

THE EFFECTS OF ANTI-IMMIGRANT LAWS IN THE U.S. ON VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND HUMAN TRAFFICKING: A GENDER-BASED HUMAN RIGHTS ANALYSIS

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I. INTRODUCTION

Across the United States, 12 states have implemented anti-immigrant laws in recent years that force local law enforcement officials to engage in immigration enforcement and prohibit so-called “sanctuary policies” by municipalities to protect immigrants.¹ These laws have a devastating effect at the community level, and have an especially harmful impact on immigrant women and LGBTQ victims of domestic abuse, sexual assault, and human trafficking (collectively, “gender-based violence,” or “GBV”).

Last year, Florida’s senate passed one such anti-immigrant law, SB 168, which took effect on October 1, 2019.² As described in the Plaintiffs’ complaint, the original version of SB 168 was drafted by the anti-immigrant hate groups, Floridians for Immigration Enforcement (“FLIMEN”) and Federation for American Immigration Reform (“FAIR”).³ SB 168 requires every Florida county and municipality to expend “maximum local resources” and make “best efforts” to enforce federal immigration laws by cooperating with federal Immigration and Customs Enforcement (“ICE”) to arrest and detain individuals suspected of being illegal immigrants—actions over which the federal government has exclusive jurisdiction under the U.S. Constitution and the Immigration and Nationality Act.⁴ SB 168 comes into force in the midst of virulent anti-immigrant rhetoric from the Trump Administration.⁵ It will likely result in the deportation of unprecedented numbers of immigrants and will have a devastating effect at the community level—tearing apart

¹ Catherine Shoichet, *Florida just banned sanctuary cities. At least 11 other states have, too*, CNN (June 14, 2019), <https://www.cnn.com/2019/05/09/politics/sanctuary-city-bans-states/index.html>, archived at <https://perma.cc/2VX2-JFYL>.

² *SB 168: Federal Immigration Enforcement*, The Florida Senate, <https://www.flsenate.gov/Session/Bill/2019/168/BillText/er/PDF>, archived at <https://perma.cc/A5GY-HXCR>.

³ See Complaint, *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927-XXXX (S.D.Fla.), ¶ 2.

⁴ *SB 168: Federal Immigration Enforcement*, The Florida Senate, <https://www.flsenate.gov/Session/Bill/2019/168/BillText/er/PDF>, archived at <https://perma.cc/LE92-MVYH>; see also *SPLC Sues Florida over Law Requiring Local Law Enforcement to Act as ICE Agents*, Southern Poverty Law Center (July 16, 2019), <https://www.splcenter.org/news/2019/07/16/splc-sues-florida-officials-over-law-requiring-police-act-ice-agents>, archived at <https://perma.cc/DTP5-QHLQ>.

⁵ Manar Waheed, *Trump Announces Plan to Admit Fewer Refugees Than Any Other President*, ACLU (Sept. 27, 2019), <https://www.aclu.org/blog/immigrants-rights/trump-announces-plan-admit-fewer-refugees-any-previous-president>, archived at <https://perma.cc/F323-NHW9>; see also Kathryn Finley, *Access to Justice in a Climate of Fear: New Hurdles and Barriers for Survivors of Human Trafficking and Domestic Violence*, Center for Migration Studies (2018), <https://cmsny.org/publications/finley-climate-of-fear>, archived at <https://perma.cc/KXU2-8DJ9>.

families, disrupting labor markets, impacting classrooms, and eroding public trust in law enforcement, which ultimately undermines public safety.

The national debate over anti-immigrant laws like SB 168 is happening at the same time that a fourth reauthorization of the Violence Against Women Act (VAWA) has stalled. VAWA is a landmark piece of legislation that, since its original passage in 1994, has marked a seismic shift in national, state and local responses to victims of domestic violence, dating violence, sexual assault and stalking. Over the years, VAWA's immigration provisions have provided a life-saving safety net for foreign-born domestic-violence victims, such as the ability to petition for immigration relief separate from their abusive partners. The House of Representatives voted in favor of a robust version of VAWA in April of 2019,⁶ and the bill is currently being debated in the U.S. Senate.⁷

SB 168 is particularly draconian and detrimental to GBV victims in Florida. It traps immigrant victims of domestic violence in a Catch-22 situation: ask for help and risk deportation, retaliation by an abuser, and separation from one's children, or stay with a violent partner and risk one's life. SB 168's anti-immigrant rhetoric has already caused widespread confusion and panic for victims across the state, and advocates report that victims are not coming forward to seek help as before. By chilling the reporting of domestic violence and other crimes, SB 168 jeopardizes not only the well-being of victims and their families, but also the safety of Florida communities more generally. Moreover, immigrant victims transferred to ICE custody as a result of SB 168 will be retraumatized as they wait in inhumane detention centers—where women are all-too frequently abused and harassed by personnel—to have their cases heard.⁸ Finally, SB 168 will lead to family separa-

⁶ H.R. 1585, 116th Cong. (2019).

⁷ S. 2843, 116th Cong. (2019). The National Network to End Domestic Violence (NNEDV) has taken the position that the final VAWA reauthorization “should reflect the provisions in H.R. 1585, which safeguard current protections to ensure all survivors have access to safety and justice. This includes ending impunity for non-Native perpetrators of violence against Native women and children; improving housing protections and providing safe housing options so that survivors do not have to choose between safety and homelessness; increasing investment in domestic and sexual violence prevention; promoting economic security for survivors; increasing avenues for justice; and supporting efforts to reduce domestic violence homicides.” NNEDV, Urging Congressional Action on the 25th Anniversary of the Violence Against Women Act (VAWA), Sept. 13, 2019, https://nnedv.org/latest_update/urging-congressional-action-25th-anniversary-violence-women-act-vawa/, archived at <https://perma.cc/L5W7-WGZ6>; see also ACTION ALERT: Call Your Senators and Ask Them to Support S. 2843 and NOT Senator Ernst's VAWA Reauthorization Bill, National Coalition Against Domestic Violence (NCADV) (Nov. 21, 2019), <https://ncadv.org/blog/posts/action-alert-call-your-senators-and-ask-them-to-support-s-2843-and-not-senator-ernsts-vawa-reauthori>, archived at <https://perma.cc/94UF-JCF7> (supporting Senator Feinstein's VAWA reauthorization bill and denouncing Senator Ernst's bill). The authors share the sentiments of NNEDV and NCADV.

⁸ Nora Ellman, *Immigrant Detention is Dangerous for Women's Health and Rights*, CENTER FOR AMERICAN PROGRESS (Oct. 21, 2019), <https://www.americanprogress.org/issues/women/reports/2019/10/21/475997/immigration-detention-dangerous-womens-health-rights/>, archived at [HTTPS://PERMA.CC/ER6R-5FZT](https://perma.cc/ER6R-5FZT); see also Human Rights Watch, *Detained at Risk: Sexual Abuse and Harassment in United States Immigration Detention* (Aug. 25, 2010),

ration, resulting in children being left with abusive spouses/intimate partners (who are statistically more likely to be abusive to children).⁹

SB 168 contains “exceptions” that supposedly protect GBV and other crime victims and witnesses from being reported to ICE, but these protections risk being interpreted by law enforcement as limited and vague, making actual protection illusory. The reach of the GBV-specific exception appears to extend only to “victims” and “witnesses” (terms which are undefined in the statute) who have been identified as such by the criminal legal system—the very system, as described in more detail below, that many immigrants try to avoid at all costs, and that has come under scrutiny for manifesting varied (and intersectional) forms of bias, including gender, racial, and anti-immigrant biases. A second, broader, exception for victims or witnesses “to a criminal offense” does not *require* state and local entities to ask about the victim’s immigration status and provide this information to ICE, but it still appears to *permit* them to do so on their initiative. This gives SB 168 the distinction of being even more draconian (and vague) than Texas’ similar anti-immigrant law, which explicitly prohibits officers from inquiring about a victim’s immigration status.¹⁰

Under international law, the United States, including the state of Florida, has a clear obligation to respect, protect, and ensure the human rights and dignity of *all* individuals within its territory, regardless of their immigration status. This includes the responsibility to take measures to prevent GBV, as well as to protect, support, and ensure access to justice and services for all victims. This responsibility applies whether the perpetrator is a state or non-state actor, and whether an act is committed in an official or private capacity. SB 168 and other anti-immigrant state laws violate U.S. obligations to immigrant GBV victims under the international human rights treaties to which it is a party—the International Covenant on Civil and Political Rights (ICCPR),¹¹ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹² and the International Convention on the Elimination of All Forms of Racial Discrimination

<https://www.hrw.org/report/2010/08/25/detained-and-risk/sexual-abuse-and-harassment-united-states-immigration-detention>, archived at <https://perma.cc/5QYQ-8X4C>.

