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AFFIDAVITS ARE FOREVER: PUBLIC CHARGE, DOMESTIC VIOLENCE, AND THE ENFORCEABILITY OF IMMIGRATION LAW'S AFFIDAVIT OF SUPPORT

> "It's been a long time financially supporting someone who abuses me. How can an American living at ... poverty level provide a home for themselves separate from a home for their abuser? And living with an abuser, how can the American be safe or have the right to pursue happiness in their own home that they have paid for with their own labor? Rather, the American is an indentured servant to the abuser, or maybe an unhappy slave." [1]

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***71 INTRODUCTION**

Since the late 1800s, the United States has denied entry to persons who may rely on government assistance for their support or become a "public charge."[2] The "public charge" ground of inadmissibility to the United States is, as it has always been, a prominent issue in ongoing and hotly contested immigration debates across public arenas and legal scholarship, with shifting notions of what characterizes a "public charge." But despite the volume of the debate, legal scholarship has not fully confronted an important element of the public charge provisions: affidavits of support.[3] To reduce the possibility that an immigrant will become a public charge, provisions introduced in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 require that a person who petitions for a family member to immigrate permanently to the United States sign a legally enforceable Affidavit of Support. Affidavits of support were designed to benefit the government by shifting financial responsibility from the public to individual sponsors. In other words, the petitioner-sponsor must sign an affidavit for the intending immigrant to ensure that the immigrant will not fall into poverty and rely on government assistance. Some have criticized this requirement as hostile to a welfare state and punitive to low-income petitioners. But these affidavits have another dark side: they can be wielded against victims of abuse to force them--without recourse and potentially in perpetuity--to support their own abusers. And lest there be any doubt, women are overwhelmingly those most affected.[4]

***72** Abusive relationships are characterized by the abuser attempting to exert power and control over victims, through any means possible.[5] Leaving an abusive relationship is difficult and the act of leaving often increases the danger to the victim.[6] Abusers use many tactics beyond physical abuse, including financial and psychological abuse, to attempt to maintain control even after a victim has left the relationship.[7] Ongoing contact and harassment can prevent the victim from moving forward and force her to revisit traumatic experiences.

Affidavits of support provide a tool that an abuser can use to perpetuate a connection with and control over aspects of his victim's life. Any obligation to support an abuser, and especially one that might never end, perpetuates the trauma of the relationship. Merely being obligated to pay support is harmful and inhibits the victim's ability to move forward by perpetuating the abusive relationship and preventing closure.[8] For example, when an abuser takes actions to limit his victim's financial options, he can have an ongoing daily impact on her ability to support herself and her children.[9] Moreover, this forced connection can be its own form of violence. When a victim feels that the legal system will not protect her, this can lead to losing a sense of autonomy and falling into a state of learned helplessness.[10] The opening quote of this article is one articulation of the frustration and helplessness that affidavits of support can impose.

***73** Should there be limits to the liability imposed by the affidavit of support on sponsors who are victimized by an immigrant they sponsored? The United States has one of the highest rates of divorce in the world[11] and a high incidence of domestic violence.[12] To be clear, there is no evidence that abuse by sponsored immigrants is any more prevalent than in the general population and this Article should not be mistaken as stating as much. Indeed, foreign-born residents in the United States commit criminal offenses at lower rates than native-born citizens.[13] But given the rates of domestic violence in the United States it is virtually guaranteed that U.S. citizens and lawful permanent resident (LPR) sponsors experience abuse by their sponsored immigrant spouse. A growing body of case law has explored implications that arise from the intersection of affidavits of support

and family law, from marriages that simply did not work to instances of fraud and domestic abuse. Litigation to enforce affidavits of support is increasingly common in both state and federal courts. This Article explores the federal legislation that created and implemented affidavits of support and the case law that has rigidly rejected appeals for equitable adjustments in enforcement when a U.S. citizen or LPR sponsor an immigrant who then abuses her.

Part I of this Article provides a brief background on the central role that family relationships play in the immigration system, examining family- ***74** sponsored immigration and the power dynamics that it creates within families. It also explores the deep roots of public charge determinations in the context of family immigration. Part II investigates the affidavit of support as currently mandated in immigration law. Part III describes the enforceability issues that arise around affidavits of support, including jurisdictional concerns, statutory and regulatory termination events, and the rejection of contract and equitable claims to end obligations of support brought by sponsors. This examination highlights the ways in which the law fails to acknowledge and ameliorate the cruelty that results when sponsors experience domestic abuse at the hands of the sponsored immigrant they are required to support. While litigation on the issue of affidavits of support generally has focused on enforceability of the affidavit by the immigrant against the sponsor, in some instances, the sponsor has sought to end support when she has been abused by the immigrant she sponsored. In such instances, the law is inadequate to provide her relief, and instead forces the woman to continue supporting her abuser. Part IV contrasts the absence of domestic violence considerations in the affidavit of support context with reforms in other areas of immigration law that address the ways in which immigration law can serve as a tool of power and control for abusers. These provisions of immigration law related to abuse usually provide immigration remedies to ameliorate the power that immigration law gives to abusive sponsors. When the situation is reversed and the sponsor is the person being abused, immigration relief is irrelevant (the sponsor is a U.S. citizen or LPR), but there is no corresponding relief from the immigration law provisions mandating financial support. As such, immigration law can cause severe and lasting harm to U.S. citizens and LPRs. Finally, Part V suggests simple reforms to bring the regulation and enforcement of affidavits of support in line with provisions that protect victims of domestic violence in immigration law.

I. THE CENTRALITY OF FAMILY RELATIONSHIPS IN IMMIGRATION LAW

A. Family Petition Process

Immigrating to the United States is a difficult and costly process. Moreover, hopeful immigrants must operate within a system that concentrates power in some individuals within relationships and subordinates others. Outside of several forms of humanitarian relief that make up a small percentage of migration, immigrants are admitted to the United States in essentially three different ways, each with its own complexities and limitations. These pathways include a petition by a close ***75** family member, [14] a petition by an employer, [15] or selection in the diversity visa lottery. [16]

Historically, the largest group of immigrants is of those lawfully admitted to the United States based on relationships with family members. [17] Immigration law facilitates family-based immigration by permitting U.S. citizens and LPRs to petition for family members meeting certain requirements to come live permanently in the United States. The law prioritizes certain immigrants' petitions based on the type of relationship involved and the citizenship and immigration status of the petitioning relative in the United States. A U.S. citizen is able to petition for a spouse; children, whether married or unmarried; parents; and brothers and sisters. [18] An LPR may petition for a spouse and unmarried children who are under age 21. [19] The number of visas available varies and is allocated to ***76** categories organized around the status of the petitioner and the type of relationship involved. As a result, some petition types provide quick paths to entry and other types languish. [20] The power that U.S. immigration law places with U.S. citizens and LPRs makes it very difficult for vulnerable immigrant spouses to leave violent relationships and allows abusers who are U.S. citizens or LPR sponsors to leverage immigration law as a powerful tool of control. [21] As elaborated below, immigration provisions that require affidavits of support can invert this dynamic and allow an abusive immigrant to use immigration laws to impose or prolong control over the life of his U.S. citizen or LPR sponsor.

After a person with lawful status in the United States chooses to petition for a relative based on a qualifying relationship, [22] the intending immigrant then must show that he is “admissible,” a demonstration that takes into consideration numerous factors. [23]

A key restriction that the United States has long imposed concerns people the federal government suspects are not ***77** going to be able to take care of themselves without economic assistance after entering the country. [24]

B. Public Charge as a Primary Factor in Determining Admissibility

A critical ground of inadmissibility that this Article will explore makes persons seeking admission to the United States inadmissible if they are "likely at any time to become a public charge." [25] The term "public charge" is a term of art with shifting meaning over time. Among the current statutorily identified indicators of whether a person is "likely at any time to become a public charge" are age, health, family status, assets, and education and skills. [26] This judgment involves conjecture regarding whether a person might become dependent on certain government benefits in the future. [27]

1. The Deep Roots of Public Charge Exclusion

Despite its aspiration to be a "nation of immigrants," [28] the United States has never really welcomed *everyone* to its shores. Since the beginning of European settlements, the land that is now the United States has managed to exclude people on many grounds, including religion, ideology, health, and, especially, poverty. [29] Immigration policies preventing the admission of immigrants likely to become public charges predate federal immigration statutes [30] and have been part of U.S. immigration policy since the ***78** Immigration Act of 1882. [31] The 1882 law excluded from entry into the United States "any person unable to take care of himself or herself without becoming a public charge." [32] This prohibition has always been anticipatorily enforced, with those lacking means being discouraged or prohibited from traveling to the United States. Even so, between 1892 and 1930, 205,601 people were excluded from the United States as "likely to become a public charge." [33] For more than a century, this provision persisted as a common reason for excluding immigrants from the United States. [34] The essence of this provision survived, including through a major revamping of U.S. immigration law in 1952, [35] and continues to this day. [36]

So, it is not a surprise that the U.S. government clings to this ground of inadmissibility, shifting the potential burden of providing for an immigrant from the government to the immigrant's sponsor or sponsors who have demonstrated an ability and willingness to do so. In the most modern version of this approach, this goal is advanced principally by requiring a legally enforceable affidavit of support as part of the family immigration process.

Historically, immigration laws have not expressly stated who is "likely to become a public charge," except for identifying personal characteristics of the immigrant seeking admission to consider in making a public charge determination. These factors include age, health, family status, assets, resources, financial status, education, and skills. [37] This test provided ample ***79** room for the system to operate in ways that are biased against women and immigrants of color. [38]

The most recent shift in public charge determinations occurred last year. On February 2, 2021, President Biden issued an Executive Order directing the Department of Homeland Security (DHS) to review the implementation of the 2019 public charge rule under the Trump administration. [39] As part of the review, DHS determined that it would not enforce the 2019 rule and instead published a new rule that largely reinstates its previously-issued 1999 interim guidance. [40] The agency indicated that it will be using the 1999 guidance until the new rule takes effect. Under the 1999 guidance, the receipt of Medicaid, public housing, or nutrition assistance are not considered by DHS as part of the public charge inadmissibility determination. [41] The 1999 guidance provides a working definition of "a public charge" as someone "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." [42] Further, an internal agency document commonly referred to as the Pearson Guidance requires that immigration officers "assess the financial responsibility of the [immigrant] by examining the totality of the alien's circumstances *at the time of his or her application* * * * The existence or absence of a particular factor *should never* ***80** *be the sole criterion* for determining if an [immigrant] is likely to become a public charge." [43] Refugees, immigrants

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granted asylum or withholding of removal, and victims of trafficking are among the small group of people who are not subject to public charge determinations, in contrast to family-sponsored immigrants.[44]

There is extensive scholarship on historical and normative understandings of what constitutes a "public charge," but this Article will not engage in that aspect of the debate. Instead, this Article will focus on firmly entrenched provisions regarding affidavits of support that have largely evaded public debate even as they directly affect millions of immigrants, U.S. citizens, and LPRs.

2. Enhancing Enforcement--1996 Reforms and Binding Affidavits of Support

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) established a five-year waiting period for LPRs to access federal public benefits for which they would otherwise be eligible, including the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Medicaid, the Children's Health Insurance Program (CHIP), and the Supplemental Security Income (SSI).[45] That same year, President Clinton also signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA).[46] Among its many anti-immigrant provisions, IIRAIRA for the first time created and mandated for most of family-sponsored immigration ***81** a legally enforceable affidavit of support.[47] In the family-sponsored immigration process, a sponsor--the person with lawful immigration status who petitions for the intending immigrant--must complete this affidavit. This affidavit, described more fully below, requires that sponsors of all family-based immigration to the United States demonstrate that they are able to maintain the sponsored immigrant at an income level not less than the 125% of the poverty level. This change "toughened the public-charge exclusion by significantly tightening the affidavit-of-support provisions to expressly make the affidavits legally enforceable in courts of law."[48]

This enforceable affidavit requirement affects almost all petitions filed by U.S. citizens or LPRs who petition for a relative to immigrate to the United States permanently.[49] The affidavit is intended to provide another mechanism to ensure that the prospective immigrant will not fall into poverty and become a public charge who will create an expense to the government. It also effectively dissuades some potential petitioners from filing immigration petitions for qualifying relatives because of the onerous and lasting implications of signing the document. Since the creation of this requirement, the government has received millions of these affidavits in conjunction with family immigration petitions.[50] Increasingly, as the ***82** awareness of the existence and potential use of these affidavits has spread, litigation over the enforceability of these affidavits has increased in a variety of contexts. Within the complicated range of litigation that has arisen, there have been outcomes that are beneficial to immigrants who suffer in abusive relationships. But outcomes also include instances in which the affidavits are used as tools of ongoing abuse by immigrants who have perpetrated domestic violence against their sponsors. To understand the range of outcomes, a deeper look at the nature and content of these strange documents is required.

II. AFFIDAVITS OF SUPPORT

The Affidavit of Support is a legally enforceable contract between a U.S. citizen or LPR who is petitioning for a relative and the United States.[51] In addition to binding these parties, the affidavit creates for the sponsored immigrant an independent claim against the sponsor for support.[52] Creative editing of the terms of this contract is not allowed, and this affidavit must be executed using a government-issued form[53] created by U.S. Citizenship and Immigration Services (USCIS).[54] In contrast to the ubiquity of these ***83** forms in family immigration, other smaller categories of immigrants are not required to have a sponsor file an affidavit of support on their behalf when filing for lawful permanent residence. These include refugees and asylees, special immigrant juveniles, self-petitioners under the Violence Against Women Act, and survivors of trafficking or other serious crimes.[55] The form is intimidating, long, complicated, and requires supporting documentation.[56] The document itself is now ten pages long,[57] with an additional seventeen pages of instructions.[58] It requires disclosure of information ranging from basic data on the intending immigrant to detailed financial information. The requirements for corroborating documentation by the sponsor mean that most submissions will include scores of pages of supporting information in addition to the form itself.

