Denying Freedom Rather Than Securing the Country: National Security is Undermined by Laws Governing Battered Immigrants

Eve Tilley-Coulson
DENYING FREEDOM RATHER THAN SECURING THE COUNTRY:

NATIONAL SECURITY IS UNDERMINED BY LAWS GOVERNING BATTERED IMMIGRANTS

Eve Tilley-Coulson

INTRODUCTION

“He beat me and he wouldn’t let me eat when I was pregnant. He kept me isolated in an apartment without heat,” she said. “When was this?” I said. “Over a year ago when I was pregnant with the baby,” she said. “Is he still doing this? Why didn’t you come to anyone?” I said. “He drove the only car,” she said. “He kept all of the money so I couldn’t go anywhere without him knowing. Where would I have gone?” she said. “I am not a legal permanent resident. I am only here because he is here, but I don’t even know if he is a citizen. He said he was, but I don’t have any proof and he left,” she said. “I’m afraid of what will happen if I try to find him. I’ll be deported. Who will care for my son? Where will I go? I can’t leave my son behind.”

Relief for battered immigrants is not an obvious national security matter per se, yet remedies are enacted in conjunction with stringent interpretations of immigration law, as though victims pose a security threat. This detrimentally affects the victim herself and her children, which in turn is harmful to national security. Discrepancies exist between the immigration laws themselves—which attempt to secure the United States from disease, violence, and illegal activity—and the loopholes within remedies under these laws, unnecessarily removing victims and perpetuating a cycle of fear and abuse. By displacing the victim, rather than the abuser, the government allows the cycle of violence to continue, while simultaneously breaking up families

---

1 The following storyline was one I personally encountered during an internship. It is a common story played out in many legal aid clinics and social work officers. As such, it is representative of the plight of battered immigrant women facing the tough decision to seek help while protecting their children and families from the laws that bind such scenarios.
and creating disorder and instability. Current legislation fails to recognize the benefits that would be conferred to the nation (as well as the children and victims themselves) if battered immigrants were allowed to remain here permanently, with their children. Such a privilege would contribute to American self-sufficiency by cultivating, rather than alienating, a population already residing within the country. The cost-benefit analysis, juxtaposing benefits and detriments to our security versus benefits and detriments to battered immigrant victims and their children, is the crux of this debate.

This paper addresses how relief for battered immigrants, when implemented with the priority of protecting national security and immigration legislation, creates and perpetuates negative societal consequences. Rather than strengthening national security, these laws negatively impact the country’s stability, and thus the freedom the American government intends to appropriate. Part I elaborates on the forms of relief that currently exist for battered immigrants: asylum, Convention Against Torture (“CAT”), the Violence Against Women Act (“VAWA”), and the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Convention”). Part I also delineates the population affected by, and the impacts of, these aforementioned forms of relief. Part II analyzes the benefits and detriments that these forms of relief have on national security, and by implication the purpose of immigration law. Finally, Part III proposes two ideas to counteract the harm from current forms of relief. These proposals suggest that it is beneficial to national security for battered immigrants to come forward without fear of removal, asylum, or separation, as this puts the best interest of the child (and therefore the future of the country) first.
I. IMMIGRATION LAW AS RELIEF FOR BATTERED IMMIGRANT VICTIMS

Domestic violence affects many subsets of the population in the United States. One such subset is the battered immigrant population. This demographic is affected without sufficient legal remedy because “cultural beliefs and practices [which] rationalize or deny the existence of domestic violence…also serve as barriers to battered immigrant women”.2 The United States’ security strategy promotes the belief that freedom comes from protecting the United States from hostile intrusion, but this ignores those (battered immigrants) within the country’s boundaries seeking this same freedom. These women become legally ensnared, with nowhere to safely or easily go. Cultural norms prevent many from acquiring asylum or refugee status, leaving them unable to stay in the United States but also unable to return to their own country. While there are definitive reasons for these laws, the overarching principles of national security fail, to their detriment, in enforcing these forms of relief.

A. Existing Laws and Remedies for Relief

There are “four categories of legal remedies available to immigrant domestic violence victims: (1) asylum; (2) withholding of removal under INA3 section 241(b)(3); (3) withholding of removal under Article 3 of CAT; and (4) deferral of removal under CAT”.4 Asylum allows a woman fleeing persecution to apply for stay in the United States under refugee status.5

---


3 Immigration and Nationality Act


comparison, CAT prohibits the United States government from returning a person to a country where they may be tortured, hindering an immigrant’s removal if it would subject her to severe harm.6 Both asylum and CAT offer remedies for the battered immigrant, but due to their stringent requirements, neither comprehensively addresses the problems facing the battered immigrant population.

