VAWA Oral Argument Nov 20, 2009

Answer the question asked or say you don't know—don't fudge.

Open

I'm RDH the attorney for the plaintiffs-appellants who are the Representatives of a putative class of US Citizen males who married alien females. I am also one of the plaintiffs.

This case is still in the pleading stage. The lower court dismissed for failure to allege a "standing injury." We, the plaintiffs, are challenging the constitutionality of certain statutory provisions of the Violence Against Women Act, which is commonly referred to as VAWA.[1]

Specifically, that the Federal Govt uses secret hearings and untrustworthy evidence to find that we and thousands of other US citizen males committed "battery," "extreme cruelty" and an "overall pattern of violence" against our alien wives. The hearings and their fact-findings are kept secret from us and the evidence comes from only one side—the alien wife's.

VAWA has taken the "he said" out of the "he said, she said." When you cut through all the politically correct propaganda, the VAWA findings of fact against citizen males are nothing more than the result of a Kangaroo proceeding.

For example, there are over 750 pages there I received from Immigration in response to a request for records concerning me. Over 500 pages are redacted—most of them are blank. Somewhere in those 500 blank pages are the Govt's fact-findings about what I allegedly did, the so-called evidence on which it was based, and all the people to whom the sum and substance of the Govt's findings of facts were communicated. But I can't look at those pages because VAWA secrecy considers them about my ex-wife.[2] 8 USC 1367(a)(2).

I'm the one this Govt found to have committed the modern day scourge of domestic violence, and yet with Kafian logic, I'm the one who can't find out what the Govt says I did.

I, the three other plaintiffs, and thousands of American husbands are the ones being dragged through the mud, having our livelihoods destroyed because VAWA keeps its boot heel on our legal rights to fight back. VAWA locks us out of the legal system. Preventing us from showing it is not us men who are the evil doers but these alien females who will tell any lie, commit any crime to win permanent residency in America.

We're not asking for the Sun, the Moon and the stars. We're asking for fairness in procedures that find we committed "battery," "extreme cruelty" and an "overall pattern of violence." That's it.

VAWA fact-findings are made
- without any notice to the citizen,
- if he somehow learns about the proceeding, the Govt won't let him in,

[1] VAWA amended the Illegal Immigration Reform and Responsibility Act, and Immigration and Nationality Act.
[2] Only the individual whose records are the subject of the dispute can bring an action in court. Word v. US, 604 F2d 1127 (8th Cir. 1979). Statute of limitations 2 years.

any evidence he submits goes in the garbage,
he can't find out what the exact fact-findings are,
he can't find out whom the fact-findings are communicated to,
if he stumbles across a communication that causes him damages, he has no recourse,
he can't correct any mistakes in the records of these fact-findings under the Privacy Act,
the fact-findings of him committing crimes and civil wrongs with the US Govt's
stamp of validity on them are not even considered by the Govt to be about him.

The last clause of the relief in the Amended Complaint ¶ 219(c), App. 31, about any plaintiffs again marrying a foreigner is withdrawn, since their past experiences caused by VAWA have deterred them from ever again marrying a foreigner.

Standing Injury Prob

We the plaintiffs face a unique problem in this case. Much of what is going on is in the shadows where we, because we are citizens and men, cannot look because VAWA forbids it. Many of the machinations and harms can only be inferred based on the provisions of VAWA. The Govt will not allow us behind the locked doors where it is generating and disseminating fact-findings about us.

So in an interesting twist, we don't really know what is going on and don't have anyway to find out except through this case. And that statement is true for thousands of men out there who have already had their lives ruin by VAWA and will have.

However, in Baur v. Veneman, 352 F.3d 625, 631 (2d Cir. 2003), this Court stated that "at the pleading stage, standing allegations need not be crafted with precise detail," and that we, therefore, "presume that general allegations embrace those specific facts that are necessary to support the claim," nor must the plaintiff prove his allegations of injury."

Can't this be solved by the political process instead of the courts?

We live in a democracy in which the majority—females, can pretty much get politicians to pass the laws they want, such as VAWA. To protect the minority—men, in this case men who marry foreigners, from the tyranny of the majority, the founding fathers set up an independent branch—the judiciary. This is one of the most important functions of the Judiciary.

Justice Powell in his concurring opinion in United States v. Richardson, 418 U.S. 166, 192 (1974):

> "The irreplaceable value of the power articulated by Mr. Chief Justice Marshall [Marbury v. Madison, 5 U.S. 137] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests."

The Supreme Court has recognized that when a person challenges the legality of government action and that person is himself the **object of the action** at issue there is ordinarily little question that the action . . . has caused him injury, and that a judgment preventing or requiring the action will redress it. Gully v. NCUA Bd., 341 F.3d 155, 161 (2d Cir. 2003).

We are the ones that fact-findings are made against—we are the object of that Govt action.

Injury is the invasion of a legally protected interest, Duke Power Co, 438 U.S. 59, 78-79 (1978), at the time this action was filed, Friends of the Earth, Inc., 528 U.S. 167 (2000).

Time line of injuries

VAWA---**fraudulent** State proceedings---primary evidence State documents---fact-findings of abuse---Permanent residency---Government benefits to aliens from Govt agencies or NGOs and defamatory fact-findings and perhaps privacy information to law enforcement agencies.

Because VAWA does not use the adversarial procedure to determine facts, it caused our alien wives to file false police complaints (RDH, Moffett, Cardozo) and acquire temporary restraining orders based on perjury (Den Hollander, Brannon).

People lie because the prize is greater than the risk.

The police complaints, arrest records, TROs and TRO alleged violations were or are being used by the Fed Govt as primary evidence to make findings of fact that we "battered," or subjected to "extreme cruelty" or "overall pattern of violence" our wives (all plaintiffs) in order to grant them permanent residency. 76 Interpreter Releases 162, 168-169 (1999).

Outside of the harm from fraudulent state proceedings caused by VAWA, the plaintiffs have no way at the pleading stage to specify injury from the VAWA process or the dissemination of privacy and defamatory information because it is all kept secret from the plaintiffs.

If this Court rules that general allegations cannot include the specifics, then at least allow limited discovery to determine those specifics, which is within the Courts' discretion.

State and Local Proceeding Injuries:

VAWA Primary Evidence

By listening to only one side, VAWA caused fraudulent *ex parte* police complaints, some of which led to arrests (Moffett, Cardozo), fraudulent temporary restraining orders (RDH, Brannon), and false claims of restraining order violations (Cardozo) against the plaintiffs so that our alien wives would have primary evidence for VAWA fact-findings against us.

This resulted in the **on going harm** of arrest records, temporary restraining order records, poor credit ratings as a result of debt incurred in defending against false accusations, pink-listing, which is similar to the blacklists of the McCarthy era.

Pink-listing continues to plague representatives Moffett and Cardozo, (Complaint ¶ 89, 108), and poor credit rating continues for Mr. Cardozo, which will take him some time to correct.

Alien wives need not fear disclosure of the truth in VAWA proceedings because the citizen husband is locked out.

The Government argues that even if procedures for correcting records were provided the plaintiffs and the VAWA adjudications of plaintiffs committing abuse used the adversarial system, their alien wives would still have an incentive "to pursue arrests and restraining orders." (Gov't Brf. p. 37). The Government reaches a factual conclusion on a pleadings motion, but more ludicrously, it claims that the adversarial process is no better at reaching the truth then listening to only one side.

Un-addressable harm

The lower court mistakenly ruled "that prospective harm [from police complaints, arrests and TROs] can be addressed in state court proceedings."

The Identification Division of the FBI collects and maintains fingerprint information that lists an individual's arrest and issuance or violation of a TRO. 28 U.S.C. § 534; 28 C.F.R. 0.85(b). The information is gathered from Federal, state and local agencies, and the FBI disseminates it to law enforcement agencies, officials of state and local governments for employment and licensing purposes. 28 C.F.R. §§ 20.21(b)(2)-(3); 20.33(a); 50.12(a). TROs are also entered into the FBI's National Information Crime Center. All of the information concerning arrests and TROs are available for FBI security clearance checks.

The states have no power to prevent dissemination or expunge federal records. Any expungement requires a Federal court and is granted only in extreme situations.

As for criminal proceedings in which a party is acquitted (Moffett, Cardozo), New York State, for example, provides for the sealing of records but excludes published court decisions or appellate material. N. Y. Crim. Procedure § 160.50. Further, sealing is not airtight, since a string of persons and agencies may have access to the sealed records. N. Y. Crim. Procedure § 160.50(d).

Private investigatory companies make state arrest reports, TROs, and restraining order violations available to potential employers with the result of denial of employment (Moffett, Cardozo). Would have to track down every PI worldwide that has those records to enjoin their use. A task well beyond any state court.

Plaintiffs cannot bring a state abuse of process, which requires showing alien wife brought action to obtain a collateral objective, because the collateral objective of permanent residency using VAWA is kept secret by the Fed Govt.

State proceedings harm a citizen's relationship with his children (Moffett).

Violation Moffett's Sixth Amend Confrontation Right
Moffett arrested for assault and in hearing could not attack alien wife's credibility that she filed the charges to help her in the VAWA fact-findings.[3]

A claimant need not set out in detail all the facts on which a claim is based but only provide enough information to put the opposing party on notice of the claim. Erickson v. Pardus, 551 U.S. 89, 93 (2007)(citation omitted). The Amended Complaint alleges throughout that the alien wives made false criminal charges against the Class Representatives in order to manufacture documents for use in the VAWA process. (Amended Complaint ¶¶ 9-11, 69-70, 89-90, 104-05, 120, App. 7, 14, 17-19). When a person is faced with false criminal charges, it goes without saying that he will defend himself, which, to every lawyer includes attacking the accusers credibility. It is unrealistic for the experience attorneys of the Government to claim that they were taken by surprise with the Sixth Amendment argument. (Class Rep. Brf. p. 29).

Besides, the Court of Appeals has discretion to consider arguments not raised below because its waiver doctrine is entirely prudential. *In re* Nortel Networks Corp. Sec. Lit., 539 F.3d 129, 132-33 (2d Cir. 2008).

What if State Proceedings Not Fraudulent?

If an alien brings state proceeding and wins judgment on specific acts of violence, then PDP not needed in VAWA fact-finding on that issue because probably *res judicata*. But still need some procedure to determine whether that was the basis for the fact-finding against the citizen husband. If my ex-wife had won a judgment that I threatened her with a gun—assault in the second degree, a felony, and the Govt used only that to find abuse, then no PDP necessary.

Permanent restraining orders granted against Moffet and Cardozo but no convictions based on fraudulent arrest complaints and alleged violations of restraining order by Cardozo determined bogus.

PDP Injuries:[4]

Plaintiffs not parties to VAWA

Judge Pauley III held that because the VAWA process "does not provide for criminal or civil proceedings against Plaintiffs," Order p. 6, there is no injury to them. In other words, the plaintiffs are not injured because they aren't parties to the VAWA proceedings that determine they have committed wrongs and crimes against their wives. That in itself is an injury, since the plaintiffs are shut out of proceedings that make fact-findings about their conduct.

[3] SCt has held that this bedrock procedural guarantee applies to both federal and **state** prosecutions. Crawford v. Washington, 541 U.S. 36, 42 (2004).

[4] Substantive Due Process limits government conduct toward the individual regardless of procedural protections. Substantive Due Process means substantive rights. Govt cannot deprive a person of a fundamental right unless it serves a compelling state interest.

The Supreme Court, however, has "long … granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them." Joint Anti-Fascist Committee v. McGarth, 341 U.S. 123, 141 (1951); Columbia Broadcasting System v. U.S., 316 U.S. 407, 423 (1942).

For example: U. S. v. SCRAP, 412 U.S. 669 (1973); Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59(1978); Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 (2d Cir. 2009).

"Those who are brought into contest with the Government in a quasi-judicial proceeding are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." Morgan v. United States, 304 U.S. 1, 18-19 (1938).

The U.S. Attorney cannot be arguing that whenever the Federal Government makes findings of fact against citizens, those citizens cannot challenge the constitutionality of those proceedings because secrecy laws keep the proceedings secret from them.

The SCt has demonstrated a consistent belief that the **adversary process** is best designed to safeguard individual rights against arbitrary action by the Government. Rotunda, Constitutional Law, 13.8, 7th ed. "The due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases" in order to prevent mistaken deprivations and promote participation by affected individuals in the decision-making process. Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

As a result of the lack of adversarial procedures, Gail Pendleton (National Lawyers Guild Immigration Project and VAWA expert used by Matthew Bender) advocates immigration lawyers use certain stock answers that she knows the Government will accept because there is no one to challenge such specious arguments. Application for Immigrant Status Under VAWA, Asista, partnership with OVW.

1. If permanent restraining orders are not acquire, lawyers claim the alien wives were fearful of more domestic mistreatment or their language ability kept them from understanding the law.
2. If a short marriage, then claim it was because of domestic mistreatment.

We're all lawyers here, we can see through this smoke screen to the subornation of perjury that's at work. Why does such subornation work—because people like Pendleton train the adjudicators at the Vt. Service Center. Virtue, Memorandum, 74 Interpreter Releases 971, 977 (May 6, 1997). The impartiality of those adjudicating has been corrupted by private organizations funded with taxpayer dollars that push their one-sided agenda in training the adjudicators who make the decisions as to what the citizen husbands did. Id.

Family Violence Prevention Fund, which is funded by the DOJ's Office on Violence Against Women under VAWA, advises alien wives to withhold information from the Government, including the police and courts. Family Violence Prevention Fund, Knowing Our Rights, Re NGO tab.

Imagine this case goes to trial but the Government doesn't show, doesn't submit any evidence, and rather than entering a default, the trial court has to make a decision on the merits. There's

only one way it could decide because there's nothing to support the other side—that's what the VAWA provisions do in determining whether the plaintiffs committed abuse.

Under VAWA, a citizen husband who was found innocent of felonies, misdemeanors and other wrongs in state proceedings or the charges were dismissed (Den Hollander, Brannon) can be found to have committed those same felonies, misdemeanors and other wrongs by the Fed Government based on the very same fact situation because the only evidence presented comes from the alien wife.

Determination of the process due means examining, Mathews v. Eldridge, 424 U.S. 319, 335 (1976):

> (1) the private interest affected by official action—all fundamental; therefore, strict scrutiny,
>
> (2) whether existing procedures create an unreasonable risk of an erroneous deprivation—there are no procedures for the class members,
>
> (3) the Government's interest in the existing procedures—to protect aliens mistreated by citizens, which procedures do not strictly serve.

Government's Interest

The Government represents its interest as preventing "accused batterers" from participating in the VAWA process so as to "ensure the effectiveness of the application procedures." Assuming effectiveness does not mean rubber-stamping, then determining whether citizens battered alien spouses is most effectively done through the adversarial process.

Congress moved into the area of family law with the purported purpose of protecting alien wives from abuse by citizen husbands refusing to sponsor their wives for permanent residency unless those wives acceded to unjust personal demands. 76 Interpreter Releases 162, 163 (1999). Govt says VAWA's purpose is "to relieve aliens whose U.S. citizen spouses were abusing them from the need to depend on that spouse to obtain" permanent residency. (Gov't Brf. p. 6).

But you cannot determine whether the alien spouses are mistreated unless you determine the truth. The threshold determination in the VAWA process is whether plaintiffs mistreated their alien wives. Without that, the process stops, and alien wives need to find another route to full permanent residency.

"The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring).

The Government claims VAWA's secrecy is to protect "domestic violence victims." (Gov't Brf. p. 9). If that were so, then why is it that every other domestic violence case ever brought did not keep the proceedings secret from the allegedly abusive spouse.

Before VAWA, there existed, and still exist, two other ways for alien wives abused by citizen husbands to acquire full permanent residency without cooperation of citizen husbands when marriages fall apart:

1. Hardship waiver, 8 U.S.C. 1186a(c)(4)(A), requires a showing of extreme hardship after the alien was admitted to U.S. as conditional permanent resident. 8 C.F.R. § 216.5(e)(1).

   VAWA hardship requirements are much more lenient for canceling removal hearings, excusing marriage fraud and includes: psychological effects of the alleged abuse, an alien wife's asserted need for social services available in America but not reasonably accessible in her home country, or even her husband's ability to travel to his wife's home country. 8 C.F.R. § 1240.58(c).

2. Termination of marriage waiver focuses on whether there existed a good faith marriage in the first place, 8 U.S.C. 1186a(c)(4)(B), and who was a fault for its termination, 13 Immig. Rptr. B2-102 (1994).

   VAWA allows for a fraudulent marriage if alien shows lower standard extreme hardship. 8 USC 1182, 1227. Such as when they allege the psychological services they receive here are not available in their home country, or assert a need for social services available in America but not reasonably accessible overseas, or assert their citizen husband has the ability to travel to his wife's home country—what husband doesn't have that ability in this day and age. Virtue, Memorandum for O'Reilly, 76 Interpreter Releases 162, 166-67 (Jan. 25, 1999).

Under VAWA

1. Cancellation of deportation hearings are easier under VAWA than generally. Sanchez v. Keisler, 505 F.3d 641, 645 (7th Cir. 2007)(Wood, J.).

