

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 19-cv-22927-BLOOM/Louis**

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CITY OF SOUTH MIAMI, et al., Plaintiffs,

v.

RON DESANTIS, et al.,

Defendants.

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**BRIEF OF  
RURAL WOMEN'S HEALTH PROJECT, THE FLORIDA COUNCIL AGAINST  
SEXUAL VIOLENCE, M.U.J.E.R., TAHIRIH JUSTICE CENTER, LOS ANGELES  
CENTER FOR LAW AND JUSTICE, OXFAM AMERICA, THE CENTER FOR GENDER  
& REFUGEE STUDIES, UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS  
CLINIC, HUMAN RIGHTS WATCH, AND FLORIDA LEGAL SERVICES,**

**AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS**

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## **BRIEF OF AMICI CURIAE**<sup>1</sup>

### **INTERESTS OF AMICI**

Amici Curiae Rural Women’s Health Project, the Florida Council Against Sexual Violence, M.U.J.E.R., Tahirih Justice Center, Los Angeles Center for Law and Justice, Oxfam America, The Center for Gender & Refugee Studies, University of Miami School of Law Human Rights Clinic, Human Rights Watch, and Florida Legal Services (“Amici”) are organizations with expertise on domestic violence, sexual assault, human trafficking, and other forms of gender-based violence in immigrant communities. Additional information regarding Amici’s interests and expertise is set out in Appendix A.

### **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.<sup>2</sup> These laws have a devastating effect at the community level and have an especially harmful impact on immigrant women and LGBTQ survivors 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.<sup>3</sup> As described in the Plaintiffs’ complaint, the original version of SB 168 was drafted by the anti-immigrant groups Floridians for Immigration Enforcement (“FLIMEN”) and Federation for American Immigration Reform (“FAIR”).<sup>4</sup> 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 undocumented immigrants—actions over which the federal government has exclusive jurisdiction under the U.S. Constitution and the Immigration and Nationality Act.<sup>5</sup> SB 168 came into force

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<sup>1</sup> Amici wish to acknowledge the significant contributions of University of Miami School of Law Human Rights Clinic law interns Jamila Flomo, Aleeza Shah, and Amanda Suarez to this amicus brief. The arguments contained in this amicus brief are also reflected in Caroline Bettinger-Lopez, Jamila Flomo and Amanda Suarez, *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*, 23 Harvard Latinx Law Review 18 (May 2020).

<sup>2</sup> Catherine Shoichet, *Florida just banned sanctuary cities. At least 11 other states have, too*, CNN (June 14, 2019), archived at <https://perma.cc/2VX2-JFYL>.

<sup>3</sup> *SB 168: Federal Immigration Enforcement*, The Florida Senate, archived at <https://perma.cc/A5GY-HXCR>.

<sup>4</sup> See Complaint, *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927-XXXX (S.D.Fla), ¶ 2.

<sup>5</sup> *SB 168: Federal Immigration Enforcement*, The Florida Senate, [archived at https://perma.cc/LE92-MVYH](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), [archived at https://perma.cc/DTP5-QHLQ](https://perma.cc/DTP5-QHLQ).

in the midst of virulent anti-immigrant rhetoric from the Trump Administration.<sup>6</sup> It will likely result in the deportation of unprecedented numbers of immigrants and will have a devastating effect at the community level—tearing apart families, disrupting labor markets, impacting classrooms, and eroding public trust in law enforcement, which ultimately undermines public safety.

SB 168 is particularly draconian as it applies to GBV survivors in Florida. It traps immigrant survivors 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 discriminatory rhetoric has already caused widespread confusion and panic for survivors across the state, and advocates report that survivors are not coming forward to seek help as before.<sup>7</sup> By chilling the reporting of domestic violence and other crimes, SB 168 jeopardizes not only the well-being of survivors and their families, but also the safety of Florida communities more generally. Moreover, immigrant survivors 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.<sup>8</sup> Finally, SB 168 will foreseeably lead to family separation, which can result in children being left with abusive spouses/intimate partners, who may also be abusive to their children.<sup>9</sup>

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

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<sup>6</sup> Manar Waheed, *Trump Announces Plan to Admit Fewer Refugees Than Any Other President*, ACLU (Sept. 27, 2019), 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), archived at <https://perma.cc/KXU2-8DJ9>.

<sup>7</sup> Telephone Interview with Robin Lewy, Director of Programming, Rural Women’s Health Project (Sept. 27, 2019).

