

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

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SCOTT D. POLLOCK &	)	
ASSOCIATES, P.C., an Illinois	)	
Corporation;	)	
	)	
Plaintiff-counterdefendant,	)	
	)	No. 03 M1-159148
v.	)	
	)	
YOUNGPING ZHOU,	)	
	)	
Defendant-counterplaintiff.	)	
	)	

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**SECOND AMENDED COUNTERCLAIM**

Now comes, defendant-counterplaintiff, YOUNGPING ZHOU, by his attorneys, Law Offices of James P. Kenny and Law Offices of Patrick Sherlock, for his Counterclaim against plaintiff-counterdefendant, Scott D. Pollock & Associates, P.C., states:

**NATURE OF ACTION**

1. This is an action for legal malpractice against Scott D. Pollock & Associates, P.C. ("Pollock") arising out of its representation of Youngping Zhou ("Zhou").
2. Zhou hired Pollock on or about August 8, 2002. At that time, Zhou was detained by the Immigration and Naturalization Service ("INS") due to pending deportation proceedings. The INS based its detention of Zhou and the deportation proceedings on a erroneous conviction entered in Indiana.
3. The conviction was wrongful because it was based upon a guilty plea of

Zhou without a disclosure to Zhou of his constitutional rights. On August 30, 2002, Judge Sheila A. Carlisle of the Marion Superior Court, Criminal Division, Room 17 ordered the conviction reversed and ordered a new trial.

4. Although the conviction was vacated on August 30, 2002, Zhou was detained in an INS detention facility located in Southern Illinois until on or about February 21, 2003. During this period of detention, Pollock failed to file a petition for habeas corpus, failed to request a new bond hearing and otherwise failed to take appropriate action to seek his immediate release.

#### **STATEMENT OF FACTS**

5. In a letter dated August 7, 2002, Pollock confirmed to Zhou that his firm's initial \$2,000 retainer had been paid in full and said the following:

I [ Pollock] will be more than happy to represent you [Zhou] because I agree that you were denied effective legal assistance and due process of law, and that your rights to counsel, to present evidence, and to present witnesses in your removal proceeding were violated.

Pollock's August 7, 2002, letter attached as Exhibit A.

6. Pollock went on to state in his August 7, 2002, letter the following:

My primary interest is in obtaining your release from detention, in addition to hopefully achieving a lawful immigration status for you in the U.S. . . . I do understand your past bad experiences with attorneys, as well as the fact that your detention prevents you from earning a living and paying bills right now.

7. Pollock set forth the plan in the August 7, 2002 letter:

I plan to file a Petition for Review with the Federal court of Appeals for the Seventh Circuit by Monday, August 12<sup>th</sup> to preserve your right to review. The Court of Appeals may decide it does not have jurisdiction if it determines that your conviction for criminal recklessness should be

considered an 'aggravated felony.' If it does, we will ask the Court to transfer your case to the U.S. District Court for the Northern District of Illinois and treat the petition as a request for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Even where there is an aggravated felony conviction, the district court clearly retains habeas jurisdiction as per the Supreme Court's decision in INS v. St. Cyr, 533 U.S. 289, 121 S. Ct. 2271 (2001)."

8. The Representation Agreement is attached as Exhibit B.
9. On August 30, 2002, Indiana Marion County Superior Court Judge Sheila

A. Carlisle vacated her court's earlier conviction on August 30, 2002:

"IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Petition for Post-Conviction Relief is hereby GRANTED. The conviction for Count I: Criminal Recklessness, is hereby reversed and the Court grants a new trial."

10. One week later on Friday, September 6, 2002, Pollock acknowledged receipt of Judge Carlisle's Order and congratulated Zhou on receiving the reversal of the conviction and stated:

Because your conviction for criminal recklessness in Indiana has been overturned, we have contacted Deborah Achim, the INS' Assistant District director of Deportation and Detention requesting that your deportation be stayed and that you be released immediately from INS custody. . . . Hopefully, I will know sometime next week if and when the INS will release you. If it will not do so, I intend to file an action for a writ of habeas corpus in federal district court to obtain an order for your release.

Pollock's September 6, 2002 Letter is attached as Exhibit C.

