

No. 10-16645

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE UNITED STATES OF AMERICA,
Plaintiff/Appellee,

vs.

**THE STATE OF ARIZONA; and JANICE K. BREWER, GOVERNOR OF THE
STATE OF ARIZONA, in her official capacity,**
Defendant/Appellant.

On Appeal From a Preliminary Injunction Order
of the United States District Court, District of Arizona
D.C. No. CV-10-1413-PHX-SRB, The Honorable Susan R. Bolton

**BRIEF OF *AMICUS CURIAE* LEGAL MOMENTUM
IN SUPPORT OF AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT (F.R.A.P. 26.1(A))

The following information is provided pursuant to Federal Rule of Appellate Procedure 26.1 for *amicus curiae* Legal Momentum:

Legal Momentum is an independent 501(c)(3) nonprofit organization. It has no parent corporation and no stock.

I. INTEREST OF AMICUS CURIAE

Amicus curiae Legal Momentum is the nation's oldest legal defense and education fund dedicated to advancing the rights of all women and girls. For 39 years, Legal Momentum has made historic contributions through public policy advocacy and litigation to secure personal and economic security for women. Its Immigrant Women Program (“IWP”) is the national expert on the rights and services available to immigrant victims of domestic, sexual, and other violence, sharing this expertise through training, comprehensive publications, and technical assistance for lawyers, advocates, and justice and health care professionals nationwide. IWP leads national advocacy efforts for legal protections, social services, and economic justice for immigrant women. Legal Momentum’s leadership has included crafting and assisting in implementation of the immigration protections in the Violence Against Women Act (“VAWA”), other federal laws and federally supported services necessary to protect life and safety, and family law protections for immigrant women.

With the support of 91 organizations listed in Appendix A to this Brief, Legal Momentum submits that this Brief will present the Court with the unique and critical perspective of the

repercussions of Arizona SB 1070 on the immigrant women population, which is not fully presented in the parties' briefing and which provides additional support for affirming the District Court's grant of a preliminary injunction, enjoining certain provisions of Arizona SB 1070 from taking effect pending final determination on the merits. Legal Momentum participated as *amicus curiae* in support of the Plaintiffs' Motion for Preliminary Injunction in the related district court case of *Friendly House et al. v. Whiting et al.*, No. CV-10-10061-PHX-SRB.

II. 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, sexual assault, and human trafficking. Women who do not have stable immigration status are far more likely to be exploited in the workplace, at home, and in accessing services and exercising their 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 of children.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

¹ Report of the Committee on the Judiciary, U.S. Senate, to accompany 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. Department of Justice, “Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,” A.G. Order No.

Arizona SB 1070 will change all of that, if the preliminary injunction preventing its most odious provisions from taking effect is not affirmed. The legislation, as enacted, would cause irreparable harm to immigrant women (nearly half of Arizona's immigrant population) and their children.⁵ Whereas Arizona law enforcement agencies and officials previously helped ensure that immigrant women were not penalized for reporting crimes, SB 1070 would require law enforcement officers involved in any stop or investigation to detain and question upon "reasonable suspicion" that a person allegedly engaged in criminal activity may be undocumented. SB 1070 also would make it unlawful to harbor or shelter undocumented immigrants. Many commonplace activities could support criminal detention under SB 1070, such as traffic infractions, jaywalking, or even simply being in the wrong place when law enforcement investigates a suspicion of employing or harboring undocumented immigrants.

Given law enforcement's wide and subjective discretion to stop and detain, as well as the fact that SB 1070 would criminalize

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>.

efforts to harbor or shelter undocumented immigrants, these laws would cause immigrants to refrain from seeking federally established protections and be irreparably harmed. Indeed, since passage of the bill and even before the law was scheduled to take effect, federally funded battered women's shelters saw the number of immigrants accessing these essential life-saving and injury-prevention services plummet because victims fear detention and permanent separation from their children if they seek help. Arizona police could be stationed outside a battered women's shelter precisely because immigrant women are likely to use federally guaranteed life-saving services. Similarly, immigrant women face these fears when dropping their children off at child care, going to work, and seeking health and other services for themselves and their children. In effect, this law threatens to put immigrant women in fear of police detention anytime they leave their homes.

