

EIGHTH CIRCUIT TO BATTERED KENYAN: TAKE A SAFARI—BATTERED IMMIGRANTS FACE NEW BARRIER WHEN REPORTING DOMESTIC VIOLENCE

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I. INTRODUCTION

In an attempt to leave an abusive relationship, an illegal immigrant from El Salvador tried to jump out of her boyfriend's car as he drove her to work.¹ Her boyfriend grabbed her blouse, removed his leather belt, dragged her into the street, and began beating her.² Because of her status as an illegal immigrant, the woman did not report the incident and remained under her boyfriend's control.³

An Eastern European immigrant was the victim of her jealous husband's "abusive tirades" for several years.⁴ Her friends and family were in Europe, and she spoke very little English.⁵ Because she turned her small salary over to her abusive husband, she and her two children were completely dependent on his financial support.⁶ She did not report the abuse because she did not want to destroy her marriage.⁷

An illegal immigrant from Mexico married a United States citizen and spent more than five years trapped in an abusive relationship.⁸ Her husband frequently raped her and threatened to kill her and their two children, but she never reported any of the abuse.⁹ She endured the controlling relationship, beatings, threats, and rape because she feared deportation if she contacted the authorities.¹⁰

A. Domestic Violence Statistics

Situations like these have become increasingly common as the number of domestic violence incidents has risen in the United States—and in Iowa specifically.¹¹ According to national statistics, a woman is assaulted

1. Jessie Mangaliman, *U Visa Offers Hope for Illegal Immigrants Who Are Abuse Victims*, SAN JOSE MERCURY NEWS, May 24, 2005, at 1A.

2. *Id.*

3. *Id.*

4. Juliette Terzieff, *More Services Reach Abused Immigrant Women*, WOMEN'S ENEWS, Aug. 11, 2005, <http://www.ncdsv.org/images/MoreServicesReachAbuseImmigrantWomen.pdf>.

5. *Id.*

6. *Id.*

7. *Id.*

8. Amanda Keim, *Battered Immigrants Shy Away from Legal Help*, SALT LAKE TRIB., Sept. 6, 2005, at B10.

9. *Id.*

10. *Id.*

11. See WHOTv.com, Domestic Killings Up in Iowa (Nov. 2, 2006), <http://www.whotv.com/Global/story.asp?s=3948507> [hereinafter Domestic Killings Up

by her domestic partner every fifteen seconds, and each year 1500 women are killed as a result of domestic violence.¹² Iowa's domestic violence statistics have paralleled national figures, and the state currently is on track to break a ten-year record for domestic-related killings.¹³ Even these figures underestimate the problem because they only reflect reported incidents of domestic violence. Due to the fact that domestic violence has been historically characterized as a private relationship matter, the majority of domestic abuse remains unreported.¹⁴ Many of the unreported cases involve illegal immigrants.¹⁵

While over fifty percent of women in the U.S. who are victims of domestic abuse will report their abusers, only fourteen percent of illegal immigrants will file reports.¹⁶ Studies show that between thirty-two and forty-nine percent of all women will be assaulted by their domestic partners,¹⁷ but it is estimated that nearly sixty percent of married immigrant women are in abusive relationships.¹⁸ The Office of Immigration Statistics estimates that about 10.5 million illegal immigrants currently live in the United States.¹⁹ The Census Bureau estimates this number will increase by 500,000 annually.²⁰ As the illegal immigrant population grows, the number

in Iowa] (discussing domestic violence killing statistics in Iowa).

12. See Elizabeth Shor, Note, *Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility*, 9 CORNELL J.L. & PUB. POL'Y 697, 697 (2000).

13. Domestic Killings Up in Iowa, *supra* note 11 (stating that domestic violence caused the deaths of 14 Iowans this year and 138 Iowans since 1995).

14. *Domestic Violence: No Safe Haven*, MOTHER JONES, July-Aug. 2005, at 36, 40-41 (finding that seventy-three percent of domestic violence incidents go unreported).

15. See Uma Narayan, "Male-Order" Brides: *Immigrant Women, Domestic Violence and Immigration Law*, HYPATIA, Winter 1995, at 104, 105-06 (stating that even though it is hard to obtain statistics on battered women, evidence shows that women whose immigration status is dependent on their husbands are more likely to be the victim of domestic abuse).

16. Terzieff, *supra* note 4, at 3.

17. *Id.*

18. Susan L. Pollet, *Barriers to Justice for Battered Immigrant Women*, N.Y.L.J., Dec. 20, 2005, at 4.

19. MICHAEL HOEFER, NANCY RYTINA & CHRISTOPHER CAMPBELL, HOMELAND SEC. OFFICE OF IMMIGRATION STATISTICS POLICY DIRECTORATE, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: January 2005 1 (2006), http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf.

20. Ctr. for Immigration Studies, Current Numbers, <http://www.cis.org/topics/currentnumbers.html> (last visited Nov. 2, 2006).

of battered women in the United States will also increase.

B. *Conditional Residency*

The term "immigrant" or "alien" describes any individual who is "not a citizen or national of the United States."²¹ Illegal immigrants or illegal aliens are individuals who are in the United States without authorization.²² These individuals are subject to deportation.²³

The Immigration and Nationality Act (INA) provides benefits to an immigrant who marries a U.S. citizen or legal permanent resident (LPR).²⁴ Marriage to a U.S. citizen gives an immigrant immediate relative status and allows the immigrant to obtain an entry visa regardless of issuing quotas.²⁵ Marriage to an LPR also shortens the wait for a visa by allowing an immigrant to be in a family-based immigrant category.²⁶ However, to receive immigration benefits based on marriage, a U.S. citizen or LPR must file a petition for the immigrant spouse to become a conditional resident.²⁷ The immigrant spouse's right to legally remain in the country then is conditioned on the marriage lasting two years.²⁸ Therefore, conditional residency requirements allow the immigrant spouse's immigration status to "depend on her relationship to her United States citizen or lawful

21. 8 U.S.C. § 1101(a)(3) (2000) (defining the term "alien"); *see also id.* § 1101(a)(15) (stating the term "immigrant" refers to all aliens except those in specific nonimmigrant categories).

22. 3B AM. JUR. 2D *Aliens and Citizens* § 1513 (2005) (stating that "[a]lthough the term 'illegal alien' is not defined by statute, an alien in the United States without authorization is an illegal alien subject to deportation"); *see also* Michael R. Fancher, *Newspaper Wrestles with Issue of Immigration, Just As U.S. Does*, SEATTLE TIMES, May 7, 2006, at A2 (discussing the political correctness of terms such as "illegal aliens," "illegal immigration," and "undocumented") (internal quotation marks omitted). *But see* HEATHER MAC DONALD, CTR. FOR IMMIGRATION STUDIES, CRIME & THE ILLEGAL ALIEN: THE FALLOUT FROM CRIPPLED IMMIGRATION ENFORCEMENT, 1, 10 (2004), <http://www.cis.org/articles/2004/back704.pdf> (stating "[i]t's the border that is illegal, not the crossing of it without permission" and quoting Los Angeles Cardinal Roger Mahoney's declaration that "[n]o person is illegal").

23. 3B AM. JUR. 2D *Aliens and Citizens* § 1513 (2005).

24. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a)(2)(A).

25. *See id.* § 1151(b)(2)(A)(i) (stating that spouses, children, and parents of a U.S. citizen are not subject to numerical limitations on visas).

26. *Id.* § 1153(a)(2)(A).

27. *Id.* § 1154(a)(1)(A)(i).

28. Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who Are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. LEGAL ISSUES 129, 133 (1995).

permanent resident spouse and his willingness to file an immigrant relative petition on her behalf.”²⁹ The large amount of control these U.S. citizens and LPRs have over the immigration status of their spouses can be detrimental in abusive relationships.³⁰ Because the abusive spouse has a disproportionate amount of control, the victim may see only two options—remain in the abusive relationship or risk deportation.³¹

C. Illegal Immigrant Employment

Without work authorization, illegal immigrants cannot get a job in the United States.³² This creates an economically dependent relationship between an illegal immigrant and a citizen or permanent resident spouse.³³ Battered illegal immigrants will not be able to leave abusive relationships unless they can support themselves and their children.³⁴ The Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify their employees’ citizenship and employment eligibility.³⁵ Under the IRCA, employers face civil or criminal penalties if they knowingly hire an individual without work authorization.³⁶ This policy was intended to provide employers with an incentive to hire U.S. workers rather than illegal immigrants.³⁷ In reality, the policy provides an even stronger incentive for illegal immigrants to purchase fraudulent green cards or falsify I-9 forms to get jobs in the United States.³⁸ Although employers likely suspect many employee documents are fraudulent, they are only required to make sure

29. Leslye E. Orloff & Janice 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 & L. 95, 98 (2001).

30. *Id.*

31. *Id.*

32. See Pressman, *supra* note 28, at 135–36.

33. See *id.* (“If she is undocumented and she leaves her spouse, she cannot work to provide for herself and for her children.”).

34. See 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers) (concluding that employment provides protection to domestic violence victims).

35. 8 U.S.C. § 1324a(b) (2000); Scott J. Fitzgerald & Gary N. Merson, *Forms, Fraud, and Security: A Call for the Overhaul of the Form I-9 Employment Eligibility Verification System*, IMMIGR. BRIEFINGS, March 2003, at 2.

36. Fitzgerald & Merson, *supra* note 35, at 2.

37. *Id.*

38. See *id.* at 3 (stating that the IRCA has failed to achieve its goals); see also Brady McCombs, *Immigrants Do Jobs Americans Won’t Do, Contractor Says*, GREELEY TRIB., Jan. 3, 2006, available at 2006 WLNR 110738 (discussing the abundance of false documents).

the paperwork “looks good.”³⁹ While employers are easily relieved of legal liability associated with I-9 forms, illegal immigrant employees are not.⁴⁰ Illegal immigrants who falsify I-9 forms violate 18 U.S.C. § 1546(b)(3)—a title 18 crime that can result in deportation.⁴¹

To become financially independent, battered illegal immigrants must find jobs in the United States.⁴² However, to become employed in the United States, illegal immigrants must falsify I-9 forms.⁴³ These illegal immigrants are forced to commit a criminal, deportable offense to get jobs.⁴⁴ When a battered illegal immigrant fraudulently completes an I-9 employment form, the abusive spouse with legal status gains an additional level of control in the relationship.⁴⁵ Therefore, battered illegal immigrants have limited choices. If they choose to free themselves from the economic confines of their abusive spouses by getting jobs, they violate § 1546(b)(3) and risk criminal conviction and deportation.⁴⁶ But, if these illegal immigrants remain economically tied to their abusive spouses, they likely will not have the resources to leave the relationship or report their abusers.⁴⁷ If battered illegal immigrants had the opportunity to obtain employment without the threat of criminal conviction and deportation, the

39. McCombs, *supra* note 38 (quoting a contractor who said he checks his workers’ papers and “[i]f [the document] looks good, we hire them”). The contractor formerly checked workers’ social security numbers with immigration officials, but this service is no longer available. *Id.*; *see also* Fitzgerald & Merson, *supra* note 35, at 3 (stating that anti-discrimination provisions prevent employers from investigating employees’ immigration status).

