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# PROTECTING HISPANIC WOMEN: THE INADEQUACY OF DOMESTIC VIOLENCE POLICY

*MICHELLE DeCASAS\**

## INTRODUCTION

Over the past three decades the women's movement has made great strides in providing women with added protection and access to the legal system. One of the most important areas of progress has been in anti-domestic violence policy. The movement has successfully made domestic violence a crime and a growing concern for society. This progress, however, has not reached all the intended beneficiaries. Women of color, in particular Hispanic women,<sup>1</sup> face domestic violence with a different set of problems. Hispanic women are at an increased risk of death at the hands of their intimate partners. Because Hispanic women are more exposed than Black or White women to the key risk factor of intimate homicide, which is domestic violence, they are more at risk of being killed by an intimate partner. Given this heightened risk of death among women, domestic violence policy must reflect the special circumstances of Hispanic women whose needs have been habitually neglected.

Part I of this note will provide a basic overview of the subject of intimate homicide, including the key risk factors. Part II will then discuss the comparative exposure to the key risk factors between Hispanic, Black and White Women. The analysis will focus on risk factors of domestic violence and guns. The exposure to domestic violence will include an in-depth look at the sub-factors of alcohol abuse, unemployment, educational attain-

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1. The term "Hispanic" is defined as a person who describes himself or herself as Mexican American, Chicano, Mexican, Mexicano, Puerto Rican, Cuban, Central American, South American, or from some other Spanish culture or origin regardless of race. This study limits the focus group to Hispanic women with Hispanic male partners in comparison to Black women with Black male partners and White women with White male partners. Note that the data and statistics used in this paper may not have defined the term Hispanic in the same way. This of course represents a limitation on the conclusions drawn from secondary research.

ment and socio-economic status. Following the summary of Hispanic women's comparative exposure to these sub-factors, this note will provide an analysis based on a basic ranking system allotting greater points to those women most at risk.

Finally, part III will consider the policy implications of the evidence that Hispanic women are more at risk of death as a function of increased risk to domestic violence. In doing so this note will consider the barriers facing Hispanic women and the resulting inadequacy of current anti-domestic violence policy. To illustrate these inadequacies a closer look will be given to the current State policy of mandatory arrest and the Federal Violence Against Women Act (VAWA).

### I. INTIMATE HOMICIDE OVERVIEW

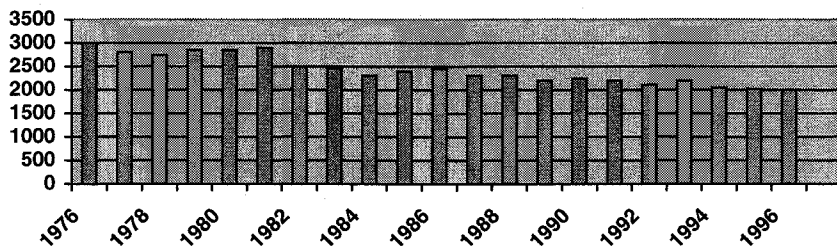
Intimate homicide is a serious problem. For decades women have lost their lives at the hands of those with whom they shared intimate relationships. Intimate relationships are defined to include spouses, common law spouses, boyfriends and ex-partners of all three categories. While any type of murder is heinous, murder by an intimate is particularly sinister because the perpetrators are known and trusted by the victims. Intimate homicide is a betrayal of human nature that falls disproportionately onto women.<sup>2</sup> An analysis of trends in intimate murder from 1976 to 1996 has shown that the number of victims of intimate homicide has declined over the past twenty years. The number of intimates killed has dropped from nearly 3,000 per year and 13.6 percent of all homicides in 1976 to fewer than 2,000 and 8.8 percent of all homicides in 1996. This represents a 36 percent decrease over twenty years.<sup>3</sup> (See Figure 1)

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2. I will subsequently demonstrate that men represent the majority of intimate homicide perpetrators while females rarely kill their intimate partners. This accounts for the significant disproportionate rate of victimization between men and women.

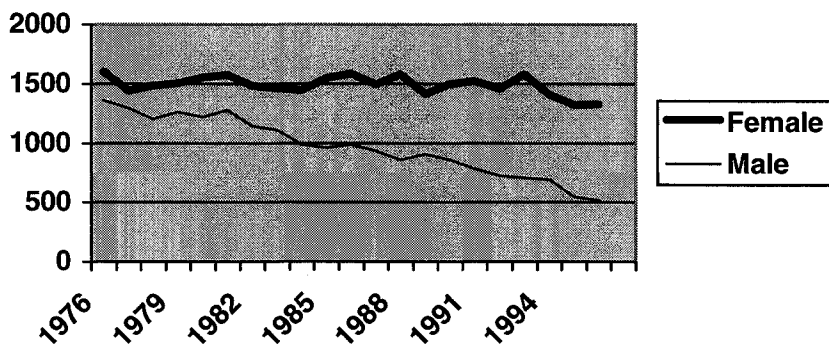
3. Lawrence A. Greenfeld et al., *Violence by Intimates: An Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, in BUREAU OF JUSTICE STATISTICS FACTBOOK 5 (March 1998).

## INTIMATE HOMICIDE

FIGURE 1<sup>4</sup>

At first glance this decrease seems optimistic. However, after taking an in-depth look at the gender breakdown, the decline is less positive for women. As can be anticipated, female murder victims are substantially more likely than male murder victims to have been killed by an intimate.<sup>5</sup> The significant decline in intimate homicide is likely attributable to a marked decrease in male victims over the past twenty years. In contrast, the number of female victims has remained relatively constant with only a minimal decrease over the same period of time. In 1976 there were 1,600 female victims of intimate murder and 1,357 male victim documented cases. In 1996, females accounted for 1,326 victims while only 516 victims were male.<sup>6</sup> (See Figure 2)

## NUMBER OF INTIMATE MURDER VICTIMS

FIGURE 2<sup>7</sup>

The gender discrepancy in intimate homicide is more startling when viewed as a percentage of all intimate homicides. To reiter-

4. *Id.*

5. This is consistent with the gender breakdown among homicides in general. See James Alan Fox et al., *Homicide trends in the U.S.*, in BUREAU OF JUSTICE STATISTICS, available at <http://www.ojp.usdoj.gov/bjs/homicide/gender.htm>.

