

# NOTES

## The Unintended Consequences of Alabama’s Immigration Law on Domestic Violence Victims

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### I. INTRODUCTION

When millions of people are afraid to avail themselves of their rights under the U.S. legal system, the entire system is undermined. The

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injustice is not only to undocumented immigrants but to U.S. society as a whole.<sup>1</sup>

Immigrant women<sup>2</sup> who are victims of domestic violence live in constant fear that prevents them from availing themselves of their rights. Alicia Carrizo is just one woman silenced by fear of her abuser and paralyzed because of her lack of immigration status:

Alicia Carrizo knew how she was going to die. Her husband often told her. She would drown in a remote offshore area in Lake Erie. He would push her off the family boat. Their five daughters would watch her body slip beneath the water. And nobody would report her missing. Her husband's chilling words resonated every day. His threats and physical assaults had escalated over time. Carrizo feared for her life. She feared for her daughters' lives. Still, Carrizo, an immigrant from Argentina, could not bring herself to leave his side. She felt trapped in her marriage—and in this country.<sup>3</sup>

Alicia is not alone; there are millions who share her terror. It is estimated that one in four women in the United States is attacked by a domestic partner.<sup>4</sup> Almost one in two immigrant women in the United States are victims of domestic violence.<sup>5</sup> Undocumented<sup>6</sup> immigrant women are particularly vulnerable to abuse—both in intimate relation-

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1. Dishpaul S. Dhuga, *Alabama's New Immigration Law Hurts Immigrants and the State*, EMPIRE JUST. CTR. (Nov. 10, 2011), <http://www.empirejustice.org/issue-areas/immigrant-rights/access-to-public-benefits/misc/alabamas-new-immigration-law.html>.

2. Although this Note will use the term “battered women,” the authors recognize that men can also be victimized by their domestic partners. We do not wish to minimize the problem of domestic violence against men and have chosen to refer to “women” in this Note because the vast majority of these victims are indeed female. *See, e.g., Domestic Violence Statistics*, DOMESTIC VIOLENCE RES. CTR., <http://www.dvrc-or.org/domestic/violence/resources/C61/> (last visited Mar. 21, 2012).

3. Regina Garcia Cano, *Cleveland Program Helps Hispanic Women, Children Escape Domestic Violence*, CLEVELAND.COM BLOG (Jan. 05, 2012, 8:29 AM), [http://blog.cleveland.com/metro/2012/01/program\\_aids\\_hispanic\\_women\\_ch.html](http://blog.cleveland.com/metro/2012/01/program_aids_hispanic_women_ch.html).

4. Mike Stobbe, *Domestic Violence: 1 in 4 American Women Attacked by Intimate Partner*, HUFFINGTON POST (Dec. 14, 2011, 8:26 PM), [http://www.huffingtonpost.com/2011/12/15/domestic-violence-survey\\_n\\_1150158.html?ref=crime](http://www.huffingtonpost.com/2011/12/15/domestic-violence-survey_n_1150158.html?ref=crime).

5. Ashley Arcidiacono, Note, *Silencing the Voices of Battered Women: How Arizona's New Anti-Immigration Law “SB 1070” Prevents Undocumented Women from Seeking Relief Under the Violence Against Women Act*, 47 CAL. W. L. REV. 173 (2010).

6. We have chosen to use the term “undocumented” as opposed to “illegal” when referring to those in this country without immigration status. We believe that the term “illegal” is not only inaccurate, but also dehumanizes the undocumented individual. *See, e.g., Eric Scheiner, Society of Professional Journalists Questioning ‘Illegal Immigrant’ as an ‘Offensive’ Term*, CNS NEWS (Dec. 29, 2010), <http://cnsnews.com/news/article/society-professional-journalists-questioning-illegal-immigrant-offensive-term>; *Use of the Term “Illegal Alien”*, HOUS. CHRON. BLOG (March 31, 2006 at 5:25 PM), <http://blog.chron.com/immigration/2006/03/use-of-the-term-illegal-alien/>. *But cf.* Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT'L L. 155, 155 n.1 (2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1157057](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157057).

ships and as victims of trafficking.<sup>7</sup> This is due to “limited host-language skills, lack of access to dignified jobs, uncertain legal statuses, and experiences in their home countries . . . .”<sup>8</sup> Immigrant women are less likely to seek help from government officials due to misinformation about the police, language barriers, fear of deportation, and concern about losing custody of their children.<sup>9</sup> Moreover, “[d]ue to their lack of access to culturally responsive services, immigrant victims of domestic violence are at greater risk of longer exposure to and greater impact from domestic violence.”<sup>10</sup>

This Note will argue that the provisions of the Beason-Hammon Alabama Taxpayer & Citizen Protection Act (H.B. 56)<sup>11</sup> and the notion of self-deportation have several “unintended”<sup>12</sup> consequences. H.B. 56 negatively affects numerous marginalized groups of people. This Note will focus on one such group and the unintended consequences on that group. This Note argues that H.B. 56 creates a culture of impunity for those who prey on vulnerable immigrants while also undermining federal protections in place for immigrant women who are victims of domestic violence. H.B. 56 makes it so that there is nowhere for a battered immigrant woman to turn in order to escape her abuser. This Note will specifically focus on how the following provisions of H.B. 56 impact battered immigrant women: Section 30 (harboring and transportation provision), Section 27 (business transaction provision), and Sections 5 and 6 (officer of the court provisions).

Part I will serve as an introduction. Part II discusses the social and political context within which H.B. 56 was created. Part III discusses the issue of domestic violence in the immigrant community. Part IV addresses the federal protections in place for undocumented immigrant

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7. See DUREN BANKS & TRACEY KYCHELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 233732, SPECIAL REPORT: CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008–2010 (2011).

8. Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, 16 GENDER & SOC'Y 898, 901 (2002), available at <http://gas.sagepub.com/content/16/6/898>.

9. BATTERED WOMEN'S JUSTICE PROJECT, ASSISTING IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE: LAW ENFORCEMENT GUIDE 3 (2011), available at <http://www.vaw.umn.edu/documents/immigrantdvleguide/immigrantdvleguide.pdf> [hereinafter LAW ENFORCEMENT GUIDE].

10. *Id.*

11. 2011 Ala. Acts 535, available at <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm> [hereinafter H.B. 56].

12. Gustavo Valdes, *Alabama AG Makes Revision Suggestions for Immigration Law*, CNN (Dec. 6, 2011), [http://articles.cnn.com/2011-12-06/us/us\\_alabama-immigration-law\\_1-immigration-law-illegal-immigration-legal-status?s=PM:US](http://articles.cnn.com/2011-12-06/us/us_alabama-immigration-law_1-immigration-law-illegal-immigration-legal-status?s=PM:US) (stating that Alabama Senate Majority Whip Gerald Dial was already working to correct what he sees as “unintended consequences” of H.B. 56).

women who are victims. Finally, Part V analyzes the unintended consequences of H.B. 56 on victims of domestic violence.

## II. THE SOCIAL & POLITICAL CONTEXT OF H.B. 56

I doubt there's anybody in America who understands the immigration issue better than Kris Kobach . . . . As far as I'm concerned, he is a godsend. —Representative Mickey Hammon, co-sponsor of H.B. 56<sup>13</sup>

Since 2001, several municipalities and state governments have passed harsh immigration laws, including Hazelton, Pennsylvania, Arizona, Georgia, and Alabama.<sup>14</sup> One man is the driving force in these promulgations: Kris Kobach.<sup>15</sup> After law school, Kris Kobach earned a White House fellowship and worked for John Ashcroft at the Department of Justice.<sup>16</sup> Post September 11, 2001, Kobach became extremely interested in immigration issues.<sup>17</sup> He believed that prior to September 11, local police missed opportunities to arrest four of the nineteen hijackers due to their illegal statuses.<sup>18</sup> One of Kobach's most significant contributions while at the Department of Justice was authoring a controversial memorandum recognizing local and state governments' authority to arrest immigrants for civil violations of federal immigration law.<sup>19</sup> Some argue that this laid the framework for the Arizona immigration law.<sup>20</sup>

Since leaving the White House, Kris Kobach has consulted with various local and state governments to craft local anti-immigrant statutes.<sup>21</sup> He defended several of these statutes in court and continues

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13. George Talbot, *Kris Kobach, the Kansas Lawyer Behind Alabama's Immigration Law*, ALA. LIVE BLOG (Oct. 16, 2011, 9:44 PM), [http://blog.al.com/live/2011/10/kris\\_kobach\\_the\\_kansas\\_lawyer\\_1.html](http://blog.al.com/live/2011/10/kris_kobach_the_kansas_lawyer_1.html).

