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The Invisible Voices of the Movement to End Violence Against Women: Immigrant Survivors with Criminal Convictions

Leoni Fred

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The Invisible Voices of the Movement to End Violence Against Women: Immigrant Survivors with Criminal Convictions

By: Leoni Fred

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I. INTRODUCTION

Immigrant women with criminal convictions are the invisible voice of the movement to end violence against women. The correlation between domestic abuse and the risk of incarceration is well documented, and immigrant survivors with a criminal history experience the same consequences of abuse as other survivors. However, pro-immigrant advocates of the movement to end violence against women have largely failed to acknowledge this group of women. Immigrant survivors with criminal convictions do not conform to the image of an innocent victim – women who have no criminal history or only one that involves the use of self-defense against their abusers.¹ The icon of the innocent victim is an image that many advocates have used to persuade state and federal governments to provide immigration relief to law-abiding immigrant victims of domestic violence.² As a result, immigration legal relief available to victims of domestic violence with significant criminal records is limited. There are no special rules that permit the release of these survivors from immigration detention centers or relief from deportation. In addition, significant research on women who use self-defense on their abuser is available.³ Whereas, none on immigrant survivors with criminal convictions who find themselves in the criminal justice and then in immigration detention have been conducted.⁴

Studies like that of Beth E. Richie and of the Bedford Hills Maximum Security Correctional Facility demonstrate the correlation between domestic violence and the risk of incarceration.⁵ These studies show that many incarcerated women have experienced at least one form of domestic violence.⁶ Many women have also reported that abuse is one of the factors, if not the dominant factor, that led them to prison.⁷ For example, one of the women featured in Richie's study, a thirty-year old African American woman, identified as Carolyn, was arrested for first degree murder of her

¹ Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 Wash. L. Rev. 581, 623 (2009) (discussing that the innocent victim icon has failed to include all victims of domestic violence. Victims under the innocent victim icon “are necessarily passive objects upon whom criminal acts were imposed.” Thus, they are not responsible for the initiation of crimes.).

² *See id.* at 621–22.

³ *See* Andrea L. Dennis & Carol E. Jordan, *Encouraging Victims: Responding to a Recent Study of Battered Women Who Commit Crimes*, 15 NEV. L.J. 1, 17 (2014).

⁴ *See id.*

⁵ *See* BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED, BLACK WOMEN* (1996); Angela Browne et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization among Incarcerated Women*, 22 INT'L J. L. AND PSYCHIATRY 301 (1999).

⁶ RICHIE, *supra* note 5 at 115, 125.

⁷ *Id.*

son after her abusive husband lied to the police that she was an accomplice.⁸ Before her arrest, Carolyn had suffered abused at the hands of her husband for twelve years.⁹ Her son also endured regular beating by his father.¹⁰ One the morning of her child's death, Carolyn awoke from a deep sleep and her husband told her that their son had fallen and hit his head on the edge of a table.¹¹ Carolyn realized that something was wrong with the child and took him to the emergency room, where he died.¹² The father was arrested at the hospital after Carolyn accused him of abuse.¹³ Four days later, at her son's funeral she was arrested after her husband told detectives that she had hit her son in the head with a hammer.¹⁴

The social and political movement to end violence against women enabled the enactment of the Violence Against Women Act (VAWA) in 1996 by Congress. VAWA criminalizes interstate domestic violence and interstate violations of protective orders and provides for immigration relief for certain categories of immigrant survivors. However, the act largely excludes female immigrant survivors with significant criminal records.¹⁵

This article argues that advocates should reach beyond the goal of securing immigration relief for law-abiding immigrant women. Like victims who have no criminal records and those who use violence to defend themselves against their abusers, immigrant victims with criminal convictions suffer the consequences of trauma and should not be excluded from immigration relief and services, such as counseling, that will empower them to break the cycle of violence. Today, services are limited to immigrant survivors serving a criminal sentence.¹⁶ Immigrant survivors with criminal convictions in detention do not receive adequate treatment for their physical, social, and emotional need.¹⁷ Moreover, in the countries that most women are being deported, immigrant survivors with criminal convictions have a high risk of being re-victimized because of the high

⁸ *Id.* at 108.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See INA § 204(a)(1)(A)(iii)(II) (stating that a battered immigrant person may not apply for immigration status if the individual does not have good moral character. Thus, excluding any person who has been convicted of an aggravated felony as defined in section 101(a)(43)).

¹⁶ See PART V.

¹⁷ See Maria Mendoza, *A System in Need of Repair: The Inhumane Treatment of Detainees in the U.S. Immigration Detention System*, 41 N.C.J. Int'l L. & Com. Reg. 405, 416 (2016).

rates of gender violence and the lack of resources that could help end the cycle of violence.¹⁸ Without Legislative intervention, immigrant survivors with criminal convictions are at risk of being part of a never-ending cycle of abuse.

This article is divided into four parts. Part II provides brief background on the movement to end violence against women and its accomplishments. The section discusses how advocates have focused on the innocent victim model to provide relief for women and how, as a result, the immigration provisions of VAWA mirror it. Part III explores the correlation between domestic violence and the risk of incarceration. The section also argues that women convicted for fighting back against their abuser and survivors convicted of other crimes should not be treated differently. Part VI illustrates how the focus on innocent victims has influenced deportation policies that affect female immigrant survivors with criminal convictions. Part V discusses the services that are often needed by survivors of domestic violence and whether these needs are met in prisons and detention centers where U.S. Immigration and Customs Enforcement (ICE) holds immigrants. This part also focuses on the services available to survivors in the top three countries to which ICE has deported people in the 2016 fiscal year.

II. PART II

A. *Emergence of the Movement to End Violence Against Women*

The movement to end violence against women emerged in the 1970s as a result of the justice system's failure to acknowledge the problems of abused women and the lack of resources available to them.¹⁹ At the time, the justice system treated domestic violence as a private matter not requiring the intervention of the police or courts. It was considered a family matter that should be left between the intimate partners to resolve.²⁰ Even when courts decided to intervene in domestic disputes, they often failed to issue arrest warrants to women who asked for them.²¹ Family assault cases that resulted in a court hearing had a common disposition of an "unsecured, unrecorded, blank, fake peace bond." Court dockets also frequently read "discharged for want of prosecution" when abusers plead

¹⁸ See PART V(B) of this note.

¹⁹ See SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT*, 54 (1982).

²⁰ *Id.*

²¹ See *id.*

guilty to assaulting their intimate partners or were found guilty.²² Some judges who dismissed cases believed that if a woman remains with her husband after the first beating, it was her fault if it occurred again.²³ Police officers often failed to make arrest based on the belief that domestic violence was a family matter. When they were called to a scene, they would sometimes side with the abusive husband.²⁴ For many victims, the barriers to gaining safety and security did not end in courts and with the police. Battered women who left their abuser were denied public benefits. The public benefits system did not provide housing or financial assistance to women who were still legally married because their husband's income made them ineligible.²⁵

Advocates created non-profit organizations to provide emergency shelters for battered women and emotional support programs.²⁶ They also worked with government officials and agencies to enforce existing state laws to prosecute abusers and to create policies and programs that would improve the handling of domestic abuse cases.²⁷ In the 1990s, advocates urged the federal government to legislate in the area of intimate partner violence.²⁸ In 1994, Congress enacted VAWA.²⁹ The Act helped create the United States Department of Justice Office on Violence Against Women and provided grants for the creation of state's law enforcement, civil legal services, and shelters services.³⁰ The Act also created other new legal remedies, including in the area of immigration, for victims.

