

UNLOCKING THE DOOR BY GIVING HER THE KEY:
A COMMENT ON THE ADEQUACY OF THE
U-VISA AS A REMEDY*

Ankita's ordeal began in early 1998 when she arrived in the United States with her new husband, an Indian software engineer working for a prestigious Silicon Valley firm. For nearly two years he beat her almost daily; slapping, punching, and kicking her even when she was pregnant. She finally called the cops the day both her eardrums burst from his blows. But when he threatened to divorce her for "ruining his life," Ankita begged him to let her stay. "I told him, 'I'm sorry. I won't do this again,' and fell at his feet crying," she says. For Ankita, a noncitizen, divorce spells deportation. If her husband had been a citizen or permanent resident of the United States, she would have had the right to leave him and apply for her own green card to stay in the country. But her husband was in the country on an H-1B work visa . . . Because Ankita's visa, a spousal H-4, was inextricably tied to her husband's, the end of her marriage would also be the end of her right to stay in the United States. If she returned to India, Ankita would have to leave her eight-month-old baby behind, since taking her son out of the country without her husband's consent could be considered kidnapping by both the United States and India.¹

I. INTRODUCTION

In the United States, 34% to 49.8% of immigrant women are victims of domestic violence.² When only considering married immigrant women, the number jumps to 59.5%,³ and when only considering married women with dependent immigration status⁴—particularly nonimmigrant women⁵ like

* I would like to thank my family for their limitless love and support. Specifically, I would like to thank Ed Lee for the inspiration and encouragement that made this comment possible.

1. *Married to the Visa—Part I*, FEMINIST DAILY NEWS WIRE, Apr. 18, 2001, available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=6275>.

2. *Battered Immigrant Women Protection Act of 1999: Hearing on H.R. 3083 Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 106th Cong. 58 (2000) [hereinafter *BIWPA Hearing*] (statement of Leslye Orloff, Director, Immigrant Women Program, NOW Legal Defense and Education Fund).

3. *Id.*

4. Dependent immigration status means the spouse's visa depends on the other spouse's visa; the

Ankita—the number of domestic violence victims jumps as high as 77%.⁶ While staggering, these percentages underestimate the problem. Because many immigrant and nonimmigrant women do not access social or health services, statistics likely underestimate the number of victims.⁷ While domestic violence affects women⁸ regardless of class, nationality, age, race, or legal status,⁹ the previous statistics point out the prevalence of the problem of domestic violence in the immigrant community.¹⁰

Consequences of not addressing the problem cut deep. Domestic violence accounts for 33% of all female murder victims,¹¹ sixty-seven billion per year in health care and government dollars,¹² and 50% of all homeless women and children.¹³ These facts are all too real for immigrant and non-

dependent visa is granted because of their marital status.

5. An H-4 visa holder has a temporary visa that is dependent upon her spouse's temporary H-1B visa. Because these temporary visas are not given on the condition that the holders stay in the United States indefinitely, the holders of such visas are legally referred to as "nonimmigrants"; in contrast, the term "immigrant" legally refers to someone who intends to stay in the United States. HEATHER MAHER & GAIL PENDLETON, ABA COMM'N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE AND IMMIGRATION IN THE CRIMINAL JUSTICE SYSTEM, BARRIERS FACED BY BATTERED IMMIGRANTS, available at <http://www.nationalimmigrationproject.org/domestic-violence/criminal%20justice%20materials.doc>. Confusion over terminology often arises because, in common language, "immigrant" describes anyone who resides in the United States, but whose original citizenship is in another country—regardless of whether that person intends to stay in the United States permanently or temporarily. For the purposes of this Comment, I will use the term "nonimmigrant" only when I am specifically referring to people who possess temporary dependent visas.

6. Uma Narayan, "Male-Order" Brides, in FEMINIST ETHICS AND SOCIAL POLICY 143, 145 (Patrice DiQuinzio & Iris Marion Young eds., 1997).

7. Satya P. Krishnan et al., *Lifting the Veil of Secrecy: Domestic Violence Against South Asian Women in the United States*, in A PATCHWORK SHAWL: CHRONICLES OF SOUTH ASIAN WOMEN IN AMERICA 145, 147 (Shamita Das Dasgupta ed., 1998).

8. I will use gender specific language in this Comment. While some men are victims of domestic violence, the victims are women and the perpetrators are men in the majority of cases. PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, A REPORT ON THE FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 1 (2000). Furthermore, while immigration law today is gender-neutral, the law has a disparate impact on women. See Nayanar, *supra* note 6, at 150 ("[O]ur current immigration policies are good examples of regulations that are formally gender-neutral, but which work to the detriment and disempowerment of many immigrant women in practice.").

9. Studies show that women in abusive situations "come from all classes, educational backgrounds, and socioeconomic positions," but the "bourgeoisie would like to relegate them to the working class" in order to "develop its own image as the model minority." Anannya Bhattacharjee, *The Habit of Ex-Nomination: Nation Woman, and the Indian Immigrant Bourgeoisie*, in A PATCHWORK SHAWL: CHRONICLES OF SOUTH ASIAN WOMEN IN AMERICA 163, 177 (Shamita Das Dasgupta ed., 1989).

10. Throughout my Comment, I intend for the term "immigrant community" to include both immigrants and nonimmigrants.

11. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE (2003) [hereinafter JUSTICE STATISTICS], available at <http://www.ojp.usdoj.gov/bjs/abstract/ipv01.htm>.

12. Kathleen F. Phalen, *Hidden Violence, Harrowing Choices: What Doctors Can Do About Domestic Abuse*, AM. MED. NEWS, May 19, 2003, available at <http://www.ama-assn.org/amednews/2003/05/19/hlsa0519.htm>.

13. Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 421 (1991) (citing a 1990 Ford Foundation Study); Joan Zorza, *Woman Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383, 384 (1994) (citing *The Violence Against Women Act: Hearing on S. 2754 Before the S. Comm. on the Judiciary*, 101st Cong. 37 (1990)); see also U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 66 (2000) (identifying domestic violence as the number one cause of homelessness in 14 of 25 cities surveyed), available at http://www.usmayors.org/uscm/news/press_releases/documents/hunger_release.h

immigrant women: “When a woman abandons her abusive spouse in order to save her life, she may be out on the street overnight with no legal status, no home, no money, and, more often than not, no community.”¹⁴ If domestic violence in the immigrant community is ignored, immigrant and nonimmigrant women will continue to live in fear for their lives and the lives of their children. Because “there is a 70 percent overlap between domestic violence and child abuse,” a failure “to stop domestic violence on behalf of immigrant women has the effect of perpetrating child abuse against their children.”¹⁵

Domestic violence involves “the abuse of power and control in an intimate relationship.”¹⁶ Men “use physical, sexual and psychological abuse, as well as isolation, intimidation and economic abuse to exert power and control over their wives.”¹⁷ For an immigrant or nonimmigrant woman, “cultural and religious norms, economic considerations, language barriers, and overall limited access to information, services, and legal protection”¹⁸ all exacerbate the control her batterer has over her life. Far from alleviating this power imbalance, U.S. immigration law increases the power and control men have over women by giving one spouse control over the other spouse’s immigration status.¹⁹ By making lawful permanent resident status conditional upon a spouse’s status as a citizen or lawful permanent resident, or a nonimmigrant visa dependent upon a spouse’s visa, immigration law isolates battered women within the walls of their abusive homes.

As part of the 2000 Violence Against Women Act, Congress created the U-visa, which aims to provide women like Ankita—women with nonimmigrant H-4 dependent visas—a way out of the abusive situation that does not depend upon cooperation from her spouse.²⁰ This Comment seeks to critique the adequacy of the U-visa as a remedy for H-4 visa holders. Part I will trace the history of the response by Congress to the problem of domestic violence for immigrant women. Part II will focus on the U-visa and specifically identify how the U-visa’s reliance upon the criminal justice system renders it inadequate. Part III will provide an alternative solution and evaluate the benefits of moving the discussion out of the realm of the justice system and into the control of the women it seeks to help.

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14. Bhattacharjee, *supra* note 9, at 177-78.

15. *BIWPA Hearing*, *supra* note 2, at 58.

16. LETI VOLPP, FAMILY VIOLENCE PREVENTION FUND, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES AVAILABLE 3 (1995).

17. Ryan Lilienthal, *Old Hurdles Hamper New Options for Battered Immigrant Women*, 62 BROOK. L. REV. 1595, 1596 (1996).

18. Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 BERKELEY WOMEN’S L.J. 137, 139 (2002).

19. *E.g.*, Lilienthal, *supra* note 17, at 1596-97.

20. *See* 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, 163 (2001).

II. THE HISTORY OF THE CONGRESSIONAL RESPONSE TO DOMESTIC VIOLENCE IN THE IMMIGRANT COMMUNITY: THE CREATION OF DEPENDENCY

A married woman's immigration status has a long history of dependence on her husband's status. An 1855 law granted U.S. citizenship to immigrant women who married men with U.S. citizenship; conversely, a 1907 law stated that a woman revoked her citizenship when she married an immigrant man.²¹ The Cable Act in 1922 continued the tradition of allowing husbands to sponsor wives but not allowing wives to sponsor husbands.²² Congress did not expunge the tradition until the 1952 Immigration and Nationality Act declared that husbands and wives had an equal interest in and right to sponsorship; the Act eliminated exclusionary quotas on the number of husbands *and* wives who could sponsor a spouse.²³

While the law no longer prohibits wives from sponsoring husbands, unequal treatment of women still exists in immigration law,²⁴ and immigration law continues to treat women as chattel—the property of their husbands.²⁵ By looking at six different Congressional acts²⁶ since the passage of the Immigration and Nationality Act of 1952, it becomes clear that the treatment of women as property by immigration law has historically left these women with an impossible choice between staying with the abuser or leaving and risking deportation.²⁷

A. *The Immigration and Marriage Fraud Amendments of 1986*

After the establishment of the Immigration and Nationality Act of 1952, anyone who married a U.S. citizen could apply for permanent residency.²⁸ However, in 1986, Congress passed the Immigration and Marriage Fraud Amendments (IMFA),²⁹ which limit this right by conditioning a spouse's

21. 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, 266 (2001).

22. Lilienthal, *supra* note 17, at 1606.

23. *Id.*

24. *See id.* at 1606-07.

25. *Id.*

26. Immigration Marriage Fraud Amendments, Pub. L. No. 99-639, 100 Stat. 3537 (1986) [hereinafter IMFA] (codified as amended in scattered sections of 8 U.S.C.); Immigration Act, Pub. L. No. 101-649, 104 Stat. 4978 (1990) [hereinafter IA] (codified as amended in scattered sections of 8 U.S.C.); Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1902 (1994) [hereinafter VAWA]; Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996) [hereinafter Welfare Act] (codified as amended in scattered sections of 8 U.S.C.); Illegal Immigration Reform and Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) [hereinafter IIRRA] (codified as amended in scattered sections of 8 U.S.C.); Battered Immigrant Women Protection Act, Pub. L. No. 106-386, 114 Stat. 1464 (2000) [hereinafter BIWPA].

27. Lilienthal, *supra* note 17, at 1597-98.

28. Sitowski, *supra* note 21, at 268.

29. IMFA, *supra* note 26, at 3537.

receipt of permanent residency upon the length of the marriage.³⁰ If the couple had been married for less than two years prior to becoming lawful U.S. residents, then Immigration and Naturalization Services (INS) granted the immigrant spouse conditional permanent resident status for a period of two years.³¹ Furthermore, the IMFA required the citizen or lawful permanent resident (LPR) spouse to petition for the immigrant spouse's conditional residency.³² Two years after filing the initial petition the couple could apply to remove the conditional status by filing a joint petition and undergoing an interview.³³ At any stage during this lengthy process, if the citizen or LPR spouse failed to participate, the immigrant spouse would not obtain independent legal status.³⁴

Congress intended the legislation to stop sham marriages after hearing evidence that 30% of marriages between citizens and immigrants were entered into for the purpose of the immigrant obtaining permanent residency.³⁵ While Congress passed the IMFA to combat fraud, it increased the control that the citizen spouse had over the immigrant spouse.³⁶ Because a citizen spouse had to initially petition for conditional status for his or her spouse and later file a petition jointly with the spouse, the citizen spouse could use the conditional status as a means of controlling the immigrant spouse.³⁷ The citizen spouse could even threaten to report the spouse to the INS for deportation or threaten not to apply on her behalf if she reported the abuse or left him.³⁸

Without the active support of the citizen or legal permanent resident spouse, the immigrant spouse could not become a permanent resident unless she qualified for one of two waivers. The first waiver granted relief if she entered the marriage in good faith and the citizen or legal permanent resident spouse died or the marriage ended in divorce.³⁹ In order to qualify for the good faith waiver, the victim had to establish that she terminated the marriage.⁴⁰ This required abused women to seek a divorce, an action that could increase the risk of violence and that required money she might not have.⁴¹ It also ignored the fact that many husbands use the threat of divorce as a means of control and may attempt to race to the courthouse to file papers before their wives.⁴² The second waiver granted relief if the victim failed to meet the petition and interview requirements but demonstrated that

30. *Id.*

31. Lilienthal, *supra* note 17, at 1607.

32. Narayan, *supra* note 6, at 150.

33. Sitowski, *supra* note 21, at 269.

34. Narayan, *supra* note 6, at 150, 154.

35. Sitowski, *supra* note 21, at 268.

36. Lilienthal, *supra* note 17, at 1608.

37. Narayan, *supra* note 6, at 150, 154.

38. *Id.* at 147, 150.

