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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF ARIZONA**

16	FRIENDLY HOUSE <i>et al.</i>,)	No. CV-10-01061-MEA
17	Plaintiffs,)	PROPOSED <i>AMICUS CURIAE</i>
18	vs.)	BRIEF OF LEGAL MOMENTUM
19	MICHAEL B. WHITING <i>et al.</i>,)	IN SUPPORT OF PLAINTIFFS'
20	Defendants.)	MOTION FOR PRELIMINARY
)	INJUNCTION
)	(Hon. Mark E. Aspey)

1 The following organizations have expressed to Legal Momentum their support for
2 Legal Momentum's *amicus curiae* brief:

3 Alabama Coalition Against Domestic Violence

4 American Friends Service Committee

5 Arizona Coalition Against Domestic Violence

6 Asian American Legal Advocacy Center, Inc.

7 Asian & Pacific Islander American Health Forum

8 Asian/Pacific Islander Domestic Violence Resource Project

9 Asian Services in Action, Inc.

10 Break the Cycle

11 California Coalition Against Sexual Assault

12 California Women's Law Center

13 Casa de Esperanza (Minnesota)

14 Casa de Esperanza (New Jersey)

15 CASA de Maryland, Inc.

16 Central American Resource Center

17 Coalition of Labor Union Women

18 Coalition to Abolish Slavery and Trafficking

19 Colorado Coalition Against Domestic Violence

20 Connecticut Sexual Assault Crisis Services, Inc.

21 Counsel of Mexican Federations in North America/Consejo de Federaciones
22 Mexicanas en Norteamerica

23 Delaware Coalition Against Domestic Violence

24 Diane Rosenfeld, J.D., LL.M.

25 Enlace Comunitario

26 Equal Rights Advocates

27 Family Values @ Work Consortium

28 Family Violence Prevention Fund

- 1 Georgia Coalition Against Domestic Violence
- 2 Harbor Communities Overcoming Violence
- 3 Hawaii State Coalition Against Domestic Violence
- 4 Human Rights Initiative of North Texas, Inc.
- 5 Illinois Coalition Against Domestic Violence
- 6 Immigrant Law Center of Minnesota
- 7 Immigrant Legal Resource Center
- 8 International Institute of the Bay Area
- 9 International Tribunal of Conscience
- 10 Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic
- 11 Violence
- 12 Kansas Coalition Against Sexual and Domestic Violence
- 13 Kentucky Coalition for Immigrant and Refugee Rights
- 14 King County Coalition Against Domestic Violence
- 15 Korean American Family Service Center
- 16 Korean-American Women in Need
- 17 Mexican-American Bar Association of Texas
- 18 Missouri Coalition Against Domestic and Sexual Violence
- 19 National Alliance to End Sexual Violence
- 20 National Asian Pacific American Women's Forum
- 21 National Association for Chicana and Chicano Studies
- 22 National Center on Domestic and Sexual Violence
- 23 National Coalition Against Domestic Violence
- 24 National Coalition for Immigrant Women's Rights
- 25 National Council of Jewish Women
- 26 National Latina Institute for Reproductive Health
- 27 National Network for Immigrant and Refugee Rights
- 28 National Network to End Domestic Violence

- 1 National Partnership for Women and Families
- 2 National Women's Law Center
- 3 Neighborhood Legal Services
- 4 Nevada Network Against Domestic Violence
- 5 New Hampshire Coalition Against Domestic and Sexual Violence
- 6 New Jersey Coalition Against Sexual Assault
- 7 New Jersey Coalition for Battered Women
- 8 New Mexico Coalition of Sexual Assault Programs, Inc.
- 9 9 to 5, National Association of Working Women
- 10 North Carolina Coalition Against Domestic Violence
- 11 NOW Foundation
- 12 Pennsylvania Coalition Against Domestic Violence
- 13 Raksha, Inc.
- 14 Rhode Island Coalition Against Domestic Violence
- 15 Safe Horizon
- 16 SafePlace
- 17 Santuario Sisterfarm
- 18 South Asian Americans Leading Together
- 19 South Carolina Coalition Against Domestic Violence and Sexual Assault
- 20 Southern Poverty Law Center
- 21 University of Cincinnati College of Law Domestic Violence and Civil Protection
- 22 Order Clinic
- 23 Vermont Network Against Domestic and Sexual Violence
- 24 Victim Rights Law Center
- 25 Voces de la Frontera
- 26 Washington State Coalition Against Domestic Violence
- 27 Wisconsin Coalition Against Domestic Violence
- 28 Wisconsin Coalition Against Sexual Assault

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Women Employed
Women of Color Network
YWCA USA

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PROPOSED AMICUS CURIAE BRIEF

I. INTRODUCTION

During the last two decades, the United States Congress and the Department of Homeland Security (DHS) specifically and repeatedly acknowledged the particular vulnerabilities of immigrant women and the widespread barriers to assistance experienced by immigrant victims of domestic violence, trafficking, and sexual assault. Lack of immigration status often makes women more likely to be exploited in the workplace, at home, and in accessing services and their civil legal rights.