SB 1070 will subject immigrants to questioning and detention, including many immigrants who are lawfully present in the United States, and will criminalize, as harboring, efforts to help immigrant crime victims. This intervention by Arizona state employees will undermine the ability of domestic violence shelters,

rape crisis centers, and other victim-services providers to bring crime victims to court, to the hospital for treatment of critical injuries, and to meetings with police and prosecutors, causing irreparable harm.

SB 1070, as enacted, would create a subclass of women and children living in perpetual fear, trapping many in violently abusive relationships or work environments. This law would create an environment in which women who police think “look like immigrants” are never sure whether they may be stopped and required to produce papers on demand; and in particular, in which immigrant women who are victims of sexual assault or other crimes or in need of food, shelter, or essential medical services will rightly fear seeking redress that Congress set up specifically for their benefit and protection. SB 1070 directly conflicts with federal laws and interests, and it would cause irreparable harm if allowed to take effect during the pendency of the litigation (or at any time).

III. SB 1070, AS WRITTEN, INTERFERES WITH FEDERAL PROTECTIONS FOR IMMIGRANT WOMEN WHO ARE VICTIMS OF CRIME

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

For reasons related to family, employment, the problem

of human trafficking, limited English proficiency, and lack of knowledge about their legal rights, immigrant women are particularly likely to suffer abuse, violence, sexual assault, and other crimes. Most immigrant women who seek lawful permanent resident status do so through the family immigration visa system.⁶ In abusive relationships, abusers with control over their wives' and children's immigration status use threats of deportation and separation of mothers from children to keep them from seeking help or calling the police.⁷ When a woman seeks legal immigration status based upon a

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

⁷ Ammar, N. *et al.*, "Calls to Police and Police Response: A Case Study From the Latina Immigrant Women," 7 U.S. J. OF INT'L POLICE SCI. & MGM'T 230, 239 (2005); Natarajan, M., "Domestic Violence Among Immigrants From India: What We Need to Know – and What We Should Do," 26 INT'L J. OF COMPARATIVE & APPLIED CRIMINAL JUSTICE 301, 310 (Fall 2002); Ramos, M.D. & Runner, M.W., "Cultural Considerations in Domestic Violence Cases: A National Judges Benchbook," San Francisco: State Justice Inst. & Family Violence Prevention Fund (1999); Raj, A. *et al.*, "Immigration Policies Increase 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

family relationship (as most do), she may languish for many years in a long queue for a visa.⁸ If she needs to work, she must do so without legal immigration status, making her vulnerable to exploitation, sexual harassment/assault, and retaliation by unscrupulous employers.

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

Immigration status significantly affects the willingness of immigrant women to seek law enforcement help. Immigrants with stable permanent immigration status are more than twice as likely as

POVERTY, LAW AND POLICY 245, 259, 302, Table 12 (2000).

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

⁹ Hogeland, C. & Rosen, K., “Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity,” Coalition for Immigrant and Refugee Rights and Services (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 <http://legalm.convio.net/site/DocServer/dvusc.pdf?docID=314> (31% of immigrant victims reported rise in domestic violence following immigration).

¹⁰ *Id.*

women with temporary legal immigration status to call police for help in domestic violence cases (43.1% vs. 20.8%). This rate decreased to 18.8% if the battered immigrant was undocumented.¹¹ These reporting rates are significantly lower than reporting rates of battered women generally in the United States (between 53% and 58%).¹² The reporting rates in the U.S. among rape and sexual assault victims are extremely low: only 16 % of all rape victims report the crime to law enforcement.¹³ With the heightened fear of detention and deportation that SB 1070 will bring, the statute, if implemented, will make it even less likely that immigrant victims will report and aid in the prosecution of rape and sexual assault. Immigrants will be made even more vulnerable to repeated assaults by perpetrators who play on their fears of detention, using the threat of deportation as a weapon to ensure their silence. In addition, immigrant witnesses to rapes, sexual assaults, and other violent crimes will be less likely to report and aid

¹¹ Ammar, N. *et al.*, *supra* n.7, at 236.

¹² 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” at 7, U.S. Department of Justice, Bureau of Justice Statistics Special Report (May 2000).

¹³ “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).

in prosecution, fearing deportation themselves.