6. Greenfeld, *supra* note 3, at 37.

7. *Id.*

ate, the decline in the overall percentage of murders that is attributable to an intimate has been greater among male victims. The percentage of female murder victims killed by intimate partners has remained at about 30 percent since 1976. The percentage of male murder victims killed by intimate partners has decreased from 11.2 percent to 5.4 percent.<sup>8</sup> It is apparent after inspecting the gender breakdown of victims of intimate homicide that despite the decline over the past two decades women continue to face a serious threat of death at the hands of an intimate partner.

Like all homicides, the type of weapons used by perpetrators of intimate homicide varies. Victims of intimate homicide, however, are disproportionately killed with a gun. Firearm assaults on intimate acquaintances are twelve times more likely to result in death than are assaults committed with other weapons.<sup>9</sup> Over the past two decades, an intimate murdered nearly 52,000 men and women. Of those 52,000 victims more than 33,500, or 65 percent, of the victims were killed with a gun.<sup>10</sup> In 1976 guns were used in about 71 percent of all intimate murders, or 2,093 times. In 1996 guns were used in about 61 percent of all intimate murders, or 1,127 times.<sup>11</sup> (See Figure 3) This data indicates that there has been a decrease in the number of intimate homicides committed with a firearm. While the decrease appears to be positive news, we must again consider the gender breakdown.

#### GUN TRENDS

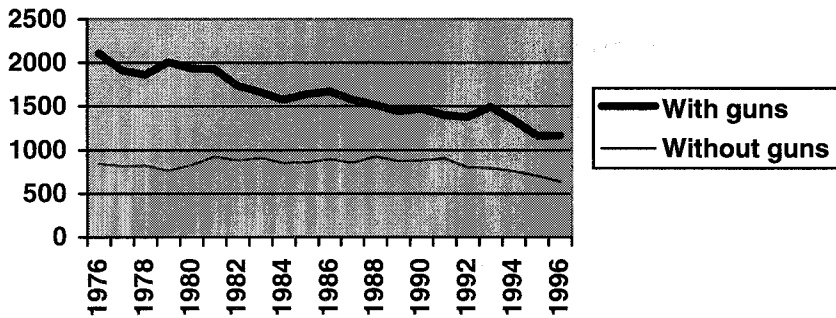


FIGURE 3<sup>12</sup>

8. *Id.* at 39.

9. NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, FIREARM INJURIES AND FATALITIES FACT SHEET, available at <http://www.cdc.gov/ncipc/factsheets/fafacts.htm> (last visited March 17, 2003).

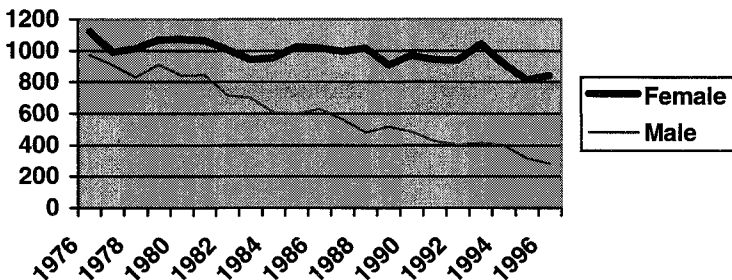
10. *Id.*

11. James Alan Fox et al., *Homicide trends in the U.S.*, in BUREAU OF JUSTICE STATISTICS FACTBOOK (January 2001), available at <http://www.ojp.usdoj.gov/bjs/homicide/tables/intweaptab.htm> (last visited March 17, 2003).

12. *Id.*

It has been suggested by some scholars that the decline in gun use can be attributed to the decline in intimate homicide discussed previously. Yet when we look at the gender breakdown of gun use in intimate homicide we are provided with an alternative explanation: the decline is attributable to a decline in male intimate homicide. In 1976, 973 male (32.9 percent of all victims) and 1120 female (37.9 percent of all victims) intimate homicide victims were killed by guns. In 1996 only 284 male victims (15.4 percent of all victims) were killed with guns while 722 females (49 percent of all victims) were killed with guns.<sup>13</sup> Over twenty years the percentage of male victims killed by guns has decreased significantly while the percentage of female victims killed by guns has actually increased. (See Figure 4)

GUN TRENDS BY GENDER

FIGURE 4<sup>14</sup>

Similar to the data on the decrease of intimate homicide, the data on the decrease of gun use in intimate homicide is significant only among males. Women still face a considerable risk of being killed by an intimate with a gun.

Intimate homicide is a serious problem that has prompted many scholars to research associated risk factors. The result of such research has produced two risk factors that strongly correlate with an increased risk of intimate homicide victimization: prior domestic violence victimization and the presence of one or more guns in the home. Domestic violence is the single greatest cause of injury to young women. In 1992, domestic violence injuries were greater in number than auto accidents, rapes and muggings combined.<sup>15</sup> Studies indicate that an intimate will perpetrate an act of domestic violence on fifty percent of all wo-

13. *Id.*

14. *Id.*

15. Donna M. Welch, *Symposium: Vital Issues In National Health Care Reform: Comment: Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?*, 43 DEPAUL L. REV. 1133 (1994).

men in the United States during their lifetimes.<sup>16</sup> These sobering statistics highlight the disturbing truth that a woman has more to fear from the man she is intimate with than from a total stranger.

An analysis of female domestic homicide shows that prior domestic violence in the household makes a woman 14.6 times more likely to be the victim of domestic homicide.<sup>17</sup> Given this information, the inference can be made that a woman who faces a higher risk of domestic violence is also at a higher risk for intimate homicide. The presence of guns in the home is predicted to greatly increase the likelihood of intimate homicide. A 1997 study that examined risk factors for violent death of women in the home found that when one or more guns were in the home, women were 7.2 times more likely to be the victim of intimate homicide.<sup>18</sup> This data is consistent with the fact that intimate homicides are committed overwhelmingly with guns. Considering both risk factors together we can infer that women who are already at increased risk for intimate homicide due to their increased risk of domestic violence, suffer an even greater risk when guns are present in the home.