The federal government enacted protections for these most vulnerable members of our society — rights that Congress called “an essential step in forging a national consensus that our society will not tolerate violence against women.”¹ These laws establish special immigration protections to encourage immigrant women to report and fully participate in investigation of crimes and prosecution of perpetrators without fear of arrest and removal.² DHS also issued policies designed to prevent the detention of immigrant women, acknowledging their roles as mothers and caretakers.³ Federal law further guarantees that all persons, without regard to immigration status, have access to programs and services necessary to protect life and safety, including shelter, emergency medical services, victim assistance, soup kitchens, and disaster relief.⁴

Arizona SB 1070 will change all of that. It will cause irreparable harm to immigrant women (nearly half of Arizona’s immigrant population) and their children.⁵

¹ Senate Judiciary Committee Report accompanying S.B. 103-138 at 41-42.

² Victims of Trafficking and Violence Protection Act of 2000, P.L. No. 106-386 (2000) (“VAWA 2000”) §§ 1501-13. The protections are not limited to women but women are at far greater risk than men of domestic and sexual violence and exploitation.

³ U.S. Department of Homeland Security, Memorandum re “Prosecutorial and Custody Discretion” (Nov. 7, 2007); U.S. Department of Justice, Memorandum re “Exercising Prosecutorial Discretion” (Nov. 17, 2000).

⁴ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended in sections of 8 U.S.C.); Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), 8 U.S.C §§ 1611(b)(1)(D), 1621(b)(4); U.S. Dep’t of Justice, “Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,” A.G. Order No. 2353-2001, 66 Fed. Reg. 3613 (Jan. 16, 2001).

⁵ Migration Policy Institute, MPI Data Hub, Arizona Fact Sheet (2008), *available at* <http://www.migrationinformation.org/databub/state.cfm?ID-AZ>.

1 Whereas Arizona law enforcement agencies and officials previously helped ensure that
2 immigrant women were not penalized for reporting crimes, SB 1070 requires law
3 enforcement officers involved in any stop or investigation to detain and question upon
4 “reasonable suspicion” that a person allegedly engaged in criminal activity may be
5 undocumented. SB 1070 also makes it unlawful to harbor or shelter undocumented
6 immigrants. A vast array of commonplace activities could support criminal detention
7 under SB 1070, such as traffic infractions, jaywalking, or even simply being in the wrong
8 place when law enforcement investigates a suspicion of employing or harboring
9 undocumented immigrants.

10 Given law enforcement’s wide and subjective discretion to stop and detain, as well
11 as the fact that SB 1070 criminalizes efforts to harbor or shelter undocumented
12 immigrants, these laws will cause immigrants to refrain from seeking federally
13 established protections and be irreparably harmed. Indeed, since passage of the bill and
14 even before the law has gone into effect, federally funded battered women’s shelters have
15 seen the number of immigrants willing to access these essential services plummet
16 because victims fear detention and permanent separation from their children if they seek
17 help. Arizona police could be stationed outside a battered women’s shelter precisely
18 because immigrant women are likely to use federally guaranteed life-saving services.
19 Similarly, immigrant women face these fears when dropping their children off at child
20 care, going to work, and seeking health and other services for themselves and their
21 children. In effect, this law puts immigrant women in fear of police detention anytime
22 they leave their homes.

23 By criminalizing efforts to harbor these immigrants and subjecting them to
24 detention and questions, SB 1070 also undermines the ability of domestic violence
25 shelters, rape crisis centers, and other victim-services providers to bring crime victims to
26 court, to meetings with prosecutors, and to the hospital for treatment of critical injuries,
27 causing irreparable harm.

28

1 SB 1070 creates a sub-class of women and children living in perpetual fear,
 2 trapping many in violently abusive relationships or work environments. This law creates
 3 an environment in which women who police think “look like immigrants” are never sure
 4 whether they may be stopped and required to produce papers on demand; and in
 5 particular, in which immigrant women who are crime victims or in need of food, shelter,
 6 or essential medical services will rightly fear seeking redress that Congress set up
 7 specifically for their benefit and protection. SB 1070 directly conflicts with federal laws
 8 and interests, it will cause irreparable harm, and it should be stricken.

9 **II. SB 1070 INTERFERES WITH FEDERAL PROTECTIONS FOR**
IMMIGRANT WOMEN WHO ARE VICTIMS OF CRIME

10 **A. Immigrant Women Face Particular Challenges That Make Them**
 11 **Uniquely Susceptible to Crime and Other Abuse.**

12 For reasons related to family, employment, and the problem of human trafficking,
 13 immigrant women are particularly likely to suffer abuse, violence and other crimes. Most
 14 immigrant women who seek lawful permanent resident status do so through the family
 15 immigration visa system.⁶ In abusive relationships, abusers with control over their wives’
 16 and children’s immigration status use threats of deportation and separation of mothers
 17 from children to keep them from seeking help or calling the police.⁷ When a woman
 18 seeks legal immigration status based upon a family relationship, she is often placed in a
 19 long queue for a visa in which she languishes for many years without legal work

20 ⁶ Jefferys, K., “Characteristics of Family-Sponsored Legal Permanent Residents: 2004,”
 21 Office of Immigration Statistics, DHS (Oct. 2005), “Table 1: Demographic Characteristics
 of All LPRs and Family-Sponsored LPRs: Fiscal Year 2004.”

