THE VIOLENCE AGAINST WOMEN ACT, IMPLICIT BIAS, AND JUDICIAL TRAINING

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INTRODUCTION

> The answer to the problem between the white race and the colored, between males and females, lies in healing the split that originates in the very foundation of our lives, our culture, our languages, our thoughts. A massive uprooting of dualistic thinking in the individual and collective consciousness is the beginning of a long struggle, but one that could, in our best hopes, bring us to the end of rape, of violence, of war.[1]

On average, nearly 20 people per minute are physically abused by an intimate partner in the United States.[2] Most domestic violence victims are women, and more immigrant women are abused by their spouses than women in the general population in the United States.[3] The main demographic of immigrant women in the U.S. are from Latin America.[4] As such, undocumented Latina immigrant women face several obstacles, in addition to difficulties stemming from their unlawful status, when attempting to escape violence: language barriers, cultural differences, and lack of a support system. Often, the only place they can turn to is law enforcement authorities and the justice system, particularly the Family Court, which enables immigrant women to obtain immigration relief as well.

The Violence Against Women Act ("VAWA") was enacted in 1994. It legitimized a "feminist anti- violence agenda within the political mainstream"[5] by providing federal criminal and civil legal remedies for female victims of violence. In part, it provides immigration relief for

1 Gloria Anzaldua. Borderlands/La Frontera: The New Mestiza. San Francisco: Aunt Lute, 1987.

2 National Coalition Against Domestic Violence, National Statistics. http://ncadv.org/learn-more/statistics. In New York, in 2013, law enforcement responded to 284,660 domestic violence incidents. New York City Domestic Violence Fatality Review Commission (2014). 2014 annual report. http:// www.nyc.gov/ html/ ocdv/ downloads/ pdf/ Statistics_ 9th_ Annual_ Report_ Fatality_ Review_ Committee_ 2014.pdf

3 Katerina Shaw, Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women, 15 Cardozo J.L. & Gender 663 (2009) (citing Family Violence Prevention Fund, The Facts on Domestic Violence, http:// endabuse.org/ userfiles/ file/ Children_ and_ Families/ DomesticViolence.pdf, Athealth.com, Domestic Violence Fact Sheet, http:// www.athealth.com/ Consumer/ Disorders/ DomViolFacts.html)

4 American Immigration Council, *Immigrant Women in the United States: A Portrait of Demographic Diversity*, Fact Sheet (Sept. 10, 2014) https:// www.americanimmigrationcouncil.org/ research/ immigrant-women-united-states-portrait-demographic-diversity (26% of immigrant women are from Mexico).

5 Jenny Rivera, The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements, 4 J.L. & Pol'y 463, 490 (1996).

immigrant women who have been victims of violence. These women may obtain status by applying for U Nonimmigrant Status ("U-visa") for victims of crime or a VAWA self-petition. One way to demonstrate that someone has been through the requisite level of abuse for each of these types of immigration relief is to attach a Family Offense Petition and accompanying Order of Protection, which can be obtained in a Family Court. Family Court judges also have the ability to provide the certification that enables victims of crimes to apply for a U-visa. Thus, the immigration relief available to these vulnerable women, who may have U.S. citizen children who depend entirely on them to provide and care for them, may be entirely contingent on a Family Court judge's assessment of their experiences of violence.

This reliance on the Family Court is extremely risky for undocumented Latinx women due to the fact that, in general, women of color are not treated similarly to how men and other women are treated in the judicial system.[6] Stereotypes are incredibly influential in our daily experiences of others in ways we might not even realize: "we are told about the world before we see it. We imagine most things before we experience them. And those preconceptions, unless education has made us acutely aware, govern deeply the whole process of perception."[7] In the Family Court, women of color struggle with being perceived as believable and reasonable because they do not fit the image of the ideal victim, who has historically been white, middle class, and cisgender.[8] This typical characterization of victims renders the very existence of women of color deviant. Thus, these women are exposed to racist treatment in their everyday experiences, and the judicial system is no exception.

Implicit bias is a concept that has increasingly been receiving attention in both the private and public sector. This concept has become salient particularly as it relates to those in positions of power, like judges, who are often perceived to have an unconditional commitment to fighting injustice. The Justice Department has defined implicit bias as "the unconscious or subtle associations that individuals make between groups of people and stereotypes about those groups."[9] Implicit bias has not only continued to develop as a concept but has recently gained more recognition in the justice system, especially law enforcement, given the

6 *Id*.

7 Linda L. Ammons, Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African -American Woman and the Battered Woman Syndrome, 1995 Wis. L. Rev. 1003 (1995).

8 *Id*.

9 Joe Davidson, Implicit Bias Training Seeks to Counter Hidden Prejudice in Law Enforcement, The Washington Post (Aug. 16, 2016), https:// www.washingtonpost.com/ news/ powerpost/ wp/ 2016/ 08/ 16/ implicit-bias-training-seeks-to-counter-hidden-prejudice-in-law-enforcement/ ? utm_ term= .914dc338cd17

increasing number of racially-motivated incidents. In her memorandum for all Department Law Enforcement Agents and Prosecutors, Former Attorney General Sally Yates announced the beginning of mandatory implicit bias training and expressed that, in spite of the many hours employees already have to devote to trainings, she would not ask them to take on the additional responsibility of implicit bias training unless she and other Department leaders were convinced of its value.[10]

Currently, in spite of the many ways in which implicit bias can tremendously affect the experience of a domestic violence victim in Family Court, there is no specific statutory language in VAWA addressing judicial training regarding the racial stereotyping of domestic violence survivors, implicit bias, or any mention of myths based on immigration status. Thus, VAWA needs to be amended to include training that addressees the aforementioned issues for Family Court Judges and court staff in order to better serve its purpose of providing adequate relief for women of color, particularly undocumented immigrant Latinx women. The suggested amendment would be consistent with other sections of VAWA, which mandate the inclusion of representatives from various communities, including communities of color, in the development and strategic planning of VAWA directed or facilitated enforcement, education, and research projects.

Part I of this note will provide an overview of the history of the Violence Against Women Act, the specific barriers that immigrant Latina women face when attempting to escape violence, the history of immigration laws affecting immigrant battered women, and the ways in which VAWA has attempted to correct its previous deficiencies. Part I will also cover the Family Court and the kind of relief that it can provide for battered immigrant women seeking status. Part II of this section will address narratives for domestic violence victims, implicit bias, and how it affects the way battered women obtain relief, particularly undocumented immigrant Latinas. Part III will look at the provisions of 42 USCA § 13992, which codifies VAWA judicial training. Further, Part III will examine examples of judicial cultural competence training and develop the argument for the necessary inclusion of an implicit bias provision in VAWA's judicial training statute so that it may properly serve its purpose as a feminist and race-conscious legislation.

