




Civil Practice
199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org



Association of Legal Aid Attorneys
UAW 2325 (AFL-CIO)
568 Broadway, 702A
New York, NY 10012-3225
212.343.0708 ▼ Fx 212.343.0966
alaa@alaa.org ▼ www.alaa.org


Blaine (Fin) V. Fogg
President

Steven Banks
Attorney-in-Chief

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Joint Testimony of The Legal Aid Society, Civil Practice

and

UAW Local 2325 – Association of Legal Aid Attorneys (ALAA)

for

**New York City Council Committees on Women’s Issues and
Public Safety**

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INTRODUCTION & EXPERTISE OF THE LEGAL AID SOCIETY AND ALAA

The Legal Aid Society is the nation’s oldest and largest non-profit law firm dedicated to serving low-income families and individuals. Through our three major practice areas, the Civil Practice, the Juvenile Rights Practice, and the Criminal Defense Practice, The Legal Aid Society handled over 300,000 legal matters for clients.

Founded in 1969, UAW Local 2325, the Association of Legal Aid Attorneys (ALAA), is the oldest and largest major union of lawyers in the United States. ALAA is affiliated with the United Auto Workers, Region 9a, which has over 60,000 active and retired members in New England, Puerto Rico and New York, including the City and Long Island up to Albany. ALAA

is comprised of some 830 attorneys across The Society's three practice areas. Every day, these ALAA members appear in court and administrative proceedings throughout the five boroughs and beyond, representing our clients' interests in proceedings ranging from matrimonial cases involving domestic violence in State Supreme Court to abuse and neglect proceedings in Family Court.

The Society's Civil Practice has offices in every borough of the City and handled more than 38,000 civil matters for its clients last year and won over 90 percent of cases that went to court or an administrative hearing. In addition, some 2 million low-income New Yorkers benefit from our pending class action law reform litigation. The Civil Practice works to improve the lives of needy New Yorkers by helping vulnerable families and individuals on issues ranging from domestic violence, health care, housing, employment and training, economic development, public assistance, and disability-related issues.

The Society's City-wide Family Law Practice includes a Domestic Violence Project that provides legal representation regarding divorce, custody, orders of protection, child support, adoption, economic justice and immigration remedies for undocumented survivors of domestic violence. Our Domestic Violence Project staff often works in close collaboration with other areas of the Society's Civil Practice to address holistically the myriad of legal issues faced by survivors of domestic violence, in particular access to housing, public assistance and health care. The Legal Aid Society's Domestic Violence Immigration Program staff plays an active role in the New York City Violence Against Women Act (VAWA) Advocates group, which is comprised of other legal service providers throughout the area providing representation and advocacy on immigration options for domestic violence survivors. This staff also participates in national and state-wide advocacy efforts for immigrant victims of domestic violence, most

recently in coalition-building around working to end New York State’s participation in the so-named “Secure Communities” federal initiative. The Society’s Domestic Violence Project staff also participates actively in the Lawyer’s Committee Against Domestic Violence (LCADV), a coalition of over 100 lawyers from the greater New York City area whose work supports victims of domestic violence and their children.

ANTI-DOMESTIC VIOLENCE LEGISLATION

Our testimony focuses on two pieces of proposed legislation before the Council today: Resolution 0817-2011 regarding extending emergency shelter for victims of domestic violence and Resolution T2011-3145 concerning duties of interpreters with regard to orders of protection. The first section addresses The Legal Aid Society and ALAA’s support of the first piece of legislation extending domestic violence victims’ stay in shelter to a minimum of one-hundred-and-eighty days. We offer background information relevant to our clients in this area with a focus on the positive impact that this bill would have on our immigrant survivors of domestic violence and their families. The second section addresses our support of the second piece of legislation and the consequences of not translating properly or understanding thoroughly an order of protection. We look at the impact that failing to translate orders of protection has had on our clients’ safety.