2. VAWA excuses aliens, overwhelmingly females, who
   a. Admit crimes of moral turpitude,
   b. Admit to violating drug laws,
   c. Received two criminal convictions for total sentencing of 5 or more years,
   d. worked as prostitutes, procurers,
   e. are illegals,
   f. and entered a marriage just to obtain residency [if deportation would result in VAWA hardship]. [1154 & 1227]

It's clear what has happened. With the ascendancy of the Feminist lobby in Washington the immigration policy of keeping out of America nefarious individuals was scrapped in favor of allowing criminally prone female con-artists a no-fault route to citizenship.

The reason for this open door policy that benefits the criminally minded was to keep American males limited to the pool of available American females by increasing the risk from marrying a foreigner. Male to female ratio in 2000 was 96.3%.

There is a drive in this country by the majority to use the political to dictate the personal. VAWA requires marriages involving aliens to be more conventional and more successful than

those involving citizens, which would raise serious constitutional questions. Bark v. Immigration & Naturalization Service, 511 F.2d 1200, 1202 (9th Cir. 1975)(Hufstedler, Circuit Judge).

Procedures denied

In the VAWA process, the plaintiffs had, have or will have

no notice,
no opportunity to speak up and argue on their own behalf ,
cannot present evidence,
no opportunity to rebut presumptions,
cannot confront and cross examine witnesses or evidence against them,
no decision with a statement of reasons or the weight provided the information on which the Govt relied in reaching their decision,
no impartial decision maker.

The lack of notice and opportunity to be heard is an injury. Carey v. Piphus, 435 U.S. 247, 266 (1978).

Nominal Injury

The denial of procedural due process should be actionable for nominal damages without proof of actual injury. Carey v. Piphus, 435 U.S. 247, 267 (1978).

Nominal damages should unquestionably be awarded for deprivation of procedural due process. Stein v. Bureau of Pupil Transp., 792 F.2d 13, 18 (2d Cir. 1986), cert. denied, 479 U.S. 984 (1986); Young Ah Kim v. Hurston, 182 F.3d 113, 121 (2d Cir. 1999).

Fundamental rights deprived by lack of PDP

The Govt, at the time of filing, was, on information and belief, holding (Moffett, Brannon) or held (RDH, Cardozo) hearings kept secret from the plaintiffs that were finding the plaintiffs committed certain felonies, misdemeanors or other VAWA wrongs against their alien wives.

1. Free Speech Injuries

The secrecy and evidentiary provisions censored or are censoring the plaintiffs from speaking or hiring attorneys to speak for them.

The overbroad prohibitions of "extreme cruelty" and "pattern of violence" deter protected speech of US citizens married to aliens. At the time of filing the Complaint, overbroad VAWA standards reaching protected speech continued to deter appellant Brannon's free speech during divorce proceedings.

VAWA also censors other citizens not before the Court from exercising their free speech when being found to have committed domestic violence by the Fed Govt. The plaintiffs, therefore, can be permitted to challenge VAWA not only based on the violation of their 1st Amend Rights but

because VAWA will violate free expression rights of others. Va. v. American Booksellers Ass'n, 484 U.S. 383, 392-93; Broadrick v. Okla., 413 U.S. 601, 611-12 (1973).

2. Marital Choice Injuries:

The VAWA provisions chilled Den Hollander's marital choices by placing him in a dilemma of committing perjury before the USCIS by sponsoring his wife for permanent residency or face fraudulent state proceedings and the Federal Government finding facts that he committed domestic violence. Complaint ¶¶ 66-70. Such is an injury.

Moffett faced the choice between domestic criminal proceedings falsely started by his wife or committing perjury to the USCIS that he had abused her. Complaint ¶ 92.

But both of you did not comply with the pressure?
Correct, but look at what that choice cost us—financial costs, harm to occupation, reputation, and forever labeled the modern-day scourge of society—one accused of domestic violence.

Choosing to fight for one's rights should not be a justification for the violation of those rights.

Plaintiffs could not choose to submit use of the VAWA process as evidence of their wives motivation for fraud in filing police complaints or obtaining arrests, TROs or making false complaints about violation of TROs.

Plaintiffs cannot use their wives VAWA motivation to reopen state proceedings fraudulently brought against them.

Plaintiffs did not or do not have the freedom of choice to challenge the accusations and findings of marital mistreatment in the VAWA process or to choose to correct the Government's fact-findings of domestic mistreatment

The plaintiffs' experiences that resulted from VAWA have chilled their right to marital choice. All have decided against marrying another alien, which is an ongoing disability similar to what a black man experienced in Evers, 358 US 202 (1958). Inferences reasonably drawn from what the class representatives experienced (Complaint ¶¶ 53 – 125) allege they will not again marry an alien wife.

Analogy with Evers v. Dwyer, 358 U.S. 202 (1958), would the black class representative, who boarded a bus only once and then got off when told he could not sit in the front, board a bus again and sit in the front if the segregation statute was not nullified? The SCt. found that such a disability gave the man standing to challenge the segregation for a class.

3. Privacy Injuries:

When the Complaint was filed, VAWA proceedings were apparently going on and may still be going on in which the Fed Govt makes fact-findings of domestic violence against Moffett and Brannon. The VAWA process takes time, just the adjustment to status can take more than 2 years.

Such proceedings had likely already occurred with respect to RDH and Cardozo.

Private information in family matters are bandied about in these proceedings without any of the plaintiffs' consents or being allowed to protect their privacy from unfair or arbitrary invasion. The right to privacy protects one's private life from government intrusion, Olmstead v. United States, 277 U.S. 438, 478-79 (1928)(Brandeis, J. dissenting).

The DOJ considers information in these fact-findings of a personal nature for alien wives and subject to privacy restrictions. 5 USC 552(b)(6). If it's personal and private for wives, then it's personal and private for husbands.

SCt has held that the personal nature of info protect by Privacy Act from disclosure applies to any individual. Dept State, 456 US 595 (1982).

Communication to NGOs of abuse is a private family matter that warrants protection because it was not made in an adversarial proceeding.

4. Reputation Injuries

The Supreme Court has long recognized that an injury to reputation will satisfy the injury element of standing. Gully v. National Credit Union Admin. Bd., 341 F.3d 155, 161 (2d Cir. 2003).

What American would think it fair to be sidelined while the Government makes determinations that he is a modern day scourge to society. That's what "battery," "extreme cruelty," or an "overall pattern of violence" mean in this day and age. And what American would rely on the Government's assurance of "Don't worry" knowledge of these destructive and false fact-findings will only be released to

1. your alien wife and her lawyer, often paid for by the Government,
2. Federal agencies that provide benefits to her,
3. State agencies that provide benefits to her,
4. Local agencies that provide benefits to her,
5. Private agencies that provide benefits to her,
6. Federal law enforcement officials,
7. State law enforcement officials,
8. Local law enforcement officials,
9. Interpol, and
10. Nonprofit, nongovernmental groups that provide any type of service to immigrants.

No American would drink that kool aid, just as no American believes that leaking of information by functionaries never happens.

The Amended Complaint at ¶¶ 93, 122 alleges that the alien wives of plaintiffs Moffett and Brannon received or are receiving benefits through private immigrant services organizations.

The providing of benefits requires the Government to communicate with third parties in those organizations whether the wife made out a *prima facie* case of battery or was found to have been abuse and that there is a "substantial" connection between the nature of the abuse and the wife's need for benefits. 8 U.S.C. § 1641(c); 74 Interpreter Releases 971 (1997).

That's a communication of **defamatory** information to third parties that Moffett and Brannon cannot prevent, do not have legal recourse for damages, or can even find out about.[5]

They, as all the plaintiffs, are essentially placed on a blacklist, or more appropriately pink list. Such listing is treated as an immediately redressible harm because it diminishes (or eliminates) the opportunity to practice one's profession even if the list does not impose legal obligations of the subject. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 141 (1951)(cited in Gully)

Think of the unfairness that the Govt finds the citizen husband committed "battery," "extreme cruelty" or "overall pattern of violence," and he's the one who cannot acquire access to these records to correct them.

All the plaintiffs **continually face an insurmountable wall blocking their access** to such findings so as to determine whether the records are inaccurate. And if so, the plaintiffs are denied any means for correcting then.

VAWA repeals the Privacy Act for citizens because the secrecy prevents any administrative means or access to the courts to correct Govt records that are seriously flawed due to the one-sided nature of the Government's procedure.

Standing continues with respect to negative references in a person's prison records because such can have a continuing adverse impact on plaintiff. Kerr v. Farrey, 95 F.3d 472, 476 (7th Cir. 1996).

Cannot determine the likelihood of records being release by defendants because the one source that knows how often that happens has denied my FOIA for statistics on disclosures, and the sources that know how the information is actually used are prohibited from telling the class.

But the likelihood of injury from disclosure is greater than the likelihood of harm in Bryant v. Yellen, 447 U.S. 352, 367-68 (1980). Farm workers had standing to intervene in support of rule that water would not be provided to acreage over 160 acres. Standing was based on a likelihood of injury in that farm workers would miss an opportunity to buy the excess land. The reasoning went this way: (1) lack of water would likely cause large land owners to sell their excess land, (2) it was likely the excess land would be sold for below market value, (3) even though farm workers did not allege they could afford the land, they would still be harmed; therefore, standing existed.

In a due process challenge to a regulation testing pilots for drugs, "an individual who belongs to [the] specific class … has standing to attack the regulation without offering evidence that he … is likely to be tested." Cronin v. FAA, 73 F.3d 1126, 1130-31 (D.C. Cir. 1996).

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[5] The alien wife of representative Moffett is being assisted by the "Civil Society Helps" of Minnesota, which receives funding from DOJ. (Complaint ¶ 93). The alien wife of representative Brannon currently receives services from the Maryland Heartly House, which receives funding from that state, and The Women's Law Center of Maryland, which receives Federal Government funding. (Complaint ¶ 122 refers to these organizations generally not by name, ¶ 151-53).

Let's assume alien wives don't seek benefits, law enforcement doesn't investigate, FBI doesn't do security clearances. There's the argument that standing still exists. Oregon residents had standing to challenge state statute allowing use of pesticides even though state officials did not intend to use statute. Oregon Environmental Council v. Kunzman, 817 F.2d 484, 491-92 (9th Cir. 1987). By analogy, citizen husbands have standing to challenge the disclosure exceptions even though no one intends to use them.

Catch 22: The lower court requires specifics with what Fed Govt doing with private and defamatory info but secrecy prevents plaintiffs from finding out. Lower court demands an allegation of harm, but the information on which such an allegation must be based is kept secret from the persons who have to make the allegation.

Anticipation of communication private and defamatory info

The anticipation of future injury itself can provide standing when persons reasonably suffer fear of the risks they cannot do anything to lessen. N.Y.P.I.R.G. v.Whitman, 321 F.3d 316, 325-26 (2d Cir. 2003). The distinction between exposure to excess air pollution, or communication of private and defamatory info, and uncertainty about exposure, or uncertainty about communication of private and defamatory info, is one largely without a difference since both cause personal and economic harm.

Infringement opportunity to work

Corporations check whether applicants have arrest records or had restraining orders filed against them, and if so, usually deny the applicant a job. As a result Cardozo has had difficulties in changing jobs (Cmplnt ¶ 104) and Moffett's career has suffered.

Valmonte v. Bane, 18 F.3d 992 (2d Cir. 1994).

The Second Circuit found that the potential employers of Valmonte in the child care field will learn of her being on the list and not hire her, or if they do hire her, will have to explain why. This was a deprivation of her opportunity to seek employment caused by a statutory impediment established by the state.

VAWA has already interfered with Moffett and Cardozo's seeking employment.

5. Impartial adjudicator

The Complaint ¶¶ 126-39 alleges that the VAWA Unit of the USCIS Vt. Service Center, which receives all VAWA applications for full permanent residency, is prejudiced against citizen husbands in the application of the VAWA provisions. At this stage, it is not necessary to prove such.

Further, since prejudice or partiality means forming an opinion without adequate knowledge or examination, Webster's Third New International Dictionary, 1993, the anonymous Govt decision makers are not neutral because they base their decisions on only one side of the story and are uninformed as to all the relevant facts which results in them making arbitrary and erroneous decisions.

6. Evidentiary proof

Untrustworthy evidence

Moffett and Brannon, as of the filing of the Complaint, on information and belief, were having or were about to have incompetent evidence used against them to find they committed "battery," "extreme cruelty," or an "overall pattern of violence:"

Presumptions:

The evidentiary provisions treat affidavits from alien wives and their supporters, police complaints, arrest records, and TROs as *prima facie* evidence of the ultimate fact of abuse. Normally, such a presumption requires the party against whom the evidence applies to present evidence disproving the ultimate fact. But evidence submitted by citizens is discarded, so they have no opportunity to repel the presumption and that violates due process.

Weight:

TROs, medical reports, police reports, and other official documents will receive more weight than other documents. Virtue, INS Memorandum, 76 Interpreter Releases 162, 168-169 (Jan 25, 1999).

Standard Proof:

Under VAWA the only proof proffered comes from aliens, so whatever standard the adjudicators choose in finding mistreatment will be met—beyond a reasonable doubt, clear and convincing or preponderance. Even the police complaints, the arrest records that resulted from police complaints, and the TROs—all *ex parte*—have one source: the alien wife and her helpers.

Equal Protection Injuries

The Government may not "bolt the door to equal justice." Griffin v. Illinois, 351 U.S. 12, 17 (1956).

Males and females pretty much squabble the same way, argue, shout, curse, threaten, hit but there is one fundamental difference: females are more intimidated by such confrontations than males and the VAWA provisions were intended to punish men for that feminine weakness. In a society that holds the sexes equal, such preferential treatment on one sex violates equal protection.

E/P violation

1. Intent to discriminate
2. Classification
3. Strict scrutiny for suspect classes or fundamental rights

E/P Injury

Barriers to plaintiffs

They are the denial of equal treatment, denial to compete on an equal footing. It does not require a plaintiff to allege that had the barriers been absent he would have avoided the deprivation of a liberty interest—that he would have benefited without the barriers. Northeastern Fla. Assoc. Gen. Contractors Am. v. Jacksonville, 508 U.S. 656, 666 (1993)(contractors did not have to allege that had the City allowed them to bid on female and minority set-aside projects they would have received the contracts); Turner v. Fouche, 396 U.S. 346 (1970)(plaintiff who did not own property challenged law requiring members of school board to own property. Plaintiff did not have to allege he would have been appointed to school board); Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978)(equal protection injury was not permitting Bakke to compete for admission positions set aside for minorities. For standing, he did not have to allege that without the set asides he would have been admitted.)

This case can be looked at in two ways:

1. The VAWA provisions have erected barriers for the plaintiffs (secrecy, ignoring evidence, reliance on incompetent evidence, overbroad and vague definitions, lack of access to records, lack of procedures to prevent disclosure of records) that:

A. Prohibit the plaintiffs from obtaining the benefits of a fact-finding of not having committed abuse while their alien wives acquire the benefit of a fact-finding that the plaintiffs did domestic violence;

B. Prevent the plaintiffs from accessing the fact-finding records;

C. Keep the plaintiffs from correcting records, which alien wives can do through the Privacy Act;

D. Keep the plaintiffs from limiting disclosure of information in the records, which the alien wives can do by refusing to grant permission.

Those are the benefits denied the plaintiffs but provided their alien wives.

Or

2. The benefits denied are the actual procedures that the VAWA provisions granted and are granting their alien wives. In which case, the benefits are denied outright. The fundamental interest impaired is P/D/P.

From the other side of the coin the disparate treatment is not in benefits granted, but in burdens imposed by reducing the plaintiffs' fundamental rights with respect to their non-permanent alien wives when fact-findings were, are, or will be made as to alleged abuse by the plaintiffs.

Think of it as a rugby game with a winner and loser. The winners, the plaintiffs' alien wives receive a fact-finding that they were abused. The losers, the plaintiffs, receive a fact-finding that they engaged in domestic violence.

Invidious discrimination itself is an injury.

"Discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community, … can cause serious **noneconomic injuries** to those persons who are personally denied equal treatment…." Heckler v. Mathews, 465 U.S. 728, 739-740, 104 S.Ct. 1387, 79 L.Ed.2d 646 (1984)(emphasis added).

1. Plaintiffs as citizens v. non-permanent aliens:

On the face of the VAWA provisions, plaintiffs as citizens are treated differently than non-permanent aliens. The disparate treatment is not in immigration benefits granted, but in burdens imposed when the Govt makes fact-findings as to the plaintiffs' committing domestic violence.

Discriminatory purpose as a motivating factor is required but need not be the only motivating factor. Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977).

Keeping the proceedings secret from citizens, forbidding citizen's to submit evidence, and the open-ended definitions of abuse are so contrary to determining the truth that one motivation must have been invidious discrimination against citizen husbands. *See* Zablocki v. Redhail, 434 U.S. 374, 388-90 (1978)(other proceedings served statutes alleged purpose of collecting money from husbands delinquent in child support making infringement on marital right unnecessary).

