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## Silencing the Voices of Battered Women: How Arizona's New Anti-Immigration Law "SB1070" Prevents Undocumented Women from Seeking Relief Under the Violence Against Women Act

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SILENCING THE VOICES OF BATTERED WOMEN: HOW  
ARIZONA'S NEW ANTI-IMMIGRATION LAW "SB1070"  
PREVENTS UNDOCUMENTED WOMEN FROM SEEKING RELIEF  
UNDER THE VIOLENCE AGAINST WOMEN ACT

INTRODUCTION

Claudia flinches as she touches the side of her face where her husband just slapped her. She hadn't properly greeted him when he came home from a long day of work. It seems she never greets him properly; sometimes, he is mad when she doesn't act excited enough, and other times, he wants her out of his way. He is so unpredictable. But what is predictable is her daily beating. As an undocumented woman married to an abusive United States citizen husband, Claudia does not have a job to escape to, or friends to confide in. She is a prisoner in her own home, with a husband who enjoys using his status to degrade and abuse her. He especially enjoys making sure she knows that if she reports the abuse, he will contact the authorities and have her deported. Helpless, Claudia wants to call the police *herself* in the hopes that they will treat her as a victim rather than an undocumented immigrant. But she cannot. She knows the police here have a different agenda. They will ask about her legal status before they ask about any abuse she may have suffered. After all, the law requires them to. Defeated, Claudia chooses to suffer her abuse alone rather than risk being sent back to a country she no longer calls home.<sup>1</sup>

On April 23, 2010, the governor of Arizona signed Senate Bill 1070 (SB1070),<sup>2</sup> also known as an "Anti-Immigration Law."<sup>3</sup>

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1. For a similar story (in this case true), see Laura Tillman, *Exclusive on a Border Near Arizona: How Police can Protect Immigrant Women*, WOMEN'S MEDIA CENTER (May 4, 2010, 7:06 AM), <http://womensmediacenter.com/blog/2010/05/exclusive-on-a-border-near-arizona-how-police-can-protect-immigrant-women>.

2. Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 24, 2010, at A1, available at <http://www.nytimes.com/2010/04/24/us/politics/24immig.html?r=2>.

Referred to by some as the “nation’s toughest bill on illegal immigration,”<sup>4</sup> the purpose of the bill is threefold: identify, prosecute, and deport illegal immigrants.<sup>5</sup> On July 28, 2010, one day before the bill was set to go into effect, a federal district judge issued a preliminary injunction, preventing implementation of many of the key provisions of SB1070 that could have had a detrimental impact on women like Claudia.<sup>6</sup> The court found the provisions were likely to be held unconstitutional because they were preempted by federal immigration law.<sup>7</sup> These provisions included (1) the requirement that state officials determine the immigration status of everyone arrested or detained under local laws and prohibit their release until such a determination has been made,<sup>8</sup> and (2) the creation of independent state penalties for immigrants who fail to carry alien registration

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3. See Alexander Ryland, *Why Arizona’s Anti-Immigration Law Will Hurt the State’s Economy*, CHRISTIAN SCI. MONITOR (July 30, 2010), <http://www.csmonitor.com/Business/The-Adam-Smith-Institute-Blog/2010/0730/Why-Arizona-s-anti-immigration-law-will-hurt-the-state-s-economy>; Tim Gaynor, *Key Parts of Arizona Anti-Immigration Law Blocked*, REUTERS (July 28, 2010), <http://www.reuters.com/article/idUSTRE66R45C20100728>.

4. Archibold, *supra* note 2.

5. *Id.*

6. See *United States v. Arizona*, 703 F. Supp. 2d 980, 1007-08 (D. Ariz. 2010). The potential effects of these particular provisions on victims of domestic violence are discussed *infra* Part II.

7. *Arizona*, 703 F. Supp. 2d at 1007-08. Additionally, Judge Susan Bolton stated that requiring police to check the immigration status of every person arrested would “impermissibly burden federal resources and redirect federal agencies away from the priorities they have established.” *Id.* at 996. In finding Section 3 of SB1070 unconstitutional, Bolton stated that criminalizing the failure of an alien to carry a federal registration document “alters the penalties established by Congress under the federal registration scheme. Section 3 stands as an obstacle to the uniform, federal registration scheme and is therefore an impermissible attempt by Arizona to regulate alien registration.” *Id.* at 998 (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). “The decision to enjoin these provisions was not rooted solely in concern for civil liberties. The Order also underscored pragmatic fiscal prerogatives.” David Austin, *Summary of Why SB1070 was Preempted* (2010) (summary prepared for the Illinois State Bar Association’s Human Rights Section) (on file with author). In other words, the federal government does not have the resources to process requests from Arizona law enforcement to determine the immigration status of every single person that is detained or arrested. See generally Austin, *supra*.

8. ARIZ. REV. STAT. ANN. § 11-1051(B) (2010); see also *Arizona*, 703 F. Supp. 2d at 993-98.

documents as required under federal law.<sup>9</sup>

Nonetheless, the legal effects of the district court's findings are outweighed by the practical effect that SB1070 will continue to have on undocumented battered women. While police contacted by a domestic violence victim are currently precluded from inquiring into the victim's immigration status or demanding her immigration documents, the anti-immigration *sentiment* that SB1070 created remains in full force. Bolstering this sentiment, Arizona Governor Jan Brewer has publicly vowed to appeal the district court's decision all the way up to the Supreme Court.<sup>10</sup> There also remains a strong likelihood that in the event the district court's decision is upheld on appeal, legislators in Arizona will simply work to modify the language of the unconstitutional provisions so they satisfy constitutional standards.<sup>11</sup> The impact on undocumented battered women remains clear: Arizona officials will work hard to ensure that the status of battered women in Arizona takes precedence over their safety. In this sense, the damage caused by the enjoined provisions of SB1070 has already been done, and the climate of fear created by SB1070 lingers.

Additionally, three provisions of SB1070 that negatively impact battered undocumented women remain in effect<sup>12</sup>: (1) the provision requiring that SB1070 be enforced to the full extent of federal law,<sup>13</sup> (2) the provision allowing citizens to sue law enforcement if SB1070 is not enforced to the full extent of federal law,<sup>14</sup> and (3) the provision prohibiting the transportation and harboring of undocumented aliens.<sup>15</sup> These provisions exacerbate the climate of fear surrounding undocumented battered women in Arizona by cloaking anti-

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9. ARIZ. REV. STAT. ANN. § 13-1509 (2010); *see also Arizona*, 703 F. Supp. 2d at 998-99.

10. Jerry Markon & Stephanie McCrummen, *Arizona Immigration Law SB1070—Judge Blocks Some Sections*, WASH. POST (July 29, 2010), <http://www.washingtonpost.com/wpyn/content/article/2010/07/28/AR2010072801794.html>.

11. Professor David Austin mentioned this as one possible response by Arizona to Judge Bolton's forecast that certain provisions of SB1070 will likely be found unconstitutional. *See Austin, supra* note 7.

12. *See Arizona*, 703 F. Supp. 2d at 986-87.

13. ARIZ. REV. STAT. ANN. § 11-1051(A) (2010).

14. *Id.* § 11-1051(H)-(L).

15. *Id.* § 13-2929.

immigration sentiment with the power of the law. Thus, SB1070 continues to deter these women from utilizing the Violence Against Women Act (VAWA)<sup>16</sup> through both anti-immigration sentiment and active provisions.

This Comment argues that although the district court properly found the applicable provisions of SB1070 likely to be unconstitutional, undocumented battered women will still be deterred from utilizing VAWA. This Comment further considers the possibility that the presumably unconstitutional provisions may be found constitutional on appeal, or alternatively, that Arizona may reword the provisions to overcome the preemption issues cited by the district court. Regardless whether SB1070 exists in whole or in part, this Comment highlights the impact relevant provisions of the bill, including those that have been temporarily enjoined, have on undocumented women who are victims of domestic violence.<sup>17</sup>

Part I discusses the male-centric foundation of immigration law and how immigration law has evolved to address the needs of undocumented battered women through the enactment of female-driven legislation in the immigration context. Specifically, Part I addresses how VAWA and its companion, the U-visa, address domestic violence issues faced by undocumented women. Part II discusses the key provisions of SB1070 that directly impact undocumented battered women living in Arizona and how these provisions will prevent undocumented battered women from seeking relief under VAWA. Part III proposes two possibilities that could serve to lessen the negative impact of SB1070 on immigrant victims of domestic violence. First, undocumented women could be better educated on their rights under immigration law. This would empower them to seek help in ways conducive to their unique situation rather than forcing them to rely on traditional methods of help designed for citizens who are victims of domestic violence. Second, police may actually *increase* utilization of VAWA under the provision requiring that they enforce SB1070 to the full extent of federal law. These two possibilities assume that SB1070 is upheld or modified, and a trend

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16. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

17. Whether or not SB1070 is actually preempted by federal law is beyond the scope of this paper. Hence, preemption issues are only briefly discussed in the introduction.

ensues wherein states are given more authority to regulate immigration.<sup>18</sup>

## I. IMMIGRATION LAW AND DOMESTIC VIOLENCE

This Part explains the historical roots of immigration law and how they fostered domestic abuse between citizen or Legal Permanent Resident (LPR) husbands and their undocumented wives. It will then describe how legislation such as VAWA, along with its companion the U-visa, addresses the issue of domestic violence within the immigrant community.