<sup>8</sup> Nora Ellman, *Immigrant Detention is Dangerous for Women’s Health and Rights*, Center for American Progress (Oct. 21, 2019), archived at <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), archived at <https://perma.cc/5QYQ-8X4C>.

<sup>9</sup> 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/> (finding that “between 45% and 70% of children” who are exposed to domestic violence between their parents are also victims of physical abuse).

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.<sup>10</sup>

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.<sup>11</sup> 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 survivors. 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 survivors under the international human rights treaties to which it is a party—the International Covenant on Civil and Political Rights (ICCPR),<sup>12</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>13</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>14</sup>—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).<sup>15</sup> These human rights treaties and instruments protect the rights to life, equality and non-discrimination, equal protection under the law, liberty and security of person, freedom from torture and inhuman or degrading treatment, an effective remedy, and health; the obligation of *non-refoulement*—i.e., not to return immigrants to countries where they will be persecuted; and, the rights of persons deprived of liberty to be treated with humanity and respect. Importantly, international human rights law recognizes that GBV survivors from vulnerable, underserved, or marginalized communities—including immigrant

<sup>10</sup> Tex. Gov't Code § 752.053 (“SB 4”).

<sup>11</sup> Amici's international human rights analysis builds off of the analysis offered to this Court by Amici Human Rights Watch, the Center for Constitutional Rights, and LatinoJustice PRLDEF in *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927 (S.D.Fla) (Dec. 6, 2019).

<sup>12</sup> Int'l 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.

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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.

<sup>14</sup> 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.

<sup>15</sup> 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 Int'l Conference of American States May 2, 1948, OEA/Ser.L./V/II.82 doc. 6 rev. 1 at 17 (1992).

women—may experience discrimination that stems from multiple and intersecting forms of oppression, further exacerbating the substantive human rights violations they experience.<sup>16</sup>

## ARGUMENT

### I. SB 168 harms immigrants and immigrant communities<sup>17</sup>

Immigrant women and LGBTQ individuals are highly vulnerable to gender-based violence.<sup>18</sup> They often face obstacles in seeking protection from abuse that other survivors do not, such as language barriers and lack of familiarity with social services and law enforcement systems.<sup>19</sup> Immigrant survivors may already harbor fear of the police based on past experiences with abusive or hostile law enforcement in their countries of origin.<sup>20</sup> Furthermore, it is commonplace for an abuser to specifically use a survivor's immigration status as a tool for abuse<sup>21</sup>—by threatening to report the survivor to immigration authorities if she/he calls the police,<sup>22</sup> threatening to withdraw an immigration benefits application,<sup>23</sup> or filing

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<sup>16</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35, ¶ 12, July 14, 2017, CEDAW/C/GR/35; Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, art. 9, June 9, 1994.

<sup>17</sup> 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).

<sup>18</sup> 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), archived at <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), archived at <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”).

<sup>19</sup> *Id.* at 11-12.

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., Cora Engelbrecht, N.Y. TIMES, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, archived at <https://perma.cc/VDB2-GTMS>; Hannah Rapple, *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC News, (Sept. 2018), 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, 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), archived at <https://perma.cc/BLL7-UMV8>.

<sup>22</sup> See, e.g., Jason Margolis, PRI's The World, *Some Immigrant Victims of Domestic Abuse Afraid to Seek Help Along Border* (Mar. 20, 2013), 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.’”).

<sup>23</sup> 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, archived at <https://perma.cc/W9FV-QBGX>.

frivolous complaints that may result in serious consequences for survivors.<sup>24</sup> Survivors 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 survivors 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.<sup>25</sup>

By forcing local and state actors to enforce federal immigration policies, SB 168 amplifies this problem. Survivors of domestic violence, sexual assault, and human trafficking will likely be reluctant to come forward and report crimes to law enforcement because they will be afraid of being separated from their family due to detention or deportation. 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 told by their abusers that they are not.

#### **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, those who are perceived to be immigrants, and those living in mixed immigration status households 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.”<sup>26</sup> 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.”<sup>27</sup> By contrast, a new study

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<sup>24</sup> 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, archived at <https://perma.cc/RN5X-FHV8>.

<sup>25</sup> See H.R. Rep. No. 103-395, at 25 (1993).

<sup>26</sup> 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).