Govt claims that citizens and aliens are not similarly situated, which means it can give aliens more rights than citizens. Neither the Government nor I have found a case that says the Constitution grants more rights to aliens than citizens. Perhaps it does, but I doubt it.

Where the rights of persons are at stake, whether citizens, legal or illegal aliens, the law is neutral. Romer v. Evans, 517 U.S. 620, 623 (1996). P/D/P protects aliens as well as citizens. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (Frankfurter J., concurring)(1951).

2. Males v. Females: Citizen husbands v. non-permanent alien wives (Complaint ¶ 160), Citizen husbands married to aliens v. citizen wives married to aliens (Complaint ¶ 161).

The legislative history of VAWA and its name shows the Act was based on stereotyping males as batterers and females as victims.[6]

Discriminatory on Face:

It's called the "Violence Against Women Act"—not the "Violence Against Persons Act." When considering the social convention at the time of passage, 1994, and today of making speech sex-neutral by using "person" or "he or she," the name is not sex-neutral.

Discriminatory Purpose:

Throw a dart at VAWA's legislative history and near where it strikes will say females are victims, males are batterers or words to that effect.

[6] Half of all cases of domestic violence were mutual in nature. For one-way (non-mutual) violence, women were responsible for 71% of such cases. Center for Disease Control Study, Daniel J. Whitaker et al. (2007) Differences in Frequency of Violence and Reported Injury Between Relationships With Reciprocal and Nonreciprocal Intimate Partner Violence. American Journal of Public Health, May 2007, Vol. 97, No. 5, pp. 941-47.

VAWA's legislative history shows the discriminatory intent of the Act: S. Rpt. 101-545, S. Rpt. 102-197, 140 Cong Rec S 12314, 12496, 6018 (stop violence against women, most women victimized in the home, to help the large number of women victimized by violence).

VAWA was enacted "to address violence against women." Cong. Research Service, Library of Cong. VAWA History and Federal Funding.

United States v. Casciano, 124 F.3d 106 , 110 **(2d Cir. 1997)**(FEINBERG, OAKES and LEVAL)(Feinberg wrote opinion).

The Violence Against Women Act is a comprehensive statute designed to provide women nationwide greater protection and recourse against violence and to impose accountability on abusers.

Hernandez v. Ashcroft, 345 F.3d 824, 827, 840, 841 (9th Cir. 2003), the Ninth Circuit held: "With the passage of VAWA, Congress provided a mechanism for **women** who have been battered or subjected to extreme cruelty to achieve lawful immigration status independent of an abusive spouse." "Congress's goal of protecting battered **immigrant women** and recognition of past governmental insensitivity regarding domestic violence." "Congress's goal in enacting VAWA was to eliminate barriers to **women** leaving abusive relationships." "The INS conceded at oral argument that [VAWA] was a generous enactment, intended to ameliorate the impact of harsh provisions of immigration law on **abused women**." "By defining extreme cruelty to encompass "abusive actions" that "may not initially appear violent but that are part of an overall pattern of violence," 8 CFR 204.2(c)(1)(vi) protects **women** against manipulative tactics aimed at ensuring the **batterer's** dominance and control."

Congress to this day continues its stereotypical discriminatory view of males as offenders and females as victims of domestic violence by passing H. Res 110-590 about raising the awareness of domestic violence. The June 10, 2009 Senate hearing on "The Continued Importance of VAWA," only females in support of VAWA were invited to testify.

So VAWA violates equal protection.

Discriminatory Application:

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886).

Gordon's treatise on Immigration Law and Procedure, § 41.05(1) and feminist advocates, such as Gail Pendleton of the National Immigration Project, make clear: it is primarily alien wives who use the VAWA process.

The discriminatory application of the VAWA provisions by the Vermont Service Center and the bias of the Center toward men are alleged in the Amended Complaint, which at this stage of the proceedings is considered accurate. (Complaint ¶¶ 126-39).

The government states that even if a disproportionate number of alien wives obtain full permanent residency through the VAWA process, that has no bearing on the plaintiffs. (Reply p.

8). Not so, in order for alien wives to succeed via VAWA, the citizen husbands of all those successful alien wives had to be found to have committed "battery," "extreme cruelty," or an "overall pattern of violence." So the disproportionate application of the VAWA provisions indicates not only

1. discrimination against citizen husbands, such as the plaintiffs, v. their alien wives, but
2. discrimination against citizen husbands v. citizen wives who marry alien men. This discrimination is even supported by the Government that states "equal protection challenge might plausibly be brought by an alien male in response to the denial of his own VAWA petition…." If an alien male can bring an equal protection action because of the disproportionate success of alien females with VAWA that means citizen wives are being treated preferentially in the proceedings that find mistreatment as compared to citizen husbands.

The Govt argues that an E/P violation cannot occur from a facially neutral statute whose application primarily burdens one group. If this Court holds that is accurate, it is fine with me because it will land this case in the Supreme Court.

Past

Representative Cardozo's ex-wife already obtained her full permanent residency through VAWA in which the secrecy, evidentiary and arbitrary definition obstacles barred him but benefited his ex-wife.

On going

At the filing of the Complaint, two of the plaintiffs were locked out of the VAWA fact-finding process by the obstacles of secrecy, evidentiary restraints, arbitrary definitions: Moffett and Brannon. Both want to challenge the evidence being presented against them.

Forward looking

Forward looking relief requires that the plaintiffs be ready, willing and able to challenge the evidence and any findings against them and the disclosure of such. Northeastern Fla., 508 US at 665 n.5. Complaint ¶ 219(f).

Plaintiffs are ready, willing and able to access any resulting records, make necessary corrections, and prevent disclosure of false and privacy information. Complaint ¶ 219(e)(f)(g)

Overbroad Injury

Enactments are facially overbroad when their reach is so sweeping that they could deter persons from engaging in **protected speech**, Broadrick v. Okla., 413 U.S. 601, 612 (1973). The SCt. has found in a number of cases that constitutional violations may arise from the deterrent, or "chilling," effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. Laird v. Tatum, 408 U.S. 1, 11 (1972).

For purposes of **standing,** subjective chill requires some specific action on the part of the defendant in order for the litigant to demonstrate an **injury-in-fact.** Morrison v. Bd. of Educ., 521 F.3d 602, 609 (6th Cir. 2008). Here the specific actions are the fact-findings of abuse, which

can be based on a citizen engaging in protected speech, such as:

1. Extreme cruelty includes verbal infliction of emotional distress and speech intended to control and exercise power (Gail Pendleton) or tone of voice (ASISTA, funded by VAWA).
2. Overall pattern of violence includes name-calling, criticizing, insulting, belittling, **false accusations**, ridiculing, (National Victim Assistance Academy, funded by DOJ); "calling [wife] sexually degrading names," "comments about women's bodies," "accusing [wife] of having a lover," "reminding [wife] of her duties," "threatening to leave [wife]," "calling [wife] to make sure she is okay,"—all protected speech. DOJ funded studies: 1999 National Victim Assistance Academy, chap. 8; Family Violence Prevention Fund, Breaking the Silence - Training Manual, pp 55-58 (2006).

At the time of filing the Complaint, Brannon was still in divorce proceedings, leading to the chilling of his protected speech so as to prevent its use in VAWA fact-findings.

Vague Injuries

Applies to laws regulating **fundamental rights** that require reasonable men to guess at what the laws prohibit. Connolly v. General Constr. Co., 269 U.S. 385, 391 (1926).

All the plaintiffs are deterred from again marrying a foreigner—marital choice fundamental right—because, in part, of the lack of clear guidelines as to what constitutes "battery," "extreme cruelty," or "pattern of violence" under VAWA.

For example:

a. Battery touching wife when she doesn't want to be touched, and he is expected o read her mind.
b. Extreme Cruelty "includes trying to obtain custody of the children, being jealous (Legal Assistance Foundation Chicago), any behavior that might influence another (Gail Pendleton).
c. Overall pattern of violence includes psychological mistreatment and other abusive actions that may not initially appear violent but are a part of an overall pattern. **8 CFR 204.2(c)(1)(vi).** Violence = social isolation, degradation, humiliation, ignoring, breaking promises, and destroying trust (National Victim Assistance Academy, funded by DOJ).

Overbroad and Vague

The only standard is that officials will know abuse when they see it, which allows bureaucrats to determine "battery," "extreme cruelty" and "overall pattern of violence" on the basis of their personal preferences, which the Govt apparently did to the plaintiffs.

The Federal Register even admits the expansive reach of the "flexible" concepts of "battery," "extreme cruelty" and "overall pattern of violence" by stating, "[i]t is not possible to cite all perpetrations that could be acts of violence under certain circumstances… [so] the rule does not itemize abusive acts other than those few particularly egregious examples." The Govt even uses non-battery and non-cruelty acts and speech—also undefined—to "establish a pattern of violence and to bolster claims" that "battery" or "extreme cruelty" occurred.**61 Fed. Reg. 13,061, 13,066 (1996)**.

In VAWA proceedings, the term "violence" has no dictionary meaning but is a grab bag of any activity or speech.[7]

Under these virtually boundless and indefinite terms as used by the Govt, the plaintiffs were apparently found to have "battered" or subjected to "extreme cruelty" or an "overall pattern of violence" their alien wives without any distinction among criminal wrongs or civil wrongs or conduct or speech that is not a wrong but is considered "offensive" based on the subjective sensitivities of the politically correct who put those terms into the law in the first place.

"The Supreme Court has explicitly held on numerous occasions that speech cannot be restricted simply because it offends people. In Street v. New York, 394 U.S. 576, 592 (1969), the court held that '[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.'"

The terms "battery," "extreme cruelty" and "over all pattern of violence" were intentionally left over inclusive and imprecise for their *in terrorem* effect on Americans marrying foreigners. The purpose and impact is to domineer over virtually every aspect of a citizen's marital relationship with an alien by punishing him for acts that include constitutionally protected speech he may use in times of quarrels and in times of making-up.

It's an example of using political power to control the purely personal when no criminal or civil wrongs have occurred.

Bill of Attainder

Politicians aren't exactly known for their courage.

Designates a class of persons for punishment without a trial. United States v. Brown, 381 U.S. 437, 450 (1965). VAWA provisions don't use that language but accomplish that result.

Punishment = loss of right or privilege. Black's Law Dictionary.

Ch Justice Marshal said "[a] bill of attainder may **affect the life of an individual**, or confiscate his property, or may do both." US v. Brown, 381 U.S. 447.

The punishment, which applies to citizens who marry aliens—but mainly males, is the chilling of their freedom of choice in marriage because marriage to and divorce from an alien wife makes any citizen male vulnerable to the Govt finding he committed "battery," "extreme cruelty," and "overall pattern of violence" without any legal recourse to disprove or correct such a finding.

Some of these fact-findings against citizens are serious and amount to indictments, which make it necessary to give them a chance to prove themselves innocent.

[7] Why not use the definition of violence in Ortega-Mendez v. Gonzales, 450 F.3d 1010, 1014 (9th Cir. 2006)(18 U.S.C. § 16), the use of physical force that causes injury.

The VAWA bill of attainder resulted from the feminist, domestic violence industry, which was aptly described by Alexander Hamilton, "Legislative interferences in cases affecting personal rights become jobs in the hands of enterprising and influential speculators, and snares to the more productive but less informed part of the community." Federalist Paper No. 44, p. 351.

All plaintiffs choice in marital relations continue to be chilled because of the VAWA provisions.

Failure to deport wives never alleged as an injury

"For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party," Warth v. Seldin, 422 U.S. 490, 501 (1975), not in favor of the defending party, nor in favor of the Court's personal views.

Standing

Lower Bar for Pleadings

The Supreme Court has commented on the lowered bar for standing at the pleading stage, stating that "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Lujan v. Defenders Wildlife, 504 US 555, 561 (1992).

This Court echoed that point in Baur v. Veneman, 352 F.3d 625, 631 (2d Cir. 2003), stating that "at the pleading stage, standing allegations need not be crafted with precise detail, nor must the plaintiff prove his allegations of injury."

At this point in the litigation, Plaintiffs need not present evidence to prove that we were injured, are being injure, or face future injury or increased risk of injury or that the Govt caused our injuries, or that the remedies we seek will redress those injuries.[8]

In a facial complaint, determining a motion to dismiss for lack of standing under Fed. R. Civ. 12(b)(1), a "court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of [the] plaintiff." Raila v. US, 355 F.3d 118, 119 (2d cir. 2004).[9]

Standing simply means that the plaintiff is entitled to 'walk through the courthouse door' and raise his grievance before a federal court. Baur v. Veneman, 352 F.3d 625, 642 (2d Cir. 2003).

Standing based on class

Secrecy makes finding class reps difficult because most don't even know whether they are the subjects of VAWA proceedings, so standing should rest on the class as a whole rather than the class reps.

[8] The presence of one party w/ standing is sufficient. Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47 n. 17 (2006).

[9] A facial Rule 12(b)(1) motion is not converted into a Rule 56 S/J motion when evidentiary matters outside the pleadings are submitted, such as the Cardozo affidavit.

Requirements

The SCt. has always taken the case-or-controversy requirement to mean cases and controversies of the sort *traditionally* amenable to, and resolved by, the judicial process. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102 (1998).
Requires:

1. Distinguishable and perceptible invasion of legally protected interest or immediate threat of such invasion,
2. Fairly traceable to VAWA provisions and enforcement (can be met by likelihood that requested relief will address injury), and
3. Court can provide a remedy.

All measured at the time action filed. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. , Inc., 528 U.S. 167 (2000)

Adverseness

Standing depends on whether there is an adversarial dispute. Warth v. Seldin, 422 U.S. 490, 498 (1975).

When one person accuses another of crimes and wrongful acts, the adversity exists between the accuser and the accused—not between the accuser and the adjudicator.

Injury or threat of injury

Injury-in-fact =

1. the asserted injury must be concrete—which the SCt has also described as direct, real, and palpable. Interests and "values of an abstract nature or esoteric nature can provide the basis for standing," O'Hair v. White, 675 F.2d 680, 687 (5th Cir. 1982), such as the highly abstract rights to speech, association and equal protection, Wright, Fed. Prac. & Proc. Supp., § 3531.4, at pp. 954-55 (2008);

2. particularized—which the SCt has also described as personal, individual, distinct, and differentiated—not generalized or undifferentiated;

3. actual or imminent—which the SCt has also described as certainly impending and immediate—not remote, speculative, conjectural, or hypothetical.

Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *78-79 (2009).

Even an identifiable trifle is enough for standing to fight out a question of principle, the trifle is the basis for standing and the principle supplies the motivation. Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *79 (2d Cir. 2009)(global warming); United States v. SCRAP, 412 U.S. 669, 690, n. 14 (1973).

Evers v. Dwyer:

Compare this case to Evers v. Dwyer, 358 U.S. 202 (1958). A blackman, who had never ridden a bus before, boarded a public bus and sat in the front. When told by police to move to the rear or leave the bus, he left. He was not arrested, he was not fined, but he was humiliated—a past

injury. Yet the SCt. held that he had standing to bring a class action for declaratory and injunctive relief.

The Supreme Court reasoned that where:
(1) the record showed the state intended to continue to enforce the segregation statute—as is alleged here that the defendants intend to continue to enforce the VAWA provisions,
(2) the plaintiff class representative was not bound to continue riding the buses at the risk of arrest if he did not comply with sitting in the back—as here the class representatives do not have to continue marrying alien females at the risk of the harms alleged,
(3) a resident of a town who cannot use transportation without being subjected to special disabilities—as here a citizen of the US who cannot exercise his fundamental right to marry an alien without being subjected to special disabilities,
Then the individual has a "substantial, immediate and real interest in the validity of the statute imposing the disability, so he has standing—the same in this case.

Prudential Standing

Prudential standing considerations include the rule barring adjudication of political question, generalized grievances more appropriately addressed in the representative branches, raising another person's rights, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked—here the plaintiffs invoke the Constitution.

Political Question

The political question doctrine is "primarily a function of the separation of powers," Baker v. Carr, 369 US 186, 210 (1962), "designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government," US v. Munoz-Flores, 495 US 385, 394 (1990), where that other branch is better suited to resolve an issue. Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873, *19-20

"Baker set a high bar for nonjusticiability." Connecticut v. Am. Elec. Power Co. Notwithstanding ample litigation, the Supreme Court has only rarely found that a political question bars its adjudication of an issue. 102 Colum L Rev 237, 267-68 (2002). The Supreme Court wrote:

> "a court [can] acknowledge the possibility that a constitutional provision may not be judicially enforceable. Such a decision is of course very different from determining that specific congressional action does not violate the Constitution. That determination is a decision on the merits that reflects the *exercise* of judicial review, rather than the *abstention* from judicial review that would be appropriate in a case of a true political question." Dep't of Commerce v. Mont., 503 U.S. 442, 458 (1992).

Separation of powers should not be used as an excuse to prevent standing when at stake are the rights of an unpopular minority that has no meaningful political access. Antieau & Rich, Modern Constitutional Law, § 48.37.

Generalized Grievance

The protection of individual constitutional rights is a central part of the role under separation of powers assigned to the judiciary where "[t]he touchstone to justiciability is injury to a legally protected right …." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 140-41 (1951).