Beyond these legal remedies are the implications of the Hague Convention and VAWA. The Hague Convention asserts that, “the interests of children are of paramount importance,” and was originally created, in part, to secure against fathers abducting their children; but recently, the Hague Convention recognized that “child abductors can be victims of domestic violence.”7 Unlike the Hague Convention, VAWA is not meant to enforce child protection, but acts in conjunction with asylum and CAT, allowing non-citizens who have been abused to apply for permanent residency, and granting immediate employment authorization.8 However, like asylum and CAT, neither the Hague Convention nor VAWA offer adequate remedy.

The government must accept that women with children are often afraid to report abuse, as they see their “immediate family as the one stabilizing force that enables” them to go on, and fear that the disclosure of abuse may be reason enough for the government to remove their children.9 Thus, many battered women are “compelled to endure abuse until they can develop a

6 Id. at 804.
safe and effective plan to leave the violent situation.”

The consequence of this is that, by making the requirements for relief unattainable for many battered immigrants, the United States implicitly accepts violence within its boundaries. Only when the law recognizes a woman’s fear of separation from her child as a motivating factor will it act in children’s best interest, and therefore in the best interest of the United States.

1. Asylum

The Immigration and Nationality Act (hereinafter “INA”) requires an asylum applicant to show that: (1) “she suffered persecution or has a well-founded fear of persecution,” and (2) “the harm was inflicted ‘on account of’ one of the five enumerated categories: race, religion, nationality, membership in a particular group, or political opinion.” To show this, the victim must “provide evidence regarding the motivation of the persecutor, known as the ‘nexus’ between the protected ground and the reasons for the infliction of harm.” However, because women are currently excluded as a legally protected social group, this requirement acts as a barrier to receiving relief. Harm against women is seen as personal and directly related to one’s position as wife, rather than as a member of any persecuted and protected class of people. Unsurprisingly, many advocates for refugee women propose to amend regulations governing asylum by establishing gender as a social group. Immigrant women would benefit from this acknowledgement, as it would allow more lenient receipt of relief.

11 Annitto, supra note 5, at 790.
12 Id. at 797.
13 Id. at 797-99 (citing the United Nations Executive Committee on Refugee Women and International Protocol, who “urges states to interpret a ‘particular social group’ to include ‘women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live’”).
14 Id. at 797.
The United States requirement for social group status rests on whether members are singled out for persecution because of permanent defining characteristics that no one should be required to change.\textsuperscript{15} This status should extend to women, who are often bound by characteristics that they are unable to change,\textsuperscript{16} such as physical and monetary instability.\textsuperscript{17} Such a status would confer women as “a collection of people closely affiliated with each other, who are actuated by some common impulse or interest,” and who need protection as a social group.\textsuperscript{18} These common impulses and interests are distinctively prevalent within the battered immigrant women population, as cultural norms and barriers create shared burdens and fears.

2. Convention Against Torture

Article 3 of CAT is a viable alternative for those who do not meet the stringent requirements of asylum, as it grants relief for torture, but not all “physical, emotional, and mental abuse that might qualify as cruel, inhuman, or degrading treatment.”\textsuperscript{19} Implemented in the United States in 1998, CAT was created in response to a discussion about torture as a “tool of repression.”\textsuperscript{20} Unlike asylum, CAT “does not have a nexus requirement,” and therefore “individuals seeking relief under CAT do not need to prove the underlying reasons for the torture they suffered.”\textsuperscript{21} CAT does not specifically define domestic violence, but most domestic violence is torture as defined under CAT. \textsuperscript{22}

Under Article 3 of CAT “there are three main elements of the definition of torture that are relevant to immigrant domestic violence victims: (1) severe physical or mental pain or suffering;

\textsuperscript{15} Id. at 799.
\textsuperscript{16} Id.
\textsuperscript{17} Physical and monetary instability can be created by a lack of independence, and furthered by preclusion from the job market, the threat of future harm, or the fear of separation from one’s children.
\textsuperscript{19} Alexander, supra note 4, at 900, 917.
\textsuperscript{20} Id. at 905-06.
\textsuperscript{21} Id. at 915.
\textsuperscript{22} Clark, supra note 2, at 51.
(2) intentional infliction for purposes enumerated and unenumerated; and (3) involvement of a public official."\textsuperscript{23} The problem is that even when CAT requirements are met, victims cannot gain legal permanent residency for themselves or their families.\textsuperscript{24} This matters because permanent residency grants the right to live and work without fear.\textsuperscript{25} Furthermore, CAT often separates a victim from her children,\textsuperscript{26} requiring the victim to choose between applying for CAT and risking separation, or remaining with her children in an abusive situation. However, if the battered immigrant has lived in the United States for ten years or more, she may be eligible to apply for cancellation of removal.\textsuperscript{27}