## II. HISPANIC WOMEN'S EXPOSURE TO RISK FACTORS

Although the general issue of domestic violence has been widely studied, the literature on domestic violence has given little attention to the specific issue of violence against Hispanic women. This issue deserves particular attention given the different elements Hispanic women are exposed to that shape their experiences with domestic violence. According to the 1996 *Statistical Handbook of Violence in America*,<sup>19</sup> Hispanic women in intimate relationships suffered the highest rate of domestic violence.<sup>20</sup> Hispanic women were domestic violence victims at a rate of 181 per 1,000 couples. In comparison, White women had a domestic violence rate of 117 per 1,000, and Black women had a rate of 166 per 1,000.<sup>21</sup> (See Figure 5)

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16. Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 232 (1994).

17. James E. Bailey et al., *Risk Factors for Violence Death of Women in the Home*, 7 ARCHIVES OF INTERNAL MEDICINE 157, 777-82 (1997).

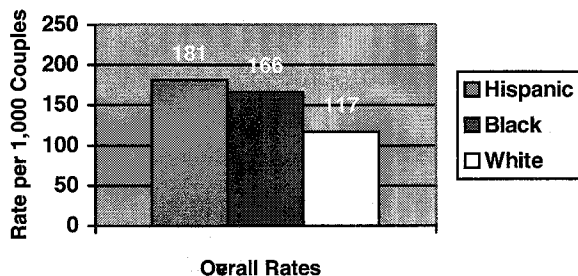
18. *Id.*

19. ADAM DOBRIN ET AL., STATISTICAL HANDBOOK ON VIOLENCE IN AMERICA 164 (1996).

20. *Id.*

21. *Id.*

## DOMESTIC VIOLENCE RATES FOR WOMEN

FIGURE 5<sup>22</sup>

Because of evidence that Hispanic women in fact are victimized at a greater rate than other women, it is important to look beyond the actual perpetration of domestic violence. Consideration must be given to the risk of domestic violence victimization since the risk itself threatens the safety of women. The greater risk a woman faces of domestic violence, the greater the risk of intimate homicide.

Domestic Violence research has documented a series of risk factors that have been associated with victimization. Women at greatest risk for injury from domestic violence include those with male partners who abuse alcohol,<sup>23</sup> are unemployed,<sup>24</sup> have less than a high-school education,<sup>25</sup> and have a low socio-economic status.<sup>26</sup> Hispanic women are more exposed to these factors as a whole than are Black and White women. Without an understanding of the economic, social and political factors that impact Hispanic women's lives, an analysis of domestic violence against women is incomplete. The data suggest that the comparatively poor economic and political position of Hispanics place them at a distinct disadvantage, thus causing Hispanics to experience and respond to domestic violence differently than White women.

Alcohol abuse by an intimate male is one factor that increases a woman's chances of being a victim of domestic violence. Heavier drinkers are at increased risk for being perpetrators of intimate partner violence.<sup>27</sup> Based on research conducted by the Substance Abuse and Mental Health Services

22. *Id.*

23. Demetrios N. Kyriacou et al., *Risk Factors for Injury to Women From Domestic Violence*, 341 *NEW ENG. J. MED.* 1892. (December 1999).

24. *Id.*

25. *Id.*

26. Callie Marie Rennison & Sarah Welchans, *Intimate Partner Violence*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 4 (May 2000).

27. Raul Caetano et al., *Alcohol-Related Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States*, 25 *ALCOHOL RESEARCH & HEALTH* 64 (2001).



Administration (SAMHSA), the rate of binge<sup>28</sup> use and/or heavy<sup>29</sup> use of alcohol was higher among Hispanics than Whites or Blacks.<sup>30</sup> According to the 2000-2001 National Household Survey on Drug Abuse,<sup>31</sup> Hispanics represent 24.6 percent of binge drinkers compared to 22.2 percent for Whites and 19.7 percent for Blacks.<sup>32</sup> (See Figure 6)

PERCENTAGE OF BINGE DRINKERS BY ETHNICITY/RACE

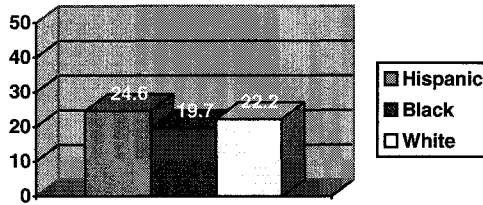


FIGURE 6<sup>33</sup>

In addition, the Survey indicates that males are more than twice as likely to be binge drinkers than are females.<sup>34</sup> From this data we can infer that Hispanic males are more likely than Black or White males to be binge and/or heavy drinkers. Therefore, Hispanic women are more exposed to the risk factor of alcohol abuse by their male partners than are Black or White women.

Unemployment is another key risk factor associated with domestic violence victimization. Men who are unemployed or have recently become unemployed represent a significant percentage of perpetrators of domestic violence. The rate of unemployment for Hispanics is 7.2 percent.<sup>35</sup> This percentage represents the proportion of Hispanics who are unemployed as a

28. Binge use is defined as five or more drinks on the same occasion at least once in the past 30 days (includes heavy use). U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, available at <http://www.samhsa.gov/oas/NHSDA/2k1NHSDA/vol1/CHAPTER3.HTM>.

29. Heavy use is defined as five or more drinks on the same occasion on at least five different days in the past 30 days. *Id.*

30. SAMHSA, OFFICE OF APPLIED STUDIES, NATIONAL HOUSEHOLD SURVEY ON DRUG ABUSE, 2000 AND 2001, *Appendix H, Table H.40*, available at [http://www.samhsa.gov/oas/NHSDA/2k1NHSDA/vol2/appendixh\\_2.htm#tableh.40](http://www.samhsa.gov/oas/NHSDA/2k1NHSDA/vol2/appendixh_2.htm#tableh.40).