11. Nearly two months later on November 1, 2002, Pollock wrote to Zhou stating that he had still not received a decision from the INS, but nonetheless has not moved forward with a writ of habeas corpus in federal district court. Pollock's November 1, 2002 letter is attached as Exhibit D.

12. In fact, Pollock did not then nor any time prior to withdrawing as counsel move forward on a writ of habeas corpus. In or around April 2003, Pollock was allowed to withdraw from his representation of Plaintiff before the Seventh Circuit.

13. Rather, the Administrative Order of Removal, INS Form I-851A, issued on February 1, 2001, by Deborah Achim, Assistant District Director of Detention and Removal, was cancelled by John Longshore on March 12, 2003, (the then Assistant District director of Detention and Removal) pursuant to 8 C.F.R. 238.

14. As such, said proceedings were terminated. Nearly one year after the grounds for detention had been vitiated, the Administrative Order of Removal had been cancelled.

## COUNT I

### Legal Malpractice

15. Defendant-counterplaintiff restates and incorporates by reference the allegations in paragraphs 1 through 14 as if set forth fully herein.

16. At all times relevant, an attorney-client relationship existed between Pollock and Zhou. As part of that relationship, Pollock provided legal services to Zhou in connection with Zhou's detention and deportation proceedings, as more fully described above.

17. Pursuant to the common law of negligence and or implied as a matter of law in the agreement for legal services between Zhou and Pollock, Pollock was under an obligation to use reasonable care in providing legal services to Zhou.

18. Pollock was negligent in the performance of the legal services rendered to Zhou in one or more of the following respects:

- a. failing to file for writ of habeas corpus;
- b. failing to use due diligence in seeking the release of Zhou from detention; and
- c. failing to advise that he would not move forward on a writ of habeas corpus.

19. If Pollock had used reasonable care in advising Zhou and/or seeking the release of Zhou, Zhou would not have remained in detention for nearly 8 months after his conviction had been overturned in Indiana.

20. As a direct and proximate result of one or more of the foregoing acts or omissions, Zhou suffered numerous and substantial damages in excess of \$1,000,000.

WHEREFORE, Defendant-counterplaintiff, Youngping Zhou, prays for judgment against plaintiff-counterdefendant, Scott D. Pollock & Associates, P.C., for an amount in excess of the minimum jurisdictional requirements for assignment of his case to the law division, together with the costs of this action and such other and further relief as the court may consider proper.

## **COUNT II**

### **Breach of Contract**

21. Defendant-counterplaintiff restates and incorporates by reference the allegations in paragraphs 1 through 20 as if set forth fully herein.

22. Pollock was retained to undertake the following activity: (i) investigate the case; (ii) seek reconsideration or judicial review of the Administrative Order of Removal (I-851A), refusal of bond, and the immigration judge's denial of asylum and violation the of right to counsel; (iii) seek release from custody on bond or under supervision; and (iv) possible relief under the Violence Against Woman Act ("VAWA"). In that capacity,

Pollock had an obligation to move forward on a writ of habeas corpus. As provided in Pollock's correspondence and communications with Zhou, as set forth in more detail above. In accomplishing these activities, Pollock agreed to use its "best efforts" in representing the client, Zhou.

23. In breach of its contractual responsibilities, Pollock failed to use its "best efforts" or otherwise in obtaining Zhou's release and defending against the deportation proceedings.

24. In August 2002, Zhou corresponded with Pollock and sought its legal advice and service on his release from detention and defense of the deportation proceedings.

25. Shortly thereafter in late August or early September 2002, Pollock knew that the reason for Zhou's detention and basis for the deportation proceedings had been vitiated because the criminal conviction, the sole basis for the Administrative Order of Removal, had been overturned.

26. Despite the knowledge of reversal of conviction, Pollock failed to use its "best efforts" in seeking Zhou's release and/or conclusion of the deportation proceedings.

