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# How Battered Immigrants Can Obtain Economic Stability in Court

*By Shuray Ghorishi*

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An estimated [7.3 million \(PDF\)](#) women in the United States are physically or sexually abused by an intimate partner annually. That is more than the [combined population](#) of Los Angeles, Chicago, and New Orleans. Like all women, immigrant women are at a high risk of domestic violence, but they may face a more

difficult time escaping abuse as a result of language barriers, ignorance of their rights, fears of separating themselves from community support, and financial dependence on their spouses. That is exactly what happened to Allison (name changed for privacy reasons).

Allison came to the United States from Fiji after an arranged marriage. Her new husband was also born in Fiji but was now a U.S. citizen living in California. To obtain lawful permanent residence for his new wife, he brought Allison to the United States with the federal immigration form known as an [I-864 Affidavit of Support](#).

[Federal immigration law](#) required Allison's husband, as her sponsor, to sign this form to ensure that Allison [would not become a public charge](#). A contract between the sponsor and the federal government, the I-864 Affidavit of Support is enforceable by the sponsored immigrant, the beneficiary of the contract. By signing the form, Allison's husband promised to support her financially at 125 percent of the federal poverty level or above for 10 years or 40 qualifying work quarters.

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Allison's husband began physically abusing her almost immediately after she arrived in the United States. Verbal and psychological abuse soon followed. Her husband turned his family against her, and in a matter of months she found herself completely socially isolated. But she could not leave. Like so many perpetrators of domestic violence, Allison's husband controlled their finances. In fact, [over half \(PDF\)](#) of women such as Allison say the number-one reason they cannot leave their abuser is financial instability or lack of money.

As a result, every day Allison had to choose: stay and risk her safety and well-being or leave and risk extreme poverty—even homelessness. Countless domestic violence survivors across the country are forced to make this choice every day. This impossible position is the reason up to [57 percent](#) of homeless women in the United States report domestic violence as the *immediate* reason for their homelessness. Over [90 percent](#) of homeless women have experienced severe physical or sexual abuse, and [38 percent](#) of domestic violence survivors experience homelessness at some point in their lives.

Allison's husband eventually abandoned her and filed for annulment. She said he stole her green card; this effectively obstructed her ability to obtain a work permit. Without a job or friends and family to rely on, Allison was alone, living in a temporary domestic violence shelter and surviving on government benefits.

## The Trial Court Proceedings in Family Court

The shelter referred Allison to [Bay Area Legal Aid](#) for help with her family law case. Protima Pandey, representing her, successfully argued that Allison should receive spousal support. Since the family court could grant spousal support only for a limited period (due to the short length of Allison's marriage), Allison's husband requested termination of the support. She countered that financial support should continue under both state spousal support law and the federal I-864 Affidavit of Support; after all, Allison reminded the court, by signing that binding federal contract, her husband swore to the U.S. government that he would take care of her for 10 years. She contended that the monetary support obligations under the I-864 Affidavit were separate and apart from his responsibility to pay her spousal support.

The judge denied Allison's requests to enforce the I-864 Affidavit and to grant her further spousal support. Pandey asked the judge why he was denying the affidavit claim. The judge explained that the reason was that Allison was not using her best efforts to find a job. Pandey objected: while state law requires spouses to seek work, federal immigration law does not. The judge, however, said he would enforce the I-864 Affidavit only if the government sought enforcement of the I-864 Affidavit against Allison's husband. Accordingly the judge told Allison to file a federal case. This latter statement was particularly troubling because Allison did not know if she had a sustainable claim in federal court. Case law from other jurisdictions precluded I-864 Affidavit claims raised in federal court under the doctrine of collateral estoppel when the litigant had raised the issue in a family court proceeding.

Despite the millions of I-864 Affidavits in effect, little published law clarifies if and how these contracts can be enforced in family court. No California appellate court had ever decided the issues in Allison's case, namely, whether the I-864 Affidavit may be enforced in family court and whether the spouse has a duty to seek

work when enforcing it or, stated in other words, whether the spouse has a duty to mitigate damages.

## Preliminary Evaluation of an Appeal

Allison and Pandey felt they had no other options than to appeal. They contacted the Family Violence Appellate Project (founded in 2012), the only organization in California—and one of only a handful in the nation—dedicated to free legal representation in civil appeals for survivors of domestic violence.

Compared with a statewide average success rate of [17 percent \(PDF\)](#) in prosecuting civil appeals, the Family Violence Appellate Project boasts a 71 percent success rate—and a 100 percent success rate in defending appeals. Part of the project's high rate of success stems from its thorough assessment process in every case brought before it.