I. HISTORY OF VAWA, IMMIGRATION LAWS, AND THE

10 *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, The United States Department of Justice Office of Public Affairs (June 27, 2016), https:// www.justice.gov/ opa/ pr/ department-justice-announces-new-department-wide-implicit-bias-training-personnel

FAMILY COURT

A. The Violence Against Women Act

VAWA of 1994 was the first piece of federal legislation in the United States that sought to curb domestic violence in the United States. Through its provisions, VAWA attempted to enhance protection by the justice system for battered women as well as expand collaboration between battered women's supportive services and the criminal and civil justice systems.[11] For instance, one major way in which VAWA 1994 was effective in enhancing protection by the justice system is by including a provision requiring states to give full faith and credit to civil protection orders issued in other states, and by making interstate domestic violence and interstate violation of protection orders a federal crime.[12]

VAWA also sought to expand the protections offered to battered women by making funding available to states that demonstrate a commitment to fighting domestic violence. From its inception, VAWA aimed to incentivize jurisdictions that worked to abolish practices that were harmful to victims of domestic violence in order to keep them in line with VAWA's purpose to expand protections for battered women. In fact, jurisdictions had to prove that their practices were already not harmful by certifying in their application for funding that, for example, they do not charge fees in protection order cases, that they have policies and procedures in place prohibiting dual arrest and mutual protection orders, and that they have pro or mandatory arrest policies in place for domestic violence cases.[13]

Further, VAWA 1994 recognized the importance of the collaborative role that law enforcement, battered women's advocates, and educational programs play in stopping domestic violence. VAWA's goal was to foster cooperation between battered women's advocates and justice system personnel. To that end, it provided funding for police, prosecutors, battered women service providers, state domestic violence coalitions, and a national domestic hotline.[14] Moreover, VAWA 1994 made funds available to educate and train community members and professionals about domestic violence. There were funds aimed at improving services for victims as well as procedures followed by police department and prosecutor's offices when handling domestic violence

11 Leslye E. Orloff & Janice v. Kaguyutan, Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, 10 Am. U. J. Gender Soc. Pol'y & L. 95 (2001)

12 *Id*.

13 *Id*.

14 *Id*.

cases.[15]

B. Domestic Violence and Latina Immigrant Women

Immigrant women, particularly undocumented Latina immigrant women, are among those who are most susceptible to domestic violence. A survey conducted among Latina immigrants in the D.C. area found that 49.3% reported physical abuse by an intimate partner during their lifetimes, 11.4% reported sexual abuse, and 42.1% reported severe physical or sexual abuse.[16] Moreover, the incidence of abuse is higher for married or formerly married immigrant Latinas: lifetime abuse rate raises to 59.5%. In fact, for many immigrants, abuse either increased or did not occur until they immigrated to the United States.[17] Although rates of violence between intimate partners are somewhat lower among Hispanics in the United States than the general U.S. population, "undocumented immigrants represent a subgroup in the Hispanic community that is more vulnerable to domestic violence, in part because they are less protected by the legal system."[18]

Immigrant women who are not aware of their rights and experience language barriers tend to underuse services available to them and designed to help battered women, such as the justice system, public benefits, and social services.[19] Nonetheless, although undocumented Latinas visit immigration professionals less often than their documented counterparts, Latina immigrants who are victims of domestic violence make more use of immigration services than other immigrant women: battered immigrant Latinas reported using more immigration assistance than any other form of service.[20] For many immigrant women who have U.S. citizen children, obtaining status is crucial to being able to escape violence and not being separated from their children if deportation occurs. Thus, battered undocumented Latinas are often faced with the decision of having to choose between risking separation from their families if denied immigration relief and having to stay in an abusive

15 *Id*.

16 Leslye E. Orloff & Janice v. Kaguyutan, Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, 10 Am. U. J. Gender Soc. Pol'y & L. 95 (2001).

17 *Id*. "A study conducted by the Immigrant Women's Task Force of the Coalition for Immigrant and Refugee Rights and Services—which surveyed immigrant Latina and Filipina women—forty-eight percent of the women reported that the level of domestic violence escalated after their immigration to the United States." Shaw.

18 Sarah M. Wood, Vawa's Unfinished Business: The Immigrant Women Who Fall Through the Cracks, 11 Duke J. Gender L. & Pol'y 141 (2004).

19 *Id*.

20 Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas:Legal and Policy Implications, 7 Geo. J. on Poverty L. & Pol'y 245 (2000).

relationship.

There are many factors preventing battered undocumented Latinas from seeking help. For undocumented women, unlawful status is a major obstacle when attempting to escape domestic violence. Their abusers, especially if U.S. citizens or residents, often refuse to assist them with obtaining status, and use this as a tool in their arsenal of abuse. 72.3% of abusive citizen or resident spouses never file immigration papers for their abused spouses and the 27.7% who do file hold their spouses in the marriage for almost four years before filing immigration papers.[21] Constant threats by U.S. Citizen or Permanent Resident spouses to deport spouses and children play upon real, deep-seated fears of deportation and are therefore very powerful tools to keep battered immigrant women in violent relationships."[22] Other factors influencing their decision to not seek help include, but are not limited to, lack of relatives or a support system, pressure to assimilate culturally or to maintain traditions, language barriers, and economic insecurity.[23] Cultural barriers come in the form of expectations by other members in their community to keep the family together and protect it from shame, at the expense of having to withstand abuse.[24] However, one of the most significant factors affecting the ability or willingness of battered immigrant Latinas to seek help from authorities is anti-immigrant sentiment and racial or ethnic bias due to discrimination, which many immigrant women have either experienced or fear experiencing.[25]

C. Immigration Laws and Domestic Violence

Historically, immigration laws have facilitated abuse towards undocumented women. Old laws conferred power to citizen and resident abusers over the immigration status of their wives, based on the assumption that the husband is the head of the household.[26]These laws required a husband to either file a petition for his wife or accompany her when she applied for immigration status, and were largely based on the concept of coverture. Coverture is the legal principle under which "the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband, under whose wing, protection, and cover, she performs

21 Leslye E. Orloff & Janice v. Kaguyutan, Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, 10 Am. U. J. Gender Soc. Pol'y & L. 95 (2001).

22 *Id*.

23 *Id*.

24 *See supra* note 3.

25 *Id*.