40. *See Developments in the Law—Jobs and Borders, Legal Protections for Illegal Workers*, 118 HARV. L. REV. 2224, 2240 (2005) (stating “[c]ompletion of the I-9 generally insulates the employer from liability, regardless of whether his employees are legal”).

41. 8 U.S.C. § 1227(a)(3)(B)(iii) (2000) (stating that “a violation of . . . section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other admission documents), is [a] deportable [offense]”); *see also* United States v. Maswai, 419 F.3d 822, 824 (8th Cir. 2005).

42. *See* Pressman, *supra* note 28, at 135–36 (stating undocumented aliens cannot work).

43. *See* 8 U.S.C. § 1324a(b)(2) (requiring all job applicants to complete employment eligibility forms).

44. *See* § 1227(a)(3)(B)(iii) (stating that violations of 18 U.S.C. § 1546 can result in deportation).

45. *See* *Maswai*, 419 F.3d at 825 (holding that § 1367(a) does not prevent abusive spouses from providing immigration officials with evidence of their spouse’s criminal offenses).

46. *See id.* at 824–25.

47. *See* 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers).

number of battered illegal immigrants would likely decrease.⁴⁸

Illegal immigrants who purchase fraudulent green cards and falsify I-9 forms to get jobs in the United States commit criminal acts.⁴⁹ However, these criminal acts have a positive impact on the U.S. economy.⁵⁰ Illegal immigrants make up 4.3% of U.S. workers and fill many labor-intensive jobs in the agricultural, cleaning, construction, and food preparation industries.⁵¹ Immigrant workers are not displacing U.S. workers—they are taking jobs rejected by U.S. workers.⁵² Studies have shown that illegal immigrant labor makes up 1.8%–4.0% of the U.S. gross domestic product (GDP).⁵³ Illegal immigrants who earn money in the United States also spend money on consumer products and services and strengthen local economies.⁵⁴ Therefore, current figures on illegal immigrants' economic contributions may be understated.⁵⁵

Illegal immigrant labor is also prolonging the lifespan of the U.S. Social Security system.⁵⁶ Employers cannot knowingly hire illegal immigrants under the IRCA, so most illegal immigrants get fraudulent identification and Social Security numbers to obtain jobs.⁵⁷ Because illegal immigrants have Social Security numbers, payroll taxes and Social Security are deducted from their paychecks.⁵⁸ Over the past twenty-five years, the Social Security Administration has received increased numbers of W-2

48. *See id.* (stating that extending employment authorization to battered illegal immigrants will allow more abuse victims to leave and report their abusers).

49. *See 18 U.S.C. § 1546 (2000).*

50. *See generally* McCombs, *supra* note 38 (discussing the positive effects of illegal immigrant labor on U.S. GDP); Eduardo Porter, *Illegal Immigrants Are Bolstering Social Security with Billions*, N.Y. TIMES, Apr. 5, 2005, at A1 (discussing the positive impact illegal immigration has on Social Security).

51. McCombs, *supra* note 38.

52. *See id.* (stating that during times of low unemployment illegal immigrant workers filled approximately forty percent of job openings); *see also* Do Immigrants Take Our Jobs? Only if We Try Too Hard to Preserve Them, THE ECONOMIST, July 9, 2005, at 66 (examining two “natural experiments” in immigration and concluding “that the higher the barriers to entry in a country are, the worse is the impact of immigration on the job prospects of its citizens”).

53. McCombs, *supra* note 38.

54. *See id.* (finding that schools and local businesses would have to lay off employees if illegal immigrants returned to their native countries).

55. *See id.* (“Pinpointing a monetary value for the net contribution of illegal immigrants . . . has proven difficult for economists and researchers.”).

56. *See generally* Porter, *supra* note 50, at A1.

57. *Id.*

58. *Id.*

earnings reports with fictitious Social Security numbers.⁵⁹ In 2002, illegal immigrant workers paid an estimated \$6.4 billion in Social Security taxes.⁶⁰ Most of this money will never be collected by the contributing immigrant workers because illegal immigrants are not entitled to Medicare or other benefits.⁶¹ Therefore, money earned by illegal immigrants subsidizes Social Security.⁶² This subsidy amounts to approximately seven billion dollars each year and will likely increase as the number of illegal immigrants increases.⁶³

Illegal immigrants work in the United States to support themselves and their children.⁶⁴ Some illegal immigrants also work to decrease the economic control their abusive spouses have over them.⁶⁵ Employment may give an immigrant greater financial power, but an abusive spouse will retain legal power and control over the alien spouse's immigration status.⁶⁶ Congress has recognized that many of the problems that result from domestic abuse can only be alleviated if power is removed from the abusive spouse and returned to the victim.⁶⁷ However, while Congress has continued to pass legislation that removes power from abusive spouses, courts have not always advanced this goal.⁶⁸

59. *Id.* (finding that the majority of employers filing these W-2 earnings reports are located in California, Texas, and Illinois—states with large numbers of illegal immigrants).

60. *Id.*

61. *Id.*

62. See McCombs, *supra* note 38.

63. Porter, *supra* note 50, at A1 (calculating benefits contributed by illegal immigrants); see also Alexia Elejalde-Ruiz, *Illegal but More Educated: Study Sheds Light on Newest Immigrants*, DAILY HERALD (Chi.), June 15, 2005, at 1 (finding that more illegal immigrants than legal immigrants enter the United States each year).

64. See McCombs, *supra* note 38.

65. Orloff & Kaguyutan, *supra* note 29, at 124 (stating “[s]ome battered immigrants who work may only be able to obtain part-time or low-wage employment”).

66. *Id.* at 98.

67. See Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 Nw. U. L. REV. 665, 695 (1998) (stating that the VAWA recognizes that domestic violence is about control).

68. See 1994 Violence Against Women Act, Pub. L. No. 103-322, § 40701(a), 108 Stat. 1796, 1953 (allowing battered immigrants to self-petition for LPR status); Immigration Act of 1990, Pub. L. No. 101-649, § 701(a), 104 Stat. 4978, 5085 (amending the Immigration Marriage Fraud Amendments of 1986 to create a waiver for battered immigrants); United States v. Maswai, 419 F.3d 822, 825 (8th Cir. 2005) (holding the government can use evidence provided by an abusive spouse to convict an illegal battered immigrant of an immigration crime).

In a recent decision, the Eighth Circuit held that evidence from an abusive spouse could be used to convict a battered illegal immigrant of falsely attesting to citizenship on an employer verification form.⁶⁹ This decision increased the control abusive spouses have over their victims by not extending protection of battered immigrant spouses to criminal prosecutions.⁷⁰ By placing additional power and control with the abusive spouse, the Eighth Circuit decision negated the intent of a decade of congressional reforms and created an additional barrier for one of society's most vulnerable groups—battered illegal immigrants.

Other circuits should not follow this decision, and Congress should act to change this decision to preserve congressional intent and encourage illegal immigrants in Iowa and the nation to report domestic violence. Part II of this Note will examine the Eighth Circuit's decision in *United States v. Maswai*⁷¹ and the negative impact it will have on battered illegal immigrants. Part III will look at the many cultural, economic, and societal barriers that prevent illegal immigrants from reporting domestic abuse. Part IV will focus on Congress's continued efforts to alleviate domestic violence, examining various congressional actions and the positive and negative effects they have had on domestic violence victims. The final portion of this Note will focus on decreasing domestic violence by separating the fear of deportation from the act of reporting domestic violence. It will examine various principles that Congress and the Eighth Circuit should take into account when amending legislation and ruling on cases involving domestic violence. It will also look at the positive impact various forms of publicity could have on this growing societal problem.

II. *UNITED STATES V. MASWAI*—A DISINCENTIVE FOR REPORTING DOMESTIC VIOLENCE

Lilian Maswai traveled to the United States from Kenya on a visitor's visa in 2001.⁷² After her non-immigrant visa expired, she married Albert Ngoytz, an LPR living in West Des Moines, Iowa.⁷³ In February of 2002, Maswai was hired at Wells Fargo Bank.⁷⁴ To get this job, she signed an I-9 employment form and falsely stated that she was a citizen of the United

69. *Maswai*, 419 F.3d at 825.

70. *See id.* at 824.

71. *United States v. Maswai*, 419 F.3d 822 (8th Cir. 2005).

72. *Id.* at 822–23.

73. *Id.*

74. *Id.* at 823.

States.⁷⁵

Ngoytz was abusive throughout the relationship, and police were called to the couple's home in December of 2002.⁷⁶ Police reported that Ngoytz had beaten Maswai, who was pregnant at the time, and Ngoytz was arrested for domestic assault causing injury.⁷⁷ From jail, Ngoytz wrote a letter to Iowa Senator Charles Grassley explaining that Maswai was an immigrant who was living and working in the country illegally.⁷⁸ The senator notified immigration authorities, and less than a year later Maswai was arrested and indicted for falsely stating she was a U.S. citizen on an employment form in violation of 18 U.S.C. § 1546(b)(3).⁷⁹

On appeal to the Eighth Circuit, Maswai argued her husband's letter could not be used as evidence against her because it violated 8 U.S.C. § 1367(a)(1)(A) and § 1367(a)(2).⁸⁰ These sections state:

[I]n no case may the Attorney General, or any other official or employee of the Department of Justice (including any bureau or agency of such Department)—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.] using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty.⁸¹

....

[Or] (2) permit use by or disclose 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 . . . [8 U.S.C. § 1154(a)(1) . . . (B)(ii) . . .] as an alien (or the parent of a child)

75. *Id.*

76. *Id.* at 822.