27. Pollock breached its contract to provide competent legal advice in one or more of the following respects:

- a. failing to use its "best efforts" in obtaining Zhou's release and handling of deportation proceedings;
- b. failing to file writ of habeas corpus;
- c. failing to seek recovery from custody on bond or under supervision;

- d. filing frivolous court documents, e.g., Petition For Review on August 8, 2002, or alternatively, a brief on January 21, 2003, to the 7<sup>th</sup> Circuit Court of Appeals;
- e. falsely filing a joint motion to dismiss the Petition for Review with the 7<sup>th</sup> Circuit Court of Appeals;
- f. falsely billing Zhou for defending against an attorney registration and disciplinary action filed by Zhou against Pollock and attempting to collect for fees and cost incurred in defending that action;

28. As a direct and proximate cause of one or more of the foregoing acts or omissions, Zhou remained in INS detention for nearly one year of his life, paid attorneys fees and cost to Pollock

29. But for the advice of Pollock, Zhou would not have relied on Pollock for his release and its handling of the deportation proceeding and would not have paid money to retain Pollock or otherwise hired Pollock

WHEREFORE, defendant-counterplaintiff, Zhou prays for judgment in his favor and against plaintiff-counterdefendant, Pollock, for a sum in excess of \$50,000.

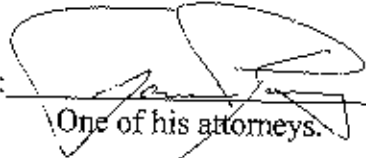
**JURY DEMAND**

A Jury trial is demanded.

Respectfully submitted,

YOUNGPING ZHOU

By:

  
One of his attorneys.

Patrick Sherlock  
Law Offices of Patrick Sherlock  
11 South LaSalle Street, Ste. 1600  
Chicago, IL 60603  
(312) 683-5575  
I.D. No. 27812

James P. Kenny  
Law Offices of James P. Kenny  
11 South LaSalle Street, Ste. 1600  
Chicago, IL 60603  
(312) 641-0700  
I.D. No. 40374

Dated: March 11, 2004



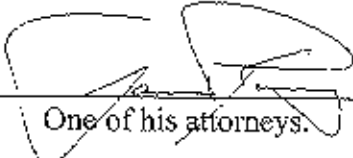
**RULE 222 AFFIDAVIT**

Counterplaintiff Youngping Zhou seeks in his counterclaim against Scott D. Pollock, P.C. damages that exceed \$50,000.

Respectfully submitted,

YOUNGPING ZHOU

By:

  
One of his attorneys.

Patrick Sherlock  
Law Offices of Patrick Sherlock  
11 South LaSalle Street, Ste. 1600  
Chicago, IL 60603  
(312) 683-5575  
I.D. No. 27812

James P. Kenny  
Law Offices of James P. Kenny  
11 South LaSalle Street, Ste. 1600  
Chicago, IL 60603  
(312) 641-0700  
I.D. No. 40374

March 11, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served on:

Stephen L. Tyma  
Stephen L. Tyma, P.C.  
105 W. Madison St., Ste. 200  
Chicago, IL 60602-4648

- by personal delivery.
- via facsimile transmission
- by depositing said document in the United States Mail, first-class postage prepaid before 5:00 on March 11, 2004.

By: \_\_\_\_\_



James P. Kenny  
11 S. LaSalle St., Ste. 1600  
Chicago, IL 60603  
Attorney I.D. No. 40374

Patrick J. Sherlock  
11 South LaSalle Street  
Suite 1600  
Chicago, Illinois 60603  
(312)-683-5575  
Attorney I.D. No. 27812

A

LAW OFFICES OF  
**SCOTT D. POLLOCK & ASSOCIATES, P.C.**

105 W. MADISON STREET, SUITE 2200  
CHICAGO, IL 60602  
TEL: (312) 444-1940 FAX: (312) 444-1950

**SCOTT D. POLLOCK**  
ADMITTED IN ILLINOIS AND NEW YORK

**MARTA DELGADO**  
ADMITTED IN ILLINOIS AND WISCONSIN

**MARIA BALDINI-POTERMIN**  
ADMITTED IN ILLINOIS AND MINNESOTA

E-MAIL: [info@lawfirm1.com](mailto:info@lawfirm1.com)  
WEB: <http://www.lawfirm1.com>