26 *Id*.

everything."[27] This concept also encouraged an environment in which domestic violence was acceptable, even required, for disciplining spouses. Thus, immigration laws effectively conferred ownership of undocumented spouses to their U.S. citizen spouses. [28]

Subsequent immigration legislation did little to address this issue. The Immigration and Nationality Act ("INA") was passed in 1952, and attempted to make marriage-related immigration benefits gender neutral by now allowing women to petition for their husbands. However, "since the majority of domestic violence victims are women, immigrant women in abusive relationships with citizen spouses still faced the choice of either remaining in the relationship or leaving and becoming undocumented."[29] Years later, the Immigration Marriage Fraud Amendments of 1986 ("IMFA") made matters worse by increasing the power and control that a U.S. citizen or lawful permanent resident spouses had over their immigrant spouse's status. Due to preoccupation about fraudulent marriages between a U.S. citizen or legal permanent resident and a "foreigner," this legislation now created a presumption that all such marriages were fraudulent.[30] Hence, immigration laws have historically treated noncitizen immigrant spouses with suspicion, which continues to affect the treatment an attitudes that immigrant women face by the justice system in this country.

D. VAWA's Response to the Specific Problems Faced by Immigrant Women in Accessing Justice

VAWA 1994 included a section addressing "special protections for battered immigrant women and children abused by United States citizen or lawful permanent resident spouses or parents."[31] One of the purposes that Congress stated when enacting VAWA was to allow battered immigrant women to leave their abusers without fearing deportation. Under VAWA 1994, these women could now petition for themselves without the knowledge of their U.S. citizen spouse and without having to leave. Legislators recognized that levels of abuse were high when immigrant spouses were dependent on citizen or permanent resident spouses for status:

27 W. Blackstone, Commentaries on the Laws of England 432 (1765).

28 Leslye E. Orloff & Janice v. Kaguyutan, Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, 10 Am. U. J. Gender Soc. Pol'y & L. 95 (2001)

29 *Id*.

30 *See supra* note 3.

31 *Id*.

> [F]indings support Congress' conclusion that many spouses of abused immigrant women never file visa petitions on the immigrant spouse's behalf. Congress realized that a spouse with permanent immigration status could revoke his battered spouse's petition at any time, thus not only frustrating his victim's attempt to gain legal status, but also thwarting potential calls for help by threatening to have her deported if she tried to contact the police or obtain a protection order.[32]

However, VAWA initially did not initially adequately address all immigration barriers for immigrant domestic violence victims. It was amended in 2000 for the purpose of remedying that fault: The Battered Immigrant Women Protection Act of 2000 was passed as a part of the VAWA 2000. The two types of immigration relief that the 2000 VAWA amendment made available to undocumented immigrant women are VAWA self-petitions and U-visas.[33] Self-petitions are designed for immigrant woman "married to a citizen or lawful permanent resident . . . whose husband had not filed or was not expected to follow through with the immigration case he filed on his immigrant spouse's or child's behalf."[34] A self-petitioner has to prove, in addition to the immigration status of her abuser, that she has suffered battering or extreme cruelty, that her marriage was a "good faith marriage," that she resided with the abuser for a period of time, that she has good moral character, and that she or her children would suffer extreme hardship if she is to be deported.[35] U-visas, on the other hand, are "designed for noncitizen crime victims who have suffered substantial physical or mental abuse flowing from criminal activity and who have mustered the courage to cooperate with government officials investigating or prosecuting such criminal activity."[36] Because U-visas usually are facilitated by a criminal investigation resulting in the granting of U-visa certification, additional evidence of battery/cruelty is helpful but not as critical as it is for VAWA self-petitions.

In 2005, Senator Joseph Biden introduced in the Senate the Violence Against Women Act and Department of Justice Reauthorization Act of 2005. This reauthorization recognized that, due to inability to meet requisite criteria, many VAWA-eligible victims were still being deported. Additional protections for battered immigrant women in the reauthorization include exemption from sanctions for not leaving the U.S. following a judicial order, inability for U or T visa recipients to petition

32 Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications, 7 Geo. J. on Poverty L. & Pol'y 245 (2000).

33 *Id*.

34 *Id*.

35 *Id*.

36 *Id*.

on behalf of an abuser, and employment authorization for those applicants that have filed valid cases.[37]

However, the evidentiary burden for U-visas and VAWA self-petitions remains to be an obstacle for many applicants. For instance, proving emotional and psychological abuse for victims is still very difficult because documentary evidence that is sometimes available in physical abuse cases, such as police reports, medical records or photographs of physical injuries, does not exist.[38] Furthermore, affidavits from acquaintances and social services practitioners might be useful, but on their own are often deemed insufficient by the immigration service, in spite of the "any credible evidence" standard, which Congress included "in order to make it easier for battered women to prove spousal abuse."[39] Lastly, many victims of domestic violence do not press charges, which would enable them to apply for a U visa. However, even if a victim does press charges against her abuser, if law enforcement chooses not to go through with the prosecution, or refuses to use the victim as a witness because the prosecution does not find her testimony credible, the victim is essentially left in the same position that she would have been in if U-visa provisions were not in place.[40]

E. The Family Court and Immigration Relief for Battered Women

The Family Court can provide relief to battered immigrant women that can also be critical for immigration relief in the form of VAWA self-petitions or U-visa applications. In order to prove extreme battery or cruelty, credible evidence of battery or extreme cruelty may include, but is not limited to, "reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other service agency personnel."[41] Final Orders of Protection from Family Court are one of the most common ways of proving extreme battery and cruelty for self-petitions.

Family Offense Petitions, which aim to result in temporary and eventually final orders of protection, can be filed by "members of the same family or household" (e.g.; persons legally married, related by consanguinity or affinity, have a child in common).[42] Family Offense

37 Laura Carothers Graham, Relief for Battered Immigrants Under the Violence Against Women Act, 10 Del. L. Rev. 263 (2008).

38 Katerina Shaw, Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women, 15 Cardozo J.L. & Gender 663 (2009).

39 *Id*. See also for personal accounts of VAWA applicants who were not able to meet the evidentiary standard of "extreme cruelty" even with an order of protection.

40 *Id*.

41 N.Y. Fam. Ct. Act §†812 (McKinney).

42 *Id*.

