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by

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Domestic Violence on Undocumented Latina Women in Texas

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Report

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Dedication

This report is dedicated to all women who are facing domestic violence, but especially to the brave women who were willing to share their stories with me in the hope of encouraging other victims to speak out.

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Abstract

Domestic Violence on Undocumented Latina Women in Texas

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The University of Texas at Austin, 2015

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Domestic violence is a steadily growing problem and a source of major concern all over the country. Texas is not the exception, and, not surprisingly, different organizations have advocated for the adoption of resolutions declaring freedom from domestic violence as a human right. The City of Austin Council and Travis County adopted resolutions of this kind in 2014. Even though the topic has captured the attention of authorities, the situation is more complicated when it comes to undocumented Latina women, since they are forced to face other obstacles alongside being in an abusive situation. Such obstacles are the difficulties of accessing the legal system because of their lack of knowledge, or because of language barriers – all circumstances occurring in a context of fear and threats by the perpetrator of the violence. In some cases, women and children are abused by United States citizens or legal permanent residents, who take advantage of their legal status and protection that the women and children lack.

This report tells the stories of some women in Texas and tries to raise awareness of this matter within the community. The report also explains different legal remedies the

women can use, such as the Violence Against Women Act (VAWA), through which they may obtain lawful permanent residency.

Table of Contents

Undocumented Latina women, the struggle to be heard.....	1
Barriers and misinformation	2
VAWA: the legal remedy for undocumented women	7
Domestic violence in Texas and human rights	9
Finding help	13
Seeking a safe place	15
Reach out!	18
References.....	20
Vita	23

Undocumented Latina women, the struggle to be heard

When Marta* decided to “cross the river” – as she remembers her journey from Mexico to the United States – she did it because of love. Or at least that is what she thought it was. Her husband, a man that she now only refers to “my children’s father,” convinced her almost 10 years ago that this country could mean a bright future for them and their unborn children.

When Marta came to the United States, she was a 16-year-old child married to a man 12 years older. Now, when she recalls that time, she believes she had no other option but to marry the man whom she lived with because her family turned their backs on her. Her parents were outraged that she chose to cohabit with a man and forbade her to return home, and her partner’s family used to tell her that it was better to get married since they were already living together.

“I did not have anywhere to go,” Marta said. “I had to get married.”

And as a married woman, she arrived at Laredo, Texas, after more than two days of journey in 2005. “We were fortunate,” Marta said after recalling all the dangers that other migrants usually faced, such as drugs or human traffickers, criminal gangs, animals, and dehydration, among others. But also, she thinks they were lucky because authorities did not detect them.

However, she never imagined that here her luck would change and she would become part of a sad statistic. Marta fell in the ranks of 1 in 3 Hispanic/Latino women who have experienced physical violence by an intimate partner in their life time in the United States, according to Casa de Esperanza: National Latin@ Network (NLN).

She did not think about that because her partner had never abused her, physically. Now, however, she realizes that back in Mexico he abused her in a psychological way.

“Even before we arrived here, he used to insult me and to tell me that he did not love me, that he felt disgusted by me,” Marta recalls. He even used to call her “prostitute,” according to Marta. And yet, she does not know why she decided to stay in that relationship, or even worse, why she decided to travel to a country where she did not speak the language and where she did not know anyone besides her husband.

Maybe it was because she did not understand those words - the insults, the verbal attacks, the hurtful slurs - to constitute domestic violence.

They lived in Austin with her husband’s relatives for the first few months. Then, they moved to Florida, where they lived for almost five years. It was there, where the physical abuse began.

She was two months pregnant when he beat her for the first time. While she did not lose the baby, she was hurt and terrified. He told her that she could go to the hospital, but that she could not say anything about the beating. If she did, she would suffer worse consequences.

That was only the beginning. Fights, screams and beatings became part of her everyday reality. To make this scenario even worse, he also threatened to kill her and her family in Mexico if she decided to report him to the police or to leave him.

“That is why I never went to the police; I was really scared.” Marta’s situation was so bad she attempted suicide once.