⁹ Monica Modi, et. al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A public Health Issue*, *Journal of Women’s Health* (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3952594/>, archived at <https://perma.cc/9V4W-JZ82> (finding that “between 45% and 70% of children” who are exposed to domestic violence between their parents are also victims of physical abuse, and how they are likely to be more violent in the future).

¹⁰ Tex. Gov’t Code § 752.053 (“SB 4”).

¹¹ International Covenant on Civil and Political Rights, art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.

¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994.

(ICERD)¹³—as well as other important sources of human rights law, such as the Universal Declaration on Human Rights (UDHR) and the American Declaration on the Rights and Duties of Man (ADRDM).¹⁴ These human rights treaties and instruments protect the rights to life, equality and non-discrimination, liberty and security of person, freedom from torture and inhuman or degrading treatment, an effective remedy, and health; the obligation of non-refoulement; and, the rights of persons deprived of liberty to be treated with humanity and respect. Importantly, international human rights law recognizes that GBV victims from vulnerable, underserved, or marginalized communities—including immigrant women—may experience discrimination that stems from multiple and intersecting forms of oppression, further exacerbating the substantive human rights violations they experience.¹⁵

II. SB 168 HARMS IMMIGRANTS AND IMMIGRANT COMMUNITIES¹⁶

Immigrant women and LGBTQ individuals are highly vulnerable to gender-based violence.¹⁷ They often face obstacles in seeking protection from abuse that other victims do not, such as language barriers and lack of familiarity with social services and law enforcement systems.¹⁸ Immigrant victims may already harbor fear of the police based on past experiences with

¹³ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on November 20, 1994.

¹⁴ Universal Declaration of Human Rights, G.A. Res. 217A U.N. GAOR, 3rd Session, U.N. Doc. A/810 (Dec. 12, 1948); Organization of American States, American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States May 2, 1948, OEA/Ser.L.V/II.82 doc. 6 rev. 1 at 17 (1992).

¹⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 ¶ 12, 14 July 2017, CEDAW/C/GR/35; Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”) art. 9, June 9, 1994.

¹⁶ The authors wish to acknowledge Tahirih Justice Center, Asista, Casa de Esperanza, et. al., for developing several of the arguments presented in this section, which are reflected in Brief for Tahirih Justice Center, et. al., as Amicus Curiae, *City of El Cenizo, et. al. v. State of Texas*, et. al. 264 F.Supp.3d 744 (2017). We are grateful for these groups’ permission to incorporate these arguments into both this article and the corresponding amicus brief we plan to submit in *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927 (S.D.Fla).

¹⁷ Michael Runner, et al., *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations*, Family Violence Prevention Fund 11-12 (Mar. 2009), https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/IPV_Report_March_2009.pdf, archived at [HTTPS://PERMA.CC/7BZ8-57HH](https://perma.cc/7BZ8-57HH). In addition to immigrant women, several studies have shown that the LGBTQ community—and in particular, lesbian, bisexual, and transgender persons—experience disproportionate levels of GBV at the hands of strangers and intimate partners alike. See, e.g., Kate Gilles, *Gender-Based Violence Against the Transgender Community is Underreported*, Population Reference Bureau (Dec. 2011), <http://www.prb.org/Publications/Articles/2011/gender-based-violence-transgender.aspx>, archived at [HTTPS://PERMA.CC/S4CJ-LRXX](https://perma.cc/S4CJ-LRXX) (noting that transgender persons “are particularly at risk of GBV because they represent a direct challenge to traditional gender norms and roles”).

¹⁸ Runner, *supra* note 17 at 11-12.

abusive or hostile law enforcement in their countries of origin.¹⁹ Furthermore, it is commonplace for an abuser to specifically use a victim's immigration status as a tool for abuse²⁰—by threatening to report the victim to immigration authorities if she calls the police,²¹ threatening to withdraw an immigration benefits application,²² or filing frivolous complaints that may result in serious consequences for victims.²³ Victims may rely on their abusers for financial protection and lack the means to support themselves on their own. Accordingly, as the United States Congress has recognized, many immigrant GBV victims are reluctant to contact the police or local authorities to report abuse, because they fear that doing so will place them or a family member at risk of deportation.²⁴

By forcing local and state actors to enforce federal immigration policies, SB 168 amplifies this problem. As the district court stated in *City of El Cenizo v. State of Texas*—a case that considered the constitutionality of a similar anti-immigrant law in Texas—victims of domestic violence, sexual assault and trafficking “will be reluctant to come forward to report crimes because they will face removal from the country and separation from their

¹⁹ *Id.*

²⁰ See, e.g., Cora Engelbrecht, N.Y. TIMES, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>, archived at <https://perma.cc/VDB2-GTMS>; Hannah Rappleye, *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC News, (Sept. 2018), <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271>, archived at <https://perma.cc/TYR7-3MBT>; Olivares, Mariela, *Battered by Law: The Political Subordination of Immigrant Women*, 64 AM. U. L. REV. 231, 231-283 (2014); Gonzalez, B., Collingwood, L., & El-Khatib, S. O. (2017), *The politics of refuge: Sanctuary cities, crime, and undocumented immigration*, Urban Affairs Review, <https://doi.org/10.1177/1078087417704974>, archived at <https://perma.cc/DG3U-LGAH>; Wong, T., *The effects of sanctuary policies on crime and the economy*. Washington, DC: Center for American Progress (2017); Melissa Jeltsen, *Domestic Abusers Have An Ally In The Trump Era. It's ICE*, Huffpost, (July 2018), www.huffpost.com/entry/ice-domestic-violence-abuse_n_5b561740e4b0b15aba914404, archived at <https://perma.cc/BLL7-UMV8>.

²¹ See, e.g., Jason Margolis, PRI's The World, *Some Immigrant Victims of Domestic Abuse Afraid to Seek Help Along Border* (Mar. 20, 2013), <https://www.pri.org/stories/2013-03-20/some-immigrant-victims-domestic-abuse-afraid-seek-help-along-border>, archived at <https://perma.cc/BL5W-NST3> (quoting a Laredo, Texas-based advocate for immigrant women as follows: “One of the ways men would keep [immigrant women] in a domestic violence situation was saying that ‘I am a U.S. citizen’ or ‘I am [a] legal permanent resident, and you call the police, and they will deport you and I will stay with the kids.’”).

²² See, e.g., *Immigrant Power and Control Wheel*, produced and distributed by National Center on Domestic and Sexual Violence, Austin, TX, and adapted from original wheel by: Domestic Abuse Intervention Project, Duluth, MN, <http://endingviolence.org/files/uploads/ImmigrantWomenPCwheel.pdf>, archived at <https://perma.cc/W9FV-QBGX>.

²³ Congress has recognized that these frivolous complaints sometimes lead to a person who actually is the victim of domestic violence being cross-charged and getting a disposition for a deportable offense. Because of this, Congress provides a waiver of deportability for such situations, which can preserve eligibility for non-LPR cancellation. See INA § 237(a)(7)(A), 8 USC § 1227(a)(7)(A). See generally Kate Bradley, *Case Update: The Domestic Violence Deportation Ground*, Immigration Legal Resource Center, https://www.ilrc.org/sites/default/files/resources/case_update_dv_deport_ground-20180627.pdf, archived at <https://perma.cc/RN5X-FHV8>.

²⁴ See H.R. Rep. No. 103-395, at 25 (1993).

families.”²⁵ For some mothers, deportation can mean loss of custody of a U.S. citizen child—even to an abuser. Others may unknowingly be eligible for immigration relief but have been conditioned by their abusers to believe that they are not.

In short, anti-immigrant laws like SB 168 are causing widespread fear among victims. These laws also allow abusers to exert additional control over immigrant women by exploiting the perception that seeking local authorities’ help could jeopardize victims’ immigration status and ability to remain in the United States. As one victim aptly stated in the wake of similar legislation in Texas (SB 4), “This is exactly what my abuser has been waiting for.”²⁶

A. *Recent Research and Data Reveal High Mistrust of the Police Amongst Immigrants When Local Law Enforcement Engages in Federal Immigration Enforcement*

Studies show that when local law enforcement enforces federal immigration laws, immigrants are deterred from contacting local officials—be it in an emergency room or by dialing 911—out of fear that doing so will result in detention or deportation. For example, one 2015 study found that in North Carolina localities where the police participated in immigration enforcement, Hispanic/Latina mothers sought prenatal care later than non-Hispanic/Latina mothers and “participants reported profound mistrust of health services, avoiding health services, and sacrificing their health and the health of their family members.”²⁷ Another study of similar North Carolina policies found that “the majority of Hispanic interviewees stated that they would hesitate before reporting crime to the authorities out of fear that a friend, neighbor, or family member might be placed in danger of deportation.”²⁸

²⁵ *City of El Cenizo, Texas v. Texas*, 264 F. Supp. 3d 744, 810 (W.D. Tex. 2017), *aff’d* in part, *vacated* in part sub nom. *City of El Cenizo, Texas v. Texas*, 885 F.3d 332 (5th Cir. 2018), *withdrawn* from bound volume, *opinion withdrawn* and *superseded*, 890 F.3d 164 (5th Cir. 2018), and *aff’d* in part, *vacated* in part sub nom. *City of El Cenizo, Texas v. Texas*, 890 F.3d 164 (5th Cir. 2018).