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Specifically, via this affidavit, the sponsor must establish that he has "enough income and/or assets to maintain the intending immigrant(s) and the rest of [the] household at 125 percent of the Federal Poverty Guidelines." [59] As proof, the sponsor must submit supporting documentation on assets, employment, and taxes for the past three years.

The affidavit of support also includes contractual language requiring the sponsor to make significant commitments. These commitments can be enforced by the government against the sponsor and intending immigrant. As to the intending immigrant, the sponsor agrees to "[p]rovide the intending immigrant any support necessary to maintain him or her at an income that is at least 125 percent of the Federal Poverty Guidelines for his or her household size." [60] The affidavit warns that if "you do not provide ***84** sufficient support to the person who becomes a permanent resident based on the I-864 that you signed, that person may sue you for this support." [61]

Further, the affidavit of support also warns the signer that the document creates "a contract between you and the U.S. Government. The intending immigrant's becoming a permanent resident is the 'consideration' for the contract." [62] Therefore, it continues, "[i]f a Federal, state, local, or private agency provided any covered means-tested public benefit to the person who becomes a lawful permanent resident based on a Form I-864 that you signed, the agency may ask you to reimburse them for the amount of the benefits they provided." [63] If such reimbursement is not made, "the agency may sue you for the amount that the agency believes you owe." [64]

Importantly, as discussed more fully below, the affidavit of support lays out a complex process that provides the exclusive means to end the otherwise eternal duration of the agreed-upon responsibility to provide support. [65] Lastly, to facilitate enforcement litigation, the sponsor agrees "to submit to the personal jurisdiction of any Federal or State court that has subject matter jurisdiction of a lawsuit against me to enforce my obligations under this Form I-864." [66]

With the submission of the signed affidavit, the sponsor demonstrates the ability and commitment to financially support the intending immigrant at 125% of the Federal Poverty Guidelines. [67] In practice, this legal responsibility is enforced in two ways. First, if the sponsor fails to support the sponsored immigrant, as required by the contract, and the immigrant receives public benefits, [68] then the government may request that the sponsor reimburse the government agency for the costs of providing the ***85** immigrant with public benefits. [69] If the sponsor fails to do so, the agency may sue for recovery of costs. [70] Second, sponsored immigrants, who are an intended beneficiary under the contract, have standing in all state and often in federal courts to bring claims against the sponsor to enforce the contract and seek payment of support. [71]

In order to qualify as a sponsor who can sign an affidavit of support, a person must be a citizen or national of the United States or an LPR who is at ***86** least 18 years of age, [72] be domiciled in the United States, and demonstrate the means to maintain an annual income equal or no less than 125 percent of the federal poverty line. [73] In order to demonstrate the means to maintain income, the sponsor is, at minimum, required to submit a certified copy of the individual's federal income tax return for the three most recent taxable years. The sponsor must also submit a written statement executed under oath or under penalty of perjury stating that the copies are legitimate. [74]

If the sponsor does not meet the income requirement, he is permitted to secure an additional sponsor who will independently commit to supporting the immigrant relative. [75] However, adding a joint sponsor does not relieve the principal sponsor of the requirement to file an affidavit of support. [76] When joint affidavits of support are filed, they are enforceable against both the principal sponsor and the joint sponsor. [77] A joint sponsor must execute a separate affidavit of support on behalf of the intending immigrant(s) and be willing to accept joint and several liabilities with the sponsor or substitute sponsor. [78]

Given the millions of affidavits of support that have been executed as part of the immigration process, efforts to enforce them inevitably present a myriad of factual and legal issues.

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*87 III. ENFORCING AFFIDAVITS OF SUPPORT

A. Jurisdiction and Type of Enforcement Actions

Recall that in signing the affidavit of support the sponsor agrees "to submit to the personal jurisdiction of any Federal or State court that has subject matter jurisdiction of a lawsuit against [sponsor] to enforce [sponsor] obligations under this Form I-864."[79] State courts have found jurisdiction over affidavit-of-support enforcement actions, which are often framed as contract disputes related to the enforceability of the affidavit of support.[80] If not pursued as a contract action, enforcement cases occur within the context of a divorce action; the sponsored immigrant seeks to obtain support from the sponsor under the affidavit.[81] Though state courts routinely exercise jurisdiction, their stated rationales vary. Generally, courts simply fold consideration of I-864 issues into divorce and support actions.[82] In these cases, a sponsored immigrant risks not receiving any support if they are not entitled to alimony and a court tries to apply state factors for spousal support[83] but fails to recognize that there are few ***88** limitations on the enforceability of the affidavit of support.[84] Other courts rely directly on a federal statute, 8 U.S.C. § 1183a(e)(1), which provides, "[a]n action to enforce an affidavit of support executed under subsection (a) may be brought against the sponsor in any appropriate court ... by a sponsored alien, with respect to financial support."[85] As Judge Posner noted, spousal support and contract rationales are distinct, and "[t]he right of support conferred by federal law exists apart from whatever rights [a sponsored immigrant] might or might not have under [state] divorce law."[86]

Since its implementation almost twenty-five years ago, claims under the affidavit of support also have been litigated in federal courts in Alabama, California, Colorado, Delaware, Florida, Georgia, Indiana, Louisiana, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Texas, Utah, Virginia, Washington, and West Virginia,[87] as well as in the Second, Fourth, ***89** Sixth, Seventh, Ninth, and Eleventh Circuits.[88] These cases generally proceed as contract matters under the above-mentioned federal statute, 8 U.S.C. § 1183a(e)(1).

Where immigrants have filed multiple claims, federal courts have been cautious in entertaining collateral attacks of prior state court judgments.[89] ***90** Pursuant to the *Rooker-Feldman* doctrine, federal courts lack subject matter jurisdiction when (1) the federal plaintiff has lost in state court; (2) the federal plaintiff complains of injuries caused by the state court's rulings; (3) those rulings were made before the federal suit was filed; and (4) the federal plaintiff is asking the district court to review and reject the state court rulings.[90] With respect to the enforceability of the affidavit of support, a federal court generally will lack jurisdiction to enter a judgment pertaining to the actionable time for which support was sought in a state court action.[91]

B. Enforcement Actions by Government

Under the 1996 welfare and immigration laws, sponsors who file an affidavit of support have the legal responsibility to support their immigrant relative and repay certain benefits that the immigrant accessed.[92]

1. Ability to Bring Suit to Enforce the Affidavit to Recoup Benefits

If a sponsored immigrant applies for and receives public benefits, the issuing state or federal agency may request reimbursement from the sponsor.[93] However, while the law requires that the relevant agency issue a request for reimbursement as a prerequisite to suit, it does *not* require the agency to sue the sponsor for benefits.[94] If the agency decides to bring an action against the sponsor, it must do so within the statute of limitations of ***91** ten years.[95] The specific federal benefits for which sponsors may be liable to reimburse include TANF, SSI, SNAP, nonemergency Medicaid, and CHIP.

Regulations from 2006 make clear that states are not obligated to seek reimbursement from sponsors. They further establish that a state cannot collect reimbursement for services until it notifies the public that those services are considered means-tested

public benefits for which sponsors will be liable. [96] In light of this agency discretion, there have been few documented cases in which a state or federal agency has sued a sponsor to recover the costs of benefits provided to the immigrant. [97]

2. Deeming and Impact of the Affidavit of Support on Ability to Qualify for Public Benefits

When a federal or state agency is determining whether an LPR is financially eligible for public benefits, the law sometimes requires the agency to "deem" the income of the immigrant's sponsor or the sponsor's spouse as available to the immigrant, without regard to whether that income is actually available to the immigrant. The sponsor's income and assets are then ascribed to the immigrant, which may disqualify the immigrant for the program. [98] For example, if Peter is an immigrant sponsored by his wife Julia, and Peter applies for Medicaid, the state Medicaid agency in determining Peter's eligibility would include Julia's income as part of Peter's household income, perhaps making him ineligible for benefits. The deeming rules would apply even after the dissolution of Peter and Julia's marriage, unless enforceability is terminated (as discussed in detail below).

Domestic violence victims and immigrants who have food insecurity or are homeless often are exempt from sponsor deeming for limited periods of ***92** time. [99] For battered spouses and children to meet this exception, battery or extreme cruelty must have been suffered at the hands of a qualifying spouse or a parent, or by a member of the household. To qualify for an economic exemption, the benefits agency must determine that a sponsored immigrant would be unable to obtain food and shelter after taking into account the immigrant's resources and receipt of assistance by other individuals, including the sponsor. [100] These exemptions to deeming generally last for twelve months. However, the benefits eligibility may continue if the sponsored immigrant is able to prove that the battery or extreme cruelty has been recognized in an order of a judge or by immigration authorities and that such battery or extreme cruelty has a substantial connection to the need for the benefits. [101] Further, immigrant victims of domestic violence may qualify for other forms of immigration relief, described briefly below. As discussed in Section 3E, when abuse is perpetrated against a sponsor, the law lacks symmetry and fails to take into account the economic disruptions that domestic violence can create, regardless of the victim's citizenship status.

C. Enforcement by Sponsored Immigrant

To date, efforts to enforce affidavits of support have largely involved private actions by sponsored immigrants. Legal liability under the affidavit begins as soon as the intending immigrant obtains her lawful permanent residence. [102] The Form I-864 affidavit of support is enforced as a contract, with the sponsored immigrant as a third-party beneficiary with respect to the promise of support made by the sponsor to the U.S. Government. [103] Separate and distinct from contract claims, there may also be child or spousal support obligations awarded under state family laws. [104] There is no ***93** statute of limitations on a sponsored immigrant's ability to enforce the affidavit of support. [105] Generally, sponsored immigrants are able to enforce the affidavit of support for all the years during which the sponsored immigrant's annual household income fell below 125% of the federal poverty line, starting from the time the sponsored immigrant attained lawful permanent residence and ending only once a condition that would terminate the sponsor's obligation is met. [106]

When a sponsored immigrant seeks to enforce her right to support under the affidavit, she may not have in her possession a copy of the signed document. As the sponsor is the one with the agency to file the immigration paperwork, he may be the only one with a copy of the document. Sponsors may also intentionally hide their affidavits--indeed, control of immigration-related paperwork and documents is a common tool of power and control in abusive relationships. [107] In such situations, the beneficiary may file a Freedom of Information Act (FOIA) [108] request to obtain a copy of her whole ***94** file (also known as Alien File or A-File). [109] In addition, 8 C.F.R. § 213a.4(a)(3) authorizes issuance of a subpoena to USCIS for obtaining the affidavit of support to be used in an enforcement case brought by either an agency or sponsored immigrant. [110]

The statute further requires disclosure to the government of the sponsor's personal information, including their last known address [111] and social security number, which is deeply troubling in instances where the sponsor is a victim of abuse yet the

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sponsored immigrant will be able to access this personal information in an enforcement action. [112] Moreover, sponsors are civilly liable and subject to penalty if they fail to notify the government of any change to their address [113] For victims of domestic violence who are immigrants, these provisions can be lifelines, counteracting the use of information and document control by the abuser. But for sponsors who have suffered abuse, this disclosure is yet another obstacle to independence from the abuser as the abuser is able to access sensitive personal information and could use such information to continue the abuse. Domestic violence issues, including confidentiality of information, are discussed further below.

***95** *D. Statutory and Regulatory Exceptions to Eternal Enforceability*

As discussed above, it is now well settled that the affidavit of support provides the sponsored immigrant a private cause of action against the sponsor should the immigrant fall into poverty and the sponsor fail to maintain support. [114] Under the terms of the affidavit of support, only six specified events end the sponsor's support obligations. [115] Of these six events, only two are specified by statute; [116] the others were created by regulation. Each of the pathways to termination of enforceability presents interpretive and factual questions, but the substance of the six routes have not been subject to serious legal challenges. Critically, these criteria include no pathways to avoid liability when the sponsor has been subject to abuse.

1. Sponsored Immigrant Becomes a U.S. Citizen

The naturalization of the immigrant as a U.S. citizen terminates enforceability of the affidavit of support and is one event specifically identified by statute as doing so. [117] Sponsored immigrants are generally able to apply to become U.S. citizens after five years of lawful permanent residence, provided they meet a host of other requirements. [118] If sponsored immigrants are married to U.S. citizens, the timeline for naturalization is shortened to three years of lawful permanent status. [119] However, there is no requirement that an immigrant apply to become a U.S. citizen. In fact, incidents of domestic violence perpetrated by an immigrant could prevent the immigrant from qualifying for citizenship, because naturalization requires that the immigrant be a person of "good moral character." [120] Finding of lack of good moral character can be based on a number of acts or convictions; including felonies, lesser crimes considered to involve moral ***96** turpitude; and certain non-criminal behavior, such as being a habitual drunkard. [121]

Consequently, if U.S. citizen Jane sponsors her husband and he never applies to naturalize, this terminating event will never occur, even if the husband intentionally avoids naturalization specifically for the purpose of perpetuating Jane's obligation of support. Even if Jane is subject to incidents of domestic violence and reports these occurrences to law enforcement such that there is an open criminal case against her husband, this terminating provision will not have been met. These reports may also disincentivize Jane's husband from applying for citizenship because they could serve as flags on her husband's naturalization application that he cannot meet the requirement to show good moral character. [122]

2. The Sponsored Immigrant is Credited with Forty Qualifying Quarters of Coverage under Title II of the Social Security Act

Crediting with qualifying quarters of work under the Social Security Act is the other terminating event specifically created by statute. [123] Sponsored immigrants earn quarters based on their work history in the United States. A quarter is the basic unit used to determine how much coverage a worker has earned for social security insurance purposes based on earnings during a calendar year. [124] An individual can personally earn no more than four quarters of credit in a given year, even if they are high earners. The government allows for the accrual of credits in several ways: (a) the sponsored immigrant has already earned qualifying quarters of work credit ***97** that can be posted to a valid social security account in her name; [125] (b) the sponsor spouse earned qualifying quarters *during the marriage* that can be credited to the sponsored spouse; [126] (c) an immigrant child

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can be credited qualifying quarters that are earned by a parent while the immigrant child was under 18 years old; [127] and (d) any combination of the above. [128]

***98** Sponsored immigrants who do not work and are unable to earn credit based on any of the above options, simply do not earn any quarters of coverage. Commonly, as noted above, married couples are able to share quarters with each other. [129] The ability to share quarters ends upon a divorce. Post-divorce, any quarters formerly shared with the former spouse are no longer credited to the immigrant. [130] In other words, a sponsored immigrant can share the quarters with his sponsor wife, but the sharing of quarters ends upon divorce. [131]

In litigation related to the enforceability of the affidavit of support, the issue of sharing quarters has resulted in confusing outcomes, particularly when it comes to imputing to the sponsored immigrant the qualifying quarters earned by the sponsor. For example, in *Gross v. Gross*, the sponsored immigrant sued to enforce the affidavit of support against her husband and his co-sponsor parents after a divorce. [132] The court eventually ***99** ruled that her husband was not liable because "the undisputed evidence is that [the sponsored immigrant] and [her husband] accumulated more than 40 qualifying quarters during their marriage." [133] Accordingly, the court continued, "[the sponsors] no longer had a contractual obligation to support [the sponsored immigrant] as of the time of the alleged breach." [134]

In an earlier case, *Davis v. Davis,* the court awarded spousal support for ten years, presumably because the sponsored immigrant spouse *could* achieve forty qualifying quarters in ten years. [135] However, there is no guarantee that someone will achieve forty quarters in her lifetime, and the contractual obligation is not predicated on her *potential* to work. If a couple is married, the sponsored immigrant may share quarters with her spouse, thus potentially diminishing her obligation to support.