"[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v. Hood, 327 U.S. 678, 684 (1946)(citing Marbury v. Madison, 1 Cranch 137, 162-63, 2 L.Ed., 60 (1803). And protect individual interests from the excesses of democratic processes. Wright & Miller, Fed. Prac. & Proc., § 3531.4, p. 952 (Supp. 2008).

While plaintiffs can certainly seek redress through the political process, "the fact that a political forum may be more readily available where an injury is widely shared . . . does not, by itself, automatically disqualify an interest for Article III purposes." F.E.C. v. Akins, 524 U.S. 11, 24 (1998).

Traceability

Injury is sufficient to establish Article III standing when it traces an injury to the defendant's conduct. *See* Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *94 (2009)(citing DC District Case).

Causation for standing requires a fairly traceable connection between the challenged conduct—VAWA provisions and their enforcement—and the claimed injury. Duke Power Co., 438 U.S. at 78-79. Causation is not defeated because plaintiff has in some sense contributed to his own injury.

The causation chain does not start with the filing of self-petitions but with the existence of the VAWA provisions that the Govt enforces. Without the VAWA provisions there is no self-petitioning and there is no finding by the Govt of "battery," "extreme cruelty," or "overall pattern of violence" in proceedings that the Govt keeps secret.

The causal connection includes state proceedings brought by the plaintiffs' wives—third parties—because fairly traceable injuries do not require the Govt's actions to be the last step in the chain of causation, Bennett v. Spear, 520 U.S. 154, 168-69 (1997), and it matters not whether that last step is a discretionary decision—alien wives can decide to bring false charges or not, *see* F.E.C. v. Akins, 524 U.S. 11, 25 (1998), for standing can be based on a prediction that remedial benefits or harm will flow from nonparties behavior in response to a decision, Duke Power Co., 438 U.S. at 74-75.

The injury may be indirect where a defendant's actions directly affect someone other than the plaintiff. Wine & Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 45-46 (1st Cir. 2005).

The Government's reliance on "primary evidence" (various official documents) causes alien wives to institute fraudulent arrests, fraudulent police complaints, temporary restraining orders, and fraudulent violations of TROs all of which are *ex parte*, often dismissed, but primary proof for the Government of the plaintiffs' abuse.

Here the third-parties are the alien wives who filed false police complaints that led to arrests (Moffett, Cardozo) and swore-out fraudulent TROs (RDH, Brannon) or fraudulent complaints of TRO violations (Cardozo). Whether they did this in order to meet the evidentiary requirements to assure a successful VAWA self-petition is a fact question that can only be resolved through discovery. However, the Amended Complaint alleges they did such, and at this point in the proceedings, the allegations are deemed true.

The Government tries to impose a heighten standard for causation by requiring the class representatives to "**establish**" a connection between the VAWA provisions and state criminal and civil proceedings regularly brought by the plaintiffs alien wives—to assure winning the prize of permanent residency by creating a trail of "primary evidence." (Reply p. 3).

> "Establish" means prove. Black's Law Dictionary. Complaints allege. The plaintiff must not be put to the test to prove his allegations at the pleading stage.

At this stage, the Court is dealing with the pleading—the Complaint in which the plaintiffs allege harm that distinguishes them from others. If the Govt wanted to argue that the allegations are untrue, then they should have moved for S/J. The Court cannot say now, especially given the Government's secrecy, that the VAWA provisions have not harmed, are not harming and will not harm the plaintiffs.

VAWA provisions cause the use of state proceedings against citizen husbands (fraudulent police complaints leading to arrests, TROs) which increases divorce costs—a more direct causation than in U. S. v. SCRAP, 412 U.S. 669, 688 (1973). In SCRAP, causation supported standing when the lack of an environmental impact study would result in a regulation that would increase rail rates, which would increase transportation costs of recyclables, thereby increasing use of more natural resources that harms the environment in which the plaintiffs enjoyed recreation.

Govt uses Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 41-42 to argue that federal courts cannot redress injury "that results from the independent action of some third party not before the court." Simon did not reach its result on that basis but rather the plaintiffs sued the wrong entities; therefore, the *Simon* plaintiffs could not establish injury, nor could the lawsuit redress the actual injuries they allegedly suffered. Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *102 (2009).

Causation is also satisfied by showing there is a substantial likelihood that the requested relief will redress the injuries. Duke Power Co., 438 U.S. at 75 n. 20; United States v. SCRAP, 412 U.S. 669, 688-90 (1973).

Redressability

The last clause of the relief in the Amended Complaint ¶ 219(c), App. 31, about any plaintiffs again marrying a foreigner is withdrawn, since their past experiences caused by VAWA have deterred them from ever again marrying a foreigner.

The plaintiffs are not seeking immigration benefits.

They are seeking fairness when the last remaining superpower goes about finding they committed “battery,” “extreme cruelty,” or an “overall pattern of violence.”

They are seeking an end to discrimination by that superpower when it treats its own citizens as having fewer rights than non-permanent aliens. America’s sovereignty allows it to do pretty much as it will with aliens, but not so with Americans. Power over the conduct of aliens does not translate into power to control citizen activities in a manner that is arbitrarily and subjectively determined by the Government.

A party need only demonstrate that it would receive "at least some" relief to establish redressability. Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *100 (2009).

Nominal damages for past injuries:

Because of the importance to organized society that procedural due process be observed, the denial of it is actionable for nominal damages without proof of actual injury. Carey v. Piphus, 435 U.S. 247, 266 (1978).

Nominal damages are available in actions alleging violations of constitutionally protected rights. Dean v. Blumenthal, 577 F.3d 60, 66 (2d Cir. 2009).

Lack of compensatory damages "does not negate standing. Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Auth., 567 F.3d 79, 85 (2d Cir. 2009).

Nominal damages will not violate sovereign immunity because it will not cause a substantial bothersome interference with government. Littell v. Morton, 445 F.2d 1207, 1214 (4th Cir. 1971).

Injunctive or declaratory relief:

The injury must be capable of being redressed through injunctive relief. Robidoux v. Celani, 987 F.2d 931, 938 (2d Cir. 1993).

The plaintiff may meet this standard by alleging that the defendant was engaging in the unlawful practice against the plaintiff at the time of the complaint. *Id.; see also* City LA v. Lyons, 461 US 95, 111 (1983)(standard also met where the plaintiff has suffered injury and there is a substantial likelihood that he or she will again be subjected to the allegedly unlawful policy in the future).

The plaintiff class requests (Complaint ¶ 219): nominal damages for past injuries; invalidating and enjoining the operation of the VAWA provisions (the traditional method for enforcing personal constitutional rights, Wright, Fed. Prac. & Proc. Supp., § 3531.6, pp 1191-92 (2008)); access to records holding them guilty of mistreatment and a fair means, similar with the Privacy Act 5 U.S.C. 552a(d), to correct those records; specific and limited definitions of mistreatment; and procedures for preventing the disclosure of private and false information about them. Such remedies will prevent or at least alleviated the injuries caused by the VAWA provisions. *See* Massachusetts v. EPA, 127 S. Ct. 1438, 1458 (2007)(some measure of relief suffices).

Wrt (e) in the Complaint: The U.S. Attorney alleges that the Amended Complaint requests “granting plaintiffs access to their ex-wives immigration records” (Defendants Memorandum p.

12 at (3)). The records to which the Amended Complaint requests access are those concerning the defendants' findings that class members mistreated their alien wives.

Wrt (j) above: The Govt prevaricates in order to infer as unreasonable the request to switch the VAWA self-petitioning decisions to the USCIS district offices where the aliens reside. USCIS district offices were the ones that originally made the decisions whether to grant a VAWA self-petition. But pressure from the Feminist lobby caused the Government to switch all self-petitioning decisions to the Vermont Service Center, which created the VAWA unit. Virtue, Memorandum, 74 Interpreter Releases 971, 972 (May 6, 1997). The switch facilitated influencing decision makers to favor alien wives over citizen husbands. (Amended Complaint ¶¶ 126-139).

If the Court dismisses injunctive and declaratory relief, but allows nominal damages, then every citizen who finds himself in a similar situation will have to bring his own individual action, but because of the time and costs, many will not.

As a result, some of the more injurious and widespread Government actions could be questioned by nobody.

Family law is state law.

It is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts. Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 12 (2004)

The resolution of domestic disputes is better left to the states where they have always resided. The Constitution requires a distinction between what is truly national and what is truly local. U. S. v. Morrison, 529 U.S. 598, 617 (2000).

The whole subject of the **domestic relations** of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. In re Burrus, 136 U.S. 586, 593-94 (1890) (emphasis in original)(child custody).

Just because an alien wife is allegedly mistreated or actually mistreated doesn't mean we have to give her permanent residency and citizenship. What if she's an associate of the Russian and Chechen mafias or of Al Qaeda. There's no necessary connection between domestic discord and citizenship. The connection was made solely to intimidate American men out of taking foreign wives.

Alien marriages cannot be required to be more successful than domestic. Attempts to regulate their life styles would likely raise serious constitutional questions. *See* Bark v. Immigration & Naturalization Service, 511 F.2d 1200, 1202 (9th Cir. 1975).

Raised State Rights Issue Below

A litigant waives an argument for purposes of appellate review by failing to present it below. The Court of Appeals, however, has discretion to consider arguments waived below because its waiver doctrine is entirely prudential. *In re* Nortel Networks Corp. Sec. Lit., 539 F.3d 129, 132-33 (2d Cir. 2008).

The Amend Cmplnt at ¶ 215 and the Opposition Mtn Dsmss pp. 4-5 raised the state rights issue below:

> The VAWA provisions use the Federal Government to reshape social relations by coercing private conduct in accordance with the Feminist Establishment's ideology.[10] The conduct regulated need not amount to criminal or civil wrongs, but even if it does, the prevention and punishment of such more appropriately falls within family law—an area traditionally reserved for the states. *See* Morrison, 529 U.S. at 615-16. The purported Federal interest of preventing citizens from mistreating alien spouses is better served by the states' police forces, family courts, legal aid societies, women's shelters and the numerous non-profit and tax-exempt organizations created to assist aliens.

Rule 12(b)(1)

The Govt claims the plaintiffs were benefited by the lower court's failure to apply the correct and more rigorous standard of Twombly. That's not exactly true when considering the lower court's criticism of the complaint as not being a short and plain statement under Rule 8. Apparently one reason for dismissing the Complaint was that it was not as short and plain as required before Twombly was decided. Since this case was decided after Twombly, the lower court made a legal error detrimental to the plaintiffs by not realizing that Twombly created uncertainty as to how much should be placed in a complaint.

Rule 12(b)(6)

It is the general rule that a federal appellate court does not consider an issue not passed upon below, but what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals. Singleton v. Wulff, 428 U.S. 106, 120-21 (1976).

(The cases the Govt cites for this Court to decide what wasn't decided below are S/J decisions in which the Court of Appeals reviewed the facts in the record to determine whether there existed factual disputes.)

It's important to remember that the plaintiffs face the unique obstacle that the Government prevents them from conducting a significant investigation beforehand because everything is locked behind closed doors. If Complaints can be dismissed for failure to state a claim because the Government chooses to keep its conduct secret, lets forget about a democracy and go straight to a dictatorship where the Government can do whatever a powerful lobby wants it to do regardless of rights.

We're not talking national security here, this is all about one sex trying to rule over the other in domestic disputes by using the power of the Federal Government.

The complaint's allegations provide "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" to support them. Bell Atl. Corp., 127 S. Ct. at 1965. In this case, that means discovery of the defendants' secret proceedings.

[10] Feminist Establishment refers to the unitary belief system held by a sufficient number of influential persons in this society such that the ideology of Feminism dominates over other beliefs in the political, governmental, academic, media and social spheres.

The pleading standard on a Rule 12(b)(6) motion to dismiss requires more than an unadorned, the-defendant-unlawfully-harmed-me accusations. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

A claim has plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. 1949.

The inference need not be probable but more than possible. Id. 1949.

Acceptance of allegations and inferences as true does not apply to conclusions.

The court's determinations are context-specific. Id. 1950.

The analysis, according to the SCt in Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, begins with

1. Identifying the specific allegations in the Complaint that are not entitled to the presumption of truth. Id. 1951. Those are statements that cut and copy the elements of a cause of action—conclusory. Some legal conclusions, however, are permissible when the defendants are given notice of the date, time and place of the alleged illegal conduct. Iqbal v. Hasty, 490 F.3d 143, 156 (2d Cir. 2007). Here, the Govt and not the plaintiffs have that information.

2. Next the SCt considers the factual allegations in a complaint to determine if they plausibly—not probably but more than possibly—suggest an entitlement to relief.

The Govt cites to only 25 allegations out of 226 that it claims do not meet these two standards. Not exactly an exhaustive analysis, and since the Govt was the party making the motion, it is the one who should do the work and not leave such a detailed analysis up to the Court.

The Amended Complaint gives the defendants fair notice of what the claims are and the grounds upon which they rest. Bell Atl. Corp., 127 S.Ct. at 1964-65.

In Yusuf v. Vassar College, 35 F.3d 709, 714, 716 (2d Cir. 1994) the claim "race was a motivating factor" absent any "reason to suspect that [the decision in question] had anything to do with [plaintiff's] race" was conclusory, but a man's claim that men were "historically and systematically" found guilty in disciplinary proceedings, without regard to the weight of the evidence, even though plaintiff made no reference to any specific examples was sufficient. In other words, a simple declaration that defendant's conduct violated the ultimate legal standard at issue is conclusory. But it is enough to assert facts from which, construing the complaint liberally and in the plaintiff's favor, one could infer such a violation.

VAWA excuses alien wrongful conduct.

Virtually all grounds of inadmissibility that would normally prevent a non-permanent alien from becoming a permanent resident in a "conventional" marriage based visa scenario are waived for foreign nationals claiming to have been abused.

1. Self-petition for immediate relative classification pursuant to the Violence Against Women Act ("VAWA"), codified as 8 U.S.C. § 1154(a)(A)(iii):

Alien classification not granted if inadmissible under § 1182 or deportable under § 1227 but inadmissibility and deportability waived for VAWA self-petitioner even though has

- admitted to or convicted of crime of moral turpitude
- admitted to or convicted of violating certain drug laws
- worked as prostitute or procurer,
- intends to engage in commercialized vice,
- is an illegal alien but unlawful entry connected to abuse.
- used fraud, including marriage fraud, or material misrepresentation to obtain visa or admission to US if alien shows VAWA "extreme hardship"

If alien engaged in any of above acts, still will be found to have good moral character if alien alleges conduct connected to alleged mistreatment.

2. Application for cancellation of removal proceedings pursuant to VAWA, codified as 8 U.S.C. §1229b(b)(2). Filing of VAWA self-petition stays any removal proceedings:

Cancellation of removal proceeding for VAWA self-petitioner waived even though has

- admitted to or convicted of crime of moral turpitude,
- admitted to or convicted of violating drug laws,
- worked as prostitute or procurer,
- intends to engage in commercialized vice,
- is an illegal alien but unlawful entry connected to abuse.
- used fraud, including marriage fraud, or material misrepresentation to obtain visa or admission to US if alien shows VAWA "extreme hardship"

and

- of good moral character which allows for above acts if acts connected to husband battering or subjecting to extreme cruelty (primary evidence self petitioner's affidavit), and
- removal would result in VAWA extreme hardship.

3. Application for adjustment of status to permanent resident pursuant to VAWA, codified as 8 U.S.C. § 1255(a). Adjustment to permanent resident requires alien admissible under §§ 1182 and not deportable under 1227, although alien could have entered US illegally.

Plaintiff Class

This is a putative class action, and "A suit brought as a class action should be treated as such for purposes of dismissal … until there is a full determination the class is not proper." Gaddis v. Wyman, 304 F. Supp. 713, 715 (S.D.N.Y. 1969). Since this is a putative class action, it includes future members and the subsequent harm to them. Ashe v. Board of Elections, 124 F.R.D. 45, 47 (E.D.N.Y. 1989).

The plaintiff class consists of US citizen men, whether by birth or naturalization, whose alien wives have, are, or will use VAWA to obtain full permanent residency. The challenged VAWA provisions overwhelmingly target American males—not American females as demonstrated by legislative history.

Males are the primary target because the political climate reinforces the stereotype of males as batterers.

At the time of filing, Brannon was still married, RDH, Moffett and Cardozo divorced. Moffett and Brannon's wives, on info and belief, were at filing still in the VAWA process.

Bass

The email from Staff Counsel was not part of the pre-argument conference because it was sent three days after the pre-argument conference ended and a preliminary scheduling order set.

Further, the email does not communicate the discussions in that conference, but Mr. Bass "thinking further" about this appeal. The pre-argument discussions were civil and intelligent and nothing in that email reflects on the pre-argument discussions where Mr. Bass even suggested an issue that might be of use to the plaintiffs. Don't believe me, ask Ms. Oeltjen.

Bass then sends this email three days later using his Second Circuit email address calling the plaintiffs, "offensive" and "mean-spirited." That's not the type of language used at pre-argument conferences—unless it's the parties' lawyers squabbling with each other.

Mr. Bass was clearly using his position to try to intimidate four citizens of this country into relinquishing their rights or face possible "imposition of costs,"[11] summary dismissal, and sanctions levied against me—one of the plaintiffs.