77. *Id.* at 822–23.

78. *Id.* at 823.

79. *Id.*; see 18 U.S.C. § 1546(b)(3) (2000) (“Whoever uses . . . a false attestation for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than five years, or both.”).

80. *Maswai*, 419 F.3d at 823, 825.

81. 8 U.S.C. § 1367(a)(1)(A) (2000).

who has been battered or subjected to extreme cruelty.⁸²

The interpretation and application of § 1367 was an issue of first impression for the Eighth Circuit.⁸³ The government's argument was based on the specific wording of the statute.⁸⁴ Maswai was charged with fraudulently attesting to U.S. citizenship on an employment form—a crime classified under title 18 of the United States Code.⁸⁵ The government argued the exception in § 1367(a)(1) only applies when an immigrant is charged with an offense under title 8 of the United States Code.⁸⁶

The government further claimed Maswai did not qualify for the exception in § 1367(a)(2), despite the fact that she had filed a petition for permanent resident status under 8 U.S.C. § 1154(a)(1)(B)(ii).⁸⁷ Under § 1367(a)(2), information about battered aliens can be disclosed to the Department of Justice for “legitimate Department, bureau, or agency purposes.”⁸⁸ Although the Department of Justice received the evidence against Maswai from her abusive spouse, the government claimed the Department could use this information for the legitimate purpose of convicting and, because of the conviction, possibly deporting illegal immigrants who live and work in the United States.⁸⁹

Maswai argued § 1367 was applicable because it was intended to prevent abusive spouses from controlling their alien spouses with the threat of deportation.⁹⁰ Ultimately, Maswai argued the “legitimate purpose” exception in § 1367(a)(2) removed her rights under § 1367(a)(1)(A).⁹¹ By allowing the government to use information from Maswai's abusive husband as evidence, Maswai could be convicted of violating 18 U.S.C. §

82. *Id.* § 1367(a)(2).

83. See Brief of Appellee at 5, *United States v. Maswai*, 419 F.3d 822 (8th Cir. 2005) (No. 04-3901).

84. *Maswai*, 419 F.3d at 824.

85. *Id.*; see also 18 U.S.C. § 1546(b)(3) (2000).

86. See *Maswai*, 419 F.3d at 824 (stating that title 8 refers to immigration proceedings where an immigrant is charged only with illegally residing in the United States, while title 18 violations involve criminal acts which extend beyond an immigrant's illegal presence in the United States).

87. *Id.* at 825; see 8 U.S.C. § 1154(a)(1)(B)(ii) (2000) (stating that an alien who is married to a lawful permanent resident can petition the Attorney General for classification by showing good moral character, eligibility for classification under § 1153(a)(2)(A), and abuse by the lawful permanent resident).

88. 8 U.S.C. § 1367(a)(2).

89. *Maswai*, 419 F.3d at 825.

90. *Id.* at 823–24.

91. *Id.* at 825.

1546 and deported based on this conviction.⁹² This interpretation of § 1367(a)(2) allows information from Maswai's abusive husband to serve as the basis for her deportation and strips Maswai of any protection provided by § 1367(a)(1)(A).⁹³ By holding that the letter written by Maswai's abusive husband could be admitted into evidence, the Eighth Circuit greatly increased Maswai's risk of deportation and decreased the protection given to all battered illegal immigrants under § 1367(a)(1)(A).⁹⁴

III. CURRENT BARRIERS PREVENTING ILLEGAL IMMIGRANTS FROM REPORTING DOMESTIC VIOLENCE

Despite efforts to protect battered illegal immigrants, obstacles continue to prevent these individuals from reporting domestic abuse.⁹⁵ Cultural differences alter the way many immigrants view marriage and domestic abuse.⁹⁶ Immigrant victims may not report their abusers because of a need to preserve their family's image and reputation.⁹⁷ Many immigrant women would rather endure violence than risk shaming their families.⁹⁸ A Vietnamese proverb exemplifies this view of their role in society: "When a woman is young, she must obey her father. When she is married, she must obey her husband. When a woman is old, she must obey her son."⁹⁹

In Kenya, Maswai's home country, many females grow up believing abuse is synonymous with marriage.¹⁰⁰ Some Kenyan societies even permit

92. *Id.*; see also 8 U.S.C. § 1227(a)(3)(B)(iii) (stating “[a]ny alien who at any time has been convicted . . . of a violation of . . . section 1546 of title 18 . . . is deportable”).

93. *Maswai*, 419 F.3d at 825; see 8 U.S.C. § 1367(a)(1)(A) (stating that aliens cannot be deported based on information furnished solely by an abusive spouse).

94. See *Maswai*, 419 F.3d at 824–25; Brief of Appellant at 5, *United States v. Maswai*, 419 F.3d 822 (8th Cir. 2005) (No. 04-3901) (“A court, when interpreting a statute, should interpret it so that its purpose is not rendered meaningless.”).

95. See Pollet, *supra* note 18, at 4 (stating that domestic violence is less likely to be reported than other crimes and immigrants are less likely to report crimes than other individuals).

96. See *id.*

97. *Id.* at 7.

98. Narayan, *supra* note 15, at 108 (“Leaving an abusive marriage to return home, even if economically feasible (which it frequently is not), often results in social stigma for the woman and her family.”).

99. Deanna Kwong, Recent Development, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 BERKELEY WOMEN'S L.J. 137, 141 (2002).

100. FIDA KENYA, DOMESTIC VIOLENCE IN KENYA—REPORT OF A BASELINE

husbands to beat their wives.¹⁰¹ In a survey of Nairobi women, more than twenty percent of the respondents had never heard the term “domestic violence.”¹⁰² However, over fifty percent of the women surveyed said they had been victims of abuse,¹⁰³ and thirty-four percent of the women who received injuries due to this abuse “ignored the matter altogether.”¹⁰⁴

Battered illegal immigrants must overcome cultural, lingual, and legal barriers to report their abusers.¹⁰⁵ Those who choose to leave their abusers may not be able to return to their families because of the stigma many cultures place on divorce and failed marriages.¹⁰⁶ Battered immigrants who do not speak English often are socially isolated and unaware of available social services and legal assistance.¹⁰⁷ When police become involved in domestic abuse cases, language barriers often force officers to rely on abusive spouses for all necessary information.¹⁰⁸ Police officers, however, are involved in only a small percentage of these domestic disputes because immigrants are reluctant to contact them.¹⁰⁹ In addition, studies have shown that battered illegal immigrants are less likely to contact police than battered immigrants with legal status.¹¹⁰ A police officer who responds to a

SURVEY AMONG WOMEN IN NAIROBI 1, 8 (2002), <http://www.fidakenya.org/reports/Domestic%20%20violence%20Report.pdf>.

101. *Id.* at 25 (stating wife-beating is sanctioned by society).

102. *Id.* at 15.

103. *Id.* at 16.

104. *Id.* at 22.

105. See Leslye E. Orloff et al., *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13 UCLA WOMEN’S L.J. 43, 46 (2003) (stating these barriers cause immigrants to be “invisible to the anti-domestic violence movement”).

106. Sudha Shetty & Janice Kaguyutan, *Immigrant Victims of Domestic Violence: Cultural Challenges and Available Legal Protections*, VAWnet: Applied Res. F. (Nat’l Elec. Network on Violence Against Women), Feb. 2002, http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_immigrant.pdf (adding that in certain cultures immigrant women who leave abusive spouses may not be allowed to remarry).

107. See Lydia Brashear Tiede, *Battered Immigrant Women and Immigration Remedies: Are the Standards Too High?*, HUMAN RTS., Winter 2001, available at <http://www.abanet.org/irr/hr/winter01/tiede.html>.

108. Shetty & Kaguyutan, *supra* note 106, at 3 (adding “interpreters are still not routinely available” (citation omitted) (internal quotation marks omitted)).

109. See Orloff et al., *supra* note 105, at 46 (stating police officers have been less responsive to and culturally disrespectful of requests from battered immigrants); see also Tiede, *supra* note 107 (stating that contacting police for domestic abuse would do no good in many countries because domestic violence is not codified as a separate crime).

110. Orloff et al., *supra* note 105, at 60 (describing the study and stating that 43.1% of battered women with stable immigration status contacted the police,

domestic violence call may ask questions about the victim's immigration status.¹¹¹ Because these illegal immigrants fear they will be reported to immigration authorities and deported if police become involved in the situation, many do not report their abusers.¹¹²

Battered illegal immigrants who are deported will lose custody of their children if the children are U.S. citizens and have relatives living in the United States.¹¹³ Therefore, battered illegal immigrants who report their abusers to the police fear more than deportation—they fear separation from their children.¹¹⁴ These immigrants may view domestic abuse as a small price to pay to remain in the United States with their children.

Unlike many battered illegal immigrants, Lilian Maswai overcame existing cultural barriers and reported her abusive husband to the police.¹¹⁵ However, Maswai's abusive husband turned the tables on her by reporting her illegal employment—a deportable offense—to immigration officials.¹¹⁶ The court held that battered illegal immigrants who have falsely claimed U.S. citizenship on work authorization forms can be convicted and possibly deported based on evidence supplied by their abusive spouses.¹¹⁷ If the threat of deportation increases, a greater number of battered immigrants will choose to endure domestic violence.¹¹⁸ As the number of battered immigrant women trapped in abusive relationships increases, the goals of various legislative acts will remain unmet.¹¹⁹ Therefore, the Eighth

compared to 20.8% of battered women with temporary status and 18.8% of undocumented battered women).

111. See Sarah M. Wood, Note, *VAWA's Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL'Y 141, 152 (2004).

112. *Id.*

113. *Id.* at 153 (stating that an abusive spouse could get custody of the children as long as the abuse was not directed at the children).

114. *See id.* at 152–53.

115. See *United States v. Maswai*, 419 F.3d 822, 822–23 (8th Cir. 2005); *see also* Orloff et al., *supra* note 105, at 55 (stating that battered immigrants' lack of trust in the legal system keeps them "from requesting the help they need to counter the domestic violence they experience in their lives").

116. *Maswai*, 419 F.3d at 823; 8 U.S.C. § 1227(a)(3)(B)(iii) (2000) (stating that a violation of 8 U.S.C. § 1546(b)(3) is a deportable offense).