The status of the marriage impacts the continuing ability to share quarters. In *Davis*, the sponsor husband filed a complaint for annulment and the sponsored immigrant wife counterclaimed for legal separation. The court granted the legal separation and the husband later successfully argued that he shared quarters with his wife even though they were separated, thus shortening the period of his obligation. Had a divorce or annulment been granted, the sponsored immigrant would not have been credited with her former husband's ongoing work quarters. [136]

In a case from the Central District of California, *Cyrousi v. Kashyap*, the court found the sponsor's support obligation does not terminate "when an immigrant 'is' credited with 40 quarters of work but instead when an immigrant 'has worked' or 'can be credited with' 40 qualifying quarters of coverage." [137] In this case, the sponsored immigrant husband was credited with his own quarters in addition to those of his current wife, who he married after divorcing his sponsoring wife. In this case, the former wife sponsor was not liable for supporting him because he was credited with 40 quarters in the subsequent marriage. [138]

This pathway to termination does not contemplate the possibility of abuse in a relationship. A wife sponsor seeking to use her own work history ***100** to terminate enforceability of the affidavit may be incentivized to delay divorce despite the presence of abuse.

3. The Sponsored Immigrant No Longer has Lawful Permanent Status and Leaves the United States Permanently

Complications often arise related to the maintenance of immigration status. By regulation, terminating the enforceability of the affidavit is not accomplished simply because the sponsored immigrant ceases to be an LPR. [139] The sponsored immigrant must also leave the United States to terminate liability. [140] For example, sponsors have argued against enforceability of the affidavit when their sponsored immigrant is awaiting the removal of "the condition" of their conditional permanent residence, a status imposed when immigration status is awarded based on a marriage that is less than two years old. [141] In *In re Marriage of Tamboura*, the sponsor husband argued that his obligation to support his wife ended, claiming that she committed fraud when applying for immigration relief and therefore should be subject to deportation proceedings. [142] The family court found

no fraud and held Mr. Tamboura had to pay spousal support. [143] In general, these arguments fail because--despite the delays and uncertainty in the process of converting conditional status to permanent status--the sponsored immigrant has not lost her lawful permanent status when she applies to remove the condition and has not left the United States.

Notably, the terminating criteria also is not met upon conviction for domestic violence; the obligation does not end until the sponsored ***101** immigrant is ordered deported from the United States and actually departs from the country, a process that can stretch for years through appellate review. [144] As a result, an abusive sponsored immigrant may be subject to deportation proceedings based on his abusive conduct, yet perversely, the victim sponsor must continue to support her abuser throughout the proceedings.

4. The Sponsored Immigrant Receives a New and Independent Grant of Lawful Permanent Status

As noted above, merely losing status is not enough to terminate the obligation to support if the immigrant remains in the United States. In very limited circumstances however, an immigrant may be found removable yet permitted to remain in the United States on a new and independent basis. This is akin to the immigrant leaving, and later reentering in a different manner, but the actual exit may not be required to effectuate the new grant of LPR status. In such rare instances, immigration regulations provide that when an immigrant "[o]btains in a removal proceeding a new grant of adjustment of status as relief from removal" the original affidavit is replaced by any new affidavit required by the subsequent petition. [145] Thereafter, "any individual(s) who signed an affidavit of support or an affidavit of support attachment in relation to the new adjustment application will be subject to the obligations of this part, rather than those who signed an affidavit of support or an affidavit of support attachment in relation to an earlier grant of admission as an immigrant or of adjustment of status." [146] Until such an event happens and a new basis for status is affirmed, the original affidavit of support remains in effect.

5. The Citizen or LPR Sponsor Dies

Death relieves the sponsor of liability, meaning that actions against the estate of a deceased sponsor will fail. The death of one sponsor who had a support obligation under an affidavit of support does not terminate the support obligation of any other sponsor, substitute sponsor, joint sponsor, ***102** or household member with respect to the same sponsored immigrant. [147] Cases of abuse, injury, or disability short of death do not terminate the support obligation, as discussed further below.

6. The Sponsored Immigrant Dies

Death of the sponsored immigrant terminates the sponsor's responsibility under the affidavit of support. Because the affidavit of support is a contractual agreement by the sponsor to use his financial resources to support the sponsored immigrant and prevent her from becoming a public charge, once the sponsored immigrant dies, the government no longer has public charge concerns. Of course, public policy and basic morality dictate that hastening the death of a sponsored immigrant is not a path to incentivize.

E. Failed Attempts to Expand Defenses to Enforcement

The statutory and regulatory defenses discussed above are narrow, forcing many sponsors to support immigrants even after their family situations have altered radically. Importantly, the contractual commitment of the sponsor does not end if and when the sponsor and the sponsored immigrant divorce, become estranged, or if the sponsor loses contact with the sponsored immigrant. [148] This obligation of support remains unchanged, even when a premarital agreement or a divorce agreement attempts to eliminate the responsibility. [149] This is a welcome and positive feature for those immigrants who are victims of domestic violence at the hands of their sponsor, but in cases where the sponsor is abused by the immigrant, the failure of the law to take abuse into account during enforceability of the ***103** affidavit means that some sponsors are left with a legal obligation to support their abusers.

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In response to the narrow statutory and regulatory paths to ending their obligations, sponsors trying to evade enforceability of the affidavit of support have proposed numerous defenses to contract enforcement, with very little success. [150] Time and time again, courts have been reluctant to enforce equitable defenses such as fraud in the inducement, [151] unconscionability, [152] and rescission. [153]

The discussion below identifies the most common defenses and illustrative cases that highlight the issues they raise. In each, courts considered defenses against contract or support liability that have traction in other settings. But in these cases, the courts consistently elevated the public charge concerns of the government above the arguments of sponsors and denied exceptions to ongoing enforceability.

1. Duty to Mitigate

The support obligation under the affidavit of support continues even when the sponsored immigrant is willfully underemployed or unemployed. Several courts have found that there is no duty on the part of the sponsored ***104** immigrant to mitigate and to seek employment. [154] For example, in *Li Liu v. Kell*, [155] the Western District of Washington addressed the affirmative defense of failure to mitigate and determined that the statute did not impose any such duty. Similarly, in *Marriage of Kumar*, the California Court of Appeals concluded that the duty to mitigate does not apply in state court actions to enforce the affidavit of support. [156] Relying on the reasoning from *Liu v. Mund*, [157] in which the Seventh Circuit Court of Appeals reversed a lower court decision imposing a duty to mitigate, the court found no mandate requiring the immigrant to mitigate in the affidavit of support statute. It further questioned whether imposing such a mandate would be sound policy. [158] In particular, the court concluded that imposing a duty to mitigate would undermine the paramount congressional objective of ensuring that sponsored immigrants do not become public charges. The court stated that the only "beneficiary of the duty [to mitigate] would be the sponsor--and it is not for his benefit that the duty of support was imposed." [159]

Because sponsored immigrants have no duty to mitigate damages by being employed and contributing to the household, a sponsor may have to support her abuser who chooses to not seek employment. This situation could be extended indefinitely if the immigrant never reaches 40 quarters and chooses not to naturalize.

2. Fraud in the Inducement

Courts have refused to entertain defenses asserted by sponsors alleging marriage fraud by sponsored immigrants. In a typical case, a sponsor claims that he was "deceived" into signing the affidavit of support. [160] While each case is factually unique, sponsors in practice have a difficult time proving that they were deceived into signing the affidavit of support. For example, ***105** in one case, a court noted that a husband had the opportunity to consult with an immigration attorney prior to signing the affidavit for his wife. [161]

Courts have also been skeptical when the sponsor claims that the sponsored immigrant, typically a wife, was using the sponsor to obtain lawful immigration status with no intention of forming a family. [162] In *Dorsaneo v. Dorsaneo*, [163] the sponsor admitted that he had signed the affidavit but had not provided support. However, one of his alleged defenses was that he signed the affidavit in reliance on his ex-wife falsely telling him that she wanted to "create a family." [164] Rejecting this argument, the court ruled that "[f]raud in the inducement cannot be a defense to an I-864 [affidavit of support] enforcement action." [165] The court reasoned that "[p]ermitting a sponsor to evade his support obligation ... is inconsistent with the purpose of the I-864 requirement, because it would place lawful permanent residents at risk of becoming dependent on the government for subsistence." [166] The statute and implementing regulations, the court said, "show that the purpose of the support obligation is to ensure that family-sponsored immigrants do not become a 'public charge.'" [167] The court ultimately concluded that, even when a sponsor produces evidence of fraud in the inducement, "he has borne the risk of being fraudulently induced into sponsoring someone,

and must satisfy his financial obligations regardless." [168] A sponsor may have been tricked into marrying an abuser, but there is no defense to liability, as the sponsor has assumed the risk of sponsorship and must support her abuser.

In a more recent case, *Rahman v. Chen*, [169] the sponsor asserted a counterclaim of fraud, along with other state law claims. The court first concluded that the *defense* of fraud in affidavit of support enforcement ***106** proceedings is "invalid as a matter of law." [170] Because a *defense* of fraud is not available, sponsors who suffer abuse at the hands of the sponsored immigrant do not get relief even if they are able to show fraud by the sponsored immigrant.

3. Res Judicata and Preclusion

Sponsors regularly argue that claims to enforce the affidavit of support are barred as a matter of claim preclusion because they should have been litigated during a prior action for dissolution of the marriage or divorce in state courts. Procedural doctrines generally prohibit the litigation of claims that could have been litigated in another action and arise from the same nucleus of operative facts. Claim preclusion would seem to apply in the context of affidavit of support litigation subsequent to family court proceedings that did consider, or could have considered, issues of support.

Many jurisdictions, however, have ruled that claims involving the affidavit of support are separate actions and that one does not bar the other even if the affidavit of support issues could have been raised in the first matter. For example, in *Marriage of Khan*, the court held that "there is no 'conflict' between federal law regarding I-864 obligations and Washington dissolution law because they are independent of each other." [171] Further, the court said:

> Nothing in the federal statutes or regulations provides that an I-864 obligation must be included in a maintenance award or otherwise be enforced in a dissolution action. On the contrary, federal law expressly provides that a spouse's I-864 obligation does not terminate upon dissolution of the marriage between the sponsor and the immigrant. [172]

The court concluded that the provision "suggests that a spouse's I-864 obligation exists independent of any dissolution proceedings, including any maintenance award." [173]

***107** Still, this view is not shared by all jurisdictions that have addressed claim preclusion in this context. Consider, for example, *Levin v. Barone*, [174] a case in which the Southern District of New York granted the sponsor's motion for summary judgment on grounds that res judicata barred the affidavit of support action filed by Levin, who was not represented by counsel. [175] The court concluded that a final judgment had been entered in the state divorce action, so res judicata attached to that judgment. [176] The court held that "claims under an Affidavit of Support can be adjudicated as part of a party's claims for support in a divorce proceeding." [177] While this outcome is plainly a minority view, it aligns with traditional common law understanding of claim preclusion. In raising res judicata defenses, sponsors must be careful to show their facts and legal basis for such arguments to prevent a dismissal of their action. For example, in *Anderson v. United States*, the sponsor claimed that the I-864 issue had been litigated in the divorce proceedings. [178] However, the court held that there was "no indication that plaintiff's I-864 claim was litigated or resolved in the state court divorce proceedings." [179] This, presumably, was an attempt to raise as a defense issue preclusion, rather than claim preclusion, on the basis that this matter was actually raised and litigated. Yet the sponsor, who had filed twenty-five affirmative defenses and six counterclaims, [180] did not show a factual or legal basis for his res judicata or preclusion defense.

***108** It may be a matter of strategy and convenience to choose to litigate the affidavit of support in a divorce action instead of a separate federal enforcement action. However, sponsored immigrants must be careful in their decision and should consider preclusion implications in their jurisdiction that a sponsor may use to seek dismissal of an enforcement claim. Indeed, there is

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no reason that abused sponsors being sued for support should not routinely and vigorously pursue preclusion arguments where they might have been raised in earlier litigation.