39. Lilienthal, *supra* note 17, at 1608.

40. Sitowski, *supra* note 21, at 271.

41. *Id.*

42. Orloff & Kaguyutan, *supra* note 20, at 104.

she would suffer extreme hardship if deported.⁴³ Because the INS defined extreme hardship as suffering which would occur after deportation—not if she remains married—past abuse did not factor into the decision of whether to grant a waiver under the IMFA.⁴⁴

B. *The Immigration Act of 1990*

The Immigration Act of 1990 (IA)⁴⁵ took notice of abuse, which the waivers under the IMFA seem to ignore, by eliminating the requirement that the victim file for divorce for good cause under the good-faith waiver and by creating a battered spouse waiver.⁴⁶ In order to qualify for the battered spouse waiver, the abused spouse had to prove that she entered the marriage in good faith and that she or her child was battered or subject to extreme cruelty.⁴⁷ Proof of abuse required documentation such as reports from police, social workers, or doctors.⁴⁸ However, many victims did not have proof because they did not access traditional service agencies for help due to language, cultural, or economic barriers.⁴⁹

Because evidentiary requirements proved insurmountable for many battered women, the battered spouse waiver, like the waivers under the IMFA, did little to help abused spouses with conditional residency. The IA also failed to address the major problem with the IMFA: absent qualification for a waiver, abused spouses still had to rely upon abusers to obtain immigration status.⁵⁰ In fact, victims could not apply for the Battered Spouse Waiver unless the abuser had filed the original petition for conditional residency.⁵¹ Thus, the law continued to treat women as property by placing the control of women's lives in the hands of men. This requirement did not begin to change until the 1994 Violence Against Women Act.⁵²

C. *The 1994 Violence Against Women Act*

The Violence Against Women Act of 1994 (VAWA)⁵³ gives some control back to the abused spouse. The Act allows women married to citizens or permanent residents to apply for permanent residency independent of their husbands.⁵⁴ In order to self-petition, an abused immigrant must show that she is the spouse of a citizen or legal permanent resident, that she has good

43. Sitowski, *supra* note 21, at 271.

44. *Id.*

45. IA, *supra* note 26, at 4978.

46. Sitowski, *supra* note 21, at 272.

47. *Id.*

48. *Id.*

49. *Id.* at 272-73.

50. *Id.* at 273.

51. *Id.*

52. *Id.*

53. VAWA, *supra* note 26, at 1902.

54. Kwong, *supra* note 18, at 143.

moral character, and that she has resided in the United States with the abuser.⁵⁵ On top of this, she must prove that she currently resides in the United States, that she entered the marriage in good-faith, that she or her child was battered or subject to extreme cruelty, and that she will suffer extreme hardship if deported.⁵⁶

The VAWA also created another means of relief for abused spouses. In addition to allowing self-petitions, the VAWA created cancellation of removal provisions, which are especially important for battered spouses who do not meet the requirements for self-petitioning.⁵⁷ If a woman establishes that she is deportable, that she has resided in the United States for three years, that she is the victim of battery or extreme cruelty, that she has good moral character, and that deportation would result in extreme hardship, then her deportation may be suspended and she may be granted legal status.⁵⁸

Stringent requirements, however, still prohibit many women married to citizens or legal permanent residents from accessing the aid Congress created in the VAWA.⁵⁹ An abused spouse with conditional resident status bears the burden of proving her husband's status as a U.S. citizen or permanent resident.⁶⁰ Many women have difficulty providing such documentation because either their husband or the INS has inaccurate information or missing records.⁶¹ Other women cannot qualify because their spouse has lost his permanent resident status; if a batterer loses his permanent resident status before the INS approves the victim's self-petition, the INS automatically denies the petition.⁶² By making domestic violence a deportable crime, the INS can deny a victim's petition when the batterer loses permanent residency due to a criminal conviction for domestic violence.⁶³

In addition to demanding that the victim provide proof of the batterer's legal status, several other requirements bar access to self-petitions. The good-faith marriage requirement prohibits many victims from divorcing abusive spouses. In order to self-petition, a victim must be married to the spouse.⁶⁴ Furthermore, most criminal convictions, regardless of whether they are in self-defense or a result of a mandatory arrest policy, prohibit women from establishing good moral character.⁶⁵ If the victim makes the claim that she acted in self-defense or as a result of abuse, the judge often wants documentation, such as police reports, supporting her claim.⁶⁶ This evidentiary burden is even higher for women who hesitate to contact law

55. Lilienthal, *supra* note 17, at 1611.

56. *Id.*

57. *Id.* at 1612.

58. *Id.* at 1612-13.

59. Sitowski, *supra* note 21, at 276.

60. Kwong, *supra* note 18, at 145.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 146.

65. *Id.* at 147.

66. *Id.*

enforcement or who may not have lived in the United States long enough to establish a paper trail.⁶⁷ Finally, the VAWA continues the imposition of burdensome evidentiary standards by establishing an “extreme hardship” requirement in its self-petition.⁶⁸

While the VAWA provides unprecedented relief for victims of domestic violence, immigrant women included, the Act contains many shortcomings that result from its failure to address the needs of many immigrant women living with domestic violence. While the VAWA allows some women to seek immigrant status independent of their abusers, it does not help others.⁶⁹ By maintaining stringent evidentiary requirements (like those in the Battered Spouse Waiver) and continuing to place initial control of the immigration process for dependent spouses in the hands of their husbands, the VAWA continued to effectively lock women in abusive homes. The VAWA also failed to provide assistance to women who are not married to citizens or lawful permanent residents.⁷⁰ Until the Battered Immigrant Women Protection Act of 2000,⁷¹ these women remained invisible. However, before the plights of those women surfaced, six years passed—and two more acts further confined victims of domestic violence in their homes.

D. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Responsibility Act of 1996

Two 1996 acts curbed the rights of immigrants and the benefits they could receive, and both had adverse effects upon battered immigrant women. First, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Welfare Act”)⁷² increased the economic dependence of immigrant women upon their spouses by limiting their eligibility for supplemental security insurance and food stamps and by allowing states to establish more strict eligibility requirements.⁷³ Second, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRRA)⁷⁴ generally expanded the grounds for deportation of immigrants.⁷⁵

While the IIRRA recognized the situations of immigrant women in domestic violence situations by providing several exceptions, the Act also

67. *Id.*

68. *Id.* at 148.

69. Orloff & Kaguyutan, *supra* note 20, at 143.

VAWA 1994 did not offer any protection to several categories of battered immigrants: those abused by citizen and lawful permanent resident boyfriends; immigrant spouses and children of abusive non-immigrant visa holders or diplomats; immigrant spouses, children, and intimate partners abused by undocumented abusers; and non-citizen spouses and children of abusive United States government employees and military members living abroad.

Id.

70. *Id.*

71. BIWPA, *supra* note 26, at 1464.

72. Welfare Act, *supra* note 26, at 2105.

73. Sitowski, *supra* note 21, at 280-81.

74. IIRRA, *supra* note 26, at 3009-546.

75. Sitowski, *supra* note 21, at 281-82.

provided additional hardships.⁷⁶ The provisions controlling suspension or deportation of victims of domestic violence remained the same while the provisions for all other immigrants became more stringent.⁷⁷ The IIRRA also eliminated prohibitions in the Welfare Act against battered immigrants receiving public assistance if they no longer lived with the batterer and could show a substantial connection between the abuse and the need for public assistance.⁷⁸ However, the IIRRA also made deportation of a domestic violence offender mandatory, increasing the chance that the offender would not be a lawful permanent resident when the victim self-petitioned.⁷⁹ Consequently, the IIRRA increased the likelihood that the INS would deny the victim's petition and the victim would face deportation herself.⁸⁰

Neither the Welfare Act nor the IIRRA removes the locks keeping immigrant women in abusive homes. In fact, despite the IIRRA's attempt to recognize the situations of abused women, its policy decisions effectively make it more difficult for women to leave. Both acts fail to address the control that husbands have over their wives' immigration process and immigration law continues to force women to choose between undesirable options—remaining with the abusive husband or risking deportation.

E. The Battered Immigrant Women Protection Act of 2000

On October 28, 2000, Congress passed the Battered Immigrant Women Protection Act of 2000 (BIWPA),⁸¹ which lessens the burden of proof placed on the self-petitioner and further helps immigrant and nonimmigrant victims of domestic violence.⁸² The Act creates additional aid for women previously invisible in congressional remedies.⁸³ One of these new remedies, the U-visa, will be examined in Part III.⁸⁴

The BIWPA provides several important remedies for the self-petition process. First, the Act lessens the burden of proof placed on the self-petitioner by allowing a woman to self-petition if her spouse was a U.S. citizen and died within the two-year period, or her spouse lost his permanent residency status due to the abuse.⁸⁵ Second, the BIWPA addresses some of the barriers posed by the good-faith marriage requirement. After the BIWPA, if the marriage terminated in the past two-years as a result of battering or extreme cruelty by the citizen or legal permanent resident spouse, then the dependent spouse can self-petition if she can show a connection

76. See *id.* at 282-84.

77. *Id.* at 282.

78. *Id.* at 282-83.

79. *Id.* at 283.

80. See *id.* at 283-84.

81. BIWPA, *supra* note 26, at 1464.

82. See Kwong, *supra* note 18, at 145-49.

83. *Id.* at 150.

84. See *infra* Part III.A.

85. See Kwong, *supra* note 18, at 145-46.

between the abuse and the divorce.⁸⁶ Third, under the VAWA, a petitioner has difficulty proving “good moral character” if she was arrested along with the batterer. However, under the BIWPA, if she has “never been the primary perpetrator of violence in the relationship” and can “prove . . . a connection between the crime and the abuse,” then she can still establish good moral character.⁸⁷ The BIWPA also eliminates the “extreme hardship” requirement found in preceding legislative acts.⁸⁸

While each of these changes helps remedy the VAWA’s weaknesses, none of the changes would help nonimmigrant women on H-4 visas, like Ankita. Until the BIWPA, women who are not married to a citizen or an LPR had no legal way of remaining in the United States if they divorced. Immigration law continued to give abused H-4 visa holders no real choice but to remain in violent homes. Finally, Congress recognized this marginalized group when it created the U-visa as part of the BIWPA.

III. THE U-VISA AND THE LIMITS OF LAW ENFORCEMENT

A. *The U-visa*

Congress created the U-visa to aid women who are not married to a citizen or permanent legal resident and who have been victims of a crime.⁸⁹ The U-visa grants victims of certain crimes⁹⁰ permission to remain in the United States and to work⁹¹ temporarily,⁹² with the possibility of receiving permanent residency at the end of a three-year period.⁹³ In order to qualify for the U-visa, a person must provide evidence of the following: (1) “substantial physical or mental abuse”; (2) “information concerning criminal activity”; (3) certification of her helpfulness to “Federal, State, or local authorities investigating or prosecuting” the crime; and (4) a crime that “violated the laws of the United States or occurred in the United States.”⁹⁴ After three years, persons granted U-visa status may apply for permanent legal residence if the attorney general finds that they meet the following requirements: (1) they have not “unreasonably refused to provide assistance in a criminal investigation or prosecution” of the crime committed against them; (2) they have been continuously present in the United States for a three-year

86. *Id.* at 146-47.

87. *Id.* at 147-48.

88. *Id.* at 148.

89. BIWPA, *supra* note 26, at 1464 (“The purposes of this title are—(1) to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and (2) to offer protection against domestic violence.”).

90. *Id.* § 1513(b)(3)(iii) (specifically listing domestic violence as one of the crimes covered).

91. *Id.* § 1513(c)(3)(B).

92. *Id.* § 1513(a)(2)(B) (“Providing temporary legal status to aliens who have been severely victimized by criminal activity.”).

93. *Id.* § 1513(f).