After all he is a

1. a full time employee of the Court,
2. a person who has input into which cases conferences are held,
3. one who sets the preliminary briefing schedule,
4. and if an appellant fails to attend one of his conferences, that appellant faces summary affirmance of the district courts decision

What Mr. Bass did was outrageous. He would never have dared do that to my former employer Cravath, Swaine & Moore. This is not how a democracy works. Officials are not suppose to use the status of their positions to further their own views.

If the Court considers it part of the pre-argument conference, then I withdraw the last paragraph of the plaintiff's Brief and the addendum reference.

[Did not learn that Staff Counsel's views were independent of the Court's until after I filed the Brief and filed a complaint with Legal Affairs. Still, despite the response, the indicia are that Bass represents the Court. In the state courts, mediators work for private contractors and a party does not have to attend a conference.]

RICO

The U.S. Attorney refers to a prior Civil RICO action by me, Appellee's Brief p 15, in an effort to paint me as a modern day leper. I'm really getting tired of opposing attorney's resorting to

[11] Cost include producing brief, copies of briefs

personal attacks and innuendos in an effort to distract from the merits of a case. Just because men fighting for their rights is not politically correct, can't these attorneys stick to the merits. So I'd like the attorney to state what relevance that case has to the issues of this case.

While that case was dismissed, the U.S. Attorney failed to note that Civil RICO cases are dismissed at a rate of around 66% to the 10% dismissal rate for other Federal civil cases. [G. Robert Blakey LR cite].

Conclusion

Assuming protecting against domestic mistreatment falls under Federal and not state authority, allowing alien wives to petition by themselves but to require they prove specific mistreatment in adversarial proceedings would serve the Government's purported purpose.

The Government, however, is asking this Court to allow it—the Government, to secretly listen to only one side and then decide whether we, the plaintiffs, and thousands of other citizen men committed "battery," "extreme cruelty," or an "overall pattern of violence."

Does that seem fair to you?

Fact Findings

When an alien invokes the VAWA process, "a finding that the spouse ... has been 'battered or subjected to extreme cruelty' is one of the threshold elements of the VAWA claim." 76 Interpreter Releases 162, 163 (1999).

The VAWA process involves a "finding of abuse" and the self-petitioner is required to "establish that 'abuse' exists." 76 Interpreter Releases 162, 163 (1999).

The Government refers to its handling of the battered spouse self-petition process as an "adjudication," "adjudicated-cases," "cases" and one task of the Vermont Service Center is "adjudicating ... self petitions." 74 Interpreter Releases 971, 972 (1997).

Battery or abuse is part of the Government's determination. *See* Id. at 976.

To succeed under VAWA, a wife has to show and the Government has to find that the husband abused her. If that were not so, then the statutes and regulations would not refer to the type of evidence required for the alien wife to demonstrate she was abused.

> 8 U.S.C.A. § 1154(a)(1)(A)
> (iii)(I) An alien ... may file a petition with the Attorney General under this clause for classification of the alien [as permanent resident]… if the alien **demonstrates** to the Attorney General that …
>
> (bb) during the marriage or relationship … the alien … **has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse** … ["battered" is the past tense meaning it already happened.]

(J) In acting on petitions filed under clause (iii) … of subparagraph (A) … the Attorney General shall consider any credible **evidence** relevant to the petition. The determination of what **evidence** is credible and the weight to be given that **evidence** shall be within the sole discretion of the Attorney General. (Emphasis added).

8 C.F.R. § 204.2(c)(2)(iv)
(2) **Evidence** for a spousal self-petition—

(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.** (Emphasis added).

61 Fed. Reg. 13,062
Basic Self-Petitioning Eligibility Requirements

A spouse who is self-petitioning under section 40701 of the Crime Bill **must show** that he or she: … (5) **has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen** … during the marriage ….

61 Fed. Reg. 13,066
This rule requires a self-petitioner to **provide evidence of qualifying abuse**…. Available relevant **evidence** will vary, and self-petitioners are encouraged to provide the best available **evidence** of qualifying abuse. A self-petitioner is not precluded from submitting **documentary proof of non-qualifying abuse** with the self-petition; however, that **evidence** can only be used **to establish a pattern of abuse and violence** and to bolster claims that qualifying abuse also occurred.

Self-petitioners who can provide only **affidavits** are encouraged to submit the affidavits of more than one person. The Service is not precluded from **deciding**, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant **evidence** of sufficient weight to meet the self-petitioner's **burden of proof**.

Rights Violated caused by VAWA Fact Findings

Procedural due process Failing to provide notice, an opportunity to be heard, and non-biased decision makers when fundamental rights are deprived.

Fundamental rights violated

Freedom of speech *(Secrecy, evidence)* By preventing him from standing up and speaking on his own behalf and in his own defense. Chilling protected speech with alien wife.

Freedom of choice in marital relations *(Secrecy, evidence)* Dilemma of committing perjury or being found to have committed "battery," "extreme cruelty," or an "overall pattern of violence" in absentia. Chilling plaintiffs' rights to marry foreigners.

Privacy invasion *(Secrecy, evidence)* Preventing plaintiffs from contesting use of privacy information in VAWA fact finding. .

Reputation *(Secrecy, evidence)* By limiting employment opportunities and depriving of state actions for defamation.

Right of access to deportation proceedings *(Secrecy)* Infringe right to know about Gov't activities via press

Equal protection – Fifth Amendment

National origin and alien – American v. alien on face *(Secrecy, evidence)* By discriminating against American on the face of the statute.

Sex – American husbands v. Alien wives and American wives with alien husbands as intended by Congress and applied by Exctv Branch *(Secrecy evidence)*

Overbroad – "extreme cruelty," "overall pattern of violence"

Freedom of speech – First Amendment *(extreme cruelty and pattern includes speech)*

Vague – "battery," "extreme cruelty," "overall pattern of violence"

Marital choice – Cannot comply if don't know what to comply to.

FOIA requests

Exceptions

1. USCIS: Number of cases in which information released under exceptions of 8 USC 1367(b)(2)(4)(5) and (7). Referred me to USCIS website that listed number of FOIAs denied—not what was requested.
2. EOIR: Number of cases in which information released under exceptions of 8 USC 1367(b)(2)(4)(5) and (7). DOJ denied appeal stating DOJ did not keep such records.

Fraud numbers and list NGOs doing contract work

3. USCIS: Number of fraud investigations opened and found in the VAWA self-petitioning process and list of non-profits that do contract work. Referred me to ICE.
4. ICE: Number of fraud investigations opened and found in the VAWA self-petitioning process and list of non-profits that do contract work. Referred me back to USCIS.

5. DOJ: Number of fraud investigations opened and found in the VAWA self-petitioning process and list of non-profits that do contract work. Referred me to DHS and OVW.
6. DHS: Number of fraud investigations opened and found in the VAWA self-petitioning process and list of non-profits that do contract work. Referred to USCIS, ICE and OIG.
7. OIG: No info on NGO contractors. Does not track fraud investigations or fraud found. Did find 400 cases involving word "spouse" but system unable to narrow search because limited to using just one word at a time. Using "VAWA" found nine complaints that USCIS violating VAWA.
8. OVW: For list of non-profits. OVW denied having any records relating to VAWA NGOs and referred me to DHS. Appealed, which DOJ denied.
9. ICE: Does not keep statistics on fraud as concerning self-petitioning aliens, only on marriage fraud investigations in general. As for list of non-profits, referred me back to USCIS. Appealed decision on fraud statistics and re-submitted request to USCIS.
10. USCIS denied fraud statistics and names of NGOs. Appealled

Number male v. female self-petitioners

11. USCIS: From 1994 to 2007, males 369, females 549

Privacy Act

1. USCIS and EOIR: Requested records on myself: DOJ denied and denied appeal. DOJ considered VAWA law enforcement proceedings involving personal privacy. USCIS gave run around, appealed to Inspector General, who denied, finally received 750+ pages with 500+ redacted.

Dates for Enactment VAWA

1990 Congress passed the Battered Spouse waiver

1994 Congress passed VAWA: (1) self-petitioning, (2) cancellation of removal.

1996 Congress passed Illegal Immigration Reform and Immigrant Responsibility: provided exemptions to inadmissibility and deportation for allegedly mistreated alien spouses.

2000 Congress amended VAWA: made it easier to adjust status.

2005 Congress amended VAWA: provide further funding and specifically added "men."

Unconstitutional VAWA Provisions

8 U.S.C. § 1367(a)(2) & (c). Secrecy, $5,000 fine for official who discloses information.

8 U.S.C. § 1367(b)(2)(4)(5) & (7). Exceptions to secrecy for accusers, or the accusers' immigration attorneys or private feminist organizations or Federal, State, and local public or private agencies that provide benefits to alien wives or law enforcement.

8 U.S.C. § 1367(a)(1)(A). Discards any exculpatory evidence the accused might submit.

8 U.S.C. § 1154(a)(1)(J), 8 C.F.R. § 204.2(c)(2)(iv), and **61 Fed. Reg. 13,066** permit the defendants to rely on incompetent evidence

All of the following fail to specifically define "battering" or "extreme cruelty" or an "overall pattern of violence."
8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb) & (II)(aa)(CC)(ccc), self-petitioning;
8 U.S.C. § 1229b(b)(2)(A)(i) & (C), cancellation of removal;
8 U.S.C. § 1182(h)(1)(C) & (i), waiver of inadmissibility;
8 U.S.C. § 1227(a)(1)(H)(ii), waiver of deportation;
8 U.S.C. § 1367(a)(2), non-disclosure of information;
8 U.S.C. § 1367(a)(1)(A), prohibition on evidence from U.S. citizens;
8 U.S.C. § 1641(c)(1)(A), **8 C.F.R. § 204.2(c)(1)(vi)** and **61 Fed. Reg. 13,061, 13,065-066.**

Statutes, regulations and Federal Registry, Int. Rel.

5 USC 552(b)(7)	FOIA. VAWA records compiled for law enforcement purposes and cannot be disclosed because unwarranted invasion of personal privacy.
5 USC 552a	Privacy Act allows for access and corrections of records.
8 USC 1101(f)	Good moral character but under other provisions there are VAWA exceptions if nefarious deeds connected to abuse.
8 USC 1154	Self petitioning by alien spouse if battered or suffered extreme cruelty. Requires good faith marriage unless hardship and good moral character, but can be bad if allege bad acts connected to mistreatment.
8 USC 1182	Inadmissible aliens are ineligible for visas and admission. Inadmissible alien who admits to moral turpitude = fraud, breach of trust, tax evasion; two or more offenses with sentences 5+ years; prostitution in pst or present; commercialized vice in future—all waived for VAWA petitioner. Fraud to obtain admission waived for VAWA petitioner if shows VAWA extreme hardship would result from deportation to alien or her family.
8 USC 1183a	Support contract.
8 U.S.C. 1186a	Legal termination of marriage ends alien spouses immigration status and she is subject to removal. Joint petition and interview to change conditional to permanent required; if none, alien subject to removal. Hardship and termination of marriage waivers do <u>not</u> require a joint petition. (g)(1) Legal permanent resident includes conditional permanent resident. basis for status.
8 USC 1227	Alien in or admitted to US will be removed if • inadmissible at time of entry unless waived under VAWA , • conditional permanent resident and marriage legally terminated, unless VAWA, marriage termination, or hardship waiver;

- fraud and misrepresentation removal unless VAWA self-petitioner and VAWA hardship.

8 USC 1229b Cancellation of removal if alien shows:

- battered or subjected to extreme cruelty,
- good moral character but bad acts are excused when connected to mistreatment,
- excused by 8 USC 1182 for acts moral turpitude, drug violations, multiple criminal convictions with sentencing 5+ years, prostitution, commercialized vice, excused by 8 USC 1227 for misrepresentations when VAWA extreme hardship.

8 USC 1255 Adjustment of status for VAWA petitioners to full permanent residency.

8 USC 1367 No determination of admissibility or deportability of VAWA petitioner based solely on evidence that passes through the hands of citizen spouse.
Secrecy of VAWA proceedings.
Exceptions to non-disclosure of information:

- law enforcement,
- alien wives
- Federal, state, local public and private agencies providing benefits
- With alien's consent, provide info to nonprofit, nongovernmental victims' service providers for providing services to aliens; and mail drop or answering service.

8 U.S.C. § 1641(c) For alien wives to receive benefits from private and governmental groups requires disclosure of the Government's findings of "battery," "extreme cruelty," or an "overall pattern of violence" and a need for the benefits resulted from mistreatment as determined by the benefit providing agency that receives money from the Government.

<u>Regulations</u>

8 C.F.R. § 204.2(c)(1)(vi) Battery and extreme cruelty open ended defintions.

8 C.F.R. § 204.2(c)(2)(iv) Evidence of mistreatment.

8 C.F.R. § 204.2(c)(2)(v) Primary evidence of alien's good moral character is her affidavit.

8 CFR 216.5(e)(3)(iv –vii) USCIS relys on only testimony of therapist used by alien to determine extreme mental cruelty.

8 CFR 216.5(e)(3)(viii) Exceptions to non-disclosure included alien's representative, <u>any</u> federal, state and local law enforcement, and for the enforcement of VAWA or in <u>any</u> criminal proceeding.

Federal Registry

61 Fed Reg. 13,065-66 No limit on time as to when last mistreatment occurred.
Open ended **definitions of battery, extreme cruelty and overall pattern of violence** that does not include violent acts. USCIS didn't want to mislead alien spouses by establishing a specific list that might be subject to misinterpretation.
USCIS **arbitrarily decides credibility and weight**. Alien's affidavit alone can be sufficient.
Good moral character according to average citizen in the community. Alien's affidavit the primary evidence.

61 Fed Reg. 13068 **Extreme hardship** for VAWA waiver of fraud to gain admission and to cancel deportation. Includes adverse psychological impact of deportation, nature of psychological harm from mistreatment; loss of access to courts TROs, child support, arrest of spouse; need for VAWA support services; less preferential treatment provided by foreign societies; citizen's ability to travel to alien's home country

Interpreter Releases

68 Int. Rel. 665 Lower evidence standards for extreme cruelty

74 Int. Rel. 795 Secrecy
No evidence from accused husband p. 797

74 Int. Rel. 971 Verification of status for benefit granting organizations
Communication defamatory info
VAWA decisions to Vermont Service Center
Private Feminist groups provide training and decision making materials
Prima facie decision

76 Int. Rel. 162 VAWA Extreme hardship standard
Credible evidence

AG Order 2129-97 Guidance on requirements for benefits provided qualified aliens

AG Letter VAWA records compiled for law enforcement and involve privacy information.

Cases

Injury

Allen v. Wright, 468 U.S. 737 (1984). *Injury*
IRS granted tax-exempt status to discriminatory private schools. Although discrimination was injury to children by denying them a pluralistic environment for education, the discrimination was not traceable to tax-exempt status.

Andrews v. Gardiner, 224 N.Y. 440, 446 (1918) *Injury*

Doctor convicted of attempted abortion after being setup by attorney for County Med. Scty. Doctor's petition for pardon libeled the Cnty Atty. Petition was not adjudication in which absolute privilege applies.

Angio-Medical Corp. v. Eli Lilly & Co., 720 F.Supp. 269, 272 (SDNY 1989). *Injury*

Licensor of cosmetic products sued licensee for defamation. SDNY declined to dismiss because jury could find words were *per se* defamatory.

Words that in part criminal activity are *per se* defamatory.

Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). *Injury*

Plaintiff arrested after 9/11 alleged deprivation of his constitutional rights because of his religion and nationality while in federal custody. SCt upheld dismissal of complaint under 12(b)(6) because dud not comply with Rule 8 under Twombly.

Barrows v. Jackson, 346 U.S. 249 (1953). *Injury*

Petitioners sued respondent at law for damages for breach of a restrictive covenant the parties entered into as owners of residential real estate in the same neighborhood in Los Angeles, California that prevented sale of homes to blacks.

Baur v. Veneman, 352 F.3d 625 (2d Cir. 2003). *Future Injury*

Consumer challenged FDA procedures for allowing mad-cow meat onto the market.

Plaintiff in Baur alleged violation of food and drug statutes. Plaintiffs in VAWA allege violation of the Const. Plaintiffs in La Raza alleged no violation of statutes.

In Baur there existed a connection between violated statutes and risk. In VAWA, there exists connection between Const protections and risk of their violations by Fed Govt.

Court found that plaintiff faced a "*present, immediate* risk of exposure to mad cow disease as a consumer of beef products - not a future risk that awaits intervening events." Baur at 640. Plaintiffs Moffett and Brannon face additional communication of defamatory info to NGOs assisting their wives and ongoing fact findings under VAWA. La Raza no specific individuals identified or targeted and threatened injury was wholly contingent on independent and unpredictable events that did not stem from an established government policy.

Baur held that when the threatened acts that will cause injury are authorized or part of an established government policy, it is significantly more likely that the injury will occur in the future. VAWA based on Govt regulations.

Brady v. Maryland, 373 U.S. 83 (1963). *Sixth Amend. Injury*

Prosecutor withheld confession of second defendant, which violated Brady's PDP rights.