B. *Successes Under VAWA*

The movement to end violence against women succeeded in many ways with the passage of VAWA. In particular, immigrant victims were for the first time in history given special relief based on their status as victims of domestic violence. A female immigrant survivor could obtain lawful status by filing a self-petition or an application for cancellation of removal if she was in removal proceedings.³¹ VAWA also allowed a female immigrant survivor to receive lawful status without her abuser's knowledge and cooperation to prevent him from using the petitioning

²² *Id.*

²³ *See id.* at 55.

²⁴ *See id.* at 158.

²⁵ *See id.* at 55.

²⁶ Dennis, *supra* note 3 at 6.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1953-1956.

process as a control tool against her.³² For the Department of Homeland Security (DHS) to approve a VAWA self-petition, the petitioner must satisfy several requirements. The victim must show that she has or had a relationship with the abuser, that the abusive spouse is a U.S. citizen or lawful permanent resident, that she resides in the U.S., that she at one point resided with the abuser, experienced battery or extreme cruelty, that she has good moral character, and that she married in good faith.³³ However, female immigrant victims married to men who lost their lawful permanent residence status for involvement in criminal activity, which included the prosecution for domestic violence crimes, were not eligible for a self-petition.³⁴ The requirement that extreme hardship would result if the female immigrant survivor made status is difficult to obtain.³⁵ To meet the extreme hardship requirement, a female immigrant survivor had to prove that the domestic violence suffered caused her or her children to receive continuous “counseling, medical care, legal protection, child support orders, or other assistance . . . requiring access to U.S. courts” and that their needs were “not likely to be met in her home county.”³⁶ However, obtaining the documents that would prove extreme hardship from medical personnel, social workers, and the police was difficult to obtain.³⁷ Also, women who divorced their husbands were ineligible to file a self-petition.³⁸ As a result, immigrant survivors had to wait for deportation proceedings to file a cancellation of removal.³⁹ Other immigrant survivors experienced difficulties in meeting the VAWA eligibility requirements. Immigrant survivors who were criminally convicted after using self-defense on the abuser or who had other types of offenses were disqualified due to a good moral character requirement.⁴⁰

In 2000, Congress addressed several of the barriers contained in the original act. Congress created a more flexible evidentiary requirement for showing extreme hardship in waivers in the reauthorized VAWA of 2000.⁴¹ It also created the U visa, which provides temporary nonimmigrant

³² Lianna E. Donovan, *The Violence Against Women Act's Protection of Immigrant Victims: Past, Present, and Proposals for the Future*, 66 RUTGERS L. REV. 745, 759 (2014).

³³ 108 Stat. at 1953–1955.

³⁴ Donovan, *supra* note 32.

³⁵ 108 Stat. at 1953–1956.

³⁶ Donovan, *supra* note 32 at n.109.

³⁷ *Id.*

³⁸ *Id.* at 760.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–3244, 114 Stat. 1464, 1518–1538.

status to victims of certain qualifying crimes.⁴² Only women who have suffered mental or physical abuse and who are helpful to law enforcement in investigation or persecution of criminal activity are eligible for the program.⁴³

In 2005, VAWA was again reauthorized to expand confidentiality protection against abusers.⁴⁴ Provisions were added to prevent abusers from obtaining information regarding whether the victim filed a VAWA immigration petition.⁴⁵ Victims' immigration cases were protected from being undermined by their abusers.⁴⁶ Abusers were also prevented from influencing ICE officials' decision to pursue deportation proceedings against victims.⁴⁷

The most recent reauthorization of VAWA occurred in 2013. This reauthorization amended the U Visa system by adding stalking to the list of covered crimes.⁴⁸ Hardship waivers to have remove the conditional basis of the permanent resident status for an immigrant were extended to immigrant survivors' spouses where the marriage was declared invalid because a U.S. citizen or lawful permanent resident spouse committed bigamy unbeknownst to the victim spouse.⁴⁹ In addition, VAWA self-petitioners, U visa petitioners and holders, and other immigrant survivors identified as "qualified aliens" were exempted from being barred from lawful permanent status based on past use of public assistance.⁵⁰

C. *The Innocent Victim Icon*

Although the movement to end violence against women has been successful in many ways at the state and federal levels, immigration relief available to women with significant criminal convictions remains limited. VAWA requirements may prevent women with criminal convictions from receiving lawful status. This exclusion is partly the result of the movement to end violence against women reliance on the idea that the law should only protect innocent victims.⁵¹ The innocent victims icon is grounded in

⁴² *See id.*

⁴³ *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last updated July 28, 2016).

⁴⁴ Donovan, *supra* note 32 at 762.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, 110.

⁴⁹ *Id.* at 112.

⁵⁰ *Id.* at 111.

⁵¹ Gruber, *supra* note 1, at 623.

morals.⁵² It divides individuals by placing them into categories of worthiness.⁵³ Innocent victims are those who abide by social norms and are not responsible for any crime.⁵⁴ Instead, the criminal acts are imposed on them.⁵⁵ By contrast, immigrant women who have committed crimes are viewed as unworthy.⁵⁶ In other words, the victims worth our concern and deserving of our protection are only those women considered respectable.⁵⁷ Women with criminal convictions, such as prostitution or drug trafficking, are less worthy of protection.

Advocates' use of the innocent victim icon began in the 1970s. At the time, advocates relied on traditional family values and stereotypes of white middle-class women as wives and mothers to persuade states to intervene in domestic matters.⁵⁸ In an effort to dissolve states' belief that domestic matters belong in the private sphere, advocates drew a contrast between women who were worthy and unworthy of protection.⁵⁹ Women worthy of protection were wives who were mostly in their homes and were loyal mothers and spouses who provided intimacy to their spouses.⁶⁰ In contrast, women unworthy of protection were those labeled as prostitutes, thieves, or drug users.⁶¹ Today, a battered woman's eligibility for protection is still distinguished by her worthiness. The element of good moral character of the VAWA self-petition and cancellation of removal, exclude women who are considered unworthy of protection.⁶² As a result, immigrant survivors with criminal convictions are less likely to be granted lawful status.

In addition to driving the requirements for immigration relief, the innocent victim icon has also affected the focus of legal scholars' research. Significant research has been directed at women who have fought back against their intimate partners in self-defense.⁶³ In contrast, battered

⁵² See generally Rebecca Sharpless, *Immigrants are Not Criminals: Respectability, Immigration Reform, and Hyperincarceration*, 53 HOUS. L. REV. 691, 707 (2016).

⁵³ See generally *id.*

⁵⁴ Gruber, *supra* note 1.

⁵⁵ *Id.*

⁵⁶ See generally Sharpless, *supra* note 47, at 708–711.

⁵⁷ See *id.*

⁵⁸ Beverly Balos & Mary L. Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U. L. REV. 1220, 1239 (1999).