14. Laura Ziegler, *The Man Behind the Illegal Immigration Crackdown*, NPR.ORG (Sept. 30, 2011), <http://www.npr.org/2011/09/30/140927115/the-man-behind-the-illegal-immigration-crackdown>.

15. S. POVERTY LAW CTR., *WHEN MR. KOBACH COMES TO TOWN: NATIVIST LAWS & THE COMMUNITIES THEY DAMAGE 7* (Jan. 2011), available at [http://www.splcenter.org/sites/default/files/downloads/publication/Kobach\\_Comes\\_to\\_Town.pdf](http://www.splcenter.org/sites/default/files/downloads/publication/Kobach_Comes_to_Town.pdf).

16. *Id.* at 8.

17. Ziegler, *supra* note 14.

18. Kris Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALA. L. REV. 179, 184 (2006).

19. Memorandum from Jay Bybee, Deputy Attorney Gen. of the U.S. Dep't of Justice on Non-Preemption of the Authority of State and Local Law Enforcement Officials to Arrest Aliens for Immigration Violations (Apr. 3, 2002), available at <http://www.aclu.org/files/FilesPDFs/ACF27DA.pdf>.

20. S. POVERTY LAW CTR., *THE MAN: A BIOGRAPHY OF KRIS KOBACH* (Jan. 2011), <http://www.splcenter.org/get-informed/publications/when-mr-kobach-comes-to-town/the-man-a-biography-of-kris-kobach> (last visited Feb. 5, 2012).

21. Ziegler, *supra* note 14.

to advance his theories and position as Kansas' Secretary of State.<sup>22</sup> Kobach believes that "the way to solve America's illegal immigration problem is to make it more difficult for unauthorized aliens to work illegally in the United States, while incrementally stepping up the enforcement of other laws discouraging illegal immigration."<sup>23</sup> In his view, this would lead undocumented immigrants to "self-deport."<sup>24</sup> More than one presidential candidate echoes this philosophy,<sup>25</sup> and it permeates the latest statute drafted by Kobach, Alabama's H.B. 56.<sup>26</sup> These extreme anti-immigrant laws have as their foundation the premise that, as an alternative to mass deportation, if life becomes so difficult, and so full of punishments, immigrants will "self deport."

#### A. Legislative History of H.B. 56

On June 2, 2011, the Alabama legislature passed H.B. 56.<sup>27</sup> The law was passed after Republicans won a supermajority in the Alabama state legislature in 2010.<sup>28</sup> According to one of the law's sponsors, Representative Hammon, its purpose was to "attack every aspect of an [undocumented immigrant's] life . . . [and was] designed to make it difficult for them to live here so they deport themselves . . . ."<sup>29</sup> Governor Bentley signed H.B. 56 into law in June 2011.<sup>30</sup> Labeled by the Immigration Reform Law Institute as the "most advanced state immigration law"<sup>31</sup> and the Southern Poverty Law Center as a "harsh anti-immigrant law,"<sup>32</sup> the passage of H.B. 56 has created many unintended conse-

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22. S. POVERTY LAW CTR., THE CASES: A TIMELINE OF KEY EVENTS, <http://www.splcenter.org/get-informed/publications/when-mr-kobach-comes-to-town/the-cases-a-timeline-of-key-events> (last visited Mar. 21, 2012); *Kansas Immigration Hardliner Fights Plan to Allow Undocumented Workers*, FOX NEWS LATINO, Feb. 1, 2012, <http://latino.foxnews.com/latino/politics/2012/02/01/kansas-business-leaders-want-state-to-allow-undocumented-to-work>.

23. Kris Kobach, *Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration*, 22 GEO. IMMIGR. L.J. 459, 471 (2008).

24. *Id.*

25. Maggie Haberman, *Self-Deportation*, POLITICO (Jan. 23, 2012, 10:11 PM), <http://www.politico.com/blogs/burns-haberman/2012/01/selfdeportation-and-a-dream-act-walkback-111994.html>.

26. Talbot, *supra* note 13.

27. Campbell Robertson, *Alabama Wins in Ruling on Its Immigration Law*, N.Y. TIMES, Sept. 28, 2011, <http://www.nytimes.com/2011/09/29/us/alabama-immigration-law-upheld.html>.

28. *Id.*

29. HUMAN RIGHTS WATCH, NO WAY TO LIVE: ALABAMA'S IMMIGRANT LAW 53 (2011), available at [http://www.hrw.org/sites/default/files/reports/us1211ForUpload\\_2.pdf](http://www.hrw.org/sites/default/files/reports/us1211ForUpload_2.pdf) [hereinafter HUMAN RIGHTS WATCH].

30. Bill Mears, *Judge Again Blocks Parts of Tough Alabama Immigration Law*, CNN (Sept. 29, 2011, 12:11 PM), <http://www.cnn.com/2011/09/28/justice/alabama-immigration-law/index.html>.

31. *Alabama Passes the Most Advanced State Immigration Law in U.S. History*, IMMIGRATION REFORM L. INST., <http://www.irl.org/node/39> (last visited Mar. 21, 2012).

32. Dan Werner, *SPLC Ready for Long Legal Battle Over Alabama's Harsh Anti-Immigrant*

quences. Some of the consequences were immediate. “Just hours after Alabama’s immigration law was implemented, thousands of undocumented immigrant workers packed their things and hurriedly fled to other immigrant-friendly states.”<sup>33</sup>

H.B. 56 builds on the similar law passed in Arizona<sup>34</sup> but “goes considerably further.”<sup>35</sup> Both critics and advocates of the law seem to agree that H.B. 56 is the “toughest of all modern state immigration enforcement measures.”<sup>36</sup> Unlike Arizona, Alabama is not a border state and has relatively few immigrants in its population. According to the 2010 Census, only 2.9% of Alabama’s population was foreign-born and only 3.9% of its population was of Hispanic origin.<sup>37</sup> Moreover, only 2.5% of Alabama’s population is undocumented,<sup>38</sup> and in 2010 undocumented immigrants comprised merely 4.2% of the work force in Alabama.<sup>39</sup> While a study by the Pew Hispanic Center estimated that the population of undocumented immigrants in Alabama was 120,000,<sup>40</sup> Alabama is “hardly a beacon for illegal immigrants.”<sup>41</sup> Notably, the study did not mention Alabama as a state with a large population of undocumented immigrants.<sup>42</sup> Interestingly, the four states with the largest undocumented immigrant populations (California, Texas, Florida,

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Law, S. POVERTY LAW CTR. (Oct. 10, 2011), <http://www.splcenter.org/get-informed/news/splc-ready-for-long-legal-battle-over-alabama-s-harsh-anti-immigrant-law>.

33. *Alabama Immigration Law: The Devastating Effect of HB 56 on the State and Its Citizens*, NEW IMMIGRATION LAWS (Nov. 29, 2011), <http://www.newimmigrationlaws.org/alabama-immigration-laws/alabama-immigration-law-the-devastating-effect-of-hb-56-on-the-state-and-its-citizens/> [hereinafter *Alabama Immigration Law*].

34. See S.B. 1070, 49th Leg. (Ariz. 2010), available at <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>; *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011), cert. granted, 132 S. Ct. 845 (2011) (granting *certiorari* to review constitutionality of cooperative enforcement and four specific provisions of S.B. 1070, including a reasonable suspicion provision similar to the one in H.B. 56).

35. Kevin Johnson, *Sweet Home Alabama? Immigration and Civil Rights in the “New” South*, U.C. DAVIS FAC. BLOG (Dec. 5, 2011, 1:46 PM), <http://facultyblog.law.ucdavis.edu/post/Sweet-Home-Alabama-Immigration-and-Civil-Rights-in-the-e2809cNewe2809d-South.aspx>.

36. *Id.*

37. *State and County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/01000.html> (last visited Mar. 21, 2012).

38. *Alabama Immigration Law*, *supra* note 33.

39. *Alabama’s Shame*, N.Y. TIMES, Oct. 3, 2011, <http://www.nytimes.com/2011/10/04/opinion/alabamas-shame.html>.

40. PEW HISP. CTR., PEW RESEARCH CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS 24 (2011), available at <http://pewhispanic.org/files/reports/133.pdf> [hereinafter PEW HISP. CTR.].