²⁶ *Tahirih Urges House Judiciary Committee to Oppose the Harmful Davis-Oliver Act*, Tahirih Justice Center (May 23, 2017), <http://www.tahirih.org/news/tahirih-urges-house-judiciary-committee-to-oppose-the-harmful-davis-oliver-act/>, *archived at* <https://perma.cc/QT5M-43ZE>; *see also* Kathryn Finley, *Access to Justice in a Climate of Fear: New hurdles and Barriers for Survivors of Human Trafficking and Domestic Violence*, Center for Migration Studies, <https://cmsny.org/publications/finley-climate-of-fear/>, *archived at* <https://perma.cc/7BAR-U4L2>; *see also* United Nations Population Fund, <https://www.unfpa.org/gender-based-violence>, *archived at* <https://perma.cc/XG2S-3NT3>; Jennifer Black, Tia Palermo, Amber Peterman, *Tip of the Iceberg: Reporting and Gender-based Violence in Developing Countries*, US National Library of Medicine National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3927971/>, *archived at* <https://perma.cc/93PY-KP5X>.

²⁷ *See, e.g.*, Rhodes, et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States*, 105 Am. J. Pub. Health 329 (Feb. 2015).

²⁸ Nguyen & Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 Urb. Stud. J. 302, 14 (2015); *see also* Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 Iowa L. Rev. 1449, 1451 (2006)

Survey results confirm these findings. In June 2019, seven national organizations working with immigrant GBV victims released the results of a nationwide survey of advocates and attorneys on the fears and concerns of immigrant victims in reporting domestic violence and sexual assault. A total of 575 victim advocates and attorneys completed the survey and reported how changing immigration policies affect the concerns of service providers and the fears of immigrant victims of domestic violence and sexual assault. Amongst the survey findings were the following data points:

- 59% of respondents observed an increase in the number of immigration-related questions that their agencies were receiving from immigrant victims;
- 52% of advocate-respondents have worked with immigrant victims who decided to drop civil or criminal cases because they were fearful to continue with their cases (an increase compared to a previous survey conducted in 2017);
- Three out of four service provider-respondents reported that immigrant victims had concerns about going to court for a matter related to the abuser/offender; and,
- 76% of advocate-respondents reported that immigrant survivors have shared concerns about contacting police.

As the authors of the report emphasized, this data underscores how anti-immigrant laws and sentiments “undermine victim safety as well as public safety and [are] contrary to our nation’s commitment to affording protections for all survivors of domestic violence and sexual assault.”²⁹

In 2018, the National Immigrant Women’s Advocacy Project and the ACLU released a survey of law enforcement, judges, prosecutors, survivor advocates, and legal services providers inquiring about the effects of the increasingly-common practice of immigration officers conducting arrests in courthouses under the Trump administration. The accompanying report revealed a deep fear of deportation that is stopping immigrants from reporting crimes and participating in court proceedings. The survey found that:

- approximately 22% of police officers reported that immigrants were less likely in 2017—compared to 2016—to make police reports;

(“[T]o the extent [survivors of domestic violence] believe that [the] police will report them to immigration authorities . . . , ‘women and children will continue to endure ongoing abuse rather than call for help.’”).

²⁹ Tahirih Justice Center et al., *May 2019 Findings: Immigrant Survivors Fear Reporting Violence* (June 2019), <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>, archived at <https://perma.cc/T2MH-KUPN>; see also Nik Theodore, *Insecure Communities: Latino Perception of Police Involvement in Immigration Enforcement*, University of Chicago (finding that 70% of undocumented immigrants, and 40% of all Latinos, are unlikely to contact law enforcement after being victimized because they fear police will ask them of their or others’ immigration status and that 67% of undocumented immigrants and 45% of Latinos will not report crimes unrelated to them for the same fear).

- 69% of domestic violence crimes were harder to investigate, directly impacting public safety; and,
- offices representing survivors of crimes experienced a 40% decline in their case intakes in 2017.³⁰

An example of this substantiated fear of contact with state authorities comes from an NBC News report of an undocumented domestic violence victim from Colombia who spoke limited English and nevertheless contacted the police in North Carolina for assistance. When she appeared in court for a hearing related to the incident, both she and her 15-year-old son were arrested by federal immigration agents, leaving her toddler in daycare and allowing her abuser, a U.S. citizen, to walk away without consequences.³¹

In a 2013 survey of 2,000 Latinos in Houston, Los Angeles, and Phoenix, 45% of respondents reported that, as a result of increased cooperation between the police and immigration authorities, they were less likely to contact law enforcement if they were victims of a crime.³² Likewise, in a 2015 survey of 800 Latinos and Latinas nationwide, 41% of respondents cited fear of deportation as the number-one barrier preventing Latino and Latina victims of domestic violence from seeking help.³³

In Texas, similar immigration enforcement efforts have had a chilling effect on the reporting of GBV. In February 2017, advocates reported that immigrant victims expressed reluctance to seek help from the police and the courts in the wake of a highly publicized incident in which U.S. Immigration and Customs Enforcement (“ICE”) agents arrested a woman inside the El Paso courthouse where she had gone to seek an order of protection.³⁴ In April 2017, a non-profit organization in Austin that assists rape victims reported that fewer victims were coming forward and that more clients were

³⁰ Freezing out Justice, ACLU and National Immigration Women’s Advocacy Project (2018), <https://www.aclu.org/report/freezing-out-justice>, archived at <https://perma.cc/NSE5-HEZ3>.

³¹ Rappleye, *supra* note 20 (explaining that fewer immigrant survivors are seeking legal recourse in the anti-immigrant climate of recent years).

³² Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF, archived at <https://perma.cc/D25A-HK6G>; see also, Cornelius et al., *Op-ed: Giving Sanctuary to Undocumented Immigrants Doesn’t Threaten Public Safety—It Increases It*, L.A. Times, Feb. 2, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-sanctuary-cities-trump-20170202-story.html>, archived at <https://perma.cc/P67D-Q2BC>.

³³ NO MORE et. al., *New Study of Domestic Violence and Sexual Assault in the U.S. Latin@ Community Reveals Barriers to Reporting and High Willingness to Intervene to Help Survivors*, NO MORE (Apr. 21, 2015), <https://nomore.org/press-release/no-mas-study-pr/>, archived at <https://perma.cc/XZ3U-CC2Z>.

³⁴ Mettler, *‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse*, Wash. Post (Feb. 16, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/>, archived at <https://perma.cc/PHB7-SV3D>; see also U.S. Commission on Civil Rights Expresses Concern with Immigrants’ Access to Justice (Apr. 24, 2017), http://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-Access-Justice.pdf, archived at <https://perma.cc/6SQH-DLHP> (finding that “[t]he chilling effect on witnesses and victims is already apparent”).

expressing fear of contacting law enforcement to report abuse.³⁵ Houston police chief Art Acevedo reported that during the first three months of 2017, Houston saw a 43 percent drop in the number of Hispanics reporting rape and sexual assault, which Acevedo attributed to the passage of SB 4 and related immigration enforcement measures.³⁶

B. Anti-Immigrant Laws Drain Resources and Divert Workstreams of Nonprofit Organizations Serving Victims

Since undocumented immigrants are more likely to be wary of the police, they may turn to nonprofit organizations for guidance on whether to report crimes to the police. In an anti-immigrant environment, such as that created in Florida by SB 168, many nonprofits have shifted a significant amount of resources away from the core services (legal, health, education, etc.) they have historically provided, in order to provide guidance to fearful constituents.

For instance, Americans for Immigrant Justice (AIJ), a law and advocacy organization that promotes the human rights of immigrants in Florida and around the world, “has seen an increase in communication from social service and community-based organizations seeking guidance on whether immigrant victims should continue to report to local law enforcement about domestic violence, sexual assault, and human trafficking.”³⁷ Since SB 168 was implemented in Florida, AIJ had to “shift its resources to assessing whether it is safe for a victim to report a crime post-SB 168 and training social service providers that interact with immigrant victims.”³⁸

Additionally, the Rural Women’s Health Project (RWHP), a health justice organization in North Florida, needed to divert its resources away from its core mission since the implementation of SB 168. Previously, the majority of RWHP’s resources went to preventative education and health-related advocacy. Since the passage of SB 168, RWHP has increased its justice sector work (including advising victims/members on whether to report abuse to authorities, and working with partner organizations to educate members of the Gainesville community about immigration issues and consequences) to 60% of its workstream, and decreased its health/prevention work to 40% of its workstream.³⁹

³⁵ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. Times (Apr. 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>, archived at <https://perma.cc/3WKB-WWUX>.