⁵⁹ See *id.* at 1241.

⁶⁰ See *id.* at 1287.

⁶¹ *Id.*; Michelle S. Jacobs, *Prostitutes, Drug Users, and Thieves: The Invisible Women in the Campaign to End Violence Against Women*, 8 TEMP. POL. & CIV. RTS. L. REV. 459, 460 (1999) (Discussing advocates failure in representing prostitutes, thieves, and drug users who frequently experience domestic violence).

⁶² 108 Stat. at 1953–1955.

⁶³ Using Lexis Nexis' Law Review and Journals with the key terms "battered women and criminal convictions" twenty-six out of the top fifty articles discussed women who killed their intimate partners in self-defense, while twenty-three discussed topics such as

women with criminal convictions unrelated to fighting back have not received much attention. Only a few scholars have moved away from the innocent victim to include battered women with criminal convictions as a focus of research.⁶⁴ However, none have been dedicated to studying immigrant survivors with criminal convictions facing deportation proceedings.

i. Influences on WAVA

VAWA's immigration provisions reflect the innocent victim icon.⁶⁵ Many immigrant survivors with criminal convictions have trouble meeting the good moral character requirement. While the Immigration and Nationality Act (INA) does not define good moral character, it lists mandatory exclusions.⁶⁶ The list includes convictions of laws relating to controlled substance, a conviction of prostitution, an aggravated felony, and other crime of moral turpitude.⁶⁷ Furthermore, aggravated felony, as defined by the INA, may include state-defined misdemeanor offenses.⁶⁸ According to the INA, aggravated felony includes crimes of violence for which the term of imprisonment is at least one year, including suspended sentences.⁶⁹ Thus, a female immigrant survivor with a sentence of confinement for more than one year for a state-defined misdemeanor may not be found to have good moral character.⁷⁰ A crime of violence is defined as the following:

[A]n offense that has an element the use, attempted use or threatened use of physical force against the person or property of another; or any other offense that is a felony and that by its nature, involves a substantial risk that

breaking the cycle of abuse and stated statutes addressing domestic violence. One article specifically addressed battered women who commit crimes besides killing their intimate partner.

⁶⁴ See Generally Jacobs, *supra* note 61, at 460; Balos et al., *supra* note 58, at 1239 (Discusses how socially labeling women unworthy and those women whom our society and culture construct as respectable influences social inequalities); Dennis et al., *supra* note 3, at 15, 21 (States that domestic violence increases or contributes to the criminal behavior of women, thus, women with criminal histories should not be overlooked).

⁶⁵ Moira Fisher Preda et al., *Preparing the VAWA Self-Petition and Applying for Residence*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2013).

⁶⁶ See 8 U.S.C.A. § 1101(b)(f) (2017).

⁶⁷ See *id.*

⁶⁸ § 1101(a)(43)(F).

⁶⁹ *Id.*

⁷⁰ *Id.*

physical force against the person or property of another may be used in the course of committing the offense.⁷¹

Therefore, an immigrant woman convicted of a misdemeanor assault deemed to be a crime of violence and sentenced to a one-year term may lack a good moral character and be deported.

In addition, an immigrant survivor with a criminal conviction must prove that she has not been convicted of a crime of moral turpitude. Crimes involving moral turpitude (CIMTs) have not been defined by the INA.⁷² As a result, courts have given CIMTs its meaning and had determined it on a case by case analysis. Traditionally, CIMTs has been defined as intent to engage in “an act that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”⁷³ Courts have found that even some crimes against property, including theft and burglary, to be CIMTs.⁷⁴ A battered immigrant woman with such a conviction will not have a VAWA self-petition or cancellation of removal approved.

III. PART III

A. *Domestic Violence Correlation to the Risk of Incarceration*

Studies have shown that incarcerated women often have a history of being abused. Seventy-five percent of women in a study of 150 women in Bedford Hills Maximum Security Correctional Facility in New York reported abuse by an intimate partner.⁷⁵ Sixty percent of the women reported being kicked, bitten, or hit with a fist, fifty-seven percent reported being beaten up, and fifty percent reported being hit with an object abuse to do damage.⁷⁶ The women also reported prevalent that was severe and cumulative over the course of the women’s lives.⁷⁷ In another study, approximately seventy-eight percent of 402 women incarcerated in Metro

⁷¹ 18 U.S.C. § 16(a)–(b) (2017).

⁷² *What is a Crime Involving Moral Turpitude?*, U.S. Citizenship and Immigration Services, <https://my.uscis.gov/helpcenter/article/what-is-a-crime-involving-moral-turpitude> (last visited Jan. 8, 2017).

⁷³ *Id.*

⁷⁴ Katherine Brady et al., *Grounds of Deportability and Inadmissibility Related to Crimes*, NAT’L IMMIGRATION PROJECT OF THE NAT’L LAWYERS GUILD 1, 10–11 (2012).

⁷⁵ Angela Browne et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 Int’l J.L. & PSYCHIATRY 301, 313 (1999).

⁷⁶ *Id.*

⁷⁷ *Id.*

State Women's Prison, located in Atlanta, Georgia, reported physical abuse by a partner.⁷⁸ A study by the Center on Juvenile and Criminal Justice found that sixty percent of women in California prisons had been physically abused as an adult.⁷⁹ Spouses or partners perpetrated most of the abuse.⁸⁰

Research also shows that involvement in prostitution, drug use, the sale of narcotics, and robbery is common for survivors of domestic violence. In interviews conducted by Beth E. Richie at the Rose M. Singer Center, a women's jail at the Rikers Island Correctional Facility, women incarcerated for prostitution, drug use, the sale of narcotics, and robbery reported domestic violence as one of the factors that drove them into the activity which led to their arrest.⁸¹ These women shared the experience of "being controlled and feeling constrained by tense intimate relationships within a hostile social world."⁸² Some reported that they had engaged in illegal activity because of coercion by their abuser.⁸³ Doreen, who was arrested for prostitution, was in an abusive relationship with her boyfriend of four years.⁸⁴ She described her experience in the following way:

In addition to being battered, he used to rape me, then he'd say that I was such a good slut that I might as well get paid for it, and he'd bring men home and ask them for money to have sex with me. About a year after that started, he took me out to work the street. When I'd get home, the only thing that would stop the abuse was if I brought in lots of money from hooking . . . I'm an addict and an alcoholic. I didn't start out this way. My life was going to be very different from this. I was going to go to college to become a teacher. He's stolen my dreams. I've lost my family, my eyesight in one eye, and my outlook on the world as a good place to live. I hope I die soon.⁸⁵

In addition, survivors often experience stress, symptoms of complex post-traumatic stress disorder (PTSD), anxiety, depression, and physical

⁷⁸ Sarah L. Cook et al., *Self-Report of Traumatic Events in a Random Sample of Incarcerated*, 16 WOMEN & CRIMINAL JUSTICE 107, 118 (2005).

⁷⁹ Barbara Bloom et al., *Women in California Prisons: Hidden Victims of the War on Drugs*, CTR. ON JUVENILE & CRIMINAL JUSTICE 1, 3 (1994).