22 ⁷ Ammar, N. *et al.*, “Calls to Police and Police Response: A Case Study From the Latina
 23 Immigrant Women,” 7 U.S. J. OF INT’L POLICE SCI. & MGM’T 230, 239 (2005); Natarajan,
 24 M., “Domestic Violence Among Immigrants From India: What We Need to Know – and
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 310 (Fall 2002); Ramos, M.D. & Runner, M.W., “Cultural Considerations in Domestic
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 27 Family Violence Prevention Fund (1999); Raj, A. *et al.*, “Immigration Policies Increase
 28 South Asian Immigrant Women’s Vulnerability to Intimate Partner Violence,” 60 J. OF
 THE AMERICAN MEDICAL WOMEN’S ASS’N 26-32 (2005). When abusers controlled the
 immigration status of a victim spouse, 72.3% never filed immigration papers on her
 behalf. Those who did so delayed in filing, on average, almost 4 years. Dutton, M.A. *et*
al., “Characteristics of Help-Seeking Behaviors, Resources, and Service Needs of
 Battered Immigrant Latinas: Legal and Policy Implications,” 7 GEORGETOWN JOURNAL
 OF POVERTY, LAW AND POLICY 245, 259, 302, Table 12 (2000).

1 authorization.⁸ If she needs to work, she is forced to obtain employment without status,
2 which can make her vulnerable to exploitation by unscrupulous employers.

3 Many battered immigrant women report an increase in the incidence of abuse after
4 their immigration to the United States.⁹ Among immigrant battered women from diverse
5 cultures, 65% report that their spouses used threats of deportation and of not filing or
6 withdrawing immigration papers as a control tactic in the abusive relationship.¹⁰

7 Immigration status significantly affects the willingness of immigrant women to
8 seek law enforcement help. Rape and sexual assault already have low reporting rates.¹¹
9 Immigrants who are victims or witnesses of sexual assault will be even less likely to
10 report and aid in the prosecution. Immigrants with stable permanent immigration status
11 are more than twice as likely as women with temporary legal immigration status to call
12 police for help in domestic violence cases (43.1% vs. 20.8%). This rate decreased to
13 18.8% if the battered immigrant was undocumented.¹² These reporting rates are
14 significantly lower than reporting rates of battered women generally in the United States
15 (between 53% and 58%).¹³

16 In addition to domestic violence, immigrant women are specially affected by
17 workplace abuse. Immigrant women constitute most of the workforce in the informal,
18 sometimes underground, employment sector, serving as childcare workers, elder and
19 home health care providers, domestic workers, hotel and office cleaners, and farm and
20

21 ⁸ See http://www.travel.state.gov/visa/bulletin/bulletin_4879.html (information on
availability of visas).

22 ⁹ Hogeland, C. & Rosen, K., “Dreams Lost, Dreams Found: Undocumented Women in
the Land of Opportunity,” Coalition for Immigrant and Refugee Rights and Services
23 (1990) (48% report rise in family violence following immigration); Hass, G.A. *et al.*,
“Battered Immigrants and U.S. Citizen Spouses” at 3 (April 24, 2006), available at
24 <http://legalm.convio.net/site/DocServer/dvusc.pdf?docID=314> (31% of immigrant victims
reported rise in domestic violence following immigration).

25 ¹⁰ *Id.*

26 ¹¹ “Violence Against Women: The Response to Rape; Detours on the Road to Equal
Justice,” Rpt. of the Senate Jud. Comm. Majority Staff, 103 Cong. (May 1993).

27 ¹² Ammar, N. *et al.*, *supra* n.7, at 236.

28 ¹³ Coulter, M.L. *et al.*, “Police-Reporting Behavior and Victim-Police Interactions as
Described by Women in a Domestic Violence Shelter,” 14 J. INTERPERSONAL VIOLENCE
1290, 1293 (Dec. 1999); Rennison, C.M. & Welchans, S., “Intimate Partner Violence” 7,
U.S. Dep’t of Justice, Bureau of Justice Statistics Special Report (May 2000).

1 factory workers. Because many immigrant women have no other options, employers
2 have a perverse incentive to employ undocumented workers, who may be more freely
3 subjected to exploitive or dangerous working conditions. Employers take advantage of
4 such women's lack of stable immigration status and lack of language proficiency by
5 creating or maintaining low wages and unsafe working conditions. Sexual harassment at
6 work is reported by 77% of Latina immigrants.¹⁴ Employers threaten reporting to
7 immigration authorities to coerce sexual favors or to discourage reporting of abuse.¹⁵

8 In addition, human trafficking results in approximately 14,500-17,500 women,
9 children, and men trafficked into the United States every year, the majority of whom are
10 women and girls.¹⁶ Traffickers use force, fraud, or coercion to compel work and in many
11 instances to subject workers to sexual violence.¹⁷ Already exploited by their traffickers
12 who withhold wages, threaten deportation, and physically harm them, trafficked women
13 are told by their traffickers that calling the police or anyone else will result in the victim's
14 deportation.¹⁸

15 **B. Congress Has Enacted a Range of Special Immigration Protections for**
16 **Immigrant Crime Victims That SB 1070 Eviscerates.**

17 Recognizing the severity of domestic abuse perpetrated against immigrant women,
18 as well as the need for immigrant women and their children to access social services
19 designed to help and support victims, Congress has specifically, and repeatedly, acted to
20 protect the rights and well-being of immigrant victims.¹⁹

21 _____
22 ¹⁴ "Under Siege: Life for Low Income Latinos in the South" at 28 (Southern Poverty Law
Center, April 2009).