<sup>27</sup> Nguyen & Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 Urb. Stud. J. 302, 14 (2015); see also Orde Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 Iowa L. Rev. 1449, 1451 (2006) (“[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.’”).

has found that sanctuary policies reduce domestic violence homicide rates among Hispanic women and that the impact is particularly large in counties with higher immigration enforcement.<sup>28</sup>

Survey results confirm these findings. In June 2019, seven national organizations working with immigrant GBV survivors released the results of a nationwide survey of advocates and attorneys on the fears and concerns of immigrant survivors 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 survivors 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);
- 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.”<sup>29</sup>

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 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:

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<sup>28</sup> Catalina Amuedo-Dorantes and Monica Deza, *Can Sanctuary Policies Reduce Domestic Violence?*, Working Paper 20202.008, The Center for Growth and Opportunity, 2 (May 2020).

<sup>29</sup> Tahirih Justice Center, et al., *May 2019 Findings: Immigrant Survivors Fear Reporting Violence*, archived at <https://perma.cc/T2MH-KUPN>; Tahirih Justice Center et al., *Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, <https://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>; 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).

- approximately 22% of police officers reported that immigrants were less likely in 2017—compared to 2016—to make police reports;
- 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.<sup>30</sup>

An example of this substantiated fear of contact with state authorities comes from an NBC News report of an undocumented domestic violence survivor 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.<sup>31</sup>

In Texas, similar immigration enforcement efforts have had a chilling effect on the reporting of GBV. In February 2017, advocates reported that immigrant survivors 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.<sup>32</sup> 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 expressing fear of contacting law enforcement to report abuse.<sup>33</sup> 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.<sup>34</sup>

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<sup>30</sup> *Freezing out Justice*, ACLU and National Immigration Women’s Advocacy Project (2018), archived at <https://perma.cc/NSE5-HEZ3>.

<sup>31</sup> Hannah Rapple, et. al., *Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers*, NBC News, (May 21, 2019), archived at <https://perma.cc/8TVJ-YBAQ> (explaining that fewer immigrant survivors are seeking legal recourse in the anti-immigrant climate of recent years).

<sup>32</sup> Katie Mettler, *‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse*, Wash. Post (Feb. 16, 2017), 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), archived at <https://perma.cc/6SQH-DLHP> (finding that “[t]he chilling effect on witnesses and victims is already apparent”).

<sup>33</sup> Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. Times (Apr. 30, 2017), archived at <https://perma.cc/3WKB-WWUX>.

<sup>34</sup> Lindsey Bever, *Hispanics are going further into the shadows amid chilling immigration debate, police say*, Wash. Post (May 14, 2017), archived at <https://perma.cc/H9D9-F24A>.

When immigrant survivors do not communicate with the police, the entire community is less safe because crimes go unreported, uninvestigated, and unpunished, as described below.<sup>35</sup>

### **B. Anti-Immigrant Laws Drain Resources and Divert Workstreams of Nonprofit Organizations Serving Survivors**

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 they have historically provided, in order to provide guidance to fearful constituents. Because of this shift, constituents lose access to life-saving healthcare, important educational resources, and low-cost legal aid.

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 survivors should continue to report to local law enforcement about domestic violence, sexual assault, and human trafficking.”<sup>36</sup> 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.”<sup>37</sup>

Additionally, Amicus 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 survivors/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.<sup>38</sup>

### **C. SB 168’s Exceptions are Illusory and Do Not Protect Domestic Violence Survivors in Practice**

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<sup>35</sup> See Section I.D.

<sup>36</sup> See Compl., *City of South Miami, et al. v. Ron DeSantis, et al.*, 1:19-cv-22927-XXXX (S.D.Fla.), ¶ 102.

<sup>37</sup> *Id.* at ¶ 103.

<sup>38</sup> Telephone Interview with Robin Lewy, Director of Programming, Rural Women’s Health Project (Sept. 27, 2019).

SB 168 provides exceptions in §§ 908.104(5), (7), and (8) that supposedly protect survivors 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.<sup>39</sup> 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.<sup>40</sup> 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, which will lead to a lack of equal protection for GBV survivors.

The language in §§908.104(7) and (8) suffers from several of these same 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.”<sup>41</sup> 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 may well 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.<sup>42</sup>

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<sup>39</sup> Fla. Stat. § 908.104(5).

<sup>40</sup> Tex. Stat. § 752.053(b)(1).

<sup>41</sup> Fla. Stat. § 908.104(7), *emphasis added*.

<sup>42</sup> 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

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]....”<sup>43</sup> 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*.<sup>44</sup> 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, she/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 exceptions. As a result, most survivors will likely never learn about the exception to the law, and their view of the law will be shaped by 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 discriminatory 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

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pursuant to a detainer, or otherwise cooperating with federal immigration officials, a state entity, local government entity, or law enforcement 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 the crimes enumerated in §908.104(8) or 8 U.S.C. §1101(a)(15)(U)(iii), or any 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 these enumerated crimes must be made in coordination with a victim services agency.