### A. Concept of Coverture

Immigration law is heavily influenced by the concept of *coverture*, which existed in early English and American common law.<sup>19</sup> Under this doctrine, the husband was considered head of the household,<sup>20</sup> and a woman's "legal identity was 'consolidated or subsumed into that of her husband,' effectively making the married couple one person in the eyes of the law."<sup>21</sup> Immigration laws from the 1920s were male-centric in that they gave males complete control over their wives' and children's immigration status.<sup>22</sup> A male U.S. citizen, LPR spouse, or relative was required to petition on behalf of the immigrant woman or accompany her to an immigration interview in order for her to obtain legal status in the United States.<sup>23</sup> In addition, immigration laws precluded a female U.S. Citizen or LPR

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18. See Markon & McCrummen, *supra* note 10 ("Legislatures in 17 states have introduced bills like the Arizona law, with the political climate in Utah, Oklahoma, and South Carolina relatively favorable for passage.").

19. Katerina Shaw, Note, *Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women*, 15 CARDOZO J.L. & GENDER 663, 667 (2009).

20. See Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History Of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL'Y & L. 95, 100 (2001).

21. Shaw, *supra* note 19, at 667 (quoting Katherine M. Schelong, *Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Marital Rape and Stalking*, 78 MARQ. L. REV. 79, 85 (1994)).

22. Orloff & Kaguyutan, *supra* note 20, at 100.

23. *Id.*

from petitioning on behalf of her immigrant spouse.<sup>24</sup> If she married a man from another country, she lost her own U.S. citizenship or other lawful status<sup>25</sup> and assumed the citizenship of her husband's domicile.<sup>26</sup>

These laws furthered the underlying concept of coverture as they treated women as the property of their husbands.<sup>27</sup> Because the doctrine of coverture permitted a husband to “‘chastise’ or even kill his wife if he deemed it necessary punishment,” early immigration laws rooted in coverture essentially acted as state-sanctioned tools for domestic violence.<sup>28</sup> A woman who depended on her husband for immigration status had no way to avoid any abuse that might occur. Rather, the doctrine of coverture forced her to tolerate the abuse indefinitely while she waited to obtain lawful status. Thus, domestic violence was encouraged and ultimately occurred with impunity.<sup>29</sup>

### B. Legislative Responses

Many factors prompted the enactment of legislation directed toward preventing domestic violence in the immigration law context. Two of these factors, for example, were (1) the unique position undocumented immigrant women experienced as a result of dependence on their husbands for legal immigration status, and (2) research showing domestic violence either begins or worsens once a woman and her husband immigrate to the U.S.<sup>30</sup> A significant attempt to eliminate the gender imbalance in immigration law was made with the enactment of the Immigration and Nationality Act of 1952.<sup>31</sup> However, although this law replaced male control over immigration

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24. *Id.*

25. *Id.*

26. Shaw, *supra* note 19, at 668.

27. Karyl Alice Davis, Comment, *Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-visa as a Remedy*, 56 ALA. L. REV. 557, 562 (2004).

28. Orloff & Kaguyutan, *supra* note 20, at 101.

29. *See id.* at 113.

30. Shaw, *supra* note 19, at 665.

31. Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101-1537 (2006)); Orloff & Kaguyutan, *supra* note 20, at 101.

status by creating gender-neutral language—giving the citizen “spouse” control over the non-citizen’s immigration status—this change failed to affect the practical application of the law.<sup>32</sup> Specifically, because women comprised the majority of immigrants who were victims of domestic violence,<sup>33</sup> husbands continued to control their wives’ immigration status despite the introduction of gender-neutral language.<sup>34</sup> Thus, underlying concepts of coverture persisted in immigration law until the enactment of the Violence Against Women Act in 1994.<sup>35</sup>

### *1. Violence Against Women Act (VAWA)*

VAWA<sup>36</sup> represented the first piece of legislation to allow an undocumented battered woman to maintain control over her own immigration status.<sup>37</sup> While congressional reports indicate that three to four million women are abused by their husbands each year, incidents of domestic violence remain vastly underreported.<sup>38</sup> Further, immigrant women appear to be particularly vulnerable to domestic violence: “In the United States, 34% to 49.8% of immigrant women are victims of domestic violence,” 59.5% of *married* immigrant women are victims of domestic violence, and as many as 77% of married women with dependent immigration status are victims of domestic violence.<sup>39</sup> These figures seem to suggest that domestic

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32. *Id.*

33. *Id.*

34. *See id.*

35. *See id.*

36. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

37. *See Davis, supra* note 27, at 562 (“[V]ictims could not apply for the Battered Spouse Waiver unless the abuser had filed the original petition for conditional residency. . . . This requirement did not begin to change until the 1994 Violence Against Women Act.”).

38. Orloff & Kaguyutan, *supra* note 20, at 109.

39. *Davis, supra* note 27, at 557. “Among the victims of domestic violence, the most vulnerable group is immigrant battered women. Research shows that a significantly greater number of immigrant women are abused by their spouses than women in the general population in the United States.” *Shaw, supra* note 19, at 663 (citations omitted). “Immigrant women, who are 40 percent more likely to face violence than the national average, are especially vulnerable.” Irasema Garza, A



violence within the immigrant community constitutes a large majority of overall unreported domestic violence.

Although VAWA was enacted as part of a larger crime bill,<sup>40</sup> with many provisions relating to areas other than immigration, Congress specifically noted that the structure of immigration law had failed to effectively address the problem of domestic violence.<sup>41</sup> Essentially, Congress determined that by allowing the U.S. citizen or LPR spouse to control the non-citizen spouse's immigration status, immigration law had created situations where domestic violence could occur with impunity.<sup>42</sup> Specifically, given that the majority of non-citizen spouses are women,<sup>43</sup> the citizen husband could use this control to abuse his wife, knowing that a fear of deportation would deter her from reporting the abuse to authorities.<sup>44</sup> Thus, the provision of VAWA relating to immigrant women stems largely from the finding of the House of Representatives Committee on the Judiciary that domestic abuse problems are "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."<sup>45</sup>

Congress's primary intent in enacting VAWA was to make it possible for an undocumented battered woman who is married to an abusive U.S. citizen or LPR to self-petition for her own immigration status without the knowledge or cooperation of her husband.<sup>46</sup> By creating a way for women to gain legal status in the United States, Congress also expressed its goal of fostering trust between

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*Losing Proposition: How Immigration Enforcement Hurts Women and Communities*, HUFFINGTON POST (Oct. 6, 2009), [http://www.huffingtonpost.com/irasema-garza/a-losing-proposition---h\\_b\\_309721.html](http://www.huffingtonpost.com/irasema-garza/a-losing-proposition---h_b_309721.html).

40. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796; *see also* Orloff & Kaguyutan, *supra* note 20, at 108.

41. Orloff & Kaguyutan, *supra* note 20, at 110.

42. *See id.*

43. *Id.* at 101. Although the Orloff & Kaguyutan article was published in 2001, recent polls confirm that women continue to constitute a majority of immigrants. Christina Fernandez-Pereda, *Women Immigrants Change America (and Themselves)*, NEW AM. MEDIA (May 16, 2009), [http://news.newamericamedia.org/news/view\\_article.html?article\\_id60d00af6845a5cb1841cf86caa64ea87](http://news.newamericamedia.org/news/view_article.html?article_id60d00af6845a5cb1841cf86caa64ea87).

44. Orloff & Kaguyutan, *supra* note 20, at 110.

45. H.R. REP. NO. 103-395, at 26 (1993), *quoted in* Orloff & Kaguyutan, *supra* note 20, at 110.

46. Orloff & Kaguyutan, *supra* note 20, at 113.

undocumented women and law enforcement.<sup>47</sup> This goal of VAWA is a particularly important consideration given the lack of trust immigrants often feel toward law enforcement in the United States based on their experiences with corrupt police in their native countries.<sup>48</sup> In addition to nurturing this trust, VAWA allowed women to help authorities prosecute their abusers, thereby allowing authorities to punish violent crimes and increase community safety.<sup>49</sup>

There are two ways for an undocumented battered woman to seek protection under VAWA.<sup>50</sup> She may self-petition or apply for relief during a process called “VAWA suspension of deportation,” also known as “cancellation of removal.”<sup>51</sup> A woman must be in deportation proceedings before she is eligible to apply for VAWA suspension of deportation.<sup>52</sup> There are different requirements depending on which method the woman selects to obtain relief.<sup>53</sup> In order to self-petition under VAWA, a woman must prove the following:

- (1) she married her abuser in good faith; (2) her abuser is a U.S. citizen or lawful permanent resident; (3) she resided with him in the United States; (4) during the marriage, either she or her child had been battered or subject to extreme cruelty perpetrated by the spouse; (5) she is of good moral character; and (6) her deportation would result in extreme hardship to either herself or her children.<sup>54</sup>

If the petition is granted, the woman obtains lawful permanent residency in the United States.<sup>55</sup> Unfortunately, not all undocumented battered women are eligible to self-petition under VAWA.<sup>56</sup> These

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47. See *ENCYCLOPEDIA of DOMESTIC VIOLENCE* 541 (Nicky Jackson ed., 2007) (noting that VAWA money was used for police sensitivity training regarding domestic violence victims).

48. Davis, *supra* note 27, at 570.

49. Orloff & Kaguyutan, *supra* note 20, at 113.

50. See *id.* at 113-16.

51. *Id.*; see also Davis, *supra* note 27, at 562-63.

52. Orloff & Kaguyutan, *supra* note 20, at 115.

53. Davis, *supra* note 27, at 562-63.

54. Shaw, *supra* note 19, at 671 (paraphrasing requirements for self petition under Violence Against Women Act of 1994 § 40701).