The first question we at the Family Violence Appellate Project ask in this assessment is whether the issues are properly preserved for an appeal. Many, if not most, civil appeals fail due to record preservation problems. Luckily Allison did not face this issue for these reasons: First, the trial court stated its decision on the record, with a court reporter present. Second, framing her questions to avoid any ambiguity, Pandey diligently questioned the judge to obtain sufficient reasoning. Third, Pandey aptly lodged appropriate objections, explaining, for instance, that the duty to seek work was not required under federal immigration law. Allison's odds of a successful appeal increased because she had created an adequate record at trial.

The second question we ask is whether there is an error that will be reviewed under the *de novo* standard of review, as this standard offers a party who files an appeal the greatest odds of success. Unlike the other two standards—abuse of discretion and substantial evidence—the appellate court does not defer at all to the decisions made in trial court under the *de novo* standard. Rather, the appellate court views the issues as if the trial court had never ruled on them. *De novo* is generally appropriate for questions of law, such as interpreting statutes and contracts. But finding a *de novo* issue is not always easy, and often this is where appellate attorneys use the most skill.

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In researching the first issue, we found out-of-state and federal courts split on whether a spouse can enforce an I-864 Affidavit in family courts. For example, in Pennsylvania [an appellate court](#) relied on a provision of the state’s spousal support law to hold that the trial court abused its discretion by failing to enforce the I-864 Affidavit as part of family court spousal support orders. Conversely a more recent [Washington case](#) concluded that the I-864 Affidavit *need not* be enforced in family court through a spousal support award. Although the former case appeared like a promising guide because California law had a similar provision, we ruled it out since application of that provision was a discretionary decision by the trial court, thus mandating the appellate court to use the more difficult abuse-of-discretion standard. Additionally the dueling authority on whether spouses can enforce an I-864 Affidavit *as part of a spousal support award* lessened Allison’s odds of success. To increase her chances of success, we had to set Allison’s case apart. We recognized that none of these cases, or any other cases, had addressed whether an I-864 Affidavit could be enforced *as a breach-of-contract claim*. The issue then became: do California family courts have jurisdiction to enforce I-864 Affidavits through contract claims? This was a question of law, which merited *de novo* review.

Framing the issue for the second topic, mitigation, was easier than the first. The only case directly on point, [a federal opinion by Judge Richard Posner on the 7th Circuit Court of Appeals](#), held, after using well-settled principles of statutory interpretation, that the spouse had no duty to mitigate.

A strategy for the legal arguments that would advance Allison’s interests having been set, the next question was whether setting legal precedent with the points we wanted to make would be sound public policy. As experts in the field of domestic violence and appellate law, we know immigrants such as Allison face substantial barriers preventing them from escaping abuse. We worked extensively with local and national stakeholders, including immigration experts, who shed light on the confusion as to whether (and how) sponsored immigrants can enforce the I-864 Affidavit in family court. Indeed, many trial practitioners were wary of raising the issue in family court for fear of barring their clients from asserting the issue in a separate federal case. Yet a clear majority agreed: monetary support under the I-864 Affidavit would afford these survivors time to gain the necessary education, skills, and stability to become self-sufficient.

## The Appellate Court Briefs

Because most appeals are won and lost on the briefs, the written product submitted to an appellate court must be clear, concise, and compelling. This requirement was especially strong here because no California appellate court had yet resolved the issues we wanted to raise on behalf of Allison. Since the statutory framework governing the I-864 Affidavit is complex, we ensured that our explanations were understandable. We accomplished this by using argument headings and short sentences.

Given the out-of-state case law, we were cognizant of the risk that our nuanced argument about enforcing the I-864 Affidavit in family court as a contract claim could be conflated with a claim to enforce it as part of a spousal support award. Therefore, instead of using the term “financial support,” we requested “contractual damages.” We also spoke to the mitigation issue by noting that the statute was silent and that imposing such a duty would clearly defeat the legislative purpose of preventing immigrants from becoming reliant on public benefits. This purpose was visible in Allison’s case; Allison explained that becoming immediately self-sufficient was extremely difficult for her because her husband had stolen her green card and refused to assist in having it replaced. Indeed, during the time that Allison’s husband was refusing to support her as he had promised in the I-864 Affidavit, Allison was forced to live in a domestic violence shelter and go on public benefits.

In his response brief, Allison’s husband tried to shift the focus from the contract claim to spousal support. In doing so, he attempted to sidestep *de novo* review and argued that the appellate court should apply the deferential abuse-of-discretion standard of review. In our reply brief, we pointed out that her husband and the trial judge did exactly what we avoided in our opening brief: they conflated the contract claim and spousal support claim. Because he had not opposed the contract claim directly, we contended he conceded error.

Thanks in part to our focus groups of national stakeholders, the [National Immigrant Women’s Advocacy Project](#) filed an amicus curiae brief, which gave the court valuable information on the prevalence of domestic violence in the immigrant population and the implications of preventing immigrant survivors from asserting their I-864 Affidavit breach-of-contract claims in family law proceedings.