In addition to domestic violence and sexual assault, immigrant women are especially affected by workplace abuse. Immigrant women constitute most of the workforce in the informal, sometimes underground, employment sector, serving as childcare workers, elder and home health care providers, domestic workers, hotel and office cleaners, and farm and factory workers. Because many undocumented women have no other options to feed and support their families, employers – knowing that immigrant women will endure exploitative and dangerous working conditions, including sexual harassment and assault – have a perverse incentive to employ them. Sexual harassment at work is reported by 77% of Latina immigrants.¹⁴ Employers take advantage of undocumented women's lack of stable immigration status, lack of language proficiency, and fear of government authorities to create or maintain unsafe working conditions and underpaid wages. Employers and managers threaten to report undocumented employees to immigration authorities in order to ensure the silence of workers who have been sexually harassed or assaulted at work and to discourage reporting of abuse and labor law

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

violations.¹⁵

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

B. Congress Has Enacted Special Immigration Protections for Immigrant Crime Victims.

Recognizing the severity of domestic abuse, sexual assault, and trafficking perpetrated against immigrant women, as well as the need for immigrant women and their children to access social services designed to help and support victims, Congress has

¹⁵ *Id.*; see also, e.g., Konrad, S.P., "Legal Challenges That Immigrant Women and Children Victims of Crimes of Violence Are Facing Today," witness statement presented at briefing on the aftermath of the Postville, Iowa Raid convened by Representative Hilda Solis (Sept. 23, 2008), available at <http://www.legalmomentum.org/our-work/immigrant-women-program/resources-and-publications/solis-house-briefing-postville.pdf>.

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

¹⁷ *Id.* at 6, 15.

¹⁸ *Id.* at 12.

specifically, and repeatedly, acted to protect the rights and well-being of immigrant victims.¹⁹

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

Domestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizen[’]s legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse’s ability to gain

¹⁹ In addition to the laws discussed herein, Congress also enacted protections for immigrant women in the Immigration Act of 1990 § 701, Pub. L. 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).

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

permanent legal status in the hands of the citizen Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation.²¹

The 2000 VAWA amendments broadened protection beyond domestic violence by creating two visa categories for crime victims who cooperate with law enforcement: the “T Visa” for victims of human trafficking and the “U Visa” for victims of domestic violence, sexual assault, and other crimes.²² Congress created the U Visa because “[a]ll women and children who are victims of these crimes [including domestic violence and sexual assault] committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes . . . and the prosecution of the perpetrators”²³ Both the

²¹ Report of the Committee of the Judiciary, House of Representatives, H.R. Rep. No. 103-395 at 26.

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”),

T and U Visa programs require coordination with local law enforcement agencies and endorsement of the victims' cooperation in investigations and/or prosecutions.²⁴ The Department of Justice (DOJ) funds antitrafficking task forces across the country that encourage coordination among service providers, law enforcement, and prosecutors, acknowledging that human trafficking cases cannot be prosecuted unless trafficking victims have access to services and the protection from deportation that come with the T Visa.²⁵ The city of Phoenix hosts one such federally funded task force.²⁶ The DOJ, through the Office on Violence Against Women, provides significant funding for coordinated community response teams in every state, including Arizona. These model teams involve police, prosecutors, forensic nurses, courts, victim advocacy programs, and others to develop and implement effective community-based responses needed to bring crime perpetrators to justice and offer help, safety, and protection to immigrant and other crime victims.

The protections Congress offers to immigrant victims

Pub. L. 109-162 (2006), §§ 801-34.

²⁴ VAWA 2000 §§ 1501-13.

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

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

extends beyond the relief provided in federal immigration laws to offer a range of additional protections Congress deemed essential to encouraging and supporting immigrant crime victims in receiving the financial and emotional help they need so that they can report criminal activity and participate with law enforcement in detection, investigation, and prosecution of crime perpetrators. When enacting 1996 immigration reforms in the IIRIARA, Congress underscored its intent to protect battered immigrants by adding battered immigrant women and children to the categories of immigrants qualified to receive welfare benefits that prior legislation took away.²⁷ IIRAIRA's restoration of benefits for battered immigrants reflected Congress's recognition that economic survival is a significant reason victims remain with abusers. IIRAIRA enables victims to break the cycle of economic dependency on an abusive spouse, partner, parent, or employer.