⁸⁰ *Id.*

⁸¹ See RICHIE, *supra* note 5, at 115, 120, 123.

⁸² *Id.* at 1-2.

⁸³ See *id.* at 117.

⁸⁴ *Id.* at 115.

⁸⁵ *Id.*

pain. They may use drugs to dull the pain.⁸⁶ Blondie, a woman convicted of a drug charge, was abused by her boyfriends for four years.⁸⁷ Her experience illustrates the use of drugs by battered women as a coping mechanism:⁸⁸

I would be in a serious pain and couldn't stop screaming. At first, I denied and tried to hide the abuse, but he would beat me to keep me quiet! But sometimes I'd have broken bones, so I couldn't just be quiet. He would go out and come home with "medicine," which I think was initially legit, and I fell for his acting like he was taking care of me . . . He started buying morphine on the street. It really helped the physical pain and the emotional pain. And soon I needed more and more to numb the pain of broken bones that weren't set, including a broken arm. Now I try to get it on my own even when he isn't beating me because I am addicted⁸⁹

Although studies discussing domestic violence and its correlation to the risk of incarceration do not specifically identify the interviewees as immigrants, statistics show that a significant number of women who are not U.S. citizens are imprisoned in the United States. In 2013, the number of inmate's in state and federal prison who were not U.S. citizens was 73,665.⁹⁰ Of the noncitizen inmates, 3,439 were reported as female.⁹¹ Therefore, it can be inferred that a significant percentage of incarcerated immigrant women are victims of domestic abuse.

Both women incarcerated for fighting back and women incarcerated for other offenses should receive relief and services. No victim should be excluded from receiving relief because they have a criminal history. In a study conducted by Maura O'Keefe, women incarcerated for fighting back and those incarcerated for other offenses shared many characteristics.⁹² The study showed that the majority of the women received serious injuries as a result of the abuser's beating.⁹³ These injuries included broken bones,

⁸⁶ Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration*, NAT'L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN 1, 4 (2002).

⁸⁷ RICHIE, *supra* note 5 at 125.

⁸⁸ *See id.*

⁸⁹ *Id.*

⁹⁰ E. Ann Carson, *Prisoners In 2013*, U.S. DEP'T OF JUST. 1, 20 (2014).

⁹¹ *Id.*

⁹² Maura O'Keefe, *Incarcerate Battered Women: A Comparison of Battered Women Who Killed Their Abusers and Those Incarcerated for Other Offenses*, 12 J. FAMILY VIOLENCE 1, 14 (1997).

⁹³ *Id.*

black eyes, cuts, and head injuries.⁹⁴ Furthermore, the report found that a high percentage of the women had multiple experiences of severe abuse in their adulthood.⁹⁵ Both groups of women needed ongoing psychological services to treat the emotional consequences of trauma endured in adulthood. Immigrant survivors with criminal convictions should not be excluded from receiving services to treat the consequences of trauma in the U.S. because they do not fit into the innocent victim icon. They are victims whose abuse often led them to the path that resulted in their arrest and conviction. They should receive relief under VAWA.

IV. PART IV

A. Influences on the U.S. Immigration and Customs Enforcement

The innocent victim icon has influenced the shift of policy towards detention and deportation as the primary means of immigration enforcement.⁹⁶ While immigrant survivors with and without criminal convictions have been deported over the years, battered undocumented women with criminal convictions face a higher possibility of deportation than other women.

As of January 25, 2017, Secure Communities, a Department of Homeland Security program, is being used by ICE to remove immigrants.⁹⁷ Secure Communities was designed to prioritize the “removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and the risk to public safety.”⁹⁸ However, the program has placed victims, like Maria Bolanos, in deportation proceeding after being charged with a crime.⁹⁹ On June 24, 2009, Maria Bolanos was arrested at her home for illegally selling phone cards after she called the police to report that her

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See generally Sarah Gryll, *Immigration Detention Reform: No Band-Aid Desired*, 60 EMORY L.J., 1211, 1224 (2011).

⁹⁷ See *Secure Communities*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/secure-communities> (last visited Jan. 9, 2018) [hereinafter *Secure Communities*].

⁹⁸ See *id.*

⁹⁹ Pilar Marrero, *Abused and Deported: Immigrant Women Face Double Disgrace*, NEW AMERICA MEDIA (March 17, 2011), <http://newamericamedia.org/2011/03/abused-and-deported-immigrant-women-face-double-disgrace.php>; see Shankar Vedantam, *Destined for Deportation?*, WASHINGTON POST (Nov. 2, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110106661.html> (Providing further details on Bolanos arrest and ICE determination to deport those who violate federal immigration law).

husband was domestically abusing her.¹⁰⁰ Although the charges against Bolanos were later dropped, immigration authorities pursued her deportation.¹⁰¹ The Secure Communities program provides a federal information-sharing partnership between the local jurisdictions, the Federal Bureau of Investigation (FBI), and the Department of Homeland Security (DHS).¹⁰² Under the program, local jurisdictions share the fingerprints of individuals after being arrested and/or books with the FBI.¹⁰³ The FBI then sends the fingerprints to DHS, which checks them against its immigration databases.¹⁰⁴ If the individual is found to be unlawfully present in the United States, ICE takes enforcement actions.¹⁰⁵

For the fiscal year 2017, ICE removed a total of 226,119 inadmissible and deportable immigrants.¹⁰⁶ Of the immigrants removed, 67,859 were interior criminals.¹⁰⁷ Data identifying the numbers of men and women who have been deported based on a crime is not available in the report. It is thus difficult to determine how many women with criminal convictions have been deported and for what specific offenses. However, it is known that women represent approximately ten percent of the overall immigration detention population.¹⁰⁸

B. *ICE and Victims of Domestic Abuse*

Currently, immigration detention centers do not provide the adequate services needed by victims of domestic abuse.¹⁰⁹ Physical, emotional, and health care services are limited to survivors.¹¹⁰ Furthermore, detained women reported physical and verbal abuse by detention officials.¹¹¹ As a result, female survivors with criminal convictions are at risk of re-traumatization. In 2014, several women in the Karnes County Residential Center in Texas reported that guards and other workers sexually abused

¹⁰⁰ Marrero, *supra* note 99.

¹⁰¹ *Id.*

¹⁰² *See Secure Communities, supra* note 97.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT: FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 1, 12 (2017).

¹⁰⁷ *Id.* at 13.

¹⁰⁸ Mendoza, *supra* note 17, at 415.

¹⁰⁹ *Id.* at 416.