117. *See Maswai*, 419 F.3d at 825 (denying Lilian Maswai's motion to exclude evidence offered by her abusive husband).

118. *See* Orloff et al., *supra* note 105, at 47 (stating that immigrant women hesitate to report abuse because they fear "arrest, deportation, and retribution from their abusers") (footnote omitted).

119. *See* Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-

Circuit's interpretation of § 1367(a) could increase domestic violence in the United States by decreasing battered immigrants' legal protection and increasing their fear of deportation. The statute should be interpreted in a way that will break through some of the barriers that prevent battered illegal immigrants from reporting domestic abuse.

IV. CONGRESSIONAL ACTS GRANTING PROTECTION TO BATTERED ILLEGAL IMMIGRANTS

Congress has spent the last decade passing laws that create a more favorable legal system for battered illegal immigrants.¹²⁰ Each new piece of legislation has included specific rights and exceptions for abuse victims.¹²¹ Therefore, recent immigration laws are designed to protect, rather than repress, battered illegal immigrants.

Early immigration laws were clearly structured to enhance stereotypical male and female roles.¹²² According to these laws, a male U.S. citizen could file a petition and his alien wife would receive legal immigration status.¹²³ A female U.S. citizen, however, would lose her citizenship if she married a non-citizen.¹²⁴ These early immigration laws reflect America's adoption of the English common law system—a system that did not provide protection to battered women.¹²⁵ Although these laws were repealed, individuals with citizen or LPR status have continued to hold dominant roles over the legal status of their immigrant spouses.¹²⁶ Men typically hold this dominant role as the vast majority of immigrant spouses are women.¹²⁷ The legal status of many immigrant women

386, § 1502, 114 Stat. 1464, 1518 stating the goal of the initial VAWA "was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships").

120. Orloff & Kaguyutan, *supra* note 29, at 99.

121. See *infra* Part IV.A–E.

122. See Wood, *supra* note 111, at 142.

123. *Id.*

124. *Mackenzie v. Hare*, 239 U.S. 299, 312 (1915) (upholding a law that required women who married non-citizens to take the nationality of their husbands but did not require men to take the nationality of their non-citizen wives).

125. Lori Romeyn Sitowski, *Congress Giveth, Congress Taketh Away, Congress Fixeth Its Mistake? Assessing the Potential Impact of the Battered Immigrant Women Protection Act of 2000*, 19 LAW & INEQ. 259, 263 (2001) (stating under this system "men were legally charged with the obligation of controlling their wives, and encouraged to 'chastise' them with physical force").

126. Wood, *supra* note 111, at 142–43.

127. *Id.* at 143.

depended solely on their husbands filing immigration petitions on their behalf.¹²⁸ If the husband did not file the petition, the immigrant wife had limited options—she could find another way to legally immigrate to the United States, return to her home country, or stay in the United States illegally.¹²⁹ These limited options trapped many immigrant women in abusive relationships.¹³⁰ Since 1990, Congress has passed and amended legislation to increase the options available to battered immigrant women and to decrease domestic violence.¹³¹

A. Immigration Marriage Fraud Amendments of 1986 and Immigration Act of 1990

In 1986, Congress passed the Immigration Marriage Fraud Amendments (IMFA).¹³² Although the goal of the IMFA was to prevent immigrants from entering into fraudulent marriages to secure immigration status, it had the negative effect of increasing the control U.S. citizens or LPRs had over the status of their immigrant spouses.¹³³ The IMFA confirmed earlier immigration law by stating an immigrant spouse's status may only be changed by a petition filed by the spouse with legal status.¹³⁴ The IMFA also added a two-year conditional residency requirement for an immigrant spouse who gained residency by marriage to a U.S. citizen or LPR.¹³⁵ To gain lawful permanent residency in the United States, both spouses had to file a joint petition and attend an INS interview ninety days before the end of the conditional residency period.¹³⁶ The IMFA did include provisions that allowed certain immigrants to bypass the joint petition and gain lawful permanent residency by demonstrating “extreme hardship” or “good faith/good cause.”¹³⁷ However, few immigrants satisfied the criteria for these waivers, and the waivers typically were not applied to female immigrants who were victims of domestic violence.¹³⁸

128. *Id.*

129. *Id.*

130. Pressman, *supra* note 28, at 134.

131. Orloff & Kaguyutan, *supra* note 29, at 99.

132. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537.

133. Orloff & Kaguyutan, *supra* note 29, at 101–02.

134. *Id.* at 102.

135. 8 U.S.C. § 1186a(b)(1) (2000).

136. *Id.* § 1186a(c)(1), (d)(3).

137. Orloff & Kaguyutan, *supra* note 29, at 102 (internal quotation marks omitted).

138. *Id.* at 102–03.

Therefore, the IMFA requirements gave abusive citizen and LPR husbands a two-year period of complete control over their immigrant wives.¹³⁹ If a wife challenged this control, her husband could jeopardize her immigration status by refusing to sign the joint petition.¹⁴⁰

To alleviate the negative effects of the IMFA and decrease the amount of control citizen and LPR husbands had over their immigrant wives, Congress passed the Immigration Act of 1990.¹⁴¹ This act created a specific waiver for battered spouses and allowed immigrants to petition for removal of conditional status by proving they had been "battered or subject to extreme cruelty."¹⁴² Although this amendment theoretically decreased a battered immigrant's dependency on her citizen or LPR husband, battered immigrants still had to produce specific documentation of abuse to receive the benefits of the waiver.¹⁴³ If battered immigrants could not produce evidence such as police reports, medical reports, social service reports, or mental health evaluations, they would not be able to change their conditional residency status.¹⁴⁴

B. Violence Against Women Act of 1994

Congress passed the Violence Against Women Act of 1994 (VAWA 1994)¹⁴⁵ with the specific intent of decreasing domestic violence.¹⁴⁶ Previous legislation did not provide protection for battered immigrants whose spouses had never initiated the immigration process or had withdrawn the application.¹⁴⁷ The VAWA 1994 gave battered immigrants married to citizens or LPRs the right to self-petition for permanent resident status in the United States.¹⁴⁸ The VAWA 1994 lowered the evidentiary burden set by the Immigration Act of 1990 but required self-petitioners to meet four basic requirements: valid marriage and residence

139. See Sitowski, *supra* note 125, at 260 (stating that IMFA requirements "allowed the abusive spouse to trap his wife with promises to file the residency petition and threats of deportation if she did not comply with his demands").

140. *See id.*

141. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

142. Sitowski, *supra* note 125, at 272.

143. *Id.*

144. *Id.*

145. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1902.

146. Orloff & Kaguyutan, *supra* note 29, at 108.

147. *Id.* at 107.

148. Wood, *supra* note 111, at 146.

with a citizen or LPR,¹⁴⁹ abuse, good moral character, and that extreme hardship would result if deported.¹⁵⁰ Although VAWA 1994 self-petitions were more accessible to battered immigrants than past waivers, meeting the requirements continued to present challenges for illegal immigrant women.¹⁵¹

To satisfy the initial requirement of abuse, VAWA 1994 self-petitioners were strongly encouraged to provide evidence such as court documents, medical reports, or other primary evidence.¹⁵² Because immigrants rarely report domestic violence,¹⁵³ it was impossible for many battered immigrants to produce this type of official documentation. Battered immigrants also had difficulties providing the official documents needed to prove marriage to a citizen or LPR.¹⁵⁴ To satisfy the extreme hardship requirement, self-petitioners had to show that deportation "would result in extreme hardship to the alien or a child of the alien."¹⁵⁵ This requirement made it difficult for women from affluent countries to self-petition, because counseling, medical treatment, and other services were available in the petitioner's home country.¹⁵⁶ Finally, many battered immigrants could not satisfy the good moral character requirement because of factors directly related to domestic violence.¹⁵⁷

C. *Illegal Immigration Reform and Immigration Responsibility Act of 1996*

Congress continued to provide protection for battered illegal immigrants with the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA).¹⁵⁸ Overall, the IIRAIRA was

149. A valid marriage under the 1994 Act includes marriage entered into in good faith. *See Kelly, supra* note 67, at 673.

150. 8 U.S.C. § 1154(a)(1)(B)(ii)(II) (2000); *Kelly, supra* note 67, at 672–73.

151. *See Wood, supra* note 111, at 148 (stating later amendments to the law "attempted to close several gaps left by VAWA 1994").

152. *See Immigration and Naturalization Service, 8 C.F.R. § 204.2(c) (1997)* (describing the self-petitioning process).

153. *See Kelly, supra* note 67, at 678 (stating that in one study, only 6 out of 304 immigrant women surveyed had ever contacted the police for help).

154. *Id.* at 683.

155. 8 U.S.C. § 1154(a)(1)(A)(iii)(II) (1994).

156. *Kelly, supra* note 67, at 686.

157. *See, e.g., id.* at 687 (stating that alcohol-related offenses could prevent a battered immigrant from successfully self-petitioning even though alcohol is often used as a coping mechanism for domestic abuse victims).

158. *See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 3009–546* (codified as amended in scattered

passed to appease anti-immigration groups.¹⁵⁹ The legislation restricted legal immigration and increased penalties for violating immigration laws.¹⁶⁰ However, Congress declared battered immigrants exempt from many provisions of the IIRAIRA.¹⁶¹ The Act also gave the VAWA-1994 eligible battered illegal immigrants some access to public benefits.¹⁶² Congress made these benefits accessible to battered immigrants to decrease the economic control abusive spouses have over illegal immigrants.¹⁶³ Therefore, by passing the IIRAIRA, Congress showed a clear intent to assist battered illegal immigrants by providing resources that could help the victims leave abusive relationships.¹⁶⁴

D. Violence Against Women Act of 2000

The Violence Against Women Act of 2000 (VAWA 2000)¹⁶⁵ remedied several negative aspects of the VAWA 1994 and granted additional protections for battered illegal immigrants.¹⁶⁶ In the Battered Immigrant Women's Protection Act of 2000 (BIWPA), the first portion of the VAWA 2000, Congress stated the goal of the legislation was to remove legal barriers that prevented abused immigrants from leaving abusive relationships.¹⁶⁷ Consistent with this goal, the Act gave battered illegal immigrants the right to self-petition for legal U.S. residency and amended

sections of 8 U.S.C.).

