent homes. "In a policy context, it doesn't make any sense at all," said Gail Pendleton, who has done immigrant-rights work for 25 years now and is the co-chair of the National Network to End Violence Against Immigrant Women. "The people who would not be able to stay here to get green cards are the people who met their abusers in the United States, and those abusers are U.S. citizens or lawful permanent residents. Those are exactly the perpetrators you want to get at, so to give them a weapon of power and control is crazy." USCIS is essentially trying to draw distinctions along the lines of when and where the abuse occurred, factors that Congress has already stated, in VAWA, do not matter.

Sharon Rummery, USCIS regional media manager for the northwest, confirmed that the agency is giving VAWA a "close review." USCIS is currently in the information-gathering stage, and they are taking into account the views of legislators who have written with concern, such as Massachusetts Sen. Edward Kennedy and California Rep. Zoe Lofgren.

Some immigration attorneys are already feeling the effects of a more restricted reading of VAWA. Susan Bowyer is a managing attorney of the Oakland office of the International Institute of the Bay Area, a non-profit that provides various services to immigrant communities. Bowyer has four clients whose fates -- either a green card or deportation -- hang in the balance until USCIS issues a memo clarifying its policy on immigrant victims of abuse. According to Bowyer, her clients' cases should not be pending and that, under the interpretation of VAWA intended by Congress, they should all have been granted permanent residency by now.

"It's preventing people from moving on with their lives and having stability, the stability that allows them to move forward to make their lives better for themselves and for their children," said Marien Sorensen, an attorney at a Sacramento law firm that practices immigration and nationality law exclusively. She has ten to 15 cases pending as a result of the anticipated policy memo. In her firm's experience, whether battered immigrants had entered the country lawfully or not was a non-issue prior to October.



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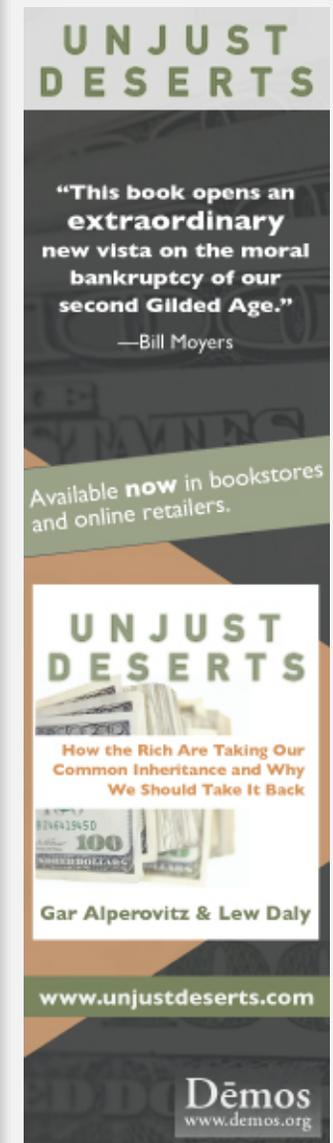
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Since the creation of VAWA in 1994, Congress has acknowledged time and time again the particular vulnerability of non-citizen victims of domestic violence and has passed legislation to help them escape their abusers, achieve safety and security, and become active participants in American society. In passing the act, Congress recognized that domestic violence is "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." The act covers a wide range of issues relating to the needs of women and children who are victims of abuse; as it pertains to immigration in particular, VAWA addresses the power imbalance that exists when an undocumented woman's abusive husband has legal status in the U.S.

"You'd think that abusers wouldn't be that aware of the immigration system, but they are getting very savvy now. They know how to work the system against their victim," said Pendleton. Oftentimes the abuser wields his ability to petition on behalf of his undocumented spouse for lawful immigration status to keep her in the abusive relationship by threatening her with deportation, a phenomenon that is very well documented. The threat becomes even more powerful when U.S. citizen children are involved, as an undocumented mother could lose custody of her children on top of deportation.

With VAWA, Congress recognized that some battered immigrants were in the U.S. illegally but explicitly sought to protect them anyway through the creation of special routes to lawful immigration status for them, as well as other protections. The purpose of VAWA was to fix a hole in immigration law, and the act allows a battered undocumented woman to petition for lawful status on her own, thereby eliminating the need for the cooperation of a violent spouse. Between 1994 and 2005, 38,000 VAWA self-petitions were filed. Approved petitioners are granted employment authorization and protected from deportation until a decision is made on whether or not to grant them permanent residency.

"VAWA completely changed my life and my kids' lives," Bejar said. Although she crossed the border without permission and does not meet the criteria of fleeing abuse, she entered the U.S. before 1997; this means she has been able to apply from within the country for her green card, which she will get with near certainty. Attaining permanent residency, however, will be almost impossible for some undocumented victims of domestic violence if USCIS decides that it will deport those who did not originally enter the U.S. to escape abuse.

According to the National Network to End Violence Against Immigrant Women, for USCIS to begin interpreting VAWA so that it applies to fewer undocumented abuse victims seriously undermines the intentions of Congress -- and the ability of the criminal justice system to operate effectively in the fight against domestic violence. If these battered women are forced to leave the U.S. to complete green card processing, they will forego the legal protections that Congress specifically created for them under VAWA. For instance, while Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that created formidable barriers in immigration law for almost all non-citizens, it included important exceptions for VAWA applicants, exceptions that were revisited and revised in 2000 to cover an even greater number of VAWA petitioners. The 2000 law clearly states that "the status of any other alien

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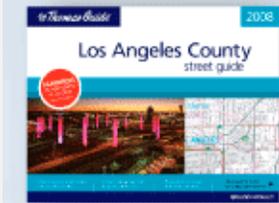
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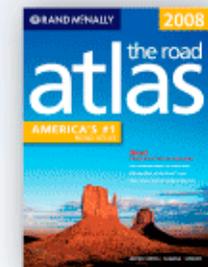
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having an approved petition for classification as a VAWA self-petitioner may be adjusted" to permanent residency regardless of the manner of entry. It further clarifies that these VAWA self-petitioners are exempt from bars to adjustment that are usually associated with unlawful entry.

"As someone else put it, doesn't USCIS have somebody else they can go after and harass? Why would you decide that *this* is the place to draw the line in the sand?" asked Bowyer, the Oakland attorney.

If the anticipated policy change becomes reality, a significant subgroup of immigrant women who have proven themselves to be victims of domestic violence -- and have been thoroughly vetted by immigration authorities specially trained in domestic violence -- will lose access to police, restraining order protections, child custody determinations, as well as child support orders. They will subsequently be discouraged from trying to access justice and safety, terrorized into staying with abusive spouses, and forced to raise their children in the midst of violence.

Bejar put it more bluntly: "These women will live in the shadows."

By Jessica Wakeman

December 12, 2008 | web only

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