¹¹⁰ *Id.*

¹¹¹ *Sexual Abuse in Immigration Detention*, ACLU, <https://www.aclu.org/feature/sexual-abuse-immigration-detention> (last visited Jan. 10, 2018).

them.¹¹² The women testified that they were removed from their cells at night for sex and asked for sexual favors in exchange for money or promises of assistance, such as help with their immigration cases.¹¹³ Moreover, in a letter dated August 9, 2016, signed by eleven women detained in the Laredo Processing Center sent to Grassroots Leadership, three women reported re-traumatization of their abuse.¹¹⁴

In addition, reports have shown that DHS has failed to fully investigate complaints of sexual abuse in ICE detention centers. An investigation by FRONTLINE discovered no evidence showing that the majority of sexual abuse complaints had been investigated or resolved.¹¹⁵ The investigation also showed that ICE failed to keep reports on abuse and assault allegations.¹¹⁶ About half of the allegations were dismissed because investigators could not determine whether the alleged incidents occurred.¹¹⁷ Twenty-five percent of the complaints were dismissed as unsubstantiated because victims had been deported.¹¹⁸ Another report by the National Immigrant Justice Center and Detention Watch Network, described a persistent “ICE culture of Secrecy.”¹¹⁹ Even after the creation of the Office of Detention Oversight to conduct independent investigations in 2009, ICE continues to monitor its own compliances.¹²⁰ ICE both sets the conditions for and conducts the investigation.¹²¹ The report also showed that ICE inspections are not fashioned to identify or address violations.¹²² Instead, they are designed to help facilities receive passing rates. Thus, ICE’s wide discretion permits the agency to escape

¹¹² Vivian Kuo & Jason Hanna, *Women Allege Sexual Abuse at Texas Immigration Detention Center*, CNN (Oct. 4, 2014), <http://www.cnn.com/2014/10/03/justice/texas-immigrant-detention-allegations/>.

¹¹³ *Id.*

¹¹⁴ Bethany N. Carson, *Exposed: 6 Types of Abuse Reported By Women from Inside for-Profit Laredo Detention Center, DHS Still Reviewing Ties to Private Prisons*, GRASSROOTS LEADERSHIP (Oct. 12, 2016), <http://grassrootsleadership.org/blog/2016/10/exposed-6-types-abuse-reported-women-inside-profit-laredo-detention-center-dhs-still>.

¹¹⁵ Sarah Childress, *Why Immigrant Detainees Still Aren’t Safe from Abuse*, FRONTLINE (Nov. 20, 2013), <http://www.pbs.org/wgbh/frontline/article/why-immigrant-detainees-still-arent-safe-from-abuse/>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Lives In Peril: How Ineffective Inspections Make ICE Complicit In Detention Center Abuse, NATIONAL IMMIGRANT JUSTICE CENTER & DETENTION WATCH NETWORK (Oct. 22, 2015), <http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0?q=livesinperil>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

accountability for re-traumatizing survivors with a criminal conviction in detention centers.

A solution that would increase accountability would be unannounced inspections by an independent agency. This would allow transparency of the actual conditions of facilities. Other recommendations include removing the immunity of federal officials working in immigration detention centers, and implementing a cause of action for victims when a correctional facility fails to complement or comply with the standards set by the Prison Rape Elimination Act (PREA), which created regulations for identify, preventing, and responding to sexual abuse and assault in DHS facilities.¹²³ ICE officers have qualified for immunity despite violating PREA standards.¹²⁴ Currently, there is no cause of action available to victims when an agency fails to comply with PREA standards.¹²⁵ Reforming policies would give immigrant survivors with, and without, criminal convictions an opportunity to see justice done.

V. PART V

A. *Services Needed by Female Immigrant Survivors with Criminal Convictions*

Domestic abuse is a traumatic and stressful experience. It makes victims feel insecure, helpless, and powerless. Women who experience long-term and severe domestic abuse are at risk of developing symptoms that prevent them from having healthy minds and bodies.¹²⁶ Victims who suffer short-term and less severe abuse are more likely to recover quickly with support and other resources.¹²⁷ Emotional and psychological symptoms that female survivors may experience include but are not limited to shock, denial, disbelief, fear, mood swings, guilt, and confusion.¹²⁸ These symptoms can develop into psychiatric symptoms,

¹²³ Bessie Munoz, *Immigrants for Sale: Corporate America Puts a Price Tag on Sexual Abuse*, 17 SCHOLAR 553, 587–589 (2015).

¹²⁴ *See id.* at 587; *see also Doe v. Robertson*, 751 F.3d 383, 392 (5th Cir. 2014) (holding that the conduct of the ICE officers knowingly breaching their contract and its provision aimed at preventing sexual abuse did not constitute deliberate indifference to the victim's rights).

¹²⁵ Munoz, *supra* note 123, at 588–589.

¹²⁶ Carole Warshaw et al., *A Systematic Review of Trauma Focused Interventions for Domestic Violence Survivors*, NAT'L CTR. ON TRAUMA & MENTAL HEALTH 1, 2 (2013).

¹²⁷ *Id.* at 2.

¹²⁸ *Id.*; Lawrence Robison et al., *Emotional and Psychological Trauma: Healing from Trauma and Moving On*, HELP GUIDE, <https://www.helpguide.org/articles/ptsd-trauma/coping-with-emotional-and-psychological-trauma.htm> (last updated Oct. 2017) (stating a complete list of common symptoms victims of trauma may experience).

such as depression, reliving the traumatic event, hyper arousal, sleep disruption, and avoiding reminders of the trauma.¹²⁹ In addition, survivors may develop chronic traumatic stress disorder (PTSD), an anxiety disorder common in some victims of trauma.¹³⁰ Female survivors with PTSD may experience ongoing symptoms of flashbacks, bad dreams, and frightening thoughts.¹³¹

Immigrant survivors with criminal convictions are not exempt from experiencing these symptoms. Thus, it is important to acknowledge that survivors with criminal convictions need services to effectively deal with the impact of the abuse they have endured. Services that are usually needed by all survivors are counseling, advocacy, substance abuse treatment, and language compatible programs.¹³²

Counseling allows victims to break the isolation of abuse by addressing its impact.¹³³ It helps survivors move forward by providing a safe and confidential space for victims to share their feelings, thoughts, and fears.¹³⁴ Domestic violence counseling is offered in individual and group settings.¹³⁵ Individual and group counseling can be structured to provide trauma therapy, grief-resolution, self-esteem improvement, problem solving, and goal setting.¹³⁶ Therefore, speaking with a professional in counseling allows victims to deal with anxiety and stress.¹³⁷ It can also increase victims' self-efficacy and coping skills.¹³⁸ Group counseling also allows victims to connect with other women who have experienced similar situations.¹³⁹ It helps reduce the feeling of isolation that is created by domestic violence.¹⁴⁰

Domestic violence advocates can provide further assistance to victims. Advocates can offer survivors additional emotional support, as well as access to resources, including legal assistance, information on

¹²⁹ Warshaw, *supra* note 126, at 2.

¹³⁰ *Id.*

¹³¹ See *Post-Traumatic Stress Disorder*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml> (last revised Feb. 2016).

¹³² Larry Bennett et al., *Effectiveness of Hotline, Advocacy, Counseling, and Shelter Services for Victims of Domestic Violence*, 19 J. OF INTERPERSONAL VIOLENCE 815, 817 (2004).

¹³³ See *id.* at 818.

¹³⁴ *Counseling for Domestic Violence Survivors*, THE NATIONAL DOMESTIC VIOLENCE HOTLINE (Aug. 20, 2012), <http://www.thehotline.org/2012/08/counseling-for-domestic-violence-survivors/> [hereafter *Counseling for Domestic Violence Survivors*].

¹³⁵ Bennett et al., *supra* note 132, at 818.