Barriers and misinformation

When it comes to undocumented Latina women, organizations working on this issue acknowledge that women have to face obstacles beyond the abuse, like fear to request help to authorities because of their immigration status, or financial and language barriers.

“In cases when people are undocumented they have additional problems, especially when someone is undocumented and is married to someone who is documented,” said Jeana Lungwitz, director of the Domestic Violence Clinic at the University of Texas Law School. “I have clients who were told ‘you are not from this country so the police will not help you.’ And even though most of them believe they can be helped, most of them think they may be deported. Or if they are married to someone else who is undocumented they do not want them to be deported because they are the sole source of income.”

Lungwitz has had clients that are even afraid to file for divorce. Most of the times it is because they do not know the divorce process. They believe if they go before the judge and somebody says anything about them being undocumented, the court will contact immigration and they will ended up being deported.

“This can happen. Here in Travis County they will not do that because we have been very successful in objecting if somebody says ‘do you have papers to be in this country?’ that that is not relevant to the case and the judges here always agreed that is not relevant. However I think there are a lot of places in the state where judges allow that to come in,” Lungwitz said.

The situation is especially problematic after the Secure Communities program was implemented. This U.S. Department of Homeland Security (DHS) program is designed to identify immigrants in U.S. jails who are deportable under immigration law. However, it also gives state and local authorities the ability to enforce immigration laws. That means that if a police officer suspects that the woman who is reporting a violent partner is undocumented, the officer could order her to be fingerprinted. Her fingerprints will be sent to the Immigration and Custom Enforcement (ICE) agency, which can determined whether she can be deported.

Last November, when President Barack Obama announced his executive immigration reform, the program was terminated. However, in February a federal judge in Brownsville sided with Texas and the other 16 states that filed a federal lawsuit challenging the President's executive actions, it is not clear what will happen with this program.

These immigration policies create the fear that leaves undocumented, domestic violence victims afraid to get authorities involved and might decide to stay in marriages.

“We definitely see undocumented status and the lack of residency as a tool used to maintain power and control over the victims,” Pierre Berastain, Communications and Marketing Coordinator NLN, said.

In fact, the recent study ‘Realidades Latinas: A National Survey on the Impact of Immigration and Language Access on Latina Survivors’ made by NLN and the National Domestic Violence Hotline in 2012 showed that about 40 percent of the Latina women that called the hotline because they were victims/survivors of domestic violence were afraid to denounce their intimate partner because of their immigration status.

Marta had that same fear. Afraid of deportation and losing her children, she continued to endure years of abuse, beatings and insults.

Carla*, a Colombian woman, lived in a similar fear. Her ex-husband is a U.S. citizen, and he used to tell her that because of her lack of U.S. citizenship, she did not have any legal remedy against him.

“He used to tell me ‘nobody is going to believe you, you are not a U.S. citizen, and you don’t even speak English’,” Carla recounts her story. “I believed him. I did not have my legal immigration status and I definitely did not want to go back [to Colombia]. I don’t have anything there. I sold everything there to come here.”

Like Marta, Carla arrived to the United States because she thought she had found love. She could not have been more wrong. When she met her ex-husband – after a mutual friend introduced them through the Internet – she was the manager of a clinic in her native Colombia. She had an 11-year-old daughter, so she worked hard for her. However, all that changed when she fell in love with this Mexican-American man, who seemed to have a profound love for God. Besides his daily job he is also a pastor in a small Oklahoman community. He even talked to her family to show to all of them his love for her and her daughter.

After some months of online dating, she arrived in the U.S. as a tourist for vacations and to meet him. Just when she was about to return to Colombia, he asked her to marry him. She said yes, not only because she was deeply in love but also because she thought it could be a great opportunity for her daughter to learn English and to experience another culture. He promised her to marry her so she could change her immigration status, and she arrived in the state of Oklahoma full of hope.

Soon this man, who in public preached love for one another, became a different in private. According to Carla, he did not only beat her, and insulted her but he also forced her to have sex. “That was another reason I was scared to report him. He was a pastor and he had a lot of credibility among his community. Besides, he was very clever to beat me somehow to prevent marks or where people cannot see them.”