159. Tien-Li Loke, Note, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 613 (1997).

160. Orloff & Kaguyutan, *supra* note 29, at 118 (stating the IIRAIRA prevented immigrants from entering the United States and reduced legal protection available to immigrants).

161. See Loke, *supra* note 159, at 613–14.

162. Orloff & Kaguyutan, *supra* note 29, at 120.

163. See *id.* at 122 (stating economic survival is essential to escape from an abusive relationship).

164. *Id.* at 124–25 (stating Congress wanted battered illegal immigrants to have access to a “public benefits safety net”). *But see* Loke, *supra* note 159, at 614 (stating that battered illegal immigrants will receive the benefits specified in the IIRAIRA only if individual states make immigrants eligible for public assistance).

165. Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491.

166. See Family Violence Protection Fund, Background on Laws Affecting Battered Immigrant Women, <http://endabuse.org/programs/printable/display.php3?DocID=320> (last visited Oct. 31, 2006) [hereinafter Background on Laws].

167. Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518.

the extreme hardship and good moral character requirements.¹⁶⁸ The extreme hardship requirement was eliminated to lower battered immigrants' evidentiary burden of proof.¹⁶⁹ The good moral character requirement was modified so battered illegal immigrants charged with crimes commonly associated with domestic abuse could become legal residents.¹⁷⁰

The VAWA 2000 also created the U visa, a provision intended to protect battered illegal immigrants from deportation as long as they cooperate with law enforcement.¹⁷¹ While self-petitions protect illegal immigrants who have been battered by citizen or permanent resident spouses, U visas extend deportation protection to all battered illegal immigrants.¹⁷² Therefore, this provision of the VAWA 2000 was designed to eliminate battered illegal immigrants' fear of deportation and encourage every member of this vulnerable group to report abuse to the police.¹⁷³

E. Violence Against Women Act of 2005

The reauthorization of the Violence Against Women Act (VAWA 2005) is Congress's most recent attempt to decrease domestic violence by providing assistance to battered illegal immigrants.¹⁷⁴ The Senate passed

168. See Wood, *supra* note 111, at 148 (stating that under VAWA 2000 battered immigrants who were divorced or widowed could self-petition for legal residency within two years of death or divorce); Background on Laws, *supra* note 166; see also Sitowski, *supra* note 125, at 284 (stating the abolition of the extreme hardship and good moral character requirements was the most significant change).

169. Wood, *supra* note 111, at 148–49.

170. See *id.* at 149 (explaining that a battered immigrant who used violence in self-defense would not be in violation of the good moral character requirement).

171. Violence Against Women Act of 2000, 8 U.S.C. § 1101(a)(15)(U)(i)(I) (stating immigrants who have "suffered substantial physical or mental abuse" due to rape, domestic violence, or other criminal activities are eligible for U visas).

172. Wood, *supra* note 111, at 150.

173. But see *id.* (stating these visas will likely help only battered illegal immigrants who are aware of the U visa and believe they will be able to receive a U visa). Similar to U visas, T visas, created under the Victims of Trafficking and Violence Protection Act of 2000, were intended to protect trafficking victims by granting "up to 5000 visas to the victims of 'severe forms of trafficking in persons.'" Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 3011 (2006). However, like U visas, T visas are only available to those immigrants willing to cooperate in their abusers' prosecution. *Id.* Because of their previous abuse, trafficking victims are often unwilling or unable to serve as witnesses. *Id.* at 3026. Therefore, as of 2004, the U.S. granted fewer than 500 T visas to immigrants. *Id.* at 3018.

174. See Violence Against Women and Department of Justice Reauthorization

the bill by unanimous consent on December 16, 2005, and the House gave approval on December 17.¹⁷⁵ President Bush signed the bill into law on January 5, 2006.¹⁷⁶ The VAWA 2005 increases the economic power of illegal immigrants admitted to the United States as temporary workers by granting work authorization to illegal immigrants who are victims of domestic abuse.¹⁷⁷ Work authorization will increase the financial independence of domestic abuse victims and may allow some victims to escape abusive relationships.¹⁷⁸ The VAWA 2005 also prevents immigration officials from “initiat[ing] contact with abusers, call[ing] abusers as witnesses or rely[ing] on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence.”¹⁷⁹ Overall, the Violence Against Women Acts of 1994, 2000, and 2005 show Congress’s intent to protect battered illegal immigrants by continually evaluating and amending legislation in favor of this vulnerable group.¹⁸⁰

Battered immigrants residing in the United States have more legal options today than they did twenty years ago.¹⁸¹ However, the growing list of amendments to the VAWA reveals more than just legal progress. The amendments also show that these laws need constant revisions and updates to prevent specific segments of the immigrant population from being overlooked. Immigration and domestic violence statutes and case law should reflect the current intentions of Congress.

Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, 2994 (finding that the problems of domestic violence are more severe for battered immigrants since the fear of deportation keeps many women trapped in abusive relationships).

175. Nat'l Org. for Women, VAWA Passes in Congress, Ready for President's Signature, <http://www.now.org/issues/violence/12-20-05vawapassage.html?printable> (last visited Oct. 31, 2006).

176. Nat'l Task Force to End Sexual and Domestic Violence Against Women, Violence Against Women Act Reauthorization, <http://www.vawa2005.org/> (last visited Oct. 31, 2006).

177. Violence Against Women and Department of Justice Reauthorization Act of 2005 § 814.

178. See 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers) (stating “[r]esearch has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser’s prosecution”).

179. *Id.* at E2607.

180. See Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518 (codified as amended in scattered sections of the U.S.C. 2000) (stating that the goal of this legislation is to eliminate immigration laws that keep immigrants in abusive relationships).

181. Orloff & Kaguyutan, *supra* note 29, at 99.

In *Maswai*, the Eighth Circuit held that § 1367(a)(1)(A) only provides protection to battered immigrants in violation of title 8 immigration offenses.¹⁸² This decision contradicts one of the goals of VAWA 2000: allowing battered immigrants to get protective orders against their abusive spouses without fearing deportation.¹⁸³ Therefore, Lilian Maswai and other battered illegal immigrants in similar situations are not receiving the benefits intended by the VAWA.¹⁸⁴ Many VAWA provisions are intended to help battered immigrants leave abusive relationships.¹⁸⁵ However, by creating case law that opposes the intentions of Congress, the Eighth Circuit has placed a barrier between battered immigrants and the legislation passed to help them.¹⁸⁶ To carry out the VAWA's ultimate goal of decreasing domestic violence, courts need to interpret § 1367(a)(1)(A) and other statutes in a way that is consistent with VAWA findings and provisions.¹⁸⁷

V. EMPOWERING BATTERED ILLEGAL IMMIGRANTS

The *Maswai* court's interpretation of § 1367(a) frustrates the purpose of existing legislation.¹⁸⁸ In addition, this interpretation does not promote many societal goals. This interpretation will increase the number of deportable immigrants and decrease communication between illegal immigrants and their spouses.¹⁸⁹ Immigrants who fear deportation will be more vulnerable to domestic abuse. Therefore, § 1367(a) should be interpreted in a way that protects battered illegal immigrants. Any additional protections or rights granted to battered illegal immigrants

182. *United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005); *see* 8 U.S.C. § 1367(a)(1)(A) (2000) (stating that information from an abusive spouse cannot be the sole source of evidence in a deportation proceeding).

183. *See* § 1502(a)(2), 114 Stat. at 1518.

184. *Compare Maswai*, 419 F.3d at 823, 824 (holding an abusive husband can provide evidence that his wife committed a deportable offense when falsifying an employment verification form), *with* § 1502(a)(2), 114 Stat. at 1518 (indicating one of the goals of the Battered Immigrant Women Protection Act of 2000 is preventing abusive spouses from blackmailing their victims with threats of deportation).

185. *See* 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers) (stating that the VAWA 2005 will grant work authorization to battered immigrants to encourage financial independence).

186. *See Maswai*, 419 F.3d at 824 (holding that evidence from an abusive spouse could be used to convict a battered illegal immigrant of a deportable offense).

187. *See* § 1502(a)(1), 114 Stat. at 1518 (indicating the original purpose of VAWA 1994 was to decrease domestic violence and protect battered women).

188. *See id.* § 1502.

189. *See infra* Part V.A-B.

should be publicized to decrease immigrants' fear of deportation and empower these individuals to seek assistance and leave abusive relationships.

A. Comparing *Maswai* with *Hernandez v. Ashcroft*¹⁹⁰

The Supreme Court has held that "deportation is a drastic measure and at times the equivalent of banishment or exile."¹⁹¹ Because deportation is considered an extremely serious punishment, the Court has a history of interpreting statutory provisions in favor of aliens.¹⁹² The Eighth Circuit's holding in *Maswai* was inconsistent with this precedent.¹⁹³ However, the Ninth Circuit upheld this Supreme Court precedent in *Hernandez*.¹⁹⁴ Like *Maswai*, *Hernandez* also ruled on the interpretation of an immigration statute.¹⁹⁵ Unlike *Maswai*, the *Hernandez* court's interpretation went beyond the literal meaning of the statute.¹⁹⁶

In *Hernandez*, the court based its decision on "Congress's intent that domestic violence be evaluated in the context of professional and clinical understandings of violence within intimate relationships."¹⁹⁷ Like Lilian *Maswai*, Laura Luis *Hernandez* became a victim of domestic abuse after marrying a LPR.¹⁹⁸ When *Hernandez*'s husband smashed a fan on her forehead, she fled from Mexico and went to her sister's home in California.¹⁹⁹ *Hernandez* returned briefly to Mexico to be with her husband but again left for the safety of the United States when he stabbed

190. *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

191. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948).

192. *See id.* at 8, 9–10 (holding that an alien convicted simultaneously for two counts of murder would not be deported as an alien "sentenced more than once"). To be deported under the statute, an alien would have to commit a crime of moral turpitude, be convicted and sentenced for that crime, and then commit a second crime of moral turpitude. *Id.* at 9–10; *see also Dominguez-Capistran v. Gonzales*, 438 F.3d 876, 878 (8th Cir. 2006) (holding to stay a battered illegal immigrant's order of deportation for ninety days to give the immigrant time to file a motion to reopen the case).

193. *United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005) (holding that 8 U.S.C. § 1367(a)(1) should not be interpreted to exclude evidence of an immigrant's criminal offense).

194. *Hernandez*, 345 F.3d at 840 (stating statutory interpretation should be applied in favor of an alien).