One of the public policy rationales for res judicata is the belief that a defendant should be able to achieve repose and not be subjected to ongoing, serial litigation. The reluctance to impose the harsh consequences of preclusion may more often than not benefit immigrant victims of abuse seeking relief from sponsors. And finding enforceability will generally serve the government's fiscal interest by providing a non-governmental avenue of support. But in situations where the sponsor is the victim of abuse by the sponsored immigrant, the refusal to recognize the preclusive effects of prior litigation means the sponsor may face abusive litigation and see no finality to the issues that she may have thought were ended by a divorce action. Litigation abuse is a common tactic of abusers and the failure to provide an end to litigation allows the abuser to use the judicial process to continue to abuse his victim. [181]

4. Unconscionability--Contracts of Adhesion and Perpetual Obligation

Defenses seeking to raise unconscionability have not been successful in limiting enforceability. For example, sponsors have attacked the affidavit as an unconscionable contract of adhesion because the affidavit of support is a “take-it-or-leave it” proposition. [182] But courts have been reluctant to find ***109** the contract unconscionable; they reason that the sponsor receives a significant benefit from the contract, namely the issuance of lawful permanent residence to the sponsored immigrant. [183] In *Baines v. Baines,* the sponsor husband argued lack of consideration and unconscionability, but the court found that the sponsor husband had been actively involved in his wife's immigration concerns and that he himself had met with the immigration attorney to sign the affidavit. [184] The court further found that he was neither coerced, nor was he an involuntary or reluctant actor in the immigration application process. [185] The inability to claim a defense of unconscionability again results in a sponsor potentially having to support her abuser in perpetuity.

5. Unconscionability--Unclean Hands and Supporting your Abuser

Notably, as evinced in the discussion above, neither the statute nor the regulations provide any equitable remedy or defenses to enforceability of the affidavit of support for a sponsor who is a victim of abuse by the sponsored immigrant. And the courts have not recognized any such exception on equitable grounds.

For example, in a recent case from the Eleventh Circuit, *Belevich v. Thomas*, [186] the sponsors, the wife and the stepdaughter of the sponsored immigrant, signed affidavits of support on behalf of Belevich, a husband and stepfather. Belevich and his wife lived together in the United States for several years. When Belevich returned from a short trip to Russia, his cosponsor wife would not let him back into the house and filed for a protection from abuse order against him as well as for divorce. Neither co-sponsor provided him any financial support after this point. Later, Belevich was ***110** criminally charged for abusing the stepdaughter's minor daughter and for possessing child pornography. When Belevich sued the co-sponsors for breaching the affidavit of support, the co-sponsors raised the affirmative defenses of unclean hands, anticipatory breach, and equitable estoppel. [187] The court rejected the co-sponsors arguments, finding that “[t]he affidavit imposes a one-way obligation on the sponsor to support the immigrant without any counter-promises by the United States or the immigrant.” [188] Further, the court determined that the statute “provides a cause of action and remedies exclusively against the sponsor and in favor of the United States and the immigrant,” [189] and that the structure of the statute was such that no equitable remedies or defenses were contemplated for the benefit of the sponsor. [190]

The Eleventh Circuit reasoned that the sponsors' alleged defenses were inconsistent with the purpose of the affidavit of support. In the court's words:

> The defenses of unclean hands, anticipatory breach, and equitable estoppel concern the immigrant's wrongful acts, not whether he or she might become a public charge. If these grounds allowed the sponsor to cut off

> financial support, the public would have to shoulder the financial responsibility that the sponsor had voluntarily assumed. [191]

In sum, any defense that is inconsistent with the purpose of the affidavit of support to ensure that the government is never on the hook for support has proven likely to fail.

Failing to recognize any equitable exception based on an abuser's behavior means that the only pathways to terminate enforceability of the affidavit of support are the limited statutory and regulatory means discussed above, and the courts have not recognized any. [192] If the sponsor is not able to exercise any defenses to enforcement, she therefore has few options where her sponsored immigrant becomes her abuser.

***111** So, should sponsors who are victimized by their sponsored immigrant be excused from the liability imposed by the affidavit of support? Given the prevalence of domestic violence in the United States, it is virtually guaranteed that many U.S. citizen and LPR sponsors have--or will--experience abuse by their sponsored immigrant spouse. Elsewhere in U.S. immigration law, Congress has recognized that the law can empower abusers and exacerbate the impact of domestic violence and has adopted provisions to address these problems. The discussion below provides a brief overview to emphasize the consensus that the law must protect victims of abuse and to provide models for how immigration law might be reformed to address domestic violence concerns in this context.

IV. IMMIGRATION LAW ADAPTATIONS FOR VICTIMS OF DOMESTIC VIOLENCE

Importantly, Congress has adopted provisions to protect immigrants who are the victims of abuse at the hands of their sponsoring petitioner. According to David Thronson, "[s]ponsoring petitioners have absolute control over decisions to file for qualifying relatives and to continue the petition through to the end of the process. No matter how close the relationship, immigrant beneficiaries have no right to force the filing of petitions on their behalf." [193] Throughout, control of the process continues in the hands of the petitioner, and the beneficiary has no guarantee that the petition process will be completed even after it is initiated.

The petitioner controls the decision of whether and when to file a petition and he may withdraw a pending petition at any time. Where a sponsored immigrant becomes the victim of domestic violence, it is common to see abusive petitioners file immigration petitions for spouses and then withdraw them only to re-file again once the couple reconciles, perpetuating and extending the cycle of violence which is common in domestic violence situations. [194] This pattern of filing and then withdrawing can go on without limit and becomes a powerful tool to control an immigrant spouse. In addition, in relationships where petitions for immigrant spouses include immigrant children from prior relationships, ***112** withdrawal of a family petition for the spouse will impact the children's opportunity to obtain lawful immigration status as well, creating additional incentive for women to remain in violent relationships. [195]

For years, advocates petitioned the federal government to create measures to protect immigrant victims of domestic violence. This advocacy finally resulted in legal reforms that addressed an inherent power imbalance in immigration law. [196] These legislative developments offer a schema for how immigration law can and does approach domestic violence issues and indicate that Congress is willing to adapt immigration law when it perpetuates abuse. [197]

For example, the Immigration Reform Act of 1990 created the "battered spouse waiver," which allows victims of domestic violence who obtained conditional permanent residence based on their marriage to a U.S. citizen to file an application to remove that condition without the assistance of their U.S. citizen or lawful permanent spouse if they are in an abusive relationship. [198] The Violence Against Women Act (VAWA) of 1994 included provisions to allow victims of domestic violence to obtain immigration relief independent of their abusive spouse, child, or parent through a process called "self-petitioning," which provides the immigrant with some agency in the family immigration process. [199] The Battered Immigrant Women Protection Act

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of 2000 (VAWA 2000) created new forms of immigration relief for immigrant victims of violent crime ("U" visas) [200] and for immigrant victims of sexual assault or trafficking ("T" visas). [201] These protective ***113** remedies have all been instrumental in taking the power and control away from abusive petitioners. However, none exist to protect sponsors who become victims of abuse by their sponsored relative. Several of these provisions are examined below as each provides a potential model to ameliorate abuse in the enforcement of affidavits of support.

A. Battered Spouse Waiver

Immigrants usually depend on their spouses to obtain lawful immigration status in the United States. In 1986, Congress passed the Immigration Marriage Fraud Amendments (IMFA), [202] which changed how immigrants obtain lawful immigration status based on marriage to a U.S. citizen or an LPR. The intent of this law was to prevent sham or fraudulent marriages. The IMFA requires that if a U.S. citizen or LPR has been married to his immigrant spouse for less than two years, the immigrant spouse will receive a conditional green card, good for two years. [203] Within ninety days prior to the expiration of the two-year period, the couple must file a joint petition to remove the condition. [204] Despite the good intention of this provision, battered immigrant spouses continued to rely on the abuser to file jointly to remove the condition. If the petition to remove the condition is not filed, the immigrant spouse is left without lawful immigration status and can face removal from the United States. [205] In early versions of this law, abused immigrant spouses were forced to remain in abusive relationships in order to fulfil the joint filing requirement. The Immigration Reform Act of 1990 introduced a waiver of the joint filing requirement in three different instances: (1) when removal from the United States would cause extreme hardship; (2) when the marriage was entered into in good faith by the immigrant spouse but the marriage was terminated for reasons other than by death, by no fault by the immigrant spouse; or (3) when the marriage was entered into in good faith by the immigrant spouse but the immigrant spouse or child was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent spouse or parent during the marriage. [206]

***114** While this waiver of the joint petition requirement is a step in the right direction, the application still requires extensive evidence to show the government that the marriage was entered into in good faith and that the immigrant spouse suffered battery or extreme cruelty. Many immigrant spouses are unable to prove these requirements, particularly when they flee the abusive relationship and have no paper trail or police or medical reports.

B. VAWA Self-Petitions

Under the Violence Against Women Act (VAWA), [207] immigrants who have been subject to abuse receive immigration protection. [208] Under VAWA, immigrant spouses, parents, or children who have been victims of abuse by a U.S. citizen or LPR do not have to rely on their abuser to help them file for lawful permanent status in the United States and may "self-petition." [209] To qualify for immigration protections, the immigrant spouse, parent or child must show that she has suffered battery or extreme cruelty. [210] The self-petitioner must show that she entered the marriage in good faith, that she resided with the abuser, that the abuser is either a U.S. citizen or an LPR, and that the self-petitioner is a person of good moral character. [211] This provision establishes a much-needed alternative to the absolute reliance of immigrants on abusive spouses or parents, weakening the ability of abusers to use immigration law to extend their power and control.

C. U Status

Congress created "U" status in the Victims of Trafficking and Violence Protection Act of 2000. [212] This status is available to immigrants who have suffered substantial mental or physical abuse as a result of a qualifying ***115** criminal activity; [213] possess information concerning that activity; and have been helpful, are being helpful, or are likely to be helpful with the investigation or prosecution of the criminal activity. [214] This provides not only humanitarian relief for victims, but also incentivizes victims to cooperate with law enforcement officials.

D. T Status

Along with "U" status, Congress also created "T" status through the Victims of Trafficking and Violence Protection Act of 2000.[215] This remedy is available to someone who is present in the United States as a "victim of a severe form of human trafficking" and meets other requirements related to assistance to a law enforcement investigation.[216] A severe form of human trafficking is defined as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" or "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."[217] Again, immigration law provides an avenue for relief for victims of abuse.

*116 *E. Confidentiality Protections*[218]

A number of federal and state laws protect the confidentiality of information relating to domestic violence victims by prohibiting the disclosure of information collected by victim service providers and state and federal agencies.[219] These provisions, commonly referred to as "VAWA confidentiality provisions," establish protections that prevent abusers from accessing information related to victims who seek services from state and federal agencies. These protections target specific nondisclosure provisions,[220] source of information limitations,[221] and enforcement limitations[222] to protect victims of domestic violence, trafficking and/or sexual assault.

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Each of the amendments to immigration law discussed above work to address the inherent power imbalance in immigration law that otherwise would allow sponsors with lawful status to utilize immigration law to further their control and abuse. But none of these provisions recognize that sometimes the victim of abuse is not the immigrant but the sponsor. Reforms are needed to ensure that immigration law cannot be used to exacerbate abuse when the abused is a sponsor.

*117 V. PROPOSED REFORMS TO THE ENFORCEMENT OF AFFIDAVITS OF SUPPORT AGAINST VICTIMS OF ABUSE--HOW TO AVOID FORCING WOMEN TO SUPPORT THEIR ABUSER

Case law interpreting the affidavit of support has made it clear that the courts will not rule that a sponsor has remedies to prevent enforceability other than under the limited circumstances provided in the statute and regulations. If public charge concerns are paramount, it is understandable that the sponsor should have no defenses to enforcement. But, normatively, *should* protection of the government's fiscal interest be the paramount consideration? Are there no circumstances in which the protection of abuse victims would outweigh the government's fiscal interests?

As described above, in the last three decades, Congress has made numerous changes to U.S. immigration laws to offer protections for victims of domestic violence, serious crimes, and trafficking. These reforms have benefitted many victims, yet there are no protections to prevent a victim sponsor from having to support her abuser. By creating a legislative fix for this population, U.S. law would align the affidavit of support and public charge provisions with other areas where domestic violence is considered worthy of exception to the general rule. In the alternative, administrative agencies could promulgate regulations or issue policy guidance as outlined below.

A. Legislative Reforms

Legislative responses to domestic violence in the immigration context have largely focused on immigrants themselves. They include both short-and long-term strategies. Short-term strategies include assistance programs that protect women who are currently being abused. Long-term protections include those that stabilize an immigrant's immigration status as described above.

The approaches for a U.S. citizen or LPR victim who sponsored her abuser should be similar. She hopefully is able to consult with an immigration attorney early to understand the never-ending responsibility of the affidavit of support before signing. However, it is important to understand how victims of abuse react--one should not blame them for not leaving an abuser or even agreeing to sign an affidavit for an abuser. There are victims who may not be willing or able to give up on the relationship with their spouse. Victims may try a variety of strategies including leaving and returning, changing behaviors, counseling, or court intervention in the hope of ending the violence while preserving the relationship. Victims also often fear that the abuser will follow through with threats of violence for ***118** leaving the relationship. They may feel trapped in the relationship due to economic concerns, lack of housing, lack of transportation, concerns for the safety and custody of their children, or religious and family pressures. [223]

A sponsor who signed an affidavit of support must either have been a U.S. citizen or an LPR, so immigration status for herself is not a primary concern. But the status of the immigrant abuser is at issue. Even in instances of abuse, a sponsor may not want to involve law enforcement because she may not want to get her sponsored immigrant in trouble--wanting abuse to stop is not always commensurate with wanting an abuser deported. If the abused sponsor decides to report the violence, she could seek an order of protection against her abusive spouse and report him to the police every time there is a violation of the order. For cases involving extreme cruelty, where there is no physical abuse, the police may not be willing to arrest and charge the abuser. In those cases, the abuse might be severe but will not give rise to criminal charges that might trigger deportation.