**JULIE T. EMERICK, OF COUNSEL**  
ADMITTED IN ILLINOIS AND MICHIGAN

August 7, 2002

Mr. Yongping Zhou  
c/o Tri-County Detention Center  
1026 Shawnee College Rd.  
Ullin, IL 62992

**ATTORNEY CLIENT PRIVILEGED COMMUNICATION/  
LEGAL MATERIALS**

Dear Mr. Zhou:

Susan Stoltz and Rong Yan of the Chinese Church have explained your situation to me. I hope to be able to assist you with:

1. Obtaining review of the July 12, 2002 Board of Immigration Appeals' decision denying your request for political asylum;
2. Challenging the INS' and immigration judge's decision to apply the mandatory detention provision to you (INA § 236(c));
3. Seeking your release on bond or under an order of supervision;
4. Following up with your attorney, Robert Schembs, regarding your petition for Indiana post-conviction relief; and
5. Possibly applying for relief under the protections of the so-called Violence against Women Act (VAWA) as an abused spouse.

The Chinese Church has paid our initial retainer in the amount of \$2,000.00 for me to represent you. I have now reviewed the transcript of your hearings before Immigration Judge Craig Zerbe, attorney Jeffrey Bloom's brief to the Board of Immigration Appeals ("BIA") and the BIA's decision denying your appeal. I will be more than happy to represent you because I agree that you were denied effective legal assistance and due process of law, and that your rights to counsel, to present evidence, and to present witnesses in your removal proceeding were violated.

I plan to file a Petition for Review with the Federal Court of Appeals for the Seventh Circuit by Monday, August 12<sup>th</sup> to preserve your right to review. The Court of Appeals may decide it does not have jurisdiction if it determines that your conviction for criminal recklessness should be considered an "aggravated felony." If it does, we will ask the Court to transfer your case to the U.S. District Court for the Northern District of Illinois and treat the petition as a request for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Even where there is an aggravated felony conviction, the district court clearly retains habeas jurisdiction as per the Supreme Court's decision in INS v. St. Cyr, 533 U.S. 289, 121 S. Ct. 2271 (2001).

I am also hopeful that the Indiana criminal court will vacate your conviction or at least reduce your sentence to less than 365 days so that the question of whether criminal recklessness is a "crime of violence" type aggravated felony for immigration purposes would no longer stand as a bar to either asylum or VAWA relief.

My primary interest is in obtaining your release from detention, in addition to hopefully achieving a lawful immigration status for you in the U.S. You are entitled to receive a custody review 90 days after the BIA's July 12<sup>th</sup> final administrative order, so I intend to follow up with the INS regarding obtaining release on supervision as soon as possible. This procedure is required under the Supreme Court's decision Zadvydas v. Davis, 533 U.S. 678 (2001) which decided that indefinite detention violates the Constitution where the INS is unlikely to remove a detainee in the near future.

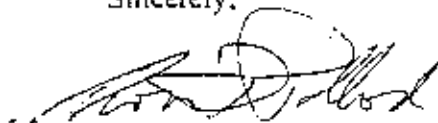
To effectively represent you, I will need your authorization to receive additional information about your case. Therefore, I enclose the following:

1. Blue Form G-28, Notice of Entry of Appearance as Attorney (4 originals). Please sign each of these where indicated;
2. "Working Copy" of Form G-639, Freedom of Information (FOIA) Act request, Form G-639 FOIA request for signature and Certificate of Identity. Please fill in all the missing information on the "Working Copy" of the FOIA request. Please sign the other forms in each of the spaces indicated;
3. Representation Agreement (2 copies). Please review this and sign it where indicated. Return one to me and keep the second for you records.

I have explained to Ms. Stoltz that it will be impossible for me to provide you with effective representation for a flat fee of \$4,000.00 as you proposed to her. I do understand your past bad experiences with attorneys, as well as the fact that your detention prevents you from earning a living and paying bills right now. This is why I agreed to begin representing you for much less than I would normally require for a case that is as complicated as yours. However, I do require your assurances and a demonstration of your commitment, by signing the representation agreement, that you will pay for services against our usual hourly rates.

Please return the above signed forms to me using the enclosed pre-paid express mail envelope. You may also call if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott D. Pollock". The signature is written in a cursive style with a large, stylized initial "S".