Even though they got married on time, to increase his power, the man never filled out the documents needed by Carla to be eligible for permanent residency and eventually for U.S. citizenship. Under U.S. immigration law, the U.S. citizen is the one who must fill those documents. That was the reason why Carla after enter the U.S. in a legal way became an undocumented immigrant.

The immigration status is not only a barrier when it comes to reporting assailants. During the 2012 study made by NLN and National Domestic Violence Hotline – mentioned earlier – 16 percent of the women reported having problems when requesting help from shelters or health centers. Those institutions requested clients to prove their legal immigration status. This is a situation that Berastain, with NLN, sees as especially harmful for women.

But the immigration status is not the only problem these women must face. Language barriers play an important role when finding help. Women not only struggle trying to explain their situation to authorities, but they also cannot understand their rights or the legal process they have to follow.

For instance, after a morning argument, Marta's ex-husband called the police claiming that she was actually the one who was being violent. In a frenzy moment Marta tried to attempt to commit suicide just when the police arrived. She was unable to tell the officers what situation was because she did not speak English.

"I just told them 'I do not know what else to do'," Marta said. "But they did not understand me; the officer just kept asking me 'why did you do it?', and took me to a hospital not only to check all my wounds but because of the attempted suicide."

During the two days Marta was in the hospital, her then husband took the opportunity to request a protective order to prevent her from getting in contact with him and their children. On the application for the protective order, he wrote that since 2013 Marta "changed dramatically with me and the kids," becoming an aggressive person and that he was afraid of her. Once the application was submitted, Marta was not allowed to go back to her house, talk to her husband or even collect her clothes and personal items. Marta said that, even before a legal decision was made regarding custody, he kept their

children with him for over a month despite the fact that he was not authorized by the court to do so.

After the protective order prohibited her to return home, Marta sought help at a shelter, where she was advised to contact the Domestic Violence Clinic at the University of Texas, which immediately began assisting her. With the Clinic's assistance, Marta submitted her own application for a protective order against her husband. In March, a judge granted protective orders to both of them and told him that he could no longer keep the children from their mother. The judge decided the children would live primarily with their mother and could see their father every other weekend, according to court documents. Marta also filed for divorce and is waiting for the final order to be signed by the judge.

VAWA: the legal remedy for undocumented women

The obstacles faced by undocumented women who are victims of domestic violence related to their immigration status not only apparent to the women's organizations but also to the United States government.

“That was the reason they passed [Violence Against Women Act] VAWA so victims of sexual and domestic violence have the Act as a way of protection,” Berastain said.

Congress passed VAWA in 1994 as an answer to increasing domestic violence. The Act brought together, for the first time, “the criminal justice system, social services systems and private nonprofit organizations responding to domestic violence sexual assault,” according to the National Domestic Violence Hotline. Most importantly for victims of domestic violence, it granted protection regardless of a person's immigration status.

Under this act, partners and children abused by a U.S. citizen or by a legal permanent resident of the U.S. can obtain permanent residency through the VAWA self-petition process. That means that VAWA allows women to begin this process without the permission or knowledge of their abusive partners. If they are approved, women have greater safeguards against deportation, may qualify for employment authorizations, and may qualify for some government benefits or legal permanent residency—a process that Carla used to get her U.S. residency.

However, many women do not use this legal remedy. The reasons could vary, but one of the most frequent reasons, again, is the fear. Nevertheless, there are also many women who do not know about the existence of VAWA, or who believe that because their immigration status they do not have the right to use it.

“I would say information and knowledge is something we are trying to work on and that is a barrier that a lot of people face. They just do not know the rights that they have,” Seve Kale, East Texas Circuit Rider at the VAWA Program for the Texas Civil Rights Project, said. “One of the big components of our program is outreach, so we actually go out to rural communities – we have circuit riders in Central, East, South and West Texas to go out to the community to meet with law enforcement, with district attorneys, county attorneys and make sure that these law enforcement agencies have the information they need so they can refer potential clients.

“We also reach out to community organizations, like churches, anywhere where is any kind of big Hispanic presence to make sure people know their right to submit and know they have this option if they find themselves in an abusive relationship and are looking for a way out, and do not really know where to turn.”