94. BIWPA, *supra* note 26, § 1513(b)(3).

period; and (3) humanitarian reasons, family unity, or public interest justifies their continued presence in the United States.⁹⁵

One group of women potentially benefiting from the legislation are H-4 visa holders. H-4 visas grant spouses of temporary workers with H1-B visas the right to live in the United States as long as the H1-B visa remains legal, but they do not grant them the right to work.⁹⁶ As a result, H-4 visa holders with abusive spouses could not leave the relationship prior to the creation of the U-visa, because they had no means of supporting themselves outside of the relationship. Vibha Bakshi described her situation as follows: "When I came here, I was a dependent on my husband What happens to spouses is that, yes you can enter the country. You can be physically present. But there is nothing else you can do."⁹⁷ H-4 visa holders also had no legal right to remain in the country absent the marriage.⁹⁸ If an H-4 visa holder reported her spouse to the police, they both faced deportation.⁹⁹ Criminal conviction resulted in the deportation of the H-1B visa holder, and the dissolution of the H1-B visa on which the H-4 visa was dependent resulted in the deportation of the H-4 visa holder as well.¹⁰⁰

The U-visa helps H-4 visa holders by decreasing their economic dependence upon their husbands and decreasing the risk of deportation if they leave the abuser. Abusive husbands often exert power and control by threatening to withhold money for necessities like food and shelter.¹⁰¹ While many abusive spouses use this tactic, the threat is especially scary for women who have no family or friends to support them.¹⁰² Immigrant and nonimmigrant women are often extremely isolated,¹⁰³ and their community in the United States may also provide little support.¹⁰⁴ In addition, many batterers use threats of deportation as a tool of control.¹⁰⁵ By granting U-visa holders the right to work and lessening the chances of deportation, the U-visa decreases the control that husbands wield over their wives. This solution, however, has limits.

95. *Id.* § 1513(f)(1).

96. Aparna Narayanan, *Battered Immigrants Gain Relief*, HOME NEWS TRIB., Oct. 26, 2003, at A1 ("Battered women on H-4 or 'dependent' visas often choose not to report abuse because they are dependent on their spouses for legal immigration status, according to advocacy groups. Those who leave their abusers are stranded without authorization to work and can be deported.").

97. Aseem Chhabra, *A Terrible Visa Which Inherently Isolates Women*, REDIFF.COM, Apr. 19, 2001, at <http://www.rediff.com/news/2001/apr/19usspec.htm>.

98. *See* Narayan, *supra* note 6, at 150 (discussing victims who possess conditional immigrant status as opposed to dependent non-immigrant visa status, but noting that both have the same effect of putting a woman's husband in control of her life by conditioning legal rights to marital status).

99. Sitowski, *supra* note 21, at 283-84 (considering the effect of deportation of an LPR on a conditional immigrant, which is comparable to the effect of deportation of an independent visa holder on a dependent visa holder).

100. *Id.*

101. M.D. Riti, *Black and Blue*, REDIFF.COM, Mar. 8, 2003, at <http://www.rediff.com/news/2003/mar/08spec.htm>.

102. *Id.*

103. *See* Benice Yeung, *The Land of Blood & Money*, SF WEEKLY, May 3, 2000 (citing a report produced by the San Francisco District Attorney's Office).

104. *See* Krishnan, *supra* note 7, at 146.

105. Narayan, *supra* note 6, at 147.

B. *The Limits of Law Enforcement*

While the U-visa provides much-needed relief for nonimmigrant H-4 visa holders, the relief is grounded in the criminal justice system. Therefore, the relief is often not meaningful. The VAWA and the BIWPA are both parts of larger crime bills.¹⁰⁶ The goals behind each act focus on the prosecution of the batterer.¹⁰⁷ The grounding of relief for nonimmigrant victims of domestic violence in the criminal justice system is problematic because immigrant and nonimmigrant women fear repercussions for contacting law enforcement from their batterers, the police, and immigration officials. Because nonimmigrant women do not trust the criminal justice system, and the system is a critical component to the dispersment of U-visas, the U-visa faces implementation barriers similar to previous acts aiding women married to citizens or legal permanent residents.¹⁰⁸ If women do not contact the police due to cultural barriers, language barriers, and discriminatory acts, then they may not satisfy the evidentiary burden necessary to qualify for the U-visa.¹⁰⁹

1. *Fear for Safety*

The U-visa requires nonimmigrant women to cooperate with the criminal justice system in the prosecution of their abusers.¹¹⁰ However, prosecution leads many batterers to escalate the violence.¹¹¹ For example, during the prosecution stage, 30% of batterers assault their victims.¹¹² A nonimmigrant woman may hesitate to cooperate with law enforcement because she, like abused women generally, fears for her safety and that of her children. A recent study finds that an intimate partner of the victim commits 33% of all female homicides,¹¹³ and most occur when the victim is trying to leave the

106. The Violence Against Women Act of 1994 was part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994). The Battered Immigrant Women Protection Act of 2000 was part of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

107. According to Congress, a central benefit to the legislation is the abused spouse's ability to prosecute the crime:

[P]roviding battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control.

BIWPA, *supra* note 26, § 1502(a)(2).

108. See *supra* Part II (discussing the U-visas reliance upon the criminal justice system).

109. See *supra* Part II.

110. BIWPA, *supra* note 26, § 1513 (b)(3)(i)(III).

111. Barbara Hart, *Battered Women and the Criminal Justice System*, in 2 DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE 58, 60 (Patricia G. Barnes ed., 1998).

112. S. Goldsmith, *Taking Spouse Abuse Beyond a Family Affair*, 17 LAW ENFORCEMENT NEWS 7 (1991).

113. JUSTICE STATISTICS, *supra* note 11.

batterer or has already left.¹¹⁴ Another study found that current or former husbands or lovers commit three-fourths of all murders where women are the victims.¹¹⁵ Leslye Orloff, the Director of the Immigrant Women Program of the NOW Legal Defense and Education Fund, testified before the House Judiciary Committee and cautioned against conditioning aid on the cooperation of victims with law enforcement officials: “[L]ots of times you have women who may want to cooperate but are legitimately terrified that if in fact they cooperate with law enforcement they will get killed.”¹¹⁶ Even calling the police increases the danger of injury, because “[i]t is then that the abuser’s power and control over his wife is threatened.”¹¹⁷ As a result, “[b]attered women may thus be much more concerned about preventing future violence than about vindicating the state’s interest in penalizing the defendant for crimes previously committed.”¹¹⁸ Despite the evidence that separation poses a danger to victims, Congress failed to recognize the “lethal limitations” of involving the criminal justice system when creating the U-visa.¹¹⁹