23 ¹⁵ *Id.*

24 ¹⁶ U.S. Department of State, Trafficking in Persons Report at 15, 23 (2004), *available at*
<http://www.state.gov/documents/organization/34158.pdf>.

25 ¹⁷ *Id.* at 6, 15.

26 ¹⁸ *Id.* at 12.

27 ¹⁹ In addition to the laws discussed herein, Congress also enacted protections for
28 immigrant women in the Immigration Act of 1990 § 701, Pub. Law No. 101-649, 104
Stat. 6478 (1990) (battered spouse waiver); Trafficking Victims Reauthorization Act of
2003, Pub. L. 108-193, 117 Stat. 2875 (2003); Trafficking Victims Reauthorization Act of
2005, Pub. L. 109-164, §§ 101, 201, 119 Stat. 3558, 3560, 3567 (2005); and William
Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457 (2008) (expanding
immigration relief, services and benefits for trafficking victims).

1 The Violence Against Women Act (“VAWA”) is the centerpiece of congressional
 2 protections for immigrant victims of crime.²⁰ Originally enacted in 1994, and expanded
 3 in 2000 and 2005, VAWA encourages immigrant women to report crimes, including
 4 domestic violence, child abuse, sexual assault and human trafficking, regardless of
 5 immigration status. This reflects a strong congressional message that life, health, and
 6 safety come first, regardless of a woman’s immigration status. VAWA 1994 includes
 7 findings that:

8 Domestic battery problems can become terribly exacerbated in marriages
 9 where one spouse is not a citizen, and the non-citizen[']s legal status
 10 depends on his or her marriage to the abuser. Current law fosters domestic
 11 violence in such situations by placing full and complete control of the alien
 12 spouse’s ability to gain permanent legal status in the hands of the citizen . . .
 13 . Consequently, a battered spouse may be deterred from taking action to
 14 protect himself or herself, such as filing for a civil protection order, filing
 15 criminal charges, or calling the police, because of the threat or fear of
 16 deportation.²¹

17 The 2000 VAWA amendments broadened protection beyond domestic violence by
 18 creating two visa categories for crime victims who cooperate with law enforcement: the
 19 “T Visa” for victims of human trafficking and the “U Visa” for victims of domestic
 20 violence, sexual assault, and other crimes.²² Congress created the U Visa because “[a]ll
 21 women and children who are victims of these crimes [including domestic violence and
 22 sexual assault] committed against them in the United States must be able to report these
 23 crimes to law enforcement and fully participate in the investigation of the crimes . . . and
 24 the prosecution of the perpetrators”²³ Both the T and U Visa programs require
 25 coordination with local law enforcement agencies and endorsement of the victims’

26 ²⁰ Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355 (1994).

27 ²¹ House Judiciary Committee Report accompanying H.R. Rep. No. 103-395 at 26.

28 ²² VAWA 2000 §§ 1501-13.

²³ VAWA 2000 § 1513(a)(1)(B); Immigration and Nationality Act §§ 101(a)(15)(T),
 101(a)(15)(U), 214(o), 214(p), 245(l), 245(m); 67 Fed. Reg. 4784 (Jan. 31, 2002); 72 Fed.
 Reg. 53014 (Sept. 17, 2007); USCIS Interim Final Rule, “Adjustment of Status to Lawful
 Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 Fed. Reg. 75540
 (Dec. 1, 2008). In 2005, VAWA was amended again, to further increase protections and
 ease restrictions for battered immigrant women and their children. Violence Against
 Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), P.L.
 109-162 (2006), §§ 801-34.

1 cooperation in investigations and prosecutions.²⁴ The Department of Justice (DOJ)
2 funds anti-trafficking task forces across the country that encourage coordination among
3 service providers, law enforcement, and prosecutors, acknowledging that human
4 trafficking cases cannot be prosecuted unless trafficking victims have access to services
5 and the protection from deportation that come with the T Visa.²⁵ The city of Phoenix
6 hosts one such federally funded task force.²⁶

7 Similarly, Congress underscored its intent to protect battered immigrants in
8 enacting IIRAIRA in 1996, adding battered immigrant women and children to the
9 categories of immigrants qualified to receive welfare benefits that prior legislation took
10 away.²⁷ IIRAIRA's restoration of benefits for battered immigrants reflected Congress's
11 recognition that economic survival is a significant reason victims remain with abusers.
12 IIRAIRA enables victims to break the dependency cycle.

13 Congress specifically authorizes organizations funded by the Legal Services
14 Corporation to represent immigrant victims of domestic violence, sexual assault,
15 trafficking, or other crimes in matters related to the abuse or victimization, even if the
16 victim's immigration status would otherwise preclude representation.²⁸ Similarly, the
17 Federal Victims of Crime Act provided grants to states that have eligible victim
18 compensation programs. Arizona, like nearly every other state and U.S. territory,
19 receives this funding and places no restrictions on crime victim assistance eligibility due
20 to immigration status, as long as the crime is reported to law enforcement within 72
21
22

23 ²⁴ VAWA 2000 §§ 1501-13.

24 ²⁵ Bureau of Justice Assistance Anti-Human Trafficking Task Force Initiative, *available at*
<http://www.ojp.usdoj.gov/BJA/grant/httf.html>.