195. *Id.*

196. *Id.* at 827 (ruling on the interpretation of a provision of the VAWA 1994).

197. *Id.* at 828.

198. *Id.* at 827.

199. *Id.* at 830.

a knife through her hand.²⁰⁰ To gain legal status in the United States, Hernandez applied for suspension of deportation under a provision of the VAWA 1994.²⁰¹ The Act required immigrants to show they had “been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident.”²⁰²

The Board of Immigrant Appeals interpreted the statute literally and held Hernandez did not meet this requirement because the domestic abuse took place in Mexico instead of the United States.²⁰³ On appeal, the Ninth Circuit determined the appropriate interpretation of the phrase “extreme cruelty” within the context of the VAWA 1994.²⁰⁴ Like the Eighth Circuit’s interpretation of 8 U.S.C. § 1367, the Ninth Circuit’s interpretation of 8 U.S.C. § 1254(a)(3) was an issue of first impression.²⁰⁵ Unlike the *Maswai* court, the *Hernandez* court interpreted the immigration statute within the context of domestic violence.²⁰⁶ The court looked beyond the obvious interpretation of extreme cruelty and placed much emphasis on the fact that, while Hernandez was residing in the United States, her husband called daily and begged her to return to Mexico.²⁰⁷ These acts were viewed as tactics of control that, although nonphysical, constituted acts of violence characteristic of abusive domestic relationships.²⁰⁸ Therefore, the Ninth Circuit held that Hernandez did experience extreme cruelty while in the United States and should be granted suspension of deportation under the VAWA 1994.²⁰⁹ This liberal interpretation of the VAWA 1994 provision reflects the court’s desire to prevent battered illegal immigrants from being deported and forced to leave the safety of the United States.²¹⁰

The *Maswai* decision was not favorable to illegal immigrants.²¹¹

200. *Id.* at 830–31.

201. *Id.* at 832 (stating that § 244(a)(3) of VAWA 1994 allowed certain battered immigrants to suspend deportation and gain lawful status).

202. *Id.* (quoting § 244(a)(3) of VAWA 1994).

203. *Id.* at 827–28.

204. *Id.* at 828.

205. *Id.*; see Brief of Appellee, *supra* note 83, at 5 (stating no previous cases have applied § 1367).

206. *Hernandez*, 345 F.3d at 849.

207. *Id.* at 830.

208. *Id.* at 840.

209. *Id.* at 841.

210. *Id.* at 840 (holding that “rule[s] will be interpreted in an ameliorative fashion . . . particularly . . . in the immigration context where doubts are to be resolved in favor of the alien” (citations omitted) (internal quotation marks omitted)).

211. See *United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005).

Examined within the context of domestic violence, the Eighth Circuit should have concluded that the protections of § 1367(a) extend to certain criminal offenses.²¹² Control is a primary element of abusive relationships.²¹³ When an abusive spouse has substantial control over an alien spouse's immigration status, the abusive spouse also has control over the alien's means of earning a living.²¹⁴ Maswai was charged with violating a criminal statute when she falsely stated she was a U.S. citizen on an I-9 employment form.²¹⁵ Employers are required to use this form to verify the eligibility of employees.²¹⁶ Therefore, falsely attesting to U.S. citizenship on an I-9 form may be the only way a battered illegal immigrant can obtain employment and weaken the control of an abusive spouse.²¹⁷ In addition, the crime of falsely attesting to citizenship is directly linked to immigration status.²¹⁸ This offense is not punishable as a crime unless the individual is illegally residing in the United States.²¹⁹ Therefore, this title 18 criminal offense bears a strong resemblance to the immigration violations listed under title 8.²²⁰

Aliens in violation of title 8 are charged with illegally residing in the United States.²²¹ Aliens in violation of 18 U.S.C. § 1546(b)(3) of title 18 are charged with illegally residing and working in the United States.²²² Despite the small difference in these violations, the specific language of 8 U.S.C. § 1367(a) only extends protection to aliens in immigration proceedings under

212. *Hernandez*, 345 F.3d at 836 (stating that "the nature and effects of violence in intimate relationships" must be considered when evaluating arguments).

213. See *Kelly*, *supra* note 67, at 695 (recognizing that the VAWA is intended to reduce the control abusers have over their victims).

214. See FAMILY VIOLENCE PREVENTION FUND, THE FACTS ON IMMIGRANT WOMEN AND DOMESTIC VIOLENCE 1 (2005), <http://www.endabuse.org/resources/facts/Immigrant.pdf>.

215. *Maswai*, 419 F.3d at 823.

216. Fitzgerald & Merson, *supra* note 35, at 2.

217. See *id.* (stating employees must be eligible to work in the United States).

218. 18 U.S.C. § 1546(b)(3) (2000).

219. *Id.*

220. Compare *id.* (stating that falsely attesting to U.S. citizenship is a criminal offense), and 8 U.S.C. § 1227(a)(3)(B)(iii) (2000) (stating that aliens convicted of falsely attesting to U.S. citizenship under 18 U.S.C. § 1546 are deportable), with 8 U.S.C. § 1227(a)(1)(A), (B) (stating that aliens who are unlawfully present in the United States are deportable).

221. See *United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005) (stating an alien's unlawful presence within the United States initiates immigration proceedings under title 8).

222. 18 U.S.C. § 1546(a), (b)(3).

title 8.²²³ In *Hernandez*, the Ninth Circuit expanded the definition of extreme cruelty to include nonphysical acts associated with domestic abuse.²²⁴ This holding was “congruent with Congress’s goal of protecting battered immigrant women and recogni[zing] . . . past governmental insensitivity regarding domestic violence.”²²⁵ By refusing to interpret § 1367 in a way that expands statutory protections to certain title 18 immigration crimes, the Eighth Circuit not only increased the control U.S. citizens and LPRs have over their illegal immigrant spouses, the court also ruled contrary to Supreme Court precedent, case law, and congressional intent.²²⁶

B. Protecting Communication Between Illegal Immigrants and Their Abusers

Cultural differences and language barriers often limit the size and scope of a battered immigrant’s support network.²²⁷ Often, this network consists solely of an abusive spouse who has legal status in the United States.²²⁸ Therefore, these immigrants are emotionally dependent on an individual who has a large amount of control over their immigration status.²²⁹

The Eighth Circuit’s interpretation of § 1367(a) allows battered illegal immigrants to be convicted of immigration-related crimes and possibly deported based on information provided by their abusive spouses.²³⁰ Abusive spouses may receive this information through confidential marital communication.²³¹ Lilian Maswai and other illegal immigrants in similar

223. 8 U.S.C. § 1367(a)(1) (stating that information from an abusive parent or spouse cannot alone be used to “make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act”).

224. *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003).

225. *Id.* at 839–40.

226. *See Fong Haw Tan v. Phelan*, 333 U.S. 6, 9–10 (1948) (holding that doubts should be resolved in favor of the alien when deportation is an issue); *Flandreau Santee Sioux Tribe v. United States*, 197 F.3d 949, 952 (8th Cir. 1999) (holding that statutory interpretation should be consistent with the statute’s purpose).

227. *See Tiede, supra* note 107 (describing undocumented immigrants as “liv[ing] secret lives in which they literally have no legal identity and few if any ties to social services, friends, or family”).

228. *Shetty & Kaguyutan, supra* note 106, at 1–2.

229. *See 8 U.S.C. § 1154(a)(1)(A)(i)* (2000) (describing the conditional residency requirement that enables immigrants to receive legal status if their citizen or permanent resident spouse files a petition on their behalf).

230. *See United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005).

231. *See 81 AM. JUR. 2D Witnesses* § 301 (2004) (stating that marital

situations likely informed their husbands of their illegal status and confided in their husbands when they committed immigration-related crimes such as falsely attesting to U.S. citizenship on an employment form.²³²

The marital communication privilege may be used by either spouse to prevent their partner from testifying about confidential marital communications.²³³ This privilege is based on the need for confidence and trust in marital relationships.²³⁴ If an illegal immigrant revealed her illegal status and immigration-related crimes to her husband in confidence, the immigrant could use the marital communication privilege to prevent her husband from testifying about this information.²³⁵ Therefore, abusive spouses should not be allowed to use marital communications as evidence of their victim's immigration-related crimes.²³⁶

The Tenth Circuit has used policy considerations to make an exception to the marital communication privilege.²³⁷ In *United States v. Bahe*, the defendant was charged with sexually abusing a young girl.²³⁸ The defendant's wife wanted to testify about her husband's sexual behavior toward her to show that he committed the crime.²³⁹ This testimony ordinarily would be excluded by the marital communication privilege, but the court admitted the testimony on policy grounds.²⁴⁰ Because child abuse

communication is considered privileged if the communication "would not have been made but for the absolute confidence in, and inducement of, the marital relationship"). *But see Trammel v. United States*, 445 U.S. 40, 53 (1980) (stating that marital privilege is limited to restricting a spouse's testimony in the courtroom); *United States v. Bahe*, 128 F.3d 1440, 1442-43 (10th Cir. 1997) (stating that marital privilege does not prevent a spouse from testifying about observed acts or communications that occur in the presence of a third party).

232. See Shetty & Kaguyutan, *supra* note 106, at 1-2 (stating that abusive husbands are the only means of support for most immigrant women).

233. *Bahe*, 128 F.3d at 1441-42 (defining the marital communications aspect of marital privilege).

234. See *Trammel*, 445 U.S. at 51 (stating the marital communication privilege recognizes the need for confidential disclosure).

235. See *People v. Krinkel*, 434 N.E.2d 1162, 1164 (Ill. App. Ct. 1982) (holding spouses cannot use intra-spousal communication in their testimony).

236. See 151 CONG. REC. H12124 (daily ed. Dec. 17, 2005) (statement of Rep. Jackson-Lee) (describing the VAWA 2005 provisions that prevent abusers from using the immigration system against their victims). *But see United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005) (stating abusive spouses can provide evidence against their victims in a criminal prosecution).

237. *Bahe*, 128 F.3d at 1446.

238. *United States v. Bahe*, 128 F.3d 1440, 141 (10th Cir. 1997).