Petitions must allege a Family offense by statute.[43] The Court may issue a temporary order of protection if good cause is shown. A temporary order of protection is not a finding of wrongdoing, but it may contain "provisions authorized on the making of a permanent order of protection."[44] The court may issue or extend a temporary order of protection ex parte[45] and at the following return date, if the court finds that the respondent has committed a family offense, the court may enter a final order of protection against him/her.[46]

For U-visas, Family Offense Petitions are helpful in providing details about the crime that the petitioner has been subjected to, but are not sufficient on their own. U-visa certification is the first roadblock in successfully submitting a U-visa petition. A law enforcement agent usually fills out and signs Form B (also known as "U Nonimmigrant Status Certification"), which confirms that the applicant "has been, is being, or is likely to be helpful to a certifying law enforcement official in the investigation or prosecution of the qualifying criminal activity."[47] However, Family Court judges also have the authority to certify for U-visa purposes: pursuant to 8 U.S.C. § 1184(p)(1) and 8 C.F.R. § 214.13, certification "may be made, inter alia, by 'a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal or State, or local authority investigating criminal activity.'"[48]

A decision to grant or deny a request for certification is discretionary, and there is no right of judicial review from a refusal to grant the certification.[49] Thus, a Family Court judge looking to grant U-visa certification, especially if there is currently no criminal investigation, has a considerable amount of discretion in determining what constitutes a "criminal action" and whether the victim is likely to be helpful in the investigation or prosecution of the criminal activity.[50] Most notably, judges are included as certifiers, in part, because immigrant victims might encounter obstacles when communicating with law enforcement officials regarding the criminal activity they've been subjected to due to language barriers. As explained previously, for undocumented Latinas, language is one of the main obstacles standing in the way of escaping violence. An increasing number of states, including New York, require courts to provide interpretation services for parties with limited English

43 *Id*. Some examples of family offenses are disorderly conduct, harassment in the first degree, aggravated harassment in the second degree, and sexual misconduct.

44 *Id*.

45 1 NY Fam Ct. Law & Prac ´§†8:18.

46 NY Law of Domestic Violence ´§†3:50 (3d ed.).

47 Instructions for I-918, Supplement B, 8 C.F.R. §†214.14(a)(3).

48 In re Clara F., 52 Misc. 3d 640, 644, 32 N.Y.S.3d 871, 874 (N.Y. Fam. Ct. 2016).

49 *Id*.

50 *Id*.

proficiency.[51]

Thus, Family Court judges are in a unique position to assist an immigrant woman who has been a crime victim with the U-visa certification requirement, for the judge may be the only certifying official whom the victim will encounter that is both language accessible and able to provide assistance.[52] Family Court judges not only have the power to grant Orders of Protection to be used as evidence of abuse in self-petitions, but since they themselves can also grant U-visa certification, they consequently have a direct effect on whether the victim can pursue that kind of relief in the first place. Further, there are other instances in which victims seeking immigration relief are dependent on the Family Court, such as undocumented children applying for Special Immigrant Juvenile status.[53]

II. DOMESTIC VIOLENCE AND IMPLICIT BIAS

A Family Court is, defined simply, "a single forum within which to adjudicate the full range of family law issues, based on the notion that court effectiveness and efficiency increase when the Court resolves a family's legal problems in as few appearances as possible."[54] Historically, the concept of a family court evolved at around the same time as the juvenile court movement did.[55] The Standard Family Court Act was produced in 1959, and its purpose was defined as "to protect and safeguard family life in general . . . in a single court with one specially-qualified staff . . . under the direction of one or more specially-qualified judges."[56] New York began a separate Family Court in 1962. The New York Family Court maintains jurisdiction over abuse proceedings, among others like support, child custody, and distribution of marital property proceedings.[57]

Judges in Family Court are hear domestic violence narratives on a daily base, but women of color do not have the same reception of their

51 Leslye E. Orloff et al., Judges and the U-Visa Certification Requirement, U Visa Certification Tool Kit For Federal, State, and Local Judges and Magistrates, Legal Momentum (Feb. 3, 2014), https:// www.lsc.gov/ sites/ default/ files/ LSC/ pdfs/ March% 207,% 202014% 20-% 203% 20-% 20% 20NIWAP% 20Appendix% 20B% 20-% 20U% 20Visa% 20Toolkit.pdf

52 *Id*.

53 See Jennifer Baum, Alison Kamhi, C. Mario Russell, Most in Need but Least Served: Legal and Practical Barriers to Special Immigrant Juvenile Status for Federally Detained Minors, 50 Fam. Ct. Rev. 621 (2012).

54 Barbara A. Babb, Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts, 32 Fam. L.Q. 31 (1998).

55 *Id*.

56 Committee on the Standard Family Court Act of the National Probation and Parole Association, Standard Family Court Act-Text and Commentary, 5 NAT'L PROBATION & PAROLE ASS'N J. 99, 104 (1959).

57 N.Y. FAM. CT. ACT §†115 (McKinney 1988 & Supp. 1997).

stories that white women do. In states like New York, where 37% of its residents were born in another country[58], these judges are hearing the stories of many immigrant women. Battered immigrant women's stories, which are crucial in determining whether they obtain immigration relief or not, are being heard by a judiciary that looks nothing like the women seeking help in the Family Court. In general, the judiciary is still predominately white, male, and middle-class. Thus, it is not surprising that judges are more likely to sympathize with women that look like those who are close to them[59] and are thus susceptible to relying on stereotypes about women of color when hearing their stories. As a result of racial privilege, white women are better served by the law than women of color. This is not to say that white women are perfectly served, or even well served, by domestic violence law, but that women of color are disserved, or even harmed, by the current legal system.

Leah Hill recounts her experiences at a NYC Family Court:

> I ached for the litigants who were often visibly upset and crying as they were ordered out of the courtroom at the conclusion of their cases. Many of them seemed dazed and confused as they left, usually with nothing but a yellow two-by-four slip of paper indicating the next adjournment date — the only evidence that they had been inside a courtroom . . . When I left the Court that day, I could not get the images out of my head: waiting rooms overcrowded with people of color that reminded me of segregation; confused and quick proceedings that didn't match the visions of due process I had conjured up in my first year of law school; and judges and court personnel who were rude, impatient, and insensitive to the litigants. It has been over twenty-three years since I first encountered the New York City Family Court. During this period there have been countless reports, critiques, and reform efforts instituted by those inside and outside of the system. And yet the Family Court continues to be a world of overcrowded waiting rooms and long waits, where most litigants are poor people of color, where most proceedings conclude in ten minutes or less, and where waiting rooms often double as law offices.[60]

58 More Foreign-Born Immigrants Live in NYC Than There Are People in Chicago, Huffington Post (Dec. 19, 2013), http:// www.huffingtonpost.com/ 2013/ 12/ 19/ new-york-city-immigrants_ n_ 4475197.html.

59 *Id*. at 17.