<sup>43</sup> Fla. Stat. § 908.104(8).

<sup>44</sup> See Section I (explaining the reasons why immigrant victims do not report). 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 also Section I.D.

incident involving a Guatemalan couple in Gainesville.<sup>45</sup> A spokesperson for the Gainesville Police Department (GPD) publicly reported the survivor's address and declared that "we have clear evidence to believe that they are illegal" and that "we will report them to ICE."<sup>46</sup> The survivor and witnesses disappeared several days later, making an effective investigation and prosecution all but impossible.<sup>47</sup>

Robin Lewy, Director of Programming at Florida-based (and Amicus) Rural Women's Health Project (RWHP), believes that the incident described above and other incidents in the Gainesville area, coupled with the introduction of SB168, have alienated RWHP clients from local police and may embolden abusers to threaten victims with calling the police to report phony charges against them, which could result in the victim's deportation.<sup>48</sup>

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.<sup>49</sup>

For these reasons, national, state, and local policing groups have opposed measures that penalize jurisdictions that restrict local participation in immigration enforcement.<sup>50</sup> 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.<sup>51</sup> And Miami-Dade County Mayor Carlos Gimenez stated that he would travel to Tallahassee to

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<sup>45</sup> *GDP Changing Unclear Policy About Reporting Foreign Nationals*, 20 WCJB, (Apr. 3, 2018), archived at <https://perma.cc/5JZJ-GAC3>.

<sup>46</sup> Daniel Smithson, *Rescued from Abuse, Victim Now Faces ICE*, The Gainesville Sun, (Apr. 3, 2018), archived at <https://perma.cc/TAC9-Y53H>.

<sup>47</sup> *Id.*

<sup>48</sup> Telephone Interview with Robin Lewy, Director of Programming, Rural Women's Health Project (Sept. 27, 2019).

<sup>49</sup> Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (Jan. 26, 2017), archived at <https://perma.cc/3VP5-CTT2>.

<sup>50</sup> See *Letter from the Major County Sheriffs' Association and Major City Chiefs Association Opposing S. 2146* (Oct. 20, 2015), 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), archived at <https://perma.cc/GZ77-HL4A>; see also Noble, *Donald Trump, police union at odds over 'sanctuary cities' funding*, Wash. Times (Nov. 22, 2016), archived at <https://perma.cc/MY9L-542W>.

<sup>51</sup> Jerry Iannelli, *Miami Police Chief Slams Florida's Anti-Sanctuary City Bill in Radio Interview*, Miami New Times (Mar. 22, 2019), archived at <https://perma.cc/5CD6-2Y8Y>.

lobby against SB 168 because “I’m against our Miami-Dade Police officers becoming immigration officials.”<sup>52</sup>

As in Florida, law enforcement officials in Texas have voiced their opposition to anti-immigrant laws. In a *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.”<sup>53</sup>

While police groups have expressed concerns about the chilling effect of anti-immigrant laws on all survivors 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.<sup>54</sup> As Chuck Wexler, executive director of the Police Executive Research Forum, 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.”<sup>55</sup>

Communities of color and immigrant communities that have historically been mistrustful of the police are especially vulnerable to the discriminatory effects of GBV in an anti-immigrant environment.<sup>56</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> Pughes & Acevedo, *Texas police chiefs: Do not burden local officers with federal immigration enforcement*, *Dallas Morning News* (Apr. 28, 2017), archived at <https://perma.cc/3QKT-9FJ8>.

<sup>54</sup> See Runner, *supra* note 18; *Domestic violence against women: Recognize patterns, seek help*, Mayo Clinic (Mar. 1, 2017), archived at <https://perma.cc/Q9TF-5CQ9>.

<sup>55</sup> Bever, *supra* note 34. 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.” Everytown for Gun Safety, *Mass Shootings in America 2009-2019* (Nov. 21, 2019), archived at <https://perma.cc/EM8M-ZCLY>. Additionally, over half of female victims of intimate partner homicide are killed by a gun, and on average, every month around 52 women are killed by an intimate partner in the United States. (*Guns and Violence Against Women: America’s Uniquely Lethal Intimate Violence Partner Problem*, Everytown for Gun Safety (Oct. 17, 2019), archived at <https://perma.cc/4B7T-LF62>). 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. Andrew Klein, *National Institute of Justice Special Report Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors, and Judges* U.S Dep’t. of Just., Office of Justice Programs 2009), archived at <https://perma.cc/VW4H-B6ZB>.