31. The National Household Survey on Drug Abuse is the primary source of information on the prevalence, patterns, and consequences of drug and alcohol use and abuse in the general U.S. civilian non-institutionalized population, age 18 and older. *Id.*

32. These differences are not statistically significant, however, for comparative analysis we will note the disparities.

33. *Id.*

34. *Id.*

35. U.S. BUREAU OF LABOR, THE EMPLOYMENT SITUATION: OCTOBER 2001, available at <ftp://ftp.bls.gov/pub/news.release/History/empstat.11022001.news> (last visited March 17, 2003). These numbers represent unemployment rates for male and females combined. Data by gender was not available for Hispanics.

percent of those in the labor force. This, however, does not take into consideration Hispanics who are not in the labor force,<sup>36</sup> which is a serious limitation for two reasons. First, given that there is a large Hispanic immigrant population, some of whom may be undocumented, these numbers may not truly represent the current unemployment rate. Illegal immigrants are unlikely to be included in the quantification of the current unemployment situation if the process entails reporting by the employees or employers, for fear of the legal consequences. Second, Hispanic men who fall outside the definition of unemployed and into the definition of those not in the labor force may be considered equivalent, for purposes of this analysis. Both categories of men may equally contribute to the risk of domestic violence victimization of Hispanic women. This second limitation equally applies to Black and White women who, in comparison to Hispanic women, have unemployment rates of 9.7 and 4.8 percent respectively.<sup>37</sup> Keeping in mind the apparent limitations of the statistical data available, Hispanics are exposed to the risk factor of unemployment second only to Black women and more than White women.

Having less than a high school education is yet another factor that is correlated with an increased risk of domestic violence victimization. Over the past four decades, Hispanics males have

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36. A person not in the labor force is defined as "persons 16 years and over in the civilian non-institutional population who are neither employed nor unemployed." *Id.* Employed persons are defined as:

[P]ersons 16 years and over in the civilian non-institutional population who, during the reference week, (a) did any work at all (at least 1 hour) as paid employees, worked in their own business, profession, or on their own farm, or worked 15 hours or more as unpaid workers in an enterprise operated by a member of the family, and (b) all those who were not working but who had jobs or businesses from which they were temporarily absent because of vacation, illness, bad weather, childcare problems, maternity or paternity leave, labor-management dispute, job training, or other family or personal reasons, whether or not they were paid for the time off or were seeking other jobs. Each employed person is counted only once, even if he or she holds more than one job. Excluded are persons whose only activity consisted of work around their own house (painting, repairing, or own home housework) or volunteer work for religious, charitable, and other organizations. *Id.*

Unemployed persons are defined as:

[P]ersons 16 years and over who had no employment during the reference week, were available for work, except for temporary illness, and had made specific efforts to find employment sometime during the 4-week period ending with the reference week. Persons who were waiting to be recalled to a job from which they had been laid off need not have been looking for work to be classified as unemployed. *Id.*

37. *Id.*

remained the leading group of high school dropouts.<sup>38</sup> (See Figure 7)

PERCENT OF HIGH SCHOOL DROPOUTS AMONG PERSONS 16 TO 24 YEARS-OLD BY RACE/ETHNICITY

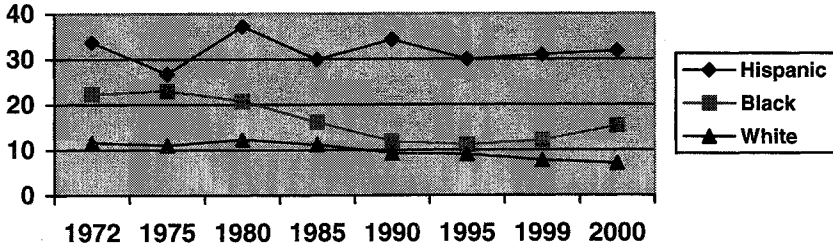


FIGURE 7<sup>39</sup>

Accordingly, in 2000 Hispanics males represented 31.8 percent of all dropouts between the ages of 16 and 24. Comparatively, Black men represented 15.3 percent and White men represented only 7.0 percent of dropouts.<sup>40</sup> These statistics are under-inclusive for quantifying less than a high school education because they fail to consider those who attained less than eight years of education. The data on educational attainment only serves to further develop the argument that Hispanics are more likely than Whites or Blacks to attain less than a high school education. Among the total Hispanic population above the age of eighteen,<sup>41</sup> an unfortunate 24.5 percent attain less than an eighth grade education. In comparison, only 3.8 percent of Whites and 5.8 percent of Blacks attain less than an eight grade education.<sup>42</sup> It is clear that Hispanic women are more likely to have a male partner with less than a high school education than are White or Black women.

The final factor considered to increase the risk of domestic violence victimization is low socio-economic status (SES). Research has shown that women living in households with lower annual household incomes experience intimate partner violence at significantly higher rates than women in households with higher annual incomes.<sup>43</sup> (See Figure 8)

38. U.S. DEPARTMENT OF EDUCATION DIGEST OF EDUCATION STATISTICS, available at <http://nces.ed.gov/pubs2002/digest2001/tables/dt108.asp>.

39. *Id.*

40. *See id.*

41. Total population is civilian non-institutional population. Data are based on a sample survey of the non-institutional population. *Id.* at <http://nces.ed.gov/pubs2002/digest2001/tables/dt009.asp>.

42. These statistics encompass both male and females since data broken down by gender was unavailable. *Id.*

43. Rennison & Welchans, *supra* note 26.

RATE OF INTIMATE PARTNER VIOLENCE BY ANNUAL INCOME,  
1993-98

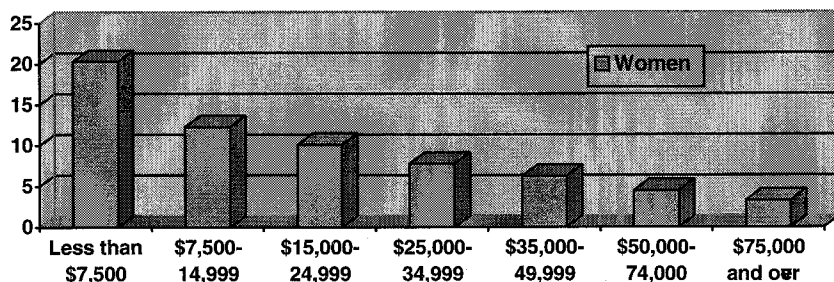


FIGURE 8<sup>44</sup>

According to the U.S. Census Bureau, 6.7 percent of Hispanic households have an annual income of less than \$7,500. This is lower than the percentage of Black men (11.7 percent) and higher than the percentage of White men (4.9 percent).<sup>45</sup> These statistics are problematic because they likely do not include immigrant workers. As asserted previously, immigrant workers are unlikely to participate in a population survey that calculates income distribution. Despite this inadequacy, however, we will assume that based on the data available for analysis Hispanic women are less exposed to low socio-economic men than Black women, but are more exposed than White women.