Further, Congress specifically authorizes organizations funded by the Legal Services Corporation to represent immigrant victims of domestic violence, sexual assault, trafficking, or other crimes in matters related to the abuse or victimization, even if the

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

victim's immigration status would otherwise preclude representation.²⁸ Similarly, the Federal Victims of Crime Act provided grants to states that have eligible victim compensation programs. Arizona, like nearly every other state and U.S. territory, receives this funding and places no restrictions on crime victim assistance eligibility due to immigration status, as long as the crime is reported to law enforcement within 72 hours.²⁹ SB 1070 would severely impair the relationships between law enforcement and immigrant crime victims that Congress sought to strengthen by directing that DHS offer VAWA and T and U Visa protections for immigrant women.

C. SB 1070 Would Undermine Immigrant Crime Victim Protections.

If not enjoined, SB 1070 would irreparably harm immigrant women's ability to flee ongoing and escalating family and

²⁸ Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 04-208 § 504(a)(11), 110 Stat. 3009 (1997). VAWA 2005 expanded these protections. *See* Legal Services Corporation Program Letter 06-02 (Feb. 21, 2006); 45 C.F.R. § 1626.4; 22 U.S.C. § 7105; VAWA 2005 § 104.

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

workplace violence. Immigrant women will stay longer in abusive situations, suffering increasing physical, sexual, and emotional violence, including injuries, some of which can lead to death, while perpetrators go unpunished. The law would deter and significantly delay crime reporting by immigrant women and children, effectively cutting them off from all crime victim assistance and undermining criminal prosecutions in the State of Arizona. It would irreparably harm women who are afraid to come forward to report crimes and abuse, as it allows crimes and abuse to continue, women and children to live in danger and fear, and perpetrators throughout Arizona to evade punishment. The law would discourage immigrant women from taking advantage of rights and benefits Congress made available to ensure victim protection and to enhance states' ability to prosecute criminals. In effect, SB 1070 would force immigrant victims to choose between detention when attempting to access the laws enacted to protect them and staying silent and enduring more abuse.

Under SB 1070, an immigrant crime victim will have no incentive to, and in fact will be afraid to, reach out to law enforcement or federally guaranteed crime victim social services in Arizona, for fear of detention, separation from her children, and removal. In

particular, SB 1070 would eliminate any reasonable possibility that a T or U Visa-eligible victim could access law enforcement for the purposes of cooperating in investigating or prosecuting crimes committed in Arizona. When crime victims and witnesses cannot safely come forward to report crimes and assist police and prosecutors investigating and prosecuting criminals, victims are condemned to a life of terror and community safety is undermined as rapists, child abuse and sexual assault perpetrators, batterers, and other violent criminals go free and are emboldened to continue perpetrating crimes.

This harm cannot be undone.

Moreover, in contrast to SB 1070, federal law and guidelines are clear that not every immigrant who may be undocumented should be subject to immigration enforcement. Federal immigration officials are precluded from relying upon “reports” or information provided by abusers, crime perpetrators, or traffickers to pursue enforcement actions against undocumented immigrant crime victims.³⁰ Federal immigration officials are strongly

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

cautioned against arresting immigrants at “sensitive locations,” such as rape crisis centers, domestic abuse shelters, or courts where domestic violence and sexual assault proceedings take place, because immigrants at these locations are likely to ultimately qualify for victim-based immigration benefits.³¹ DHS Guidance provides that nursing mothers and others with health conditions should not be held in detention.³² DOJ has issued a list of factors that it and DHS use in exercising prosecutorial discretion not to initiate immigration enforcement actions. These factors include humanitarian concerns, criminal and immigration history, length of time in the United States, eligibility for immigration relief, likelihood of ultimate removal from the United States, and cooperation with law enforcement.³³

Another consequence of this law is that many immigrants who are lawfully in the United States would be subject to detention when Arizona law enforcement personnel are unfamiliar with a given

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

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

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

immigration status or its documentation. The complexities of federal immigration law, the multiple types of legal immigration status, and the wide range of federally acceptable evidence documenting status will make it virtually impossible for local Arizona law enforcement authorities to implement the SB 1070 provisions in any fair, informed manner consistent with federal immigration law. For example, for the subset of legal immigrants eligible for public benefits, the Attorney General has issued guidance that contains nine pages, in small font, of the various types of documentation acceptable to establish citizenship, lawful permanent residency, and other qualified immigrant status.³⁴ Several of the categories of legally present immigrants, including qualified immigrants, will not have a lawful permanent residency card, a visa stamp in their passport, or legal work authorization.