Bryant v. Yellen, 447 U.S. 352, 367-68 (1980). *Future Injury*

Farm workers had standing to intervene in support of rule that water would not be provided to acreage over 160 acres. Lack of water would likely cause large land owners to sell their excess land, and it was likely that land would be sold for below market value, and even though farm workers did not indicate they could afford the land put up for sale, they would still be harmed if the rule was not upheld because then the land would not likely be sold for below market price.

Brinson v. Walker**,** 547 F.3d 387 (2d Cir. 2008). *Sixth Amendment. Injury*

State trial court violated defendant's confrontation clause rights in robbery prosecution when it barred defendant from cross-examining victim about whether victim was fired from his job at restaurant for refusing to serve black patrons. Went to credibility.

Burrus, 136 U.S. 586, 593-94 (1890). *Injury*

Child custody case in which Burrus held in contempt by district court for not turning over child.

The Court held that family law, involving parent-child, husband-wife relationships, belonged to the states, and not to the laws of the United States. The Court held that a federal court did not have jurisdiction over a family matter involving custody of a minor, and held that petitioner was held in contempt illegally.

Carey v. Piphus, 435 U.S. 247, 266 (1978). *Injury*

Students were suspended from school without procedural due process.

SCt. held that students could recover nominal damages because they were deprived of their right to procedural due process.

City of L.A. v. Lyons, 461 U.S. 95 (1983). *Future Injury*

Police stopped motorist for traffic violation and injured motorist using a chokehold.

SCt. found no immediate risk of it happening again. Even if plaintiff again stopped for traffic violation, the police do not subject all such motorists to chokeholds regardless of their conduct and the plaintiff did not allege such, and rule requiring chokeholds.

Columbia Broadcasting System v. U.S., 316 U.S. 407, 423 (1942). *Indirect Injury*

FCC promulgated regulations requiring the FCC to refuse to grant a license to any radio broadcasting station that entered into certain types of contracts with a radio broadcasting network. Contracts had CBS agreeing not to furnish its programs to other stations in the same city; the affiliated station agreeing not to broadcast the program of any other network.

CBS brought suit in federal court under the Communications Act 402(a) to enjoin enforcement of FCC order.

SCt held broadcasting network had standing.

CBS's standing to maintain the present suit is unaffected by the fact that the regulations are not directed to CBS and do not in terms compel action by it or impose penalties upon it because of its action or failure to act. It is enough that, by setting the controlling standards for the Commission's action, the regulations purport to operate to alter and affect adversely CBS's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked.

The test for standing under a statute cannot be more lenient than under Art III. Valley Forge v. Separation Church State, 454 US 464, 488 n. 24.

Connecticut v. Am. Elec. Power Co., 2009 U.S. App. LEXIS 20873 *78-79 (2009). *Injury*

Plaintiff asserts that Defendants' continued emissions of carbon dioxide contribute to global warming, which harms them now and will harm them in the future in certain ways. Defendants' argument that many others contribute to global warming in a variety of ways, and that therefore Plaintiffs cannot allege traceability, does not defeat the causation requirement.

De Rosa v. United States Dep't of Housing & Urban Dev., 787 F.2d 840, 842 n. 2 (2d Cir. 1986). *Injury risk*

Low income residents had standing to challenge a city's use of Federal block grants as collateral for construction of a hotel because it would put block grant funds at risk.

Evers v. Dwyer, 358 U.S. 202 (1958). *Future Injury*

Declaratory relief when one party pursues a course of conduct that will result in imminent and inevitable litigation. For declaratory judgment, the question is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment.

Fortyune v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1081 (9th Cir. 2004). *Future Injury*

Theatre, pursuant to its written policy, refused to allow companion of person in wheel chair to sit next to person in wheel chair because someone else was in that seat. Theatre had oversold tickets. Circuit Court upheld injunction requiring theatre to seat companions next to handicaps. "[w]here the harm alleged is directly traceable to a written policy there is an implicit likelihood of its repetition in the immediate future."

Gladstone Realtors v. Vil. Bellwood, 441 US 91, 100 (1983). *Injury*

Plaintiffs pretended to want to buy houses in white neighborhoods but were steered away. Plaintiffs who lived in town had standing; those who didn't did not.

On **Summary Judgment motion**, SCt. required "distinct and palpable" injury.

Griffin v. Illinois, 351 U.S. 12, 17 (1956). *EP injury*

The SCt court held that destitute defendants must be afforded as adequate appellate review as defendants who had money enough to buy the transcripts. Destitute convicted parties must be provided copy of trial record for appeal.

Griffith v. Colorado, Div. of Youth Servs., 17 F.3d 1323, 1327 (10th Cir. 1994). *Injury*

Employee brought Title VII action against employer alleging sexual and racial discrimination and harassment on part of supervisor, and retaliatory actions by employer.

The Court of Appeals held that: (1) employee was not entitled to nominal damages. Nominal damages are compensatory in nature and since Title VII provides for equitable, not legal relief, nominal damages must not be awarded under Title VII.

Gully v. National Credit Union Admin. Bd., 341 F.3d 155, 161 (2d Cir. 2003). *Injury*

Nat Credit Union Bd found asst credit union manager breached fiduciary duty to depositors. 2d Cir held finding was a reputational injury so manager had standing. 2d Cir upheld Nat Credit Union Bd finding.

The Supreme Court has long recognized that an injury to reputation will satisfy the injury element of standing.

Kerr v. Farrey, 95 F.3d 472, 476 (7th Cir. 1996). *Injury*

Prisoner did not attend certain anti-drug seminars because they inculcated religious beliefs. On going injury existed in that prison records noted his failure to attend and such could have negative consequences.

Lafleur v. Whitman, 300 F.3d 256 (2d Cir. 2002) *Injury*

Middletown contracted with company to construct waste disposal plant. The plant would produce air pollution. EPA Administrator did not object and protesters brought suit under Clean Air Act to review Administrator's decision. Protesters had standing but the Court upheld Administrator's decision.

Laird v. Tatum, 408 U.S. 1, 10 (1972). *Injury*

Army ran data gathering operation against anti-war protesters.

SCt. no chilling injury because plaintiffs admitted that no specific action of the Army was taken against plaintiffs and no foreseeable action would be taken. The plaintiffs claimed the chill came from only the existence and operation of the intelligence gathering system, not that it gather any information on them or would. There is no evidence that activities unconstitutional or illegal.

Loa-Herrera v. Trominski, 231 F.3d 984, 987-88 (5th Cir. 2000). *Injury*

Aliens had standing to challenge Government's seizing of green cards incident to deportation proceedings although aliens failed to identify anyone who suffered diminished employment opportunities as a result.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). *Future Injury*

Wildlife association challenged the US Secretary of the Interior's change in its interpretation of the Endangered Species Act as not applying to foreign aid projects.

In reviewing a **S/J motion**, the SCt. found no immediate injury to plaintiffs because their affidavits said they may at some future time visit certain habitats, but lacked specific plans.

SCt. stated at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.

Plaintiffs were not the object of Government action, the animals were. In that situation it's more difficult for the plaintiffs to show on a S/J motion by affidavits of specific facts that plaintiffs were directly affected.

No personal injury because environmentalists only used land near the area that would be impacted, not the actual area itself.

Also lacked redressability because ESA does not apply to all foreign projects.

Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990). *Injury*

Conservationists challenged Fed Govt reclassification of some lands and the return of others to the public domain would open the lands up to mining activities, thereby destroying their natural beauty and violating Fed law.

SCt granted S/J to the Govt because conservationists failed to allege facts to show action was ripe.

Marchi v. Board of Coop. Educ. Servs., 173 F.3d 469, 478 (2d Cir. 1998). *Injury*

School board issued directive to restrict teacher's religious expression. It did not infringe his free exercise rights because there was no credible fear of enforcement. The case was not yet ripe.

Massachusetts v. Mellon, 262 U.S. 447, 484-85 (1923). *Injury*

This case is the real source of the Governments slightly dissembling requirement that "abstract injury is not enough," and "complaint rests on abstractions." State challenged Cong statute as unconstitutional. SCt held state had no standing.

The source of that quote apparently comes from the SCt. stating "we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi-sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government. No rights of the State falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute…." The SCt did not hold that because rights are abstract, there can be no injury to them that supports standing. It was really talking about "suffering in some indefinite way in common with people in general."

Nat'l Council of La Raza v. Gonzales, 468 F. Supp. 2d 429, 436 (E.D.N.Y. 2007). *Future Injury*

Immigrant organizations challenged Federal practice of providing immigration information on outstanding immigration warrants to state and local law enforcement agencies through the Nat. Crime Info. Center.

There was no dispute between any of their members and the government, which is similar to New Alliance Party v. FBI, 858 F. Supp. 425, 432 (SDNY 1994).

La Raza did not request nominal damages for past injuries, nor injunctive relief for ongoing injuries, but only **future injuries for unidentifiable immigrants**. In VAWA the injuries are not only past but ongoing because of the state proceedings impact on plaintiffs' employment and the communication of defamatory information to Moffett and Brannon's wives.

For the VAWA injuries yet to occur, or imminent, the information from state and VAWA proceedings are about identifiable individuals who are targeted by the Govt enforcing VAWA. In La Raza, immigrants were not identifiable or targeted for arrest. La Raza court: There is no analogous reasonable likelihood that any particular individual will actually be identified or arrested.

Fear of arrest as injury:

(1) plaintiffs did not allege fear came from an allegedly unconstitutional statute. **VAWA provisions alleged as unconstitutional.**

(2) fear of arrest results from plaintiffs own actions. **With VAWA the release of findings do not depend on the class members actions.**

Privacy: There is no privacy interest in the alleged status as an Immigration violator. **But there are privacy interests in intimate personal family matters used in the VAWA process.**

Nat'l Council of La Raza v. Mukasey, 283 Fed. Appx. 848, 851 (2d Cir. 2008)(On Appeal)

1. No injury-in-fact for privacy, re: Dist Ct: There is no privacy interest in the alleged status as an Immigration violator. Under VAWA intimate private family matters are involved.

2. No injury-in-fact for diminishment of public safety because generalized grievance. VAWA violates specific rights of citizens.

3. No standing for imminent risk of unlawful arrest because there existed no causation. The Second Circuit avoided the "difficult question" of whether there was an injury-in-fact of imminent risk of unlawful arrest. This implies to some extent that the EDNY analysis of Baur on "heightened risk" was inaccurate.

The Supreme Court has explained that causation is lacking if the claimed injury is "the result [of] the independent action of some third party not before the court," *Lujan v. Defenders of Wildlife*, 504 U.S. at 560, a plaintiff need not allege that a defendant's challenged actions were

the very last step in a chain of events leading to an alleged injury to allege causation adequately. It is sufficient for a plaintiff to plead facts indicating that a defendant's actions had a "determinative or coercive effect upon the action of someone else" who directly caused the alleged injury. *Bennett v. Spear*, 520 U.S. 154, 169, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997).

La Raza alleges that state and local authorities, not the Fed Govt, are engaged in unlawful arrests of aliens whose civil immigration records are entered into NCIC.

When a state or local law enforcement officer runs an NCIC check on an individual and the NCIC identifies an immigration violator DHS requests the local officer to retain violator. But some state and local authorities do not comply w/ DHS and do not suffer any adverse consequences; therefore, Fed Govt entering info in NCIC dose not have a determinative or coercive effect on state and local authorities.

VAWA determinative of RDH, Moffett, Cardozo & Brannon wives bringing *ex parte* state and local actions. As for other injuries, those are caused by Fed Govt.

Neu v. Corcoran, 869 F.2d 662 (2d Cir. 1989). *Injury*

Pres. insurance company alleged defamation by state officials. Second Cir. found no liberty interest because reputational harm did not result in deprivation of any other state right.

New Alliance Party v. FBI, 858 F. Supp. 425, 432 (SDNY 1994). *Injury*

Court converted Rule 12(b) motion to dismiss to **summary judgment** motion and made a decision that injuries speculative based on summary judgment affidavits, which requires more specificity than the allegations in a complaint, Lujan.

Members of Party did not have standing because the S/J affidavits did not suggest that FBI investigated one person.

N.Y.P.I.R.G. v.Whitman, 321 F.3d 316 (2d Cir. 2003). *Anticipation from uncertainty injury*

NYPRIG challenged the EPA's response to deficiencies in New York's program for issuing permits to major stationary sources of air pollution created **uncertainty** of danger from air pollution.

Court held uncertainty was injury.

O'Hair v. White, 675 F.2d 680, 687 (5th Cir. 1982, en banc). *Rights are abstract*

Atheist had standing to challenge state constitution that prevent atheists from holding office or people voting for atheists.

Oregon Environmental Council v. Kunzman, 817 F.2d 484, 491-92 (9th Cir. 1987). *Future Injury.*

Oregon residents had standing to challenge state statute allowing use of pesticides even though state officials did not intend to use pesticides as provided for under the statute.

Ninth Circuit found that Oregon residents still had contingent risks of injury that would result if Oregon decided to use chemical insecticides.

O'Shea v. Littleton, 414 U.S. 488 (1974). *Future Injury*

Class of blacks and whites alleged color discrimination from the local criminal justice system.

None of the named plaintiffs was identified as himself having suffered any injury from the criminal justice system. None of the criminal statutes were alleged unconstitutional and future injury rested on likelihood that representatives will be arrested again, which was too remote.

Pennsylvania v. Ritchie, 480 U.S. 39 (1987). *Sixth Amend Injury*

Defendant entitled to have Pennsylvania Children and Youth Services file reviewed by trial court to determine whether it contained information that probably would have changed outcome of trial, but did not have right to unsupervised authority to search through the Commonwealth's files.

Port Dock & Stone Corp. v. Oldcastle Northeast, Inc., 507 F.3d 117, 121 (2d Cir. 2007). *Injury*

This is an anti-trust case. Antitrust standing is distinct from constitutional standing, in which a mere showing of harm in fact will establish the necessary injury. Antitrust standing for a private plaintiff requires more: a showing of a special kind of "antitrust injury," (from anticompetitive practice) as well as a showing that the plaintiff is an "efficient enforcer" to assert a private antitrust claim.

Rattner v. Netburn, 930 F.2d 204, 208 (2d Cir. 2002) *Injury*

Deals with punishment of speech after it is made. The Complaint deals with prohibition of speech before it is made by preventing speech all together.

Singelton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976). *Injury*

The Court held that if physicians prevailed to remove the Medicaid limit on abortions, they would benefit financially while the state and federal government would be out of pocket the amount of additional payments.

"The relationship between the parties is classically adverse, and there clearly exists between them a case or controversy in the constitutional sense."

Simmonds v. INS, 326 F.3d 351, 358-59 (2d. Cir. 2003). *Injury*

Alien held in state prison and filed habeus corpus against INS. INS would eventually have custody of alien for removal proceedings but that was not yet imminent. Second Circuit ruled that case presents a live controversy but for prudential reasons should be handled closer to plaintiff's parole when he is about to enter removal proceedings.

US v. Rabadi, 889 F.Supp. 757 (SDNY 1995). *Injury*

Plaintiff sought to expunge records in criminal proceeding in which all counts against him were dismissed. Court refused to expunge records because no extreme circumstances.

U.S. v. Schnitzer, 567 F.2d 536 (1977). *Injury*

Rabbinical student denied expungement of arrest record.

Utz v. Cullinane, 520 F.2d 467 (DC Cir, 1975). *Injury*

DC police routinely transmitted to FBI arrest info in violation of DC law.

Valley Forge Christian College v. Americans United for Separation, 454 U.S. 464 (1982). *Injury*

Nonprofit organization challenged the transfer of property from the Federal Govt to a religious college.

SCt. found no standing for plaintiffs as taxpayers because the property was not transferred as a result of Congressional action under the Taxing and Spending Clause and they alleged no other basis for standing.

Valmonte v. Bane, 18 F.3d 992 (2d Cir. 1994). *Injury*

The plaintiffs do not consider themselves in an equivalent position to Valmonte (Reply p. 4)—she had the benefit of many more procedures than the class members. Once complaint of abuse made against Valmonte, the State investigated to determine whether it was unfounded. Under VAWA, there is generally no independent investigation by the Government.

If Valmonte complaint founded, then her name was placed on registry but did not indicate nature of conduct. Welfare providers that hire person must check list. List of names available only to future employers in child care field. If person on list, providers do not get to see the report and can still hire the person, but if they do not, they must notify person as to reason, and person then has a right to a hearing in which the State has burden of proving the person committed the acts. If State fails, then employers are no longer told about the person being once being on the list.

Valmonte could also request to have her name expunged if not hired because name on list. If denied, an administrative hearing is held in which the burden of proof is on the State. If hearing does not expunge name on list then Valmonte has an Article 78 proceeding option. After 10 years the State's registry is expunged. No such procedures exist under VAWA for the class members and the records presumably last until days end.

The Second Circuit found that the potential employers of Valmonte in the child care field will learn of her being on the list and not hire her, or if they do hire her, will have to explain why. This was a deprivation of her opportunity to seek employment caused by a statutory impediment established by the state.