¹³⁶ *Id.*

¹³⁷ *Counseling for Domestic Violence Survivors*, *supra* note 134.

¹³⁸ Bennett, *supra* note 132, at 821.

¹³⁹ *Counseling for Domestic Violence Survivors*, *supra* note 134.

¹⁴⁰ *Id.*

immigration, crime prevention, and the criminal process.¹⁴¹ They can also provide referrals to other agencies, attend court hearings with victims, and assist battered women in submitting comments to the court.¹⁴² Moreover, research by Sullivan and Bybee has demonstrated the importance of having advocacy programs for survivors' safety and quality of life.¹⁴³ The study centralized on survivors who participated in ten weeks of intensive therapy for two years at six-month intervals.¹⁴⁴ The study showed that twenty-four percent of participants experienced no physical abuse by the original assailant or a new partner over a two-year follow-up period compared to ten percent of women who had not received advocacy services.¹⁴⁵ Women who received services also demonstrated fewer symptoms of depression and were more effective at obtaining social support.¹⁴⁶

Language barriers have prevented many female immigrant survivors from receiving counseling and attending advocacy programs.¹⁴⁷ According to a wide-range study conducted by the Immigrant Women's Task Force of the Coalition for Immigrant and Refugee Rights and Services on immigrant Latinas and Filipina women, forty-eight percent of the Latinas interviewed did not speak any English.¹⁴⁸ While, thirty-eight only spoke basic English.¹⁴⁹ Thus, the inability to speak fluent English may prohibit battered immigrant women from receiving assistance if programs are not designed in their native languages.

i. Services Available in Prison

Many female inmates have experienced adult abuse that has led to mental health problems.¹⁵⁰ According to the Bureau of Justice Statistics, at midyear 2005, sixty-eight percent female inmates had experienced past physical or sexual abuse out of the three-quarters who have mental health

¹⁴¹ *What is a Victim Advocate?*, NAT'L CTR. FOR VICTIMS OF CRIMES, <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/what-is-a-victim-advocate-#roles> (last visited Jan. 16, 2017).

¹⁴² *Id.*

¹⁴³ Bennett, *supra* note 132, at 818.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See generally Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implication*, 7 GEO. J. POVERTY LAW & POL'Y 245, 250 (2000).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See Kim White, *Women in Federal Prison: Pathways In, Programs Out*, 14 WM & MARY J. WOMEN & L. 305, 309-310 (2008).

issues.¹⁵¹ The Federal Bureau of Prisons (BOP) offers gender-responsive programs to meet the needs of inmates who are addicted to drugs and victims of trauma.¹⁵²

Substance abuse programs, such as Residential Drug Abuse Program (RDAP), are available to female inmates who qualify and volunteer for treatment.¹⁵³ Currently, RDAP is available in seventy-seven federal prisons for men and most female only institutions.¹⁵⁴ It is usually a nine-month intensive program in a set in a therapeutic community where inmates live in a unit separated from the general population.¹⁵⁵ The program offers individual and group counseling, as well as other skill development strategies.¹⁵⁶

To serve female inmates with trauma, BOP offers psychological services through the Resolve Program.¹⁵⁷ The Resolve Program allows certain inmates to qualify for the Trauma in Life Workshop and the Resolve Non-residential Treatment Program.¹⁵⁸ The Trauma in Life Workshop provides inmates with information on trauma and its potential impact.¹⁵⁹ Meanwhile, the Resolve Non-residential Treatment Program is tailored to meet the needs of individual inmates. However, only inmates that have participated in the Trauma in Life Workshop and suffer from Axis I or Axis II disorders are eligible for the program.¹⁶⁰ Therefore,

¹⁵¹ Doris J. James et al., *Mental Health Problems of Prison and Jail Inmates*, U.S. DEP'T OF JUST. BUREAU OF JUST. STATISTICS 1, 10 (last updated Dec. 14, 2006).

¹⁵² White, *supra* note 150, at 312.

¹⁵³ *Id.*

¹⁵⁴ *Residential Drug Treatment Program and Locations*, U.S. DEP'T OF JUST. FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/custody_and_care/docs/RDAP_locations.pdf (last updated Nov. 25, 2016).

¹⁵⁵ *Substance Abuse Treatment*, U.S. DEP'T OF JUST. FED. BUREAU OF PRISONS CUSTODY & CARE, https://www.bop.gov/inmates/custody_and_care/substance_abuse_treatment.jsp (last visited Jan. 17, 2017).

¹⁵⁶ White, *supra* note 150, at 312.

¹⁵⁷ *Psychology Treatment Program*, U.S. DEP'T OF JUST. FED. BUREAU OF PRISONS CUSTODY & CARE (2016), <https://www.bop.gov/policy/progstat/5330.11.pdf>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 41.

¹⁶⁰ *Id.*; see Cheryl Lane, *DSM 5– Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders*, PSYWEB (Dec. 1, 2012), <http://www.psyweb.com/content/main-pages/dsm-5-fifth-edition-of-the-diagnostic-and-statistical-manual-of-mental-disorders> (defining Axis I as the highest level of the Diagnostic and Statistical Manual of Mental Disorder (DMS) that needs treatment and include diagnoses that are the most familiar and recognized, such as major depressive episode, schizophrenic episode, and panic attacks. Axis II include life-long problems that begin in childhood; defining Axis II disorders to include but are not limited to antisocial, borderline, narcissistic, paranoid, and dependent personality disorder).

access to these services is limited and does not address the needs of every single abuse victim.

ii. Services Available in ICE Detention Centers

Although access to trauma and substance abuse treatment may be limited in prison, survivors have a higher chance of being receiving services in prison than in immigration detention. Currently, there are adequate programs for female immigrant survivors in ICE detention centers.¹⁶¹ Therefore, immigrant survivors receiving treatment for trauma will terminate therapy services once they are transferred from a prison cell to an ICE detention center. Women needing further treatment will not be able to adequately address their mental health concerns and/or substance abuse. Some may also be victimized once deported back to their home countries because they were unable to complete programs tailored to breaking the cycle of abuse.

B. Gender Violence in Battered Immigrant Women's Home Country

In the 2017 fiscal year, three of the highest countries to which ICE deported people were Mexico, Guatemala, and El Salvador.¹⁶² Each of these countries has limited resources for addressing the consequences of domestic abuse. These countries also account for the highest rates in gender violence in the world due to lack of addressing gender violence.¹⁶³ Inadequate funding exists to permit the investigation and prosecution of cases, and abusive men often receive no serious penalties.¹⁶⁴ Less than three percent of reported femicide, or gender-motivated killing of women, cases are resolved by courts.¹⁶⁵ Therefore, immigrant survivors with criminal convictions are mostly being deported to countries that will not address their traumas and may re-expose them to more violence targeted at women.

¹⁶¹ Mendoza, *supra* note 17, at 416.

¹⁶² Fiscal Year 2017 ICE Enforcement and Removal Operations Report, *supra* note 106, at 15.

¹⁶³ Anna Alvazzi Del Frate, GLOBAL BURDEN OF ARMED FORCES 113, 120–22, 133 (Keith Krause, et al. eds., 2d ed. 2011).

¹⁶⁴ *Id.* at 122.