2. *Fear of Arrest*

Police also represent danger to many nonimmigrant women. Far from acting as harbingers of peace, police involvement may bring with it a fear of additional violence from law enforcement. Current policing policies frequently result in the criminalization of the victim.¹²⁰ This occurs when police arrest victims of domestic violence as well as batterers.¹²¹ Mandatory arrest statutes often require police to arrest victims when responding to domestic violence calls,¹²² but police also arrest victims because abusers file counter charges against them.¹²³ Such arrests fail to recognize that “[women]’s violent acts may be rooted in self-defense.”¹²⁴

Language barriers may contribute to perceived police bias.¹²⁵ Few police speak a language other than English.¹²⁶ When they respond to calls

114. Barbara Hart, *The Legal Road to Freedom*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* (Marsali Hansen & Michele Harway eds., 1993), reprinted in *DOMESTIC VIOLENCE LAW: A COMPREHENSIVE OVERVIEW OF CASES AND SOURCES* 36-37 (Nancy K.D. Lemon ed., 1996).

115. *Id.*

116. *BIWPA Hearing*, *supra* note 2, at 168 (statement of Bree Buchanan, Director of Public Policy, Texas Council on Family Violence).

117. Riti, *supra* note 102.

118. Hart, *supra* note 111.

119. Holly Maguigan, *Wading into Professor Schneider’s “Murkey Middle Ground” Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 *AM. U. J. GENDER SOC. POL’Y & L.* 427, 435 (2003).

120. Hannah R. Shapiro, *Battered Immigrant Women Caught in the Intersection of U.S. Criminal and Immigration Laws: Consequences and Remedies*, 16 *TEMP. INT’L & COMP. L.J.* 27, 28 (2002).

121. *Id.*

122. Lilienthal, *supra* note 17, at 1623.

123. *Id.*

124. *Id.* at 1624.

125. Nimish R. Ganatra, Comment, *The Cultural Dynamic in Domestic Violence: Understanding the Additional Burdens Battered Immigrant Women of Color Face in the United States*, 2 *J.L. SOC’Y* 109,

where one person speaks English and the other does not, they often speak only to the English speaker.¹²⁷ One-sided conversations communicate bias towards the English speaker.¹²⁸ Often the result is the arrest of the victim or no arrest at all.¹²⁹

A lack of knowledge about the U.S. criminal justice system also fosters distrust. The only reference for many immigrants and nonimmigrants is the criminal justice system in their native country. Bad experiences with law enforcement in their home country may lead to a distrust of the U.S. system.¹³⁰ For example, Russian mail-order brides may not know that U.S. law enforcement will enforce laws against domestic violence because Russian police fail to arrest and prosecute batterers.¹³¹

Police insensitivity and misconduct also create distrust between the immigrant community and police.¹³² "Alienated from her mother culture, 'alien' in the dominant culture, the woman of color does not feel safe"¹³³ In communities of color, police represent violence, not a protection from violence.¹³⁴ The use of the criminal justice system as the avenue for aid discourages women from seeking help because the system has historically discriminated against people of color.¹³⁵ The problem of institutional racism and its disparate impact upon women of color decreases the trust that nonimmigrant women have in the criminal justice system.¹³⁶ Police zealotry may deter nonimmigrant women from dialing 911 in the same way that it deters African-American women.¹³⁷ Overall, by requiring nonimmigrant women to work with law enforcement in order to qualify for the U-visa, Congress effectively shackles the victim instead of the abuser.

3. *Fear of Deportation*

A nonimmigrant woman may also hesitate to apply for the U-visa because she fears deportation. An abusive husband often uses his wife's dependent immigration status as a means of control; he may threaten her with deportation if she leaves or seeks assistance from service agencies.¹³⁸ A survey of Latina immigrants in the District of Columbia found that 21.7%

125-26 (2001).

126. *Id.* at 126.

127. *Id.*

128. Lilienthal, *supra* note 17, at 126.

129. *Id.*

130. Ganatra, *supra* note 125, at 125.

131. Tiffany E. Markee, *A Call for Cultural Understanding in the Creation, Interpretation and Application of Law: Is the United States Meeting the Needs of Russian Immigrant "Mail-Order Brides?"*, 31 CAL. W. INT'L L.J. 277, 281 (2001).

132. Ganatra, *supra* note 125, at 125-26.

133. GLORIA ANZALDUA, *BORDERLANDS: LA FRONTERA* 20 (1987).

134. Holly Maguigan, *supra* note 119, at 431.

135. *See* Ganatra, *supra* note 125, at 125-26.

136. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 63 (2000).

137. *See* Maguigan, *supra* note 119, at 440.

138. Narayan, *supra* note 6, at 147.

listed fear of being reported to immigration as their primary reason for remaining in abusive relationships.¹³⁹ The threat works because many consequences accompany deportation:

[S]he may lose custody of her children, may not be allowed to enter the country to see her children for five years, may return to poverty, famine, or political persecution, and may no longer be able to financially assist her family in her home country. She may be deported to a country whose laws do not protect her from domestic violence. She may be ostracized by friends and family members because she got a divorce, or sought a protection order against her abuser.¹⁴⁰

Combining threats of deportation with threats of separating the mother from her children keeps many victims from contacting police.¹⁴¹

The U-visa provides a means for some nonimmigrant victims of domestic violence to avoid deportation, but it does not eliminate the *fear* of deportation. Language barriers may limit the amount of knowledge that the victim has about the criminal justice system and the assistance it provides to victims of domestic violence.¹⁴² Even if she knows about the services, she may hesitate to use them because most agencies target English-speaking victims,¹⁴³ and may not have a translator available.¹⁴⁴ Limited numbers of bilingual 911 operators, police, and court personnel mean that the batterer may be the only translator available to the victim.¹⁴⁵ As a result, the batterer may be able to effectively control the information that the victim receives.¹⁴⁶

Even for nonimmigrant women without a language barrier, the evidentiary standards that must be met to qualify for the visa are unclear.¹⁴⁷ Congress made 10,000 visas available each year,¹⁴⁸ but in the four years since the creation of the U-visa none have been issued.¹⁴⁹ The government has

139. Orloff & Kaguyutan, *supra* note 20, at 98.

140. LETI VOLPP, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 17 (Leni Marin ed., 1995).

141. See *BIWPA Hearing*, *supra* note 2, at 71 (statement of Bree Buchanan, Director of Public Policy, Texas Council on Family Violence).