55. See Orloff & Kaguyutan, *supra* note 20, at 114.

56. *Id.* at 115.

include women

who were divorced; whose spouses or parents lost lawful permanent residency status due to criminal activity (including domestic violence crimes); whose spouses or parents died before they could file or obtain their permanent resident status under a VAWA self-petition; those victims of child abuse who turned [twenty-one] before they could file for or obtain lawful permanent residency under VAWA; and those immigrant parents of child abuse victims whose mothers are not married to the abusive citizen or lawful permanent resident.<sup>57</sup>

While the requirements under the suspension of deportation provisions are similar to those for self-petitioning, there are some key differences. Specifically, the woman must

show three years continuous physical presence in the United States; prove that she would suffer extreme hardship if she were deported; demonstrate that she is, or *was*, married to a citizen or lawful permanent resident . . . ; prove that she resided with the abuser and married him in good faith; and prove good moral character.<sup>58</sup>

If the woman successfully proves the foregoing, she is granted lawful permanent residency in the United States.<sup>59</sup> If unsuccessful, she is deported to a country outside the United States.<sup>60</sup> Because the amended cancellation of removal provisions do not require the woman to be married to the abuser at the time of filing for relief under VAWA,<sup>61</sup> they make it possible for many women who are ineligible for relief under the self-petitioning process to still get relief under VAWA.<sup>62</sup> It is important to note that when a woman obtains relief

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57. *Id.* (citing Violence Against Women Act of 1994 § 40703(a)).

58. *Id.* (citing Violence Against Women Act of 1994 § 40703(a)) (emphasis added).

59. *Id.* at 116.

60. *Id.*

61. *See* Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1504, 114 Stat. 1464 (amending VAWA 1994 to allow women who were divorced, whose spouses had died, or who had otherwise lost their legal status in the United States to be eligible for VAWA relief).

62. *See* Orloff & Kaguyutan, *supra* note 20, at 115; *see also* Davis, *supra* note 27, at 563 (noting the cancellation of removal provisions are “especially important”

under VAWA, she does not automatically obtain an immigration document indicating her status.<sup>63</sup> The current standard processing time for VAWA petitions is approximately fourteen months.<sup>64</sup> In the meantime, the woman will most likely obtain only a letter from the issuing administrative authority or judge indicating she has filed for VAWA relief.<sup>65</sup>

Lastly, the cancellation of removal provisions allow a woman to apply for relief *after* she is already put into deportation proceedings.<sup>66</sup> By including this alternate method to obtain relief under VAWA, Congress effectively gave the woman a second chance to obtain protection and remain in the United States after she had failed to self-petition or was ineligible to do so. The benefit derived from this provision may prove increasingly important for undocumented battered women in Arizona, who may be put into deportation proceedings at increasing rates because of SB1070.<sup>67</sup>

## 2. U-Visa

The U-visa was created as part of the 2000 amendments to the Violence Against Women Act.<sup>68</sup> It was designed to help victims of violent crimes who were never married to a U.S. Citizen or LPR,<sup>69</sup>

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for victims who do not meet the requirements for self-petitioning).

63. Complaint for Declaratory and Injunctive Relief at 11, *Friendly House v. Whiting*, No. CV 10-1061 (9th Cir. May 17, 2010), *available at* [http://www.aclu.org/files/assets/az\\_sb1070\\_complaint\\_20100517.pdf](http://www.aclu.org/files/assets/az_sb1070_complaint_20100517.pdf).

64. *VAWA Immigration Case Approved for Domestic Violence Victim in Newport Beach*, NUNEZ FIRM (Feb. 24, 2010), <http://www.ocimmigrationattorney.com/blog/?p=644> [hereinafter NUNEZ FIRM].

65. Valeria Fernandez, *Arizona SB 1070 Silences Victims of Domestic Violence*, NEW AM. MEDIA (July 15, 2010), <http://newamericamedia.org/2010/07/domestic-violence-victims-silenced-by-sb-1070.php> (highlighting the contradiction between federal and Arizona state law regarding immigrant document requirements).

66. Orloff & Kaguyutan, *supra* note 20, at 115.

67. *See* discussion *infra* Part II.

68. Laura Graham, *Relief for Battered Immigrants Under the Violence Against Women Act*, 10 DEL. L. REV. 263, 268 (2008); *see also* Orloff & Kaguyutan, *supra* note 20, at 162 (explaining the primary implications of the U-visa introduction).

69. *See* Davis, *supra* note 27, at 566. Although Davis cites the beneficiaries of the U-visa as those women who *are* not married to a citizen or LPR, the true beneficiaries are those who were *never* married, given that VAWA cancellation of

and who are consequently ineligible to seek relief through the self-petitioning and cancellation of removal provisions of VAWA 1994.<sup>70</sup> Thus, the U-visa acts as a “gap-filler to the Violence Against Women Act of 1994”<sup>71</sup> by giving women who may be victims of domestic violence at the hands of their citizen or LPR *boyfriends* a form of relief.<sup>72</sup> To be eligible for a U-visa, a person must prove the following: “(1) ‘substantial physical or mental abuse’; (2) ‘information concerning criminal activity’; (3) certification of her helpfulness to ‘Federal, State, or local authorities investigating or prosecuting’ the crime; and (4) a crime that ‘violated the laws of the United States or occurred in the United States.’”<sup>73</sup>

The U-visa provides four years of temporary residency in the United States and the opportunity to become a permanent resident after three years if the recipient meets certain criteria.<sup>74</sup> Specifically, the attorney general must find

- (1) [the person has] not “unreasonably refused to provide assistance in a criminal investigation or prosecution” of the crime committed against them; (2) they have been continuously present in

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removal provisions allow petitioning following divorce.

70. *See id.* at 563 (explaining that women could be divorced at time of filing under cancellation of removal provisions, but still had to show proof of marriage within past two years and that divorce was related to abuse); *see also* Orloff & Kaguyutan, *supra* note 20, at 114 (clarifying that woman had to be married to abuser at the time of filing self-petition and that divorce was a bar).

71. Anna Hanson, *The U-visa: Immigration Law’s Best Kept Secret*, 63 ARK. L. REV. 177, 177 (2010).

72. Orloff & Kaguyutan, *supra* note 20, at 163. The U-visa also protects the “wives and children of diplomats, work-visa holders, and students.” *Id.* Not only does the U-visa extend protection to immigrant *women* who were ineligible under VAWA provisions, but it also extends protection to men. Hanson, *supra* note 71, at 189-90 (explaining that the U-visa provides important protection for male “brown collar” workers who are typically exploited by their employers).

73. Davis, *supra* note 27, at 566 (quoting Battered Immigrant Women Protection Act of 2000 § 1513(b)(3)). Regarding the third requirement in this list, a law enforcement official or judge must certify that the victim “has been helpful, is being helpful, or is likely to be helpful” in the investigation and prosecution of the crime. Hanson, *supra* note 71, at 192.

74. Mark Shmueli, *Protecting Immigrant Women: Benefits for Abuse Victims*, 41 MD. B.J. 20, 25 (2008).

the United States for a three-year period; and (3) humanitarian reasons, family unity, or public interest justifies their continued presence in the United States.<sup>75</sup>

Thus, the U-visa helps law enforcement investigate and prosecute violent crimes that would otherwise go unpunished due to the undocumented status of victims.<sup>76</sup> In this sense, the visa quells the fears of undocumented victims who would otherwise not report crimes because they fear deportation,<sup>77</sup> while also increasing community safety for citizens and non-citizens alike. Although the intended beneficiaries of the U-visa are undocumented victims of crime and law enforcement, it is worth noting that at the time of its inception, the primary justification for the legislation was solely to help law enforcement increase community safety.<sup>78</sup> It is likely the legislature did not want to reveal the fact that it was trying to give rights to undocumented immigrants in the process.<sup>79</sup> This reluctance on the part of the legislature may reflect society's hesitancy to recognize undocumented citizens as members of the communities in which they live and are victimized.<sup>80</sup>

Society's hesitancy in this regard is strongly reflected in the provisions of SB1070. This is because the legislative purpose behind the creation of the U-visa inherently conflicts with the purpose behind SB1070. Rather than prosecuting violent crimes in the community, the police in Arizona will be more focused on identifying, prosecuting, and deporting illegal immigrants.<sup>81</sup> Consequently, as the protection of communities gives way to an unprecedented enforcement of immigration policy at the state level, many illegal immigrants who happen to be victims of violent crimes will refuse to report them.

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75. Davis, *supra* note 27, at 566-67 (quoting Battered Immigrant Women Protection Act of 2000 § 1513(f)(1)).

76. Orloff & Kaguyutan, *supra* note 20, at 163; *see also* Hanson, *supra* note 71, at 188.

77. Hanson, *supra* note 71, at 189.

78. *See id.* at 188.

79. *Id.*

80. *Id.* (explaining that proponents of U-visa legislation focused on improving law enforcement in order to "circumvent society's reluctance to give rights to the undocumented").

81. *See* Archibold, *supra* note 2.

The enactment of VAWA has positively contributed to the ability of undocumented battered women to remain in the United States while simultaneously improving community safety. VAWA has removed lingering notions of coverture in immigration law and given a voice to women who did not have one until its enactment. Unfortunately, SB1070 threatens to once again silence these women through provisions that focus on status rather than safety. Where VAWA has made great strides in furthering equality in immigration law and ensuring that women are not victims because of their status, SB1070 victimizes these women while offering immunity to their abusers.

## II. SB1070 PROVISIONS AND HOW THEY AFFECT UNDOCUMENTED WOMEN IN ARIZONA

This Part addresses the key provisions of SB1070 most likely to affect undocumented women living in Arizona. It then discusses *how* these provisions will negatively impact undocumented abused women in Arizona by focusing on four relevant consequences of the law. Specifically, SB1070 (1) creates negative ramifications when undocumented women report abuse to authorities because they do not have the proper identification indicating they are legally in the United States, (2) erodes undocumented battered women's trust in law enforcement, (3) creates a sense of fear in battered undocumented women, and (4) discourages citizens in the community from assisting undocumented battered women in escaping their abusers. Consequently, undocumented battered women are deterred from seeking relief under VAWA.