VAWA has already interfered with Moffett and Cardozo's seeking employment.

Virginia v. American Booksellers Ass'n, 484 U.S. 383 (1988). *Third Party Injury*

Booksellers challenged Va. Statute making it criminal to display obscene material so that juveniles could view it.

SCt. found plaintiffs had standing to assert harm to other booksellers not before the SCt. Standing rested on this rule because the allegation of harm to the plaintiffs who were before the court was not passed on by the district court, so the SCt. only had a ruling wrt standing for other booksellers to review. p. 393 n. 6. Statute was substantially overbroad.

Warth v. Seldin, 422 U.S. 490, 509-10 (1975). *Injury*

Challenge to town zoning ordinance favoring single family homes that prevented low and moderate income people from living in the town.

SCt. found no injury to plaintiffs because none of the plaintiffs alleged injuries to themselves only to other unnamed third parties (prudential standing rule).

Wilderness Soc. v. Griles, 824 F.2d 4 (DC Cir. 1987). *Injury*

Conservation groups challenged the Interior Dept's decision to shift some of Alaskan land from Federal control to State control. Groups did not show sufficient likelihood of future harm.

In a three-party case, the court must ascertain whether the third party's response to governmental action will, likewise, affect the plaintiffs.

Wine & Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 45-46 (1st Cir. 2005). *Injury*

State law prohibited certain sellers of alcohol to be franchisees. Ct found that statute harmed third party franchisor and harm was not result of independent action by franchisees.

The injury may be indirect where a defendant's actions directly affect someone other than the plaintiff.

Young Ah Kim v. Hurston, 182 F.3d 113, 121 (2d Cir. 1999). *Injury*

Plaintiff removed from work release program without notice of reason. 2d Cir. held that violated PDP rights.

The denial of procedural due process was a technical violation that resulted in no compensable damages. The appropriate remedy was an award of only nominal damages.

Youngblood v. West Virginia, 547 U.S. 867 (2006). *Sixth Amend. Injury*

State trooper suppressed note indicating that defendant's sexual encounters with victim were consensual = Brady violation.

P/D/P

Armstrong v. Manzo, 380 U.S. 545 (1965). *P/D/P*

Natural father not given notice of child's adoption by wife's second husband. SCt. held violation of P/D/P.

Bell v. Hood, 327 U.S. 678, 684 (1946). *P/D/P*

Plaintiffs accused FBI agents of detaining them without due process and search without a warrant.

SCt. found that the Federal courts had jurisdiction because procedural federal rights were invaded.

Burdeau v. McDowell, 256 US 465, 477 (1921)(Brandeis, J. dissenting). *Fairness P/D/P*

Govt refused to return materials stolen from the plaintiff by a third party that the Govt was going to use in a prosecution.

SCt. allowed Govt to keep stolen records, Brandeis dissented that the Govt was not above the law and fairness required return of the materials.

Burrafato v. U.S. Dep't of State, 523 F.2d 554, 555 (2d Cir. 1975). *P/D/P*

Case dealt with the deportation of alien spouses who argued that such deportation violated their U.S. spouses' rights to keep their families intact. 2d Cir held no such constitutional right. Did not involve VAWA or the Government making fact-findings of abuse against U.S. citizens.

Greene v. McElroy, 360 U.S. 474, 496-97 (1959). *P/D/P*

Private employee lost security clearance needed for his employment because in secret hearings his ex-wife was accused of being a communist. SCt. held he had been denied right to confront and cross-examine.

In re Winship, 397 U.S. 358(1970)(Harlan, J.)(concurring). *Standard Proof P/D/P*

Trial of juvenile required beyond reasonable doubt standard and not preponderance when tried for offense that if adult would amount to larceny.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-72 (Frankfurter, J. concurring)(1951). *P/D/P*

The US Attorney General included the plaintiffs on a list of Communist organizations.

SCt. found AG procedures in finding plaintiffs communists were arbitrary. The plaintiffs were put on the list without notice, without disclosure of any reasons justifying it, without

opportunity to meet the undisclosed evidence or suspicion on which designation may have been based, and without opportunity to establish affirmatively that the aims and acts of the organization were innocent.

Levine v. Morgenthau, 1996 U.S. Dist. LEXIS 9872 SDNY 1996). *Liberty interest P/D/P*

Plaintiff arrested, no trial, denied request to have arrest records expunged.

In Valmonte, the statute in question placed burdens on potential employers by saddling them with an affirmative obligation to list specific reasons why they were hiring someone from the Central Register list. It was that fact which the Court relied on to find a deprivation of a liberty interest. In this case, there is no such obligation on employers in question (prospective employers of police or peace officers). Rather, the statute simply requires that plaintiff's records be made available to such employers. Thus, the statute does not deprive plaintiff of a liberty interest.

Further, procedures exist to challenge disclosure of arrest.

Also, an arrest consists of allegations, VAWA consists of fact-findings.

Loving v. Virginia, 388 U.S. 1, 12 (1967)(Warren, C. J.). *Marital right P/D/P*

Overturned Va. statute that prevent marriages between persons solely on the basis of skin color.

MacArthur Found. v. FBI, 102 F.3d 600 (D.D.C. 1996). *P/D/P*

Nonprofit-corporation did not have standing because the F.B.I. maintained records on the corporation. Corp. argued injury to employees' future employment prospects because they had worked for the corporation. Court held corporation failed to allege anyone of employees so injured.

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980). *Impartiality P/D/P*

Corporation challenged procedures of Dept of Labor for adjudicating fines for child labor law violations as creating a risk of bias by the adjudicator.

SCt. said the procedures did not create a bias by adjudicators.

Mathews v. Eldridge, 424 U.S. 319 (1976). *P/D/P*

Plaintiff sought evidentiary hearing prior to termination of Social Security disability benefits. SCt ruled no P/D/P violation and set three part test for determining procedure due. Property interest at stake.

M.L.B. v. S.L.J., 519 U.S. 102 (1996) *Marital right P/D/P*

The 14th Amend. did not permit a state to condition the taking of an appeal by a mother from the termination of her parental rights on the affected parent's ability to pay record transcription costs.

Morgan v. United States, 304 U.S. 1 (1938). *Evidence P/D/P*

Case questioned the validity of an order of the US Secretary of Agriculture fixing maximum rates to be charged by market agencies at the Kansas City Stock Yards. Secretary failed to allow plaintiffs to examine government reports on which decision was based; therefore, no reasonable opportunity to oppose Secretary's evidence.

Noel v. Chapman, 508 F.2d 1023, 1027-28 (2d Cir. 1975). *P/D/P*

Case dealt with the deportation of alien spouses who argued that such deportation violated their U.S. spouses' rights to keep their families intact. 2d Cir held no such constitutional right. Did not involve VAWA or the Government making fact-findings of abuse against U.S. citizens.

Olmstead v. United States, 277 U.S. 438 (1928) *P/D/P*

SCt held that tapping of telephones did not violate 4th Amend.

Skinner v. Oklahoma, 316 U.S. 535 (1942). *Marital right P/D/P*

State statute called for sterilization of habitual criminals engaging in larceny but not embezzlement. Violated EP because discriminated against one group for committing the same type of crime as other group.

SCt said marriage was a fundamental right; therefore, strict scrutiny required of the statute.

Stanley v. Ill., 405 U.S. 645, 658 (1972). *Evidence*

State law presumed the father of a child was unfit to care for child based solely on the father not having been married to the deceased mother.

SCt. held such a presumption violated due process.

Stein v. Board of New York, Bureau of Pupil Transp., 792 F.2d 13 (2d Cir. 1986) *P/D/P*

Bus driver charged deprivation of his due process rights because he did not receive adequate notice or a fair hearing before appellants disqualified him for employment. 2d Cir held that the district court erred by refusing to instruct the jury that only nominal damages were appropriate if they found appellee would have been discharged even if he had received proper notice from appellants.

Thomas v. Collins, 323 U.S. 516, 545 (1945)(Jackson, J. concurring). *Evidence P/D/P*

Challenge to law that required registration before speaking on behalf of union.

SCt. found that registration infringed speech. Justice Jackson called it a means for the State to keep citizens from determining the truth for themselves. The framers of the Constitution "did not trust any government to separate the true from the false for us."

Equal Protection

Able v. United States, 155 F.3d 628 (2d Cir. 1998). *E/P*

Gays in the military challenged law requiring discharge for homosexual conduct. Second Cir. held rule bore a **rational relationship to appropriate military interest**. Congressional judgment in military matters given great deference. **Gays are not a suspect class and no fundamental rights involved.**

Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265-67 (1977). *Discriminatory purpose E/P*

Housing development corp. applied for rezoning from single family to multiple family housing that was denied by village. Area had always been zoned for single family housing. Housing corp. alleged denial motivated by discrimination.

SCt. found one of plaintiffs had a standing injury but did not prove discriminatory purpose as a motivating factor in the town refusing re-zoning. More than a disproportionate

impact is required to show discriminatory purpose and discriminatory purpose need not be the sole purpose. List various factors used to show one motivating purpose discrimination.

Bernal v. Fainter, 467 U.S. 216 (1984). *Citizens more rights E/P*

State denied alien's application to be a notary public because not a citizen.

SCt ruled the political function exception requiring citizenship did not apply to notary publics. The State's notary public requirement of citizenship did not further a compelling state interest as required because alien member suspect class.

Craig v. Boren, 429 U.S. 190 (1976). *E/P*

State law allowing females to drink 3.2 beer when 18 or older but only allowing males when 21 or older violated EP by basing its enactment on outmoded stereotyping of males.

Frontiero v. Richardson, 411 U.S. 677 (1973) *Suspect classificationsex E/P*

Military's providing of dependent benefits violated EP because it drew a sharp line between appellants, female military personnel, and their counterparts, solely for the purpose of achieving administrative convenience, necessarily commanding dissimilar treatment for men and women who were similarly situated.

Gomillion v. Lightfoot, 364 U.S. 339 (1960). *Discrimination in effect E/P*

State gerrymandered city boundaries so that blacks where outside the boundaries but whites within. While in form the state law was merely an act redefining metes and bounds, in effect it infringed the voting rights of blacks and, therefore, violated 15th Amendment.

Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966). *E/P*

Poll tax on voting violated E/P. Voting a fundamental right.

Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003). *VAWA for Women E/P*

Alien female spouse of LPR appealed denial of VAWA self petitioning adjustment of status. Ninth Circuit found the alien female had been subjected to extreme cruelty and remanded to Immigration Court for reconsideration. In reaching its decision, the Ninth Circuit reviewed the VAWA process and its purpose.

Heckler v. Mathews, 465 U.S. 728, 740 (1984). *Remedy E/P*

Retired husband's right to Social Security benefits based on wife's benefits were off set by husband's benefits. He could not receive both.

SCt. found no E/P violation because the statute was of limited duration and the purpose of the statute was served by protecting the financial expectations of people.

SCt. recited rule that equality can be restored by providing the same benefits to both groups or denying the benefits to both groups.

Hunter v. Underwood, 471 U.S. 222 (1985). *Initial motivating factor E/P*

Class action challenge to 1901 Alabama law that any person convicted of a moral turpitude misdemeanor cannot vote. SCt found that the motivating factor for the law was to keep blacks from voting, and since law still in effect, that motivating factor still applied.

Jankowski-Burczyk v. INS, 291 F.3d 172 (2d Cir. 2002). *Similarly situated E/P*

Deals with treating non-permanent resident aliens differently than permanent resident aliens. Does not deal with a "national origin" suspect classification of citizens or infringement of fundamental rights, but with whether full permanent aliens could be treated differently than non-permanent aliens for admission purposes.

The case before the Court is not about treating one group of aliens differently from another, but of giving aliens preferential treatment over U.S. citizens because of a difference in national origin, which requires a compelling Govt reason strictly served and not the rational relationship test of Jankowski-Burczyk.

Full permanent alien argued waiver for removal should apply to her because it applied to non-permanent aliens. The power of national sovereignty allows Congress to create different classification of aliens, so they are not similarly situated, and even if so, it can still treat them differently to a degree. Jankowski, at 178.

Northeastern Fla. Assoc. Gen. Contractors Am. v. Jacksonville, 508 U.S. 656 (1993). *Obstacles injury E/P*

Plaintiff contractor association challenged city's set aside program for female and minority contractors.

SCt. found that equal protection injury was not being allowed to compete on equal footing. Contractors did not have to allege that they would succeed if allowed to compete—probability of success is not the injury.

Orr v. Orr, 440 U.S. 268, 272 (1979). *E/P*

The SCt found Alabama's alimony statutes unconstitutional in violation of EP because they authorized courts to place an obligation of alimony upon husbands but never upon wives.

Romer v. Evans, 517 U.S. 620 (1996). *E/P applies to all persons*

Colorado law prohibited any laws protecting homosexuals from discrimination.

SCt. found law violated equal protection because laws must be neutral where the rights of persons are at stake.

Truax v. Raich, 239 U.S. 33 (1915). *E/P*

State law required businesses to employ 80% citizens. SCt. found act violated aliens right to E/P. Law was titled: "Act to protect the citizens of the United States in their employment against non-citizens of the United States." Discriminatory purpose of law found in title.

Yick Wo v. Hopkins, 118 U.S. 356 (1886). *E/P violation as applied*

San Francisco ordinances allowed for laundry operations in brick buildings, but in wooden buildings granted the supervisors power to allow or not. Supervisors arbitrarily barred Chinese launderers but not others in wooden buildings.

Zablocki v. Redhail, 434 U.S. 374, 388-89 (1978). *Strict scrutiny, motivating factor E/P*

Statute prevented person who owed child support from re-marrying—in effect preventing men from re-marrying because they were the ones who owed child support as a result of custody given to mothers. In a class action, SCt found statute violated E/P because infringed fundamental right to marital decisions

Overbroad /Vague

Broadrick v. Okla., 413 U.S. 601, 612 (1973). *Overbroad*

State employees challenge a provision of State's Personnel act limiting partisan political activity.

SCt. found provision not overly broad because it neutrally prohibited state employee partisan political activity only, and not vague because the statute gave adequate warning of proscribed activities and set out explicit standards.

Connolly v. General Constr. Co., 269 U.S. 385, 391 (1926). *Vague*

State contractor paid employees rates lower than local rates as determined by the State Labor Commissioner.

SCt. found the statute did not define the terms "current rate of wages" or "locality" sufficiently for an employer to know what they meant.

Grayned v. City of Rockford, 408 U.S. 104 (1972). *Vague*

SCt. found city anti-noise statute not vague because it was narrowly tailored to further city's compelling interests of education in its schools.

Morrison v. Bd. of Educ., 521 F.3d 602, 609 (6th Cir. 2008). *Overbroad*

High school student challenged that school's speech codes chilled him from expressing his views on homosexuality. 6th Circuit found no standing because the student only experienced a "subjective chill" without any action on the part of the school that he would be punished.

Street v. New York, 394 U.S. 576, 592 (1969) *Overbroad*

After learning that civil rights leader James Meredith had been shot by a sniper in Mississippi, the accused took one of his American flags to a New York street corner and set the flag on fire. A small crowd was at the street corner while the flag was burning, and after a policeman approached and learned from the accused that he had burned the flag, the accused stated: "If they did that to Meredith, we don't need an American flag."

Bill Attainder

Cummings v. Missouri, 71 U.S. 277, 320 (1867). *B/A*

The priest was indicted and convicted of the crime of teaching and preaching as a priest and minister of the Roman Catholic Church without having first taken an oath.

SCt held oath requirement a B/A. The clauses in the Missouri Constitution did not define any crimes or declare that any punishment shall be inflicted, but they produced the same result upon the parties against whom they were directed as though the crimes were defined and the punishment was declared.

Fletcher v. Peck, 10 U.S. 87, 138 (1810). *B/A*

Dispute over sale of state land. State legislative act transferred property of an individual to the public, which violated the clause against bills of attainder.

Foretich v. United States, 351 F.3d 1198, 1213 (Cir. D.C. 2003). *Reputation harm B/A*

Congress passed law finding that plaintiff was a danger to his daughter and denied him visitation.

DC Cir. found law inflicted reputational injuries that amounted to punishment, which made the law a bill of attainder.

DC Cir. found standing because the Cong. statute harmed his reputation by embodying a congressional determination that he is a child abuser and a danger to his own daughter. Cong. act of judging plaintiff gave rise to reputational injury.

DC Cir. rules that because the daughter now of an age where visitation depended on her consent, the Cong statute reputational harm on that point was moot, and the plaintiff did not have standing on that issue because there existed no relief that would correct that reputational harm from denying visitation rights.

Nixon v. Adm'r of General Servs., 433 U.S. 425 (1977) *B/A*

Congressional act required president Nixon to turn over to the Govt his Presidnetial papers and recordings.

The SCt looks beyond mere historical experience and has applied a functional test of the existence of punishment, analyzing whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes. Where such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decisionmakers.

The act was not aimed to punish Nixon, but cast a wider net by establishing a special commission to study and recommend appropriate legislation regarding the preservation of the records of future Presidents and all other federal officials. Congress' action to preserve only appellant's records is easily explained by the fact that at the time of the Act's passage, only his materials demanded immediate attention because some would be destroyed on his death.