SB 1070 would likely lead to the detention and potential removal of immigrant women who are in the process of obtaining legal immigration status under VAWA and the Trafficking Victims Protection Act (which may involve months or even years of

³⁴ 62 Fed. Reg. 61344, 61363-371 (Nov. 17, 1997) (e.g., asylees, refugees, undocumented battered immigrant VAWA self-petitioners, and VAWA Cancellation of Removal applicants).

administrative processing³⁵), because such victims receive documentation in the form of “*prima facie* determinations” or “deferred action status,” but do not receive an ID card or formal judicial order. Federal policies advise that stays of removal be granted for persons with pending U Visa applications who demonstrate *prima facie* eligibility, including consideration of “humanitarian factors.”³⁶ Federal policies also require release from detention for VAWA, T Visa, and U Visa applicants, and for other persons with pending valid applications for immigration benefits.³⁷ Moreover, due to VAWA’s confidentiality provisions, even federal immigration authorities may be unaware of an immigrant’s pending or approved application for immigration relief unless the Victims and Trafficking Unit of the Vermont Service Center – the centralized processing unit in which VAWA, T Visa, and U Visa petitions are

³⁵ Gorman, A., “U-visa program for crime victims falters,” *Los Angeles Times* (Jan. 26, 2009); Ingram, M. *et al.*, “Experiences of Immigrant Women Who Self-Petition Under the Violence Against Women Act,” *VIOLENCE AGAINST WOMEN* (August 2010) 16:858.

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

³⁷ *Id.*

processed – is specifically contacted.³⁸

IV. SB 1070 WOULD CUT IMMIGRANT WOMEN OFF FROM CRITICAL PUBLIC SERVICES PROVIDED BY FEDERAL LAW

In addition to those social and legal services and public benefits specifically available to immigrant crime victims, Congress has ensured that certain federally funded benefits deemed necessary to life and safety are available to *all persons who need them* – without regard to immigration status. PRWORA cut off access of many immigrants to most federally funded benefits, but Congress reserved for the U.S. Attorney General the right to designate that certain services necessary to protect life and safety are open to all persons without regard to immigration status. The Attorney General's designation stated:

Neither states nor other service providers may use [PRWORA] as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than

³⁸ See Jan. 22, 2007 Memorandum, *supra* n.31; U.S. Department of Justice, Memorandum re “Revocation of VAWA-Based Self-Petitions” (Aug. 5, 2002); U.S. Department of Homeland Security, Memorandum re “Centralization of Interim Relief for U Nonimmigrant Status Applicants” (Oct. 8, 2003); U.S. Department of Justice, Memorandum re “Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues” (May 6, 1997); House Report, *supra* n.30.

[PRWORA], benefit providers may not restrict the access of any alien to the services covered by this Order.³⁹

Nearly half of Arizona's immigrant population are women, and substantial proportions of immigrant women report that they head their households and are primarily responsible for decisions and transportation related to their children's health care and schooling.⁴⁰ Because anti-immigrant policies like SB 1070 create a climate of fear,⁴¹ the law would cause significant harm to immigrant women by impeding their ability to access federally guaranteed benefits such as emergency Medicaid,⁴² federally qualified

³⁹ A.G. Order 2353-2001, *supra* n.4, Preamble.

⁴⁰ Migration Policy Institute, MPI Data Hub, Arizona Fact Sheet, *supra* n.5; Women Immigrants: Stewards of the 21st Century Family at 26 (New American Media Feb. 2009) (reporting the following percentages of immigrant women as heads of household: Latin American, 39%; African, 27%; Arabic, 18%; Chinese, 27%; Vietnamese, 19%; Korean, 18%); "Women, Work, and Family Health: A Balancing Act," Issue Brief: An Update on Women's Health Policy, The Henry J. Kaiser Family Foundation (April 2003), *available at* <http://www.kff.org/womenshealth/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=14293>.

⁴¹ Bauer, T. *et al.*, "Challenges Obtaining Well-Baby Care Among Latina Mothers in New York and California" at 3, New York Forum for Child Health, New York Academy of Medicine, and University of California (Oct. 2003), *available at* <http://www.nyam.org/initiatives/docs/NYCHChallenges2.pdf>.