First Bill: Resolution 0817-2011: Extending shelter for DV survivors

The Legal Aid Society and ALAA strongly support the proposed legislation seeking to extend the maximum length of stay at an emergency residential shelter residential program for victims of domestic violence to not less than 180 days. While obtaining stable, safe housing when leaving shelter is an extraordinarily difficult endeavor for anyone, it is an especially daunting task for survivors of domestic violence and their children, who likely fled to shelter

because of violence and the risk of harm to themselves or their children. Extending the stay at these shelters to a minimum of 180 days would help provide these survivors of domestic violence with more stability and economic independence from their batterers. In addition, the increased number of days would help insure that immigrant survivors of domestic violence have a chance for the United States Citizenship and Immigration Service (USCIS) to adjudicate their petitions for DV-related immigration benefits.

Brief Summary of Common Legal Options for Undocumented Survivors of Domestic Violence and Sexual Assault

In 1994, Congress enacted the Violence Against Women Actⁱ (VAWA) to prevent citizen and lawful permanent resident batterers from using their control over different stages of the family immigration process of their spouses as part of the cycle of abuse. It is quite common for batterers to refuse to file a family visa petition for their spouses, threaten to withdraw a petition that has already been filed or threaten to have their spouses deported if they take any steps to report the abuse or leave the relationship. Many undocumented survivors rely on their abusive partner to provide economically to the household -- including providing shelter. VAWA legislation permits spouses of U.S. citizens and lawful permanent residents to initiate or complete this family petition process without their abuser's cooperation.ⁱⁱ This process is referred to as self-petitioning.

Immigrants who are married to their abusive citizen or resident spouses for less than two years when their residency applications are approved receive a conditional "green" card valid for two years. They must file jointly with their spouses to remove this condition on their lawful permanent residence within the ninety-day period prior to the expiration of their conditional residence.ⁱⁱⁱ This requirement gives batterers yet another opportunity to use the immigration

process to maintain control and domination over their spouses. A battered immigrant in this situation can apply for a battered spouse waiver to remove the conditions on her lawful residence by herself.^{iv}

In 2000, as part of the Victims of Trafficking and Violence Protection Act (VTPRA),^v Congress created a new non-immigrant category, the U visa, at least partially as a way to legalize battered immigrants who were not legally married or who were married to people without status. The U visa also helps victims of certain other crimes.

To qualify for a U visa, applicants must show that they are a victim of a qualifying crime, have suffered substantial physical or mental abuse as a result of that crime and that they are helping or were helping law enforcement in the investigation or prosecution. A law enforcement agency must sign a certification attesting to the victim's helpfulness or cooperation only. U visas are numerically capped at 10,000 visas a year.^{vi} They are intended to provide humanitarian relief to victims of crimes and to be used as a tool to assist law enforcement in the investigation or prosecution of crimes. Unlike many non-immigrant visas, the U visa provides a possible path to lawful permanent residency after three years in U non-immigrant status.

Connection between VAWA Relief and Public Benefits Programs for Undocumented Survivors of Domestic Violence

Lawful immigration status and economic assistance are two critical components on a battered immigrant's road to an independent, violence-free life. Mental and/or physical cruelty are often intertwined with economic control by the abuser. Public assistance and employment authorization go hand in hand to facilitate independence and stability, including housing

stability, for abused undocumented immigrants. Without this key component, many survivors of domestic violence return to their batterers.

Eligibility for Federal and New York State benefits programs for immigrant survivors of domestic violence are completely interdependent on the type of VAWA relief that a battered immigrant seeks. VAWA self-petitioners are eligible for Safety Net Assistance and Medicaid a few months after filing an application with USCIS. Within the group of VAWA self-petitioners, those whose eligibility is based on marriage to a U.S. citizen are able to receive employment authorization several months after applying for VAWA relief while their applications are adjudicated. VAWA self-petitioners whose eligibility is based on domestic violence perpetrated by a lawful permanent resident, however, must wait until their self-petitions are approved to receive employment authorization. Currently, a VAWA self-petition takes an average of 7.2 months to be approved according to USCIS's Website.^{vii} Increasing the stay in DV shelters to 180 days would allow immigrant survivors of domestic violence the chance to have their petitions adjudicated while they are still in DV shelter. The current limitation on the number of days people can stay in DV shelter makes this option an impossibility.