25 ²⁶ *Id.*, map of Human Trafficking Task Forces, *available at*
<http://www.ojp.usdoj.gov/BJA/grant/40HTTF.pdf>.

26 ²⁷ Pub. L. No. 104-208, 110 Stat. 3009 (1996). PRWORA had cut off access to public
benefits for many immigrant non-citizens.

27 ²⁸ Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208 § 504
(a)(11), 110 Stat. 3009 (1997). VAWA 2005 expanded these protections. *See* Legal
28 Services Corporation Program Letter 06-02 (Feb. 21, 2006); 45 C.F.R. § 1626.4; 22
U.S.C. § 7105; VAWA 2005 § 104.

1 hours.²⁹ SB 1070 severely impairs the relationships between law enforcement and
2 immigrant crime victims that Congress sought to strengthen by directing that DHS offer
3 VAWA, T and U Visa protections for immigrant women.

4 **C. SB 1070 Undermines Immigrant Crime Victim Protections.**

5 SB 1070 will irreparably harm immigrant women's ability to flee ongoing and
6 escalating family and workplace violence. Immigrant women will stay longer in abusive
7 situations, suffering increasing physical, sexual, and emotional injuries that may lead to
8 death, while perpetrators go unpunished. The law will deter and significantly delay crime
9 reporting by immigrant women and children, effectively cutting them off from all crime
10 victim assistance and undermining criminal prosecutions in the State of Arizona. It will
11 irreparably harm women who are afraid to come forward to report crimes and abuse, as it
12 will allow crimes and abuse to continue, women and children to live in danger and fear,
13 and the perpetrator to escape punishment. The law discourages immigrant women from
14 taking advantage of rights and benefits Congress made available to ensure victim
15 protection and enhance states' ability to prosecute criminals. Under SB 1070, an
16 immigrant crime victim will have no incentive to, and in fact will be afraid to, reach out
17 to law enforcement or federally guaranteed crime victim social services in Arizona, for
18 fear of detention, separation from her children, and removal. In particular, SB 1070 will
19 eliminate any reasonable possibility that a T or U Visa-eligible victim could access law
20 enforcement for the purposes of cooperating in investigating or prosecuting crimes
21 committed in Arizona. This harm cannot be undone.

22 Moreover, in contrast to SB 1070, federal law and guidelines are clear that not
23 every immigrant who may be undocumented should be subject to immigration
24 enforcement. Federal immigration officials are precluded from relying upon "reports" or
25 information provided by abusers or traffickers to pursue enforcement actions against

26 ²⁹ 42 U.S.C. § 10602; Ariz. Rev. Stat. § 41-2407. In addition, numerous other federal
27 benefits are available without regard to immigration status. See
28 [http://www.govbenefits.gov/govbenefits_en.portal?_nfpb=true&gb_en_](http://www.govbenefits.gov/govbenefits_en.portal?_nfpb=true&gb_en_questionnaire_actionOverride=%2FQuestionnairePageFlow%2FValidateAnswersMoreQuestions&_windowLabel=gb_en_questionnaire&_pageLabel=gbcc_page_questionnaire)
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[estions&_windowLabel=gb_en_questionnaire&_pageLabel=gbcc_page_questionnaire.](http://www.govbenefits.gov/govbenefits_en.portal?_nfpb=true&gb_en_questionnaire_actionOverride=%2FQuestionnairePageFlow%2FValidateAnswersMoreQuestions&_windowLabel=gb_en_questionnaire&_pageLabel=gbcc_page_questionnaire)

1 undocumented immigrant crime victims.³⁰ Federal immigration officials are strongly
2 cautioned against arresting immigrants at “sensitive locations,” such as rape crisis centers
3 or domestic abuse shelters, because immigrants at these locations are likely to ultimately
4 qualify for victim-based immigration benefits.³¹ Nursing mothers and others with health
5 conditions should not be held in detention.³² DOJ has issued a list of factors that it and
6 DHS use in exercising prosecutorial discretion not to initiate immigration enforcement
7 actions, including humanitarian concerns, criminal and immigration history, length of
8 time in the United States, eligibility for immigration relief, likelihood of ultimate removal
9 from the United States, and cooperation with law enforcement.³³

10 Another consequence of this law is that many immigrants who are lawfully in the
11 United States will be subject to detention when Arizona law enforcement personnel are
12 unfamiliar with a given immigration status or its documentation. The complexities of
13 federal immigration law, the multiple types of legal immigration status, and the wide
14 range of federally acceptable evidence documenting status will make it virtually
15 impossible for local Arizona law enforcement authorities to implement the SB 1070
16 provisions in any fair, informed manner consistent with federal immigration law. For
17 example, for the subset of legal immigrants eligible for public benefits, the Attorney
18 General has issued guidance that contains nine pages, in small font, of the various types
19 of documentation acceptable to establish citizenship, lawful permanent residency, and
20 other qualified immigrant status.³⁴

22 ³⁰ 8 U.S.C. § 1367(a), (b); *see also* “Department of Justice Appropriations Authorization
23 Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of
24 Representatives, to accompany H.R. 3402,” H.R. Rep. No. 109-233, at 122 (2005); 151
25 Cong. Rec. E2606-07 (2005) (statement of Rep. Conyers).