⁴² Arizona provides emergency Medicaid to undocumented immigrants who meet the other eligibility requirements. Ariz. Rev. Stat. § 36-2903.03. Emergency Medicaid provides coverage for childbirth. 42

community health clinics, emergency shelters and transitional housing,⁴³ soup kitchens, treatment for mental illness or substance abuse, crisis counseling and intervention, and violence and abuse prevention.⁴⁴

Federal money supports critical post-assault services, such as sexual assault forensic exams (SAFE) and rape-related sexually transmitted infections tests. Impeding access to forensic exams undermines the criminal justice system's ability to identify and successfully prosecute rape, sexual assault, and child sexual abuse cases, thereby increasing the risk of future assaults by the same sexual predator against women and children in Arizona and beyond.

Federally funded clinics also offer prenatal and child health care services, as well as care for uniquely female illnesses such as cervical cancer, which is far more prevalent among Latina women.⁴⁵ Routine cervical cancer screening (pap tests) prevents

U.S.C. § 1395dd.

⁴³ Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001), *available at* <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

⁴⁴ A.G. Order No. 2353-2001, *supra* n.4.

⁴⁵ A.G. Order No. 2353-2001, *supra* n.4, § 3(e); Centers for Disease Control, U.S. Preventive Services Task Force, Screening for Cervical

cervical cancer-related death.⁴⁶ Impeding access to prenatal care leads to significantly higher rates of low-birthweight births and thus a higher incidence of serious disabilities.⁴⁷ SB 1070 will deter immigrant women and their children from obtaining critical life-saving assistance, thereby undermining Congress's intent to maintain healthy, safe communities.⁴⁸ Every woman who needs such services and does not seek them for herself or her child will be irreparably harmed.

V. SB 1070 WOULD INCREASE DETENTIONS OF IMMIGRANT MOTHERS AND HARM ARIZONA'S CHILDREN THROUGH MOTHER-CHILD SEPARATIONS

SB 1070 would exacerbate the likelihood that children will be separated from their immigrant parents. Sole and primary

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).

⁴⁶ Centers for Disease Control, AHRQ Pub. No. 03-515A, *supra* n.45.

⁴⁷ See Arizona Health Status and Vital Statistics, Distribution of Low-Birthweight (LBW) Births and LBW Risk by Number of Prenatal Visits and County of Residence, Arizona, 2008, *available at* <http://www.azdhs.gov/plan/report/ahs/ahs2008/pdf/5b21.pdf>; The Future of Children, Low Birth Weight and Infant Mortality and Later Morbidity Vol. 5 No. 1 *Low Birth Weight* (Spring 1995), *available at* <http://futureofchildren.org/futureofchildren/publications/journals/article/index.xml?journalid=60&articleid=370§ionid=2479>.

⁴⁸ In addition, the U.S. citizen children of immigrant parents may be eligible as citizens for a host of other benefits, but parents may be deterred from applying for such benefits for their children due to the same fears arising from their own immigration status.

caretaker immigrant mothers would be deterred from undertaking day-to-day activities crucial to their children's healthy development. Immigrant children will be harmed if every time an immigrant mother leaves her home, she risks arrest, detention, and separation from her children.

In Arizona, 84.5% of children with at least one immigrant parent are U.S. citizens.⁴⁹ The increase in local police involvement in immigration enforcement that SB 1070 mandates will cause far more parental separations than federal immigration enforcement actions.⁵⁰ The forced separations that SB 1070 would cause, whatever the duration, will cause significant and irreparable harm to children and violate immigrant mothers' constitutional rights to nurture, care for, and have custody and decision-making over their child's health, welfare, and development.⁵¹ Detention of a mother

⁴⁹ Passel, J.S. & Cohn, D., A Portrait of Undocumented Immigrants in the United States ii (Pew Hispanic Center Apr. 14, 2009), *available at* <http://pewhispanic.org/files/reports/107.pdf>; Migration Policy Institute, MPI Data Hub, Arizona Fact Sheet, *supra* n.5.

⁵⁰ Chaudry, A. *et al.*, Facing Our Future, Children in the Aftermath of Immigration Enforcement, The Urban Institute at 26 (February 2010).