<sup>56</sup> 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), archived at <https://perma.cc/N5D3-PTWU> (finding communities of color have some of the highest rates of intimate partner violence and domestic violence homicides). See generally *In the Line of Fire Human Rights and the Gun Violence Crisis*, Amnesty

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 over a one month period in April and May 2015. According to the report, “over 80 percent of the respondents believed that police-community relations influenced marginalized survivors’ willingness to call the police.”<sup>57</sup> Additionally, 54 percent of the respondents believed that police were biased against immigrants and 69 percent of the respondents believed that the police held biases against women.<sup>58</sup>

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”).<sup>59</sup> 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.<sup>60</sup> 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.”<sup>61</sup> The guidance specifically references immigrant victims and instructs law enforcement agencies to develop policies and procedures about U visas for crime victims.<sup>62</sup> Laws such as SB 168 run precisely counter to federal 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

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International (2019), 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), archived at <https://perma.cc/C56R-4ZDN>.

<sup>57</sup> *Responses from the Field: Sexual Assault, Domestic Violence and Policing* ACLU, CUNY School of Law, and University of Miami School of Law (Oct. 2015), archived at <https://perma.cc/NS3T-5AKB>.

<sup>58</sup> *Id.*

<sup>59</sup> *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* U.S. Dep’t of Just. (2015), page 4, archived at <https://perma.cc/RJF6-WBUT>.

<sup>60</sup> 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), archived at <https://perma.cc/7B94-J25P>.

<sup>61</sup> U.S. DEPT. OF JUST., *supra* note 59.

<sup>62</sup> *Id.*

survivors 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 survivors, 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. Article 3 of the Universal Declaration of Human Rights and Article 1 of the American Declaration of the Rights and Duties of Man recognize these fundamental rights, and they are also reflected in two treaties the United States has ratified: the International Covenant on Civil and Political Rights (Arts. 6, 9), and International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5(b)).<sup>63</sup> 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 survivors and their children to prevent GBV.<sup>64</sup>

Additionally, the United Nations Committee Against Torture (CAT Committee) has found GBV to be a form of torture or other cruel, inhuman, or degrading treatment under the CAT<sup>65</sup> (which the United States has also ratified), for which the State may be responsible when it fails to exercise due diligence to prevent, investigate, prosecute and punish such acts, whether they be committed by private or State actors.

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<sup>63</sup> See UDHR Art. 3 (non-discrimination); ADRDM Art. 1 (life, liberty and security of person); ICCPR Art. 6 (life), Art. 9 (liberty and security of person); ICERD Art. 5(b) (security of person and state protection).

<sup>64</sup> *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), *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”).

<sup>65</sup> UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by State Parties, Jan. 24, 2008 CAT/C/GC/2, 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). See also ICCPR Art. 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment).

Moreover, the rights to equality and freedom from discrimination on any ground such as 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.”<sup>66</sup>

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 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.”<sup>67</sup> Additionally, 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.”<sup>68</sup> The CERD Committee has specifically focused on discrimination at the intersection of race and gender in the United States. In its 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.”<sup>69</sup>

Finally, immigrant survivors 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

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<sup>66</sup> 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/35. 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*, ¶¶ 112-113 (“[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.”).

<sup>67</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, art. 9.

<sup>68</sup> 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).

<sup>69</sup> *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 et al. (“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).

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.”<sup>70</sup> 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 remedies.”<sup>71</sup> SB 168 will accomplish just the opposite, making it more likely that immigrant survivors 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.<sup>72</sup> 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.”<sup>73</sup>

## **II. Anti-immigrant laws make it more likely that GBV survivors will be detained and separated from their families, exacerbating their trauma**

Many immigrant GBV survivors in the United States fled their home countries after experiencing horrific domestic and sexual violence, only to experience it again in this country.<sup>74</sup> SB 168 will increase the likelihood that these survivors are detained in local jails or immigration detention centers with poor mental health and medical treatment conditions, which will further exacerbate trauma. Additionally, survivors risk enduring new trauma due to sexual abuse by prison guards and officials within detention centers. Lastly, separating immigrant GBV survivors from their families, and especially children, can have

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<sup>70</sup>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).

<sup>71</sup> 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, UN Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014).

<sup>72</sup>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.