Given courts' reliance on a strict reading of the affidavit of support statute's termination provisions, the most effective path to reform would be through legislation. Potential legislation to revise the statute could easily fix this problem and prioritize the needs of victims of domestic violence over the financial concerns of the government.

A simple starting point is a potential statutory amendment to 8 U.S.C. § 1183a(a)(3). But as often is the case with immigration laws, the devil is in the details.

One proposal that has been discussed would add an additional section to § 1183a(a)(3) where an immigrant convicted of a criminal offense against his or her sponsor may not enforce an affidavit of support. This change would address some of the concerns discussed above in Section III.D.3, moving the termination date for the affidavit from ultimate deportation to conviction. But requiring a criminal conviction severely limits this reform's reach. Another potential proposal would create a mechanism for storing a sponsor's required payments in an escrow account until the sponsored immigrant's criminal case is fully adjudicated. The money would either be returned to the sponsor if a conviction is obtained or distributed to the sponsored immigrant if acquitted of the charges.

These ideas recognize and seek to address the basic problem, but they create other issues. For example, both ideas fail to consider the susceptibility of the victim sponsor who has suffered from violence. Domestic violence is disruptive, and it places women in economically ***119** vulnerable positions. Requiring payments to continue, even to an escrow account, fails to account for the disruption caused by domestic violence, since it in no way suspends the requirement of the sponsor to make ongoing and potentially onerous payments.

Moreover, when relief turns on a conviction for domestic violence, the analysis quickly becomes complicated given the many variations of domestic violence statutes across jurisdictions and the constrained notion of domestic violence crimes in immigration statutes. For example, the term "crime of domestic violence" is used in a quite narrow way as a ground of deportation in 8 U.S.C. § 1227(a)(2)(E). [224] By contrast, a more inclusive set of criminal activity serves as the basis for immigration relief for victims of crime under 8 U.S.C. § 1101(a)(15)(U)(iii). [225] And while a conviction is needed to trigger deportation, lesser thresholds are standard to implicate immigration relief, such as VAWA relief available to those who "are subjected to battery or extreme cruelty" and U status for those "subjected to substantial physical or emotional abuse" without the requirement of a conviction. Given the vagaries of the criminal justice system, it should be expected that many instances of domestic violence will not result in the conviction required by these ideas.

Further, requiring a particular sort of conviction would not have helped the sponsor in *Belevich,* as the criminal offense by the sponsored immigrant was *not* against the sponsor but against a child relative of the sponsors. [226] Careful legislative crafting

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would be necessary to make relief from the obligation to pay be triggered by crimes against a broader group, such as the sponsor, the sponsor's children, or members of the sponsor's household.

In sum, common suggestions begin to recognize the problem but fail to approach possible solutions from the perspective of the affected domestic violence victims. Crafting a broader statutory change that is grounded in the ***120** harms and challenges from the perspective of the victim could provide more immediate relief.

B. Regulatory and Policy Guidance Reforms

Building from the models and language of other immigration law provisions that create protection mechanisms related to domestic violence, an easy long-term fix could involve a statutory or regulatory provision to end enforceability of affidavits of support in instances of domestic violence. Even without statutory change or formal regulations, a guidance memorandum or policy from USCIS creating a carve-out for an abused sponsor to avoid having to support her abuser likely would suffice. As with the examples above, there is no need that an abuser be convicted to trigger relief from the support obligation. Elsewhere in immigration law, the power of abusers is curbed where abuse or extreme cruelty are present, even in the absence of a conviction. That approach should be mirrored here in setting criteria to end enforcement of affidavits.

It is important to remember that only the sponsor, the sponsored immigrant, or the federal government can initiate litigation seeking to enforce the affidavit. A regulation could be put in place to protect an abused sponsor from litigation by prohibiting an abuser from filing an action to enforce the support obligations until any domestic violence charges against the sponsored immigrant have been adjudicated and resolved in favor of the accused abuser. This solution would prevent forcing the abused sponsor to support her abuser.

In the absence of legislation or reforms to avoid this injustice, attorneys and advocates must provide abused sponsors the tools necessary to encourage reporting of abusive behavior. This, however, may not be as easy as many victims of abuse lack the wherewithal to confront an abuser.

CONCLUSION

As litigation regarding the enforceability of the affidavit of support continues to increase, it is important to understand that sponsored immigrants have a lasting ability to enforce the obligation of sponsors to provide support. To date, equitable defenses to enforcement by sponsors have not been successful, as courts have found that the affidavit of support is for the benefit of the sponsored immigrant and not for the sponsor. Obviously, a gap exists where an abused sponsor could end up supporting her abuser sponsored immigrant. A defense to enforceability should be created, aligned with other areas of immigration law where domestic ***121** violence is considered to prevent an unfair outcome. Even as changes are necessary, it must be remembered that affidavits of support can serve as important sources of rights for victims who are beneficiaries, so reforms must be carefully and narrowly formulated to not weaponize the system against immigrant-victims. Revisions that protect abused sponsors from supporting their beneficiary abusers need not undermine support from abusive sponsors.

At the same time, the ability to enforce affidavits of support remains an important tool for immigrant women who suffer abuse. Crafting a solution that prevents sponsors from owing perpetual support to their abusers should and does not require any diminishment of the rights of immigrants to enforce affidavits of support when abuse is not present or when they are the victims of abuse. A nuanced, tailored legislative or administrative fix must understand the dynamics of abusive relationships, as they apply to both immigrant victims and citizen or LPR sponsors. There need be no tension in the approach for these two vulnerable groups if a victim-centered perspective shapes the response.

Finally, it is worth noting that the root of the problem here is the overemphasis on preventing the immigration of those who might become public charges. Broader reforms to roll back the expansive of public charge concerns in 1996 would go far to make the immigration system more humane and less prone to abuse.

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Footnotes

a1 Clinical Professor of Law, Michigan State University College of Law. I would like to thank David B. Thronson for his support and insight in preparing this article and Daryl Thompson, Olivia Rose Beale, and Shannon T. Hickey for their research assistance.

1 Email from anonymous U.S. citizen to the author (March 5, 2019, 10:25 AM) (on file with author) (commenting on her obligation to financially support a man who had abused her because of an affidavit of support filed in connection with the abuser's immigration application).

2 *See, e.g.*, Immigration Act of 1882, ch. 376, § 2, 22 Stat. 214, 214 (requiring examining officers to prohibit entry to persons likely to become a public charge).

3 8 U.S.C. § 1182(a)(4)(C)(ii).

4 Centers for Disease Control and Prevention, *National Data on Intimate Partner Violence, Sexual Violence, and Stalking*, (2014) https://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf [https://perma.cc/KNK9-64M5] ("Women are disproportionately impacted. They experienced high rates of severe IPV, rape, and stalking, and long-term chronic disease and other negative health impacts, such as post-traumatic stress disorder symptoms."). Because an overwhelming number of abused victims are women and children, gender references in this Article refer to women. Most of the forms of immigration relief discussed in this Article are gender neutral and available to male victims as well.

5 Katherine E. Shulte, *Restoring Balance to Abuse Cases: Expanding the One-Sided Approach to Domestic Violence*, 28 COLUM. J. GENDER & L. 144, 144 (2015) ("Abusive relationships are inherently unbalanced; the abusive partner maintains power and control by systematically overcoming the will of the other partner, often using violence and coercion.").

6 *See* Sarah M. Buel, *Fifty Obstacles to Leaving,* a.k.a.*, Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999); *50 Obstacles to Leaving*, NAT'L DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving [https://perma.cc/74WP-S5DC].

7 Anna McLemore, *Stalking By Way of the Courts: Tennessee's Abusive Civil Action Law and Why All States Should Adopt a Similar Approach to Abusive Litigation in the Family Court Context*, 28 UCLA WOMEN'S L.J. 333, 340 (2021).

8 *See* Maria Stamatelatos, *Spousal Support and Domestic Violence: What Happens When the Dependent Spouse is the Abuser*? 32 J. CIV. RTS. & ECON. DEV. 439, 464 (2019).

9 McLemore, *supra* note 7, at 341.

10 Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 721 (2004).

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11 *See Divorce Rate by State 2022*, WORLD POPULATION REV. (2022), https://worldpopulationreview.com/state-rankings/divorce-rate-by-state [https://perma.cc/RJ8Z-LFUU] (reporting that in the United States, about fifty percent of married couples divorce, giving the United States the sixth-highest divorce rate in the world).

12 According to the Centers for Disease Control and Prevention, about 41% of women and 26% of men have experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of intimate partner violence-related impact. Over 61 million women and 53 million men have experienced psychological aggression by an intimate partner in their lifetime. *See Intimate Partner Violence Fast Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 2, 2021), https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html [https://perma.cc/MG5L-T5TD].

13 Kristin F. Butcher & Anne Morrison Piehl, *Recent Immigrants: Unexpected Implications for Crime and Incarceration*, 51 INDUS. LAB. RELS. REV. 654, 654-679 (1998); Nazgol Ghandnoosh & Josh Rovner, *Immigration and Public Safety*, THE SENTENCING PROJECT, https://www.sentencingproject.org/app/uploads/2022/10/Immigration-and-Public-Safety.pdf [https://perma.cc/CDG3-KDNF].

14 *See generally* 8 U.S.C. § 1154.

15 *See* 8 U.S.C. § 1153(b).

16 *See* 8 U.S.C. § 1153(c).

17 Of the approximately one million immigrants admitted to lawful permanent residence in fiscal year 2019, "49 percent were immediate relatives of U.S. citizens (an uncapped visa category), followed by another 20 percent" of family-sponsored immigrants in other categories whose admission is limited by category and per-country numerical caps. *See generally* Jeanne Batalova et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Feb. 11, 2021), https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020 [https://perma.cc/YM9R-DGDY].

18 *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a)(4).

19 *See* 8 U.S.C. § 1153(a)(2); *see also* David B. Thronson, *Children's Rights and U.S. Immigration Law, in* RESEARCH HANDBOOK ON CHILD MIGRATION 157, 159 (Jacqueline Bhabha, Daniel Senovilla Hernandez, and Jyothi Kanics, eds., Elgar Publishing 2018) ("Top priorities include petitions by parents for children, while petitions by children for parents are not allowed. This creates an asymmetry, where parents can be the source of immigration status for children, but children are not similarly entitled to create immigration opportunities for their parents."). The "limitation on the rights of children to serve as the source of immigration rights needed to maintain family unity is repeated throughout immigration law, through provisions such as those that permit adults who are granted refugee status or asylum to generate derivative status for their spouses and children but do not allow child refugees and asylees to generate status for their parents" *Id.* (citing 8 U.S.C. §§ 1157(c)(2), 1158(b)(2)). Similarly, "children who obtain legal immigration status through a family petition by one parent or a stepparent cannot include the other parent as a derivative." *Id.* (citing 8 U.S.C. § 1153(d)).

20 For example, visas are just now available for an adult daughter or son of a U.S. citizen who was petitioned for in December 2014 while visas are available for a sibling of a U.S. citizen who was petitioned for in March 2007. *See Visa Bulletin for November 2022*, U.S. DEP'T OF STATE (2022), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-november-2022.html [https://perma.cc/MX4G-CJ83]. In contrast, visas

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for immediate relatives of U.S. citizens are not numerically limited and thus these petitions face no backlog at all. *See* 8 U.S.C. § 1151(b)(2).

21 *See generally* Veronica T. Thronson, *Domestic Violence and Immigrants in Family Courts*, 63 JUV. & FAM. CT. J. 63 (2012).

22 Eligibility to immigrate derives not simply from the fact of the qualifying relationship, but also from the decision of the person in that relationship with lawful immigration status to *choose* to petition for the intending immigrant. As discussed later in this Article, in situations involving domestic violence, this aspect of immigration law can provide immense power and control to abusers. *See id.*

23 8 U.S.C. § 1182 (establishing numerous grounds of inadmissibility based on factors including criminal history, ideology, health, and prior involvement with the immigration system).

24 *See* Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882) (repealed 1943). For a brief history of the public charge ground of inadmissibility, see generally CHARLES WHEELER, PUBLIC CHARGE AND AFFIDAVITS OF SUPPORT: A PRACTITIONER'S GUIDE 6 (2d ed. 2020).

25 8 U.S.C. § 1182(a)(4)(A).

26 8 U.S.C. § 1182(a)(4)(A)-(B).

27 *See id.* For example, a U.S. citizen may have difficulty proving that his ailing elderly mother will not rely on public assistance, hence the importance of the affidavit of support.

28 For example, the phrase "a nation of immigrants" was adopted by President John F. Kennedy as the title of a book he wrote when he was still a senator that includes a history and analysis of immigration to the United States. *See* JOHN F. KENNEDY, A NATION OF IMMIGRANTS (1964).

29 *See generally* 8 U.S.C. § 1182 (establishing general inadmissibility grounds).

30 KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600-2000 (2015).

31 An Act to Regulate Immigration, Pub. L. No. 47-376 §§ 1-5, 22 Stat. 214, 214 (1882).

32 *Id.* § 2. In addition to those believed likely to become public charges, the law also excluded any "convict, lunatic, [and] idiot." *Id.*

33 *See* Immigr. and Naturalization Serv., *2001 Statistical Yearbook of the Immigration and Naturalization Service*, U.S. DEP'T OF JUST. 258 tbl.66 (2003), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2001.pdf [https://perma.cc/2R3K-KPUS].

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34 *See* Jonathan Kuo, *The History of the Public Charge and Public Health*, PUBLIC HEALTH ADVOCATE (Dec. 29, 2020), https://pha.berkeley.edu/2020/12/29/the-history-of-the-public-charge-and-public-health/ [https://perma.cc/VFM7-775Z].

35 *See* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at U.S.C.§§ 8, 18, and 22).