³⁶ Lindsey Bever, *Hispanics are going further into the shadows amid chilling immigration debate, police say*, Wash. Post (May 14, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/>, archived at <https://perma.cc/H9D9-F24A>.

³⁷ See Compl., *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927-XXXX (S.D.Fla.), ¶ 102.

³⁸ *Id.* at ¶ 103.

³⁹ Telephone Interview with Robin Lewy, Director of Programming, Rural Women’s Health Project (Sept. 27, 2019).

C. *SB 168's Exceptions are Illusory and Do Not Protect Domestic Violence Victims in Practice*

SB 168 provides exceptions in §§ 908.104(5), (7), and (8) that supposedly protect victims of domestic violence and other crimes from being reported to ICE, but these protections are illusory in practice. Section 908.104(5) states that SB 168 “does not require [state or local entities] to provide a federal immigration agency with information related to a victim or witness to a criminal offense . . . if the victim or witness . . . timely and in good faith responds to the entity’s or agency’s request for information and cooperation in the investigation or prosecution” of a past or current offense or investigation.⁴⁰ However, this provision is not sufficient to protect crime victims (including GBV victims) in practice, for several reasons. First, while the exception does not *require* state and local entities to ask about the victim’s immigration status and provide this information to ICE, many law enforcement officers will interpret this to mean that the statute permits them to do so on their own initiative. That gives SB 168 the distinction of being even more draconian than Texas’ similar anti-immigrant law, which explicitly prohibits officers from inquiring about a victim’s immigration status.⁴¹ Additionally, the exception’s terms also overlook the widespread language and cultural barriers that prevent immigrant victims from communicating with the authorities in the first place. Finally, the exception in §908.104(5) does not define the term ‘victim’ or ‘witness,’ which could lead to confusion for both victims and law enforcement as to who qualifies for the protections. The statute should be read to apply to crime victims regardless of whether the crime has been reported to a law enforcement agency; but in practice, it will likely not be interpreted in this way.

Similarly, the language in §§908.104(7) and (8) suffers from several of these deficiencies and more. Section 908.104(7) states that the law “does not authorize a law enforcement agency to detain an alien unlawfully present in the United States pursuant to an immigration detainer *solely* because the alien witnessed or reported a crime or was a victim of a criminal offense.”⁴² Not only does this provision suffer from the same problems of vagueness and overly broad discretion accorded to state and local entities that are outlined above, but law enforcement agencies will interpret the law as authorizing the detention of a crime victim pursuant to an immigration detainer so long as that person’s victimization was not the sole basis for the detention.⁴³

⁴⁰ Fla. Stat. § 908.104(5).

⁴¹ Tex. Stat. § 752.053(b)(1).

⁴² Fla. Stat. § 908.104(7), emphasis added.

⁴³ The burden of proof is an important issue in the interpretation of these exceptions. The authors believe that Fla. Stat. § 908.104(7) should be read to require that, before detaining a person “pursuant to an immigration detainer,” law enforcement agencies must establish beyond a reasonable doubt that the subject of the detainer has not “witnessed or reported a crime or was a victim of a criminal offense.” Similarly, §908.104(8) should be read to require that, before sharing information, detaining pursuant to a detainer, or otherwise cooperating with federal immigration officials, a state entity, local government entity, or law enforcement

Finally, the section that is arguably the most protective of GBV victims—§908.104(8)—is similarly flimsy. This section states that the law “does not apply to any alien unlawfully present in the United States if he or she is or has been a necessary witness or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, [and other enumerated crimes]. . . .”⁴⁴ As described above, law enforcement officers and victims themselves will likely read this section to apply only to individuals who have been identified as victims and witnesses by the criminal legal system, when in fact it should be read to apply to GBV victims regardless of whether the crime has been reported to a law enforcement agency. This provision is especially problematic in the GBV context because many immigrant victims avoid contact with the criminal legal system at all costs, for reasons ranging from personal safety, to fear of immigration consequences, to family considerations, to bias and mistreatment by law enforcement officers, to law enforcement’s misclassification of victims as offenders, as outlined *supra and infra*.⁴⁵ In reality, §908.104(8) will only, at best, protect the small number of victims who are *able* and *willing* to risk coming forward, turning in their abusers, and cooperating with law enforcement. Moreover, if a victim in Florida has been arrested for a crime, s/he could be denied the protections of SB 168’s exceptions—a problem exacerbated by the vagueness of the statute’s terms.

Finally, a search of government websites—including the Florida Governor’s website, the Florida Attorney General’s website, and the Florida Department of Law Enforcement website—revealed no information about SB 168, let alone its exception. As a result, most victims will likely never learn about the exception to the law, and their view of the law will be shaped by

agency must establish beyond a reasonable doubt that the subject of the law enforcement action is not, and has never been, a witness or victim of “a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering,” or a crime enumerated in 8 U.S.C. §1101(a)(15)(U)(iii), or similar crime, regardless of whether the crime has been reported to a law enforcement agency. Determinations of whether or not a person has been a victim or witness of “a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering,” or a crime enumerated in 8 U.S.C. §1101(a)(15)(U)(iii), or similar crime, must be made in coordination with a victim services agency.

⁴⁴ Fla. Stat. § 908.104(8).

⁴⁵ See Section I, p. 4-5 (explaining the reasons why immigrant victims do not report, including fear of the immigration consequences of doing so, economic dependence on their abusers, child or family concerns, fear that they will be subject to worse abuse by the abuser down the line, poor treatment by law enforcement, or because they simply do not know the legal protections that they are afforded in the United States). In reality, the exceptions will lead to law enforcement only protecting the “perfect victim”—that is, the one who is *able* and *willing* to come forward and turn in their abuser and cooperate with law enforcement. See Section I.D. (discussing the United States Department of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2015), page 4; *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, DEP’T OF JUST., <https://www.justice.gov/opa/file/799366/download>, archived at <https://perma.cc/9RXXF-2HC8>) (last visited Oct. 21, 2019).

what they have learned from popular discourse in their communities, in the media, and from advocacy groups.

D. SB 168 Makes Florida Communities Less Safe by Chilling the Reporting of Abuse

The harmful effects of local law enforcement's entanglement with ICE in Florida were visible even prior to the enactment of SB 168. Take, for example, an April 2018 domestic violence incident involving a Guatemalan minor in Gainesville.⁴⁶ A spokesperson for the Gainesville Police Department (GPD) publicly reported the victim's address and declared that "we have clear evidence to believe that they are illegal" and that "we will report them to ICE."⁴⁷ The victim and witnesses disappeared several days later, making an effective investigation and prosecution all but impossible.⁴⁸

Robin Lewy, Director of Programming at the Florida-based Rural Women's Health Project (RWHP), believes that this incident and several others in the Gainesville area have alienated RWHP clients from local police. She states: "Collaborators of the North Central Florida Social Service/Hispanic Alliance, of which I am a founder, have documented that victims are expressing fear of reporting abuse to authorities for fear of being asked about status. Additionally, they have reports that abusers are threatening their victims and pledging to call the police with phony charges, because they believe that under SB 168 the undocumented victim can suffer immediate transfer to ICE."⁴⁹

These examples illustrate how anti-immigrant rhetoric and ICE's entanglement with local law enforcement not only jeopardize individual safety, but also the safety of Florida communities more generally. Fostering trust between the police and immigrants is essential to ensuring community safety. Indeed, one study found that there are, on average, 35.5 fewer crimes committed per 10,000 people in counties that limit local participation in immigration enforcement compared to counties that do not.⁵⁰

For these reasons, national, state, and local policing groups have opposed measures that penalize jurisdictions that restrict local participation in

⁴⁶ *GPD Changing Unclear Policy About Reporting Foreign Nationals*, 20 WCJB, (Apr. 3, 2018), <https://www.wcjb.com/content/news/GPD-Changing-Unclear-Policy-About-Reporting-Foreign-Nationals-478699083.html>, archived at <https://perma.cc/5JZJ-GAC3>.

⁴⁷ Daniel Smithson, *Rescued from Abuse, Victim Now Faces ICE*, The Gainesville Sun, (Apr. 3, 2018), <https://www.gainesville.com/news/20180402/rescued-from-abuse-victim-now-faces-ice>, archived at <https://perma.cc/TAC9-Y53H>.

⁴⁸ *Id.*

⁴⁹ Telephone Interview with Robin Lewy, Director of Programming, Rural Women's Health Project (Sept. 27, 2019).