Scott D. Pollock  
Attorney at Law

SDP/yk  
Enclosures



REPRESENTATION AGREEMENT

COPY

1. This is an agreement between SCOTT D. POLLOCK & ASSOCIATES, P.C. (the LAW FIRM) and Yong Ping Zhou (the CLIENT) for legal representation.

2. The LAW FIRM agrees to assist the CLIENT in the following matter:

- 1. Investigate case; 2. seek reconsideration or judicial review of a. <sup>of I851A and</sup> INS' refusal of bond and b. immigration judge's denial of asylum and violation of right to counsel;
  - 3. Seek release from custody on bond or under supervision; 4. possible VAWA relief.
3. The LAW FIRM agrees to keep the CLIENT advised about the status of the case by promptly sending copies of all relevant written materials regarding the case.

4. The CLIENT promises to be truthful with the LAW FIRM at all times and agrees to promptly advise the LAW FIRM of any facts relevant to the case, including changes in employment, marital status, address or telephone number. The CLIENT agrees to cooperate with the LAW FIRM's requests for documents, witness information and to appear for any meetings, interviews or hearings. CLIENT understands that the failure to cooperate with the LAW FIRM's requests may harm the CLIENT's case, and may be cause for the LAW FIRM to withdraw as the attorneys of record.

5. The CLIENT understands that the Immigration and Naturalization Service (INS), the Department of Labor (DOL), Immigration Courts, Federal Courts and the U.S. Consuls have a heavy workload such that there may be delays in the resolution of the CLIENT's case. The CLIENT further understands that a qualified Legal Assistant of an Attorney at the LAW FIRM may answer questions regarding the status of the case and that legal assistants will work on the case with the attorney.

6. The LAW FIRM agrees to use its best efforts in representing the CLIENT. The CLIENT agrees and acknowledges that the LAW FIRM may not and has not made any assurance or guarantee about the successful outcome of the matters being handled by the LAW FIRM. Comments about the outcome of the CLIENT's matter are expressions or opinion only.

7. It is understood and agreed by the LAW FIRM and the CLIENT that attorneys fees for the services in paragraph two (2) will be \$ hourly \* plus costs. These costs may include filing and advertising fees, certified or express mail charges, long distance telephone calls, photocopying, translations, courier services, fax and telex costs, credential evaluation services, or other out-of-pocket expenses. These shall be paid in the following manner, with the explicit understanding that the CLIENT must make full payment immediately upon being billed.

Initial minimum payment of \$ 2,000 by immediately (\$ 500 received 8/1/02) to open new case file.

Additional fees to be paid as follows:

Firm will invoice Mr. Zhou as services are provided. Firm understands that

Mr. Zhou's ability to pay is limited until he is released from custody and that after he is released he will seek loans to cover his legal fees and costs, but he understands that, owing to the complexity of his case, the firm cannot agree to represent him for a flat fee, and he will be responsible to pay all fees.

Costs/expenses payable when incurred.



8. The CLIENT understands that if attorneys' fees and/or costs are not paid within 30 days of billing, the LAW FIRM is not obligated to continue working on the case. The CLIENT also understands that the LAW FIRM is not obligated to release the CLIENT's file unless all fees and costs are paid.

9. The CLIENT expressly authorizes the LAW FIRM to seek and retain co-counsel on the case, understanding that the retaining of additional lawyers to assist the LAW FIRM will not alter the method of payment or reimbursement specified in paragraphs six (6) and seven (7).

10. Unless indicated otherwise in paragraph two (2) above, this agreement does not include appeals, motions, motions to reconsider or motions to reopen, to any government agency or court. The CLIENT understands that unusual or unanticipated difficulties, including extensive responses to government requests for additional information or the need to prepare related but distinct applications, (e.g. employment authorization, advance parole, etc.) requiring additional services may require additional fees, which will be charged only after advance consultation with, and agreement by the CLIENT.

11. If attorneys fees or costs are to be payable by a court under the Equal Access to Justice Act (EAJA) or other fee/costs-reimbursement provision, CLIENT authorizes the fees to be issued jointly to the LAW FIRM and the CLIENT.