36 *See, e.g.*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

37 *See* 8 U.S.C. § 1182a(4)(B).

38 *See, e.g.*, Veronica T. Thronson & David B. Thronson*, Immigration: Barriers Predicated on Origin and Identity, in* CHILDREN AND RACE: PSYCHOLOGY, PUBLIC POLICY, AND LAW 5 (Margaret C. Stevenson, Bette L. Bottoms & Kelly Burke, eds., Oxford University Press 2020) ("Yet judgments about whether a person is 'likely' to become poor or garner economic success are easily subject to bias, and one consequence of these exclusionary policies has been to exclude people of color and people from less wealthy countries, whether the prediction is accurate or not in the individual case.").

39 Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 2, 2021) (reviewing 84 Fed. Reg. 41,292 (Aug. 14, 2019)) ("In addition, medical treatment, or preventive services for COVID-19, including vaccines, will not be considered for public charge purposes.").

40 *See* Press Release, Dep't of Homeland Sec., DHS Statement on Litigation Related to the Public Charge Ground of Inadmissibility (March 9, 2021), https://www.dhs.gov/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility [https://perma.cc/3WTB-2JPT].

41 *See id.*

42 *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28690 (Mar. 26, 1999).

43 *Id.*

44 *Id.* Also exempt from the public charge determination are Amerasians, Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act, and the Haitian Refugee Immigration Fairness Act immigrants. *Id.* Court-dependent special immigrant juveniles are also exempt. *See* 8 U.S.C. § 1255(h).

45 *See* 8 U.S.C. § 1613.

46 *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996). IIRAIRA includes many provisions that significantly impact legal immigrants and others seeking to enter the United States legally, including by limiting judicial review, expanding the definition of "aggravated felonies" to include crimes that are neither aggravated nor felonies, and by creating new bars to admissibility for people who have been unlawfully present in the U.S. for six months or longer.

47 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009, 3009-546 to 3009-724, 8 U.S.C. § 1182(a)(4)(C)(ii).

48 Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW AND CONTEMPORARY PROBLEMS 1-36 (2009).

49 8 U.S.C. § 1182(a)(4)(C)(ii) (making beneficiaries of family-sponsored petitions excludable unless "the person petitioning for the [noncitizen's] admission ... has executed an affidavit of support ...."). A limited set of beneficiaries of family-sponsored immigration petitions will have already met the criteria, discussed below, to avoid the requirement to file the affidavit of support, such as beneficiaries who already have accrued forty quarters of work in the United States before immigrating and children who will become U.S. citizens upon entry. In these cases, the applicants will file a Request for Exemption for Intending Immigrant's Affidavit of Support, or Special Immigrant Juvenile recipients. *See I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864w.pdf [https://perma.cc/PD7Q-XLKR].

50 *See USCIS 2016-2020 Statistical Annual Report*, U.S. CITIZENSHIP AND IMMIGR. SERVS. 19 tbl.1, https://www.uscis.gov/sites/default/files/document/reports/2020-USCIS-Statistical-Annual-Report.pdf [https://perma.cc/83RY-B6ZE]. In 2020, U.S. Citizenship and Immigration Services received 300,200 family-based applications for lawful permanent residents, the lowest number in five years, due to the COVID-19 pandemic. Many of these applications require an in-person interview. With USCIS office closures in March through June 2020, as well as the implementation of social distancing guidelines after reopening, in-person services were limited. *Id.*

51 *See* 8 U.S.C. § 1183a(a); 8 C.F.R. § 213a.2(d); *Form I-864: Affidavit of Support Under Section 213A of the INA*, U.S. CITIZENSHIP & IMMIGR. SERVS. 6-7 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864.pdf [https://perma.cc/NR9D-M8XR].

52 *See generally* 8 U.S.C. § 1183a(e), which provides in pertinent part, "An action to enforce an affidavit of support executed under subsection (a) may be brought against the sponsor in any appropriate court ... by a sponsored alien, with respect to financial support[.]"

53 8 U.S.C. § 1182(a)(4)(C)(ii); *I-864EZ: Affidavit of Support Under Section 213A of the Act*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 8, 2021), https://www.uscis.gov/sites/default/files/document/forms/i-864ez.pdf [https://perma.cc/F96G-WH6V].

54 8 U.S.C. § 1182(a)(4)(C)(ii); U.S. Citizenship & Immigr. Servs., *Affidavit of Support Under Section 213A of the INA*, DEP'T OF HOMELAND SEC. (Dec. 8, 2021) [hereinafter *Affidavit of Support*], https://www.uscis.gov/sites/default/files/document/forms/i-864.pdf [https://perma.cc/VV67-544P].

55 *See* 8 U.S.C. § 1182(a)(4)(C)(i); 8 C.F.R. § 212.23 (2022).

56 The instructions state: "The public reporting burden for this collection of information is estimated at 6 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit." U.S. Citizenship & Immigr. Servs., *Instructions for Affidavit of Support Under Section 213A of the INA*, DEP'T OF HOMELAND SEC. 16 (December 8, 2021) [hereinafter *Instructions*] https://www.uscis.gov/sites/default/files/document/forms/i-864instr.pdf [https://perma.cc/6DSY-BJA3].

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57 The number of pages increased from eight to ten in 2021. Examples of eight-page forms on file with author.

58 The number of pages increased from ten in 2019 to seventeen pages in 2021. *See Instructions, supra* note 56.

59 *See Instructions, supra* note 56, at 1.

60 *Affidavit of Support, supra* note 51, at 6.

61 *Id.*

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 Immigration and Nationality Act § 213A(a)(1)(A), 8 U.S.C. § 1183a(a)(1)(A). In 2021, 125% of the poverty guidelines for a family of 2 was $21,775. Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732 (Feb. 1, 2021).

68 As discussed below, immigrants do not qualify for many public benefits and, even when they do, the existence of an Affidavit of Support may allow the government to "deem" resources available in instances where they plainly are not.

69 Immigration and Nationality Act § 213A(b)-(c); 8 C.F.R. § 213a.2(d) (2022); *Affidavit of Support, supra* note 51, at 6.

70 Immigration and Nationality Act § 213A(b), 8 U.S.C. § 1183a(b); *Affidavit of Support, supra* note 51, at 6-7.

71 8 U.S.C. § 1183a(a)(1)-(2), (c) (providing that a sponsored immigrant may sue sponsors who do not support and maintain the sponsored immigrant at an annual income of at least 125% above the federal poverty line); 8 C.F.R. § 213a.2(c)(2)(i)(C)(2), (d) (2011); *Affidavit of Support, supra* note 51, at 6; Kumar v. Kumar, 220 Cal. Rptr. 3d 863, 872 (Cal. Ct. App. 2017) (holding that the obligation under the sponsor's I-864 affidavit of support is enforceable by the sponsored wife, and there is no duty to mitigate when enforcing an affidavit of support); Love v. Love, 33 A.3d 1268, 1273 (Pa. Super. Ct. 2011) (recognizing the obligation of the sponsor's I-864 affidavit of support is enforceable by the sponsored wife); *In re* Marriage of Kamali and Alizadeh, 356 S.W.3d 544, 546-47 (Tex. App. 2011) (enforcing I-864 affidavit of support despite divorce of the contracting parties and holding that the sponsored immigrant has the right to enforce the I-864 affidavit of support as a third party beneficiary); *In re* Marriage of Sandhu, 207 P.3d 1067, 1071 (Kan. Ct. App. 2009) (recognizing the sponsored immigrant's standing to file a complaint for enforcement of an I-864 affidavit); Naik v. Naik, 944 A.2d 713, 717 (N.J. Super. Ct. App. Div. 2008) (holding that a sponsored immigrant can enforce an I-864EZ affidavit of support in state court); Davis v. United States, 499 F.3d 590, 595 (6th Cir. 2007) (holding that state court enforcement of an I-864 affidavit of support is "explicitly permitted under the statute"); Moody v. Sorokina, 830 N.Y.S.2d 399, 402 (N.Y. App. Div. 2007) (holding that the sponsored immigrant has independent standing to enforce the

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sponsor's obligations under the I-864 affidavit of support in any federal or state court). *But see, e.g.*, Ivanoff v. Schmidt, No. 17-cv-01563-KMT, 2018 WL 1468559, at *2-3 (D. Colo. Mar. 23, 2018) (holding that I-864 breach of contract claims do not arise under federal law and that federal courts do not have subject matter jurisdiction to enforce I-864 affidavits of support). For a discussion of state and federal jurisdiction over Form I-864 enforceability, *see* Veronica Tobar Thronson, 'Til Death Do Us Part: Affidavits of Support and Obligations to Immigrant Spouses, 50 FAM. CT. REV. 594, 596-99 (2012).

72 While persons who are under 18 years of age are allowed to marry in many jurisdictions and are not expressly limited from filing family immigration petitions, they are not allowed to be sponsors and thus are effectively prohibited from helping a spouse immigrate to the United States. *See generally* 9 FAM. 102.8-1(B)3(c) ("In any case involving a spousal petitioner who is under the age of 18, you should refuse the visa application under INA 212(a)(4)(A) as a public charge as the petitioner cannot properly submit the required I-864").

73 *See* 8 U.S.C. § 1183a(f).

74 See *id.*

75 *Id.*; 8 C.F.R. § 213a.2(c)(2)(iii) (2022).

76 8 U.S.C. § 1183a(f)(5)(A); *Instructions, supra* note 56, at 13.

77 8 U.S.C. § 1183a(f)(5)(A); 8 C.F.R. § 213a.2(c)(2)(iii)(C); *Instructions, supra* note 56, at 13; Thronson, *supra* note 71, at 595.

78 8 C.F.R. § 213a.2(2)(C).

79 *Affidavit of Support, supra* note 51, at 7.

80 *See, e.g.*, Kumar v. Kumar, 220 Cal. Rptr. 3d 863, 868 (Cal. Ct. App. 2017).

81 *See, e.g.*, Motlagh v. Motlagh, 100 N.E.3d 937, 942-43 (Ohio Ct. App. 2017) (noting that "a divorce court may enforce the I-864 obligation through a spousal support order, an order of specific performance, or some combination of both").

82 *See, e.g.,* Baines v. Baines, No. E2009-00180-COA-R3-CV, 2009 WL 3806131, at *3 (Tenn. Ct. App. Nov. 13, 2009) (noting that "several state courts have concluded that they had jurisdiction to consider a claim for enforcement of an affidavit of support within the context of an underlying divorce action"). *See also* Davis v. Davis, No. WD-04-020, 2004 WL 2924344 at *4 (Ohio Ct. App. Dec. 17, 2004); *In re* Marriage of Sandhu, 41 Kan. App. 2d 975, 978, 207 P.3d 1067, 1071 (Kan. Ct. App. 2009) (citing Moody v. Sorokina, 40 A.D.3d 14, 18-19 (N.Y. App. Div. 2007)); Barnett v. Barnett, 238 P.3d 594 (Alaska 2010).

83 In Michigan, the spousal support factors include a typical example, the factors include (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in

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causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. Olson v. Olson, 256 Mich. App 619, 631, 671 NW2d 64 (Mich. Ct App. 2003). *See also In re* Marriage of Khan, 332 P.3d 1016, 1019 (Wash. Ct. App. 2014) ("we hold that a trial court need not enforce a spouse's I-864 obligation through a maintenance award").

84 *See, e.g.*, Miller v. Miller, No. E067923, 2019 WL 2433189, at *1, *3 (Cal. Ct. App. June 22, 2019) (where the sponsored immigrant was awarded only 10 months of alimony. The appellate court rejected the claim that the trial court had failed to consider the affidavit of support).

85 8 U.S.C. § 1183a(e)(1). *See also, e.g.*, Davis v. Davis, No. WD-04-020, 2004 WL 2924344, at *1, *4 (Ohio Ct. App. Dec. 17, 2004) (reversing the trial court's order that "any specific suit or enforcement of the § 213(A) of the Illegal Immigration Reform and Immigrant Responsibility Act, a federal provision, be pursued in an appropriate federal court").

86 *Liu v. Mund*, 686 F.3d 418, 419-20 (7th Cir. 2012). *See also* Erler v. Erler, 824 F.3d 1173, 1177 (9th Cir. 2016).