41. *Alabama Immigration Law Robs Citizens of Their Own Future: View*, BLOOMBERG (Oct. 20, 2011, 7:00 PM), <http://www.bloomberg.com/news/2011-10-20/alabama-immigration-law-robs-citizens-of-their-own-future-view.html> [hereinafter BLOOMBERG].

42. Georgia was listed as a state with one of the largest shares of undocumented immigrants. The population of undocumented immigrants in Georgia is approximately 4.4%. PEW HISP. CTR., *supra* note 40, at 15.

and New York) have chosen not to enact such draconian measures.<sup>43</sup> In fact, in late 2011, California became the first state to pass legislation to provide undocumented immigrants with public and private funding for higher education purposes.<sup>44</sup>

### B. Procedural History of H.B. 56

Robert Bentley, the governor of Alabama, signed H.B. 56 into law and stated that he would “continue to fight to see this law upheld.”<sup>45</sup> On September 28, 2011, Judge Sharon Lovelace Blackburn of the Northern District of Alabama became the first judge to rule on the law. Judge Blackburn’s ruling left the following sections of H.B. 56 intact: Section 10 (criminalizing immigrant’s lack of registration), Section 12 (permitting reasonable suspicion stops), Section 18 (making the carrying of licenses obligatory), Section 27 (nullifying contracts), Section 28 (verifying citizenship prior to education enrollment), and Section 30 (prohibiting business transactions with the state).<sup>46</sup> In her preemption analysis, Judge Blackburn was guided by two principles: 1) the congressional purpose of the underlying federal statute and 2) whether Congress had legislated in a traditionally state-occupied field.<sup>47</sup>

Judge Blackburn preliminarily enjoined sections 11(a) (prohibiting undocumented immigrants from seeking work), 13 (harboring and transportation provision), 16 (prohibiting the deduction of an undocumented immigrant’s wages as a business expense), and 17 (making the hiring of an undocumented immigrant over a U.S. citizen/resident unlawful).<sup>48</sup> Judge Blackburn also enjoined Section 8 due to federal preemption; the last sentence of sections 10(e), 11(e), & 13(h) on Sixth Amendment grounds; and sections 11(f) and 11(g) on First Amendment grounds.<sup>49</sup> Despite this, Republicans have characterized Judge Blackburn’s ruling as a “significant win” for those in favor of the law.<sup>50</sup> Meanwhile, Judge Myron Thompson of the Middle District of Alabama granted a prelimi-

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43. *Id.*; see also CAROLE KEETON STRAYHORN, TEX. COMPTROLLER OF PUB. ACCOUNTS, SPECIAL REPORT—UNDOCUMENTED IMMIGRANTS IN TEXAS: A FINANCIAL ANALYSIS OF THE IMPACT TO THE STATE BUDGET AND ECONOMY (2006).

44. *California Dream Act Signed By Jerry Brown: Second Bill Passes*, HUFFINGTON POST (Oct. 28, 2011, 8:49 PM), [http://www.huffingtonpost.com/2011/10/08/california-dream-act\\_n\\_1001828.html](http://www.huffingtonpost.com/2011/10/08/california-dream-act_n_1001828.html).

45. Mears, *supra* note 30.

46. *United States v. Alabama*, No. 2:11-cv-02746-SLB, 2011 WL 4582818, at \*114 (N.D. Ala. Sept. 28, 2011).

47. *Id.* at \*20.

48. *Id.* at \*115.

49. *Hispanic Interest Coal. of Ala. v. Bentley*, No. 5:11-cv-02484-SLB, 2011 WL 5516953, at \*3–4 (N.D. Ala. Sept. 28, 2011).

50. Robertson, *supra* note 27.

nary injunction against Section 30 of H.B. 56.<sup>51</sup> In March 2012, the United States Court of Appeals for the Eleventh Circuit temporarily stayed Sections 27 and 30 of H.B. 56; however, the court refused to issue a formal opinion until after the U.S. Supreme Court opines on a similar matter arising from the Arizona statute.<sup>52</sup>

### III. H.B. 56 AND DOMESTIC VIOLENCE

There haven't been mass arrests. There aren't a bunch of court proceedings. People are simply removing themselves. It's self-deportation at no cost to the taxpayer. I'd say that's a win. —Kris Kobach<sup>53</sup>

Contrary to Kobach's assertion, Alabama is facing an economic and humanitarian crisis. A study by the University of Alabama estimates that the economic consequences of H.B. 56 may reach nearly \$11 billion,<sup>54</sup> and it is clear from the study that the negative economic effects in Alabama will reach much further than just the agricultural community.<sup>55</sup> While most of the dialogue about H.B. 56 has centered on its economic impact,<sup>56</sup> there are other, presumably unintended consequences of this law, which have been largely ignored by the general public.

Over thirty organizations and advocacy groups filed briefs describing how H.B. 56 will discourage the reporting of domestic violence and other crimes.<sup>57</sup> The rate of domestic violence in the general population is

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51. Cent. Ala. Fair Hous. Ctr. v. Magee, No. 2:11-cv-00982-MHT-CSC, 2011 WL 6182334, at \*107 (M.D. Ala. Dec. 11, 2011).

52. Jeremy Redmon, *Court Puts Parts of Alabama's Anti-Illegal Immigration Law on Hold*, ATL. J. CONST., March 8, 2012, <http://www.ajc.com/news/georgia-politics-elections/court-puts-parts-of-1378018.html>.

53. Talbot, *supra* note 13.

54. SAMUEL ADDY, CTR. FOR BUS. & ECON. RESEARCH, UNIV. OF ALA., A COST-BENEFIT ANALYSIS OF THE NEW ALABAMA IMMIGRATION LAW 9 (2012), available at <http://cber.cba.ua.edu/New%20AL%20Immigration%20Law%20-%20Costs%20and%20Benefits.pdf>.

55. *Id.*

56. See, e.g., Campbell Robertson, *After Ruling, Hispanics Flee an Alabama Town*, N.Y. TIMES, Oct. 3, 2011, <http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all> (stating that critics of H.B. 56 believe the law is "devastating, leaving rotting crops in fields and critical shortages of labor"); BLOOMBERG, *supra* note 41 (stating that there are now "shortages of workers in construction and agriculture," that "tomatoes and other crops were left rotting in north Alabama's fields," and that "post-tornado reconstruction of Tuscaloosa has been hindered by a lack of skilled labor"); *The Price of Intolerance*, N.Y. TIMES, Nov. 27, 2011, <http://www.nytimes.com/2011/11/28/opinion/the-price-of-intolerance.html> (stating that there will be a loss of productivity and investments in Alabama); cf. Jess Brown, *What's the Real Impact of Alabama's New Immigration Law?*, ALA. LIVE BLOG (Jan. 8, 2012, 6:57 AM), [http://blog.al.com/times-views/2012/01/whats\\_the\\_real\\_impact\\_of\\_alaba.html](http://blog.al.com/times-views/2012/01/whats_the_real_impact_of_alaba.html) (stating that H.B. 56 probably only affected the "unskilled or marginally skilled, relatively young, entry-level labor primarily in the construction trades and agribusiness").

57. Robertson, *supra* note 27; *Organizations That Have Filed Briefs Opposed to Alabama Law H.B. 56*, ACLU (Aug. 11, 2011) <http://www.aclu.org/immigrants-rights/organizations-have-filed-briefs-opposed-alabama-law-hb-56>.

21%; the rate for Latina, immigrant women is almost twice that.<sup>58</sup> Immigrant women are also more likely to “stay longer in abusive relationships, suffer more severe forms of abuse, and sustain more devastating physical and psychological damage compared to U.S. born victims of domestic violence.”<sup>59</sup> As a result of these factors, a woman’s immigration status is often used as a mechanism of control by her abuser.<sup>60</sup>

While the full impact of H.B. 56 on battered undocumented women remains to be seen, some powerful consequences have already occurred and others are inevitable. What is clear is that laws such as H.B. 56 overlook the complex nature of immigration enforcement. As a result, these laws further marginalize vulnerable immigrant populations that are protected by federal law. Furthermore, they fail to protect the due process rights of one of the most marginalized populations in the United States—undocumented immigrant women.