⁵⁰ Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>, archived at <https://perma.cc/3VP5-CTT2>.

immigration enforcement.⁵¹ Prominent Florida law enforcement officials and elected officials have voiced opposition to state laws that force police officers to enforce immigration laws, because, *inter alia*, doing so discourages immigrants from reporting other crimes, including domestic and sexual violence. In a radio interview, City of Miami Police Chief Jorge Colina sharply criticized SB 168, insisting that police officers should not be tasked with deporting people.⁵² And Miami-Dade County Mayor Carlos Gimenez stated that he would travel to Tallahassee to lobby against SB 168 because “I’m against our Miami-Dade Police officers becoming immigration officials.”⁵³

As in Florida, law enforcement officials in Texas have voiced their opposition to anti-immigrant laws. In an April *Dallas Morning News* editorial, for example, the Dallas, Houston, Austin, Arlington, Fort Worth, and San Antonio chiefs of police, along with the executive director of the Texas Police Chiefs Association, opined that SB 4 would “further strain the relationship between local law enforcement and . . . diverse communities,” and that “[s]uch a divide between the local police and immigrant groups will result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing crime.”⁵⁴

While police groups have expressed concerns about the chilling effect of anti-immigrant laws on all victims of crime, the effect of these laws is especially troubling in the context of domestic violence, given that immigrant women and LGBTQ individuals face increased vulnerability to gender-based violence and that intimate-partner violence often escalates over time.⁵⁵ As Chuck Wexler, executive director of the Police Executive Research Fo-

⁵¹ See *Letter from the Major County Sheriffs’ Association and Major City Chiefs Association Opposing S. 2146* (Oct. 20, 2015), <http://www.aila.org/infonet/letter-county-sheriffs-opposing-s-2146>, archived at <https://perma.cc/FYN5-E82N>; see also Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs*, N.Y. Times (Feb. 22, 2017), https://www.nytimes.com/2017/02/22/nyregion/police-fear-trump-immigration-orders-may-handcuff-effort-to-fight-gangs.html?_r=0, archived at <https://perma.cc/GZ77-HL4A> (quoting a statement by the International Association of Chiefs of Police); see also Noble, *Donald Trump, police union at odds over ‘sanctuary cities’ funding*, Wash. Times (Nov. 22, 2016), <http://www.washingtontimes.com/news/2016/nov/22/donald-trump-national-fraternal-order-of-police-at/>, archived at <https://perma.cc/MY9L-542W> (citing National Fraternal Order of Police Former Executive Director James Pasco).

⁵² Jerry Iannelli, *Miami Police Chief Slams Florida’s Anti-Sanctuary City Bill in Radio Interview*, Miami New Times (Mar. 22, 2019), <https://www.miaminewtimes.com/news/miami-police-chief-jorge-colina-slams-florida-anti-sanctuary-city-bill-sb-168-11127176>, archived at <https://perma.cc/5CD6-2Y8Y>.

⁵³ *Id.*

⁵⁴ Pughes & Acevedo, *Texas police chiefs: Do not burden local officers with federal immigration enforcement*, Dallas Morning News (Apr. 28, 2017), <https://www.dallasnews.com/opinion/commentary/2017/04/28/texas-police-chiefs-burden-local-officers-federal-immigration-enforcement>, archived at <https://perma.cc/3QKT-9FJ8>.

⁵⁵ See Runner, *supra* note 17; *Domestic violence against women: Recognize patterns, seek help*, Mayo Clinic (Mar. 1, 2017), <http://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397>, archived at <https://perma.cc/Q9TF-5CQ9> (noting that “[domestic] abuse often starts subtly and gets worse over time”).

rum, recently explained, “[t]he reason police chiefs are so concerned [about anti-immigrant laws] is that an unreported domestic violence case can become a reported homicide if police are not alerted.”⁵⁶

The link between domestic violence and homicide is unmistakable. A report by Everytown for Gun Safety found that in at least 54 percent of mass shootings between 2009 and 2018, the perpetrator shot a former intimate partner or family member during the rampage, and that “[o]f the 309 children and teens killed in all mass shootings in the past 10 years, nearly three in four (72 percent) died in an incident connected to intimate partner or family violence.”⁵⁷ Additionally, over half of female victims of intimate partner violence are killed by a gun,⁵⁸ and on average, every month around 52 women are killed by an intimate partner in the United States.⁵⁹ The National Institute of Justice has found that domestic violence-related police calls constitute one of the largest categories of calls received by police, accounting for 15 to more than 50 percent.⁶⁰ This means that responding to domestic violence calls should be viewed as a public safety priority by law enforcement.

Communities of color and immigrant communities that have historically been mistrustful of the police are especially vulnerable to the harmful effects of GBV in an anti-immigrant environment.⁶¹ In the 2015 *Responses from the Field: Sexual Assault, Domestic Violence, and Policing Report* conducted by the ACLU, CUNY School of Law, and the University of Miami School of Law, more than 900 advocates, service providers, and attorneys, shared their responses to a nationwide survey concerning sexual assault and policing that was conducted from April 2015 to May 2015. According to the

⁵⁶ Bever, *supra* note 36.

⁵⁷ Everytown for Gun Safety, *Mass Shootings in America 2009-2019* (Nov. 21, 2019), <https://everytownresearch.org/massshootingsreports/mass-shootings-in-america-2009-2019/>, archived at <https://perma.cc/EM8M-ZCLY>.

⁵⁸ Everytown for Gun Safety, *Guns and Violence Against Women: America’s Uniquely Lethal Intimate Violence Partner Problem*, (Oct. 17, 2019) <https://everytownresearch.org/reports/guns-intimate-partner-violence/>, archived at <https://perma.cc/4B7T-LF62>.

⁵⁹ *Id.*

⁶⁰ U.S. Department of Justice, Office of Justice Programs, *National Institute of Justice Special Report Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors, and Judges* (2009) available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>, archived at <https://perma.cc/VW4H-B6ZB>.

⁶¹ Emiko Petrosky, MD, et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner—Violence United States, 2003-2014*, Center for Disease Control and Prevention, (July 21, 2017) <https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm>, archived at <https://perma.cc/N5D3-PTWU> (finding communities of color have some of the highest rates of intimate partner violence. “Non-Hispanic black and American Indian/Alaska Native women experienced the highest rates of homicide (4.4 and 4.3 per 100,000 population, respectively). Over half of all homicides (55.3%) were IPV-related.”). See generally *In the Line of Fire Human Rights and the Gun Violence Crisis*, Amnesty International (2019), https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf, archived at <https://perma.cc/3D4N-E9AC>. See also *Responses from the Field: Sexual Assault, Domestic Violence and Policing* ACLU, CUNY School of Law, and University of Miami School of Law (Oct. 2015) https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf, archived at <https://perma.cc/C56R-4ZDN>.

report, “over 80 percent of the respondents believed that police-community relations influenced marginalized victims’ willingness to call the police.”⁶² Additionally, 54 percent of the respondents believed that police were biased against immigrants and 69 percent of the respondents believed that the police held bias against women.⁶³

In 2015, the U.S. Department of Justice (DOJ) addressed some of these issues when it released guidance to the 18,000 police departments across the United States entitled *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (“DOJ Guidance”).⁶⁴ It advances trauma-informed and victim-centered approaches in police response to domestic violence and sexual assault, and lays out eight key principles for law enforcement agencies to integrate into trainings, protocols, and practices, to reduce potential gender bias in policing, keep victims safe, and hold offenders accountable. The guidance cautions against misclassifying victims as offenders, a common result of bias.⁶⁵ It also notes that “[t]he intersection of racial and gender stereotypes and biases can also pose unique difficulties for women and LGBT individuals of color seeking police services to address sexual assault and domestic violence incidents.”⁶⁶ The guidance specifically references immigrant victims and instructs law enforcement agencies to develop policies and procedures about U visas for crime victims.⁶⁷ Laws such as SB 168 run precisely counter to the federal

⁶² Responses from the Field: Sexual Assault, Domestic Violence and Policing ACLU, CUNY School of Law, and University of Miami School of Law (Oct. 2015). https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf, archived at <https://perma.cc/NS3T-5AKB>.

⁶³ *Id.*

⁶⁴ The United States Department of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2015), page 4; *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, DEP’T OF JUST., <https://www.justice.gov/opa/file/799366/download>, archived at <https://perma.cc/RJF6-WBUT> (last visited Oct. 21, 2019). The eight principles it articulates are:

1. Recognize and address biases, assumptions and stereotypes about victims;
2. Treat all victims with respect and employ interviewing tactics that encourage a victim to participate and provide facts about the incident;
3. Investigate sexual assault or domestic violence complaints thoroughly and effectively;
4. Appropriately classify reports of sexual assault or domestic violence;
5. Refer victims to appropriate services;
6. Properly identify the assailant in domestic violence incidents;
7. Hold officers who commit sexual assault or domestic violence accountable;
8. Maintain, review and act upon data regarding sexual assault and domestic violence.