The Office of Temporary and Disability Assistance's (OTDA) current position is that non-interim relief U visa applicants must wait until their U visas are approved by USCIS. USCIS's Website presently indicates that a U approval takes 4 months.^{viii} However, the experience of the attorneys and advocates in our Domestic Violence Project is that it takes longer than four months for USCIS to approve an application. Moreover, to be eligible for a U visa, one must obtain a certification from a qualified law enforcement agency, such as the District Attorney, the Administration for Children's Services, or the New York City Police Department.

Some District Attorneys Offices in the City will not provide a certification until the criminal case has come to a close. That process alone can take well up to a year.

Employment authorization is critical in assisting both VAWA self-petitioners and U visa applicants with economic independence. It is especially crucial to secure transitional and other housing options. Neither approved VAWA self-petitioners nor approved U visa applicants are eligible for federally-funded housing programs or for New York City Housing Authority (NYCHA) programs. In recent years, the Department of Homeless Services, in coordination with other City agencies, established the Advantage NY Programs to help people transition out of shelter into stable, safe housing. However, the Advantage Program, which is currently not even available to new applicants leaving shelter and is the subject of litigation right now, has required that applicants receive federal disability benefits, which are not available to immigrants without status, or demonstrate a lawful ability to work. Many of our clients simply cannot do this in the timeframe they need to because they are not employment authorized while their cases are still pending with the USCIS. Even battered immigrants who have other qualifying members in the household, such as U.S. citizen children, find the unsubsidized portions of their rent cost prohibitive. These issues present an enormous hurdle for battered immigrants seeking to transition out of shelter and/or obtain more permanent housing. Extending the stay for survivors of domestic violence to 180 days will help ensure that USCIS has a chance to adjudicate their petitions and allow eligible survivors the chance to obtain employment authorization on their road to economic independence and stability.

Typical Examples of the Effects of Inadequate Stays in DV Shelters

Ms. M

Ms. M is a survivor of domestic violence who fled her abusive husband after a particularly brutal attack when he held her down to the ground and strangled her until she lost consciousness. She entered DV shelter with her 6-month-old daughter. Ms M had a conditional green card when she entered shelter, but she had already filed a Battered Spouse Waiver with USCIS. While in the last 30 days of her stay in DV shelter, she received the happy news that her immigration application had been approved and that she would receive her permanent green card in the mail shortly. NYCHA contacted Ms. M, and she started looking at different NYCHA apartments.

When her permanent green card arrived, she happily showed it to NYCHA to demonstrate her eligibility for the housing. Unfortunately, USCIS had made an error on her green card, through no fault of her own, and NYCHA deemed Ms. M ineligible for housing. Feeling that she was left with no choice and with the DV shelter informing her that her stay was coming to an end, Ms. M and her baby returned to her husband's home.

If Ms. M had additional time in the DV shelter to sort out the error on her permanent green card and petition USCIS to replace the card, she would have been eligible for the NYCHA apartment and she would not have had to return to her husband's home – and his abuse.

Ms. G

Ms. G came to the United States from China to be with her husband whom she had met through church. Her husband told her that he would arrange for all of her immigration paperwork once she arrived here, and she looked forward to beginning their lives together. For a

short time after her arrival, she and her husband were happy. After around one year of marriage, she found out she was pregnant. Excited and nervous about the future as an expectant mother, she told her husband the good news. He slammed her against the refrigerator door and accused her of being a whore. Stunned at this attack, Ms. G begged her husband to calm down, and he apologized. But the abuse only got worse. Her husband held a gun to her head and told her that he would shoot her in her leg so that she would just bleed to death slowly and suffer. He told her that if she told anyone, he would have her deported and she would never see her baby boy again.

One afternoon, her husband drove her to the airport and threw her out of the car with a one-way ticket back to China. Terrified, Ms. G went to the police who took her to a DV shelter. Ms. G is eligible for a VAWA Self-Petition based on her marriage to her husband, but she was unaware of this immigration remedy. Without work authorization or status, Ms. G could not obtain employment sufficient to sustain herself outside of shelter. Towards the end of her stay in shelter, Ms. G was referred to The Legal Aid Society's Domestic Violence Project, which immediately began the process of investigating and preparing a Self-Petition. However, for Ms. G, there wasn't enough time for her to receive any benefits while she was still in the safety of the DV shelter, which is no surprise since even USCIS currently estimates that it will take at least 7.2 months to adjudicate a self-petition.