### *A. Identification Documents Required*

Because undocumented battered women do not have the identification required by SB1070,<sup>82</sup> they are discouraged from contacting the police or leaving their homes to seek relief under VAWA. The identification provision of SB1070 requires that all citizens and immigrants carry relevant identification documents.<sup>83</sup> "Willful failure to complete or carry an alien registration document"

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82. *See supra* text accompanying notes 63-65.

83. ARIZ. REV. STAT. ANN. § 13-1509(A) (2010).

constitutes a new state criminal offense in Arizona.<sup>84</sup> Specifically, a person is guilty if he or she does not “‘maintain authorization from the federal government to remain in the United States’ and is ‘in violation of 8 United States Code 1304(e) or 1306(a).’”<sup>85</sup> Furthermore, a person is presumed to be a legal resident of the United States if he or she presents to a law enforcement officer any of the following documents when stopped:

(1) a valid Arizona driver license, (2) a valid Arizona non-operating identification license, (3) a valid tribal enrollment card or other form of tribal identification, or (4) if the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state, or local government issued identification.<sup>86</sup>

The first offense for failure to carry the required documentation constitutes a Class 1 misdemeanor, which is punishable by a fine of up to \$100 and up to twenty days of jail time.<sup>87</sup> The punishment increases to thirty days jail time for subsequent offenses.<sup>88</sup>

This requirement is particularly harsh as applied to undocumented battered women in Arizona for several reasons. Foremost, these women do not have the necessary identification documents precisely because their abusive husbands control their access to the immigration process.<sup>89</sup> Thus, this provision of SB1070 is in direct conflict with VAWA, which does not mandate that a woman present any form of identification as part of meeting the four criteria for relief mentioned above.<sup>90</sup> In fact, an undocumented battered woman is eligible

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84. *Id.*; see also Gabriel J. Chin et al., *A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070*, 25 GEO. IMMIGR. L.J. (forthcoming 2011) (manuscript at 4), available at <http://ssrn.com/abstract=1617440> (follow “One Click Download” hyperlink).

85. Chin et al., *supra* note 84, at 4 (quoting § 13-1509(A), (F)).

86. ARIZ. REV. STAT. ANN. § 11-1051(B).

87. § 13-1509(H).

88. *Id.*

89. See Orloff & Kaguyutan, *supra* note 20, at 111 (noting that “72.3% of abusive citizen or resident spouses never file immigration papers for their abused spouses and the 27.7% who do file hold their spouses in the marriage for almost four years before filing immigration papers”).

90. See *supra* text accompanying note 73.



precisely *because* she is undocumented and without the necessary identification to otherwise help herself through the immigration process. Nonetheless, because these women cannot rebut the presumption that they are illegally in the United States if they are stopped by law enforcement, this provision of SB1070 further deters them from leaving an abusive home and seeking relief under VAWA.

Secondly, not only are identification documents not required under VAWA, but it can take over a year<sup>91</sup> for a woman to receive the official government issued documentation after she has self-petitioned for relief under VAWA (or applied via the cancellation of removal provisions).<sup>92</sup> In the meantime, she may only have a letter indicating that she filed an application for VAWA relief,<sup>93</sup> which does not satisfy SB1070's identification requirements.<sup>94</sup> Ultimately, due to SB1070, "the predicament of being in limbo—applying for legal status, but lacking official identification—affects potentially thousands of people who are either applying for asylum or visas."<sup>95</sup>

One local Arizona family advocacy group has expressed concern over the conflicting requirements of SB1070 and VAWA as they relate to undocumented battered women. Named Arizona South Asians for Safe Families (ASAFSF), the group seeks to "increase awareness of [d]omestic [v]iolence, and to provide support services to Asian victims in the South Asian community."<sup>96</sup> Specifically, ASAFSF "fears that local law enforcement will stop and detain clients who have applied for immigration relief under the VAWA, the TVPA, or through asylum procedures, because they do not have any registration documents that are acceptable under SB1070, and that potential clients will be discouraged from seeking these services."<sup>97</sup>

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91. See NUNEZ FIRM, *supra* note 64.

92. See Fernandez, *supra* note 65.

93. *Id.*

94. *Friendly House* involves a plaintiff who obtained relief under VAWA cancellation of removal provisions, and whose order from the immigration judge represents her only form of identification and permission to remain in the United States. Complaint for Declaratory and Injunctive Relief, *supra* note 63, at 23.

95. Claire Doan, *SB1070 May Silence Domestic Violence Victims*, KGUN9 (July 21, 2010), <http://www.kgun9.com/Global/story.asp?S=12850213>.

96. ARIZONA SOUTH ASIANS FOR SAFE FAMILIES, <http://www.asafsf.org> (last visited Nov. 28, 2010).

97. Complaint for Declaratory and Injunctive Relief, *supra* note 63, at 10-11.

Moreover, the federal government may be aware that a particular undocumented woman is here illegally while she is in the process of obtaining relief under VAWA, yet not penalize her by initiating deportation proceedings. Arizona's SB1070 fails to consider this possibility and assumes that the woman will have the required documentation immediately upon applying for VAWA relief. In a complaint filed in *Friendly House* challenging SB1070, plaintiffs highlight SB1070's impermissible overlap with the federal immigration system:

There are many non-citizens who are present in the United States without formal permission who lack the "registration document" mandated by SB1070, *yet would not be removed if placed in federal removal proceedings*. For example, an individual may be eligible for some form of immigration relief, such as asylum, adjustment of status, or withholding of removal. Some of these individuals are known to the federal government; others will not be identified until they are actually placed in proceedings by the federal government and their cases are adjudicated.<sup>98</sup>

SB1070's mandate that these women have the required documentation, and Arizona's *hope* to imprison and refer them to federal authorities if they do not, are misplaced. This provision significantly increases the likelihood that women will not contact police or leave their homes while penalizing them for an undocumented status perpetuated by their abusive husbands. Consequently, this provision counteracts the efforts of VAWA and prevents these women from attempting to seek the relief it offers.

### *B. Determine Immigration Status*

Because SB1070 expands police powers and responsibilities when it comes to immigration policy, it simultaneously erodes battered undocumented women's trust in law enforcement. The second relevant provision of SB1070 requires, "where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the

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98. *Id.* at 41 (emphasis added).

determination may hinder or obstruct an investigation.”<sup>99</sup> This provision is particularly complex and has the most potential for preventing undocumented women from seeking relief under VAWA insofar as it interacts with other provisions discussed below.

Perhaps the most challenging aspect of this provision lies in defining what constitutes reasonable suspicion.<sup>100</sup> Federal and state courts have repeatedly stated that reasonable suspicion is “context-specific and not quantifiable.”<sup>101</sup> Furthermore, many of the factors that may be considered in determining whether there is reasonable suspicion that someone is an alien are correlated with race and ethnicity.<sup>102</sup> This allows police in Arizona to legally inquire into the immigration status of someone who does not speak English or who is of Hispanic origin pursuant to their authority under SB1070.<sup>103</sup> Thus, the elusive nature of reasonable suspicion contributes to the broad power SB1070 gives police to inquire into an individual’s immigration status. Additionally, it greatly reduces battered undocumented women’s trust in the police.

### 1. Lawful Stop

It is important to point out that as a prerequisite to stopping, detaining, or arresting an individual, the stop must be *lawful*.<sup>104</sup> In other words, a police officer may not simply stop an individual because he or she believes the individual is undocumented. In theory, this appears to satisfy constitutional standards under the Fourth Amendment<sup>105</sup> as it relates to unlawful stops and seizures without

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99. ARIZ. REV. STAT. ANN. § 11-1051(B) (2010).

100. See Chin et al., *supra* note 84, at 16.

101. *Id.* at 20 (stating that reasonable suspicion is a lower standard than probable cause, “which is less than a preponderance of the evidence”).

102. *Id.*

103. See *id.*

104. ARIZ. REV. STAT. ANN. § 11-1051(B); see also Chin et al., *supra* note 84, at 14.

105. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

reasonable suspicion.<sup>106</sup> On the surface, this appears to rebut the very strong argument that SB1070 will result in racial profiling,<sup>107</sup> which is understood by many to be unconstitutional.<sup>108</sup> However, in practice and as applied in the immigration context, the “lawful” prerequisite is meaningless. This is because federal immigration law allows some degree of racial profiling in immigration enforcement.<sup>109</sup> The Supreme Court has indicated that the U.S. Constitution allows consideration of race in immigration enforcement: “The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor.”<sup>110</sup> Because Arizona shares a border with Mexico, it is very likely that many of the undocumented battered women who would be victimized by this provision of SB1070 are of Mexican appearance, and would fall within the allowable range of racial profiling under federal immigration law.

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106. See *Terry v. Ohio*, 392 U.S. 1, 37-39 (1968).

107. The author of SB1070, Russell Pearce, defended his bill against accusations that it will lead to rampant racial profiling: “The law does not allow police to stop suspected illegal aliens unless they have already engaged in normal ‘lawful conduct’ such as a traffic stop, and explicitly prohibits racial profiling. Illegal is not a race, it is a crime.” Russell Pearce, *Arizona or San Francisco: Which Path Will America Take on Immigration?*, TOWNHALL.COM (May 12, 2010), [http://townhall.com/columnists/RussellPearce/2010/05/12/arizona\\_or\\_san\\_francisco\\_which\\_path\\_will\\_america\\_take\\_on\\_immigration](http://townhall.com/columnists/RussellPearce/2010/05/12/arizona_or_san_francisco_which_path_will_america_take_on_immigration). The governor of Arizona, Jan Brewer, has also expressed a belief that the language of SB1070 deters the practice of racial profiling: “My signature today represents my steadfast support for enforcing the law—both AGAINST illegal immigration AND against racial profiling.” Jan Brewer, Ariz. Governor, Statement Given at Signing of SB1070 (Apr. 23, 2010), available at [http://arizona.gov/dms/upload/PR\\_042310\\_StatementByGovernorOnSB1070.pdf](http://arizona.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf).