⁶⁵ For instance, a Washington state court manual notes that law enforcement officers often do not investigate survivors’ claims thoroughly, or arrest the survivor along with the abuser due to false reporting or counter-charges. See Legal Voice Violence Against Women Workgroup, *Abusive Litigation and Domestic Violence Survivors (DV Manual for Judges 2015)*, Appendix H, Washington State Administrative Office of the Courts (2015), <https://www.courts.wa.gov/content/manuals/domViol/appendixH.pdf>, archived at <https://perma.cc/7B94-J25P>.

⁶⁶ Guidance at 7.

⁶⁷ *Id.*

procedures outlined in the DOJ guidance, and instead will further traumatize GBV victims.

Anti-immigrant laws like SB 168 can reinforce marginalized communities' preexisting mistrust of the police and lead to deportation or other serious immigration consequences. These laws also deter victims of gender-based violence from reporting their abuse, which in turn jeopardizes the safety of the entire community.

E. SB 168 Violates International Human Rights Law, to which the United States and the State of Florida Are Bound

When laws such as SB 168 chill the reporting of abuse and create fear for victims, they run afoul of the international human rights obligations of the United States and the state of Florida. Under several international human rights instruments and treaties to which the United States is a party, the government—in its national, state, and local capacities—has a responsibility to protect the rights to life, liberty, and security of person of *all* individuals within its territory, no matter their immigration status.⁶⁸ Article 3 of the UDHR and Article 1 of the ADRDM recognize these fundamental rights, and they are also reflected in two treaties the United States has ratified: the ICCPR (Arts. 6, 9), and ICERD (Art. 5(b)).⁶⁹ The Inter-American Commission on Human Rights and the United Nations Human Rights Committee have underscored the importance of the right to life in the context of domestic violence in the United States, and emphasized the responsibility of state actors (including law enforcement) to exercise due diligence to protect and provide redress for domestic violence victims and their children, to prevent GBV, and to prosecute and punish perpetrators.⁷⁰

⁶⁸ See also Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”) Art. 7, June 9, 1994 (stating that freedom from violence and fear of violence is essential to the enjoyment of all human rights and that States have an obligation to refrain from committing acts of violence against women).

⁶⁹ See UDHR Art. 3 (“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”, see also ADRDM Art. 1 “Every human being has the right to life, liberty and the security of his person”; ICCPR Art. 6 (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”); ICCPR Art. 9 (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”); ICERD Art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”).

⁷⁰ *Jessica Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, 115-21 (2011) (finding that the state’s failure to act with due diligence to protect a domestic violence victim and her children violated their rights to life, equal protection/non-discrimination, due process, and special protections); UN Human Rights Committee (HRC),

Additionally, the United Nations Committee Against Torture (CAT Committee) has found GBV to be a form of torture or cruel and inhuman treatment under the CAT treaty (which the United States has also ratified), under certain circumstances. In General Comment 2, the CAT Committee noted that “where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts”—including acts of “gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”⁷¹ The prohibition against torture is also contained in Article 7 of the ICCPR.⁷²

Moreover, the rights to equality and non-discrimination on any ground, including sex, race, color, language, national or social origin, political or other opinion, and other status, are protected under the United States’ international human rights obligations, including ICCPR Art. 26 and ICERD Art. 5. Additionally, the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) has found that “violence against women [is] a form and manifestation of gender-based discrimination, used to subordinate and oppress women.”⁷³

Concluding observations on the fourth periodic report of the United States of America, ¶ 16, UN Doc. CCPR/C/USA/CO/4, <https://www.refworld.org/docid/5374afcd4.html>, archived at <https://perma.cc/GQ4P-CPTP> (23 April 2014); see also Julie Goldscheid and Debra Liebowitz, *DUE DILIGENCE AND GENDER VIOLENCE: PARSING ITS POWER AND PERILS* (2015) 302 (noting the due diligence obligation includes the obligation of the state “to prevent gender violence, to prosecute and punish perpetrators, and to protect and provide redress for its victims”).

⁷¹ UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by State Parties, Jan. 24, 2008 CAT/C/GC/2, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskevE%2BTuw1mw%2FKU18dCyrYrZhDDP8yaSRi%2Fv43pYTgmQ5n7dAGFdDalfzYTJnWNYOXxeLRAIVgbwcSm2ZXH%2BcD%2B%2F6IT0pc7BkgqlATQUZPVhi>, archived at <https://perma.cc/FJV7-G6K9>; see also Interim Report of the Special Rapporteur on Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment at para. 84, United Nations General Assembly (July 12, 2019) (finding that domestic violence could amount to torture or cruel, inhuman or degrading treatment or punishment).

⁷² See, e.g., ICCPR Art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”).

⁷³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 19 ¶ 11, 1992, CEDAW/C/GR/19; see also UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 ¶ 24 CEDAW/C/GR/25 (“The frequent failures of authorities to act with due diligence to investigate, prosecute and punish perpetrators can stem from a plethora of reasons, ranging from institutionalized discriminatory practices, to political and societal condonation of such discriminatory practices.”). Notably, the United States has not ratified CEDAW, but as a signatory, it is obligated not to take actions that would violate the overall spirit and purpose of the treaty; see also *Lenahan (Gonzales) v. United States of America*, Case 12.626, Inter-Am. Comm’n. H.R., Report No. 80/11, ¶ 112-113 (2011) (“[T]he international and regional systems have pronounced on the strong link between discrimination, violence and due diligence, emphasize-

The rights to equality and non-discrimination are especially important in the context of immigrant women and LGBTQ individuals. Article 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Covention of Belém do Pará) states that “States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons.” Additionally, in General Recommendation 25, the CERD Committee underscored the importance of addressing “certain forms of racial discrimination [that] may be directed towards women specifically because of their gender . . .” and created a requirement that states report on the “factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention.”⁷⁴ The CERD Committee has specifically focused on discrimination at the intersection of race and gender in the United States. In the 2014 *Concluding Observations* on the United States, the CERD Committee noted concern about “the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence.”⁷⁵

Finally, immigrant victims of gender-based violence are denied the right to an effective remedy under Art. 2(3) of the ICCPR and Art. 6 of ICERD when they are forced to make the impossible choice between reporting their abuse and staying silent. The United Nations Human Rights Committee has expressed particular concern “that domestic violence victims [in the United States] face obstacles to obtain remedies, and that law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence and often inadequately respond to such cases.”⁷⁶ In the context of immigrant women and other minorities, the CERD Committee has exhorted the United States to “ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate reme-

ing that a State’s failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law.”).

⁷⁴ Committee on the Elimination of Racial Discrimination, General Comment 25: Gender Related Dimensions of Racial Discrimination, U.N. Doc. A/55/18 (Mar. 20, 2000).

⁷⁵ See Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined 7th to 9th Periodic Reports of the United States of America: Committee on the Elimination of Racial Discrimination*, ¶ 19, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014); see also *González (“Cotton Field”) v. Mexico* Preliminary Objection, Merits Reparations, and Costs, Judgment Inter-Am. Ct. H.R. (ser.C), No. 205 ¶ 403 (November 16, 2009) (reaffirming the principle that states must take special measures to safeguard marginalized groups of women).

⁷⁶ See UN Human Rights Committee (HRC), *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 16, UN Doc. CCPR/C/USA/CO/4, (23 April 2014).

dies.”⁷⁷ SB 168 will accomplish just the opposite, making it more likely that immigrant victims will remain silent and choose not to pursue avenues of protection that have previously been available to them.

More generally, international human rights bodies have found that anti-immigrant laws and practices run afoul of the United States’ human rights commitments and are an affront to basic human dignity.⁷⁸ For instance, the CERD Committee in 2014 expressed concern with the “increasingly militarized approach to immigration law enforcement . . . [and the] increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws.”⁷⁹ Recently, the Inter-American Commission on Human Rights (IACHR) held a hearing in which it considered how disturbing “easy access to firearms fuels domestic violence, urban violence, and mass shootings” which disproportionately affects women, children, and adolescents⁸⁰—an issue that Amnesty International has documented in a recent report.⁸¹ While international human rights law clearly speaks to the human rights violations that SB 168 and other anti-immigrant laws impose against immigrant GBV victims, this is an area that could benefit from additional future developments by international human rights bodies.

III. ANTI-IMMIGRANT LAWS MAKE IT MORE LIKELY THAT GBV VICTIMS WILL BE DETAINED AND SEPARATED FROM THEIR FAMILIES, EXACERBATING THEIR TRAUMA

Many immigrant GBV victims in the United States fled their home countries after experiencing horrific domestic and sexual violence, only to

⁷⁷ See Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined 7th to 9th periodic reports of the United States of America: Committee on the Elimination of Racial Discrimination*, ¶ 8, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014).

⁷⁸ See generally Universal Declaration of Human Rights, G.A. Res. 217A U.N. GAOR, 3rd Session, U.N. Doc. A/810 (Dec. 12, 1948); see also UN General Assembly, International Covenant on Civil and Political Rights Art. 7, Dec. 16, 1966, United Nations Treaty Series, vol. 999.