24 ³¹ Immigration and Nationality Act § 239(e); 8 U.S.C. 1229(e); DHS, Memorandum re
25 “Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005”
at 5 (Jan. 22, 2007).

26 ³² Nov. 7, 2007 Memorandum, *supra* n.3.

27 ³³ *See* Nov. 17, 2000 Memorandum, *supra* n.3, at 7-8. DHS also exercises prosecutorial
28 discretion to stay removal of crime victims with pending U Visa applications. Jan. 22,
2007 Memorandum, *supra* n.31.

28 ³⁴ 62 Fed. Reg. 61344, 61363-371 (*e.g.*, asylees, refugees, and undocumented battered
immigrant VAWA self-petitioners).

1 SB 1070 will likely lead to the detention and potential removal of immigrant
 2 women who are in the process of obtaining legal immigration status under VAWA and
 3 the Trafficking Victims Protection Act (which may involve months or even years of
 4 administrative processing³⁵), because such victims receive documentation in the form of
 5 “*prima facie* determinations” or “deferred action status,” but do not receive an ID card or
 6 formal judicial order. Federal policies advise that stays of removal be granted for persons
 7 with pending U Visa applications who demonstrate *prima facie* eligibility, including
 8 consideration of “humanitarian factors.”³⁶ Moreover, due to VAWA’s confidentiality
 9 provisions, even federal immigration authorities may be unaware of an immigrant’s
 10 pending application for immigration relief unless the Victims and Trafficking Unit of the
 11 Vermont Service Center – the centralized processing unit in which VAWA, T Visa and U
 12 Visa petitions are processed – is specifically contacted.³⁷

13 **III. SB 1070 CUTS IMMIGRANT WOMEN OFF FROM CRITICAL PUBLIC** 14 **SERVICES PROVIDED BY FEDERAL LAW**

15 In addition to those social services available to immigrant crime victims, Congress
 16 has ensured that certain federally funded benefits deemed necessary to life and safety are
 17 available to *all persons who need them* – without regard to immigration status.
 18 PRWORA cut off access of many immigrants to most federally funded benefits, but
 19 Congress reserved the Attorney General’s right to designate that certain services
 20 necessary to protect life and safety are open to all without regard to immigration status.
 21 The Attorney General’s designation stated:

22 _____
 23 ³⁵ Gorman, A., “U-visa program for crime victims falters,” Los Angeles Times (Jan. 26,
 2009).

24 ³⁶U.S. Immigration and Customs Enforcement, Memorandum re “Guidance: Adjudicating
 Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants (Sept. 24, 2009),
 25 *available at* [http://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-
 stay_requests_filed_by_u_vis_a_applicants.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_vis_a_applicants.pdf).

26 ³⁷ See Jan. 22, 2007 Memorandum, *supra* n.31; U.S. Dep’t of Justice, Memorandum re
 “Revocation of VAWA-Based Self-Petitions” (Aug. 5, 2002); U.S. Dep’t of Homeland
 27 Security, Memorandum re “Centralization of Interim Relief for U Nonimmigrant Status
 Applicants” (Oct. 8, 2003); U.S. Dep’t of Justice, Memorandum re “Supplemental
 28 Guidance on Battered Alien Self-Petitioning Process and Related Issues” (May 6, 1997);
 House Report, *supra* n.30.

1 Neither states nor other service providers may use [PRWORA] as a basis for
 2 prohibiting access of aliens to any programs, services, or assistance covered
 3 by this Order. Unless an alien fails to meet eligibility requirements
 4 provided by applicable law other than [PRWORA], benefit providers may
 5 not restrict the access of any alien to the services covered by this Order.³⁸

6 Nearly half of Arizona's immigrant population are women, and substantial
 7 proportions of immigrant women report that they head their households and are
 8 primarily responsible for decisions and transportation related to their children's health
 9 care and schooling.³⁹ Because anti-immigrant policies like SB 1070 create a climate of
 10 fear,⁴⁰ the law will cause significant harm to immigrant women by impeding their ability
 11 to access federally guaranteed benefits such as emergency Medicaid,⁴¹ federally qualified
 12 community health clinics, emergency shelters and transitional housing,⁴² soup kitchens,
 13 treatment for mental illness or substance abuse, crisis counseling and intervention, and
 14 violence and abuse prevention.⁴³ Federally funded clinics offer post-assault, pre-natal,
 15 and child health care, as well as care for uniquely female illnesses such as cervical
 16 cancer, which is far more prevalent among Latina women.⁴⁴ Federal money also supports

16 ³⁸ A.G. Order 2353-2001, *supra* n.4, Preamble.

17 ³⁹ Migration Policy Institute, MPI Data Hub, Arizona Fact Sheet (2008), *available at*
 18 <http://www.migrationinformation.org/databub/state.cfm?ID-AZ>; Women Immigrants:
 19 Stewards of the 21st Century Family at 26 (New American Media Feb. 2009) (reporting
 20 the following percentages of immigrant women as heads of household: Latin American,
 21 39%; African, 27%; Arabic, 18%; Chinese, 27%; Vietnamese, 19%; Korean, 18%);
 22 "Women, Work, and Family Health: A Balancing Act," Issue Brief: An Update on
 23 Women's Health Policy, The Henry J. Kaiser Family Foundation (April 2003), *available*
 24 *at* <http://www.kff.org/womenshealth/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=14293>.