87 *See, e.g.*, Belevich v. Thomas, No. 2:17-cv-1193-AKK, 2019 WL 2550023 (N.D. Ala. June 20, 2019); Cyrousi v. Kashyap, 386 F. Supp. 3d 1278, 1285-86 (C.D. Cal. 2019); Echon v. Sackett, No. 1:14-cv-03420-PAB-NYW, 2018 WL 2087594, at *3 (D. Colo. May 4, 2018); Yates v. Yates, Civ. No. 14-545-LPS, 2018 WL 1444576 (D. Del. Mar. 23, 2018); Cheshire v. Cheshire, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010 (M.D. Fla. May 4, 2006); Hrachova v. Cook, No. 5:09-cv-95-Oc-GRJ, 2009 WL 3674851, at *3 (M.D. Fla. Nov. 3, 2009); Winters v. Winters, No. 6:12-cv-536-Orl-37DAB, 2012 U.S. Dist. LEXIS 75069 (M.D. Fla. Apr. 25, 2012); Greiner v. De Capri, 403 F. Supp. 3d 1207 (N.D. Fla. 2019); Complaint, Hall v. Hall, No. 1:19-cv-03903-JCF (N.D. Ga. Aug. 29, 2019); Stump v. Stump, No. 1:04-cv-253-TS, 2005 WL 2757329, at *7-8 (N.D. Ind. Oct. 25, 2005); Ainsworth v. Ainsworth, No. 02-1137-A-M2, 2004 U.S. Dist. LEXIS 28962 (M.D. La. Apr. 29, 2004); Farhan v. Farhan, No. WDQ-11-1943, 2013 U.S. Dist. LEXIS 21702 (D. Md. Feb. 5, 2013); Dahhane v. Stanton, No. 15-1229 (MJD/JJK), 2015 U.S. Dist. LEXIS 112306 (D. Minn. Aug. 4, 2015); Complaint, Pachal v. Bugreeff, No. 9:20-cv-00050-DLC (D. Mont. Apr. 24, 2020); Montgomery v. Montgomery, 764 F. Supp. 2d 328 (D.N.H. 2011); Shah v. Shah, No. 12-cv-4648 (RBK/KMW), 2014 U.S. Dist. LEXIS 4596 (D.N.J. Jan. 14, 2014); Tornheim v. Kohn, No. 00-cv-5084 (SJ), 2002 U.S. Dist. LEXIS 27914, (E.D.N.Y. Mar. 26, 2002); Nasir v. Shah, No. 2:10-cv-01003, 2012 U.S. Dist. LEXIS 135207 (S.D. Ohio Sept. 21, 2012); Nguyen v. Dean, No. 10-cv-6138-AA, 2011 U.S. Dist. LEXIS 3803 (D. Or. Jan. 14, 2011); Mathieson v. Mathieson, No. 10-1158, 2011 WL 1565529 (W.D. Penn. Apr. 25, 2011); Harsing v. Naseem, No. 11-cv-1240-CCC (D.P.R. Jan. 18, 2012); Kawai v. Uacearnaigh, 249 F. Supp. 3d 821 (D.S.C. 2017); Nwauwa v. Ugochukwu, No. 1:18-cv-1130-RP, 2019 WL 2077048 (W.D. Tex. May 10, 2019); Golipour v. Moghaddam, 438 F. Supp. 3d 1290 (D. Utah 2020); Al-Aromah v. Tomaszewicz, No. 7:19-cv-294, 2019 WL 4306970 (W.D. Va. Sept. 11, 2019); Li Liu v. Kell, 299 F. Supp. 3d 1128, 1133 (W.D. Wash. 2017); Du v. McCarthy, No. 2:14-cv-100, 2015 U.S. Dist. LEXIS 50970 (N.D.W. Va. Mar. 26, 2015); Carlborg v. Tompkins, No. 10-cv-187-BBC, 2010 U.S. Dist. LEXIS 117252 (W.D. Wis. Nov. 3, 2010).

88 *See, e.g.*, Levin v. Barone, 771 Fed. App'x 39 (2d Cir. 2019); Du v. McCarthy, 710 Fed. App'x 611 (4th Cir. 2018) (per curiam) (unpublished table decision) (affirming grant of summary judgment in favor of sponsored immigrant); Davis v. United States, 499 F.3d 590, 594-95 (6th Cir. 2007) (holding that court lacked subject matter jurisdiction over declaratory judgment action seeking to clarify sponsor's duties); Liu v. Mund, 686 F.3d 418, 420 (7th Cir. 2012); Erler, 824 F.3d at 1173; Belevich v. Thomas, 17 F.4th 1048 (11th Cir. 2021) (rejecting sponsor's defenses to enforceability and awarding sponsored immigrant damages).

89 *See, e.g.*, Nguyen v. Dean. No. 10-6138-AA, 2011 U.S. Dist. LEXIS 3803 (D. Or. Jan. 14, 2011) (holding that sponsored immigrant was barred by issue preclusion from relitigating spousal support in federal court because there was no difference between "financial support" and "spousal support"); Schwartz v. Schwartz, 409 B.R. 240, 249 (B.A.P. 1st Cir. 2008) (noting that *Rooker-Feldman* doctrine would bar suit if the affidavit of support had been considered by state

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divorce court); Davis v. United States, 499 F.3d 590, 595 (6th Cir. 2007) (as alternate basis for dismissal, holding that *Rooker-Feldman* doctrine barred action).

90 *See generally* Rooker v. Fid. T. Co. U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (In 2005, the Supreme Court revisited the doctrine in Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) reaffirming it). U.S. 413 (1923); D.C. Cir. v. Feldman, 460 U.S. 462 (1983). In 2005, the Supreme Court reaffirmed the *Rooker-Feldman* doctrine. *See* Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005).

91 *See, e.g.*, Mathieson v. Mathieson, No. 10-1158, 2011WL1565529 (W.D. Penn. Apr. 25, 2011).

92 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104- 193, 110 Stat. 2105; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009.

93 8 U.S.C. § 1183a(b)(1)(A).

94 8 U.S.C. § 1183a(b)(2).

95 8 U.S.C. § 1183a(b)(2)(C).

96 U.S. Dept. of Homeland Sec., Affidavits of Support on Behalf of Immigrants, 71 Fed. Reg. 35732, 35742-43 (June 21, 2006). On May 23, 2019, the Trump administration issued a memorandum on enforcing the responsibilities of sponsors. President Biden rescinded the memorandum through an executive order issued on February 2, 2021, directing agencies to review all actions taken in accordance with the Trump memorandum.

97 *See, e.g.*, Sloan v. Uwimana, No. 1:11-cv-502 (GBL/IDD), 2012 WL 1155206 (E.D. Va. Apr. 4, 2012) (holding sons liable to provide support to their mother on whose behalf they had filed Form I-864s and including award of attorney's fees).

98 *See* 8 U.S.C. § 1631(a).

99 8 U.S.C. § 1631(e)-(f).

100 8 U.S.C. § 1631(e).

101 8 U.S.C. § 1631(f).

102 Immigration and Nationality Act § 213A(a), 8 U.S.C. § 1183a(a); 8 C.F.R. § 213a.2(d)-(e)(1) (2020).

103 *See, e.g.*, Stump v. Stump, No. 1:04-CV-253-TS, 2005 U.S. Dist. LEXIS 45729, at *19 (ND. Ind. May 27, 2005).

104 *See, e.g.*, Motlagh v. Motlagh, 100 N.E.3d 937, 942-43 (Ohio Ct. App. 2017) (holding that "spousal support and an I-864 obligation are separate and distinct issues," but that "a divorce court may enforce the I-864 obligation through a spousal

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support order, an order of specific performance, or some combination of both"); *In re* Marriage of Khan, 332 P.3d 1016, 1017 (Wash. Ct. App. 2014) ("We hold that [the supported immigrant's] right to support under federal immigration law is a contract right separate from any rights she had as a result of her marriage, and that this contract right need not be enforced through maintenance payments in a dissolution proceeding.").

105 *See, e.g.,* Akers v. Akers, 102 N.E.3d 648, 653 (Ohio Ct. App. 2017). Here, the Ohio Court of Appeals concluded that there is no statute of limitations. The Court recognized that the law imposes a ten-year statute of limitations at 8 U.S.C. § 1183a(b)(2)(C). However, this is only as to actions by the government to recoup the cost of means-tested public benefits provided to the beneficiary. Because the statute imposed a time-limitation on actions by the government, the "omission of any such limitation period for an immigrant seeking to sue a sponsor for financial support suggests that Congress did not intend to impose one."

106 8 U.S.C. § 1183a(3)(A).

107 *See generally* Futures Without Violence, *Forms of Domestic Violence that Women Experience: Immigrant Women* (2020) https://www.thehotline.org/wp-content/uploads/media/2020/09/Power-Control-Wheel.pdf [https://perma.cc/4CLL-CUN7].

108 Even though the documents may be under the sponsor's name, a sponsored immigrant is entitled to receive a copy of her file. However, FOIA requests take up to six months to receive, despite a mandated response time of 20 days. 5 U.S.C. § 552(a)(6)(A)(i).

109 *See generally* U.S. Citizenship and Immigr. Servs., *I-865, Sponsor's Notice of Change of Address*, https://www.uscis.gov/i-865 [https://perma.cc/3ANE-9GQW].

110 *See* 8 C.F.R. § 213a.4(a)(3), "Upon the receipt of a duly issued subpoena, USCIS may provide a certified copy of an affidavit of support that has been filed on behalf of a specific alien for use as evidence in a civil action to enforce an affidavit of support, and may also disclose the last known address and social security number of the sponsor, substitute sponsor, or joint sponsor. Requesting information through the Systematic Alien Verification for Entitlement (SAVE) Program is sufficient, and a subpoena is not required, to obtain the sponsored immigrant's current immigration or citizenship status or the name, social security number and last known address of a sponsor, substitute sponsor, or joint sponsor."

111 *See* 8 U.S.C. § 1183a(d) (addressing the sponsor's responsibility to notify the Attorney General and the State in which the sponsored immigrant resides). *See generally* USCIS Form I-865 Sponsor's Notice of Change of Address, https://www.uscis.gov/i-865 [https://perma.cc/3ANE-9GQW].

112 *See* 8 U.S.C. § 1183a(i) (requiring the disclosure of each sponsor's social security account number).

113 *See* 8 U.S.C. § 1183a(d)(2). It is widely assumed that compliance with this requirement is spotty, at best. The author submitted a FOIA request a year ago inquiring about the rate of compliance with this requirement, and this remains pending.

114 *See, e.g.*, Moody v. Sorokina, 40 A.D.3d 14, 19 (N.Y.S. 2007) (holding that a trial court erred in determining that the affidavit of support created no private cause of action).

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115 *See* 8 C.F.R. § 213a.2(e)(2).

116 8 U.S.C. §§ 1183a(a)(2) (liability terminates if the sponsored immigrant becomes a U.S. citizen) and (a)(3)(A) (the sponsored immigrant can be credited with 40 qualifying quarters of work).

117 *See* 8 C.F.R. § 213a.2(e)(2)

118 *See* 8 U.S.C. § 1427(a)(1).

119 *See* 8 U.S.C. § 1430(a).

120 *See* 8 U.S.C. § 1427(a)(3).

121 *See* 8 C.F.R. § 316.10(b).

122 *See* 8 U.S.C. § 1427(a)(3).

123 8 U.S.C. § 1183a(3)(A).

124 42 U.S.C. § 413(a); Immigration and Nationality Act § 213A(a)(3), 8 U.S.C. § 1183a(a)(3); *Quarter of Coverage*, SOC. SEC. ADMIN. (2021), https://www.ssa.gov/oact/cola/QC.html [https://perma.cc/T97L-JQ3A]. A person can only earn a maximum of four qualifying quarters per year, and the funds can be earned at any time during the year--including being earned all in one quarter. 42 U.S.C. § 413(a)(2)(B)(vii); *Quarter of Coverage*, SOC. SEC. ADMIN. (2021), https://www.ssa.gov/oact/cola/QC.html [https://perma.cc/T97L-JQ3A]. For a historical chart listing the earnings required to earn a quarter of coverage for each year since 1978, *see Amount of Earnings Needed to Earn One Quarter of Coverage*, SOC. SEC. ADMIN (2021), https://www.ssa.gov/oact/cola/QC.html#qcseries [https://perma.cc/9WJW-2MWH].

125 U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1616-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7]; *see* Charles Wheeler, *Ten Pitfalls to Avoid with the Affidavit of Support*, IMMIGR. DAILY (Nov. 28, 2006), https://www.ilw.com/articles/2006,1128-wheeler.shtm [https://perma.cc/VU26-HQZG] (explaining that a sponsored immigrant can receive credit for earnings posted to a valid social security account in the sponsored immigrant's name, including earnings posted after termination of valid employment authorization). After a sponsored immigrant is granted a valid work-authorized social security number, credit for past earnings for which the worker has documentation can be moved into that account to add qualifying quarters. Charles Wheeler, *Ten Pitfalls to Avoid with the Affidavit of Support*, IMMIGR. DAILY (Nov. 28, 2006), https://www.ilw.com/articles/2006,1128-wheeler.shtm [https://perma.cc/VU26-HQZG].

126 Immigration and Nationality Act § 213A(a)(3)(B)(ii), 8 U.S.C. § 1183a(a)(3)(B)(ii); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO.1615-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7]. Divorce cuts the immigrant spouse off from any ability to use qualifying quarters earned by the former spouse during the marriage. If the sponsoring spouse dies, the immigrant spouse can continue to count the sponsoring spouse's quarters earned during the marriage. *See* Immigration and Nationality Act § 213A(a)(3)(B)(ii), 8 U.S.C. § 1183a(a)(3)(B)(ii); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1616-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF

SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7].

127 Immigration and Nationality Act § 213A(a)(3)(B)(i), 8 U.S.C. § 1183a(a)(3)(B)(i); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1616-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7].

128 Immigration and Nationality Act § 213A(a)(3)(B), 8 U.S.C. § 1183a(a)(3)(B); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1615-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7]; *Introductory Guide to the Affidavit of Support*, IMMIGRANT LEGAL RES. CTR. 3 (Apr. 10, 2018), https://www.ilrc.org/sites/default/files/resources/intro_guide_affidavit_support-20180410.pdf [https://perma.cc/36ZY-M7ML].

129 8 U.S.C. § 1183a(a)(3)(B)(ii).

130 8 U.S.C. § 1183a(a)(3)(B)(ii); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO.1615-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7]. Divorce cuts the immigrant spouse off from any ability to use qualifying quarters earned by the former spouse during the marriage. If the sponsoring spouse dies, the immigrant spouse can continue to count the sponsoring spouse's quarters earned during the marriage. *See* Immigration and Nationality Act § 213A(a)(3)(B)(ii), 8 U.S.C. § 1183a(a)(3)(B)(ii); U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1616-0075, INSTRUCTIONS FOR REQUEST FOR EXEMPTION FOR INTENDING IMMIGRANT'S AFFIDAVIT OF SUPPORT 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7].

131 Immigration and Nationality Act § 213A(a)(3)(B)(i), 8 U.S.C. § 1183a(a)(3)(B)(i); U.S. Citizenship & Immigr. Servs., OMB No. 1616-0075, Instructions for Request for Exemption for Intending Immigrant's Affidavit of Support 1 (2021), https://www.uscis.gov/sites/default/files/document/forms/i-864winstr.pdf [https://perma.cc/4CLL-CUN7].