142. Ganatra, *supra* note 125, at 112.

143. *Id.* at 113.

144. Kwong, *supra* note 18, at 142.

145. Maguigan, *supra* note 119, at 441.

146. Kwong, *supra* note 18, at 142.

147. *Id.* at 150 (“Difficulty, sluggishness, and a lack of the victim’s control, however, characterize the current U-visa application process.”).

148. BIWPA, *supra* note 26, § 1513(c)(2)(A).

149. Nasha Vida et al., Nat’l Immigration Project, U-visa Frequently Asked Questions (FAQ) Sheet 1 (Nov. 1993), at http://www.nationalimmigrationproject.org/domestic-violence/Uvisas/UVisa_index.htm.

U visas cannot be issued until the Department of Homeland Security (DHS) issues regulations making them available. Until then, no one is receiving an actual U visa. However, in the meantime, the DHS has made an interim form of relief available. It is referred to as “U nonimmigrant status interim relief” or “U visa interim relief.” Eligible individuals who request U visa interim relief can receive deferred action, which would also allow them to obtain employment authorization.

attributed the delay in issuing regulations for the U-visa to the reorganization of the Department of Homeland Security after September 11, 2001.¹⁵⁰ Once finalized, the regulations could address the issue by lessening the burden of proof, but this goes against past policies that have attempted to counter the risk of fraud by requiring strict evidentiary standards.¹⁵¹ The U-visa requires a victim to show that she has suffered serious physical or mental abuse,¹⁵² but if a victim does not contact law enforcement such evidence may be scant.¹⁵³ Many advocates have argued that a victim's testimony and the testimony of people in her community should qualify as evidence.¹⁵⁴ However, immigration law has continued to focus on official reports in order to establish abuse.¹⁵⁵ As a result of the subjective nature of the qualification process, no law, including the U-visa, allows women to leave abusive relationships without the *fear* of deportation.

IV. INDEPENDENT VISA STATUS AS AN ALTERNATIVE: PLACING CONTROL IN THE HANDS OF IMMIGRANT WOMEN

In order to apply for a U-visa, nonimmigrant women must cooperate with law enforcement. As discussed in Part II, this requirement places a large barrier between victims of domestic violence and help. Currently, “[w]hen punitive interventions do not seem to work to control behaviors, a dominant response among U.S. policymakers is to increase the level of punitiveness.”¹⁵⁶ In the alternative, U.S. policymakers could focus on changing immigration law so that nonimmigrant women do not have to access the criminal justice system in order to remain in the United States absent their marital relationship. As long as a nonimmigrant woman can be deported for leaving her husband and her visa does not permit her to work, immigration law will continue to serve the vice of batterers. It will continue to reassure batterers that their wives will not leave them out of fear of deportation and economic destitution and that they will not face penalties for the terror they inflict upon their families. The U-visa aims to hold batterers accountable for the “physical, sexual and psychological abuse, as well as isolation, intimidation and economic abuse”¹⁵⁷ they inflict on their wives, but instead, immigration law allows such abuse to continue by not providing nonimmigrant women with the power they need to leave an abusive relationship without involving the criminal justice system.

Id.

150. Memorandum from Associate Director of Operations of U.S. Department of Homeland Security to Director Vermont Service Center (Oct. 8, 2003), at http://www.nationalimmigrationproject.org/domestic-violence/Uvisas/UVisa_index.htm.

151. See *supra* Part II.

152. BIWPA, *supra* note 26, § 1513(b)(3)(i)(I).

153. See *supra* notes 47-49 and accompanying text.

154. *E.g.*, Narayan, *supra* note 6, at 155.

155. See *supra* notes 47-49 and accompanying text.

156. Maguigan, *supra* note 119, at 435.

157. Lilienthal, *supra* note 17, at 1596.

As an alternative, U.S. policymakers could grant current and future H-4 visa holders independent visa status from the outset, regardless of the presence or absence of abuse. Independent visas are a better solution than the U-visa; they avoid many of the barriers present when the solution is grounded in the criminal justice system and they treat women as people and not property. In so doing, independent visas would increase the control that women have over their own lives, while simultaneously decreasing the control of the state and their husbands.

The alternative solution of granting independent visas recognizes the fears that prevent abused nonimmigrant women from accessing and working with the criminal justice system. Independent visa status, unlike the U-visa, would not require a woman to take actions adverse to her safety and that of her children. In contrast to the U-visa, independent visa status would not require a victim to contact the police or to prosecute the batterer in order to remain legally in the country or to work. As a result, failure to access the criminal justice system out of fear for her safety, arrest, or deportation would in no way keep a victim from obtaining the documentation necessary to allow her to remain; she would already have such documentation (an independent visa) upon entering the country. Dependent immigration status would no longer prevent nonimmigrant women from leaving abusive husbands.

In addition to avoiding many of the barriers which accompany U-visas, the alternative solution of granting independent visas to both spouses also helps to eliminate one of the causes of domestic violence—the doctrine of coverture, which is “a legislative enactment of the common law theory that the husband is the head of the household.”¹⁵⁸ The common law doctrine of coverture held that “upon marriage, a wife’s identity merged with her husband’s.”¹⁵⁹ A woman’s legal identity ended with marriage, and her husband subsequently became legally responsible for her actions.¹⁶⁰ Consequently, “men were *legally* charged with the obligation of controlling their wives.”¹⁶¹ The law required husbands to control their wives and thus sanctioned a husband’s decision to beat, abuse, and rape his wife—to chastise her. Chastisement was “the idea that the husband could enforce his control prerogatives.”¹⁶² For example, a husband’s “right of chastisement”¹⁶³ meant that he could legally beat his wife, provided that the stick with which he beat her was no larger than his thumb.¹⁶⁴ Because chastisement is “a notion developed out of coverture,”¹⁶⁵ domestic violence cannot be eliminated without

158. Orloff & Kaguyutan, *supra* note 20, at 100 (quoting S. Rep. No. 81-1515, at 414 (1951)).

159. Lilienthal, *supra* note 17, at 1602.

160. *Id.*

161. Sitowski, *supra* note 21, at 263 (emphasis added).

162. Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture’s Diminishment, But Not Its Demise*, 24 N. ILL. U. L. REV. 153, 200 (2004).

163. Lilienthal, *supra* note 17, at 1602.

164. *Id.* This was referred to as the “rule of thumb.”