H.B. 56 creates “a culture of impunity . . . for those who exploit and abuse immigrants.”<sup>61</sup> This has an echo of familiarity to it. In the aftermath of the Arizona immigration law, S.B. 1070, domestic violence programs reported a decrease in the number of calls for help because the law “generate[d] a culture of fear within the minority communities.”<sup>62</sup> Just as with S.B. 1070, Alabama’s H.B. 56 will compromise trust in law enforcement authorities and in the community. “More crimes will go unreported as many immigrants will refuse to surface for fear of being questioned about their citizenship status . . . .”<sup>63</sup>

Instead of reaching out to law enforcement, some immigrants reach out to non-profits for help. Mary Bauer, Legal Director of the Southern Poverty Law Center, reported that a hotline instituted to address concerns about the new law received almost 2,000 calls in less than a week.<sup>64</sup> Bauer said that the “calls [were] deeply disturbing and painted a

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58. Jacqueline P. Hand & David C. Koelsch, *Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence*, 25 WIS. J.L. GENDER & SOC’Y 185, 190 (2010).

59. *Id.*

60. Mary Ann Dutton, Leslye E. Orloff, & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. POVERTY L. & POL’Y 245 (2000).

61. Irasema Garza, *Arizona Law Compounds Immigrant Women’s Vulnerability*, HUFFINGTON POST (May 9, 2010, 7:22 PM), [http://www.huffingtonpost.com/irasema-garza/arizona-law-compounds-imm\\_b\\_568132.html](http://www.huffingtonpost.com/irasema-garza/arizona-law-compounds-imm_b_568132.html).

62. Laura Tillman, *Domestic Abuse Fears Grow in Immigrant Communities*, WOMEN’S MEDIA CTR. (Oct. 28, 2011), <http://www.womensmediacenter.com/feature/entry/domestic-abuse-fears-grow-in-immigrant-communities>.

63. *Alabama Immigration Law*, *supra* note 33.

64. Patricia Zapor, *Crops Rotting, Families Leaving, Say Critics of Alabama Immigration Law*, CATHOLIC NEWS SERVICE (Oct. 7, 2011), <http://www.catholicnews.com/data/stories/cns/1103981.htm>.

grim picture of the aftermath of this ill-conceived law.”<sup>65</sup> She also testified before the Birmingham City Council that “a victim of domestic violence went to court to obtain a protective order” and was told that if she proceeded, she would be reported to Immigration and Customs Enforcement (ICE).<sup>66</sup>

#### IV. H.B. 56 FRUSTRATES EXISTING FEDERAL IMMIGRATION LAW INTENDED TO PROTECT IMMIGRANT WOMEN

There are a variety of factors that prevent a battered immigrant woman from leaving her abuser, and as analyzed below, Congress has promulgated various laws to address these factors. For many immigrant women who are abused, leaving an abuser is not a simple process or decision; it often takes several attempts.<sup>67</sup> This may be because immigrant women have fewer economic and social resources available to them, a fact which creates an imbalanced power relationship.<sup>68</sup> Undocumented women face an additional threat if they seek help from authorities—the threat of immediate removal.<sup>69</sup> If an immigrant is in the United States without legal authority, her vulnerability is extreme, and her ability to defend herself legally is minimal.

Immigrant women are especially vulnerable to domestic violence because in many cases immigration status is tied to the abusive partner.<sup>70</sup> For example, around three hundred immigrant men were deported in 2001 after being reported as abusers, but immigration authorities also deported the abused partners recorded as dependents on their partners’ immigration applications.<sup>71</sup> Even if a woman is a legal resident, she is vulnerable to challenges to her legal status, especially from her husband, who is in a position to allege conduct rendering her removable under federal immigration law. Moreover, “an abusive husband can use his wife’s legal status as a form of blackmail, and the wife will avoid filing criminal charges against her husband because her own legal status will

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65. *Id.*

66. *Testimony Before Congressional Ad Hoc H.B. 56 Hearing*, S. POVERTY LAW CTR. (Nov. 21, 2011), <http://www.splcenter.org/get-informed/news/testimony-before-congressional-ad-hoc-hb56-hearing> [hereinafter *Testimony*]; Immigration and Customs Enforcement is the “investigatory arm of the Department of Homeland Security.” Immigration and Customs Enforcement, <http://www.ice.gov/about/overview/> (last visited Feb. 5, 2012).

67. Brief for Alabama Coalition Against Domestic Violence’s *Amicus Curiae* in Support of the Plaintiffs’ Motion for Preliminary Injunction at 22, *Hispanic Interest Coal. of Ala. v. Bentley*, No. 5:11-cv-02484-SLB, 2011 WL 5516953 (N.D. Ala. Sept. 28, 2011) [hereinafter *Alabama Coalition Amicus Curiae Brief*].

68. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1021 (2000).

69. *Id.* at 1031.

70. Menjivar & Salcido, *supra* note 8, at 908.

71. *Id.*

be jeopardized.”<sup>72</sup> In fact, when an immigrant woman is married to an American citizen, the rate of abuse is almost three times the national average.<sup>73</sup> Even taking the preliminary step of seeking police intervention may lead to a separation from her children, with the very real possibility that her abuser will gain custody of their children if he is a citizen.<sup>74</sup>

Culture and family roles are other inhibitors that keep Latina immigrants from leaving their abusers and seeking help.<sup>75</sup> Fear of law enforcement authorities is further amplified by past negative experience with police in home countries and the casual acceptance of domestic violence as a fact of life for women.<sup>76</sup> As one immigrant woman in Arizona described:

The Police? Who would think of calling the police back there [in El Salvador]? If you called them they'd think it's a prank and they won't even bother coming! No one does that. Everyone will laugh if a woman calls for help if her husband is beating her.<sup>77</sup>

Battered immigrant Latinas may be “among the most vulnerable and marginalized within the Latino community.”<sup>78</sup> H.B. 56 is another weapon in the abuser's arsenal, allowing abusers to further exploit vulnerabilities and undermining a comprehensive federal legislative framework to protect these women.

#### A. Violence Against Women Act

The Violence Against Women Act of 1994 (VAWA) was the first comprehensive legislative attempt at addressing domestic violence on a national level.<sup>79</sup> It is congressional recognition of the vulnerability of immigrant women and children to violence in their homes and is legisla-

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72. *Id.*; see also Hand & Koelsch, *supra* note 58, at 199–200.

73. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 9; GISELLE AGUILAR HASS ET AL., BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES, LEGAL MOMENTUM 3 (April 24, 2006), available at [http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-violence-against-immigrant-women-in-the-u.s/BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf/view](http://iwp.legalmomentum.org/reference/additional-materials/research-reports-and-data/research-violence-against-immigrant-women-in-the-u.s/BB_RSRCH_ImmVictims_Battered_Imm.pdf/view).

74. Coker, *supra* note 68, at 1031.

75. Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93 (2000), available at [www.legalmomentum.org/assets/pdfs/wwwr1lifetimeprevalence.pdf](http://www.legalmomentum.org/assets/pdfs/wwwr1lifetimeprevalence.pdf); Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 95.

76. Menjivar & Salcido, *supra* note 8, at 910; Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 8 B.U. PUB. INT. L.J. 589, 591–92 (1997) (“[I]f a battered immigrant woman is from a country that views the police as repressive, it is difficult for her to have anything but terror of the police.”).

77. Menjivar & Salcido, *supra* note 8, at 910.

78. Hass et al., *supra* note 75, at 94.

79. Violence Against Women Act of 1994, Pub. L. No. 103-322 (1994); Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Protection to*

tive confirmation of the underlying data proving such vulnerability. This legislation endeavors to permit an undocumented battered woman to control her immigration status rather than ceding such power to her spouse, who is also her sponsor and provider. In drafting this legislation, the fate of immigrant children trapped in cycles of violence was also of particular importance to Congress.<sup>80</sup> Under VAWA, abused immigrant spouses can file for immigration relief for themselves and their children via two separate remedies: self-petition and cancellation of removal, the latter of which allows the woman to apply for relief after she is already in deportation proceedings.<sup>81</sup>

The VAWA self-petition is available to abused spouses, children, and parents abused by their children (if the children are over twenty-one years of age and are U.S. citizens).<sup>82</sup> This remedy “protects women who fear that leaving an abusive spouse will subject them to deportation, or will jeopardize their chances of gaining legal status.”<sup>83</sup> There are seven requirements to be eligible for this remedy including: 1) a relationship to the abuser, 2) the abuser is a U.S. citizen or lawful permanent resident (LPR), 3) residence in the U.S., 4) residence with the abuser, 5) battery or extreme cruelty, 6) good moral character, and 7) a marriage entered into in good faith.<sup>84</sup> An applicant must submit affidavits from themselves and any witnesses to the abuse in support of her application. Unlike VAWA cancellation, an applicant need not be in removal proceedings to be eligible for VAWA self-petition.<sup>85</sup>

To be eligible for cancellation of removal under VAWA, an immigrant must already be in removal proceedings.<sup>86</sup> Commentators note that “Congress effectively gave the woman a second chance to obtain protection,” even after she is in removal proceedings.<sup>87</sup> In addition, a person must be the abused spouse, abused former spouse, abused fiancée, or abused child of a U.S. citizen or LPR. Alternatively, a parent of a child abused by a U.S. citizen or LPR may also be eligible. The applicant must demonstrate good moral character and that removal from the

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*Immigrant Battered Women: A History of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL'Y & L. 95, 110 (2001).