21 ⁴⁰ Bauer, T. *et al.*, "Challenges Obtaining Well-Baby Care Among Latina Mothers in New
 22 York and California" at 3, New York Forum for Child Health, New York Academy of
 23 Medicine, and University of California (Oct. 2003), *available at*
 24 <http://www.nyam.org/initiatives/docs/NYCHChallenges2.pdf>.

23 ⁴¹ Arizona provides emergency Medicaid to undocumented immigrants who meet the other
 24 eligibility requirements. Ariz. Rev. Stat. § 36-2903.03. Emergency Medicaid provides
 25 coverage for childbirth. 42 U.S.C. § 1395dd.

25 ⁴² Letter from the Secretary of the U.S. Department of Housing and Urban Development to
 26 HUD Funds Recipient (Jan. 19, 2001), *available at*
 27 <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

26 ⁴³ A.G. Order No. 2353-2001, *supra* n.4.

27 ⁴⁴ A.G. Order No. 2353-2001, *supra* n.4, § 3(e); Center for Disease Control, U.S.
 28 Preventive Services Task Force, Screening for Cervical Cancer, AHRQ Pub. No. 03-515A
 January 2003 at 1; American Cancer Society, Cancer Facts and Figures for
 Hispanics/Latinos 2003-2005, Table 1 at 1 (2003).

1 critical post-assault services, such as sexual assault forensic exams (SAFE). Impeding
 2 access to pre-natal care leads to significantly higher rates of low birthweight births and
 3 thus a higher incidence of serious disabilities.⁴⁵ SB 1070 will deter immigrant women
 4 and their children from obtaining critical life-saving assistance, thereby undermining
 5 Congress's intent to maintain healthy, safe communities.⁴⁶ Every woman who needs
 6 such services and does not seek them for herself or her child will be irreparably harmed.

7 **IV. SB 1070 WILL INCREASE DETENTIONS OF IMMIGRANT MOTHERS**
 8 **AND WILL HARM ARIZONA'S CHILDREN THROUGH MOTHER-**
 9 **CHILD SEPARATIONS.**

10 SB 1070 exacerbates the likelihood that children will be separated from their
 11 immigrant parents. Sole and primary caretaker immigrant mothers will be deterred from
 12 undertaking day-to-day activities crucial to their children's healthy development.
 13 Immigrant children will be harmed if every time an immigrant mother leaves her home,
 14 she risks arrest, detention, and separation from her children.

15 In Arizona, 84.5% of children with at least one immigrant parent are U.S.
 16 citizens.⁴⁷ The increase in local police involvement in immigration enforcement that SB
 17 1070 mandates will cause far more parental separations than federal immigration
 18 enforcement actions.⁴⁸ The forced separations that SB 1070 will cause, whatever the
 19 duration, will cause significant and irreparable harm to children and violate immigrant
 20 mothers' constitutional rights to nurture, care for, and have custody and decision-making

21 ⁴⁵ See Arizona Health Status and Vital Statistics, Distribution of Low-Birthweight (LBW)
 22 Births and LBW Risk by Number of Prenatal Visits and County Of Residence, Arizona,
 23 2008, available at <http://www.azdhs.gov/plan/report/ahs/ahs2008/pdf/5b21.pdf>; The
 24 Future of Children, Low Birth Weight and Infant Mortality and Later Morbidity Vol. 5
 25 No. 1 Low Birth Weight (Spring 1995), available at
 26 <http://futureofchildren.org/futureofchildren/publications/journals/article/index.xml?journalid=60&articleid=370§ionid=2479>.

27 ⁴⁶ In addition, the U.S.-citizen children of immigrant parents may be eligible as citizens for
 28 a host of other benefits, but parents may be chilled from applying for such benefits for
 their children due to the same fears arising from their own immigration status.

29 ⁴⁷ Passel, J.S. & Cohn, D., A Portrait of Undocumented Immigrants in the United States ii
 30 (Pew Hispanic Center Apr. 14, 2009), available at
 31 <http://pewhispanic.org/files/reports/107.pdf>; Migration Policy Institute, MPI Data Hub,
 32 Arizona Fact Sheet (2008), available at
 33 <http://www.migrationinformation.org/databub/state.cfm?ID-AZ>.

34 ⁴⁸ Chaudry, A. *et al.*, Facing our Future, Children in the Aftermath of Immigration
 Enforcement, The Urban Institute at 26 (February 2010).

1 over their child's health, welfare, and development.⁴⁹ Detention of a mother who has
 2 been abused often results in children being turned over to the abusive spouse.⁵⁰

3 The significant damage to the mother-child relationship and the health and well-
 4 being of children led federal immigration authorities to develop and implement
 5 "humanitarian guidelines" that attempt to promptly identify immigrants who are sole
 6 caregivers of children, to coordinate with social services agencies, and to consider release
 7 or alternatives to detention of immigrant parents, usually mothers.⁵¹ DHS also has
 8 instructed that nursing mothers be released from detention.⁵² Federal immigration
 9 policies direct the use of prosecutorial discretion to decline initiation of immigration
 10 enforcement actions against persons who ultimately will be awarded lawful immigration
 11 status.⁵³ SB 1070 contains no such protections or considerations. The law allows
 12 unsupported and improper detentions of lawfully present immigrants who fail to carry or
 13 possess specific forms of immigration documentation that the particular officer stopping
 14 the immigrant expects to see.