<sup>73</sup> 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, UN Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

<sup>74</sup> *Fleeing for our lives: Central American Migrant Crisis*, Amnesty International archived at <https://perma.cc/K8FU-SJ9K>; see also *I Came to the U.S. Fleeing Horrific Abuse in My Home Country. Jeff Sessions Wants to Send People Like Me Back*, ACLU archived at <https://perma.cc/LE5L-73ZW>.

a particularly devastating impact on everyone involved. Ultimately, immigration detention and family separation will result in fundamental violations of many immigrant survivors' human rights and dignity.

### **A. Immigrant Detention Centers Exacerbate GBV Survivors' Trauma**

Immigrant GBV survivors 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.<sup>75</sup> Several reports have focused on these abuses in facilities in Florida,<sup>76</sup> 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.<sup>77</sup> Intimate partner violence, for instance, is correlated with many mental health conditions, such as depression and PTSD.<sup>78</sup> It is therefore critical that GBV survivors 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 survivors,<sup>79</sup> and that providers must be adequately trained to ensure that the survivors with whom they interact can face their trauma and “have a chance to rewrite their stories.”<sup>80</sup>

Immigrant detention centers in the U.S. operate contrary to these trauma-informed principles. These centers are notorious for insufficient mental health services<sup>81</sup> and the use of practices such as solitary confinement, which one government official recently disclosed is sometimes the “only approach”

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<sup>75</sup> Geneva Sands, *Lawsuit alleges poor medical and mental healthcare in ICE Detention Facilities*, CNN (August 19, 2019), archived at <https://perma.cc/L979-JZ6Y>.

<sup>76</sup> Ana Ceballos, *Florida Investigated Sexual Abuse Claims at the Homestead Migrant Detention Camp*, Orlando Weekly, (Mar. 20, 2019), archived at <https://perma.cc/JHA7-MZKU>; see also *How You Can Help migrant Children*, Women's Refugee Commission, archived at <https://perma.cc/9G8V-53V2>.

<sup>77</sup> *Gender-based violence in health emergencies*, Health Cluster at World Health Organization, (2018), archived at <https://perma.cc/9RXH-V3HD>.

<sup>78</sup> *Id.*

<sup>79</sup> *Listen, believe, support: the power of mental health care for survivors of violence*, UN Women, archived at <https://perma.cc/6NF8-ADYG>.

<sup>80</sup> *Id.*

<sup>81</sup> Sarah Varney, *ICE Detainees Face Severe Shortage of Medical and Mental Health Care*, Truth Out (Apr. 15, 2019), archived at <https://perma.cc/ZS94-CHY3>.

used for immigrant detainees with mental illness.<sup>82</sup> Detention itself is detrimental to survivors' mental health,<sup>83</sup> and these practices only make the experience worse. ICE has specifically been identified as failing to respond appropriately to detained individuals with severe mental illnesses.<sup>84</sup> Psychologists are not readily available or may have contact with detainees for too short a time period to have a significant impact.<sup>85</sup>

Abuse of GBV survivors 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.<sup>86</sup> Specifically, Human Rights Watch found that in Florida, immigrant detainees experienced rape and sexual assault in facilities and during transport.<sup>87</sup> Amici believe these cases are just the tip of the iceberg, since many instances of sexual abuse and harassment go unreported due to survivors' 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."<sup>88</sup> Moreover, a recent ACLU report has also documented abuse committed in these centers by government officers.<sup>89</sup> 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.<sup>90</sup> It also emphasizes that the problems are not isolated and that conditions are so poor they have been constitutionally challenged in court.<sup>91</sup>

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<sup>82</sup> [Rappleye, supra note 31](#); see also Jessica Lipscomb, *New Report Sheds Light on Immigrants Held in Solitary at Krome Processing Center*, Miami New Times, (May 22, 2019), archived at <https://perma.cc/YP5J-WXUM>.

<sup>83</sup> See von Werthern, et. al., *The impact of immigration detention on mental health: a systematic review*, BMC Psychiatry, (2018), archived at <https://perma.cc/J5SU-FXGG>.

<sup>84</sup> Renuka Rayasam, *Migrant Mental Health Crisis Spirals in ICE Detention Facilities*, Politico (July 21, 2019), archived at <https://perma.cc/7P9H-R44N>.

<sup>85</sup> Sarah Varney, *ICE Detainees Face Severe Shortage of Medical and Mental Health Care*, Truth Out (Apr. 15, 2019), archived at <https://perma.cc/5KRM-WMSZ>.