Proponents of CAT suggest including more lenient standards for “the absence of relevant documentary evidence,” as this would preclude court prejudices.\textsuperscript{28} Proponents also argue that the use of other international treaties to support victims’ claims is valid, and “by providing a broader base of instruments from which to draw support, domestic violence victims…are better positioned to prove their claims.”\textsuperscript{29} They further suggest that the court should give those granted a withholding or deferral of removal under CAT the ability “to adjust to legal permanent resident status.”\textsuperscript{30} While this would be beneficial, by lowering the burden of proof on the victim and

\textsuperscript{23} Alexander, supra note 4, 925.
\textsuperscript{24} Id. at 900.
\textsuperscript{25} JUNCK, supra note 8, at Appendix E-1.
\textsuperscript{26} Alexander, supra note 4, at 900.
\textsuperscript{27} JUNCK, supra note 8, at Appendix G-3.
\textsuperscript{28} Alexander, supra note 4, at 935 (indicating that credible testimony of the applicant may be enough evidence). The four illustrative categories of relevant evidence are:
(i) Evidence of past torture inflicted upon the applicant;
(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
(iii) Evidence of gross, flagrant or mass violations of human rights within the country or removal, where applicable; and
(iv) Other relevant information regarding conditions in the country of removal.
\textsuperscript{29} Id. at 936.
\textsuperscript{30} Id. at 937; see also Junck, supra note 8, at 46-50 (stating “people who fear returning to their home country can apply for…withholding of removal,” under 8 U.S.C. §§ 1158, 1231 (b), as a non discretionary measure which grants “protection for individuals who fear a threat to life or freedom on account of one of the five grounds in the refugee definition”; or, under CAT, applicants may apply for protection due to a fear of torture; but, CAT does not require the torture be due to one of the five refugee grounds).
making it easier for the victim to resume a healthy quality of life, the measures still disregard children. CAT ignores the most promising aspect of asylum: extending the protections that asylum affords to the children of battered immigrants granted asylum relief.

What CAT offers—by foregoing the nexus requirement of asylum—it loses in not providing for the welfare of the family as a whole. What asylum may offer by inclusively treating the victim and her family, it loses in its stringent requirements. While asylum and CAT offer the only remedies per se for battered immigrants, the Hague Convention guides the treatment of children, and as such the children of battered immigrations.31

3. Hague Convention

Steps have been taken “to ensure that the Convention is not another obstacle for women seeking to escape abusive situation[s], that women are not compelled to litigate custody in an unsafe venue, and that women are not required to litigate in a forum that was…imposed on them by force.”32 However, the Hague Convention assumes that abducting children across international lines is always harmful for children, even when the fleeing parent is escaping an abusive spouse.33 This is due to the belief that “the accompanying instability and disruption of emotional attachment” is tantamount to “child abuse, even absent actual physical abuse or neglect.”34 Legislators forget that often this is the only way a mother can protect her children from abuse—by abducting them and fleeing from the abuser herself.35 It is important to “compare the potential harm to the child from international abduction with the potential harm to

31 See generally Weiner, supra note 7.
32 See generally Id.; see also HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, Convention on the Civil Aspects of International Child Abduction (Oct. 25, 1990) http://www.hcch.net/upload/conventions/txt28en.pdf. The Hague Convention refers to conventions concluding in The Hague, Netherlands, which dealt with international state application of children’s rights. For the purposes of this paper, the Hague Convention referred to is that on the Civil Aspects of International Child Abduction, held on October 25, 1980.
33 Weiner, supra note 7, at 617.
34 Id.
35 Id.
the child [and the United States] from having the mother obtain legal protection...in the country where the domestic violence occurs.” 36 In weighing these options, it is clearly more beneficial to the victim to grant legal protection and stability in the United States, 37 than to imply her only option is to flee the United States, with or without her child.

4. Violence Against Women Act

The Child Abuse Prevention and Treatment Act of 1974 and Adoption Assistance and Child Welfare Act of 1980 both act as influences on the current child welfare system. 38 In 1984, Congress enacted the Family Violence Prevention and Services Act to address “family violence and to provide shelters and other assistance for victims of family violence and their children.” 39 Following this VAWA of 1994 was passed to reflect the growing understanding that domestic violence is still a problem, and to “improve law enforcement, criminal justice, and state court system responses to domestic violence.” 40 VAWA was modified in 1999, to include “funding supervised visitation centers for children in families affected by domestic violence; increasing access to legal services of domestic violence victims; monitoring the impact of domestic violence on employment; and improving domestic violence services [to]…immigrants.” 41 But, because there is not enough funding or support for the legal remedies suggested by VAWA, much remains unchanged.