15
 16
 17 ⁴⁹ Discussing the parental rights of undocumented, detained, and deported immigrant
 18 parents in the context of termination of parental rights proceedings, the Supreme Court of
 19 Nebraska unanimously ruled: "We have explained that the interest of parents in the care,
 20 custody, and control of their children is perhaps the oldest of the fundamental liberty
 21 interests recognized by the U.S. Supreme Court. Accordingly, before the State attempts to
 22 force a breakup of a natural family, over the objections of the parents and their children,
 23 the State must prove parental unfitness. . . . [T]he 'best interests' standard is subject to the
 24 overriding presumption that the relationship between parent and child is constitutionally
 25 protected and that the best interests of a child are served by reuniting the child with his or
 26 her parents. This presumption is overcome only when the parent has been proved unfit."
 27 *In re Angelica L.*, 767 N.W.2d 74, 92 (Neb. 2009).

28 ⁵⁰ Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona
 (U. Ariz. Jan. 2009) at 44, available at <http://sirow.arizona.edu/files/UnseenPrisoners.pdf>.
 Fear of separation from children is a primary reason abused immigrant women do not
 report domestic violence. Wood, S.M., "VAWA's Unfinished Business: The Immigrant
 Women Who Fall Through the Cracks," 11 DUKE J. OF GENDER L. & POLICY 141, 152-53
 (2004).

⁵¹ See Cervantes, W. & Lincroft Y., MBA, "The Impact of Immigration Enforcement on
 Child Welfare," Caught Between Systems: The Intersection of Immigration and Child
 Welfare Policies at 3 (First Focus and Migration and Child Welfare National Network
 March 2010), available at <http://www.firstfocus.net/Download/Enforcement4.7.pdf>; Nov.
 17, 2000 Memorandum, *supra* n.3.

⁵² Nov. 7, 2007 Memorandum, *supra* n.3.

⁵³ Nov. 7, 2007 Memorandum, *supra* n.3; Nov. 17, 2000 Memorandum, *supra* n.3, at 7-8.

1 Mothers in detention face multiple barriers to reuniting with their children. Some
 2 state child welfare agencies actively prevent or impede the immigrant's access to her
 3 children and ability to participate in custody and termination of parental rights
 4 proceedings. *See generally In re Angelica L.*, 767 N.W. 2d 74 (2009). Systemic barriers
 5 in family court proceedings that impede immigrant mothers' ability to maintain custody
 6 of their children include language barriers; family court judges who base custody
 7 decisions on immigration status rather than parenting ability and the children's best
 8 interests as required by state law;⁵⁴ limited access to services; and reunification case-plan
 9 requirements imposed by child welfare authorities that make reunification virtually
 10 impossibility for many immigrant mothers.⁵⁵

11 Separations stemming from a mother's detention pose serious risks to children's
 12 immediate safety, economic security, well-being, and long-term development, causing
 13 eating and sleeping disorders, anxiety, withdrawal, aggression, and academic and
 14 behavioral problems.⁵⁶ Largely because of this trauma, even mothers who are clearly
 15 eligible for immigration relief abandon their attempts to challenge removal proceedings
 16 so that they can gain speedy release from detention and be reunited with their children as
 17 soon as possible. An Arizona lawyer working with immigrant women reported that
 18 immigrant women's "needs are so different from men. All they want is their children.
 19 So it's very hard to work with them because they don't want to . . . hear 'you have to be
 20 here four months fighting your case.' They just say, 'You know, I don't care about my
 21 case; I care about my kids.'"⁵⁷

22
 23
 24 _____
 25 ⁵⁴ *Diana H. v. Rubin*, 217 Ariz. 131, 138 (2007).

26 ⁵⁵ Cervantes & Lincroft, *supra* n.51, at 4-6.

27 ⁵⁶ Chaudry, *supra* n.48; Capps, R. *et al.*, "Paying the Price: The Impact of Immigration
 Raids on America's Children," at 50-53, Report by the Urban Institute for the National
 Council of La Raza (2007), *available at*
 28 http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf; Cervantes &
 Lincroft, *supra* n.51.

⁵⁷ Capps, *supra* n.56, at 45.

1 **V. CONCLUSION**

2 SB 1070 unravels years of federal immigration protections for women, enacted to
3 encourage reporting of crimes and abuse and to ensure battered women and their children
4 access to necessary immigration and health and welfare benefits. SB 1070 cuts off
5 immigrant women from such benefits by requiring Arizona law enforcement to detain
6 and question upon “reasonable suspicion” that a person is allegedly engaged in criminal
7 activity, including the new Arizona crime of not carrying sufficient immigration papers.
8 Local law enforcement officers lack experience with the nuances of lawful immigration
9 presence under federal law and lack training to consider the particular vulnerabilities and
10 humanitarian needs of immigrant mothers, crime victims, and children. Thus, SB 1070
11 deters immigrant women from so much as leaving their homes, let alone from
12 affirmatively contacting law enforcement or going to schools, health care providers, and
13 social service agencies related to the care and nurturing of their children. The law chills
14 the exercise of legal rights, stops pursuit of justice system remedies, and cuts off
15 immigrant women and their children from federally funded services that protect life and
16 safety and prevent significant morbidity and mortality among immigrant women.

17
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