⁵¹ Discussing the parental rights of undocumented, detained, and deported immigrant parents in the context of termination of parental rights proceedings, the Supreme Court of Nebraska unanimously ruled: "We have explained that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the

who has been abused often results in children being turned over to the abusive spouse.⁵²

The significant damage to the mother-child relationship and the health and well-being of children led federal immigration authorities to develop and implement “humanitarian guidelines” that attempt to promptly identify immigrants who are sole caregivers of children, to coordinate with social services agencies, and to release on orders of recognizance or offer alternatives to detention of immigrant

fundamental liberty interests recognized by the U.S. Supreme Court. Accordingly, before the State attempts to force a breakup of a natural family, over the objections of the parents and their children, the State must prove parental unfitness. . . . [T]he ‘best interests’ standard is subject to the overriding presumption that the relationship between parent and child is constitutionally protected and that the best interests of a child are served by reuniting the child with his or her parents. This presumption is overcome only when the parent has been proved unfit.” *In re Angelica L.*, 767 N.W.2d 74, 92 (Neb. 2009).

⁵² 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. *See also* Dutton, M. A. *et al.*, “Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas,” *supra* n.27. Among battered immigrant women living with their abusers, fear of losing their children was reported by almost half (48.2%) as one of the most significant reasons for not leaving their abusers. *See* 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).

parents, usually mothers.⁵³ DHS also has instructed that nursing mothers be released from detention.⁵⁴ Federal immigration policies direct the use of prosecutorial discretion to decline initiation of immigration enforcement actions against persons who ultimately will be awarded lawful immigration status.⁵⁵ SB 1070 contains none of these protections, mandates or considerations. The law would allow unsupported and improper detentions of lawfully present immigrants who fail to carry or possess specific forms of immigration documentation that the particular officer stopping the immigrant expects to see.

Mothers in detention face multiple barriers to reuniting with their children. Some state child welfare agencies actively prevent or impede the immigrant's access to her children and ability to participate in custody and termination of parental rights proceedings. *See generally In re Angelica L.*, 767 N.W. 2d 74 (Neb.

⁵³See 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.

⁵⁴ Nov. 7, 2007 Memorandum, *supra* n.3.

⁵⁵ Nov. 7, 2007 Memorandum, *supra* n.3; Nov. 17, 2000 Memorandum, *supra* n.3, at 7-8.

2009). Systemic barriers in family court proceedings that impede immigrant mothers' ability to maintain custody of their children include language barriers; family court judges who base custody decisions on immigration status rather than parenting ability and the children's best interests as required by state law;⁵⁶ limited access to services; and reunification case-plan requirements imposed by child welfare authorities that make reunification virtually impossible for many immigrant mothers.⁵⁷

Separations stemming from a mother's detention pose serious risks to children's immediate safety, economic security, well-being, and long-term development, causing eating and sleeping disorders, anxiety, withdrawal, aggression, and academic and behavioral problems.⁵⁸ Largely because of this trauma, even mothers who are clearly eligible for immigration relief abandon their attempts to challenge removal proceedings so that they can gain speedy release from detention and be reunited with their children as soon as possible.

⁵⁶ *Diana H. v. Rubin*, 217 Ariz. 131, 138 (2007).

⁵⁷ Cervantes & Lincroft, *supra* n.53, at 4-6.

⁵⁸ Chaudry, *supra* n.50; 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* http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf; Cervantes & Lincroft, *supra* n.53.

An Arizona lawyer working with immigrant women reported that immigrant women’s “needs are so different from men. All they want is their children. So it’s very hard to work with them because they don’t want to . . . hear ‘you have to be here four months fighting your case.’ They just say, ‘You know, I don’t care about my case; I care about my kids.’”⁵⁹

VI. CONCLUSION

If the District Court’s injunction is not allowed to remain in effect, SB 1070 will unravel years of federal immigration protections for women, enacted to encourage reporting of crimes and abuse and to ensure immigrant women and their children access to necessary immigration and health and welfare benefits. If not enjoined, SB 1070 will cut off immigrant women from such benefits by requiring Arizona law enforcement to detain and question upon “reasonable suspicion” that a person is allegedly engaged in criminal activity, including the new Arizona crime of not carrying sufficient immigration papers. Local law enforcement officers lack experience with the nuances of lawful immigration presence under federal law and lack training to consider the particular vulnerabilities and

⁵⁹ Capps, *supra* n.58, at 45.

humanitarian needs of immigrant mothers, crime victims, and children. Thus, if not enjoined, SB 1070 will deter immigrant women from so much as leaving their homes, let alone from affirmatively contacting law enforcement or going to schools, health care providers, and social service agencies related to the care and nurturing of their children. The law would chill the exercise of legal rights, stop pursuit of justice system remedies, and cut off immigrant women and their children from federally funded services that protect life and safety and prevent significant morbidity and mortality among immigrant women.