Since 1994, VAWA “allowed battered immigrants married to United States citizens or lawful permanent residents to self-petition for lawful immigration status, rather than relying on

36 Id. at 623.
37 For the purpose of this paper implications of the Hague Convention are in reference to immigrants trying to flee the United States and their spouse or abuser, and return to their home country or another country. The Hague Convention also implicates victims fleeing other countries to come to the United States, but this topic will not be discussed.
38 MATTHEWS, supra note 10, at 55.
39 Id. at 51.
40 Id.
41 Id. at 52.
their abusive spouses to sponsor them.” It has also since lessened the burden of showing that a marriage is in good faith, and in 2000 VAWA “authorized the Attorney General to determine that a battered immigrant woman had shown good moral character even if she had been convicted of crimes.” Good moral character could be found “as long as they [the crimes] were related to her abuse and she was not the primary perpetrator of violence in the relationship.” Hence, “a battered woman could defend herself and her children from violence without putting her immigration status at risk.” These changes are important to battered immigrants as they take control from the abuser by allowing victims to fight abuse without fearing criminal charges. Furthermore, these changes allow a battered immigrant to petition for cancellation of removal (if she can show that her or her child will suffer if she is deported), without fearing that she will be punished.

The most influential tool within VAWA was the creation of U Visa in 2000, which helps “domestic violence…victims who could not file a self petition under VAWA 1994 because they were not married to a citizen or lawful permanent resident.” The creation of U Visa was a big step in the growth of battered immigrant rights as “it offers protection to female domestic violence victims who are ineligible for VAWA self-petitions because of a lack of a marital relationship.” The 2005 amendments also gave victims the option to have their cases re-opened for grant of stay, and “expanded the relief available to derivative family members under U Visa.” Most importantly, the amendments give self-petitioners work eligibility while they

42 Clark, supra note 2, at 45.
43 Id. at 45, 49-50. Establishing good moral character is necessary to showing fitness as a parent and gaining custody rights.
44 Id.
45 Id.
46 MATTHEWS, supra note 10, at 61.
47 Clark, supra note 2, at 50.
48 Id. at 51.
49 Id. at 54-55.
wait for the results of their status.\textsuperscript{50} Since work gives stability to a victim’s life, by allowing her to provide for her family economically, this amendment is crucial to a victim maintaining custody of her children. It also underwrites the importance of citizenship or legal permanent residency. Without it, or the ability to petition for it, one cannot hold a job or establish “economic self-sufficiency.”\textsuperscript{51}

VAWA’s purpose in protecting children from abusive marriages contains two important provisions: encouraging the report of child abuse, and letting mothers petition for their child’s documentation.\textsuperscript{52} While a non-citizen may file for relief under VAWA there is no guarantee that the child of an abused parent will qualify.\textsuperscript{53} This may lead to a child’s removal from the home.\textsuperscript{54} Battered immigrants who come forward are often eligible under VAWA, but their children may be taken by the state. This separates child abuse from spousal abuse though the two are intimately tied. Further, it ignores the fact that child witnesses are victims themselves.

Removed children may be eligible for Special Immigrant Juvenile Status (“SIJS”), but this grants neither parent the legal status of a parent.\textsuperscript{55} Furthermore, it does not confer resident status for either parent, nor guarantee reunification with their children at a later date.\textsuperscript{56} Since mother and child are often separated when seeking protection under VAWA, many victims choose to remain in abusive relationships or as illegal residents rather than seek help.\textsuperscript{57} When victims of domestic violence attempt to leave an abusive partner, issues of custody and support remain, and “if courts fail to take domestic violence into account…parents may remain in violent

\textsuperscript{50} Id. at 55.
\textsuperscript{51} Id.
\textsuperscript{52} Id. at 47.
\textsuperscript{53} JUNCK, supra note 8, at 17.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
homes for fear of losing custody of their children.”58 Children in battered immigrant households “may be harmed by being used as pawns in abusive parent’s efforts to control their partners”, with decisions made which “fail to serve [the] children’s best interests.”59 In the immigrant population the fear of loosing one’s child is paramount, and abusers may use this to gain power, as victims often have no other relatives in the country besides their children.

VAWA advocates for counseling and other services for those impacted by domestic violence, but it could be improved in three ways. First, by addressing the nuances affecting the battered immigrant population.60 Second, by putting requirements on states.61 Finally, by proposing to mediate the staggering statistic that 77% of married immigrant women in America are dependent on their spouse for their immigration status.62 This essentially leaves these women helpless to come forward about their abusers for fear they will lose their ability to stay in the country or lose custody of their children. Legislation provides “limited opportunities for securing permanent residence to spouses who left their abusive sponsor spouses”; therefore, victims are forced to remain with their abuser, fearful of what might happen should they reach out for help.63

B. Impact of Current Laws on the Battered Immigrant Victim

There is a tendency, when making laws, to view domestic violence as a problem for women only. This is problematic. Under the nexus requirements of asylum all individuals seeking asylum must “prove that they were persecuted because of their race, religion, nationality,