60 Leah A. Hill, Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court - the Case of the Court Ordered Investigation, 40 Colum. J.L. & Soc. Probs. 527 (2007)

A. Domestic Violence and Stock Narratives

The kind of assistance battered women receive depends on how their stories are interpreted by police, case workers, and judges.[61] Narratives are quintessential to the functioning of the legal system, as they shape the system's reaction to that person's experience and consequently, the relief that person can obtain.[62] In general, stories of abuse are difficult to follow, for victims who are traumatized are dealing physical and emotional injuries. In the case of immigrant women, language differences might prevent them from telling their stories fully. Often, these narratives are passed down from those who have initial contact with them, such as law enforcement or social workers. Moreover, a victim who is unrepresented will have to attempt to convey her story to the court herself.[63]

Thus, the existence of a stock narrative for victims of domestic violence stands in the way of victims with different narratives. For instance, women who fight back when in a violent relationship are often not recognized as victims because there already is a narrative for women who stay in violent relationships and are seen as passive (battered woman syndrome)[64], but not one for those that take affirmative actions because they lack other options to address the violence they are experiencing.[65]

Similarly, there already is an existing narrative, one based on race, for victims of domestic violence. Because those affected the most by domestic violence are women, victimhood is inevitably tied to womanhood:

> Victim status . . . is readily accessible to white women because both the Anglo American tradition and the social development of women have established 'true women' as pious, pure, submissive, and domestic. Generally speaking, white women in America are, and have been, best able to enjoy the benefit of victim status because they are expected to be "true women." Comparatively, African American women, whose stereotype was created by slavery, have been and continue to be denied "true woman" status as defined by American

61 Leigh Goodmark, When Is A Battered Woman Not A Battered Woman? When She Fights Back, 20 Yale J.L. & Feminism 75, 76 (2008).

62 *Id*.

63 *Id*.

64 *Id*.

65 Susan L. Miller, Victims as Offenders: The Paradox of Women's Violence in Relationships 116-20 (2005): Susan Miller has organized women's use of violence into two categories: defensive behavior (the attempt to escape or avoid a violent incident against the woman or her children, typically after the man has already used violence against her) and frustration responses (expressive acts conveying the woman's frustration over her inability to escape the violence or control the violent situation).

culture.[66]

Moreover, the face of the battered women's movement has been that of a white, middle-class, heterosexual woman, in spite of the involvement of women of color from its beginnings.[67] Therefore, women who do not fit into that description are not easily seen as victims and deserving of assistance.[68] Studies show that African American women often find their credibility sharply questioned by judges and jurors.[69] The following was the experience of an African American battered woman when presenting her story to a judge in Family Court: "I was told to act like a little white girl . . . to look sad, to try to cry, to never look the jury in the eye . . . the judge took one look at me and said, "You look pretty mean; I bet you could really hurt a man."[70]

Just as there are specific stereotypes about African-American women which affect how they are treated in a court of law[71], there are specific stereotypes associated with Latina women and immigrant women that might affect the way judges perceive their stories and victimhood. The societal produced image of Latinos is deeply rooted in history going back to the early thirteenth century. This image is largely based on the Anglo construction of Mexicans as inherently criminal, an image which is still prevalent in U.S. society. These stereotypes and cultural differences led to a "double standard of justice where Mexicans receive negative disparate treatment in criminal justice encounters."[72] This stereotype, over the years, extended to all Latino immigrants, even where there is little scholarly support for the linkage between immigration and criminal activity.[73]

66 *Id*. (quote from Shelby A.D. Moore, Battered Woman Syndrome: Selling the Shadow To Support the Substance, 38 How. L.J. 297, 301 (1995); see also Developments in the Law—Legal Responses to Domestic Violence, 106 Harv. L. Rev. 1498, 1592 & n.136 (1993)).

67 *Id*. at 2.

68 Beth E. Richie, Compelled to Crime: The Gender Entrapment of Battered Black Women 56-58 (1996); Linda L. Ammons, Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African -American Woman and the Battered Woman Syndrome, 1995 Wis. L. Rev. 1003 (1995).

69 Lisa A. Harrison & Cynthia Willis Esqueda, Myths and Stereotypes of Actors Involved in Domestic Violence: Implications for Domestic Violence Culpability Attributions, 4 Aggression & Violent Behav. 129, 130 (1998)

70 Linda L. Ammons, Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African -American Woman and the Battered Woman Syndrome, 1995 Wis. L. Rev. 1003 (1995).

71 See *Id*. at 70.

72 Ed A. Muñoz, Barbara J. McMorris and Matt J. DeLisi. Misdemeanor Criminal Justice: Contextualizing Effects of Latino Ethnicity, Gender, and Immigrant Status. Race, Gender & Class, Vol. 11, No. 4, Social Change, Criminology, Women of Color in the Academy, Reparations for African Americans, Critical Whiteness Studies, Workfare (2004).

73 *Id*. "In fact, data show that Latino immigrants in comparison to non-immigrant populations

The credibility of Latina immigrant women is affected by historical stereotypes tied to issues of race/ethnicity/culture, class, and/or gender which place them at a distinct disadvantage in the criminal justice system.[74] Latinas are often over sexualized, for example, in the media. This over-sexualization has real life implications for Latinas. To illustrate, when it comes to workplace sexual harassment, "white males may feel confident that they will not be convicted in a court of law for sexual harassment, especially when their victims are 'overly sexual' Latinas who surely acquiesce to sexual advances in return for personal gain."[75] Thus, Latinas' credibility in Family Court may be equally affected by this stereotype, particularly where there are allegations of sexual assault.

On the other hand, another stereotype affecting how stories of abuse by Latinas are perceived in court is that violent behavior is perceived to be normal in the "macho Latino culture." This characterization of Latino men can sometimes result in leniency for Latino abusers in court.[76] "Macho culture," in reality, also has the effect of rendering Latinas submissive and actually less likely to seek legal retribution.[77] Like immigrant women of other ethnicities, Latina women may be considered to be accepting of domestic violence because it is a part of the culture they brought with them when they moved to the U.S.[78]

Further, Latina immigrants are also susceptible to accusations of fabricating stories in order to obtain status, accusations that have been and continue to be supported by the immigration law system itself. These attitudes are reflected in early legislation putting limitations on the acquisition of status based on marriage to U.S. citizens, and are exploited by abusers. Take the case of AM, a Dominican national who married a U.S. citizen, whom she had been dating for 5 years in the Dominican Republic, before moving to the U.S. Once here, her husband became abusive with her. As mentioned previously mentioned, this scenario is not atypical for immigrant women. She filed a Domestic Incident Report at the police station after he committed the worst incident of violence

have lower rates of criminally potential behavior such as violence and illegal drug use†.†.†.†Bivariate findings seem to suggest that Latino criminality was worse in Scottsbluff County where larger proportions of U.S. born Latinos reside. But again as previous research seems to suggest, this may be an outcome of assimilation to the dominant Anglo culture and not to deficiencies in Latino culture. Regardless, immigrant Latinos/as experience more punitive sentencing in comparison to their non-immigrant counterparts, which ironically could conceivably be ameliorated through increased assimilate."