Without work authorization, Ms. G believed she could not properly provide for herself and her baby. Without the daycare provided in the DV shelter, she couldn't even go to the low-paying job that she had to get by. Left with no choice, Ms. G returned to her batterer. Shortly after she returned home, her husband filed for an order of protection against her, making up lies about what she had done to hurt him physically, and he filed for custody. When she was in DV shelter, he was unable to find her to serve her with these Family Court papers, but once she

returned home, he knew what to do to keep her under his power and control. Alone in this country, despondent, and forced out of her home again, Ms. G left her child with her husband to rent a room in Queens.

Conclusions

Extending the stay in DV shelter to a minimum of 180 days would be an extremely important step in helping survivors of partner violence obtain economic independence from their batterers and, ultimately, stable housing. The current time limits for DV shelter do not even afford an opportunity for immigrant survivors of DV to have their petitions adjudicated by USCIS, depriving them of the ability to receive work authorization or the ability to receive public assistance to help them build a bridge towards stability and independence.

Even non-immigrant survivors of domestic violence face great obstacles in obtaining stability and safety in the current inadequately short stays in DV shelter. The additional time in shelter will help these DV victims and their children receive the resources, training and counseling necessary to start a new chapter in their lives, free from violence and in stable, safe housing.

Second Bill: Resolution T2011-3145: Interpreting essential terms of OPs

The Legal Aid Society and ALAA support the proposed legislation amending the Family Court Act and Criminal Procedure Law to require court interpreters to translate the essential terms and conditions of temporary and permanent orders of protection (OPs) on the record. Through our Domestic Violence Project in the Civil Practice, we represent a large number of clients who do not speak English as their first language. Some can converse about basic topics in English but cannot read or write in English, or require interpreters for complex topics.

This bill is important not only to insure that the protected party understands the terms and conditions of the order but also so that person against whom the order of protection runs understands the legal effect of violating the order and exactly what behavior and actions are prohibited. The Legal Aid Society and ALAA hope that the Council will extend this legislation to include a requirement that the interpretation of essential terms and conditions also occurs in matrimonial actions in Supreme Court, as orders of protections may be sought in divorce actions pursuant to Section 252(1) of the Domestic Relations Law.

Background about Orders of Protection (OPs)

When courts issue orders of protection in Family, Criminal, and Supreme Courts, the process can happen in the blink of an eye. Oftentimes, judges in the custody, visitation, and order of protection parts of Family Court have a daily docket of eighty cases before 1pm. Faced with dozens of litigants waiting for their cases to be heard, the far-reaching legal consequences of the orders that are issued may not be explained fully to the affected parties.

It is also not uncommon for Family Court to issue cross orders of protection, meaning that intimate partners each have an order of protection against each other. There may be no inquiry into which party is actually the victim of domestic violence, especially in the first few court appearances. Thus, the actual victim of partner violence, who may not understand the terms and conditions of the order, can be in danger of violating an order of protection, not just the perpetrator.

Typical Examples of the Consequences of Failing to Interpret the Terms and Conditions of Orders of Protection (OPs)

Ms. F

Mr. F, who is from Italy, and Ms. F were in the midst of an uncontested divorce case and were having a hearing on some defects in their court papers to finalize the divorce when Ms. F's husband threatened her life. The Special Referee overheard the threat and, pursuant to Section 252(1) of the Domestic Relations Law, issued Ms. F an order of protection in her favor *sua sponte*. She placed the case on the contested divorce calendar.

Before the next court appearance, Mr. F repeatedly called Ms. F and sent her e-mails in clear violation of the temporary order of protection, which explicitly forbade telephonic contact and e-mails, no matter their content. The years of domestic violence had taken a toll on Ms. F's health, which is already poor because of a chronic illness that compromises her immune system. Ms. F remained fearful of her husband and wanted his repeated harassing phone calls to stop. Ms. F called the police and reported Mr. F's clear, verifiable violations of the order of protection.