Yongping Zhou  
CLIENT

08-08-02  
DATE

[Signature]  
SCOTT D. POLLOCK & ASSOCIATES

8/6/02  
DATE

Interpreted into the \_\_\_\_\_ language by \_\_\_\_\_

Interpreter's initials \_\_\_\_\_ Client's initials \_\_\_\_\_

\*Unless fees are fixed at a stated amount, attorneys' fees are assessed against the following current rates:

- \$190.00/hr. for senior attorney
- \$150.00/hr. for junior attorney
- \$75.00/hr. for legal assistants

The CLIENT understands that rates may be adjusted from time to time, upon at least 30 days notice to the CLIENT.

c

LAW OFFICES OF  
**SCOTT D. POLLOCK & ASSOCIATES, P.C.**

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**MARTA DELGADO**  
ADMITTED IN ILLINOIS AND WISCONSIN

**MARIA BALDINI-POTERMIN**  
ADMITTED IN ILLINOIS AND MINNESOTA

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**JULIE T. EMERTON, OF COUNSEL**  
ADMITTED IN ILLINOIS AND MICHIGAN

September 6, 2002

Yongping Zhou  
c/o Tri-County Detention Center  
1026 Shawnee College Rd.  
Utin, IL 62992

Dear Mr. Zhou:


Congratulations on your success in receiving post conviction relief. Because your conviction for criminal recklessness in Indiana has been overturned, we have contacted Deborah Achim, the INS' Assistant District Director of Deportation and Detention requesting that your deportation be stayed and that you be released immediately from INS custody. A copy of this correspondence is enclosed.

We also filed Form I-246, Application for Stay of Removal, on your behalf with the INS today. The fee for this application is \$155.00 and will be billed to your account. Although I signed the application for you, I am enclosing a copy of the application for your signature. Please sign this document as indicated and return it to our office immediately via the U.S. Express Mail envelope enclosed. We will keep the signed application in our files in the event that the INS requires it. We will also be filing a formal motion to reopen and vacate your final administrative removal order.

Hopefully, I will know sometime next week if and when the INS will release you. If it will not do so, I intend to file an action for a writ of habeas corpus in federal district court to obtain an order for your release.

Our office will keep you informed regarding any further developments with your case. If you have any questions, please do not hesitate to contact me, or my legal assistant, Youngmee Kwon.

Sincerely,



Scott D. Pollock  
Attorney at Law

SDP/yk  
Enclosures

D

LAW OFFICES OF  
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MARIA BALDINI-POTERMIN  
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Web: <http://www.lawfirm1.com>

JULIE T. EMERICK, OF COUNSEL  
ADMITTED IN ILLINOIS AND MICHIGAN

November 1, 2002

Yongping Zhou  
c/o Tri-County Detention Center  
1026 Shawnee College Rd.  
Ullin, IL 62992

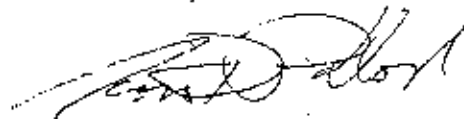
Dear Mr. Zhou:

Enclosed please find a copy of the INS' Second Motion for Extension of Time to File the Certified Administrative Record. A copy of the Seventh Circuit Court of Appeals order indicating that the INS motion is granted and that the administrative record must be filed by December 6, 2002 is also enclosed. Once the administrative record is filed by the INS, we will have 40 days to review this record and submit a brief to the Seventh Circuit in support of your petition for review. We will keep you updated regarding any further developments with this petition.

Our office has not yet received any word regarding our requests for a stay of your deportation and for your release from INS custody. We will continue to follow-up with the INS Deportation Branch regarding these matters and inform you regarding any developments with these requests. If we do not receive a decision from the INS shortly, I would like to move forward with a writ of habeas corpus in Federal District Court.

In the meantime, please forward our office the documents and statement in support of your petition for relief under the Violence against Women Act (VAWA) as soon as possible. It is very important that we receive these from you at this time. If you have any questions, please do not hesitate to contact me, or my legal assistant, Youngmee Kwon. Thank you.

Sincerely,



Scott D. Pollock  
Attorney at Law

SDP/yk  
Enclosures