

## Impact of DeSantis Amendment on Immigrant Victims of Domestic Violence

By: Rachel Feuer<sup>1</sup>, Alexandra Iannolo<sup>2</sup>, Benish Anver & Leslye Orloff  
February 3, 2015

**DeSantis Amendment** This amendment claims to make certain crimes deportable offenses, specifically, sexual assault, domestic violence, child exploitation and child molestation. However, every single one of those crimes is already a deportable offense<sup>3</sup> and the *only* change the DeSantis Amendment makes is to *eliminate* the authority DHS current has to grant *humanitarian waivers specially designed for victims of domestic violence* and who ended up with convictions often related to the pattern of abuse they suffered.

The DeSantis Amendment will undermine long established protections for immigrant domestic violence victims created in the Violence Against Women Acts of 2000 and 2005 by eliminating the Domestic Violence Victim Waiver and other U visa waiver protections for immigrant victims of domestic violence who wrongfully end up with domestic violence convictions. The amendment accomplishes this by disallowing funding to support implementation, administration, enforcement or carrying out of any policy that does not prioritize enforcement against those with domestic violence, and sexual abuse convictions.

### 1. Battered Women and Battered Immigrant Women and Arrests for Domestic Violence

#### **Victims of Domestic Violence Are Often Arrested Instead of or With Their Abuser**

- Police are responsible for making predominate perpetrator determinations when they respond to domestic violence calls -- when they fail to do this
- Victims who acted in *in self defense* against an abusive partner end up arrested
- Victims who are *falsely accused* by their batterers and can be inappropriately arrested.<sup>4</sup>

Another study found that battered women are arrested when officers misconstrue their actions at the scene of the crime as aggression toward the officer instead of anger or frustration with the abuse that they suffered.<sup>5</sup>

#### **Language Barriers and Why Immigrant Women are Wrongly Arrested**

- Language access barriers: 29.7% of limited English proficient immigrant women face language barriers when reporting domestic violence to the police<sup>6</sup>
  - Often the police do not have the capacity, resources, and/or DOJ recommended policies in place to communicate effectively with the immigrant victim in her own language.<sup>7</sup>

<sup>1</sup> Law student, Immigrant Women Law & Policy Seminar, Spring 2015, American University, Washington College of Law

<sup>2</sup> Law student, Immigrant Women Law & Policy Seminar, Spring 2015, American University, Washington College of Law

<sup>3</sup> Convictions for domestic violence are deportable offenses under INA Section 237(a)(2)(E); 8 U.S.C.A. § 1227 (a)(2)(E); Rape and sexual abuse of a minor are deportable offenses as aggravated felonies INA Section 101(a)(43)(A); 8 U.S.C.A. § 1101 (a)(43)(A); Child pornography is child exploitation that is deportable as an aggravated felony INA Section 101(a)(3)(I); 8 U.S.C.A. § 1101 (a)(43)(I) and sexual assault of an adult, child exploitation and child molestation are in the vast majority cases either deportable as crimes of violence which are aggravated felonies under INA Section 101(a)(43)(F); 8 U.S.C.A. § 1101 (a)(43)(F); or are deportable as Crimes of Moral Turpitude 8 USC § 1227(a)(2)(A)(i), (ii); INA § 237(a)(2)(A)(i), (ii).

<sup>4</sup> Crager, M., Cousin, M., & Hardy, T. (2003). *Victim-defendants: An emerging challenge in responding to domestic violence in Seattle and the King County region*. Seattle, WA: King County Coalition Against Domestic Violence.

<sup>5</sup> Osthoff, S. (2002), *But, Gertrude, I beg to differ, a hit is not a hit is not a hit: When battered women are arrested for assaulting their partners*, Violence Against Women Special Issue: Women's use of violence in intimate relationships, part 2, 8(12), 1521-1544.

<sup>6</sup> Mary Ann Dutton, Leslye E. Orloff, & Giselle Hass, Characteristics of Help-seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications 7 GEO. J. POVERTY L. & POL'Y 245 (2000), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/CULTCOMP\\_Georgetown-Imm-Victim-Helpseeking2000.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/CULTCOMP_Georgetown-Imm-Victim-Helpseeking2000.pdf/view)

- Police may use her abuser or her children to translate for her;<sup>8</sup>
- Police may consider domestic violence a culturally sanctioned practice;<sup>9</sup> and/or
- Police may credit the statements of her citizen spouse or boyfriend over her statements due to gender, race or cultural bias.<sup>10</sup>
- A study found that, upon arrival, in nearly one-third of all cases (31.1%) police never spoke to the immigrant woman who made the call to the police for help, speaking instead to the abusive partner (11 %) or to others (20 %).<sup>11</sup>
- Although more than 75% of the women in the sample spoke only a little English, only one-third (34 %) of the women reported that Spanish was spoken when police arrived.<sup>12</sup>
- A little over one-quarter (28.6%) of police calls resulted in the arrest of the abusive partner. Among those who experienced a form of violence that would legally constitute a criminal offence, police made an arrest only 29.6% of the time.<sup>13</sup>
- A national survey on police and immigrant victims found that police arriving at the scene of the following violence against women cases only spoke with the perpetrator<sup>14</sup>
  - In 10.7% of sexual assault cases;
  - In 8.1% of domestic violence cases; and
  - In 4.8% of human trafficking cases.
- Similarly, when immigrant and Limited English Proficient (LEP) victims call the police for help, when the police arrive on the scene, a police report was not taken in<sup>15</sup>
  - 9.6% of sexual assault cases;
  - 10.4% of domestic violence cases; and
  - 11.8% of human trafficking cases.