## Oral Argument

With the briefs submitted, we next prepared for oral argument. We began our preparation for Allison's case by researching the three justices assigned to hear the case. We learned the panel favored sending the parties "focus letters"—letters sent in advance to "focus" the questions parties should speak to at oral argument—a somewhat rare tool in California courts. As we anticipated, they sent us one requesting that the parties argue whether family courts have jurisdiction to hear breach-of-contract claims and whether there is any reason not to follow the Seventh Circuit's opinion on mitigation. Relieved, we now knew what to expect.

On the first question, opposing counsel argued that because family courts were already overwhelmed, they could not handle contractual I-864 Affidavit claims. We countered by underscoring the law that California family courts have general jurisdiction, and, since a party seeking to enforce an I-864 Affidavit would necessarily be impoverished and ill-capable of mounting a separate legal action, allowing the claim in one courtroom setting would alleviate the burden on all parties and the courts.

Second, opposing counsel argued—for the first time—that the I-864 Affidavit was meant to force immigrants to be self-sufficient, not to keep them off public benefits; thus a duty to mitigate should be imposed. We simply noted the clear language in the statute, the sound reasoning of the Seventh Circuit opinion, and the strong public policy against a duty to mitigate. Indeed, public policy cautioned against sponsored immigrants becoming reliant on public benefits due to a lack of financial support by the sponsor, especially in cases where immigrants are forced to mitigate their poverty as a result of their sponsor's domestic abuse.

## The First District Court of Appeal's Decision and the California Supreme Court

After a nearly three-year battle, Allison finally won. In a landmark ruling reversing the trial court, the appellate court held: (1) the I-864 Affidavit is enforceable in family courts as they are courts of general jurisdiction; and (2) an immigrant

spouse seeking to enforce the I-864 Affidavit has no duty to mitigate damages by, for instance, seeking employment, given the purpose of the law.

Allison's husband requested that the California Supreme Court review the appellate court's decision. In California, supreme court review is difficult to obtain—the court receives more than 1,000 requests to review civil cases annually, and grants review in only about [6 percent of those cases \(PDF\)](#) . But the supreme court may grant review if, among other reasons, the court needs to secure uniformity or settle important questions of law. We were cautiously optimistic that Allison's case would not be accepted. In our response brief, we contended that, while the case presented important questions of immigration law, there was no need to override the appellate court's decision since that court used well-settled principles of law and statutory interpretation to reach its conclusions. Additionally, we argued that Allison's husband conceded that there was no need to secure uniformity in the law since the case involved issues of first impression in California. The supreme court agreed with our points and declined to grant review, keeping the appellate court's decision intact as legal precedent for all trial courts in California to follow.

Aside from offering Allison the justice she deserves, this decision helps low-income immigrants who are trapped in abusive relationships by precarious finances. Because the decision guarantees the right to enforce the I-864 Affidavit in family court, sponsored immigrants will not be required to file a separate state or federal lawsuit to enforce it; such a separate process is often too expensive for low-income immigrants to pursue. And, because the decision does not require immigrants to mitigate their damages, they will be able to achieve economic stability and live a life free from abuse and full of dignity.

## How Can You Help Your Clients?

If you are working with immigrant clients who are sponsored through an I-864 Affidavit, then you may be able to employ the strategies used in Allison's case. Consider the following questions.

1. Do family courts in your state have general or limited subject-matter jurisdiction?
2. Is there any legal precedent in your state on the enforcement of the I-864 Affidavit in family courts? If negative appellate authority has been established—e.g., as in Washington State—then consider filing an action for breach of the sponsor's I-864 contractual obligations. Remember, the Washington court held only this: family



courts are not required to enforce the I-864 Affidavit through spousal support orders. If no precedent exists, then consider asserting both a contract claim and a spousal support claim. However, make sure the pleadings clearly indicate that these are separate claims. You may be able to do this by filing two separate requests for orders.

3. Will mitigation harm your client? If so, explain that to the family court.

If you do proceed with a case, you must establish a strong record that properly preserves the issues for an appeal in the event that an appeal becomes necessary. To do so, you may want to consider consulting with an appellate law expert in your state to learn best practices on how to lay a record for an appeal.



**Shuray Ghorishi**  
*Senior Staff Attorney*

*Family Violence Appellate Project*  
449 15th St. Suite 104  
Oakland, CA 94612  
510.858.7358  
[shuray@fvaplav.org](mailto:shuray@fvaplav.org)



67 EAST MADISON STREET, SUITE 2000 CHICAGO, ILLINOIS 60603 · PHONE: (312) 263-3830 FAX: (312) 263-3846