74 Ed A. Muñoz and Melissa R. Martínez, Latinas and Criminal Sentencing: An Exploratory Analysis, Voces: A Journal of Chicana/Latina Studies, Vol. 3, No. 1/2 (Spring 2001).

75 *Id*.

76 *Id*.

77 *Id*.

78 Tanya R. Anderson et. al, *Diverse Faces of Domestic Violence*, PubMed (2006), https:// www.ncbi.nlm.nih.gov/ pubmed/ 17252877.

against her: her husband left her with a black eye and long cut in her arm. In retaliatory fashion, the husband filed a Family Offense Petition against her in Family Court. Among his allegations were that she made up the entire story in order to expedite the process of receiving her green card, thus making it part of a narrative that now AM would have to explain or counter in Family Court. Thus, immigration status can add yet another layer of complexity to the manner in which Latinas are perceived by the justice system: they may be deemed opportunistic, particularly if they can obtain status through their partners.

B. Implicit Bias

Psychological science has greatly influenced legal scholarship in the past decade, particularly civil rights jurisprudence.[79] Lawyers and social psychologists have historically worked together to facilitate advances in federal civil rights jurisprudence.[80] Advances in empirical social sciences have shown that "what the law refers to as 'intentional discrimination' can just as easily result from the uncontrolled application of implicit, unconscious, or automatic stereotypes and other subtle ingroup preferences as from the operation of conscious discriminatory designs."[81]Scholars have worked to identify mental processes that result in the disparate treatment of marginalized groups, advocating for a causation-based, rather than an intent-based, understanding of the antidiscrimination principle, particularly in the context of cases involving subjective decision making.[82]

Research on implicit social recognition has demonstrated that much of human mental process in occurs in 'the cognitive unconscious,' outside of the perceiver's mindful attentional focus, meaning people do not often realize they have formed biased judgments of others.[83] Implicit bias refers to bias that results from implicit attitudes and implicit stereotypes that are part of unconscious mental processes.[84] The problem with implicit

79 Linda Hamilton Krieger & Susan T. Fiske, Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment, 94 Cal. L. Rev. 997 (2006).

80 *Id.*: "The example that comes most readily to mind, of course, is the collaboration between the NAACP Legal Defense and Education Fund and the social scientists who authored and signed the Social Science Statement submitted to the Supreme Court in Brown v. Board of Education.24 The American Psychological Association's amicus participation in Price Waterhouse v. Hopkins,25 following on the trial testimony of Susan T. Fiske, played a significant role in the Court's endorsement of mixed motive theory in Title VII cases."

81 *Id*.

82 Linda Hamilton Krieger & Susan T. Fiske, Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment, 94 Cal. L. Rev. 997 (2006).

83 *Id*.

84 Greenwald, Anthony G., and Linda Hamilton Krieger. "Implicit Bias: Scientific Foundations." California Law Review 94.4 (2006): 945-67. Examples of other unconscious mental processes (outside our conscious attention) are implicit memory and implicit self-esteem.

attitudes and stereotypes is that they often result in non-deliberate and spontaneous discriminatory behaviors.[85] Social stereotypes associate a social group with a particular category or trait, which may be favorable or unfavorable. Some stereotypes are the result of some sort of statistical reality (e.g.; basketball players have physical stamina).[86] Implicit biases resulting from implicit stereotypes, however, are different:

> Implicit biases are especially intriguing, and also especially problematic, because they can produce behavior that diverges from a person's avowed or endorsed beliefs or principles. The very existence of implicit bias poses a challenge to legal theory and practice, because discrimination doctrine is premised on the assumption that, barring insanity or mental incompetence, human actors are guided by their avowed (explicit) beliefs, attitudes, and intentions.[87]

Implicit bias is not only pervasive[88], but particularly worrisome when you have authority figures dealing with disadvantaged groups, as evidence that implicit attitudes produce discriminatory behavior is already substantial and will continue to accumulate."[89] Judges and juries are delegated fact-finding and decision making authority based on the assumption that they can "cognitively process, evaluate, and weigh the facts that were presented during trial."[90] However, studies have concluded that implicit memory biases do taint the legal decision making process. Further, unintentionally biased "misremembering" by judges and juries (which happens during all facts of decision making process), even if not based on race, may also propagate racial bias in the legal process.[91]

Racial bias on part of judges is concerning especially because most judiciaries do not reflect the diversity in their states.[92] For instance, in New York State, people of color and women remain significantly under-represented on the bench, even on districts with large minority

85 *Id*.

86 *Id*.

87 Linda Hamilton Krieger & Susan T. Fiske, Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment, 94 Cal. L. Rev. 997 (2006).

88 *Id*. at note 84. Study revealed that "averaged across the dozen topics, 42% of respondents expressed exact or near-exact neutrality on explicit measures. On the IAT (Implicit Association Test) measures, however, only 18% of respondents demonstrated sufficiently small implicit bias to be judged implicitly neutral."

89 *See supra* note 84.

90 Justin D. Levinson, Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering, 57 Duke L.J. 345 (2007).

91 Justin D. Levinson, Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering, 57 Duke L.J. 345 (2007).

92 Ciara Torres-Spelliscy et al., *Improving Judicial Diversity*, Brennan Center for Justice (Mar. 3, 2010), https:// www.brennancenter.org/ publication/ improving-judicial-diversity

populations.[93] One of the negative effects of a lack of diversity in the composition of the judiciary, is an erosion of citizens' confidence that judges will treat them fairly and impartially.[94] Thus, it not surprising that many women of color felt or might feel that the justice system is not made for them and will not treat them the way it treats their white counterparts. This is particularly worrisome for Latina immigrant women who tend to be more isolated than their citizen counterparts.