239. *Id.*

240. *Id.* at 1446.

is a serious crime that often occurs within the privacy of the home, the *Bahe* court held “[i]t would be unconscionable to permit a privilege grounded on promoting communications of trust and love between marriage partners to prevent a properly outraged spouse with knowledge from testifying against the perpetrator of such a crime.”²⁴¹ Using this reasoning, it would also be unconscionable to permit an abusive husband to provide evidence that could result in the deportation of his battered immigrant wife.²⁴²

Courts have allowed testimony based on marital communication when the defendant spouse has committed a crime against the testifying spouse.²⁴³ Many of these cases involve battered wives testifying against their abusive husbands.²⁴⁴ This exception benefits battered women by increasing the amount of admissible evidence against their abusers. However, as a matter of sound public policy, this reasoning should be extended to benefit battered immigrant women who are convicted of crimes related to domestic abuse and immigration status.²⁴⁵

Lilian Maswai was charged with falsifying an employment form.²⁴⁶ This offense is directly tied to immigration status and domestic abuse because false employment forms are often necessary for immigrants to obtain jobs, and “financial dependence on an abuser is a primary reason battered women are reluctant to cooperate in their abuser’s prosecution.”²⁴⁷ Battered illegal immigrants falsify employment forms to get jobs so they can end their financial dependence and report their abusers to the police.²⁴⁸ Therefore, sound public policy requires an exception for battered immigrants charged with immigration-related crimes. Current public policy exceptions to the marital communications

241. *Id.*

242. *See id.*

243. *Id.* at 1445.

244. *See, e.g., id.*; *United States v. White*, 974 F.2d 1135, 1138 (9th Cir. 1992) (holding the marital communications privilege does not apply when the testifying spouse is the victim of the accused crime).

245. *Compare White*, 974 F.2d at 1137-38 (defendant’s battered wife was allowed to testify that the defendant had threatened to kill her and her daughter), *with United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005) (defendant’s abusive husband was allowed to provide evidence that could result in the deportation of his battered wife).

246. *Maswai*, 419 F.3d at 822.

247. *See* 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers).

248. *See id.*

privilege protect battered women by admitting additional testimony.²⁴⁹ To protect battered illegal immigrants, this rationale should be extended to exclude marital communications in non-testimonial evidence.

Testimonial privilege goes beyond marital communications and allows “a party to exclude the adverse testimony of his or her spouse.”²⁵⁰ This privilege is used only in limited circumstances when the exclusion of adverse spousal testimony “promotes sufficiently important interests to outweigh the need for probative evidence in the administration of criminal justice.”²⁵¹ A similar balancing test should be used by courts when determining whether evidence from an abusive spouse can be used to convict an illegal immigrant of an immigration-related crime.²⁵² This will require courts to consider not only statutory language but also policy arguments.²⁵³

In *Wyatt v. United States*, the Court held a defendant could not exclude adverse spousal testimony when his wife was the victim of the offense.²⁵⁴ Because the defendant took advantage of his wife, he could not prevent her from testifying by claiming an interest in the marriage.²⁵⁵ This testimonial privilege exception was enacted to prevent the defendant “from sealing his wife’s lips by his own unlawful act.”²⁵⁶ This reasoning should be applied when interpreting battered illegal immigrants’ rights under § 1367(a).²⁵⁷ In *Maswai*, the Eighth Circuit held that a battered immigrant could not prevent her abusive spouse from supplying authorities with evidence of her immigration-related crime.²⁵⁸ This decision gives abusive spouses the power to seal their wives’ lips and prevent them from reporting

249. See *Bahe*, 128 F.3d at 1446; *White*, 974 F.2d at 1137–38.

250. *Wyatt v. United States*, 362 U.S. 525, 526 (1960).

251. *Trammel v. United States*, 445 U.S. 40, 51 (1980).

252. See *Mangels v. United States*, 828 F.2d 1324, 1329 (8th Cir. 1987) (holding courts should not use a statute’s “plain meaning” if that interpretation would result in absurd consequences).

253. See *Flandreau Santee Sioux Tribe v. United States*, 197 F.3d 949, 952 (8th Cir. 1999) (stating that statutory interpretation should reflect the meaning and purpose of the statute being interpreted).

254. *Wyatt v. United States*, 362 U.S. 525, 526 (1960) (holding that a defendant charged with offering as a prostitute a woman he later married could not exclude the victim’s testimony).

255. See *id.* at 530 (holding that the female victim could be compelled to testify against the defendant). But see *Trammel*, 445 U.S. at 53 (holding that the witness-spouse could not be compelled to testify).

256. *Wyatt*, 362 U.S. at 529.

257. See *id.*; 8 U.S.C. § 1367(a) (2000).

258. *United States v. Maswai*, 419 F.3d 822, 824 (8th Cir. 2005).

domestic abuse.²⁵⁹ The testimonial privilege exception gives spouses who are crime victims control over some of the evidence against the defendant.²⁶⁰

Lilian Maswai was an illegal immigrant and a victim of domestic abuse.²⁶¹ She was charged with falsifying an employment form²⁶²—a crime linked to victims of domestic violence.²⁶³ However, despite her criminal victim status, Maswai was unable to prevent the government from using evidence provided by her abuser.²⁶⁴ To encourage battered immigrant women to report domestic abuse, § 1367(a) should follow the policy rationale behind the testimonial privilege exception and give crime victims some evidentiary control over their abuser.²⁶⁵ If courts' interpretation of § 1367(a) gave battered immigrants control over adverse evidence from their abusive spouses, fewer battered immigrants would fear deportation, and fewer abusive relationships would go unreported.

C. Amending Current Statutes

In his 2005 State of the Union Address, President Bush stated: "America's immigration system is . . . unsuited to the needs of our economy and to the values of our country. We should not be content with laws that punish hardworking people who want only to provide for their families, and deny businesses willing workers."²⁶⁶ Congress and the courts should implement this idea by reevaluating the current classification and interpretation of certain immigration statutes. When evaluating these statutes, there should be specific focus on amending immigration laws that punish the most vulnerable members of society—battered illegal immigrants.²⁶⁷

259. See Wood, *supra* note 111, at 152 (stating that battered immigrants' fear of deportation prevents them from reporting domestic abuse).

260. See *Trammel*, 445 U.S. at 53 (holding that the victim spouse can choose whether to testify).

261. *Maswai*, 419 F.3d at 822.

262. *Id.*

263. See 151 CONG. REC. E2606 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers) (stating employment authorization provides abused spouses with the resources to stop the violence).

264. *Maswai*, 419 F.3d at 825.

265. See *Trammel*, 445 U.S. at 53.

266. Press Release, Office of the Press Sec'y, State of the Union Address (Feb. 2, 2005), available at <http://www.whitehouse.gov/news/releases/2005/02/20050202-11.html>.

267. See Wood, *supra* note 111, at 155 (stating public policy requires that the

Congress should amend 18 U.S.C. § 1546(b)(3) to grant additional rights to illegal immigrants working in the United States.²⁶⁸ These amendments will likely provide the greatest benefits to battered illegal immigrants.²⁶⁹ Amending these statutes will not only grant additional rights to battered illegal immigrants, it will also restrict the rights of abusive spouses.

According to 18 U.S.C. § 1546(b)(3), it is a criminal offense to falsify an I-9 employment form.²⁷⁰ Immigrants convicted of falsifying I-9 forms are deportable.²⁷¹ However, to become employed in the United States, illegal immigrants must complete an I-9 form.²⁷² Illegal immigrants have to purchase fraudulent Social Security cards or falsely attest they are U.S. citizens to complete this form.²⁷³ These immigrants risk criminal punishment and deportation when they accept labor-intensive jobs that remain unfilled by U.S. workers.²⁷⁴ The risks are compounded for battered illegal immigrants whose abusive spouses use this criminal offense as leverage to continue their own criminal conduct.²⁷⁵

Congress can alleviate many of the risks faced by battered illegal immigrants and other illegal immigrant workers by amending 18 U.S.C. § 1546 and classifying it as a title 8 immigration offense.²⁷⁶ “[Offenses] under

most vulnerable members of society receive protection).

268. *See supra* notes 50–63 and accompanying text (explaining the beneficial impact of illegal immigrant labor on the U.S. economy).

269. *See supra* Part IV (explaining the barriers battered illegal immigrants face when reporting domestic abuse).

270. 18 U.S.C. § 1546(b)(3) (2000) (stating it is a criminal offense to use a false attestation to satisfy a § 274A(b) Immigration and Nationality Act requirement).

271. 8 U.S.C. § 1227(a)(3)(B)(iii) (2000) (stating that violation of 18 U.S.C. § 1546 is a deportable offense).

272. *Developments in the Law—Jobs and Borders, Legal Protections for Illegal Workers*, *supra* note 40, at 2240 (stating IRCA regulations require that employers receive I-9 forms from all employees but that the forms effectively function as a way to launder illegal immigrant workers); *see also* Porter, *supra* note 50, at A1 (stating that illegal immigrants who file fraudulent I-9 forms pay into social security and provide the system with a seven billion dollar annual subsidy).

273. *See* Fitzgerald & Merson, *supra* note 35, at 1–2.

274. *See* McCombs, *supra* note 38 (noting that illegal immigrants fill jobs most Americans do not want, but must forge papers to do so).

275. *See* United States v. Maswai, 419 F.3d 822, 823–24 (8th Cir. 2005) (holding an abusive spouse can report his wife’s illegal employment to officials while in jail for domestic assault, and this information can be used as evidence against his wife).

276. *See* 8 U.S.C. § 1367(a)(1)(A) (stating that illegal aliens charged with a title 8 immigration offense cannot be deported based on information received solely from an abusive spouse); *Maswai*, 419 F.3d at 825 (stating aliens charged with a title 18 crime

[t]itle 18 are distinguishable from deportation proceedings [under title 8 because] . . . [title 8 proceedings] require proof of a criminal act beyond an alien's unlawful presence within the United States.”²⁷⁷ Because illegal immigrants must violate § 1546(b)(3) to support themselves while in the United States, this offense coexists with their illegal presence in the United States and should not be classified as an additional crime.²⁷⁸

If making a false attestation on an I-9 form is classified as a title 8 immigration crime, illegal immigrants will receive the protections granted to them under 8 U.S.C. § 1367(a) and various city ordinances and policies.²⁷⁹ These protections will primarily assist battered illegal immigrants by eliminating some of the barriers that prevent this group from reporting and leaving their abusers.²⁸⁰

Under 8 U.S.C. § 1367(a)(1)(A), battered illegal immigrants cannot be deported based on evidence provided by their abusive spouse.²⁸¹ However, this statute has been interpreted to apply only to title 8 immigration proceedings.²⁸² If falsifying an I-9 form is classified under title 8, battered illegal immigrants will have the evidentiary protection of § 1367(a).²⁸³ Battered illegal immigrants will be able to work in the United States without fearing their abusive spouses will initiate deportation proceedings by reporting their illegal employment to government officials.²⁸⁴ This will decrease the control abusive U.S. citizens or LPRs have over their illegal immigrant spouses.²⁸⁵ In addition, battered illegal

can be convicted and possibly deported based on information from an abusive spouse).