Having established the relative exposure of each individual risk factor of domestic violence, it is necessary to look at the totality of exposure to all four risk factors to establish which group of women is at higher risk. No single factor is determinative of an increased risk of domestic violence. When considered as a function of some measurable increase in risk, we can draw inferences as to which group of women is at higher risk.<sup>46</sup> This can be accomplished by ranking<sup>47</sup> Hispanic, Black and White women according to their comparative exposure to each of the individual factors.

Looking first at alcohol abuse, as aforementioned Hispanic women are more exposed to men who abuse alcohol than White and Black women, respectively. Therefore, Hispanic women are given a ranking of 3, White women a ranking of 2, and Black women a ranking of 1. Next we look to the risk factor of unem-

44. *Id.*

45. U.S. CENSUS BUREAU, *Table HINC-01. Selected Characteristics of Households by Total Money Income in 2000, Current Population Survey*, available at [http://ferret.bls.census.gov/macro/032001/hhinc/new01\\_000.htm](http://ferret.bls.census.gov/macro/032001/hhinc/new01_000.htm) (last visited March 17, 2003).

46. Increased risk will not be quantified.

47. Ranking will be on a 1-3 scale, 1 being least exposed and 3 being the most exposed. The group with the highest total is the group more at risk than the others.

ployment. Black women are the most exposed to men who are unemployed thus they are given a ranking of 3, while Hispanic women are given a ranking of 2 and White women, the least exposed, are given a ranking of 1. Subsequently we look to educational attainment. Hispanic women are far more likely to have male partners that have attained less than a high school education accordingly they are given a ranking of 3. Black women are the second most exposed, followed by White women giving them a ranking of 2 and 1, correspondingly. Lastly we consider the risk factor of low socio-economic status. Again, Black women are more exposed to this factor because Black men are more likely to have an annual income less than \$7,500. We accordingly give Black women a 3 for this risk factor. Comparatively, we give Hispanic women a ranking of 2 because they are the next most exposed to low socio-economic status, leaving White women with a ranking of 1. Tallying the rankings of each risk factor, Hispanic women have a total of 10, Black women have a total of 9, and White women have a total of 5. Given that Hispanic women have the highest total we can infer that they face a higher risk of domestic violence than Black or White women.<sup>48</sup>

Now that we have established that Hispanic women are more likely to be the victims of domestic violence we can reasonably say that they are at greater risk of intimate homicide. As noted prior, when we include the additional risk of gun possession Hispanic women are placed at even greater risk of being killed by an intimate partner.<sup>49</sup> The already heightened risk to Hispanic women becomes even more significant. In view of the heightened risk to Hispanic women we now address the lack of consideration that is given to the needs of women of color when developing anti-domestic violence policy.<sup>50</sup>

### III. POLICY CONSIDERATIONS

The last several years has seen an explosion of domestic violence law reform. Much of this recent law reform has focused on a number of far-reaching changes in criminal law.<sup>51</sup> This focus

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48. The difference in real terms between Hispanic and Black women is not significant. The implications of this is that for public policy reasons women of color may experience domestic violence similarly and share common burdens.

49. Increased risk by the existence of guns in the home is a risk to all women regardless of race or ethnicity.

50. Hispanic women ranked just above Black women indicating that much of the concern regarding lack of consideration in the policy arena is applicable to women of color in general. The term "women of color" refers to Hispanic and Black women.

51. A number of states and municipalities have adopted strong domestic violence arrest and prosecution policies. *See, e.g.*, Calif. Penal Code 273.5 (2000) (the crime of infliction of injury on a spouse, cohabitee, or parent of child is committed

has not been without influence. Advocates for battered women have urged a stronger criminal response in light of the inadequacy of past criminal justice response to domestic violence cases.<sup>52</sup> The women's movement has made significant progress on many issues regarding domestic violence. However, not all the intended beneficiaries of the anti-domestic violence movement's efforts have realized those gains. It is best stated by Kimberly Crenshaw:

Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles.<sup>53</sup>

### A. *Barriers Facing Women of Color*

Women of color, and particularly immigrant women, face domestic violence with problems that do not burden "White" women. The barriers facing Hispanic women include such factors as language and cultural differences, and immigrant status.<sup>54</sup>

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whenever a person "willfully inflicts . . . corporal injury resulting in a traumatic condition" and is a felony, punishable by "imprisonment . . . for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars . . . "). Violence Against Women Act ("VAWA") passed in 1994 and the recently enacted Victims of Trafficking and Violence Protection Act of 2000 ("VAWA II"), have significantly changed federal criminal law regarding domestic violence. See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 16 U.S.C., 18 U.S.C., and 42 U.S.C.); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 22 U.S.C. 7101. VAWA enacted the following domestic violence related federal crimes: crossing a state line in violation of a restraining order (18 U.S.C. 2262); crossing a state line to injure, harass or intimidate an intimate partner (18 U.S.C. 2261 (a)(1)); forcing or tricking an intimate partner to cross a state line and intentionally committing injurious violence against the partner while doing so or as a result (18 U.S.C. 2261 (a)(2)). In addition, federal law requires anyone against whom a domestic violence restraining order has been issued to surrender all firearms and refrain from obtaining firearms that have been "shipped or transported" in interstate commerce. 18 U.S.C. 922 (g)(8).

52. See SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* 158 (1982) (noting that at the beginning of the movement, battered women complained that police refused to come when they were called, or they would side with the batterer, and they refused to arrest)

53. Kimberly Crenshaw, *Women of Color at the Center: Selections From the Third National Conference on Women of Color and the Law: Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1246 (1999).