⁷⁹ See Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined 7th to 9th periodic reports of the United States of America: Committee on the Elimination of Racial Discrimination*, ¶ 18, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

⁸⁰ Press Release, Inter-American Commission on Human Rights, IACHR Completes 174th Period of Sessions, (Nov. 20, 2019), http://www.oas.org/en/iachr/media_center/PReleases/2019/301.asp, archived at <https://perma.cc/JET7-6EYA> (expressing additional concern over America’s lack of effective gun control federal and state legislation to prevent the mass shootings—such as the El Paso, Texas and the Dayton, Ohio shootings—and practices that can disrupt abusers’ access to guns).

⁸¹ Amnesty International, *Inter-American Commission on Human Rights Will Examine Gun Violence in the U.S.*, (Nov. 4, 2019), <https://www.amnestyusa.org/press-releases/inter-american-commission-on-human-rights-will-examine-gun-violence-in-the-u-s/>, archived at <https://perma.cc/WLST-ABVN> (participating in the IACHR hearing focused on survivors of gun violence in America, which included those affected by domestic violence based of Amnesty International’s report).

experience it again in this country.⁸² SB 168 will increase the likelihood that these victims are detained in local jails or immigration detention centers with poor mental health and medical treatment conditions, further exacerbating their trauma. Additionally, victims risk enduring new trauma due to sexual abuse by prison guards and officials within detention centers, which occurs not infrequently. Lastly, separating immigrant GBV victims from their families, and especially children, can have a particularly devastating impact on everyone involved. Ultimately, immigration detention and family separation will result in fundamental violations of many immigrant victims' human rights and dignity.

A. *Immigrant Detention Centers Exacerbate GBV Victims' Trauma*

Immigrant GBV victims who are picked up by law enforcement and transferred to ICE custody will likely be placed in detention centers while they wait to have their case heard, or wait to be deported from the country. This will exacerbate the trauma they have already experienced. Medical treatment in immigrant detention facilities—which can take the form of federal immigrant detention centers, county jails, or private detention facilities—is often delayed or denied, and some detainees are held in isolation without receiving any medical attention.⁸³ Several reports have focused on these abuses in facilities in Florida,⁸⁴ though it is important to note that many immigrants arrested in Florida will be transferred by ICE to facilities in Georgia (which have notoriously poor medical care and safety problems) and other states.

Trauma from gender-based violence increases the risk for mental health diagnoses in survivors.⁸⁵ Intimate partner violence, for instance, is correlated with many mental health conditions, such as depression and PTSD.⁸⁶ It

⁸² Amnesty International, *Fleeing For Our Lives: Central American Migrant Crisis*, <https://www.amnestyusa.org/fleeing-for-our-lives-central-american-migrant-crisis/>, archived at <https://perma.cc/K8FU-SJ9K>; see also ACLU, *I Came to the U.S. Fleeing Horrific Abuse in My Home Country. Jeff Sessions Wants to Send People Like Me Back*, <https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/i-came-us-fleeing-horrific-abuse-my-home-country>, archived at <https://perma.cc/LE5L-73ZW>.

⁸³ Geneva Sands, *Lawsuit alleges poor medical and mental healthcare in ICE Detention Facilities*, CNN (August 19, 2019), <https://www.cnn.com/2019/08/19/politics/class-action-lawsuit-ice-detention-facilities/index.html>, archived at <https://perma.cc/L979-JZ6Y> (reflecting how medical treatment in immigration detention facilities is often delayed or denied, and some are held in isolation without receiving any medical attention).

⁸⁴ Ana Ceballos, *Florida Investigated Sexual Abuse Claims at the Homestead Migrant Detention Camp*, Orlando Weekly, (Mar. 20, 2019), <https://www.orlandoweekly.com/Blogs/archives/2019/03/20/florida-investigating-sexual-abuse-claims-at-the-homestead-child-migrant-detention-camp>, archived at <https://perma.cc/JHA7-MZKU>; see also *How You Can Help Migrant Children*, Women's Refugee Commission, <https://www.womensrefugeecommission.org/blumber/2159-the-tragic-cost-of-home-detention-sexual-abuse-and-assault>, archived at <https://perma.cc/9G8V-53V2>.

⁸⁵ *Gender-based violence in health emergencies*, Health Cluster at World Health Organization, (2018), <https://www.who.int/health-cluster/about/work/task-teams/genderbasedviolence/en/>, archived at <https://perma.cc/9RXH-V3HD>.

⁸⁶ *Id.*

is therefore critical that GBV victims have access to adequate mental health treatment to address past trauma. UN Women has underscored that mental health services are one of the six essential categories of services for addressing the needs of victims,⁸⁷ and that providers must be adequately trained to ensure that the victims with whom they interact can face their trauma and “have a chance to rewrite their stories.”⁸⁸

Immigrant detention centers in the U.S. operate contrary to these trauma-informed principles. These centers are notorious for insufficient mental health services and the use of practices such as solitary confinement,⁸⁹ which one government official recently disclosed is sometimes the “only approach” used for immigrant detainees with mental illness.⁹⁰ Detention itself is detrimental to victims’ mental health, but these practices only make the experience worse.⁹¹ ICE has specifically been identified as failing to respond appropriately to detained individuals with severe mental illnesses.⁹² In addition, psychologists are not readily available or may have contact with detainees for too short a time period to have a significant impact.⁹³

Abuse of GBV victims in immigrant detention centers and in the custody of ICE is also a grave concern. Human Rights Watch has documented rampant abuse and sexual harassment of detainees in U.S. immigrant detention facilities.⁹⁴ Specifically, Human Rights Watch found that in Florida, immigrant detainees experienced rape and sexual assault in facilities and

⁸⁷ *Listen, believe, support: the power of mental health care for survivors of violence*, UN Women, <https://www.unwomen.org/en/news/stories/2019/3/feature-story-mental-health-care>, archived at <https://perma.cc/6NF8-ADXG>.

⁸⁸ *Id.*

⁸⁹ Sarah Varney, *ICE Detainees Face Severe Shortage of Medical and Mental Health Care*, Truth Out (Apr. 15, 2019), <https://truthout.org/articles/ice-detainees-face-severe-shortage-of-medical-and-mental-health-care/>, archived at <https://perma.cc/ZS94-CHY3>.

⁹⁰ Hannah Rapple, et. al., *Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers*, NBC News, (May 21, 2019), <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>, archived at <https://perma.cc/8TVJ-YBAQ> (an investigative report finding that thousands of immigrants in detention have been placed in solitary confinement); see also Jessica Lipscomb, *New Report Sheds Light on Immigrants Held in Solitary at Krome Processing Center*, Miami New Times, (May 22, 2019), <https://www.miaminewtimes.com/news/solitary-confinement-practices-exposed-at-miami-dades-ice-facility-the-krome-processing-center-11178560>, archived at <https://perma.cc/YP5J-WXUM>.

⁹¹ See von Werthern, et. al., *The Impact of Immigration Detention on Mental Health: A Systematic Review*, BMC Psychiatry, (2018), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>, archived at <https://perma.cc/J5SU-FXGG>.

⁹² Renuka Rayasam, *Migrant Mental Health Crisis Spirals in ICE Detention Facilities*, Politico (July 21, 2019), <https://www.politico.com/story/2019/07/21/migrant-health-detention-border-camps-1424114>, archived at <https://perma.cc/7P9H-R44N>.

⁹³ Sarah Varney, *ICE Detainees Face Severe Shortage of Medical and Mental Health Care*, Truth Out (Apr. 15, 2019), <https://truthout.org/articles/ice-detainees-face-severe-shortage-of-medical-and-mental-health-care/>, archived at <https://perma.cc/5KRM-WMSZ>.