However, the 1994 rendition of the act had limitations for women who were abused by non U.S. citizens or non-legal permanent residents. In 2000, the U.S. Congress

in the VAWA reauthorization established new legislation including further protections for immigrants who are victims of domestic violence, dating violence, sexual assault or stalking by establishing U- and T- visas. Those visas are granted to people who are victims of a crime who help authorities in the case. Since Marta's ex-husband was undocumented she would not have been eligible under the first VAWA version. However, she might be eligible for a U- or T- visa.

Congress reauthorized in 2005 and in 2013. This is a powerful tool, especially in Texas, where the Pew Research Center estimated more than 4 million Latina women live.

The VAWA program for the Texas Civil Rights Project "focuses on immigrant survivors of domestic violence living in Texas' rural areas," according to its website. If the Project accepts a case it does all the legal representation required.

"We have a hotline that people can call and we screen everyone who calls to see if they are eligible to apply. There are essentially two forms of immigrations relief under the VAWA Act that we work with: one is the self-petition and the other is the U-visa," Kale said, explaining that the process is different depending on what kind of visa women are applying. "Either way, we have to prove a variety of things to immigration office. A lot of it involves proving the abuse and also a huge part is the client's willingness to work with us, to stay in contact with us regularly, to comply with our deadlines. We also know there are people that are not ready to apply. It can be a very difficult process. We do ask [Women] to disclose the history of the abuse and we know it can be difficult to many people so it depends of the client and how proactive they are able to be."

Domestic violence in Texas and human rights

Under Texas legislation, the Texas Family Code defines family violence as "an act by a member of a family or household against another member that is intended to

result in physical harm, bodily injury, assault, or a threat that reasonably places the member in fear of imminent physical harm.”

According to the Texas Council on Family Violence 119 women were killed by their current or former intimate partner in 2013. In 2013, 185,453 family violence incidents were reported in Texas, a 1.9 percent decrease when compared to 2012. It involved 119,752 victims of which 38 percent were Hispanic, according to the Texas Department of Public Safety.

However in April 8, 2014, Travis County took a step forward on dealing with domestic violence when the County’s Commissioners Court approved a resolution which recognizes that “domestic violence is a human rights concern” and that “freedom from domestic violence is a fundamental human right.”

The resolution calls for the county to incorporate these principles into its policies and continue “to secure this human right on behalf of its residents.” The resolution established that the Austin/Travis County Family Violence Task Force will provide biennial reports “on the challenges faced by survivors of domestic violence and recommendations on how to improve services to those survivors.” On April 17, 2014, the City of Austin approved a very similar resolution.

The fact that the city and the county recognize the right to be free from domestic violence means that the city and the county recognize it as a right that all human beings possess simply by being human. But most important, the resolutions give authorities a larger responsibility when it comes to protecting and respecting this human right by removing the issue from the area of private concern and into the public realm.

“Since I have been doing this work – I have been practicing law about 25 years now – domestic violence has been viewed as a criminal law situation or a family law situation, and under the VAWA Act as an immigration issue,” Lungwitz said. “These

resolutions bring attention to the broader issue: fundamental human rights. That it is a fundamental human right to not have violence in your home by your intimate partner.”

The resolutions were part of a nationwide movement. The Cincinnati City Council, the Baltimore City Council, the Miami-Dade County Board of Commissioners, city and county officials in Albany (New York), and the city and county of Montgomery (Alabama) have all passed similar resolutions.

“Taking the human rights approach to deal with domestic violence means first of all that we have to place the victim or the survivor of domestic violence as the center of the strategy that is used to protect victim’s rights,” Director of the Human Rights Clinic at the University of Texas Ariel Dulitzky said. “This approach should be use in all the strategies that the different state institutions should take.”

According to Dulitzky, this human rights perspective considers at least five more elements when dealing with domestic violence incidents. It requires having a holistic approach. It means that besides the reaction of the criminal justice system, it is necessary to take into consideration different rights, such as rights of women or rights of children, among others. This perspective also transforms a private incident into a public issue which demands that governments establish public policies making the States the most important actor when dealing with domestic violence.