58 MATTHEWS, supra note 10, at 53.
59 Id.
60 Clark, supra note 2, at 38.
61 Id.
62 Id. (citing the differences in the populations affected by domestic violence to show the significant amount of immigrants, specifically immigrants dependent on their spouse for their ability to stay in the county, who are victims of domestic violence).
63 Id. at 43.
membership in a particular social group, or political opinion.” This “poses a barrier to domestic violence victims,” who cannot prove their persecution was a direct result of their membership in one of these groups. Further, by treating the effects on battered immigrants as isolated experiences of violence—the same way many domestic violence incidents are treated—the government ignores the characteristics specific to the battered immigrant woman, and implications these characteristics have on the family as a whole. While citizens harmed by domestic violence may seek refuge with family members, or have their children taken care of by family, such options are not readily available for immigrants. Therefore, there are obvious differences between these two subsets of the population.

Though both the Battered Spouse Waiver of 1990 and The Immigration Act of 1990 made efforts to loosen the requirements of the Immigration Marriage Fraud Amendments (“IMFA”), they continue to hinder battered immigrants from becoming permanent residents, unless sponsored by a spouse with citizenship. This is perplexing. While this requirement serves no purpose under immigration law, it significantly harms a victim’s chance of restarting life after abuse. This is due to its effect on a victim’s ability to pursue education or work, alongside “the physical and psychological injuries,” which “may make it harder for victims to find and keep jobs”—hindering a victim’s ability to gain custody of her children or start a career in the United States. Further, a battered immigrant “can be ‘alienated from major social institutions’, with ‘family/social support’” elsewhere, and feel unsafe where she currently resides but with nowhere to go. In such situations, a victim is unable to leave the United States and

---

64 Alexander, *supra* note 4, at 898.
65 *Id.*
66 MATTHEWS, *supra* note 10, at 50.
67 Clark, *supra* note 2, at 44.
68 MATTHEWS, *supra* note 10, at 58.
69 Wiener, *supra* note 7, at 625.
begin a new life, but remains within the country, unstable and dependent, without resources or stability. In 1952, under the INA, immigration laws gained gender neutrality, which allowed wives to sponsor their husbands. But power remains with men, because the "majority of immigrant spouses and victims of domestic violence are women" without citizenship.

Domestic violence is about control. Unfortunately, many states define domestic violence narrowly, “concentrating on physical abuse, sexual abuse, and threatening behaviors.” Battered immigrant women fear they will lose custody of their children if they themselves are deported; therefore, “the threat of deportation to their home country may cause more fear than the threat of continued spousal abuse.” Often, “the remedy of return is an important tool by which batterers can harass and further control their victims,” as children are the only family a battered immigrant may have left in the country. While courts consider custody and visitation orders in relation to domestic violence, in more than half the states the state court itself has the discretion to determine these issues without a standard. But, the American Bar Association (“ABA”) has suggested a “presumption against giving custody of children to perpetrators of domestic violence,” as batterers may use custody to gain control over their former partners. Furthermore, the VAWA supports the idea that the removal of a child from her mother is an extreme hardship, lending credibility to the idea that separating a parent from her child, via removal, is detrimental to both parent and child.

While a woman’s status as an immigrant or refugee allows for her protection under the domestic violence nexus, this often occurs at the price of separation from her family. Immigrants

---

70 Clark, supra note 2, at 42.
71 Id.
72 Kent, supra note 9, at 1341.
73 Clark, supra note 2, at 40.
74 Weiner, supra note 7, at 634.
75 MATTHEWS, supra note 10, at 53-54.
76 Id.
77 Clark, supra note 2, at 46.
seeking asylum or aid under CAT want to remain in the United States—but they often have no
basis for stay. Further, without understanding their rights, victims often remain incapable of
petitioning or proving their own case. Battered immigrant women continue to suffer without
help, “afraid that protecting themselves from violence will compromise their presence in the
United States.” Specifically, “the National Coalition Against Domestic Violence estimates that
up to 90% of battered women never report their abuse.” Chronological, clear, and systematic
guidelines are necessary if immigrants are to make it through the legal system.

C. The Impact of Forms of Relief on National Security

The National Security strategy of the United States, as laid out in 2002, lists the
following topics, amongst others, as a part of its strategy: human dignity, alliances to defeat
global terrorism and prevent attacks, prevention from threats, and expansion of society and the
infrastructure of democracy, transforming America’s national security institutions to meet the
challenges and opportunities of the twenty-first century. It is unclear why these issues, meant
as a basis for preventing people from entering the country, should detrimentally impact children
and battered immigrants already within the United States. Interestingly, the United States does
not actively seek out illegal immigrants already within the country. This suggests that the
government does not consider them a detriment or genuine threat to the United States.