80. *Id.* at 111.

81. *Id.* at 115.

82. Moira Fisher Praeda et al., *Preparing the VAWA Self-Petition and Applying for Residence*, LEGAL MOMENTUM 1, 3 (2009), [http://iwp.legalmomentum.org/immigration/vawa-self-petition-and-cancellation/articles/VAWA\\_self-petition\\_SA-MAN.pdf](http://iwp.legalmomentum.org/immigration/vawa-self-petition-and-cancellation/articles/VAWA_self-petition_SA-MAN.pdf).

83. Loke, *supra* note 76, at 602.

84. *Id.* at 4–6.

85. *Id.* at 4.

86. Rebecca Story et al., *VAWA Cancellation of Removal*, LEGAL MOMENTUM 1, 1 (2009), [http://www.legalmomentum.org/assets/pdfs/www3\\_4\\_vawa\\_cancellation\\_of\\_removal.pdf](http://www.legalmomentum.org/assets/pdfs/www3_4_vawa_cancellation_of_removal.pdf).

87. Arcidiacono, *supra* note 5, at 183.

United States will result in extreme hardship to herself or her child. Once an immigration judge approves cancellation, the immigrant is granted lawful permanent residence status.<sup>88</sup> Additionally, those who are eligible for VAWA may also be eligible for federal public benefits.<sup>89</sup>

### B. U-Visa

In 2000, Congress amended VAWA to include the U-visa. The purpose of the U-visa is to:

create a new nonimmigrant visa classification that [would] strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa [would] encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.<sup>90</sup>

This form of relief was meant to act as a “gap-filler to the Violence Against Women Act of 1994.”<sup>91</sup> To qualify, an immigrant must: 1) have “suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity,” 2) “have information concerning that criminal activity,” 3) “must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime,” and 4) the crime must be a violation of U.S. law.<sup>92</sup> One prerequisite for the U-visa is an affidavit from a crime advocate.<sup>93</sup> By obtaining a U-visa, an immigrant is granted legal residence for up to four years and is eligible to adjust to LPR status during that time.<sup>94</sup> This form of relief is particularly significant for those victims of domestic violence whose partners do not have legal status.

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88. Story, *supra* note 86, at 4.

89. *Id.* at 8.

90. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533–34 (2000).

91. Anna Hanson, *The U-Visa: Immigration Law's Best Kept Secret*, 63 ARK. L. REV. 177, 177 (2010).

92. Fact Sheet: Certifying U Nonimmigrant Status, USCIS (Sept. 5, 2007), [http://www.uscis.gov/files/pressrelease/U-visaFS2\\_05Sept07.pdf](http://www.uscis.gov/files/pressrelease/U-visaFS2_05Sept07.pdf).

93. *U Visa Laws for Crime Victims*, WOMENSLAW.ORG, [http://www.womenslaw.org/laws\\_state\\_type.php?id=10271&state\\_code=US](http://www.womenslaw.org/laws_state_type.php?id=10271&state_code=US) (last updated Jan. 2, 2012).

94. Katherine Ellison, *A Special Visa Program Benefits Abused Illegal Immigrants*, N.Y. TIMES, Jan. 8, 2010, [www.nytimes.com/2010/01/08/us/08sfimmigrant.html?pagewanted=all](http://www.nytimes.com/2010/01/08/us/08sfimmigrant.html?pagewanted=all).

### C. *T-Visa*

The T-visa is available to immigrants who are victims of trafficking.<sup>95</sup> To be eligible, the immigrant must: 1) be a victim of severe trafficking, 2) be in the United States, 3) suffer extreme hardship if removed, and 4) be willing to cooperate with law enforcement.<sup>96</sup> The T-visa, like all remedies for crime victims, was enacted to provide law enforcement officials with the tools necessary to assure the cooperation of immigrants through minimizing their fear of removal.

### D. *Battered Spouse Waiver*

Another form of relief available to immigrant victims of domestic violence is the Battered Spouse Waiver, which assists abused immigrants who have conditional permanent residency.<sup>97</sup> It allows a battered spouse to have conditions removed from her residency that would otherwise bar her from obtaining lawful permanent residence, without the abusive spouse's knowledge or participation.<sup>98</sup> More specifically, an immigrant spouse usually must prove that she is still married two years after she receives the conditional lawful permanent residency through her husband, but this requirement is waived through this particular waiver. Congress has repeatedly enhanced and reauthorized these protections, signaling the federal government's commitment to protecting immigrant victims of domestic violence.<sup>99</sup>

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95. 8 U.S.C. § 1101(a)(15)(T)(i)(I)–(IV) (2006).

96. *T-Visa Laws and Trafficking*, WOMENSLAW.ORG, [http://www.womenslaw.org/laws\\_state\\_type.php?id=13636&state\\_code=US&open\\_id=13641#content-13641](http://www.womenslaw.org/laws_state_type.php?id=13636&state_code=US&open_id=13641#content-13641) (last updated Apr. 13, 2011). Some women are trafficked into the country for marriage purposes and subsequently become domestic abuse victims in the United States. *See generally*, COALITION AGAINST TRAFFICKING IN WOMEN, <http://www.catwinternational.org/factbook/usa1.php> (last visited Mar. 23, 2012).

97. Immigration & Nationality Act § 216(c)(4)(C); 8 U.S.C. § 1186a(c)(4) (2010). *See also* Cecilia Olavarria and Moira Fisher Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, LEGAL MOMENTUM 1, 1 (2004), [http://www.legalmomentum.org/assets/pdfs/www3\\_5\\_battered\\_spouse\\_waiver.pdf](http://www.legalmomentum.org/assets/pdfs/www3_5_battered_spouse_waiver.pdf).

98. LAW ENFORCEMENT GUIDE, *supra* note 9, at 5.

99. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 3. *But see* Adam Serwer, *Republicans are Blocking the Violence Against Women Act—Here's Why*, MOTHER JONES, Mar. 20, 2012, <http://motherjones.com/politics/2012/03/republicans-violence-against-women-act>; Wendy Kaminer, *What's Wrong with the Violence Against Women Act*, ATLANTIC, Mar. 19, 2012, <http://www.theatlantic.com/national/archive/2012/03/whats-wrong-with-the-violence-against-women-act/254678/>.

### E. Prosecutorial Discretion

Recently, federal immigration authorities have made it clear that prosecutorial discretion should be used in certain instances.<sup>100</sup> One factor that authorities are now directed to consider is whether or not an immigrant is a victim of domestic violence, trafficking, or a serious crime.<sup>101</sup> In addition, ICE administrators have discouraged officers from making arrests at sensitive areas such as domestic abuse shelters “absent clear evidence that the [immigrant] is not entitled to victim-based benefits.”<sup>102</sup>

It is clear that there is a comprehensive federal framework in place to empower abused women and allow them to control their own immigration status. Such protection has developed over years, is based on hard data, and has proven effective in empowering the victims. H.B. 56 hands that power back over to the abuser in direct contravention of this federal framework.<sup>103</sup>

## V. THE UNINTENDED CONSEQUENCES OF H.B. 56

### A. *The Harboring & Transportation Provisions of H.B. 56 Further Isolate Immigrant Victims of Domestic Violence*

Proponents of stringent state anti-immigrant laws view them as merely an attempt at cooperative enforcement with the federal government.<sup>104</sup> For this reason, the statutes often include duplicative enforcement provisions taken from the federal Immigration and Nationality Act. For example, harboring provisions have appeared in many of the new anti-immigrant state laws, which are already addressed in federal law.<sup>105</sup> Unfortunately, the exact definition of what act constitutes “harboring” under federal law still remains unclear,<sup>106</sup> and state laws do little to clarify this issue.

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100. Memorandum from ICE Dir. John Morton on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 3 (June 17, 2010), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

101. *Id.* at 4.