The human rights approach also highlights the idea of non-discrimination and equality, which means that government’s strategies should take into consideration these concepts when seeking justice. This requires a lot of community engagement since it is now a public issue. Finally, while it is a public issue, it still requires an individualized approach. The necessity of understanding and taking into consideration the particulars of each victim’s case would make it possible to put them at the center of the strategy, while still fulfilling the non-discrimination and equality concepts.

This human rights perspective on domestic violence may have an important impact in the United States after the *Town of Castle Rock, Colorado v. Gonzales* case, according to Lungwitz. In the case, Jessica Lenahan (formerly Jessica Gonzales) obtained a protective order against her ex-husband (Simon Gonzales) from a Colorado state trial court in 1999. Just one month after she received this protective order, her ex-husband kidnapped her three daughters. Even though Lenahan repeatedly asked the police to find her daughters and expressed her fears about her ex-husband, she was ignored.

The case ended when Gonzales drove to the police department and, was killed in an exchange of gunfire with officers in a “suicide by cop” strategy (when a person deliberately behaves in a threatening manner to provoke a lethal response from the official forces) as Lungwitz explained. The three daughters were found dead in the back of his truck. Lenahan filed a suit against Castle Rock alleging it failed to effectively enforce her restraining order. When the case got to the United States Supreme Court it held that Lenahan did not have a constitutional right to enforce the protective order. Eventually, the Inter-American Commission on Human Rights (IACHR) issued a report arguing that the U.S. violated several human rights obligations – such as the right to life, and the obligation to prevent and eradicate violence against women.

Even though the U.S. has been working on this case with the IACHR, the Supreme Court decision was not overturned.

However, Dulitzky stresses that although the U.S has not ratified many treaties regarding human rights, it still has obligations at an international level. This was proven when the IACHR, in the Lenahan case, said the U.S. is under obligation to respond from a human rights perspective to domestic violence. Dulitzky is also very optimistic about a possible change of mind at the federal level when dealing with domestic violence. The first step is the one taken by different cities that approved resolutions declaring freedom

from domestic violence to be a human right. The second step is the fact that the lawyer who litigated the Lenahan case in front of the IACHR is now the White House Advisor on Violence Against Women.

Finding help

If there is something that Marta regrets is waiting so long to report her partner. When she finally did it, it was almost too late for her. Even though she now has the custody of her children and she is done with her legal case against her abuser, she is still under the protective order granted to her ex-husband.

“I should have spoken sooner. I almost lost my children,” Marta said. “Besides, it is very painful for me to think of all those years of abuse that my children had to see. Now when I see them so happy, and peaceful, I think ‘it was not worth it.’ And it kills me every time the little girl says to me ‘why did you and my father fight too much;’ I do not know what to answer her.”

Carla, on the contrary, sought help on time. She did it because she worried her daughter could suffer the same fate, she said.

“I got out preserving my life and my daughter’s,” Carla said. “I found a place where women victims of domestic violence go. So I decided to talk to them, I told them my story and they were able to help me. We decided to wait a while so they had time to work on my case.”

Now Carla is sure that contacting the center was a miracle. During a beating, Carla told him she would call the police, however he did it first. As he had control of all cellphones, he called the police, reporting domestic violence. When the police arrived, she could not understand what her husband was saying or what the police were asking

her. Luckily she was able to call the center that was taking care of her case, and its representatives explained to the policemen the real situation.

Marta and Carla not only share an abusive relationship history. Now, they know and want women to understand that the only way to break that chain of violence is by talking to others, denouncing their assailants and fighting for their rights.

“I would tell to all women that are facing a situation like the one I faced that yes, being alone with your children is hard, but it is even harder to stay in a relationship in which you are being abused, in which your children can see all that violence,” Marta said. “If they see all that, the chain of abuse is not going to end. Now, after many years of abuse I know that it was not love. I know that when a man loves you, he does not hurt you.”