<sup>86</sup> *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detentions*, Human Rights Watch (Aug. 25, 2010), archived at <https://perma.cc/J44U-NV8C>; see also Brief for Tahirih Justice Center, et. al., as Amicus Curiae, *Make the Road NY v. Wolf*, No. 19-5298, available at <https://www.tahirih.org/wp-content/uploads/2020/01/2020-01-24-Make-the-Road-NY-v.-Wolf-Amicus-Brief-As-Filed.pdf>

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See Victoria Lopez and Sandra Park, *Rampant Abuses in Immigration Detention Prove ICE Is Rotten to the Core*, ACLU (Mar. 1, 2019), archived at <https://perma.cc/O8RS-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), archived at <https://perma.cc/6MP9-3GVZ>.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

By subjecting immigrant GBV survivors 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.<sup>92</sup> When immigrant GBV survivors 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 survivors' previous trauma. These violations ultimately may result in a violation of the right to be free from torture and other ill-treatment. Lastly, returning immigrant GBV survivors to their home countries if they are at risk of continued abuse would violate 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 survivors are deported or detained as a result of SB 168, this may also lead to family separation. In this scenario, the children of GBV survivors 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.<sup>93</sup> This places children at risk and retraumatizes GBV survivors.

Besides the risks associated with leaving their children with their abusers, GBV survivors may have legitimate fears that their children will be detained or deported through collateral arrests.<sup>94</sup> 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 survivors 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.<sup>95</sup>

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<sup>92</sup> See, e.g., the rights to life, liberty, and security of person under the UDHR (Art. 3), the ICCPR (Arts. 6, 9), and ICERD (Art. 5(b)); special protections for vulnerable groups under ADRDM (Art. 7); freedom from torture or cruel and inhuman treatment ICCPR (Art. 7), CAT (Art. 1 and General Comment 2), and *Castro v. Peru*, Merits, reparations and costs, IACHR Series C No 160, 25th Nov. 2006, Inter-American Court of Human Rights [IACtHR]. See also 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"); *Interim report of the special rapporteur on torture, and other cruel, inhuman, or degrading treatment or punishment* ¶ 84, United Nations General Assembly (July 12, 2019), archived at <https://perma.cc/VQE5-L929>.

<sup>93</sup> *Effects of domestic violence on children*, Office of Women's Health, (Apr. 2, 2019), archived at <https://perma.cc/K5QS-2QLR>.

<sup>94</sup> Andrea Castillo, *Collateral arrests by ICE amount to racial profiling, violate immigrant's rights, lawyers say*, LA Times, (Feb. 4, 2018), archived at <https://perma.cc/XUH8-TQMV>.

<sup>95</sup> *Domestic Violence and the Child Welfare System*, Child Welfare Information Gateway, (Oct. 2014), archived at <https://perma.cc/XUH8-TQMV>.

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.<sup>96</sup>

When immigrant GBV survivors 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.<sup>97</sup> Additionally, the rights to special protection for children and other vulnerable groups (including GBV survivors), as described above, are violated.<sup>98</sup> 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 survivors and their children are guaranteed under international human rights law.

### CONCLUSION

Amici urge this Court to permanently enjoin the operation of SB 168, thereby permitting local governments in Florida to ensure the human rights to equality and nondiscrimination to all residents, and in particular to immigrant women and LGBTQ survivors of domestic abuse, sexual assault, and human trafficking.

Date: September 24, 2020

Respectfully submitted,

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<sup>96</sup> *APHA Opposes Separation of Immigrant and Refugee Children and Families at U.S. Borders*, American Public Health Association (Nov. 13, 2018), archived at <https://perma.cc/Y6WJ-MSGF>.

<sup>97</sup> See, e.g., ICCPR Art. 23 (right to family).

<sup>98</sup> See, e.g., ICCPR Art. 24; ADRDM Art VII. While this brief focuses on the effects of SB 168 on immigrant women who are GBV survivors, the effects of family separation on children are profound as well.

## **APPENDIX A: LIST OF AMICI CURIAE**

This brief is filed on behalf of the Rural Women’s Health Project, the Florida Council Against Sexual Violence, M.U.J.E.R., Tahirih Justice Center, Los Angeles Center for Law and Justice, Oxfam America, the Center for Gender & Refugee Studies, University of Miami School of Law Human Rights Clinic, Human Rights Watch, and Florida Legal Services (collectively, “Amici”). The parties have consented to the filing of this brief.

Amici are Florida-based, national, and international educational, advocacy, and legal service organizations whose members and clients are directly affected by the implementation of SB 168. Amici have an interest in the proper resolution of the issues presented in this case, which concerns the Defendants’ power to authorize state and local law enforcement to arrest and detain persons who are suspected of civil immigration violations. Amici regularly encounter clients and community members who will be exposed to law enforcement due to their immigration status, and therefore have a direct interest in the questions presented in the case. In this amicus brief, Amici focus on how SB 168 directly impacts survivors of gender-based violence (“GBV”) who are immigrants, due to their knowledge of and work with that specific population.