¹⁶⁵ *Central America: Femicides and Gender-Based Violence*, CTR. FOR GENDER & REFUGEE STUDIES, <https://cgrs.uchastings.edu/our-work/central-america-femicides-and-gender-based-violence> (last visited Jan 12, 2018) [hereinafter *Femicides and Gender-Based Violence*].

i. Mexico

Currently, Mexico, the country to which ICE deports the most individuals, struggles to reduce violence against women.¹⁶⁶ A recent nationwide survey indicates that approximately forty–four percent of women in Mexico have suffered some form of violence in their homes.¹⁶⁷ Of those women, twenty–five percent reported physical violence, eleven percent sexual violence, fifty–six percent economic violence, and eighty–nine percent emotional violence.¹⁶⁸ Between 2013 and 2014, INEGI discovered that seven women were killed every day on average across Mexico.¹⁶⁹ In addition, the Inter–American Commission on Human Rights’ most recent report on Mexico found that women continue to be victims of certain crimes at rates higher than men.¹⁷⁰ The report found that eighty–two percent were the victims of rape, while eighty–two for human trafficking, eighty–nine for sexual abuse, and seventy–nine for domestic violence.¹⁷¹

In reaction to the high rate of violence against women and civil society organizations outcry for justice, Mexico enacted the Gender Alert on July 28, 2015. The Alert is “[a] set of emergency governmental measures to confront and eradicate violence against women in a given territory, whether perpetrated by individuals or by the community itself.”¹⁷² Gender Alert provides funding for programs to educate public servants, such as the police and public prosecutors, on gender violence so that they are more sensitive to the issue and can identify what crimes are gender–motivated. Gender Alert is also aimed at increasing the sentences of those convicted of gender–based violence.¹⁷³ However, Gender Alert has not been effective at reducing the rate of femicides and gender–based violence in Mexico because of the government’s failure to implement it.¹⁷⁴ In 2016, at

¹⁶⁶ Fiscal Year 2017 ICE Enforcement and Removal Operations Report, *supra* note 106, at 15 (Illustrating that in 2017 ICE deported 128,765 citizens of Mexico).

¹⁶⁷ Ariadna Estevez, *Sexual and Domestic Violence: The Hidden Reasons Why Mexican Women Flee Their Home*, THE CONVERSATION (Sept. 27, 2016), <http://theconversation.com/sexual-and-domestic-violence-the-hidden-reasons-why-mexican-women-flee-their-homes-65352>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Inter–American Comm’n on Human Rights, *The Human Rights Situation in Mexico*, Doc. 44/15 (Dec. 31, 2015).

¹⁷¹ *Id.*

¹⁷² *Id.* at 113.

¹⁷³ Clayton Conn, *Despite ‘Gender Alert’ in Mexico, Violence Against Women Climbs*, TELESUR (Aug. 3, 2016), <http://www.telesurtv.net/english/news/Despite-Gender-Alert-in-Mexico-Violence-Against-Women-Climbs-20160803-0016.html>.

¹⁷⁴ *Id.*; see also Nat’l Citizens’ Observatory, *Femicide and Impunity in Mexico: A Context Of Structural and Generalized Violence*, TELESUR, 1, 4 (2012), http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CDDandCMDPDH_forthesession_Mexico_CEDAW52.pdf.

least thirty-one investigations into possible femicide cases were initiated by the Mexico State Attorney.¹⁷⁵ However, independent organizations claim that the number of gender-based violence murders is at least 146.¹⁷⁶ Thus, a significant gap between the numbers of gender-based violence murders and those being investigated exists.¹⁷⁷

Furthermore, governmental programs for female survivors are limited in Mexico. With more than a 100 cities and a female population of sixty-two million, there are only twenty-five Women's Justice Centers in Mexico.¹⁷⁸ Women's Justice Centers were launched as part of USAID's Promoting Justice Program and the Government of Mexico's National Commission to Prevent and Eradicate Violence Against Women and to empower, provide counseling, job training, and safe environments to victims of domestic violence.¹⁷⁹ Non-governmental agencies that offer resources to battered women also have their limitations. In 2007, the Immigration and Refugee Board of Canada reported that the state of Coahuila had five shelters.¹⁸⁰ On average, each shelter took in ten families.¹⁸¹ Therefore, victims in search of safe environments had to enlist their names on a waiting list.¹⁸² In addition, the maximum length a woman and her children could stay at a shelter is three months.¹⁸³ In the state of Jalisco, there were 110 temporary shelters, which were usually full.¹⁸⁴ Because the locations of shelters were available to the public, victims had to move between shelters to prevent abusers from locating them.¹⁸⁵ In another report by the Immigration and Refugee Board of Canada published in 2008, only three non-government and one government operated shelters

¹⁷⁵ Conn, *supra* note 173.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See *Mexico Demographics Profile 2018*, CENTRAL INTELLIGENCE AGENCY, http://www.indexmundi.com/mexico/demographics_profile.html (identifying a population of 16,402,301 females between the ages of 0 and 14, 10,770,843 between 15 and 25, 25,938,909 between 25 and 54, and 4,944,802 between 55 and 64) (last updated Jan. 20, 2018); *Mexico Shows Domestic Violence Survivors How to Move Forward*, USAID, <https://www.usaid.gov/results-data/success-stories/violence-victim-empowered-businesswoman> (last updated June 17, 2016).

¹⁷⁹ Femicide and Impunity in Mexico: A Context of Structural and Generalized Violence, *supra* note 174, at 4.

¹⁸⁰ *Responses to Information Requests*, IMMIGRATION AND REFUGEE BD. OF CANADA, <https://www.justice.gov/sites/default/files/coir/legacy/2013/11/07/MEX102544.FE.pdf> (last updated June 7, 2007).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Responses to Information Requests*, IMMIGRATION AND REFUGEE BD. OF CANADA, <https://www.justice.gov/sites/default/files/coir/legacy/2013/11/07/MEX102551.E.pdf> (last updated June 13, 2007).

¹⁸⁵ *Id.*

were available in the Federal District of Mexico to victims of violence.¹⁸⁶ In 2007, the government-operated shelter accepted eighty-eight victims.¹⁸⁷ Like the shelters in Coahuila, women and their children at the government-operated shelter were accommodated up to three months, except for exceptional situation in which a woman could extend her stay up to six months.¹⁸⁸ Moreover, because shelters did not receive any police protection, the abuser has threatened members of the staff in order to have them divulge the location of their victims.¹⁸⁹

ii. Guatemala

Guatemala, the country receiving the second highest number of deportees from the United States, has the third highest rate of femicide.¹⁹⁰ According to the Inter-American Commission on Human Rights of the Organization of American States, violence against women has been the most reported crime in Guatemala.¹⁹¹ More than 40,000 complaints of domestic violence have been recorded each year.¹⁹² Police reports collected between 2000 and 2010 by Inter Press Service indicate that 5,200 women died in gender-related violence.¹⁹³ Sixty percent of all femicides are perpetrated by a current or former intimate partner.¹⁹⁴

To reduce the high rate of gender violence, the Guatemalan government in 2008 passed the Law Against Femicide and Other Forms of Violence Against Women, which finally made violence against women a punishable crime.¹⁹⁵ However, according to the Inter American Court, the law has not been effective at reducing the numbers of women murdered and punishing perpetrators, due to the high level of corruption in the criminal justice system.¹⁹⁶ Many prosecutors do not acknowledge violence

¹⁸⁶ *Responses to Information Requests*, IMMIGRATION AND REFUGEE BD. OF CANADA, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/MEX102832.FE.pdf> (last updated June 3, 2008).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Femicides and Gender-Based Violence, *supra* note 165; *see also* Fiscal Year 2017 ICE Enforcement and Removal Operations Report, *supra* note 106, at 15 (Showing that 33,570 individuals were removed by ICE to Guatemala).