108. Former Attorney General John Ashcroft publicly decried the use of racial profiling during his tenure with the Bush administration: “Using race . . . as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement.” DEPT. OF JUSTICE, FACT SHEET: RACIAL PROFILING 1 (2003), available at [http://www.justice.gov/opa/pr/2003/June/racial\\_profiling\\_fact\\_sheet.pdf](http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf).

109. Chin et al., *supra* note 84, at 17.

110. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) (holding that while Mexican appearance may be a relevant factor, police may not stop someone on grounds that they might be an illegal alien *solely* because of their Mexican appearance).

Although the Arizona Supreme Court has held that Mexican ancestry alone is not enough to establish reasonable suspicion for an investigatory stop, it qualified this finding with the following statement: “but if the occupants’ dress or hair style are associated with people currently living in Mexico, such characteristics may be sufficient.”<sup>111</sup> Although Arizona claims to have heightened standards beyond pure Mexican ancestry when it comes to racial profiling in immigration enforcement, the Arizona Supreme Court still maintains that “enforcement of immigration laws often involves a relevant consideration of ethnic factors.”<sup>112</sup> Not surprisingly, the reality exists that most of the modern cases decided on the issue involve *only* persons of Mexican or Hispanic origin.<sup>113</sup>

Given the proximity between Arizona and Mexico, undocumented battered women who are most likely of Mexican descent remain unprotected even under SB1070’s requirement that immigration status may only be inquired into during the course of a “lawful” stop, detention, or arrest. Law enforcement’s legitimate consideration of ethnic factors in determining whether or not there is reasonable suspicion that someone is in the country illegally renders SB1070’s “lawful” prerequisite meaningless. Instead, SB1070’s provision granting police broad authority to inquire into immigration status serves to decay trust between immigrant women and law enforcement and decreases the likelihood that battered undocumented women will come forward to seek relief under VAWA.

## 2. *During Investigation*

The ease with which police may develop reasonable suspicion that a person is undocumented has especially harsh implications for undocumented battered women during domestic violence

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111. *State v. Gonzalez-Gutierrez*, 927 P.2d 776, 780-81 (Ariz. 1996) (reaffirming the holding that reasonable suspicion requires a combination of factors other than pure Mexican appearance).

112. *State v. Graciano*, 653 P.2d 683, 687 n.7 (Ariz. 1982) (citing *State v. Becerra*, 534 P.2d 743 (Ariz. 1975)) (holding that ethnic factors may be considered when there are specific facts indicating that a person of a particular ethnicity has committed a crime, and consideration of those factors will aid law enforcement in arresting the perpetrator).

113. *Chin et al.*, *supra* note 84, at 18.

investigations. Assuming that an undocumented battered woman summons enough courage to call the police during or after a domestic violence incident, it is very likely that as soon as the police arrive (or even immediately after receiving the phone call), the police will have enough facts at their disposal to create a reasonable suspicion that the abused woman is undocumented. Specifically, the woman probably will not speak English, or if she does, she will have a heavy foreign accent. These factors may be sufficient for the police to inquire into her immigration status, as they constitute “ethnic” factors that may be properly considered during enforcement of immigration laws.<sup>114</sup> Hence, under the requirement of SB1070, the police in this situation “must, when practicable, make efforts to determine the person’s immigration status.”<sup>115</sup> In the event the woman is then asked to produce the necessary identification, she may be unable to do so. As a victim of domestic violence at the hands of an abusive U.S. citizen or LPR husband, she will not have the necessary documentation to provide to the police.<sup>116</sup> Ultimately, what started out as a domestic violence investigation may turn into a full-fledged immigration investigation.

Unfortunately, this scenario was all too familiar to law enforcement in Arizona even *before* the enactment of SB1070:

Maricopa County Sheriff Joseph Arpaio has publicly stated that his own agency has been doing what he believes SB1070 mandates. . . . Three years ago he announced that [the Maricopa County Sheriff’s Office (MCSO)] was becoming a “full fledged anti-immigration

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114. *See id.* at 20 (“Federal and state law allows language, accent, clothing, and hair style to be relevant factors.”).

115. ARIZ. REV. STAT. § 11-1051(B). Although this section of the statute seems to limit mandatory immigration investigation to the time after a person is “stopped, detained, or arrested,” Chin notes two interpretations that may make the investigation of a domestic violence victim possible, if not mandatory: (1) police officers have always been able to make voluntary (consensual) inquiries of anyone regarding their nationality, meaning that police could presumably ask a domestic violence victim in addition to the abuser, Chin et al., *supra* note 84, at 15, and (2) while this section of the statute *requires* police to investigate in certain situations, it does not *prohibit* the police from investigating in *any* situation. Thus, police *can* investigate the status of witnesses, victims, and bystanders. *Id.* The absence of any restricting language in this regard makes the investigation of a domestic violence victim a distinct and worrisome possibility.

116. *See supra* text accompanying notes 91-95.

agency . . . .”

According to MSCO training materials, the fact that an individual has no English skills or speaks English poorly is a factor indicating that an individual is not “lawfully present” in the U.S.<sup>117</sup>

Not surprisingly, the Department of Justice is currently conducting a civil rights investigation of MCSO based on its history of civil rights violations.<sup>118</sup> The ease with which Arizona police can shift their focus from inquiring into a domestic violence incident to the victim’s immigration status creates a sense of fear in undocumented battered women and discourages them from taking the first step in contacting the police and seeking relief under VAWA.

Furthermore, this provision of SB1070 will further exacerbate the tendency of police to inadequately respond to domestic violence investigations within the immigrant community. Currently, a significant number of battered immigrant women hesitate when considering whether to call the police.<sup>119</sup> Of those who do contact the police, 43.1% have a stable immigration status, 20.8% have a temporary status, and 18.8% are undocumented.<sup>120</sup> Research has shown that police response to undocumented victims of domestic violence has been inadequate,<sup>121</sup> even without provisions such as SB1070. Specifically, in nearly one-third of all cases, upon arrival police immediately speak to the abuser (or a person other than the abused) about what happened.<sup>122</sup> This is largely because the abuser speaks English.<sup>123</sup> In only one third of cases did the police speak

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117. Complaint for Declaratory and Injunctive Relief, *supra* note 63, at 50 (citations omitted).

118. *Id.* at 51.

119. Leslye E. Orloff et al., *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13 UCLA WOMEN’S L.J. 43, 47 (2003).

120. *Id.* at 68.

121. *Id.* at 53 (noting that the factors of language and cultural bias often work to create or worsen this poor response).

122. *Id.* at 63.

123. *See id.* at 71 (“The fact that only 34% of officers communicated with the victims in Spanish” supports the inference that the majority of officers speak in English to the abuser.); *see also infra* note 188 for a related discussion on the importance of translators during domestic violence investigations in the immigrant community.

Spanish.<sup>124</sup> It is thus not surprising that police rarely ask the victim any questions.<sup>125</sup> Even worse, research shows that police largely ignore evidence of physical violence that is visible upon arrival when deciding whether or not to make an arrest.<sup>126</sup> Such evidence might include torn clothing, property in disarray, or first-hand observation by police of the violence or threats.<sup>127</sup> Rather than using the “crime scene,” police often rely solely on whether the woman had a protection order in place to determine whether an arrest should be made.<sup>128</sup> However, because it is extremely difficult for an undocumented woman to get a protection order, undeterred by fear of deportation, many undocumented women fail to do so.<sup>129</sup> Consequently, arrests are made in less than half of all immigrant domestic violence investigations and in less than one third of situations where the form of domestic violence would constitute a criminal offense.<sup>130</sup>

The inadequacy of police responses to domestic violence calls in the immigrant community stems from a variety of factors. Despite an increase in legislation such as VAWA, which recognizes domestic violence as a public problem, police officers continue to be hindered in their ability to address domestic violence within immigrant communities.<sup>131</sup> This result is largely due to the personal attitudes of police officers who continue to view domestic violence as a private problem that should be resolved through mediation rather than through legal mechanisms such as arrests, formal charges, and prosecution.<sup>132</sup> These personal beliefs have the effect of “marginalizing victims of domestic violence” and can even result in ignoring victims’ requests for help.<sup>133</sup>

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124. Orloff et al., *supra* note 119, at 63.

125. *See id.* at 74.

126. *Id.* at 63.

127. *Id.* at 62.

128. *Id.* at 63.

129. *Id.* at 71 (indicating that protection orders and family courts provide important services to domestic violence victims regardless of their immigration status).

130. *Id.* at 63.

131. *See id.* at 53.

132. *Id.*

133. *Id.*



The willingness of police officers to respond to reports of domestic violence is further weakened when the victim is an *immigrant* woman.<sup>134</sup> Prejudices and stereotypes about immigrants generally result in police believing that domestic violence within the immigrant community is “normal,” and that for immigrant women, it is a way of life.<sup>135</sup> Consequently, “some police officers [have] conclude[d] that domestic violence is not a crime when the victim is an immigrant.”<sup>136</sup> These prejudices and stereotypes result from a lack of police understanding about the experiences and cultures of immigrant victims.<sup>137</sup> Not only do many immigrants lack trust in the U.S. law enforcement system due to their experiences with corrupt law enforcement in their native countries<sup>138</sup> (which *fails* to protect victims of domestic violence<sup>139</sup>), but many immigrants come from a culture where it is shameful to report spousal abuse because such abuse is common—if not expected.<sup>140</sup> Police may also often fail to recognize the complexity of immigration laws in the United States and the ease with which they allow an abusive U.S. citizen spouse to prevent his undocumented wife from obtaining legal status. These prejudices and stereotypes ultimately result in “selective law enforcement,” where police officers determine the extent of legal action they will take in a particular situation based on their personal beliefs about domestic violence, race, class, and ethnicity.<sup>141</sup>

Furthermore, gender bias and language barriers often prevent police from responding adequately to domestic violence incidents in the immigrant community.<sup>142</sup> Gender bias is likely a relevant factor in police choosing to immediately communicate with the male batterer<sup>143</sup> and further “*believ[ing]* the citizen batterer when he contradicts the

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134. *Id.*

135. *Id.* at 54.