Seeking a safe place

When Maritza* realized that she was pregnant, she knew that she needed to end the abusive relationship she was in. She did not want for her daughter to live in that world full of violence. The unborn child gave her the strength to leave her country in search for a safe place.

Maritza thought that her best option was the United States and decided to emigrate from Mexico by jumping the border wall in the Rio Grande Valley area. It was not an easy decision. She knew that once she arrived in U.S. territory, she would not be able to go back to Mexico. For this reason, she did nothing but cry during her two days of journey.

“I felt like I did not have another option”, Maritza said when asked why she did not apply for a visa. “I thought the visa would be denied and I was very scared of my former partner and his family. If I would have stayed in Mexico, they would have found me. They knew I was pregnant”.

She is certain of that because every time she tried to break up with him during the four years of abuse, she was always forced to go back with him. She particularly recalls the time when her ex partner’s family kept her locked in the house until she agreed to continue with the relationship. They had no regard for the times she was beat, raped, threatened or insulted.

That was the main reason Maritza decided to cross the border. After doing so, she became part of the four percent of Latina women that fled their countries of origin in search of protection and safety from domestic violence, according to Casa de Esperanza: National Latin@ Network (NLN). The principal cause of women leaving their countries

is the lack of a strong legal system that gives protection to those who are victims of domestic violence.

However, looking for an asylum is not always an easy process. Since most of these women do not enter the U.S. in a legal way, they are not aware of the requirements needed for requesting this benefit. For instance, they must be able to prove that they are victims of crimes – such as domestic violence – in their countries. Unfortunately, most of them do not have the proper documentation.

“I only denounced him once, but his family forced me to withdraw the complaint,” Maritza recalls. Because the lawsuit did not continue, she lost that document and now she does not have a way to prove her allegations.

The lack of documents needed to request the asylum which could give her a legal immigration status has affected Maritza in getting granted other rights such as the right to health. Three years ago, she found small masses in her breasts that she suspects can be tumors. However, she has not been able to get a medical appointment. Due to the budging cuts for health services in Texas, many Planned Parenthood clinics were closed, which leave The Valley without clinics that provide health services to undocumented immigrants. And because she cannot pass the immigration point, she cannot leave The Valley in search for other clinics.

“I’m worried. I do not know if I have cancer and my daughter is only eight years old. I’m the only person that she has here. If I die, who is going to take care of her?”

Casa de Esperanza has estimated that some of the women crossing the border during the influx of migrants during the summer of 2014 fled their countries because they were victims of domestic violence. During that summer, there was an inflow of unaccompanied minors and families crossing the border from countries of the so-called Northern Triangle of Central America: El Salvador, Guatemala and Honduras, as well as

Mexico. According to the Customs and Border Protection (CPB) this past fiscal year the Border Patrol apprehended more than 66,000 unaccompanied children and 66,000 family units. Most of these immigrants said violence was the main reason they fled their countries.

Reach out!

One of the main goals of organizations working with women who are victims and survivors of domestic violence is creating awareness not only about this crime but for women to understand the rights they have in the U.S. regardless of their immigration status.

However, organizations such as the National Domestic Violence Hotline established that each person's situation is unique and for that reason there is no one path to take when dealing with domestic violence.

“At the National Domestic Violence Hotline, we believe that ‘You are the expert of your own life.’ You determine what feels safest for you, but it can be beneficial to understand all of your options,” Communications Specialist with the National Domestic Violence Hotline Breanna Rollings said. “For those who choose to contact The Hotline, we can help explore those options, create an individualized safety plan, and potentially connect to local resources if needed.”

You can contact the National Domestic Violence Hotline at 1-800-799-SAFE (7233). Their advocates are available 24/7 in over 170 languages. If it is not safe for you to call, you can use the website chat service.

You can also reach the Texas Civil Rights Project at 1-888-364-8277. However, note that they only take cases happening in rural areas of Texas and that they cannot immediately offer shelter services.

The Domestic Violence Clinic at the University of Texas can be reached at (512) 232-1358. If it is the case, the clinic might work in collaboration with the Immigration Clinic at UT Law School.

** Women who contributed to this story asked that their names and exact place of residence not be disclosed.*

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Vita

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