54. Asian women are likely to share these same barriers.

## 1. *Language Barriers*

Language may create a large barrier for Hispanic victims of domestic violence because most of the literature and services are intended for the English-speaking population. The inability to read or speak English fluently means that many Hispanic women, particularly immigrant women, may not know that domestic violence is a crime or that anti-domestic violence services exist. Non-English speaking Hispanic women have limited access to shelters. When non-English speaking women do seek assistance, shelter workers often deny their request because of the shelter's general preference to offer their limited number of slots to English-speaking women who can theoretically make better use of shelter services.<sup>55</sup> "Shelters without bilingual and bicultural personnel claim that they would do a disservice to Latinas by accepting them, because the language barrier would prevent personnel from providing Latinas with adequate services."<sup>56</sup> The supporters of this policy rationalize it by arguing that the best interest of all women is better served by ensuring that only those women who can benefit from the services are residents. These policies effectively serve to further subordinate and marginalize Hispanic women. Professor Kimberle Crenshaw, a seminal figure in the Critical Race Theory field, best illustrates this point. Professor Crenshaw refers to a letter written by Diana Campos, Director of Human Services for Programas de Ocupaciones y Desarrollo Economico Real, Inc. (PODER), to the New York State Department of Social Services. The letter detailed the case of a

Latina in crisis who was repeatedly denied accommodation at a shelter because she could not prove that she was English-proficient. The woman had fled her home with her teenaged son, believing her husband's threats to kill them both. She called the domestic violence hotline administered by PODER seeking shelter for herself and her son.<sup>57</sup>

The hotline counselor located a shelter that was willing to take both of them in after having spent two days living in the street. However, once the Hotline counselor told the shelter intake coordinator that the woman was limited English proficient the shelter refused to accept them. The intake coordinator told the counselor that they "could not provide services to this woman because they have house rules that the woman must agree to

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55. Leslys E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 316 (1995).

56. Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 253 (1994).

57. Crenshaw, *supra* note 53, at 1262-1263.

follow."<sup>58</sup> In addition, the intake coordinator stated that "all the women at the shelter are required to attend [a] support group and they would not be able to have her in the group if she could not communicate."<sup>59</sup>

The Hotline counselor stressed the severity of the woman's situation, telling her that the woman had been wandering the streets at night and had been mugged twice. Still, the shelter refused to budge on its language policy. The woman inquired whether it would be sufficient if her son translated for her, but the shelter rejected this suggestion stating that "utilizing the son was not an acceptable means of communication for them, since it further victimized the victim."<sup>60</sup>

Unfortunately, when the shelter finally agreed to take the woman, she was nowhere to be found. The hotline counselor does not know whether the woman is alive and safe, and questioned whether she would have faith enough in the program to seek their assistance in the future.<sup>61</sup> Despite this Hispanic woman's desperate need, she was unable to receive protection that English-speaking women enjoyed because of the shelter's commitment to exclusionary policies. This story demonstrates the urgency of putting the needs of Hispanic women in a central position in feminist discourse.

## 2. *Cultural Differences*

A society and laws that promote individualism influences modern American women. Many Hispanic communities<sup>62</sup> emphasize the family and restrict women into subordinate roles.<sup>63</sup> The identities of Hispanic women are dictated by their roles as wives and mothers, and they are therefore dependent on the family unit. They are treasured as self-sacrificing women who always put the needs of their family above their own. This identity is further supported by the influence of Catholicism which dictates that women are supposed to be devout and traditional in their beliefs.<sup>64</sup> The individual identity held by mainstream<sup>65</sup> women is unfamiliar to many Hispanic cultures. This classification brings about a perception of female inferiority that is a precursor to the cultural acceptance of domestic violence.

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58. *Id.*

59. *Id.*

60. *Id.* at 1263.

61. *Id.* at 1262-1263.

62. There is likely to be some variance between Hispanic communities, which may produce different circumstances between the different sub-groups.

63. Rivera, *supra* note 16, at 241.

64. *Id.*

65. The term "mainstream" refers to non-Hispanic or non-immigrant women for purposes of this note.



Cultural acceptance of violence against women is often present in Hispanic communities because they view it as a private family issue.<sup>66</sup> Women who openly confront their husbands' abusive behavior run the risk of being publicly chastised by their community. To discuss abuse overtly brings shame and embarrassment to the whole family. Families place substantial pressure on women not to disrespect the family unit. This pressure creates a strong disincentive for women to seek assistance outside of the family.

This cultural acceptance is further enhanced by the lack of anti-domestic violence laws in Hispanic countries. To illustrate this point we look at Mexico to get an idea of the situation that Hispanic women are likely to encounter. According to the U.S. State Department Country Report, Mexico, domestic violence is a serious and widespread problem within the borders of Mexico.<sup>67</sup> In response to this vast problem, Mexico has just recently begun to "build legal and social systems with which to control domestic violence . . . and therefore, does not provide sufficient protection and services to battered women."<sup>68</sup> In addition, the country does not have the criminal justice system's participation to effectively meet the needs of domestic violence victims.<sup>69</sup> Police are reluctant to interfere in what is thought to be a domestic matter. Domestic violence is essentially a culturally accepted norm.

The apparent lack of anti-domestic violence laws abroad becomes a significant problem within the United States when women emigrate. Women who arrive in the United States from countries with cultures that tolerate domestic violence and justice systems that have not effectively criminalized domestic violence, cannot be expected to know that the abuse they are experiencing is unacceptable and unlawful. With this lack of knowledge they may never become aware of the legal and social resources that are available to them. In addition, cultural values are passed on from generation to generation perpetuating a vicious cycle of domestic abuse.

Lastly, assuming a Hispanic woman has access to information on the condemnation of domestic violence, cultural distrust of law enforcement authority and the criminal justice system in general tends to hinder any consideration of seeking assistance.

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66. Ryan Lilienthal, Note, *Old Hurdles Hamper New Options for Battered Immigrant Women*, 62 BROOK. L. REV. 1595, 1604 (1996).

67. Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L. L.J. 1, 63 (1999).

68. *Id.* at 63-64.

69. *Id.* at 64.

This negative depiction of police stems from several sources. First, the police failure to adequately respond to complaints of domestic violence creates a feeling of helplessness that influences Hispanic women not to bother.<sup>70</sup> Law enforcement officers do not pay as much attention to the calls for assistance from Hispanic women because they believe these complaints to be more hazardous or less rewarding.<sup>71</sup>

Second, Hispanics are reluctant to seek police assistance because of the history of violence they have experienced at the hands of police officers. The tension is further intensified by the denial of law enforcement agencies that they have behaved inappropriately within the scope of their duties.<sup>72</sup> This situation affects the success of any attempt to curb domestic violence from a law enforcement stance. Hispanics will continue to distrust the police based on what they perceive their relationship with law enforcement to be.

Finally, the lack of similarity between law enforcement agencies and Hispanic communities is critical. Women seeking assistance are likely to be confronted by officers who are not bilingual or bicultural and therefore are unable to effectively address their needs.<sup>73</sup> This is highly problematic given the position women are in when seeking assistance for domestic violence. Women are essentially forced to take care of themselves in order to compensate for the lack of personnel. These language barriers create insecurity in Hispanic women causing them to question whether the police are acting to protect their interests.

All these factors – gender roles, cultural acceptance of domestic violence, and distrust of law enforcement – combine to culturally distance Hispanic women from the mainstream feminist perspective.

### 3. *Immigrant Status*

There exists a large foreign-born population of Hispanics in the United States. In addition to, and somewhat related to, the barriers already discussed, immigrant women face distinctive barriers attributable to their immigration status. Many women emigrate from their native countries dependent on their spouse for financial support, legal status, and/or both. This makes immigrant woman particularly vulnerable to domestic violence. Immigrant women refrain from reporting domestic violence for fear that the undocumented spouse on whom they are dependent will

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70. Rivera, *supra* note 16, at 243-44.

71. *Id.* at 249.

72. *Id.* at 246.

73. *Id.*

be deported.<sup>74</sup> These women commonly come to the United States with no independent financial resources.<sup>75</sup> They are therefore wholly dependent on their husband for financial support. This creates a rationale for remaining in the abusive relationship.

Women fearful of their own deportation are also reluctant to report domestic violence. Immigrant women are often dependent on their U.S. citizen or lawful permanent resident spouse for their legal status. These women desist from reporting their abusive spouse for fear that they will be deported. Abusive husbands can use this reliance to condition sponsorship on staying in the relationship despite the abuse.<sup>76</sup> Even if legal status is no longer dependent on the husband's sponsorship, due to the lack of access to information, women continue to be intimidated by such threats.<sup>77</sup>

In addition to the threat of deportation, immigrant women who are undocumented are not eligible for public assistance.<sup>78</sup> This further deters immigrant women from seeking assistance given that it is limited to church or private groups devoted to providing services to undocumented families.<sup>79</sup>

## B. Current Policy Analysis

Hispanic women are exposed to a range of barriers that Black<sup>80</sup> or White women are not faced with when dealing with domestic violence. Consequently, in order for policy makers to effectively serve all women affected by domestic violence the unique needs of Hispanic women must be considered. This consideration has for the most part been lacking or inadequate in developing anti-domestic violence legislature thus far. Conducting an analysis of state and federal legislation will serve to illustrate this state of affairs.

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74. Berta Esperanza Hernandez-Truyol, *Las Olvidadas - Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 354, 383 (1998).

75. Tien-Li Loke, Note, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 593 (1997) citing Michelle J. Anderson, Note, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1424 (1993).

76. Lilienthal, *supra* note 66, at 1597.

77. Crenshaw, *supra* note 53, at 1248.

78. Rivera, *supra* note 16, at 254 citing Edward W. Gondolf et al., *Racial Differences Among Shelter Residents: A Comparison of Anglo, Black, and Hispanic Battered*, 3 J. FAM. VIOLENCE 39, 48-49 (1988).

79. *Id.*

80. Black immigrant women, such as Haitians, may experience similar barriers.

### 1. *State Domestic Violence Policy: Mandatory Arrest*

States have implemented an array of policies geared towards responding to the epidemic of domestic violence. These policies range from stricter criminal penalties to allocation of funds for more social services. One of the most controversial criminal justice reforms in domestic violence is mandatory arrest policy. Given the premise under which these policies exist, domestic violence reporting, these laws fail to protect Hispanic women.

Mandatory arrest laws require that police officers who have probable cause to believe that a felony or misdemeanor has occurred *must* arrest the primary physical aggressor.<sup>81</sup> Gauging the effectiveness of this policy as it applies to Hispanic women requires that we consider the barriers facing Hispanic women to determine if the policy is likely to positively support them. Mandatory arrest policies rest on the premise that women are making complaints against their perpetrators. Hispanic women are confronted with circumstances that make it likely that they, and those around them, will refrain from reporting the incidents.

Virtually all the previous factors play into Hispanic women's refusal to report. Most directly, the cultural view that violence against women is a matter of personal concern furthered by the cultural acceptance, the distrust of law enforcement,<sup>82</sup> and the fear of deportation operate to prevent reporting of victimization. Hispanic women who are pressured into keeping the problem within the family by their community are likely not to call the police when victimized, especially since the violence is likely to be accepted as a cultural norm. Furthermore, if the community as a whole has a general distrust of law enforcement, women are unlikely to seek their support. At most, women are more likely to seek assistance from social service agencies. Lastly, if a woman is an immigrant, the fear of deportation will also likely prevent her from reporting abuse.

Apart from the difficulties that arise from the reporting aspect of the policy, the functionality of the law is limited even if Hispanic women were to report abuse. The law requires that the police officer arrest the "primary physical aggressor."<sup>83</sup> This is problematic since language barriers may serve to impede an officer from understanding the factual circumstances that led to the physical attack. This obstacle might then lead officers to apply their discretion to determine who they feel is likely to have been

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81. Sarah Mausoloff Buel, *Recent Developments: Mandatory Arrest for Domestic Violence*, 11 HARV. WOMEN'S L.J. 213, 214-15 (1988).