136. *Id.*

137. *See generally id.*

138. *Id.* at 47.

139. *Id.* at 66.

140. *Id.* at 65.

141. *Id.* at 51.

142. *Id.* at 46-47.

143. *See id.* at 51,74 (noting that gender views may influence police response, and citing language barriers as only one possible reason for abuser-focused investigation, respectively).

battered immigrant woman's accusations of violence."<sup>144</sup> This bias may be exasperated by language barriers that exist between the Spanish speaking immigrant woman and the English speaking police officer.<sup>145</sup> In a more abstract sense, general views about women and their position in society can also serve to foster gender bias. Specifically, "the patriarchal occupational subculture of police officers or departments often leads to individual attitudes which tend to blame the victim, project blame on other institutions, and foster negative images of women as manipulative individuals."<sup>146</sup>

The combination of these factors ultimately causes police to act as the "gatekeepers to the judicial system."<sup>147</sup> Police discretion is often the determining factor in whether or not an undocumented battered woman will gain access to the legal system in order to escape her abuser.<sup>148</sup> However, because SB1070 tends to supplement police indifference toward the immigrant community by giving police more power to treat undocumented battered women as *criminals* rather than as *victims*, it is unlikely that such women will gain access to the legal system and relief available under VAWA.

The SB1070 provision giving police expansive authority to inquire into immigration status even during a domestic violence investigation increases the likelihood that police will continue to respond ineffectively to the needs of undocumented battered women. As the priority in Arizona shifts from increasing trust within the community to enforcing federal immigration law, undocumented battered women will continue to endure abuse alone rather than reach out for relief under VAWA.

Thus, it appears that SB1070's requirement that all stops be "lawful" is functionally meaningless when applied to undocumented battered women. The statute's exception to another one of its requirements suffers from a similar flaw. In an attempt to qualify the mandate that police investigate a person's immigration status upon reasonable suspicion that he or she is undocumented, drafters included the following exception: police must, when practicable, make

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144. *Id.* at 55 (emphasis added).

145. *Id.* at 75.

146. *Id.* at 51.

147. *Id.* at 55.

148. *Id.*

reasonable efforts to “determine the immigration status of a person, *except if the determination may hinder or obstruct an investigation.*”<sup>149</sup> Thus, it would seem the drafters of SB1070 preserved police discretion regarding whether to inquire into the immigration status of certain individuals, such as domestic violence victims. Arizona Senator Russell Pierce, the primary drafter of SB1070, clarified this by stating, “Police don’t have to ask legal status if that would ‘hinder or obstruct an investigation’. We made it clear we left it up to officer discretion . . . for unique situations.”<sup>150</sup> However, despite the ostensibly well-meaning intentions of the drafters and proponents of SB1070, what little discretion the bill affords police officers when investigating crimes is, in practical effect, meaningless. This is because the exception creating police discretion directly conflicts with two other provisions of the law, each of which work in tandem with one another. These are the provisions requiring SB1070 be enforced to the full extent of federal law<sup>151</sup> and allowing Arizona citizens to sue law enforcement if it is not.<sup>152</sup> As will be seen, both of these provisions work together to further erode undocumented battered women’s trust in the police and create a climate of fear in Arizona.

### *3. Enforce To The Full Extent Of Federal Law & Citizen Suit Provision*

Because federal law permits the consideration of ethnic factors when enforcing immigration law, the provision requiring SB1070 be enforced to the full extent of federal law greatly increases undocumented battered women’s fear that they will be arrested and imprisoned should they attempt to contact police regarding a domestic violence incident. This provision states, “No official or agency of this state or a county, city, town or other political subdivision of this state

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149. ARIZ. REV. STAT. ANN. § 11-1051(B) (2010) (emphasis added); *see also* Chin et al., *supra* note 84, at 14.

150. Howard Fischer, *National Advocates for Domestic Violence Victims Want Judge to Block SB1070*, EAST VALLEY TRIB. (June 16, 2010), [http://www.eastvalleytribune.com/arizona/article\\_b26cbcea-79a2-11df-ba53-001cc4c03286.html](http://www.eastvalleytribune.com/arizona/article_b26cbcea-79a2-11df-ba53-001cc4c03286.html).

151. § 11-1051(A).

152. § 11-1051(G).

may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.”<sup>153</sup> A closely related provision is known as the “Citizen Suit Provision.”<sup>154</sup> This provision mandates that

a person who is a legal resident of Arizona may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.<sup>155</sup>

Returning to the example of a domestic violence investigation, assume the police officer uses his or her discretion and decides *not* to ask the victim about her immigration status, *despite* the fact that the victim does not speak English or has an accent, because this will understandably hinder the investigation.<sup>156</sup> However, because ethnic factors may be considered in the enforcement of federal immigration law,<sup>157</sup> the police officer who used his discretion could nonetheless be punished in the form of a citizen lawsuit for failing to enforce SB1070 to the full extent permitted by federal law. This possibility arises because the officer chose to disregard the victim’s immigration status despite the existence of ethnic factors strongly indicating that she is undocumented. Thus, the citizen suit provision undermines what little police discretion was allocated in the law and in practical effect *demand*s that law enforcement “consider race, color, or national origin

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153. § 11-1051(A).

154. See Steven Croley, *Arizona’s Immigration Statute: Another Devil in the Details*, HUFFINGTON POST (May 11, 2010), [http://www.huffingtonpost.com/steven-p-croley/arizonas-immigration-stat\\_b\\_571312.html](http://www.huffingtonpost.com/steven-p-croley/arizonas-immigration-stat_b_571312.html).

155. § 11-1051(G).

156. Specifically, the domestic violence investigation would be hindered if police first question the immigrant woman about her immigration status because this focus would detract from any potential abuse she might have suffered. The effort police may expend in determining status could instead be directed toward questioning the abuser. Ultimately, the domestic violence investigation is hindered because the investigation into domestic violence may (1) never take place if the woman is arrested after it is discovered she is undocumented, or (2) will only take place after the woman’s immigration status is confirmed, by which time her abuser may have removed evidence or crafted a convincing explanation for the police.

157. Chin et al., *supra* note 84, at 19.

to the full, yet vague and uncertain, extent permitted by federal law.”<sup>158</sup> This means Arizona police may have to treat an undocumented battered woman as a suspect rather than as a victim even during a domestic violence investigation.

The requirement that SB1070 be enforced to the full extent of federal law also has important implications for how police departments prioritize investigative activities.<sup>159</sup> Although it is possible that agency directors could set priorities for law enforcement regarding *when* police may investigate immigration offenses as compared to other crimes in the community, the legality of such action under SB1070 remains unclear.<sup>160</sup> In fact, it is possible that agency directors could not set such priorities due to SB1070’s “full federal extent” language. In this event, it is still possible to interpret the requirement to mean that agency heads may *not prohibit* police officers from choosing to enforce immigration laws over responding to more serious crimes in the community.<sup>161</sup> This is a reasonable interpretation considering that blanket prohibitions of immigration law enforcement are rare or non-existent in Arizona today.<sup>162</sup> Thus, it is plausible that a police officer could spend extra time inquiring into an individual’s immigration status during a traffic stop rather than investigating a violent crime in the community without being reprimanded.<sup>163</sup> Investigations into domestic violence crimes could decrease as a result, or, in the event an investigation is initiated, its focus could legitimately turn from the domestic violence crime to the immigration status of the victim.

Although SB1070 attempts to circumvent the harsh application of the law by including the exceptions that all stops be “lawful” and that inquiries into immigration status are not required if they would “hinder or obstruct the investigation,” the reality remains that SB1070 is unsuccessful in this endeavor because of its reliance on federal law and the presence of conflicting provisions. The fear that arises from

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158. Complaint in Intervention at 7, *Escobar v. Brewer*, No. 4:10-CV-00249-DCB (9th Cir. June 11, 2010).

159. *Chin et al.*, *supra* note 84, at 24.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

this predicament prevents women from taking the first step toward seeking relief under VAWA and pushes them farther back into the shadows of an abusive home. Lastly, as explained below, even United States citizens can fall victim to the misguided application of SB1070.

#### 4. *No Harboring Illegals*

SB1070's provision making it illegal to transport or harbor illegal immigrants significantly discourages United States citizens who are interested in helping undocumented battered women from doing so. This provision makes it a crime for any person who is in violation of a criminal offense to "transport or move or attempt to transport or move an alien in [Arizona] . . . in a means of transportation if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law."<sup>164</sup> This language has a detrimental impact on the ability of domestic violence shelters in Arizona to continue providing a safe haven for women who are seeking relief under VAWA,<sup>165</sup> considering that "every three days, there is a domestic violence related death in Arizona."<sup>166</sup> Given the potential effects of such a restriction, this provision also directly conflicts with federal statutes guaranteeing access to emergency shelters and other services, regardless of immigration status.<sup>167</sup>

On the surface, this provision of SB1070 appears not to effect domestic violence shelters because it contains a qualification that the defendant must be *in violation of a criminal offense* while harboring the undocumented non-citizen.<sup>168</sup> While directors and owners of domestic violence shelters are unlikely to be in violation of another criminal offense while providing their services to undocumented abused women, the statute's "in violation of a criminal offense" wording is vague and is not used in any other current statute in the

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164. ARIZ. REV. STAT. ANN. § 13-2929 (2010).