III. CULTURAL COMPETENCY AND JUDICIAL TRAINING

Unfortunately, there are no simple answers to the problem posed by the lack of diversity in the judiciary. The Brennan Center for Justice[95] suggests several best practices for judicial nominating Commissions seeking to increasing the number of female and minority judges in the judiciary, such as increasing strategic recruitment and being clear about the role that diversity plays in the nominating process.[96] Another best practice the Center suggests is to "grapple fully with implicit bias."[97] The Brennan Center acknowledges that the harboring of biases against disadvantaged groups is prevalent. However, it also advises that these biases are mutable, and that, once they have been acknowledged, steps can be taken for them to be counteracted."[98]

"Cultural competency" is a term that has become increasingly popular around discussion of professional training in both legal and non-legal fields.[99] As discussed previously, in the context of domestic violence, culture becomes complex, particularly when courts attempt to establish credibility and make fair decisions."[100] In the context of adjudication of domestic violence matters, "cultural competency" has been defined as an attempt to teach personnel how to "understand and assess particular situations, determine feasible solutions, provide referrals, and work with victims, perpetrators and families from different communities using cultural characteristics to shape a just outcome."[101]

93 New York State Bar Association Judicial Section, *Judicial Diversity in New York State: A Work in Progress*, New York State Bar Association (Sep. 17, 2014), http:// www.nysba.org/ Sections/ Judicial/ 2014_ Judicial_ Diversity_ Report.html

94 Constance A. Anastopoulo & Daniel J. Crooks III, Race and Gender on the Bench: How Best to Achieve Diversity in Judicial Selection, 8 Nw. J. L. & Soc. Pol'y 174 (2013)

95 *See supra* note 92. The Brennan Center for Justice is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice.

96 *See supra* note 92.

97 *Id*.

98 *Id*.

99 *Id*.

100 *Id*.

101 Sujata Warrier, *"It's in Their Culture": Fairness and Cultural Considerations in Domestic Violence*, New York State Office for the Prevention of Domestic Violence, https:// www.njidv.org/ media/ com_ programs/ materials/ 1/ i.-its-in-their-culture.pdf (last visited Apr. 20, 2018)

Several organizations have attempted to address cultural competency through judicial training. For instance, The National Judicial Institute on Domestic Violence offers a workshop titled "Enhancing Judicial Skills in Domestic Violence Workshop." Their training covers cultural competency. Their cultural training materials include an article by Sujata Warrier, Director of the New York City Program of the New York State Office for the Prevention of Domestic Violence, stands out. Warrier suggests, among other things, looking at how the context within a particular court and court system can structure both the experience of the litigants as well as court personnel.[102] She recognizes the utility of cultural competency written materials that provide information on how to work with diverse populations, including concerns on diversity and individual actions that professionals can take. However, she also recognizes that these materials are not complete, for most of them "contain a litany of characteristics of different groups with solutions on how to work with individuals that represent a particular racial or ethnic group."[103] Thus, although important and useful, this kind of cultural competency training merely scratches the surface of the obstacles that people of color face when trying to access justice. Notably, it does not cover implicit bias as a major or how to grapple with it.

A. Implicit Bias Training

Although our understanding of the effects implicit bias training has on those who participate in such trainings is still developing, institutions in both the public and private have recognized the dangers of implicit bias and the importance of addressing it.[104] In June 2016, the U.S. Department of Justice ("DOJ") announced a department-wide implicit bias training for its law enforcement officers, prosecutors, and other personnel.[105] In its announcement for the training, the DOJ stated that implicit bias "can affect interactions and decisions due to race, ethnicity, gender, sexual orientation, religion and socio-economic status" and that "social science has shown that all individuals experience some form of implicit bias but that the effects of those biases can be countered through training." Over 28,000 employees were to participate in this training, with former Deputy Attorney General Yates and agencies such as the FBI and DEA leading

102 *Id*.

103 *Id*.

104 One salient example in the private sector is Facebook and its implicit bias training for staff, which has received positive reviews for its effectiveness in raising awareness as well as strategy discussion and establishing follow-up practices. Francesca Gino, *What Facebook's Anti-Bias Training Program gets Righ*t, Harvard Business Review (Aug. 24, 2015), https://hbr.org/2015/08/what-facebooks-anti-bias-training-program-gets-right

105 *See supra* note 10.

in the first part of the executive training.[106] In Missouri, the Columbia Police Department presented a training in 2016 with the purpose of combatting the influencing of bias in officer decisions.[107] Due to the success of the program, which was very popular with officers, beginning in January 2017, it became mandatory for police force to train its officers for at least two hours a year.[108] In 2015, The Fourth Judicial District Family Treatment Drug Court ("FTDC") in Colorado determined, as part of its annual best practice goals, that cultural competency was necessary for the efficacy of their programs. [109] The first step the Court identified as crucial in advancing cultural competency was individual awareness, and to this end, the state problem-solving court coordinator with Colorado's Office of the State Court Administrator presented a group training to the FTDC titled "Oops, Your Implicit Bias is Showing."[110]

B. VAWA and Judicial Training

Through several provisions, VAWA recognizes that "women of color - because of their race, ethnicity, culture and language - have available to them different and often fewer options than do many white women."[111] Because of this recognition, VAWA is a very unique feminist and civil rights piece of legislation. As such, VAWA's different sections work in tandem to make it "a gender conscious-gender responsive civil rights law; one which provides legal recourse to all women survivors of domestic violence, regardless of race, ethnicity, culture and/or language."[112]

VAWA's concern for adequate representation and inclusion becomes evident in some of their provisions. VAWA mandates "the inclusion of representatives from various communities, including communities of color, in the development and strategic planning of VAWA mandated or facilitated enforcement, education and research projects."[113] Moreover, due to the lack of extensive information about the

106 *Id*.

107 *Id*.

108 Shane Sanderson, *Implicit Bias Training will Continue for Columbia Police*, Missourian (Nov. 17, 2016), http:// www.columbiamissourian.com/ news/ local/ implicit-bias-training-will-continue-for-columbia-police/ article_ e7c2313c-acdf-11e6-90ac-7b6e3a3e594b.html

109 Jami Vigil, Building A Culturally Competent Problem-Solving Court, Colo. Law., April 2016, at 51

110 *Id*. The second step identified as necessary to achieve cultural competency was to increase efforts to develop a diverse staff to tend to the needs of different communities. The last step involved evaluating how statements and actions are perceived in the courtroom in order to ensure procedural fairness.

111 Jenny Rivera, The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements, 4 J.L. & Pol'y 463, 490 (1996).

112 *Id*.