102. Memorandum from ICE Dir. John Torres on Interim Guidance to Officer Procedure Following Enactment of VAWA 2005 5 (Jan. 22, 2007), available at [http://www.asistahelp.org/documents/resources/ICE\\_384\\_Memo\\_FCD88FAD0E6DD.pdf](http://www.asistahelp.org/documents/resources/ICE_384_Memo_FCD88FAD0E6DD.pdf).

103. A constitutional preemption discussion is beyond the scope of this article, but there appears to be a meritorious preemption claim against H.B. 56.

104. See Gabriel J. Chin & Marc L. Miller, *The Unconstitutionality of State Regulation of Immigration Through Criminal Law*, 61 DUKE L.J. 251, 261 (2011).

105. See ARIZ. REV. STAT. § 13-2929 (2010); GA. CODE §§ 16-11-200, 201 (2011); H.B. 56; Immigration and Nationality Act § 274 (2010); 8 U.S.C. § 1324.

106. Eisha Jain, *Immigration Enforcement and Harboring Doctrine*, 24 GEO. IMMIGR. L.J. 147 (2010).

Section 13 of H.B. 56 states that it is unlawful to:

- (1) Conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien from detection in any place in this state, including any building or any 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 federal law.
- (2) Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering, or residing in the United States is or will be in violation of federal law.
- (3) *Transport, or attempt to transport, or conspire to transport in this state an alien* in furtherance of the unlawful presence of the alien in the United States, *knowingly, or in reckless disregard of the fact*, that the alien has come to, entered, or remained in the United States in violation of federal law. Conspiracy to be so transported shall be a violation of this subdivision.
- (4) *Harbor* an alien unlawfully present in the United States *by entering into a rental agreement*, as defined by Section 35-9A-141 of the Code of Alabama 1975, with an alien to provide accommodations, if the person *knows or recklessly disregards* the fact that alien is unlawfully present in the United States.

A violation of Section 13 may have different criminal implications. Under the statute:

- (4)(b) Any person violating the provisions of [Section 13] is guilty of a Class A misdemeanor for each unlawfully present alien, the illegal presence of which in the United States and the State of Alabama, he or she is facilitating or is attempting to facilitate.
- (4)(c) A person violating the provisions of this section is guilty of a Class C felony when the violation involves 10 or more aliens, the illegal presence of which in the United States and the State of Alabama, he or she is facilitating or is attempting to facilitate.<sup>107</sup>

In addition, any vehicle used to transport undocumented immigrants is subject to civil forfeiture.<sup>108</sup>

The Alabama law does provide a narrow exemption for first responders and protective services providers.<sup>109</sup> Under H.B. 56 Section 3(12), protective services providers are defined as:

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107. H.B. 56 § 13 (emphasis added).

108. H.B. 56 § 13(f).

109. H.B. 56 § 13(3).

A child protective services worker; adult protective services worker; protective services provider; or provider of services to victims of domestic violence, stalking, sexual assault, or human trafficking *that receives federal grants under the Victim of Crimes Act, the Violence Against Women Act, or the Family Violence Prevention and Services Act.*<sup>110</sup>

However, victims of abuse receive services from initiatives that are funded through private, state, and other federal mechanisms. Therefore, H.B. 56 may criminalize “transitional housing for victims funded through Housing and Urban Development grants, professional counseling and crisis interventions, federally funded health care, soup kitchens, and thrift stores operated by domestic violence agencies.”<sup>111</sup> Interestingly, the Alabama statute does not provide an exemption for religious missionary activities as the federal statute does,<sup>112</sup> and under another section of the statute, there is a narrow verification exemption for:

[p]rograms, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that satisfy all of the following:

- a) Deliver in-kind services at the community level, including services through public or private nonprofit agencies.
- b) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient.
- c) Are necessary for the protection of life or safety.<sup>113</sup>

This exemption is vague, however. It is not clear what programs fall into the aforementioned categories. It is also unclear whether the exemption would be narrowly applied or if it would extend to transportation services and contracts as well. Under the statute, there is no civil or criminal penalty for unwarranted verification, but there may be a penalty for failure to verify. As a result, program managers may decide to implement unwarranted verification procedures leaving battered women isolated and homeless.

In other state jurisdictions, laws may not provide any protection for protective services providers,<sup>114</sup> while others attempt to carve out an

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110. H.B. 56 § 3(12) (emphasis added).

111. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 31. This also placed some housing programs that are federally funded in the catch-22 where they could be found to be violating federal fair housing laws if they turn away immigrant victims in an effort to comply with H.B. 56's no harboring provision. *Id.*

112. 8 U.S.C. § 1324(a)(1)(c) (2006); *but see* Mary Sell, *Changes on the Horizon: Republicans to Tweak Questionable Parts of Immigration Law*, *TIMES DAILY*, Apr. 1, 2012, <http://www.timesdaily.com/stories/changes-on-horizon,189044>.

113. H.B. 56 § 7(a)(5).

114. *See* Arcidiacono, *supra* note 5, at 203.

even broader exemption.<sup>115</sup> The resulting patchwork of legislation makes it very difficult for domestic abuse service providers to understand how to provide services without incurring liability. In order to avoid losing federal funding, non-profit organizations have urged shelters to continue to provide services regardless of state statutes.<sup>116</sup>

Section 13 of H.B. 56 also imposes criminal sanctions on private landlords who rent to undocumented immigrants. As a result, this may prevent abused women from creating a safe space away from their abusers.<sup>117</sup> Landlords wishing to avoid liability under the state law will simply err on the side of caution and refuse outright to rent to any prospective tenants who happen to be, or even appear to be, Hispanic. Laws like H.B. 56, then, are likely to increase the number of landlords engaging in housing discrimination in violation of the federal Fair Housing Act.<sup>118</sup> An Alabama landlord may well feel caught in the whipsaw between the state law's punishments for an action that he or she feels is a proper humanitarian response.

Obtaining a safe home immediately after leaving the abuser is "crucial" to any battered woman's recovery, especially when her vulnerability is compounded by virtue of her undocumented immigrant status.<sup>119</sup> This is especially true when one considers that women who self-petition under VAWA can sometimes wait up to seven years until their LPR petition is approved.<sup>120</sup> According to studies, abused women are more likely to turn to those who they know—friends, family, neighbors—rather than an organization or law enforcement officials.<sup>121</sup> By imposing criminal liability on ordinary citizens, state laws effectively cut-off this escape route for undocumented immigrant women. Leaving an abuser is difficult and dangerous enough for the typical domestic violence victim.<sup>122</sup> "These barriers to independence will deter women from leaving their abusers, potentially force those who have left their abusers to

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115. GA. CODE § 16-11-201(a)(1) (2011).

116. Kilpatrick Townsend & Stockton LLP, *Harboring and Transportation of Undocumented Persons: Information for Domestic Violence, Sexual Assault and Victim Services Agencies*, LEGAL MOMENTUM (Aug. 5, 2011), <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws/Harboring%20and%20Transportation%20of%20Victims%208.5.11.pdf/view>.

117. Alabama Coalition *Amicus Curiae Brief*, *supra* note 67, at 24.

118. Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances and Housing Discrimination*, 62 VAND. L. REV. 55 (2009).

119. Alabama Coalition *Amicus Curiae Brief*, *supra* note 67, at 27.

120. *Id.* at 23–24.

121. P. CATLIN FULLWOOD, FAMILY VIOLENCE PREVENTION FUND, PREVENTING FAMILY VIOLENCE: COMMUNITY ENGAGEMENT MAKES THE DIFFERENCE 2 (2002), *available at* <http://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/PFV-Community%20Engagement.pdf>.