¹⁹¹ Guatemala: Domestic violence, including legislation, state protection, and services available to victims, THE UN REFUGEE AGENCY, <http://www.refworld.org/docid/4fc4aa872.html> (last updated May 14, 2012).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Guatemala: Domestic violence, including legislation, state protection, and services available to victims, THE UN REFUGEE AGENCY, <http://www.refworld.org/docid/4fc4aa872.html> (last updated May 14, 2012).

¹⁹⁵ Guatemala: Domestic Violence, *supra* note 191.

¹⁹⁶ Angelika Albaladejo, *supra* note 194.

against women as a serious problem. Some prosecutors and judges have required the parties to reconcile rather than proceed with a criminal case.¹⁹⁷ As a result of these practices, ninety-nine percent of gender-based violence murders have not been prosecuted.¹⁹⁸

Because of the limited number of shelters and economic opportunities, women do not always report abuse to the police.¹⁹⁹ Guatemala's government operates only eight shelters for victims of domestic violence.²⁰⁰ Each shelter offers temporary accommodation, legal and psychological support.²⁰¹ In Guatemala City, there are only two women's shelters, which are funded by government and foreign donors. One of these shelters has the capacity to house forty women, and the other can house twenty victims and their families for six months. In Quetzaltenango, there is only one shelter, which has the capacity to house forty women.²⁰² Furthermore, the lack of employment opportunities also prevents victims of domestic abuse from relocating to other areas of Guatemala.²⁰³ Guatemalan women find it very difficult to escape domestic abuse.

iii. El Salvador

For the fiscal year 2017, ICE deported 18,838 individuals to El Salvador.²⁰⁴ As a result, EL Salvador is fourth highest among countries receiving deportees from the United States.²⁰⁵ Currently, El Salvador is experiencing high rates of murders motivated by gender, sexual, and domestic abuse. Since 2009, 2,521 women have been murdered in El Salvador.²⁰⁶ This works out to an average of 420 femicides each year.²⁰⁷ In 2013, 4,826 sexual assaults against women cases were reported in the first nine months.²⁰⁸ In 2014, there were approximately 5,007 domestic violence cases.²⁰⁹

¹⁹⁷ See Guatemala: Domestic Violence, *supra* note 191.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Fiscal Year 2017 Ice Enforcement and Removal Operations Report, *supra* note 106, at 15.

²⁰⁵ See *id.*

²⁰⁶ Angelika Albaladejo, *How Violence Affects Women in El Salvador*, LATIN AMERICAN WORKING GROUP (Feb. 22, 2016), <http://www.lawg.org/action-center/lawg-blog/69-general/1590-how-violence-affects-women-in-el-salvador>.

²⁰⁷ See *id.*

²⁰⁸ Amnesty Int'l, *Canada: Submission to the UN Human Rights Comm.*, AI Index AMR 20/1806/2015 (June 5, 2015).

²⁰⁹ *Id.* at 1.

In 2011, the Salvadoran government passed the Special Comprehensive Law for a Violence-Free Life for Women, which addressed crimes motivated by gender. The law provides a guide to law enforcement authorities for identifying and preventing violence against women.²¹⁰ However, data has shown that conviction rates remain low.²¹¹ In 2013, the rate of impunity, or lack of police and the judicial system action, for femicide crime was estimated at seventy-seven percent.²¹² Only 392 out of the 4,826 sexual assault cases in 2013 resulted in convictions.²¹³ Some government officials ignore the law, while others refuse to enforce it, often by rejecting the statements of victims.²¹⁴ Data collected by the Organization of Salvadoran Women for Peace show that judges, prosecutors, and police officers are the offenders in twelve percent of the cases of crimes against women.²¹⁵

While some services to female victims of violence are made available by the government, they are very limited. According to World Bank Reports, Women City, a program created in 2011 to provide female victims with psychological, legal, medical, and financial counseling, is only available in six locations.²¹⁶ The program has aided 575,747 women between 2011 and 2014.²¹⁷ Women City does not provide shelters for women escaping violence.²¹⁸ The only government shelter in the country is provided by the Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU). The ISDEMU shelter is temporary and can accommodate only thirty-five women and children one to three months at a time.²¹⁹ The admission process is also very strict. Women that have been victimized by a gang member are younger than eighteen years old, have children, or have health problems are excluded from the admission process. Abused women in El Salvador face formidable barriers to accessing help and resources.

²¹⁰ El Salvador: Violence against women, including non-domestic sexual violence, legislation, state protection and support services, THE UN REFUGEE AGENCY, <http://www.refworld.org/docid/4fc4aa872.html> (last updated May 14, 2012).

²¹¹ EL SALVADOR: Submission to the Human Rights Committee for the 114th Session, *supra* note 208, at 2.

²¹² El Salvador: Violence Against Women, Including Non-Domestic Sexual Violence, Legislation, State Protection, and Support Services, *supra* note 210.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Albaladejo, *supra* note 206.

²¹⁶ El Salvador: Violence Against Women, Including Non-Domestic Sexual Violence, Legislation, State Protection, and Support Services, *supra* note 210.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

VI. CONCLUSION

Advocates of the movement to end violence against women should look beyond the innocent victim icon to help all survivors of violence, including those with significant criminal histories. Survivors of domestic violence should not be separated into categories of who is worthy and unworthy of relief. Many incarcerated women have a history of being abused. Numerous studies have shown a correlation between domestic violence and the risk of incarceration. For some women, the abuse is part of the path that led to their criminal activities. Advocates should acknowledge that some immigrant survivors have been pressured by abuse into criminal activity.

Women with and without criminal offenses experience trauma from domestic abuse. All victims of domestic violence are at risk of developing PTSD. Immigrant survivors with criminal convictions should have access to services that can prevent and treat this condition. Counseling should be available to immigrant women in both prison and immigration detention centers to help them break the isolation of abuse and foster healthy coping skills. Immigrant survivors with criminal convictions will most likely be deported to countries that will not provide them with the services needed to treat trauma and break the cycle of abuse. Countries, such as Mexico, Guatemala, and Honduras, have high rates of gender-motivated violence and are lacking in resources, such as counseling and shelter.

Advocates should push Congress to include immigrant survivors with significant criminal convictions in VAWA by eliminating the good moral character requirement and xx. Immigrant survivors with criminal convictions do not conform to the icon of an innocent abuse survivor and fall victim to the stigma against people with criminal convictions. But they, like women without criminal histories, should be eligible for relief through VAWA so they too can seek help for their trauma in the United State.