165. See Sandy Rathbun, *Shelters Fear SB1070 Could Prevent Domestic Violence Victims from Seeking Help*, KVOA.COM (June 29, 2010), [www.kvoa.com/news/shelters-fear-SB1070-could-prevent-domestic-violence-victims-from-seeking-help](http://www.kvoa.com/news/shelters-fear-SB1070-could-prevent-domestic-violence-victims-from-seeking-help).

166. *Id.*

167. Fischer, *supra* note 150; see also Rathbun, *supra* note 165.

168. See Chin et al., *supra* note 84, at 12-13 (discussing how this provision is most likely geared toward punishing smuggling of illegal aliens).

United States.<sup>169</sup> Consequently, it is open to many interpretations.<sup>170</sup> One potential interpretation, with serious implications for domestic violence shelters, is that the provision includes certain crimes known as “continuing offenses.”<sup>171</sup> Such offenses continue from the “point when every element has occurred . . . until the offense stops.”<sup>172</sup>

For domestic violence shelters, furthering the illegal presence of undocumented non-citizens<sup>173</sup> in knowing violation of the law could be considered a continuing offense under this provision.<sup>174</sup> Thus, domestic violence shelters could presumably violate this provision by continuing to provide shelter for undocumented victims of domestic violence who are currently in the process of seeking relief under VAWA. In fact, Senator Russell Pierce acknowledged that SB1070 does not provide any legal protection for domestic violence shelters.<sup>175</sup> In a recent article discussing this issue, he admitted, “The only people with immunity for being prosecuted for harboring or shielding an illegal immigrant are child protective service workers and ‘first responders’ like ambulance attendants.”<sup>176</sup> Thus, as noted in an amicus curiae brief in *Friendly House*, SB1070 makes it very likely that “police could be stationed outside a battered women’s shelter precisely because immigrant women are likely to use federally guaranteed life-saving services.”<sup>177</sup>

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169. *Id.* at 10-11; *see also* Complaint for Declaratory and Injunctive Relief, *supra* note 63, at 39 (“The transportation, harboring, and encouragement provisions of SB1070 provide no explanation or other sufficient guidance for individuals as to what actions will be deemed ‘in furtherance of illegal presence’ or ‘that the immigrant has entered or remained in the United States illegally.’”).

170. *See* Chin et al., *supra* note 84, at 10-11.

171. *Id.* at 11.

172. *Id.*

173. *Id.* at 12 (interpreting section 13-2929 to mean that the “defendant must act in furtherance of the unlawful presence”).

174. This is a logical interpretation of how a domestic violence shelter might commit a “continuing offense” under SB1070. *See* Fischer, *supra* note 150 (discussing how domestic violence shelters will be prevented from continuing to assist battered undocumented women because of SB1070’s harboring provisions).

175. *Id.*

176. *Id.*

177. Proposed Amicus Curiae Brief of Legal Momentum in Support of Plaintiffs’ Motion for Preliminary Injunction at 2, *Friendly House v. Whiting*, No. CV 10-1061 (9th Cir. June 11, 2010).

This provision may also prevent domestic violence shelters and other community based outreach organizations from transporting undocumented abused women “to court, to meetings with prosecutors, and to the hospital for treatment of critical injuries.”<sup>178</sup> Consequently, law enforcement in Arizona would be unable to prosecute violent abusers in the community, making it more likely that the abuse would continue. On the other hand, federal courts have interpreted analogous federal law more narrowly.<sup>179</sup> This narrow interpretation allows the federal government to exercise discretion when deciding who to prosecute for violation of federal harboring provisions, and thereby avoids the harsh consequences posed by SB1070. In recognizing that undocumented battered women often rely on community outreach programs to obtain federally guaranteed relief, the federal government does not penalize those who assist with the process. Rather, it looks at whether the person transporting or harboring the illegal alien has the “additional intent to violate or frustrate federal law.”<sup>180</sup> The Ninth Circuit has explained:

A broader interpretation of the transportation section would render the qualification placed there by Congress a nullity. To do this would potentially have tragic consequences for many American citizens who come into daily contact with undocumented aliens and who, with no evil or criminal intent, intermingle with them socially

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178. *Id.*

179. *See United States v. Parmelee*, 42 F.3d 387, 391 (7th Cir. 1994) (“[The statute] could conceivably criminalize the actions of a cab driver who transports in a routine commercial transaction an individual who announces his illegal alien status during the course of the ride. We do not read . . . such sweeping liability.”); *see also United States v. Merkt*, 764 F.2d 266, 271-72 (5th Cir. 1985) (“Willful transportation of illegal aliens is not, per se, a violation of the statute, for the law proscribes such conduct only when it is in furtherance of the alien’s unlawful presence.”).

180. *Chin et al.*, *supra* note 84, at 11-13 (citing *Merkt*, 764 F.2d at 271-72) (suggesting that although federal law on this issue remains unclear, merely housing or employing an illegal alien will not always violate the federal transportation statutes unless the person *intends* to further the illegal presence of the alien). Thus, it appears plausible that the federal government considers those who actively smuggle illegal aliens and provide safe houses for them to be “furthering the illegal presence of the alien” more so than those who are merely assisting illegal aliens who have been present in the United States for some time, such as undocumented battered women.



or otherwise. It could only *exacerbate the plight of these aliens* and, without adding anything significant to solving the problem, create, in effect judicially, a new crime and a new class of criminals. All of our freedom and dignity as people would be so reduced.<sup>181</sup>

The no-harboring provision of SB1070 impermissibly restricts the freedom of Arizona citizens who serve the immigrant community, and in so doing, removes yet another valuable resource that undocumented battered women rely on in order to seek relief under VAWA.

The SB1070 provision prohibiting the transporting and harboring of illegal aliens negatively impacts citizens and non-citizens alike. By discouraging citizens from providing undocumented battered women with shelter and access to the legal system through meetings with prosecutors and other social service providers, this provision serves as yet another barrier to relief under VAWA for an undocumented abused woman. Without a shelter to turn to and qualified individuals to assist during the legal process, relief under VAWA in Arizona is practically unattainable.

These four provisions will prevent undocumented battered women in Arizona from taking the steps necessary to seek relief they are entitled to under VAWA provisions. SB1070 requires documentation that undocumented battered women do not have, erodes their trust in Arizona police while increasing fear, and discourages citizens who once aided them from continuing to do so. Ultimately, community safety is compromised as undocumented battered women who would otherwise come forward are now likely to endure their abuse alone.

### III. POTENTIAL SOLUTIONS

The previously mentioned provisions make it very likely that SB1070 will substantially deter undocumented battered women from seeking the relief they are entitled to under VAWA provisions. Two possibilities may help to alleviate these effects. The first focuses on empowering undocumented battered women in Arizona to assert their rights under VAWA. The second focuses on ways police can enforce

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181. *United States v. Moreno*, 561 F.2d 1321, 1323 (9th Cir. 1977) (emphasis added) (holding that someone who transports illegal aliens as “part of the ordinary and required course of his employment” is not liable under the federal provisions for transporting illegal aliens in violation of the law).

the immigration objective of SB1070 without deterring undocumented battered women from reporting abuse and seeking relief under VAWA.

### A. Empowerment Through Acculturation

The enactment of SB1070 requires immigrant women in Arizona to understand their rights under VAWA *before* they encounter law enforcement. In order to empower undocumented battered women, we must teach them to solve their own problems rather than merely “rescue” them as survivors of abuse, which only reinforces a sense of helplessness.<sup>182</sup> In order to solve their own problems, women must learn to “exercise rights that are inherent” rather than wait for some authority to grant that right to them.<sup>183</sup> Research has shown that much of this empowerment occurs through the process of *acculturation*, wherein “new immigrants begin to adapt to their new country.”<sup>184</sup> This adaptation includes becoming more familiar with U.S. customs, justice, and means of accessing the legal system.<sup>185</sup> Fortunately, the U.S. legal system does not tolerate domestic violence. The enactment of VAWA and the existence of various social services catering to domestic violence victims<sup>186</sup> exemplify attempts to empower women “to take action to hold their perpetrators accountable” for domestic violence crimes.<sup>187</sup> Through the mass media, a feminist culture sends the message that domestic violence is unacceptable in the United States.<sup>188</sup> The longer battered immigrant women remain in the United States, the more likely they will adopt this “norm”<sup>189</sup> and begin to recognize there is an “inherent right” to be free from abuse.<sup>190</sup>

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182. Alicia C. Carra, *Creating Law and Policy with Women's Voices: Feminism in Action*, 39 U. BALT. L.F. 181, 185 (2009).

183. *Id.*

184. Orloff et al., *supra* note 119, at 65.

185. *Id.*

186. *See, e.g.*, N. COUNTY FAM. VIOLENCE PREVENTION CENTER, <http://www.familyviolencepreventioncenter.org> (last visited Dec. 7, 2010).

187. Orloff et al., *supra* note 119, at 65.

188. *Id.*

189. *Id.* at 66.