122. Alabama Coalition *Amicus Curiae Brief*, *supra* note 67, at 22.

return, and make it harder for victims to stay outside their abusers' sphere of influence."<sup>123</sup>

If a woman is unable to find a safe home, she and her children could be forced into "unsafe and overcrowded apartments," be forced to return to the abuser,<sup>124</sup> or may face homelessness.<sup>125</sup> Congress has recognized these concerns and even allowed undocumented battered immigrants special housing benefits because of these issues.<sup>126</sup> H.B. 56 undermines the careful protective framework Congress has put in place for this marginalized population. Fortunately, federal courts in Georgia and Alabama have temporarily blocked the implementation of harboring provisions in accordance with the federal preemption doctrine.<sup>127</sup>

Alabama State Attorney General Luther Strange also recently urged the Alabama legislature to consider amending Section 13 to more closely mirror federal legislation.<sup>128</sup> Alabama should follow Attorney General Strange's advice and amend Section 13 to eliminate the specification that "renting is harboring" and eliminate Section 13(a)(2), which makes it illegal to encourage or induce an undocumented immigrant to come to the state of Alabama.<sup>129</sup> Without the elimination of Section 13(a)(2), families and friends of victims will not be able to provide safe havens for the battered women who need it most without risking criminal sanctions. Section 13 may also criminalize the work of shelters, rape crisis centers, and other victim advocates who might transport victims to the hospital for treatment, for forensic exams, or to court for a domestic violence hearing.<sup>130</sup> Unfortunately, the anti-harboring provision is just one such section of H.B. 56 that negatively impacts victims of domestic violence.

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123. *Id.* at 24.

124. *Id.* at 27.

125. One study found that 25% of homeless people are homeless because of domestic violence. *Id.* at 28.

126. *Id.* at 27–28.

127. *Ga. Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317 (N.D. Ga. 2011); *United States v. Alabama*, No. 2:11–CV–2746–SLB, 2011 WL 4469941 (N.D. Ala. Sept. 28, 2011).

128. Memorandum from Ala. Attorney Gen. Luther Strange to Senate President Pro Tempore Del Marsh & House Speaker Mike Hubbard 2 (Dec. 1, 2011), available at <http://www.nsba.org/SchoolLaw/Legal-Clips-Documents/Alabama-Attorney-General-Letter-to-Legislature.pdf> [hereinafter Strange Memorandum].

129. *Id.*

130. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 6.

B. *The State Business Transaction Provision of H.B. 56 Is Overly Broad and Will Allow Exploitation of Domestic Violence Victims*

Section 30 of H.B. 56 may also affect a battered woman's access to shelter. Section 30 provides:

(b) An alien not lawfully present in the United States shall not enter into or attempt to enter into a business transaction with the state or political subdivision of the state and no person shall enter into a business transaction or attempt to enter into a business transaction on behalf of an alien not lawfully present in the United States.

(c) Any person entering into a business transaction or attempting to enter into a business transaction with this state or a political subdivision of this state shall be required to demonstrate his or her United States citizenship, or if he or she is an alien, his or her lawful presence in the United States to the person conducting the business of this state.<sup>131</sup>

The criminal penalty for violating the statute is a Class C felony and subjects violators to possible imprisonment for up to ten years.<sup>132</sup> Section 30(a) broadly defines the term "business transaction" to include:

[a]ny transaction between a person and the state or a political subdivision of the state, including, but not limited to, a person applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or nondriver identification card, or applying for or renewing a business license.<sup>133</sup>

The Section 30 definition of "business transaction" is nebulous to say the least. In fact, the Attorney General of Alabama has pointed out this lack of clarity.<sup>134</sup>

Under Alabama law, manufactured homes, including mobile homes, must be registered on a yearly basis.<sup>135</sup> Failure to register or pay an ensuing fine may result in a Class C misdemeanor.<sup>136</sup> In Alabama, Latinos are more likely to live in mobile homes than any other racial group.<sup>137</sup> Prior to the preliminary injunction issued by Judge Myron

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131. H.B. 56 § 30(b)–(c); *see also* ALA. CODE 13A-5-6(a)(3) (1975), available at <http://www.legislature.state.al.us/codeofAlabama/1975/13A-5-6.htm>.

132. Applying for a marriage license is the sole exception. H.B. 56 § 30(a).

133. *Id.*

134. Strange Memorandum, *supra* note 128, at 4.

135. ALA. CODE § 40-12-255 (1975).

136. *Manufactured Homes*, MONTGOMERY COUNTY, ALA. REVENUE COMMISSIONER, <http://www.mc-ala.org/ElectedOfficials/Revenue/FAQ/Pages/ManufacturedHomes.aspx> (last visited Mar. 22, 2012).

137. *Cent. Ala. Fair Hous. Ctr. v. Magee*, No. 2:11-cv-00982-MHT-CSC, 2011 WL 6182334, at \*94 (M.D. Ala. Dec. 11, 2011). The authors note that this statistic includes both U.S. citizens and immigrants.

Thompson, some undocumented immigrants transferred property to people with legal status and undervalued their property in order to sell quickly.<sup>138</sup>

If the injunction is overturned, this will affect battered women profoundly. Section 30 forces undocumented immigrants into the predicament of having to choose between facing criminal penalties and abandoning their home.<sup>139</sup> As a result of legislation like Section 30, battered women will be forced into an even more powerless position—particularly if her batterer is a U.S. citizen.<sup>140</sup> A battered woman who owns a mobile home may be pressured by her abuser to sign over her property to him or his family. This will only further isolate her economically and make her even more reliant on her batterer for the most basic necessities—water and shelter.

The broad language of Section 30 may also lead to societal isolation of battered women. Use of public institutions such as libraries, parks, parking lots, school grounds, museums, as well as offices that handle traffic violations, recordings of deeds, garbage collection, and water services all meet the language of Alabama's law, whether intentionally or not.

Section 30 also hinders an undocumented immigrant's access to the justice system. For example, under this provision, a detained Latino man was denied telephone access to call his lawyer because use of the telephone was considered a "business transaction."<sup>141</sup> Even if a battered woman were not detained, Section 30 again has obvious implications regarding access to the justice system. Under Alabama law, a name is legally changed through a procedure administered by Probate Court.<sup>142</sup> An undocumented woman attempting to leave her husband and change her name for security reasons would be unable to do so through the courts because the process would be considered a "business transaction." By applying for a name change, she would actually be committing a felony under Section 30.<sup>143</sup> A felony conviction would also make her

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138. HUMAN RIGHTS WATCH, *supra* note 29, at 18.

139. *Cent. Ala. Fair Hous. Ctr.*, 2011 WL 6182334, at \*105.

140. In December 2011, Judge Myron Thompson granted a preliminary injunction against Section 30 as it applies to mobile homes. *Id.* at 115.

141. AFL-CIO, *CRISIS IN ALABAMA: INVESTIGATING THE DEVASTATING EFFECTS OF H.B. 56 6* (2011).

142. *Probate Court: Jefferson County*, OFFICIAL SITE OF JEFFERSON COUNTY, ALA., <http://jeffonline.jccal.org/probatecourt/main/change-name.html> (last visited Mar. 22, 2012).

143. H.B. 56 § 30; Cyrus D. Mehta, *The Ethical Role of the Attorney Under Alabama's Anti-Immigrant Law*, INSIGHTFUL IMMIGR. BLOG (Nov. 11, 2011, 9:35 PM), <http://blog.cyrusmehta.com/2011/11/ethical-role-of-attorney-under-alabamas.html>.

ineligible for some forms of immigration relief.<sup>144</sup> Shortly after H.B. 56 passed, the Montgomery County Office of the Probate Judge issued a flyer stating: “[A]ll individuals conducting a business transaction with any government office will be required to provide official proof of their United States citizenship or that they are a lawfully present alien in the United States. *This applies to ALL transactions conducted in our office.*”<sup>145</sup> Even if one assumes that the notice only applies to Probate Court, at a very minimum a woman would be unable to change her name in order to escape an abusive husband or partner.<sup>146</sup>

C. *The Contract Nullification Provision of H.B. 56 Undermines the Economic Security of Battered Immigrant Women*

Section 27 of H.B. 56 states:

No court of this state shall enforce the terms of, or otherwise regard as valid, any contract between a party and an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present in the United States at the time the contract was entered into, and the performance could not reasonably be expected to occur without such remaining.<sup>147</sup>

The law does provide an exemption for the contract of “lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien’s return to his or her country of origin.”<sup>148</sup> In practice, however, store clerks have refused to sell groceries to individuals who cannot produce documentation.<sup>149</sup>

Section 27 has severe implications for undocumented battered women in the work sector. Many undocumented workers are employed at the margins of our economy.<sup>150</sup> They are often more vulnerable to

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144. A felony conviction will bar some forms of relief under the Immigration and Naturalization Act. 8 U.S.C. § 1228 (2006).

145. JOAN FRIEDLAND, IMMIGRATION POLICY CTR., TURNING OFF THE WATER: HOW THE CONTRACTING AND TRANSACTION PROVISIONS OF ALABAMA’S IMMIGRATION LAW MAKE LIFE HARDER FOR EVERYONE 6 (2011), available at [http://immigrationpolicy.org/sites/default/files/docs/Friedland\\_-\\_Alabama\\_Contracts\\_and\\_Business\\_110111\\_0.pdf](http://immigrationpolicy.org/sites/default/files/docs/Friedland_-_Alabama_Contracts_and_Business_110111_0.pdf).