277. *Maswai*, 419 F.3d at 824.

278. *See id.*

279. See 8 U.S.C. § 1367(a)(1) (stating the statute applies to title 8 offenses); Nina Bernstein, *Police Report Noncitizens to U.S., Official Says*, N.Y. TIMES, Apr. 23, 2005, at B3 (explaining the benefits of New York Mayor Michael Bloomberg's Executive Order 41).

280. See 8 U.S.C. § 1367(a)(1)(A) (stating that abusive spouses cannot use title 8 violations as a basis for deportation); Wood, *supra* note 111, at 150, 152 (indicating that many battered illegal immigrants fear deportation and do not report abuse to law enforcement because of this fear).

281. 8 U.S.C. § 1367(a)(1)(A).

282. *See Maswai*, 419 F.3d at 824.

283. See 8 U.S.C. § 1367(a)(1)(A) (stating evidence from an abusive spouse cannot be used to deport a battered illegal immigrant).

284. See Wood, *supra* note 111, at 152 (explaining battered illegal immigrants' fear of deportation).

285. See generally *Maswai*, 419 F.3d at 823–24 (discussing how evidence furnished by an abusive husband may be used in a criminal prosecution, but may be limited in deportation proceedings).

immigrants who are not financially dependent on their abusive spouse are more likely to report the abuse and leave the relationship.²⁸⁶

Battered illegal immigrants will also receive protection under certain city ordinances if 18 U.S.C. § 1546(b)(3) is amended to equate with title 8 immigration offenses.²⁸⁷ In 2003, New York City Mayor Michael Bloomberg enacted Executive Order 41 to encourage illegal immigrants to contact police and other agencies.²⁸⁸ The Executive Order “codifie[s] a ‘don’t ask, don’t tell’ policy for city workers” and ensures that an individual’s immigration status will be confidential after interactions with police or other city workers.²⁸⁹ Similar city ordinances and policies have been enacted in Minneapolis and Denver.²⁹⁰ However, these protective policies do not apply to illegal immigrants who are suspected of criminal activity.²⁹¹ The ordinances allow police officers and other city workers to report these illegal immigrants to Immigration and Customs Enforcement (ICE).²⁹² Because falsifying an I-9 employment form is a criminal offense, battered illegal immigrants who contact police to report their abusive spouse may be reported to ICE.²⁹³ The municipal policies were enacted to encourage domestic violence victims to report abuse;²⁹⁴ however, current laws prevent battered illegal immigrants who work in the United States from receiving the benefits of these policies.²⁹⁵ By amending 18 U.S.C. § 1546(b)(3), all battered illegal immigrants will be able to report their spouses’ domestic abuse crimes without reporting their own immigration

286. See 151 CONG. REC. E2605 (daily ed. Dec. 18, 2005) (statement of Rep. Conyers) (stating that work authorization for battered illegal immigrants will decrease domestic violence).

287. See Nina Bernstein, *Grievance About a Policeman, Then a Deportation Hearing*, N.Y. TIMES, Sept. 26, 2005, at B1 (discussing Mayor Bloomberg’s Executive Order 41).

288. See *id.*

289. *Id.*

290. See Lou Kilzer, ‘99 Legal Opinion Backs City, ROCKY MOUNTAIN NEWS, May 18, 2005, at 5A (stating Executive “Order 116 discourages reporting undocumented aliens who seek essential services” (internal quotation marks omitted)); Tim Nelson, *Cities Rebuff Pawlenty Initiative*, DULUTH NEWS TRIB., Jan. 6, 2006, at 1B (stating Minneapolis and St. Paul police are not supposed to ask questions about immigration status).

291. Bernstein, *supra* note 287, at B3.

292. *Id.*

293. See *id.*

294. Kilzer, *supra* note 290, at 5A (stating many immigration policies developed after domestic violence increased in the 1980s).

295. See Bernstein, *supra* note 279, at B3.

crimes.²⁹⁶

D. Publicizing Available Resources

Many battered illegal immigrants are not aware of current legal remedies and other resources that provide protection for domestic abuse victims.²⁹⁷ These victims will continue to fear deportation and will stay in abusive relationships unless they learn how to use the available resources to their advantage.²⁹⁸

Lawyers and nonprofit agencies need to develop more extensive outreach programs to educate immigrants about immigration law and the many exceptions available for immigrants who are victims of domestic violence.²⁹⁹ Through VAWA and other legislation, Congress has granted various protections to illegal immigrants.³⁰⁰ These protections, however, only benefit immigrants who seek help from outside sources.³⁰¹ Culture and language barriers prevent many immigrants from contacting the agencies designed to assist them.³⁰² Many agencies and departments focus on decreasing domestic violence on a broad level and neglect the subset of domestic violence victims who are not U.S. citizens or LPRs.³⁰³ For example, the Los Angeles Police Department gives domestic violence victims a flier with contact information for various agencies and resources.³⁰⁴ However, this flier does not include contact information for agencies that primarily assist battered illegal immigrants.³⁰⁵

Organizations funded by the Legal Services Corporation (LSC)

296. See *id.* (noting that under New York City Executive Order 41, city agencies must keep immigration status confidential).

297. See Tiede, *supra* note 107.

298. Keim, *supra* note 8, at B10.

299. See *id.* (stating most immigrants are not aware that domestic violence victims can file self-petitions and achieve legal status without assistance from their abusive spouses).

300. See Leila Rothwell, Comment, *VAWA 2000's Retention of the "Extreme Hardship" Standard for Battered Women in Cancellation of Removal Cases: Not Your Typical Deportation Case*, 23 U. HAW. L. REV. 555, 558 (2001).

301. See Keim, *supra* note 8, at B1 (recounting the story of a battered illegal immigrant who received assistance from VAWA after contacting a legal aid attorney about a divorce). The attorney noticed the client was a VAWA candidate and helped her file the appropriate papers to become an LPR. *Id.*

302. *Id.*

303. See *id.*

304. *Id.*

305. *Id.*

should advertise their services to inform a larger number of battered illegal immigrants about available legal resources.³⁰⁶ Although LSC-funded organizations cannot provide legal services to illegal immigrants, Congress made an exception for battered women in the Immigration Reform Act.³⁰⁷ The exception allows legal service organizations to assist victims of domestic violence with any issue related to domestic abuse.³⁰⁸ Because battered women are the only group of illegal immigrants who can get help from legal service organizations, many women in this group likely do not know they can get legal representation.³⁰⁹

Legal service organizations need to develop public relations and advertising campaigns that will reach illegal immigrants who are victims of domestic violence. An effective public relations campaign will target the female immigrant population and make this group aware of the services offered to domestic violence victims.³¹⁰ Most individuals try a specific product or service because of recommendations from a friend or family member—not because of traditional methods of advertising.³¹¹ Battered illegal immigrants' social groups typically include only a few friends and family members.³¹² Legal service organizations likely will have a difficult time delivering their message to their target market—battered illegal immigrants.³¹³ However, when these organizations do successfully deliver their message to the female immigrant population, a larger number of battered illegal immigrants will benefit from these legal services. If battered illegal immigrants receive information about available legal services from other immigrants, they will likely trust the credibility of the source and seek help from the recommended organization.³¹⁴ Therefore, legal service organizations may be able to decrease domestic violence by effectively publicizing their services to the intended recipients. These efforts will direct battered illegal immigrants to attorneys with knowledge of current immigration law, VAWA, and U visa requirements and allow

306. See Orloff & Kaguyutan, *supra* note 29, at 127.

307. Loke, *supra* note 159, at 617.

308. Orloff & Kaguyutan, *supra* note 29, at 127.

309. Tiede, *supra* note 107 (stating illegal immigrants have few ties to social services and do not know how to seek help).

310. See AL RIES & LAURA RIES, THE FALL OF ADVERTISING AND THE RISE OF PR 247 (2002).

311. *Id.*

312. Tiede, *supra* note 107.

313. See *id.*

314. See RIES & RIES, *supra* note 310, at 247–48 (stating messages are more powerful when the sources have respected credentials).

this vulnerable group to receive the legal protections intended to help them escape abusive relationships.³¹⁵

VIII. CONCLUSION

Before 1993, there were fewer than fifty organizations dedicated to helping and protecting battered immigrants.³¹⁶ Today there are over 3,000 organizations dedicated to this goal.³¹⁷ These numbers show that Americans want to protect this group of victims, and these organizations are helping battered illegal immigrants leave their abusive spouses and make lives for themselves in the United States.³¹⁸ However, these organizations can only provide limited assistance to this vulnerable group. Many battered illegal immigrants remain under the control of their U.S. citizen or LPR spouses because they fear deportation. Although Congress has passed legislation to decrease this fear, the Eighth Circuit has shown that legislation sometimes fails the individuals it is intended to protect. Immigrants who are victims of domestic abuse should be able to contact the police without fearing that they will face a more serious punishment than their abusers. In addition, our legal system should not discourage illegal battered immigrants from communicating freely with their spouses. Domestic violence is a crime that often remains behind closed doors and goes unreported. The Eighth Circuit encouraged this behavior by increasing the risk of deportation for those battered immigrants who attempt to seek help from outside sources.

315. See Keim, *supra* note 8, at B1 (describing a battered illegal immigrant who received LPR status after a Southern Arizona Legal Aid attorney filed a VAWA application on her behalf).

316. Terzieff, *supra* note 4, at 1.

317. *Id.*

318. See *id.* (telling the story of a battered immigrant who received help from a local YWCA).

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Congress and the courts need to examine the negative impact of this decision and remedy the situation by amending specific immigration statutes or altering the interpretation of existing immigration statutes. If battered illegal immigrants like Lilian Maswai receive additional protection from the legislature and courts, a greater number of domestic abuse victims will choose to report their abusers rather than endure the violence.

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