While immigration laws inherently impact families, domestic relations, children’s
welfare, divorce, custody, and support, it is unclear why national security initiatives are allowed
to impact these same areas without exception. Rather than eliminating immigrants from the

---

78 Id. at 37 (discussing the impacts of VAWA on immigrants, including why current appropriate legal remedies fail
to exist).
79 Kent, supra note 9, at 1356.
population without thought to the their purpose, why not cultivate their protection? The United States will never be able to consistently and objectively eradicate illegal immigrants, and the implications of our current removal system harm the youth that could either thrive as the country’s future or be the basis for an increase in crime. This lack of support may erode the very security the laws purport to build. Without security in the country’s future there is little real security in the country now.

II. ANALYZING THE IMPACTS ON VICTIMS, CHILDREN, AND THUS NATIONAL SECURITY

The White House issued a National Security Strategy following the attacks of September 11, 2001.81 The strategy suggested that the government’s primary security purpose was in “defending our nation against enemies,” and that “the United States…must not allow the terrorists to develop new home bases.”82 This has formulated the basis for the mentality existing today—denying entry to anyone who may pose a threat to the United States.83 But, this strategy fails to recognize immigrants already within the United States borders, removing them inconsistently, under subjective pretexts. How can this strategy, which preaches that “freedom is the non-negotiable demand of human dignity,” and the foundation on which the United States’ security structure is based, then deny this right to battered immigrants already living within the country’s walls?84

81 The National Security Strategy, supra note 80, at 1-2.
82 Id.
83 Id.
84 Id. at 4.
A. Benefits of These Forms of Relief on National Security

There are benefits to national security from the remedies offered to battered immigrants in conjunction with immigration law. The United States does not want to support the idea that if an immigrant is able to enter the country, illegally or not, she will be allowed to stay without question. By formulating forms of relief that preclude easy stay, the United States attempts to squelch the idea that if one makes it into the United States one is home free. Arguably, these laws also benefit national security by keeping out unfavorable people, and thus theoretically improving the citizenry in America. Immigration law “is about controlling which non-citizens enter the United States…conferring immigration status…and taking it away.” As such, it disqualifies people based on “poverty level” as well as “visa fraud, alien smuggling, document fraud, illegal re-entry after being deported, and in some cases unlawful presence in the U.S.” The government acknowledges that, “poverty does not make poor people into terrorists and murderers” but states that, “nations that enjoy freedom [such as the United States] must actively fight terror.” By denying freedom to those in poverty and creating itself as the leader in this movement, ‘granting’ freedom to weaker countries, the United States believes it protects itself.

This law itself is discriminatory, however, as “how long a person must wait to immigrate generally depends upon what country the person was born in and on the kind of visa petition that was submitted”—forcing some to wait ten to twelve years. While this subjectivity can be beneficial as a security measure, when immigration laws are enacted without adequate

85 JUNCK, supra note 8, at 1006-107.
86 Id.
87 The National Security Strategy, supra note 80, at 3-4.
88 Id.
89 JUNCK, supra note 8, at 40.
knowledge of the issues each culture faces within the United States, these laws fail to correctly address the issues.  

The forms of relief offered to battered immigrants they confer benefits to national security while simultaneously creating corresponding detriments. As there is a direct correlation between domestic violence and poverty, “federal and state laws governing welfare programs in particular, have substantial bearing on children affected by domestic violence.” These children stand to suffer as much or more than their parents. Courts sometimes remove children affected by domestic violence from their home, but this adds to the risk of child abuse or neglect. When administered correctly, a child’s removal can mitigate the effects of domestic violence; but, when determinations are made inappropriately or hastily, problems ensue, such that many battered immigrants resist help. Further, removal may lead to children being “taken by Child Protective Services because no other person has been legally designated to take care of them.” This not only poses an economic burden on citizens, but it assumes that a “lack of participation” by a parent in the child custody proceedings “is due to the fact that she has already been deported” or does not want custody. In comparison, by inappropriately shortening the time a child is in foster care, victims are forced to re-establish themselves quickly in order to regain custody.

These forms of relief for battered immigrants do not serve security purposes and only exist to dissuade immigration, without regard to the problems they create.

---

90 MATTHEWS, supra note 10, at 50.
91 Id. at 59.
92 Id. at 55.
93 JUNCK, supra note 8, at 67.
94 Id.
95 MATTHEWS, supra note 10, at 56.
B. Detriments of These Forms of Relief on National Security

A more generous policy toward violence victims would not create an overwhelming burden on the immigration system. First, a country may improve over time in the way that it reacts to domestic violence. Second, increased international pressures on countries that do not protect women may force them to react differently. Improvements will alleviate the need for women to flee. Consistent state recognition of gender-based violence elevates its importance.  