Despite the clear evidence that Mr. F had violated the order of protection, the Assistant District Attorney (ADA) assigned to the case was reluctant to prosecute, claiming that Mr. F did not understand that the terms and conditions of the order of protection and the referee had not taken the time to interpret the temporary order of protection to explain its content and consequences. The ADA also explained that Mr. F had only sent videos of the children and that the other e-mails were a result of Mr. F's account's being "phished" or compromised. The calls, the ADA explained, were related to the pick up and drop off of the children and should be excused as well, especially since Mr. F did not understand the contents of the OP.

Ms. F knew that Mr. F understood the OP, and she was aware of the techniques he used to exert power and control over her. He had sent her the e-mail with the video of the children because he had told her for years that he watched her and the children and that he could take the children away from her and disappear into the night, but the ADA believed that Mr. F had a viable excuse because the OP hadn't been properly explained. Defeated, Ms. F felt she had no choice but to drop the criminal case and have the system reward her husband's abusive behavior.

Ms. B

Ms. B and her husband, Mr. B, are immigrants. Mr. B inflicted years of abuse on Ms. B, beating her mercilessly, many times while the children were forced to watch. Due to many reasons, including cultural and language barriers, Ms. B did not flee. Eventually, Ms. B's husband decided he did not want her anymore, and told her to leave. When she refused, he created an allegation of assault and she was arrested. At the arraignment, Mr. B received an order of protection in his favor, against Ms. B. The order of protection also included the children, so Ms. B could not see her children, who were now with her husband.

Though Ms. B could have petitioned for custody or visitation in Family Court, she was not aware of this remedy. The order of protection, she assumed, told her to stay away from her children just as she had to stay away from her husband. The exact terms of the order of protection, which stated that the order was subject to court ordered visitation, were never explained to her. Had she been aware of this, she would have asked to see her children sooner.

The criminal matter took 18 months to conclude, with an acquittal of all charges. As soon as it concluded, she ran to see her children. Had the order of protection been explained to her, she would not have gone over a year-and-a-half without seeing her children.

Conclusions

Passing legislation requiring that the essential terms and conditions of orders of protection be translated will help ensure that people accused of being batterers understand what they are prohibited from doing, and it will avoid future disputes about whether all parties understood the terms of the order when it was issued. We also urge the Council to advocate for a change in this legislation to make certain that it also applies to orders of protections in matrimonial cases brought under Section 252(1) of the Domestic Relations Law.

CLOSING

We appreciate the opportunity to describe some of our clients' experiences and the dramatic change that this legislation could have on the lives of survivors of domestic violence. The oversight of the City Council is important to ensure that DV survivors have a chance to forge a pathway to economic independence and stability, living their lives free from violence.

Respectfully submitted,

Steve Banks
Attorney-in-Chief
The Legal Aid Society

Deborah Wright
President
UAW Local 2325,
Association of Legal Aid Attorneys

ⁱ Violence Against Women Act of 1994, Pub. L. No. 103-322 40701-03, 108 Stat. 1902, 1953.

ⁱⁱ INA § 204(a)(1)(A)(iii) (spouse of USC) *and* INA § 204 (a)(1)(b)(ii) (spouse of LPR). Note: Immigrant children can self-petition when they are abused by their USC or lawful permanent resident parent under INA § 204(a)(1)(a)(iv) and INA § 204(a)(1)(B)(iii), respectively.

ⁱⁱⁱ INA § 216(c).

^{iv} INA § 216(c)(4).

^v Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No 106-386, div A, § 1513, 114 Stat. 1464 (Oct. 28, 2000) (“VTVPA”).

^{vi} INA § 214(p)(2)(A); 8 CFR § 214.12(d)(1).

^{vii} See <https://egov.uscis.gov/cris/processTimesDisplayInit.do>, last visited June 10, 2011. According to USCIS, these processing times are estimates. Many advocates would argue that these processing times are minimums and presume that the immigrant petitioner submits an entirely complete application. For many survivors of domestic violence, they do not have easy access to the documentation and proof required to prevail in these petitions easily without subsequent submissions and spending a great deal of time gathering evidence to support their applications.

^{viii} See Endnote vii, *supra*.