Dated: September 30, 2010

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Joanna S. McCallum

Joanna S. McCallum

Attorneys for Amicus Curiae

LEGAL MOMENTUM

APPENDIX A

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

Alabama Coalition Against Domestic Violence
American Friends Service Committee
Arizona Coalition Against Domestic Violence
Asian American Legal Advocacy Center, Inc.
Asian/Pacific Islander Domestic Violence Resource Project
Asian Services in Action, Inc.
Break the Cycle
California Coalition Against Sexual Assault
California Partnership to End Domestic Violence
California Women's Law Center
Casa de Esperanza (Minnesota)
CASA de Maryland, Inc.
Center for Gender and Refugee Studies
Central American Resource Center
Coalition of Labor Union Women
Coalition to Abolish Slavery and Trafficking

Colorado Coalition Against Domestic Violence

Connecticut Sexual Assault Crisis Services, Inc.

Counsel of Mexican Federations in North America/Consejo de Federaciones Mexicanas en Norteamérica

Delaware Coalition Against Domestic Violence

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

Domestic Violence Legal Empowerment and Appeals Project

Enlace Comunitario

Equal Rights Advocates

Family Values @ Work Consortium

Family Violence Prevention Fund

Florida Council Against Sexual Violence

Georgia Coalition Against Domestic Violence

Harbor Communities Overcoming Violence

Human Rights Initiative of North Texas, Inc.

Illinois Coalition Against Domestic Violence

Immigrant Law Center of Minnesota

Immigrant Legal Resource Center

International Institute of the Bay Area

International Tribunal of Conscience

Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence

Kansas Coalition Against Sexual and Domestic Violence

Kentucky Coalition for Immigrant and Refugee Rights

King County Coalition Against Domestic Violence

Korean American Family Service Center

Korean-American Women in Need

Mexican-American Bar Association of Texas

Missouri Coalition Against Domestic and Sexual Violence

National Alliance to End Sexual Violence

National Asian Pacific American Women's Forum

National Association for Chicana and Chicano Studies

National Association of Social Workers

National Center for Victims of Crime

National Center on Domestic and Sexual Violence

National Coalition Against Domestic Violence

National Council of Jewish Women

National Domestic Workers Alliance

National Latina Institute for Reproductive Health

National Network for Immigrant and Refugee Rights

National Network to End Domestic Violence

National Partnership for Women and Families

National Women's Law Center

Neighborhood Legal Services

Nevada Network Against Domestic Violence

New Hampshire Coalition Against Domestic and Sexual
Violence

New Jersey Coalition Against Sexual Assault

New Jersey Coalition for Battered Women

New Mexico Coalition of Sexual Assault Programs, Inc.

9 to 5, National Association of Working Women

North Carolina Coalition Against Domestic Violence

NOW Foundation

Our Bodies Ourselves

Pennsylvania Coalition Against Domestic Violence

Pennsylvania Coalition Against Rape

Raksha, Inc.

Rhode Island Coalition Against Domestic Violence

Safe Horizon

SafePlace

Santuario Sisterfarm

South Asian Americans Leading Together

South Carolina Coalition Against Domestic Violence and
Sexual Assault

Southern Poverty Law Center

Tahirih Justice Center

UNITED SIKHS

University of Cincinnati College of Law Domestic
Violence and Civil Protection Order Clinic

Vermont Network Against Domestic and Sexual
Violence

Victim Rights Law Center

Voces de la Frontera

Washington State Coalition Against Domestic Violence

West Virginia Coalition Against Domestic Violence

Wider Opportunities for Women

Wisconsin Coalition Against Domestic Violence

Wisconsin Coalition Against Sexual Assault

Women Employed

Women of Color Network

YWCA USA

CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT
RULE 32-1 and 29(c)(5)

Pursuant to Circuit Rule 32-1 and 29(c)(5), I certify that this Brief of *Amicus Curiae* Legal Momentum is proportionately spaced, has a typeface of 14 points or more and contains 6,922 words, including Appendix A but not including the table of contents, table of authorities, the caption page, or this certification page.

Dated: September 30, 2010 MANATT, PHELPS & PHILLIPS, LLP

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