⁹⁴ *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detentions*, Human Rights Watch (Aug. 25, 2010), <https://www.hrw.org/report/2010/08/25/detained-and-risk/sexual-abuse-and-harassment-united-states-immigration-detention>, archived at <https://perma.cc/J44U-NV8C>.

during transport.⁹⁵ The authors believe these cases are just the tip of the iceberg, since many instances of sexual abuse and harassment go unreported due to victims' fear and ineffective reporting systems. A Human Rights Watch report, in 2018, details how an ICE agent transporting a female detainee between two Florida detention facilities drove her to his home and raped her. "I was scared for my life," the woman said. "He had a gun. He's a big man, and I was in his custody. I expected him to protect me, not to take advantage of me."⁹⁶ Moreover, a recent ACLU report has also documented abuse committed in these centers by government officers.⁹⁷ The report details the mistreatment of pregnant women, force feeding of detainees who have protested negative treatment, and even deaths that have occurred in ICE detention centers.⁹⁸ It also emphasizes that the problems are not isolated and that conditions are so poor they have been constitutionally challenged in court.⁹⁹

By subjecting immigrant GBV victims to detention conditions that fail to meet their health needs and that in many cases may lead to new forms of direct physical and sexual abuse, the state of Florida violates international human rights law standards to which it is bound. First, as discussed *supra*, the United States has an obligation to protect the rights to life, liberty, and security of person under the UDHR (Art. 3), the ICCPR (Arts. 6, 9), and ICERD (Art. 5(b)).¹⁰⁰ Additionally, as described *supra*, immigrant GBV victims are entitled to special protections under international human rights law. Article 7 of the American Declaration on the Rights and Duties of Man contains special protections for vulnerable groups, which the Inter-American Commission of Human Rights has interpreted to include victims of gender-based violence.¹⁰¹ Moreover, under several treaties to which the United States is party, such as ICCPR (Art. 7) and CAT (Art. 1), the government must ensure that all people are not subjected to torture or cruel and inhuman treatment, including within detention centers.¹⁰²

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Victoria Lopez and Sandra Park, *Rampant Abuses in Immigration Detention Prove ICE Is Rotten to the Core*, ACLU (Mar. 1, 2019), <https://www.aclu.org/blog/prisoners-rights/rampant-abuses-immigration-detention-prove-ice-rotten-core>, archived at <https://perma.cc/Q8RS-6TUE>; see also Victoria Lopez and Sandra Park, *ICE Detention Center Says It's Not Responsible for Staff's Sexual Abuse of Detainees*, ACLU (Nov. 6, 2018), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/ice-detention-center-says-its-not-responsible>, archived at <https://perma.cc/6MP9-3GVZ>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See UDHR, *supra* at note 69.

¹⁰¹ *Lenahan (Gonzales) v. United States of America*, Case 12.626, Inter-Am. Comm'n. H.R., Report No. 80/11, ¶ 121 (2011).

¹⁰² See ICCPR Art. 7, *supra* at note 72; see also CAT Art. 1 ("For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or

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Additionally, CAT General Comment 2, described *supra*, states that all persons deprived of their liberty must enjoy

the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.¹⁰³

When immigrant GBV victims are denied adequate medical and mental health care and other information and services detailed in General Comment 2, the government may be responsible for torture, cruel, and or inhuman treatment. The right to be free from torture and cruel and inhuman treatment has also been recognized by the Inter-American Court. In *Castro-Castro v. Peru*—which concerned women who were abused by prison guards—the court determined that sexual abuse by officers was a form of cruel treatment, and it ordered the state to provide all victims and their next of kin with free medical and psychological treatment.¹⁰⁴

Lastly, the United States may also violate CAT Art. 3 (the obligation of *non-refoulement*, or returning asylum seekers or refugees to a country where a person has reason to fear persecution) when it deports immigrant GBV victims. Art. 3 prohibits a State from returning a person to another State “where there are substantial grounds for believing that he would be in danger.”¹⁰⁵ This is further emphasized in a 2019 United Nations report concerning the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment to the context of domestic violence, which states that “under no circumstances should States expel persons to places where there are substantial grounds for believing that they would be in danger of domestic violence amounting to torture or cruel, inhuman or degrading treatment or punishment.”¹⁰⁶

When immigrant GBV victims are held in detention centers, their freedom is restricted, and their security of person is threatened due to significant risks of abuse by personnel. Moreover, the lack of mental health treatment exacerbates these victims’ previous trauma. These violations ultimately may

other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”).

¹⁰³ See CAT Gen. Cmnt., *supra* note 71.

¹⁰⁴ *Castro Castro v. Peru*, Merits, reparations and costs, IACHR Series C No 160, 25th November 2006, Inter-American Court of Human Rights [IACtHR].

¹⁰⁵ See CAT, art. 3 (“No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”).

¹⁰⁶ *Interim Report of the Special Rapporteur on Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment* at para. 84, United Nations General Assembly (July 12, 2019), <https://undocs.org/en/A/74/148>, archived at <https://perma.cc/VQE5-L929>.

result in a violation of the right to be free from torture and cruel and inhuman treatment. Lastly, returning immigrant GBV victims to their home countries if they are at risk of continued abuse violates the United States' obligation of *non-refoulement*.

B. SB 168 Will Separate Families and Result in Children Being Left with Their Abusers or Placed in the Foster Care System

When immigrant GBV victims are deported or detained as a result of SB 168, this may also lead to family separation. In this scenario, the children of GBV victims may be left in the hands of abusive spouses or intimate partners, who are statistically more likely to be abusive to their children, or placed in the foster care system.¹⁰⁷ This places children at risk and retraumatizes GBV victims.

Besides the risks associated with leaving their children with their abusers, GBV victims may have legitimate fears that their children will be detained or deported through collateral arrests.¹⁰⁸ This could lead to them and their children being sent back (whether together or separately) to the place that they fled because of previous, separate incidents of abuse or other dangers.

Additionally, immigrant GBV victims risk leaving their U.S. citizen children behind if their parents are deported or detained and no adult remains in the United States to watch over the children. For children who may have also experienced trauma or witnessed domestic violence by one parent (usually the father) against another (usually the mother), being placed in foster care could be particularly harmful.¹⁰⁹ This harm is not easily reversible and could leave a lasting impact on these families. Supporting families after separation is a multi-faceted approach that requires a significant amount of time and skilled professional intervention.¹¹⁰

When immigrant GBV victims are separated from their children and families, the United States and the state of Florida may be responsible for violations of the right to family under ICCPR Art. 23.¹¹¹ Additionally, the rights to special protection for children and other vulnerable groups (includ-

¹⁰⁷ *Effects of Domestic Violence on Children*, Office of Women's Health, (Apr. 2, 2019), <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children>, archived at <https://perma.cc/K5QS-2QLR>.

¹⁰⁸ Andrea Castillo, *Collateral Arrests by ICE Amount to Racial Profiling, Violate Immigrant's Rights, Lawyers Say*, LA Times, (Feb. 4, 2018), <https://www.latimes.com/local/lanow/la-me-ice-collateral-arrests-20180204-story.html>, archived at <https://perma.cc/XUH8-TQMV>.

¹⁰⁹ *Domestic Violence and the Child Welfare System*, Child Welfare Information Gateway, (Oct. 2014), <https://www.childwelfare.gov/pubPDFs/domestic-violence.pdf#page=1&view=Introduction>, archived at <https://perma.cc/XUH8-TQMV>.

¹¹⁰ *APHA Opposes Separation of Immigrant and Refugee Children and Families at U.S. Borders*, American Public Health Association (Nov. 13, 2018), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/separation-of-immigrant-and-refugee-children-and-families>, archived at <https://perma.cc/Y6WJ-MSGF>.

¹¹¹ See, e.g., ICCPR Art. 23 ("the family is the natural and fundamental group unit of society and is entitled to protection by society and the State").

ing GBV victims), as described *supra*, are violated.¹¹² When families are separated—putting both mothers at risk in detention and children at risk at home or in foster care—the United States fails to provide the special protections that GBV victims and their children are guaranteed under international human rights law.

IV. CONCLUSION

Like other anti-immigrant state laws in the United States, SB 168 will put GBV survivors, families, and communities at risk and violate international human rights norms. It will make GBV survivors even more fearful of contacting the police, which in turn will jeopardize overall public safety. The exceptions in SB 168 fall exceedingly short of providing the robust protections that international human rights law demands.

To be sure, international human rights bodies can and should go even further in outlining intersectional protections for immigrant GBV victims and other vulnerable populations, especially in the midst of these anti-immigrant times that characterize the United States and many other countries in the world at this moment. One area that is ripe for additional jurisprudence is the way in which individual-level human rights violations can result in harms to a community that rise to the level of group-based human rights violations. It would behoove the United Nations Human Rights Council to further explore these issues during the forthcoming Universal Periodic Review of the United States in May 2020.

Local, state, and federal government officials also have a critical role to play at this time, when many outspoken voices are espousing hate toward the most marginalized groups in the United States. State lawmakers must serve as watchdogs to prevent anti-immigrant laws like SB 168 from emerging, and repeal any such laws that are on the books. Law enforcement leaders and elected officials should continue to use their platforms to speak out against SB 168 and other anti-immigrant laws that place the lives of GBV victims at risk. On the national front, the U.S. Senate should reauthorize a robust version of VAWA (such as Senator Feinstein's), which provides stronger protections than ever before on the immigration and firearms fronts, amongst other areas.

Such measures would send a message to all survivors of domestic violence that they are welcome in our state and our country, and that we are committed to creating a safety net for them — regardless of their immigration status.

¹¹² See, e.g., ICCPR Art. 24 (“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”); ADRDM Art VII (“All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”). While this brief focuses on the effects of SB 168 on immigrant women who are GBV survivors, the obligation to protect the child is no doubt violated by the practice of family separation as well.