The Rural Women's Health Project (“RWHP”) is a non-profit organization that designs and implements community-based, health-education projects, trainings, and materials to assist communities in strengthening their understanding of critical health, occupational and family issues. RWHP’s focus is largely on immigrant women and they produce and disseminate health education training programs, curriculum and popular education techniques, publications for community and health organizations, and clinics and outreach programs.

The Florida Council Against Sexual Violence (“FCASV”) is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs that serve

them. FCASV serves as a resource to the state on sexual violence issues. FCASV hosts many trainings, provides technical assistance to agencies seeking to improve their services for rape victims, and provides up-to-date information to the public. FCASV provides information, assistance and leadership on all aspects of sexual violence, including rape, child abuse, stalking and sexual harassment.

M.U.J.E.R. Inc. (Mujeres, Unidas, en Justicia, Educacion, y Reforma, Women, United in Justice, Education, and Reform) is a non-profit community based social service organization located in Homestead, FL. M.U.J.E.R. provides a trusting environment that promotes emotional wellness and stability by empowering individuals through advocacy, direct response to domestic and sexual abuse, and support services that strengthen families.

The Tahirih Justice Center is the largest multi-city direct-services and policy-advocacy organization in the United States specializing in assisting immigrant women and girls who survive gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital cutting and mutilation. Tahirih serves clients at four local offices, including in Houston, and to date has provided free legal assistance to more than 20,000 individuals.

Los Angeles Center for Law and Justice (“LACLJ”) is a non-profit organization located in East Los Angeles that provides free legal services to survivors of domestic violence, sexual assault and human trafficking. LACLJ’s work to secure justice for survivors, many of them immigrants, provides us with an important and helpful lens through which to identify not only the needs but also the particular vulnerabilities of immigrant survivors.

Oxfam is an international development and relief agency with locations in more than 60 countries, including the United States, dedicated to developing lasting solutions to poverty and social injustice. A centerpiece of this work involves supporting the world’s most marginalized communities, including migrants, women, children, and survivors of sexual and gender-based violence. Given that nearly 80

million individuals are displaced across the globe - the highest number since World War II - ensuring that governments uphold migrants' internationally guaranteed human rights grows increasingly urgent. Oxfam is concerned that SB 168 will jeopardize the lives and wellbeing of survivors of gender and sexual-based violence, an unthinkable outcome and a violation of U.S. international treaty obligations.

The Center for Gender & Refugee Studies (“CGRS”) engages in litigation, policy advocacy, technical assistance, and scholarship in furtherance of its core mission to advance the human rights of refugees and to ensure that asylum protections under U.S. law conform with international obligations. CGRS has significant expertise in cases involving domestic violence. Many CGRS clients are domestic violence survivors. The questions presented in this petition for review relate directly to CGRS’s core missions to ensure that asylum protections under U.S. law comport with our international obligations.

The University of Miami School of Law Human Rights Clinic (“HRC”) is located in Coral Gables, Florida and works for the promotion of social and economic justice globally and in the U.S. The HRC draws on international human rights laws and norms, along with domestic law and policy. It engages in multidimensional advocacy, strategies, which include documentation and report writing, litigation, media engagement, work with legislative and administrative bodies, campaigning, community organizing, global networking to develop practical solutions and promote accountability on the part of non-state actors.

Human Rights Watch (“HRW”) is a non-profit, independent organization and the largest international human rights organization based in the United States. Since 1978, Human Rights Watch has investigated and exposed human rights violations and challenged governments to protect the human rights of citizens and noncitizens alike. Human Rights Watch investigates allegations of human rights violations in more than 100 countries around the world, including in the United States, by interviewing witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human rights

violations have been found, Human Rights Watch advocates for the enforcement of those rights with governments and international organizations and in the court of public opinion.

Florida Legal Services (“FLS”) is a statewide leader for justice that advocates for poor, vulnerable, and hard-to-reach people through litigation, legislative and administrative advocacy, education, and strategic collaboration. They aim to ensure that all of their clients have equal justice under the law. FLS works with undocumented immigrants through their domestic violence hotline as well as through litigation.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2020, I electronically caused the foregoing to be filed via the Court's CM/ECF filing system, with notification and service electronically upon all parties of record.

Date: September 23, 2020

Respectfully submitted,

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