### **Alarming Rates at Which Battered Women in the U.S Are Arrested at Domestic Violence Crime Scenes**

- Women make up to 30-40% of the arrests in situations involving domestic violence;
- Men account for 90 to 95% of domestic violence convictions.
  - Research in San Diego found that when women are arrested in only 6% of those cases was there evidence of domestic violence sufficient to result in the prosecution of the arrested women.<sup>16</sup>
  - Wrongful arrests of battered women result in significant waste of police department and court resources.
- Research has found that when women are arrested for domestic violence, 90% of arrested women reported that “they had a history of physical, emotional and sexual abuse by the same male partner against whom they were charged with using force.”<sup>17</sup>

### **Impact of Arresting Battered Immigrant Women**

<sup>7</sup> Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar-Hass, *Calls to police and police response: A case study of Latina immigrant women in the USA*. *International Journal of Police Science & Management*: Winter 2005, Vol. 7, No. 4, pp. 230-244, at 233. [Hereinafter “Calls to police and police response”]

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar-Hass, *Calls to police and police response: A case study of Latina immigrant women in the USA*. *International Journal of Police Science & Management*: Winter 2005, Vol. 7, No. 4, pp. 230-244, at 233. [Hereinafter “Calls to police and police response”]

<sup>11</sup> *Id.* At 238.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Krisztina E. Szabo, David Stauffer, Benish Anver & Leslye E. Orloff, Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NIWAP (Feb. 12, 2014), available at <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>

<sup>15</sup> *Id.*

<sup>16</sup> Marie De Santis, Women’s Justice Center, Advocating for Domestic Violence Victims Who Have Been Arrested for Domestic Violence. [http://justicewomen.com/tips\\_dv\\_victims.html](http://justicewomen.com/tips_dv_victims.html)

<sup>17</sup> Pollack, S., Battaglia, M., & Allspach, A. (2005). *Women charged with domestic violence in Toronto: The unintended consequences of mandatory charge policies*. Toronto, Canada: Woman Abuse Council of Toronto.

- Can result in the victim losing their jobs and being unable to support themselves and their children.
- Arrest victims may lose custody of their children.<sup>18</sup>
- Victims who are wrongly arrested for being the abusive party are
  - *Less likely* to call the police in cases of future violence, and
  - Are *more at risk* having themselves and their families victimized again.<sup>19</sup>

### **When Battered Women are Convicted as a Result of Being Arrested for Domestic Violence**

- Victims have to overcome the burden of having an unfair criminal record for the rest of their lives.
- The children of victims who are convicted and serve time for domestic violence struggle the most. Too often, children are left to be cared for by the abusive parent who was the predominate abuser in the relationship and are at risk of being physically and sexually abused.<sup>20</sup>

## **2. Domestic Violence Victim Waiver INA § 237(a) and U visa waivers**

Domestic Violence Victim Waiver: To address the problem that limited English proficient and immigrant battered women experience in interacting with police that can lead to victims being arrested when they acted in self-defense or when they committed no violent acts at all (e.g. when their English speaking abuser lies to the police when serving as “interpreter”), Congress created special rules that allow immigration adjudicators and judges to look behind the state court domestic violence conviction and to waive deportation or removal for domestic violence in cases of immigrant victims with domestic violence convictions. These waivers are available only to victims who:

- Who were acting in self-defense; or
- Who were found to have violated the terms of a protection order issued to protect them against their abuser; or
- Have domestic violence or stalking convictions where the victim was
  - Not the primary perpetrator of abuse in the relationship; and
  - The domestic violence they were convicted of committing did not cause serious bodily injury
- U Visa Waiver: As with the domestic violence victim waiver described above, when a battered immigrant applicant who is helpful to and cooperating with police and/or prosecutors in a criminal case against her domestic violence perpetrator, has been convicted of domestic violence, DHS can waive this conviction if after considering totality of the circumstance in the victim’s case DHS decides that the waiver is in the national or public interest.

### **Impact of the DeSantis Amendment:**

The DeSantis Amendment would effectively gut these special waivers created by Congress to protect vulnerable battered immigrant women who are isolated and limited English proficient. The amendment will put victims at a greater risk of being harmed by wrongful arrests impacting their ability to protect themselves and their children from ongoing abuse by undermining their ability to apply for VAWA immigration relief.

## **3. Data on Immigrant Women and Domestic Violence in the United States<sup>21</sup>**

- 49.8% of immigrant women suffer domestic abuse during their lifetime
- Abuse rates for immigrant women married to United States citizens rises to 59.5%

<sup>18</sup> Hirschel, D., & Buzawa, E. (2002). Understanding the context of dual arrest with directions for future research. *Violence Against Women*, 8, 1449-1473.

<sup>19</sup> Pollack, S., Battaglia, M., & Allspach, A. (2005). *Women charged with domestic violence in Toronto: The unintended consequences of mandatory charge policies*. Toronto, Canada: Woman Abuse Council of Toronto.

<sup>20</sup> Pollack, S., Battaglia, M., & Allspach, A. (2005). *Women charged with domestic violence in Toronto: The unintended consequences of mandatory charge policies*. Toronto, Canada: Woman Abuse Council of Toronto.

<sup>21</sup> Mary Ann Dutton, Leslye E. Orloff, & Giselle Hass, Characteristics of Help-seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications 7 GEO. J. POVERTY L. & POL’Y 245 (2000), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/CULTCOMP\\_Georgetown-Imm-Victim-Helpseeking2000.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/CULTCOMP_Georgetown-Imm-Victim-Helpseeking2000.pdf/view)