165. Calvo, *supra* note 162, at 200.

eliminating the subordination of wives to their husbands: "Legacies of chastisement can not be removed without removing the power and control legacies of coverture, whether or not they result in provable violence or cruelty."¹⁶⁶ Granting all women independent visas changes the immigration law so that it does not contribute to the subordination of women. While the government cannot prevent acts of violence from harming women, it can prevent the law from inadvertently condoning them. Until we eliminate coverture in the law, we will not eliminate domestic violence.

The legislature needs to take a stand. Immigration law continues to treat a woman as the property of her husband by making her legal status dependent upon him. The legislature's failure to "firmly and finally reject the legal sanction and enforcement of the control of one spouse over another . . . perpetuates the inequality of women and provides the basis for violence against them."¹⁶⁷ Dependent visas contribute to a system in which men have more power and women have less power. As a result, immigration law denies a woman's autonomy:

When immigration rules render women legally dependent on their husbands in a manner that is oblivious to problems of domestic violence or make legal provisions to help battered immigrant women that assume immigrant women to have the knowledge, resources, and choices of the sort enjoyed by mainstream male citizens, these rules exacerbate immigrant women's lack of autonomy instead of helping to enhance their autonomy.¹⁶⁸

Independent visa status would change this dynamic. It would empower women to make their own decisions about when to stay with an abuser and when to leave.¹⁶⁹ Independent visa status would also empower a woman to make the transition from a victim to a survivor. Independent visa status would enable a nonimmigrant wife to choose to leave her husband, because it would allow her to legally remain in the United States and work without accessing the criminal justice system.

166. *Id.*

167. *Id.* at 155.

168. Narayan, *supra* note 6, at 144.

The INS's underlying picture of a battered immigrant woman seems to be that of an agent who has the knowledge, resources, and confidence to avail herself of the services of legal and medical experts and of social service agencies, to secure her immigration status without her spouse's cooperation, a picture of agency and autonomy that few immigrant women are likely to match. These inflated ascriptions of autonomy are then inscribed in legal policies that circumscribe further the limited autonomy of battered immigrant women. The INS evidentiary requirements reflect a frightening lack of attention to the specific vulnerabilities of battered immigrant women, *even in a context of policy changes specifically designed to address their plight.*

Id. at 153.

169. Shapiro, *supra* note 120, at 32 ("By stripping battered women of their power, the legal system re-victimizes rather than empowers.").

As long as the state refuses to take a stand by failing to grant independent visa status to all nonimmigrant women, the state will remain an enforcer of immigration laws that imprison women in abusive homes. The U-visa “exemplifies a system-wide indifference to the cultural nuances of domestic violence, and places the bride at the mercy of a new dominator, the government.”¹⁷⁰ Utilizing the criminal justice system “serves to give control to the state,” which ultimately protects male power.¹⁷¹ In the alternative, independent visas would “attend to the coercive power of the state, as well as the coercive power of battering men.”¹⁷² The government cannot prevent men from attempting to wield control over the lives of nonimmigrant women through domestic violence, but the government can remove itself from a position of control over the lives of these women. The government can stop the practice of coverture and treat nonimmigrant women as autonomous human beings with rights equal to those of their husbands. The government can grant independent visa status to women entering the United States on spousal visas.

V. CONCLUSION

Current immigration law, consequently, “seem[s] more concerned with ‘policing the borders’” between non-citizens and citizens than with helping to make empowered citizens of immigrant women.”¹⁷³ According to Gloria Anzaldúa, “[b]orders are set up to define the places that are safe and unsafe, to distinguish *us* from *them*.”¹⁷⁴ Because nonimmigrant women are not citizens, their problems are not seen as our problems. The walls of homes become borders in and of themselves—allowing larger society to relegate terror to the domestic front, to label domestic violence a private problem, and to turn the other cheek. For nonimmigrant women who are victims of domestic violence, danger lies on both sides of the border. “A border is a dividing line, a narrow strip along a steep edge . . . an unnatural boundary.”¹⁷⁵ The unnatural boundary in immigration law that has divided women who are married to permanent residents and those who are married to temporary workers is not only artificial, it is deadly. Along this border “the Third World grates against the first and bleeds.”¹⁷⁶ Living in the United States without recognizable, enforceable rights as autonomous human beings is home for nonimmigrant women: “This is [their] home / this thin edge of /

170. Markee, *supra* note 131, at 294.

171. Naomi Cahn, *Policing Women: Moral Arguments and the Dilemmas of Criminalization*, 49 DEPAUL L. REV. 817, 820-21 (2000).

172. Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 859-60 (2000) “Not only does a focus on crime control deflect attention from other anti-domestic violence strategies, crime control policies result in greater state control of women, particularly poor women.” *Id.* at 805.

173. Narayan, *supra* note 6, at 144.

174. ANZALDUA, *supra* note 133, at 3.

175. *Id.*

176. *Id.*

barbwire.”¹⁷⁷ Because of the excessive policing of the border between dependent visa holders and independent visa holders, nonimmigrant women are locked into a political space that is neither safe nor secure. Until independent visa status is granted to all nonimmigrants, the state has failed to provide abused nonimmigrant women with any choice other than to live with terror. Under current immigration law, an abused nonimmigrant woman with a dependent visa either chooses to access the criminal justice system, which carries with it the terror of deportation and economic destitution, or she chooses to stay with her abusive husband, which carries with it the terror of physical, sexual and emotional violence, including the fear of death. It is time that battered nonimmigrant women have a real choice, and it is time for the state to eliminate coverture in immigration law.

In passing the Battered Immigrant Women Protection Act of 2000, Congress intended to continue the goal outlined in the Violence Against Women Act—to “remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.”¹⁷⁸ However, they failed to remove legal barriers because they relied too heavily on the criminal justice system. The U-visa requires abused nonimmigrant women to depend upon a system in which they have little trust due to cultural barriers, language barriers, and experiences of racial discrimination. Because “many battered women do not come to the attention of the criminal justice system,”¹⁷⁹ the U-visa’s reliance on that system to provide aid to domestic violence victims inevitably excludes some of the women it seeks to help. The U-visa continues to place power in the hands of the state and the husbands but not nonimmigrant women with dependent visas. Independent visa status would do what no Congressional act has yet been able to do: unlock the chains of coverture and grant H-4 visa holders, women like Ankita, a chance for freedom.

Karyl Alice Davis

177. *Id.*

178. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(1), 114 Stat. 1464, 1518 (2000).

179. Coker, *supra* note 172, at 859-60.