United States v. Brown, 381 U.S. 437, 450 (1965). *B/A*

Law forbid Communists from being union officers. SCt found law a bill of attainder.

U.S. v. Lovett, 328 U.S. 303 (1946). *B/A*

Congress, after giving certain alleged communist employees of the Government a hearing, passed legislation that prevent them from being paid because they had engaged in subversive activities. SCt. ruled Congress actions a bill of attainder because it cut off their pay based on their political beliefs.

Standing

Alliance for Envtl. Renewal, Inc. v. Pyramid Crossgates Co., 436 F.3d 82, 89 n. 6 (2d Cir. 2006). *Standing*

Nonprofit environmental advocacy groups asserted Clean Water Act violations by shopping mall operator. The Court of Appeals held that district court was required to rule on plaintiffs' Article III standing before determining that they lacked statutory standing.

Cites to Rent Stabilization Ass'n of City of New York v. Dinkins, 5 F.3d 591, 593 n. 2 (2d Cir.1993), which stated that while standing addresses the question of whether a federal court may grant relief to a party in the plaintiff's position, subject matter jurisdiction addresses the question whether a federal court may grant relief to any plaintiff given the claim asserted.

Baker v. Carr, 369 US 186, 210 (1962) *Standing*

1901 Tenn. Statute apportioning state elected official seats failed to take account of recent population changes; thereby, denying voters E/P.

CutCo Indus. v. Naughton, 806 F.2d 361, 364 (2d Cir. 1986). *Standing*

New York corporation brought action against out of state alleging violation of restrictive covenants in franchise agreements. The Court of Appeals, Cardamone, Circuit Judge, held that under totality of defendant's acts in New York, plaintiff established prima facie personal jurisdiction over defendant under New York's long arm statute.

Case contains no mention of SMJ or standing. Sole issue is personal jurisdiction.

Flast v. Cohn, 392 U.S. 83 (1968). *Standing*

Taxpayers challenged Congressional aid to religious schools as violating the Establishment Clause.

SCt held that since the plaintiffs' constitutional challenge was made to an exercise by Congress of its constitutional power to spend for the general welfare with respect to a program involving a substantial expenditure of federal tax funds, and since the establishment clause operated as a specific constitutional limitation upon the exercise by Congress of its taxing and spending powers, the plaintiffs had standing to invoke a federal court's jurisdiction for an adjudication on the merits.

Kamen v. American Tel. & Tel. Co., 791 F.2d 1006 (2d Cir. 1986) *Standing*

Attorney accused of failing to reasonably investigate allegations, so Dist Ct found Rule 11 violation. Based on Rule 11 violation Dist Ct prevented limited discovery to determine SMJ where facts within defendant's knowledge.

2d Cir held no connection between Rule 11 and limited discovery and reversed Dist Ct SJ.

Linda R. S. v. Richard D., 410 U.S. 614, 619 (1973) *Standing Relief*

Mother challenged as violation EP DA's failure under state criminal statute to require father of her illegitimate child to pay child support.

SCt held that even if statute enforced against father it would not result in payment of child support.

Although the Court in *Linda R. S.* recited the "logical nexus" analysis of ***Flast* v. *Cohen*, 392 U.S. 83, 20 L. Ed. 2d 947, 88 S. Ct. 1942 (1968)**, which has since fallen into desuetude, "it is clear that standing was denied . . . because of the unlikelihood that the relief requested would redress appellant's claimed injury." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 79, n. 24, 57 L. Ed. 2d 595, 98 S. Ct. 2620 (1978). There was no "logical nexus" between nonenforcement of the statute and Linda R. S.'s failure to receive support payments because "the prospect that prosecution will . . . result in payment of support" was "speculative," *Linda R. S., supra*, at 618 -- that is to say, it was uncertain whether the relief would prevent the injury. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167 , 204 (2000).

Munoz-Mendoza v. Pierce, 711 F.2d 421, 425 (1st Cir. 1983). *Standing Injury*

Minority residents of city brought action challenging decision of the Department of Housing and Urban Development to grant money to city to develop a commercial complex. Court of Appeals held the plaintiffs had standing for claim that the grant will increase racial

segregation in nearby neighborhoods, and that as a result, they will lose the advantage of living in an integrated local community.

Raila v. US, 355 F.3d 118, 119 (2d Cir. 2004). *Standing*

Resident, who was allegedly injured when she slipped on a postal package that had been left below her front door step, filed suit against the United States under the Federal Tort Claims Act (FTCA). The Court of Appeals held that postal matter exception that shielded it from FTCA's did not apply to resident's claims.

Raines v. Byrd, 521 U.S. 811 (1997). *Standing Political Question*

Raines, a summary judgment decision, involved a confrontation of institutional power between the Congress and the Executive branch in which a number of individual Congressmen, opposed to a line-item veto act, filed suit that the act unconstitutionally reduced Congress's power. The Congressmen alleged injury to the institution of Congress as a whole—not to themselves individually. They claimed "loss of political power, not loss of any private right." Raines, 521 U.S. at 821. The Supreme Court denied standing because the case concerned the balance of power between the two branches of Government and declined to take on the role of re-distributing that power.

Robinson v. Overseas Mil. Sales Corp., 21 F.3d 502, 506 (2d Cir. 1994). *Standing*

Employee of military sales corp. sued over being fired for black market activities by selling duty free goods to foreigners.

Second Cir. upheld summary judgment for the defendants based on plaintiff's failure to raise a material issue. Second Cir. cited rule that in facial objection to SMJ, court construes complaint most favorable to plaintiff but did not reach a decision on the district court's ruling of no SMJ.

Singleton v. Wulff, 428 U.S. 106, 120-21 (1976). *Standing, New Issue, 12(b)(6)*

Two Missouri-licensed physicians brought action challenging constitutionality of Missouri statute excluding abortions that are not "medically indicated" from the purposes for which medicaid benefits are available to needy persons.

Plaintiffs had standing to maintain the action since if they prevailed in their suit they would benefit by receiving payment for the abortions and the state would be out-of-pocket by the amount of payments.

The Court of Appeals should not have proceeded to resolve the merits of the case since petitioner, who had not filed an answer or other pleading addressed to the merits, had not had the opportunity to present evidence or legal arguments in defense of the statute.

United States v. Richardson, 418 U.S. 166 (1974). *Standing*

Taxpayer challenged CIA secretive spending.

SCt held taxpayer failed to allege a direct injury and failed to challenge the taxing or spending power, thus, respondent had no standing.

Traceability

Bennett v. Spear, 520 U.S. 154, 168 (1997). *VAWA causes state proceedings*

Plaintiffs challenged an opinion by Secretary of the Interior as to the impact on endangered fish that would result from an irrigation project.

SCt. found traceability. On a **motion to dismiss** the Court presumes that general allegations embrace those specific facts that are necessary to support the claim of injury. The Court found that for traceability, it did not matter that the impact opinion would then be followed by some yet undetermined Government action. That action would not be the proximate cause because it would be produced by the determinative and coercive effect of the impact opinion.

Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 75 n. 20 (1978). *Traceability*

Environmental groups near planned nuclear power plant challenged US statute that limited power company liability from a nuclear accident. SCt found causation because liability limit created a **substantial likelihood** that plant would be constructed and presence of the plant would impact the environment. Didn't deal with potential effects.

F.E.C. v. Akins, 524 U.S. 11, 25 (1998). *VAWA wives discretion to file fraudulent actions or no. Traceability*

Voters challenged decision of the Federal Election Commission that a American Israel Public Affairs Committee was not a Political Action Committee. If a PAC, then would have to disclose a lot of information.

SCt. held the decision caused injury because it denied voters information requested. Those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground.

Traceability still would have existed even though the FEC reached the opposite decision that AIPAC was a PAC and then used its discretion to withhold the information or release the information. Dicta, but still the SCt.

If in that situation, FEC releases info then no harm; if VAWA wives don't file false state charges than no harm from those proceedings. But if FEC withholds info then harm, and if VAWA wives file false charges then harm.

Smith v. Block, 784 F.2d 993, 995 (9th Cir. 1986). *Traceability*

Smith's had two mortgages on their farm, one with Farmers Home Admin and one with insurance company. FmHA did not give Smith's notice of certain moratorium provisions concerning its loan. Insurance co. mortgagor foreclosed, and property purchased at auction by FmHA. Smiths denied injunctive relief because FmHA did not foreclose; therefore, failure to give moratorium notice did not lead to foreclosure.

US v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973). *Traceability*

SCRAP environmental group challenged rate increase for railroads because it would result in increase transportation costs for recyclable materials, which would increase the cost of recyclable goods compared to new goods, which would cause a decrease in the use of recycled goods, which would cause an increase in depletion of natural resources.

SCRAP specifically alleged that the Interstate Commerce Commission was required to file an environmental impact statement before it approved the rate. SCRAP claimed injury because its members use the environment for recreation and depletion of natural resources will harm the environment.

SCt. found the failure to file the environmental impact study would have an adverse environmental effect on the quality of life.

Relief

Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Auth., 567 F.3d 79, 85 (2d Cir. 2009). *Relief*

Ferry company and passengers brought action against port authority, challenging reasonableness of passenger fee. Ferry company had standing. Lack of quantifiable compensatory damages does not negate standing.

Bryant v. Yellen, 447 U.S. 352 (1980). *Relief*

Farm workers in California valley had standing to pursue validity of Federal rule that owners of 160+ acres no longer receive water for irrigation.

Without relief plaintiffs harmed in that they could not buy excess land that might go for sale even though farm workers never alleged they could afford to buy any land. (That was before anyone could get a mortgage regardless of credit worthiness).

Jaffee v. US, 592 F.2d 712, 720 (3rd Cir. 1979). *Relief*

Service men were not provided warning of medical dangers from being exposed to nuclear tests, yet still had standing for injunctive relief to require warning to future servicemen even though plaintiffs already knew the dangers.

Massachusetts v. EPA, 127 S. Ct. 1438 (2007). *Relief*

Environmental organizations and state had standing to require EPA to reduce car emissions in order to reduce global warming. The relief sought of reducing car emissions would impact to some degree global warming.

Littell v. Morton, 445 F.2d 1207, 1214 (4th Cir. 1971). *Relief*

Secretary of Interior to deny compensation to an Indian attorney for professional services rendered and Indian tribe.

Finally, we are constrained to add that this would appear to be a most appropriate case for judicial review. The essential issues in this case are ones of contract interpretation and appropriate remedies if breach of contract is established. There is certainly no compelling agency expertise in this area of the law. These are questions always considered to have been within the special competence of the courts. The notion that the government can administratively give a unilateral and final interpretation to a contract under which it may be obligated to pay, and thereby avoid payment, is one that should not be encouraged.

Robidoux v. Celani, 987 F.2d 931, 938 (2d Cir. 1993). *Relief*

Welfare recipients sought to represent a class challenging state's delay of benefit payments.

Second circuit found delay caused injuries that were redressable by preventing such delays.

Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26 (1976). *Relief*

Indigents challenged IRS ruling that allowed favorable tax treatment to nonprofit hospitals that did not offer full patient services to indigents.

SCt. found no redressability because the elimination of the Revenue ruling would not necessarily result in full services being offered. Plaintiffs sued wrong hospitals.

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102 (1998). *Relief*

Company filed environmental reports late.

SCt. ruled no relief available because the plaintiffs complained of company's failure to file reports but did subsequently file those reports.

Right Access Removal Hearings

Detroit Free Press v. Ashcroft, 303 F.3d 681 (6th Cir. 2002). *Press Access*

US Chief Immigration Judge closed a wide range of deportation hearings. Sixth Cir. held closure of hearings violated First Amendment right of the **press** to have access to information to report to the public, and the purpose of the 1st Amendment press was to prevent arbitrary acts by the Government behind closed doors. "In an area such as immigration, where the government has nearly unlimited authority, the **press and the public** serve as perhaps the only check on abusive government practices." At 704. "Openness assures the government does its job properly; that it does not make mistakes. Openness enhances perception of integrity and fairness." Id.

North Jersey Media Group v. Ashcroft, 308 F.3d 198, 201 (3rd Cir. 2002) *Press Access*

Ruled the opposite way as Detroit Free Press on the exact same action by the US Chief Immigration Judge. Third Cir. Ruled access to deportation hearings not a traditional right for the public and press, such access in post 9/11 may have negative effects, deference to national security concerns.

Family Law

Ankenbrandt v. Richards, 504 US 689, 703-04 (1992).

The domestic relations exception to diversity jurisdiction has no place in a suit in which a former spouse sues another on behalf of children alleged to have been abused.

Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 12, (2004). *Family law*

Father denied standing to sue on behalf of daughter in opposing pledge of allegiance's "under God" because his status under state family law was in dispute.

U. S. v. Morrison, 529 U.S. 598 (2000). *Family law*

Female brought suit under VAWA for damages against two male college students for sexual assault.

SCt. found the civil remedy provision for sex-motivated violence exceeded Congress's power under the Commerce Clause and infringed on state rights.

Pleadings

Erickson v. Pardus, 551 U.S. 89, 93 (2007)(decided after Twombly). *Pleadings*

Prisoner removed from treatment program. SCt held complaint should not have been dismissed. It was error for the Court of Appeals to conclude that the allegations in question, concerning harm caused petitioner by the termination of his medication, were too conclusory to establish for pleading purposes that petitioner had suffered "a cognizable independent harm" as a result of his removal from the treatment program.

Hickman v. Taylor, 329 U.S. 495, 500-01 (1947). *Pleadings*

In action against owner of tug boat that sank killing some of crew, attorney for owner claimed privilege work product to an interrogatory. SCt held info was work product.

Luce v. Edelstein, 802 F.2d 49, 54 (2d Cir. 1986). *Pleadings*

Court reversed dismissal of complaint by finding that allegations of fraud under the SEC Act 1934 10(b) were stated with particularity.

Norton v. Larney, 266 U.S. 511, 515 (1925). *Pleadings*

Suit to quiet title to a tract of land in Oklahoma, alleged to have been allotted as a distributive share of the lands of the Creek Nation. SCt held that suit arose under Act of Congress; therefore, a fed ques. Does not involve standing.

12(b)(6)

Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007). *12(b)(6)*

Subscribers of telephone and internet services brought Sherman Sec. 1 action against defendants for agreeing to discourage competition by not competing with each other and inhibiting new competitors.

SCt. dismissed complaint for failure to state a claim. Companies operating similarly does not infer an agreement, need more plausibility than parallel business conduct to allege an agreement.

Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008). *12(b)(6)*

Plaintiff sued banks for violating FHA statute by treating her less favorably than other loan applicants because of her race, her sex and location of her property.

2d Cir reversed lower courts dismissal under Rule 8(a) for insufficiency of pleadings.

Gregory v. Daly, 243 F.3d 687, 692 (2d Cir. 2001). *12(b)(6)*

Female employee sued under Civil Rights Act claiming a hostile work environment because of her sex.

Second Circuit found she had stated a claim for relief.

Iqbal v. Hasty, 490 F.3d 143, 156 (2d Cir. 2007). *12(b)(6)*

Post 9/11, Pakistani male jailed and allegedly mistreated by government defendants because of his nationality and religion. Second Cir. held plaintiff had stated a claim.

L'Europeene de Banque v. La Republica de Venezuela, 700 F. Supp. 114 (S.D.N.Y. 1988). *12(b)(6)*

Poor cite because Court concerned with jurisdiction of which none because Sov Immnty and found no diversity.

Port Dock & Stone Corp. v. Oldcastle Northeast, Inc., 507 F.3d 117, 121 (2d Cir. 2007). *12(b)(6)*

Antitrust case where plaintiffs failed to allege a plausible claim of anticompetitive conduct at the distribution level because there were no allegations that defendants' vertical

expansion and refusal to deal with plaintiffs was for an anticompetitive purpose rather than for the purpose of increasing efficiency.

Yusuf v. Vassar College, 35 F.3d 709, 714, 716 (2d Cir. 1994). *12(b)(6)*

Male college student was disciplined for harassing female student. Male student charged college with race and sex discrimination.

Second Circuit dismissed race charge as conclusory but kept the sex discrimination charge.

Class Action

Gaddis v. Wyman, 304 F. Supp. 713, 715 (S.D.N.Y. 1969). *Class*

Welfare applicant brought putative class action challenge to NYS law requiring welfare recipients to be residents for a year.

Defendants made motion to dismiss the entire action because the class representative was no longer denied benefits. The action was moot wrt the original class plaintiff. The SDNY held the case continued to be treated as a class action and was not moot when three additional plaintiffs moved to intervene after the original plaintiff received benefits. So interventions allowed.

Ashe v. Board of Elections, 124 F.R.D. 45, 47 (E.D.N.Y. 1989). *Class*

Court certified a class of voters for their action challenging NYC Bd of Election failure to properly prepare for 1988 election. Class included future voters.

VAWA easier route

Sanchez v. Keisler, 505 F.3d 641, 645 (7th Cir. 2007) *VAWA easier*

Female alien wife appealed BIA denial of benefits under the VAWA process.

The court instructed the BIA to re-evaluate the merits, and stated that canceling deportation proceedings were easier under VAWA than generally.