Immigration law, part of the United States National Security strategy, treats immigrants as burdens on the country’s ability to be secure and free. This freedom comes at a detriment to battered immigrants, their children, and our legal aid system, which is flooded by variations on the story initially introduced. One in five children are either immigrants or children of immigrants. Illegal or not, these children will become one fifth of the United States’ workforce as adults. As many as ten million children between the ages of three and seventeen, witness domestic violence in their home each year. But until recently, “few federal and state laws specifically addressed the needs of children in families in which there is domestic violence.” The federal government itself “did not officially recognize child exposure to domestic violence as a problem until 1984.” Yet many laws granting relief to victims of domestic violence “have profound effects on the well-being” of children. These children are the future of our country but security measures harm, rather than supplement, their growth.

The detriments of denying protection to immigrants within the country’s boundaries far outweigh the policy supported. While the purpose of immigration law is to secure our country, these laws promote secrecy within immigrant cultures and their families. Allowing a population to thrive unacknowledged, and either ignored or removed, creates a counterculture. Instead of

---

96 Annitto, supra note 5, at 821.
97 JUNCK, supra note 8, at 1.
98 Kent, supra note 9, at 1338.
99 MATTHEWS, supra note 10, at 50.
100 Kent, supra note 9, at 1338.
101 MATTHEWS, supra note 10, at 50.
regulating what exists within U.S. walls, abiding by these forms of relief under immigration law breeds poverty in immigrants: afraid to pursue careers and education, but desperate to make ends meet and stay in America. Specifically, foster families, single-family homes, and third-party parenting, though beneficial under the right circumstances, have all contributed to crime, instability, and poverty in the rising youth of the country.\textsuperscript{102}

Further consequences occur when a battered immigrant parent fails “to protect her child,” due to her inability to provide economically or emotionally.\textsuperscript{103} This may lead to the loss of custody or the “determination” that the battered immigrant “lacks good moral character,” squashing her chances of “gaining legal status and remaining permanently in the United States with the child.”\textsuperscript{104} This consequence, alongside government inconsistencies in citizenship application acceptance, lessens immigrant applications.\textsuperscript{105} While the IMFA provides the opportunity for those who have left their abusive spouses to secure permanent residence, they must qualify under the criteria for ‘extreme hardship’ or ‘good faith/good cause’.\textsuperscript{106} This is a stringent requirement as many feel unable to come forward to begin with or are ashamed.

Coming forward to attempt having your removal waived notifies people of your very existence, making the gamble on your own safety and your family’s safety real. It also makes it easier for an abuser to locate a former victim. These are real fears that the current legislation does not address. Instead, regulations often indirectly “force battered parents to remain in or return to violent homes,” by virtue of the fear their inconsistent enactment causes.\textsuperscript{107} The

\textsuperscript{102} See generally Alexander, supra note 4, at 912; see also STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, IMPORTING POVERTY: IMMIGRATION’S IMPACT ON THE SIZE AND GROWTH OF THE POOR POPULATION IN THE UNITED STATES 6 (Sept. 2 1999) (arguing that immigration is a major factor in poverty growth in the United States).
\textsuperscript{103} MATTHEWS, supra note 10, at 61.
\textsuperscript{104} Id.
\textsuperscript{105} Id. at 62.
\textsuperscript{106} Clark, supra note 2, at 43.
\textsuperscript{107} MATTHEWS, supra note 10, at 59.
distinction between those immigrants who have a potential implication for the national security of our country, and those who do not, must be clearly delineated rather than interpreted in the subjective nature it is now.

III. GAPS IN THE CURRENT FORMS OF RELIEF AND HOW TO FILL THEM

The United States’ legal system acts as if, by precluding illegal immigrants from the job market, they will return to their home countries, and they will not be national security threats nor propagate crime. Instead, by precluding illegal immigrants from legal employment the government aggravates their monetary needs and amplifies the possibility of keeping the family fed and clothed at whatever cost. People often forget that the children of domestic violence victims are prone to replicate the abuse as adults.108 When this cyclical nature manifests itself in the immigrant population this negatively impacts the United States—creating the implication that the government does not feel it is important to stop the violent cycle from repetition in future generations.

While each of the forms of relief available for battered immigrants acts to stop some of the abuse, each remedy only address a part of the problem. Asylum “is a basis for adjustment of status to become a legal permanent resident,” and is therefore the most preferable form of relief.109 But, asylum “is not an option for domestic violence victims who meet the definition of torture and qualify for withholding of removal under CAT.”110 And while asylum allows family members living outside of the United States the opportunity to join their spouses or parents within the country, it is useless for victims already living within the United States.111

108 Id. at 50.
110 Id.
111 Id. at 913.
A. Proposed Plan

In order to realign the effects of current remedies for battered immigrants with the purpose of immigration law—controlling the security of the United States by controlling who is let in—\textsuperscript{112} the United States should: (1) identify women as a ‘social group’ in need of protection, and (2) grant reciprocal forms of relief and stay to children and battered immigrant mothers, under the regulations currently existing. This will prevent immigration law from giving battered women separate remedies from their children. This modification will also promote the purpose of immigration law, securing freedom for those living within the United States by ending cycles of domestic violence, promoting independence and economic stability, and encouraging protection under the law.

