

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

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

CITY OF SOUTH MIAMI, et al., Plaintiffs,

v.

RON DESANTIS, et al.,

Defendants.

**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 CURIAE¹

INTERESTS OF AMICI

Amici Curiae

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 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

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

² 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

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 draco anti-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.¹¹ 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),¹² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹³ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁴ 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).¹⁵ 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

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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).

¹²

6, 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.

¹³ 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.

¹⁴ Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res.

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

ARGUMENT

I. SB 168 harms immigrants and immigrant communities¹⁷

Immigrant women and LGBTQ individuals are highly vulnerable to gender-based violence.¹⁸ 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.¹⁹ Immigrant survivors may already harbor fear of the police based on past experiences with abusive or hostile law enforcement in their countries of origin.²⁰ Furthermore, it is commonplace for an abuser to specifically use a survivor

frivolous complaints that may result in serious consequences for survivors.²⁴ 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

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.²⁸

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

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he 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:

²⁸ 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).

²⁹ Tahirih Justice Center, et al., *May 2019 Findings: Immigrant Survivors Fear Reporting Violence*, archived at

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 2017.³⁰

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.³¹

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

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.³⁵

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 [all entities] to provide a

The section that is arguably the most protective of GBV victims §908.104(8) is similarly to any alien unlawfully present in the United States

incident involving a Guatemalan couple in Gainesville.⁴⁵ A spokesperson for the Gainesville Police Department (GPD) publicly reported the survivor

⁴⁶ The survivor and witnesses disappeared several days later, making an effective investigation and prosecution all but impossible.⁴⁷

Robin Lewy, Director of Programming at Florida-based (and Amicus) 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

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These examples illustrate how anti-immigration 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.⁴⁹

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

⁴⁵ GDN()-298

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 survey, police-community relations influenced marginalized survivor ⁵⁷ 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.⁵⁸

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*.⁵⁹

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.⁶⁰

It also notes that 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

⁶¹ The guidance specifically references immigrant victims and instructs law enforcement agencies to develop policies and procedures about U visas for crime victims.⁶² 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 harm the police and lead to deportation or o612 792 r0 G[0.145 0.176 rg0.118 0.145 0.176 RG[(be)4(li)-3(e)4(-132(po

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 I

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

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

a particularly devastating impact on everyone involved. Ultimately, immigration detention and family separation will result in fundamental violations of many immigrant survivor

used for immigrant detainees with mental illness.⁸² Detention itself is detrimental to survivor health,⁸³ 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.⁸⁴ Psychologists are not readily available or may have contact with detainees for too short a time period to have a significant impact.⁸⁵

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.⁸⁶ Specifically, Human Rights Watch found that in Florida, immigrant detainees experienced rape and sexual assault in facilities and during transport.⁸⁷ Amici believe these cases are just the tip of the iceberg, since many instances of sexual abuse and harassment go unreported due to survivor

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 as a big man, and I was in

⁸⁸ Moreover, a recent ACLU report has also documented abuse committed in these centers by government officers.⁸⁹ 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.⁹⁰ It also emphasizes that the problems are not isolated and that conditions are so poor they have been constitutionally challenged in court.⁹¹

⁸² [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>.

⁸³ 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>.

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

⁸⁵ 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>.

⁸⁶ *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>

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 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/Q8RS-6TUE>; see also Victoria Lopez and Sandra Park, *ICE Detention Center*, ACLU (Nov. 6, 2018), archived at <https://perma.cc/6MP9-3GVZ>.

⁹⁰ *Id.*

⁹¹ *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.⁹² 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 survivor _____ It 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 _____ *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.⁹³ 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.⁹⁴ 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.⁹⁵

⁹² 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 _____ *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>.

⁹³ *Effects of domestic violence on children* _____ archived at <https://perma.cc/K5QS-2QLR>.

⁹⁴ Andrea Castillo, _____, LA Times, (Feb. 4, 2018), archived at <https://perma.cc/XUH8-TQMV>.

⁹⁵ *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.⁹⁶

APPENDIX A: LIST OF AMICI CURIAE

This brief is filed on behalf of the

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

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

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,

violations have been found, Human Rights Watch advocates for the enforcement of those rights with governments and