113 *Id*.

impact of domestic violence on communities of color, data collection is essential to the development of preventive and protective programs in communities of color. To that end, in the development of a research agenda, VAWA provisions require the "inclusion of experts on services to ethnic and language minority communities, and a focus on the needs of underserved populations."[114]

Other VAWA provisions also reflect an effort to achieve its purpose of making resources available to non-white domestic violence victims by keeping their grant recipients accountable about the women they are serving. Law enforcement and prosecution federal grants are available for "developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities . . . ."[115] In order to qualify for a grant, States must set forth in their applications the demographics of the service population, including information on "race, ethnicity, and language background." In addition, they have to demonstrate a commitment to "diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities . . . "[116]

All of these provisions, therefore, make VAWA legislation that is culturally-conscious and beneficial to women for immigrant women for whom it is more difficult to seek and access help. For instance, by presenting a plan to employ Spanish-speaking hotline personnel, some states made the hotline available to immigrant women who are not fluent in English. This hotline allows for the breach of one of the biggest barriers for Latina immigrants who experience domestic violence: language. In general, Latinas who do not speak English carry the burden of the lack of bilingual-bicultural services. Language-accessible services allow them to access the protection of the government, which is critical because, as previously mentioned, many do not have a support system and this hotline can be the first step towards escaping violence.[117] These provisions are thus consistent with VAWA's goal to address barriers for immigrant women.

Notably, VAWA also acknowledges that training is necessary to combat stereotyping that impacts the experiences of battered women of color in court. It looks to address the disparate treatment of women of color in court through training for judges and court staff. Law enforcement and prosecution federal grants are available for purposes of "developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities . . . ".[118] Training provided pursuant to grants made under 42 USCA § 13992 may include current information,

114 *Id*.
115 *Id*.
116 *Id*.
117 *Id*.
118 *Id*. at note 3.

existing studies, or current data on: (6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice, and (13) sex stereotyping of female and male victims of domestic violence and dating violence, myths about presence or absence of domestic violence and dating violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice.[119] While these provisions address the existence of myths and stereotypes that might affect the adjudication process, none of these provisions recognize the existence of institutional implicit bias.

If legislation designed to assist all victims of domestic violence is to be effective, it must address all barriers facing women of diverse backgrounds. VAWA's provisions for immigrant battered women and the subsequent reauthorizations have addressed some of these barriers. However, VAWA's judicial training provisions are insufficient if they do not address implicit bias, particularly as it relates to race or immigration status. In order to effectuate its goal of making its resources available especially to immigrant women, VAWA should be amended to include a provision which focuses specifically on the behavior of judges and court staff, not just the stereotypes and myths associated with non-white victims. To that end, VAWA needs to include a separate training provision focusing solely on implicit bias. The provision to be added could be as follows: "implicit bias and the way it might influence courtroom demeanor or interpretation of facts and making of decisions in domestic violence cases."

If discrimination or fear of being discriminated is one of the factors keeping immigrant women from either pursuing or receiving relief in a court of law, VAWA should provide for a more effective solution to ensure that courts are protecting instead of alienating these immigrant women. Because immigrant women tend to be extremely reliant on the prospective protection offered by Family Court, removal of any and all barriers is critical to these women. Self-petitions and U-visas were designed to help free immigrant women from barriers related to their immigration and marital status. Family Court judges have the power to grant U certification for women who are incapable of communicating with law enforcement due to language barriers, thus, in this context, it is crucial that bias does not play a role in the judge's decision.

By including a provision on implicit bias training, VAWA could be incentivizing existing implicit bias training programs for family court judges and staff, and encouraging the creation of new ones.[120] Thus, this

119 §†13992. Training provided by grants, 42 USCA §†13992.

120 *See* Enhancing Judicial Skills in Domestic Violence Cases. National Judicial Institute on Domestic Violence (a project supported by grants from the Office on Violence Against Women of

new provision would not necessarily require additional spending, but in some cases mere diversion of funds to programs already being offered in different jurisdictions. Evidence of the effectiveness of implicit bias training is not yet abundant, but the general trend is that long-term training and strategies are most effective at reducing implicit bias. Nonetheless, most of the short-term programs are, at the very least, effective at creating awareness.[121]

An excellent example of an existing judicial training program is The National Council of Juvenile and Family Court Judges' training titled "Racial Disparities and Implicit Bias."[122] In it, the Chief Program Officer, Shawn Marsh, defines bias as "preference for a group largely based on held stereotype." He illustrates the cognitive aspects of implicit bias by discussing concepts like automatic processing and using helpful acronyms such as BRAIN (Biases Really Are Inherently Normal). His method is interactive - different activities allow the viewer to understand their brain processes and realize just how much little control the viewer has over them internal prejudice. He also addresses stereotypes (particularly in media) and their direct influence on bias. He remarks, importantly, that implicit preference results in biased behavior, particularly decisions. He concludes his presentation in a hopeful note - implicit bias can be controlled thorough "self-awareness, intrinsic/extrinsic motivation, and an active "fight" each time."[123]

IV. CONCLUSION

Both the feminist and civil rights movements have suffered because they have failed to be intersectional. When the movement against domestic violence grew in the 1970s, women of color also recognized and attempted to fight the problem in their own communities. However, women of color were often excluded and their issues considered secondary: "at best, appendages to those struggles—mere afterthoughts to be included as footnotes concerning racism, or the lack of bilingual services."[124] Meanwhile, the civil rights agenda asked that women of

the DOJ, an office created by VAWA). https:// www.njidv.org/

121 Devine, Patricia G. et al. "Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention." Journal of experimental social psychology 48.6 (2012): "We developed an intervention to produce long-term reductions in implicit race bias. The intervention reduced implicit race bias throughout a 12-week longitudinal study. The intervention also increased awareness of bias and concern about discrimination. Our results raise the hope of reducing the pernicious effects of implicit race bias."

122 Shawn Marsh, *Racial Disparities and Implicit Bias*, National Council of Juvenile and Family Court Judges, (Apr. 6, 2016), https:// www.ncjfcj.org/ racial-disparities-and-implicit-bias

123 *Id*.

124 Jenny Rivera, The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements, 4 J.L. & Pol'y 463 (1996).

color concerned about domestic violence focus on the "broader" needs of the "community," rather than on the supposedly "narrower" issues raised by feminists.[125] Theories for both movements have required, and continue to require, continuous reconsideration and reformulation. Therefore, as legislation that serves the interests of both movements, VAWA needs to be intersectional and eliminate all barriers for women from undeserved communities, particularly the group that it explicitly seeks to protect by providing special immigration relief.

Nothing can replace the importance of diversity in judicial decision-making. As Supreme Court Judge Sonia Sotomayor once said: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." However, it is unlikely that judiciaries will diversify as quickly as they need to, which is why we need to focus on raising awareness. As the concept of implicit bias becomes increasingly more acknowledged and better understood by the legal community, training to create awareness about implicit bias and how to address it could become mandatory in all areas of the law and government, particularly those that serve underrepresented communities. People from all underserved backgrounds (people of color in general, LGBTQ individuals, etc.), not just Latina immigrants who have experienced domestic violence, stand to benefit from the benefits of implicit bias training.

125 *Id.*