1. Identification of Women as a ‘Social Group’

If identified as a social group, women would be granted protection under asylum. This would alleviate many issues found under in the Hague Convention and CAT. For example, by allowing women fleeing persecution to apply for refugee status and providing protection where there is a “fundamental breakdown in state protection.”\textsuperscript{113} The law currently differentiates between state and private actors, and the United States has shied from protection of private action.\textsuperscript{114} The consequence of this is to ignore immigrant women persecuted by their partner. If asylum extended social group protection to women, it would not only help those fleeing from other countries to find shelter, but it would also grant women the ability to remain under protection in America, with their child.

This would extend the privileges given to domestic violence victims with citizenship to immigrants. Outside of the humanitarian objectives, this is necessary for national security for

\textsuperscript{112} See generally 8 U.S.C.A. §§ 1151-1381.
\textsuperscript{113} Anitto, supra note 5, at 790.
\textsuperscript{114} Id. at 793.
three reasons: (1) protecting battered immigrants shows intolerance for domestic violence as a standard, and stops the cyclical nature of domestic violence in future generations of citizens; (2) making it a priority to protect families from violence, and children from growing up in unhealthy, unstable, and unnecessary conditions, reduces the need for illegal action as a means for survival; and, (3) actively addressing problems occurring on America’s own soil establishes self-sufficiency.

2. Grant of Reciprocal Relief on Battered Immigrants and their Children

Why is it so important that United States protect battered immigrants? As they are often illegal, what purpose is served in allowing them to stay? The national security purpose, and benefit, in letting these victims remain in the country, is to secure and protect their children. The protection of these children is important for the following reasons. First, their protection is economically beneficial, because it precludes the United States from using resources such as foster care and welfare to raise them. Economic stability is directly tied to national security, as it confers independence and power. Second, children benefit from being raised by their biological parent and being removed from abusive circumstances, as supported by the ‘child’s best interest’ standard used in America, and this in turn promotes positive societal values. It is in America’s interest to promote these values. To allow violence on its own soil sends a message to other countries that America cannot control its own population. Furthermore, it sends a message to American residents that violence is tolerated. The long-term effects may range from an increase in crime rates to an increase in poverty, all at America’s expense.

Not only should the Hague Convention add a domestic violence defense, but VAWA and CAT should give an implicit waiver to those who are victims of domestic violence. While opponents would argue that this unnecessarily floods the legal system, it is an imperative

115 Weiner, supra note 7, at 694.
measure for insuring relief by the aforementioned means. This relief is necessary for keeping mother and child together, which in turn assures the stability of our youth and future generations, regulating the need for American resources such as foster care, police action, welfare benefits, and crime protection. Broken, unstable, poverty-ridden families are detrimental to American economy, protection, and resources, and by protecting battered immigrants and allowing them to remain with their children, America removes the burden on itself to provide for these children. This, in turn, strengthens the country and further protects the freedom of those living within its bounds.

B. Effects of Immigration Law Reform on National Security

The effects of these forms of relief, as they currently stand, are detrimental to both the present and future of the United States. Each of the four forms of relief discussed, fails to address some part of the battered immigrant population, leaving open the possibility that a women could suffer domestic violence and either be removed from the country herself or be separated from her child. Hence, given these risks, battered immigrants are often fearful to come forward, and abuse and violence brew unaccounted for within the country’s boundaries. The economic and societal implications jeopardize America’s stability as a country by: (1) implicitly condoning violence, a gateway to crime and poverty; (2) making these children and women economically dependent on either their abusive spouse and father or America, preventing self-sufficiency and thus America’s economic stability; (3) forcing America to expend more resources to prevent societal degradation; and, (4) showing America to have lessened control over its own population, thus decreasing its credibility internationally.
CONCLUSION

Current forms of relief create a trap. If a victim does not qualify for stay, then by coming forward to apply she notifies authorities of her existence and will be marked for deportation. If she does qualify, she may be removed or separated from her child. This pushes battered immigrants to endure abuse, or seek other possibly illegal measures to sustain the family and remain with their children.

By allowing asylum to women as a social group, America would prevent removal in an increased number of cases. By conferring reciprocal relief to children and their battered immigrant parent, the United States would implicitly help its own economics and society, as elaborated above. Each of these measures benefit national security: reducing the unnecessary use of resources for prevention measures, instead earmarking this money for growth, and creating the precedent that America does not stand for violence and will not indirectly support it.