82. This distrust of police is likely to extend to black communities as well since they have a history of negative interaction with law enforcement.

83. Buel, *supra* note 81, at 214-215.

the initial aggressor. Having created this discretion defeats the main principle upon which the policy exists: eliminating police discretion. Mandatory arrest policy presupposes the notion that police discretion must be completely alleviated in order to curb the problem of domestic violence.<sup>84</sup>

Mandatory arrest laws are inadequate given the circumstances facing Hispanic women, and fail to afford them any protection from the perpetration of domestic violence. Relying on this same reasoning, essentially any anti-domestic violence policy that is premised on the reporting of abuse to law enforcement agencies, neglects to afford protection to Hispanic women.<sup>85</sup>

## 2. *Federal Domestic Violence Policy: VAWA*

The Violence Against Women Act (VAWA), passed in 1994, is an attempt by the legislature to fill the void remaining in the previous legislation with regards to immigrant women.<sup>86</sup> Under VAWA, battered immigrant women can petition for lawful residency without the sponsorship of their abuser.<sup>87</sup> In addition, VAWA provides an immigration remedy in the form of an exception to removal if deportation would be an extreme hardship.<sup>88</sup> While these progressive reforms appear to shed a positive light on the direction of anti-domestic violence legislation, the application of the provisions are unlikely to effectuate their intended purposes.

### a. *Self-Petitioning Process*

In order to successfully make a VAWA self-petition, a woman must meet four basic requirements:

1. **ABUSE** – During the marriage the woman or her child was battered or subject to extreme cruelty by the woman's spouse;
2. **VALID MARRIAGE WITH QUALIFYING SPOUSE** – the women entered the marriage with either a U.S. Citizen (USC) or Legal Permanent Resident (LPR) in "good faith" and has resided in the United States with the qualifying spouse.
3. **GOOD MORAL CHARACTER** – the woman has been a person of good moral character for the last three years; and

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84. Welch, *supra* note 15, at 1150.

85. Policies that rely on the reporting of abuse include policies such as protective orders and no-drop prosecution.

86. 8 U.S.C.A § 1154.

87. *Id.*

88. *Id.*

4. EXTREME HARDSHIP – the woman's removal would be an "extreme hardship" to the woman or her child.<sup>89</sup>

These requirements pose a terrific challenge that is likely to dissuade many battered immigrant women from seeking relief and lead to the denial of relief for others. Beginning with the abuse requirement, the "strongly encouraged" evidence required is listed as "court documents, medical reports, and other official documents."<sup>90</sup>

Given the particular circumstances affecting immigrant women, it is highly improbable that they will have access to such documentation. Considering the previous discussion on the unlikelihood of reporting among Hispanic women, obtaining official documentation is not feasible since it is likely there is none. This requirement effectively bars many of the women most in need of the legislation from being protected.

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89. *Id.*

90. 8 C.F.R. 204.2

(c)(iv) Abuse. Evidence of abuse 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 social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(vi) Extreme hardship. Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(vii) Good faith marriage. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

We next turn to the requirement of being in a valid marriage to a qualifying spouse. This requirement is three-fold. The women must prove her husband's immigrant status, that the marriage was entered in good faith, and lastly, she must prove her residency in the United States. These elements pose similar access to information problems as the abuse requirement. Due to the power and control dimensions of domestic violence, not only may undocumented women be unable to provide the records of her husband's status, she may also be unsure of the exact nature of his status. As to proving a good faith marriage and residency, the regulation again places emphasis on official records.<sup>91</sup> Faced with the possibility of possessing few, if any, public records to prove good faith marriage and residency, battered immigrants are persuaded not to file for VAWA relief.

Good moral character is another hurdle that immigrant women are forced to overcome. Women must present an affidavit asserting her good moral character along with local police clearance reports or state issued background checks for each locality in which the woman has lived for more than six months over the past three years.<sup>92</sup> Again the reality of obtaining this information is doubtful for the reasons already discussed. The regulation does allow, in the event that these reports are not available, the submission of other evidence such as affidavits from people knowledgeable of the woman's moral character.<sup>93</sup> This standard is likewise unworkable for immigrant women considering that the process of self-petitioning is contingent on the women having exposed their husband's abuse. Because having done so might be seen by her community as shameful and disrespectful to her family, the immigrant women are unlikely to obtain an affidavit of her "good moral character" from anyone in that community. Furthermore, it is unlikely that a woman would know anyone well enough for them to attest to her moral character outside of her community. Lastly, women must demonstrate extreme hardship in the event of deportation. The extreme hardship test developed in immigration law prior to the passage of VAWA has been narrowly interpreted by case law, making it an arduous task for women to meet.<sup>94</sup> This standard only takes into consideration the hardship that results after deportation.<sup>95</sup> The extreme hardship is generally met by showing an aggregate of factors es-

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91. *Id.*

92. *Id.*

93. *Id.*

94. Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 N.W. U. L. REV. 665, 684-85 (1998).

95. Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacies of Coverage*, 28 SAN DIEGO L. REV. 593, 610 (1991).

tablishing her strong ties to the United States.<sup>96</sup> The factors can be established with evidence such as "affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence."<sup>97</sup> As with essentially all the factors, lack of access to information creates a barrier to meeting this requirement.

Having analyzed both state and federal policy, it is apparent that the needs of Hispanic women have failed to significantly impact the content of those policies. Feminist discourse continues to address the needs of "mainstream" women when pushing for legislative reform. So long as this is the practice, Hispanic women will continue to lack the essential protection and support that is available to mainstream women.

#### CONCLUSION

As long as Hispanic women are dying at the hands of their intimate partners, law makers must pay greater heed to their particular needs in creating policy to protect them. The progress that has been made by the domestic violence movement has not been completely in vain, however, "women" is not a homogeneous term. Given the particular needs of women of color, and Hispanic women in particular, efforts must be expanded. The most effective way of accomplishing this is to change the focus of the mainstream movement to include the minority perspective.

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96. Kelly, *supra* note 94, at 685.

97. 8 C.F.R. 204.2 (c)(vi).