

IN THE  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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ATALA DE JESUS LEIVA-MENDOZA

Petitioner,

v.

ERIC H. HOLDER, JR., UNITED STATES ATTORNEY GENERAL

Respondent.

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Appeal from the Board of Immigration Appeals  
Appeal No. A097-653-566

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**BRIEF FOR *AMICI CURIAE* NATIONAL NETWORK TO END  
VIOLENCE AGAINST IMMIGRANT WOMEN, LEGAL MOMENTUM,  
THE FAMILY VIOLENCE PREVENTION FUND AND ASISTA  
IMMIGRATION ASSISTANCE PROJECT IN SUPPORT OF PETITIONER  
AND REVERSAL**

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Prevention Fund and ASISTA Immigration  
Assistance Project

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### **RULE 26.1 CERTIFICATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* National Network To End Violence Against Immigrant Women, Legal Momentum, the Family Violence Prevention Fund and ASISTA Immigration Assistance Project each state that they have no parent corporation and no publicly held company owns 10 percent or more of their stock.

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## INTEREST OF THE *AMICI*

This *amici curiae* brief is submitted on behalf of the National Network to End Violence Against Immigrant Women (the “Network”), Legal Momentum, the Family Violence Prevention Fund and ASISTA Immigration Project (collectively, the “Amici”).<sup>1</sup> The Network is a coalition of domestic-violence survivors, immigrant women, advocates, activists, lawyers, educators and other professionals working together to end domestic abuse. The Network is co-chaired by The Immigrant Women Program of Legal Momentum, the Family Violence Prevention Fund, and the ASISTA Immigration Assistance Project. These leading national organizations – who participated in drafting the Federal Violence Against Women Act – share a deep understanding of domestic violence, the procedures for fighting it, and the particular dynamics of domestic violence experienced by immigrant victims.

ASISTA Immigration Assistance Project (“ASISTA”), founded in 2004, provides comprehensive, cutting-edge technical assistance regarding immigration and domestic violence. ASISTA seeks to enhance immigrant women’s security, independence and full participation in society by promoting integrated holistic approaches and educating those whose actions and attitudes affect immigrant women who experience violence. In addition to serving as a clearinghouse for

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<sup>1</sup> Pursuant to Federal Rules of Appellate Procedure 29(b), the Amici have filed a Motion for Leave to File *Amici* Brief, which more fully describes the interests of *amici*.

immigration law technical assistance, ASISTA staff train civil and criminal judges and system personnel in the best practices for working with immigrant survivors of violence. ASISTA works closely with Department of Homeland Security (“DHS”) personnel to ensure they implement the law as Congress intended, and coordinates litigation to correct misapplications of the law by the Executive Office of Immigration Review (“EOIR”). Together with the National Network to End Violence Against Immigrant Women and DHS, ASISTA contributed a section on VAWA to EOIR’s 2005 training video for all immigration judges.

Legal Momentum is the nation’s oldest legal defense and education fund dedicated to advancing the rights of all women and girls. For 39 years, Legal Momentum has made historic contributions through public policy advocacy and litigation to secure personal and economic security for women. Its Immigrant Women Program is a national expert on the rights and services available under immigration, family, public benefits, and language access laws for immigrant victims of domestic violence, sexual assault, human trafficking and other violence. It shares this expertise through training, comprehensive publications, and technical assistance for lawyers, advocates, justice, and health care professionals nationwide. As co-chair of the Network, Legal Momentum led the efforts to craft and assist in implementation of the immigration protections in the Violence Against Women Acts of 1994, 2000 and 2005 (“VAWA”), the Trafficking Victims Protection Acts

of 2000 and 2008 and other federal laws including public benefits access for immigrant victims and access to federally supported services necessary to protect life and safety.

The Family Violence Prevention Fund (“FVPPF”) is a non-profit tax exempt organization founded in 1980. The FVPPF is a national organization based in San Francisco. It focuses on domestic violence education, prevention and public policy reform. Throughout its history, the FVPPF has pioneered prevention strategies for justice, public education, and health care. The FVPPF’s Battered Women’s Rights Project expands access to legal assistance and culturally appropriate services for all women, including battered immigrant women. The FVPPF was instrumental in developing the 1994 VAWA and has since worked to educate health care providers, police, judges, employers and others regarding domestic violence. In addition, the FVPPF has provided training and technical assistance to domestic violence shelters, legal assistance workers and other service providers on issues facing battered immigrant women.

The Amici are concerned with the immigration determinations in this case because they improperly create a non-statutory requirement that a noncitizen seeking special rule cancellation under VAWA of an order of removal on the grounds of “extreme cruelty” directed at the noncitizen’s lawful resident child, must establish that the child suffered *actual* harm or injury as a result of the alleged

abusive conduct. This incorrect legal standard improperly shifts the focus of VAWA and its progeny away from preventing abusive behavior to simply addressing the after-effects of such abuse, and only then, limiting relief to those cases where there is evidence of actual harm or injury. The decisions below subvert the purpose of VAWA by completely ignoring the well-established premise that the effects of psychological abuse often do not manifest until a substantial period of time has elapsed. The tribunals below also ignore the generational harm to our society and children that Congress sought to address because children who witness their father abuse their mother are more likely to become abusers themselves.

Additionally, the regulations under the VAWA recognize that certain types of behavior mandate a finding of “extreme cruelty.” Amici believe that the psychological abuse associated with a child witnessing intentional acts of domestic abuse by a parent, regardless as to proof of actual harm or injury, mandates a determination of “extremely cruelty” as a matter of law.

### **ISSUES PRESENTED**

I. Whether the courts below applied an incorrect legal standard by holding that “extreme cruelty” under VAWA requires evidence of “actual harm” to the child of a noncitizen parent facing deportation?

II. Whether the psychological abuse associated with a child witnessing intentional acts of domestic violence perpetrated by her father against her noncitizen mother constitutes “extreme cruelty” under VAWA as a matter of law?

### SUMMARY OF ARGUMENT

There is no dispute from the record below that the Petitioner’s child, who was a United States citizen, witnessed physical violence against her mother which was intentionally committed by the child’s permanent resident father in the child’s presence. The father then reported the Petitioner’s immigration status to the Petitioner’s employer. (A-6)<sup>2</sup> Shortly thereafter, removal proceedings were commenced against the Petitioner.<sup>3</sup>

The special cancellation of removal provisions of VAWA were specifically designed to, *inter alia*, protect from deportation, unmarried noncitizens whose children have been “battered or subjected to extreme cruelty” by a permanent resident parent.

In the instant case, the courts below erred by holding that “extreme cruelty” does not exist unless there is proof that the alleged abusive conduct has resulted in “actual harm” to the child. However, the statute does not, by its terms, require a

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<sup>2</sup> References to (“A.”) are to Petitioner’s Appendix.

<sup>3</sup> Congress acted to prevent abusers from using the immigration system as a weapon against their noncitizen victims) when it enacted 8 U.S.C. § 1367, which prohibits, *inter alia*, the use of information from abusers and suspected abusers when making evidentiary or deportation decisions.