132 Gross v. Gross, 2015 WL 4661553,10 (not reported in Cal. Rptr. 3d (2015).

133 *Id.*

134 *Id.*

135 Davis v. Davis, 970 N.E.2d 1151, 1151 (Ohio Ct. App. 2012).

136 *Id. See also* 8 U.S.C. § 1183a(a)(3)(B)(ii).

137 Cyrousi v. Kashyap, 386 F.Supp. 3d 1278, 1278 (C.D. Cal. 2019).

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138 *Id.* (Importantly, the plaintiff was on his third marriage and yet, the first wife sponsor was still liable for his support, barring any terminating events, such as the sharing of quarters).

139 8 C.F.R. § 213a.2(e)(2)(i)(C).

140 *Id.*

141 To prevent marriage fraud, if the marriage is less than two years old, the sponsored immigrant receives a "conditional" lawful permanent residence. To remove the condition, the immigrant must file Form I-751 within 90 days of the expiration of the conditional residence. *See, e.g.*, 8 U.S.C. § 1186a(c)(1)(A), 8 U.S.C. § 1186a(d)(2)(A). *See, e.g.,* Golipour v. Moghaddam, 438 F.Supp. 3d 1290 (D. Utah 2020) (holding that loss of lawful permanent resident status *without* departure from the United States does not terminate support obligation); *Cyrousi*, 386 F.Supp. 3d at 1285-86(holding that plaintiff's lawful permanent residence had not expired when he timely filed a Form I-751 removal of condition application before departing from the United States).

142 In re Marriage of Tamboura, 2019 WL 2206197 (not reported in Cal. Rptr.) (2019).

143 *Id.*

144 Even before appeals, immigration court proceedings can be quite long. *See* TRAC, Immigration Court Processing Times by Outcome, https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php [https://perma.cc/N6GX-2QRJ].

145 8 C.F.R. § 213a.2(e)(2)(i)(D).

146 *Id.*

147 8 C.F.R. § 213a.2(e)(2)(i). *See Gross.*, 2015 WL 4661553 (not reported in Cal. Rptr. 3d) (2015) (sponsored immigrant sued the living co-sponsors after one of the sponsors died).

148 *See* U.S. Citizenship & Immigr. Servs., OMB No. 1615-0075, *Instructions for Affidavit of Support Under Section 213A of the INA 13* (2021), Affidavit of Support: Responsibilities as a Sponsor, U.S. Citizenship & Immigr. Servs. (Mar. 19, 2021), https://www.uscis.gov/sites/default/files/document/forms/i-864instr.pdf [https://perma.cc/NXJ4-CZCJ].

149 *See, e.g.,* Erler, 824 F.3d at 1177 ("[U]nder federal law, neither a divorce judgment nor a premarital agreement may terminate an obligation of support.").

150 *Cyrousi*, 386 F. Supp. 3d at 1284; *Belevich,* 2019 WL 2550023, at *21 ("Courts have consistently recognized that a sponsor's breach of an Affidavit of Support can only be excused by the conditions enumerated in the Form I-864 and 8 C.F.R. § 213a.2(e)(2)(i)(ii)."); Dorsaneo v. Dorsaneo, 261 F. Supp. 3d 1052, 1054 (N.D. Cal. 2017); Li Liu v. Kell, 299 F. Supp. 3d 1128, 1133 (W.D. Wash. 2017); *Erler*, 824 F.3d at 1179; Liu v. Mund, 686 F.3d at 420.

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151 *See e.g., Dorsaneo*, 261 F. Supp. 3d at 1054 (holding that "[f]raud in the inducement cannot be a defense to an I-864 enforcement action").

152 *See* Anderson v. United States, No. C17-0891, 2017 WL 6558255, at *2 (W.D. Wash. Dec. 22, 2017) ("[Defendant] is essentially arguing that the perpetual support obligation imposed by the United States immigration service in exchange for a visa is unfair ... however. Defendant has not shown that the contract was unconscionable or is otherwise unenforceable.").

153 *See, e.g.*, Rahman v. Chan, 281 F. Supp. 3d 1124, 1125 (W.D. Wash. 2017) (finding various contract-based defenses, including rescission, to a claim for breach of an I-864 support obligation "invalid as a matter of law") (citing Liu v. Mund, 299 F. Supp. 3d at 1133, *Dorsaneo*, 261 F. Supp. 3d at 1054, and *Erler*, 824 F.3d at 1177).

154 *See generally* Liu, 686 F.3d at 420-23 (finding no such mandate to mitigate in the statute and questioning whether imposing such a mandate would be sound policy).

155 299 F.Supp.3d 1128, 1133 (W.D. Wash. 2017).

156 *In re* Marriage of Kumar, 220 Cal. Rptr. 3d 863, 871-72 (Ct. App. 2017).

157 686 F.3d. at 418, 420, 422, 423.

158 *In re Marriage of Kumar,* 220 Cal. Rptr. 3d at 871-72.

159 *Id.* at 871 (quoting Liu v. Mund, 686 F.3d at 422).

160 *See, e.g.*, Dorsaneo v. Dorsaneo, 261 F. Supp. 3d 1052, 1053-54 (N.D. Cal. 2017), *aff'd*, 780 F. App'x 532 (9th Cir. 2019).

161 Hrachova v. Cook, No. 09-cv-95-Oc, 2009 WL 3674851, at *3 (M.D. Fla. Nov. 3, 2009).

162 *See, e.g.*, Cheshire v. Cheshire, No. 05-cv-00453-MCR, 2006 WL 1208010, at *4 (M.D. Fla. May 4, 2006).

163 261 F. Supp. 3d 1052.

164 *Id.* at 1053.

165 *Id.* at 1054.

166 *Id.*

167 *Id.*

168 *Id.* at 1055.

169 281 F. Supp. 3d 1124, 1125 (W.D. Wash. 2017).

170 *Id.* (citing Li Liu v. Kell, 299 F. Supp. 3d 1128, 1128 (W.D. Wash. 2017); *Dorsaneo*, 261 F. Supp. 3d at 1082; and Erler v. Erler, 824 F.3d 1173, 1177 (9th Cir. 2016)).

171 332 P.3d 1016, 1019 (Wash. Ct. App. 2014).

172 *Id.* (citing the USCIS Form I-864 Instructions; Liu v. Mund, 686 F.3d 418, 423 (7th Cir. 2012); and Shumye v. Felleke, 555 F. Supp. 2d 1020, 1024 (N.D. Cal. 2008)).

173 *Id.*

174 2018 WL 1626526 (S.D.N.Y. Mar. 29, 2018).

175 It is important to note that *pro se* litigants do not fare well when making affidavit of support arguments in court. *See, e.g.*, Yates v. Yates, Civ. No. 14-cv-545 (D. Del. Mar. 23, 2018) (explaining Res Judicata bars Plaintiff's claims, due to previous EDPA action when court dismissed complaint with prejudice and motion for reconsideration was denied).

176 2018 WL 1626526 at *4 (articulating that, "as between actions pending at the same time, res judicata attaches to the first judgment regardless of the sequence in which the actions were commenced") (internal citations omitted).

177 *Id.* (citing *In re* Schwartz, 409 B.R. 240 (B.A.P. 1st Cir. 2008) (concluding that the affidavit of support had already been included in a divorce proceeding, so the court lacked subject matter jurisdiction over the action)).

178 No. 2:14-cv-1182-WMA, 2019 WL 11866989 (W.D. Wash. Feb. 25, 2019).

179 *Id.* at *1.

180 *Id.* Among sponsor's defenses were Res Judicata, Claim Preclusion, Issue Preclusion, Impossibility, Frustration, Statute of Limitations, and Fraud and Misrepresentation.

181 Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Court to Abuse Victims, And How Courts Can Put an End to It*, 24 UCLA WOMEN'S L.J. 41, 53 (2017) ("Litigation abuse is a common tactic for batterers because it is often the only way left for batterers to stay in contact with their victims."); David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 SEATTLE J. FOR SOC. JUST. 429, 430 (2015) ("Domestic violence survivors and their advocates have long known that abusers often use the legal system to continue to exert power and control over survivors years after a relationship has ended, particularly through litigation in family court.").

182 Al-Mansour v. Shraim, No. CCB-10-1729, 2011 WL 345876, at *2 (D. Md. Feb. 2, 2011).

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183 "[C]laims that I-864A forms are unconscionable have been explicitly rejected." Zhu v. Deng, 250 N.C. App. 803, 812 (2016). *See also* Al-- Mansour v. Shraim, Civil No. CCB-10-1729, 2011 WL 345876, at *3 (D. Md. Feb. 2, 2011) ("While the Form I-864 may be a contract of adhesion under Maryland law, it is not unconscionable."); *Cheshire v. Cheshire*, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010, at *4 (M.D. Fla. May 4, 2006) ("[T]he Court fails to find evidence that the affidavit of support Form I-864 was an unconscionable or illusory contract ....").

184 Baines v. Baines, No. E2009-00180-COA-R3-CV, 2009 WL 3806131, at *5-6 (Tenn. Ct. App. Nov. 13, 2009).

185 *Id.* at *6.

186 17 F.4th 1048 (11th Cir. 2021).

187 *Id.* at 1049.

188 *Id.* at 1052.

189 *Id.* at 1052-53.

190 *Id.* at 1053.

191 *Id.*

192 *See* Liu v. Mund, 686 F.3d 418, 422 (7th Cir. 2012) ("The only beneficiary of [these equitable defenses] would be the sponsor--and it is not for [her] benefit that the duty of support was imposed.").

193 David B. Thronson, *Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law*, 63 OHIO ST. L.J. 979, 993 (2002); *see* Fornalik v. Perryman, 223 F.3d 523, 527-28 (7th Cir. 2000).

194 Victims of domestic violence may leave and come back to the abuser several times. Research on leaving an abusive relationship shows that it takes an average of seven attempts to leave before a victim finally leaves permanently. *See* Buel, *supra* note 6.

195 *See* Mariela Olivares, *A Final Obstacle: Barriers to Divorce for Immigrant Victims of Domestic Violence in the United States*, 34 HAMLINE L. REV. 149 (2011); Veronica T. Thronson, *Domestic Violence and Immigrants in Family Courts*, 63 JUV. & FAM. CT. J. 63 (2012).

196 *See* Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (2018).

197 For detailed descriptions of these immigration remedies, *see, e.g.,* RACHEL SETTLAGE, ELIZABETH CAMPBELL & VERONICA TOBAR THRONSON, IMMIGRATION RELIEF: LEGAL ASSISTANCE FOR VULNERABLE NONCITIZEN VICTIMS OF CRIME 69, 78 (2014) (explaining how courts use a "best interest of the child" analysis to

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determine eligibility for special immigrant juvenile status, which provides relief for abandoned or abused undocumented children).

198 *See* Immigration and Nationality Act § 216(c)(4)(C), 8 U.S.C. § 1186a(c)(4)(C) (2018).

199 *See* 8 U.S.C. § 1154(a)(1)(A)(iii) (2018).

200 *See* 8 U.S.C. § 1101(a)(15)(U) (2018).

201 *See* 8 U.S.C. § 1101(a)(15)(T) (2018).

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

203 *See* 8 U.S.C. § 1186a(a)(1) (2018).

204 *See* 8 U.S.C. § 1186a(c)(1)(A), (d)(2)(A) (2018).

205 *See* 8 U.S.C. § 1186a(c)(2)(A)-(B) (2018).

206 *See* 8 U.S.C. § 1186a(c)(4) (2018).

207 *See* 8 U.S.C. §1154(a)(1)(A)(iii) (2018).

208 Despite its name, protections under the Violence Against Women Act are available to any potential battered immigrant regardless of gender. *Id.*

209 *See* 8 U.S.C. § 1154(a)(1)(A)(iii) (2018).

210 *See* 8 C.F.R. § 204.2(c)(1)(e) (2021).

211 *See* 8 C.F.R. § 204.2 (2021).

212 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1463.

213 Such qualifying activity includes "rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes." 8 U.S.C. § 1101(a)(15)(U)(iii) (2018).

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214 *See* 8 U.S.C. § 1101(a)(15)(U)(i) (2018).

215 *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1463.

216 8 U.S.C. § 1101(a)(15)(T) (2018).

217 22 U.S.C. § 7102(11) (2018).

218 For a complete analysis of VAWA confidentiality provisions, see Veronica Thronson, et al., *Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights*, 9 FAM. & INTIMATE PARTNER VIOLENCE Q., Winter 2017, at 7, 69.

219 34 U.S.C. § 12291(b)(2) (2018).

220 8 U.S.C. § 1367(a)(2) (2018) (protecting the confidentiality of information a victim may provide to the Department of Homeland Security, the Department of Justice, or the Department of State).

221 8 U.S.C. § 1367(a)(1) (2018) (preventing immigration officials from relying solely on information provided by the abuser as a basis for making adverse determinations against a victim).

222 8 U.S.C. § 1229(e)(2) (2018) (requiring enforcement officials to certify compliance with 8 U.S.C. § 1367 (2018) when initiating removal proceedings (i.e., serving a Notice to Appear) in sensitive areas, including domestic violence shelters, rape crisis centers, victim services programs, family justice center or supervised visitation centers).

223 *See generally* Susan Schechter, *Domestic Violence: A National Curriculum for Family Preservation Practitioners* (2005); Buel, *supra* note 6.

224 For purposes of this provision the term "crime of domestic violence" is limited to crimes which meet the definition of a "crime of violence" in 18 U.S.C. § 16, which includes only crimes with an element requiring the "use, attempted use, or threatened use of physical force." As such, many convictions under state statutes that include elements encompassing mere battery do qualify as crimes of domestic violence. *See, e.g., Matter of S.S.P.,* AXXX XXX 854 *(*BIA, Aug. 4, 2017) (unpublished) finding that a domestic violence conviction under M.C.L. §750.12 is categorically "not for a crime of violence."); *see also Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016).

225 *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1463.

226 *See* Belevich v. Thomas, No. 2:17-cv-1193-AKK, 2019 WL 2550023 (2019)

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