190. Carra, *supra* note 182, at 185-87.

Consequently, they will begin to seek the relief that is available to them.<sup>191</sup>

Commonly, undocumented battered women initially rely on informal, rather than formal (e.g., immediately contacting law enforcement), methods of seeking help.<sup>192</sup> Specifically, they contact another *female* in their community to discuss a domestic violence problem before contacting the police.<sup>193</sup> At this point the abovementioned effect of acculturation is greatest: many of the women in immigrant communities who have been present in the United States for a long time often serve as valuable resources for exposing newly arrived women to feminist norms in the United States.<sup>194</sup> Battered immigrant women are likely to learn of possible ways to obtain relief during these informal encounters, which in turn gives them the confidence they need to resort to the formal method of contacting law enforcement.<sup>195</sup> Specifically, immigrant women “who had talked with more than one person about the violence were significantly more likely to call the police during a domestic violence incident.”<sup>196</sup>

Therefore, informing women in immigrant communities of their rights under VAWA through outreach programs would enable them to *advocate for one another* before the police ever become involved.<sup>197</sup> Given that these women naturally feel more comfortable talking with each other before contacting the police, it is important to ensure they are educated in issues of domestic violence and know how to respond to one another appropriately.<sup>198</sup> Preferably, citizens who currently work with the immigrant community and in domestic violence shelters should educate the immigrant community on VAWA relief as part of

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191. Orloff et al., *supra* note 119, at 65-66.

192. *Id.* at 66.

193. *Id.* at 83-84.

194. *Id.* at 65.

195. *Id.* at 65, 66, 83.

196. *Id.* at 66. In fact, a study undertaken by Ayuda, Inc. from 1992 to 1995 revealed that in the Washington D.C. metropolitan area, 31.9% of women who had talked with more than one person about the violence they were experiencing called the police during a domestic violence incident. Conversely, those who had talked to less than one person called the police a startling 0% of the time. *Id.*

197. *Id.* at 84-85.

198. *Id.* at 83.

their normal operations.<sup>199</sup> By providing information on how immigrant women can help themselves, citizens enable undocumented battered women to address their needs through means *they themselves* are able to implement, rather than in ways imposed by other citizens.<sup>200</sup> This action would also ensure the *substance* of the feminist message—that women in the United States are able to prosecute their abusers—remains intact without being overridden by the fear that results when undocumented battered women believe contacting the police is their first and only option. Battered immigrant women who have received relief or are in the process of getting relief should be encouraged by those helping them to share their experiences with the communities in which they live. Hearing from peers who have been in the same situation could empower current victims to seek the relief they are entitled to. Ultimately, the process of acculturation empowers undocumented battered women to seek the relief they are entitled to in the United States, such as relief under VAWA.<sup>201</sup> This solution is particularly effective because it caters to the needs of undocumented battered women as shown through their behavior when facing a domestic violence problem, rather than forcing them to fit the traditional mold of the United States criminal justice system and immediately contact the police.<sup>202</sup>

### *B. Re-thinking SB1070 and Changing Police Perspective*

The second way to increase the chance that women in Arizona will be able to seek relief under VAWA while SB1070 is in effect is to re-interpret the provision requiring SB1070 be enforced to the full extent of federal law. Fortunately, the dangers posed by the ambiguity of this provision are mirrored by potential benefits for undocumented

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199. *Id.* at 84.

200. See Carra, *supra* note 182, at 186-87 (stressing the importance of allowing the victim to “control her own destiny” and not have others simply impose outside beliefs).

201. Orloff et al., *supra* note 119, at 66.

202. See *id.* at 83-84. For related discussion on how the United States criminal justice system is inherently male-based and thus does not adequately fit the needs of female immigrants who come into contact with the system during domestic violence incidents see Zelda B. Harris, *The Predicament of the Immigrant Victim/Defendant: “VAWA DIVERSION” and Other Considerations in Support of Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 49, 50 (2004).

battered women.<sup>203</sup> One possible interpretation is that the provision allows police to enforce federal laws that might *benefit* certain immigrant populations. VAWA is a federal program designed to help illegal battered immigrants despite their illegal status.<sup>204</sup> Because VAWA is a federal program and has specific immigration related provisions, the provision requiring police to enforce SB1070 to the full extent of federal law could encompass the enforcement of VAWA provisions, or at the very least, the exclusion of women eligible for VAWA relief from the application of provisions previously discussed. This technical interpretation of the provision requiring SB1070 to be enforced to the full extent of federal law could allow police in Arizona to continue enforcing the immigration intent of SB1070 while making undocumented battered women aware that they are not the “illegal immigrants” the bill intended to target. If this result were to materialize, the citizen-suit provision would be unlikely to deter police from helping battered undocumented women because federal law would *mandate* police exclude such women from application of the aforementioned provisions of SB1070, allowing relief pursuant to VAWA. Under this interpretation, processing of VAWA cases could actually *increase* in Arizona, as police would be aware of VAWA provisions while also carrying out their immigration-related duties under SB1070.<sup>205</sup>

However, this interpretation will be meaningless unless mechanisms are put in place which allow police in Arizona to inform undocumented battered women that they will not be penalized by SB1070. Having a translator accompany police to domestic violence calls within the immigrant community is one way to achieve this goal. A translator would allow police to communicate directly with the victim rather than to rely solely on the abuser for information.<sup>206</sup> This arrangement could be particularly useful considering that undocumented battered women “find that it is easier to communicate about traumatic incidents and intimate details of their lives in their

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203. Chin et al., *supra* note 84, at 24 (discussing various interpretations of this provision).

204. See Orloff & Kaguyutan, *supra* note 20, at 113 (discussing Congress’s intent in enacting VAWA 1994).

205. Interview with Josephina Carrillo, Domestic Violence Program Dir., Casa Cornelia, in San Diego, Cal. (June 2010).

206. See Orloff et al., *supra* note 119, at 85.

native language.”<sup>207</sup> This arrangement would end the cycle of abuse that persists when the abuser tells his side of the story with clarity and conviction in English and escapes punishment while the victim remains silent.<sup>208</sup> In addition, the translator would probably be able to determine at the outset whether the victim would be eligible for relief under VAWA provisions. This would circumvent any misapplication of SB1070 that might occur if the English-speaking officer was only able to speak with the abuser (and thereby avoid assisting the victim), and instead allow her access to such relief. This is especially important given the ease with which domestic violence investigations in Arizona can turn into immigration investigations.

Another way in which police could inform undocumented battered women that they will not be penalized by SB1070 is to employ more female officers. This move would be particularly appropriate in response to research that shows such women tend to confide in a female friend or family member prior to contacting the police about a domestic violence incident.<sup>209</sup> Given that victims feel more comfortable speaking with other women *before* contacting the police, it is reasonable to believe victims would also feel more comfortable communicating with a female officer once she is on the scene of the domestic violence investigation.<sup>210</sup> Having more female officers could also address the problem of the “patriarchal occupational subculture of police officers”<sup>211</sup> discussed above, as the female victim may be more likely to relate to the female police officer purely because of shared gender and experiences. This might encourage the victim to communicate and thus increase the likelihood that the female officer would be able to determine whether the victim is eligible for relief under VAWA.

Finally, increasing police training in domestic violence issues and the complex provisions of VAWA would help police more

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207. *Id.* at 74.

208. *See* Harris, *supra* note 202, at 62 (providing a hypothetical example of how a battered undocumented woman is unable to communicate effectively with police during a domestic violence investigation because she does not speak English, while her abuser escapes punishment precisely because he speaks English and communicates effectively with the police).

209. Orloff et al., *supra* note 119, at 85.

210. *Id.*

211. *See supra* text accompanying note 146.

effectively respond to domestic violence as they enforce SB1070. This increased training would help police inform undocumented battered women that they are not going to be penalized by SB1070. Incorporating this type of training into the training required for SB1070 could be a particularly successful way to increase police awareness on this issue while also streamlining police operations under SB1070.<sup>212</sup> This rings especially true considering police will be encountering potential domestic violence victims out in the field on a daily basis because of SB1070. Thus, mandatory training on domestic violence and on the factors that make a woman eligible for VAWA relief makes it more likely that police can enforce SB1070 without violating the rights of undocumented battered women, as police will be able to recognize the signs of domestic violence and will be aware of the federal relief that is available.<sup>213</sup>

#### CONCLUSION

SB1070's goal of identifying, prosecuting, and deporting illegal immigrants currently living in Arizona greatly deters undocumented battered women from seeking the relief they deserve under VAWA provisions. These women will continue to remain isolated in abusive

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212. Streamlining police operations is particularly important considering that different Arizona law agencies have "supplemented SB1070 with their own policies." Andrea Nill, *AZ Law Enforcement Agencies 'Supplement' SB-1070 with their own Policies*, WONK ROOM (June 28, 2010), <http://wonkroom.thinkprogress.org/2010/07/28/arizona-immigration-training>. Consequently, there is a lack of uniform application of SB1070 in Arizona. *Id.* For a detailed description of how five different law enforcement agencies in Arizona plan to implement SB1070, see *id.*

213. Although maintaining specialized domestic violence units within police departments provides protection to victims, such units should also collaborate with "community domestic violence response teams" and other professionals who come into contact with immigrant women on a daily basis to help ensure all immigrant victims are given equal access to information concerning their legal rights. See Orloff et al., *supra* note 82, at 119. These other professionals include maternal and child care service providers, public benefit agencies, immigration lawyers, English class teachers, and emergency medical services. *Id.* at 86. Additionally, increasing language competency among domestic violence units within police departments would enable more immigrant victims to access police protection. *Id.* at 90. These efforts could help protect undocumented battered women from misguided applications of SB1070.

homes as the battle continues between Arizona citizens who want to secure their border and illegal immigrants who call Arizona home. Thus, if police are to preserve community safety and regain the trust of undocumented battered women, they must learn to strike a balance between enforcing immigration law and prosecuting the men who continue to abuse these women. Otherwise, undocumented battered women in Arizona and in any *other* state that adopts a law similar to SB1070 will be prevented from seeking the federally guaranteed relief to which they are entitled.

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