146. *Id.* at 6. However, the notice did apply to “any government office,” which means it could have much broader implications.

147. H.B. 56 § 27(a). This provision may violate Article IV, Section 95 of the Alabama Constitution. See Birmingham News Editorial Board, *Our View: A Jefferson County Circuit Judge Uses Alabama’s Flawed Constitution to Throw Out a Provision in Alabama’s Flawed Immigration Law*, ALA. LIVE BLOG (Oct. 26, 2011, 5:44 AM), [http://blog.al.com/birmingham-news-commentary/2011/10/our\\_view\\_a\\_jefferson\\_county\\_ci.html](http://blog.al.com/birmingham-news-commentary/2011/10/our_view_a_jefferson_county_ci.html).

148. H.B. 56 § 27(b).

149. *This American Life: Reap What You Sow*, Chicago Public Radio (Jan. 27, 2012) (downloaded using iTunes).

150. Hector E. Sanchez, *Wage Theft, Sexual Harassment and Workplace Violence: The Troubling Reality of Many Latina and Immigrant Workers*, HUFFINGTON POST BLOG, (Jan. 29,

predatory behavior because they find work that is paid “off the books,” with no benefits, no overtime limits, and no safety protections.<sup>151</sup> The need for employment is especially dire for a female abuse victim because “financial insecurity [is] a major barrier to escape.”<sup>152</sup> Section 27 makes undocumented battered women more vulnerable to wage theft, sexual harassment, sexual assault, and other violent acts.<sup>153</sup> Already, some unscrupulous individuals have victimized undocumented immigrants because they believed the immigrants had no legal recourse.<sup>154</sup> Unfortunately, this belief has merit. While undocumented immigrants can enter into contracts, they cannot enforce those contracts in Alabama courts.<sup>155</sup> Section 27 is wide in scope and may apply to a variety of contracts ranging from rental agreements to mortgages to employment.<sup>156</sup>

Imagine a battered woman whose boss withholds payment of her wages. When she asks him about it, he tells her, “I don’t have to pay you anything because you don’t have papers.”<sup>157</sup> When her landlord finds out that she is fired, he evicts her.<sup>158</sup> With no place to go, she tries to rent a motel room for a week but is refused because the owners of the hotel know about Section 27. So, she shows up at a private homeless shelter. She is turned away there as well. She finally finds a battered women’s shelter that is exempted from H.B. 56 for herself and her children. Looking for guidance, she hires an attorney. When she asks for an update from the attorney, she receives no response. She has nowhere to go and no one to turn to. Such a scenario under the rule of H.B. 56 is not hard to imagine.

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2012, 8:33 AM), [http://www.huffingtonpost.com/hector-e-sanchez/wage-theft-sexual-harassm\\_b\\_1235182.html](http://www.huffingtonpost.com/hector-e-sanchez/wage-theft-sexual-harassm_b_1235182.html).

151. *Id.*; see generally NAT’L EMP’T LAW PROJECT, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES (2009), available at <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

152. *National Poll Reveals Economic Abuse Viewed Differently on Main Street Than Wall Street*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (June 2009), <http://www.nnedv.org/projects/ecojustice/280-new-national-poll-reveals-economic-abuse-defined-differently-on-main-street-than-wall-street.html>.

153. HUMAN RIGHTS WATCH, *supra* note 29, at 27.

154. *Id.* at 21 (stating that after the passage of H.B. 56, a landlord refused to keep his rental property habitable and that Latinos were victims of wage theft). See also Elizabeth Llorente, *Suspects in Deadly Alabama Home Invasion Targeted Latino Victims, Police Say*, FOX NEWS LATINO, Dec. 29, 2011, <http://latino.foxnews.com/latino/politics/2011/12/29/suspects-in-alabama-home-invasion-targeted-latino-victims-police-say/#ixzz1i9aD73yM>.

155. FRIEDLAND, *supra* note 145, at 3.

156. HUMAN RIGHTS WATCH, *supra* note 29, at 27.

157. An incident similar to this was reported to the Southern Poverty Law Center. *Id.* at 28.

158. Human Rights Watch reports that landlords in Alabama have neglected their duties to maintain a habitable environment. HUMAN RIGHTS WATCH, *supra* note 29, at 19–20.

D. *Mandatory Investigation of Immigration Status Undermines a Battered Immigrant Woman's Trust in Law Enforcement*

Convincing the immigrant community to turn to government officials for protection will prove difficult under Alabama's law.<sup>159</sup> Under Section 12 of H.B. 56:

Upon any lawful stop, detention, or arrest made by a state, county, or municipal law enforcement officer of this state in the enforcement of any state law or ordinance of any political subdivision thereof, where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct an investigation. Such determination shall be made by contacting the federal government . . . and relying upon any verification provided by the federal government . . . . If for any reason federal verification pursuant to 8 U.S.C. § 1373(c) is delayed beyond the time that the alien would otherwise be released from custody, the alien shall be released from custody.<sup>160</sup>

Consequently, in Alabama, if a battered woman calls the police for help, she will face questioning and possible detention as a result.

This leaves a battered woman in an impossible predicament. If she is detained, her children may be kept in the custody of an abuser or, in a more likely scenario, will be placed in the foster care system.<sup>161</sup> Loss of custody is a very real threat. Currently there are 5,100 children in foster care whose parents are detained or deported.<sup>162</sup> Also, between January and June 2011, 46,486 parents of U.S. citizen children were removed.<sup>163</sup>

Even if an undocumented immigrant is eventually released and applies for VAWA, she still must fight the state for custody of her children. Of course, the longer she is in detention, the less contact she will have with her children and the greater problem she will have demonstrating parental fitness to ensure their return to her care. The difficulties Alabama's law imposes on her finding work and even renting an apartment adds to her obstacles in keeping her children. If out of fear the battered woman does not report her abuser and her child is also abused,

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159. See, e.g., Theresa Nolan Breslin, Note, *Fleeing Time Below the Poverty Line—Is It a Crime? C.E.L. v. State and Its Impact on Indigent Defense and Police-Citizen Relations*, 66 MIAMI L. REV. (forthcoming 2012) (discussing Border Patrol abuses and distrust of law enforcement officers by noncitizens and minorities).

160. H.B. 56 § 12(a)–(b).

161. APPLIED RESEARCH CTR., SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 31, 35 (2011).

162. *Id.* at 6.

163. *Id.* at 11.

she may be arrested for “failure to report child abuse.”<sup>164</sup> This may render her ineligible for immigration benefits and again render her vulnerable to losing her children.<sup>165</sup> Furthermore, H.B. 56 obligates that police officials check immigration status even when this is not a priority for them. This takes much needed resources away from police investigations that are more urgent.<sup>166</sup> If any state official chooses not to enforce the law, he may be subject to a private civil suit and criminal sanctions.<sup>167</sup>

E. *Many Immigrant Abuse Victims Will Be Unable to Comply with H.B. 56's Identification Provision*

H.B. 56 Section 12(a) requires that one of six state approved documents be produced to verify immigration status.<sup>168</sup> “If none of these six documents can be produced, local law enforcement must investigate the citizenship and immigration status of the person stopped, leading to prolonged detentions.”<sup>169</sup> Many of the new state immigration laws, including H.B. 56, require that immigrants carry identification documents at all times.<sup>170</sup> For victims of domestic violence, this might present an insurmountable burden since it is routine in a chronic abuse situation for the abuser to control the woman's documents and any other items that might be used to facilitate escape.

This requirement is also ironic, and perhaps preempted by the federal immigration laws, considering that VAWA does not require the abuse victim to present any type of documentation.<sup>171</sup> Some women who are eligible for VAWA benefits do not possess identification documents for months or sometimes years while their applications are processed.<sup>172</sup> In addition, VAWA has confidentiality provisions designed to ensure the abuser cannot track down his victim, which make it even more difficult to ascertain a person's immigration status.<sup>173</sup> Since local law enforcement officers do not have access to a list of those awaiting a visa or relief under VAWA, this will likely lead to unnecessary detention of abused immigrant women, potentially jeopardizing their lives and the

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164. ALA. CODE § 26-14-3 (1975).

165. APPLIED RESEARCH CTR., *supra* note 161, at 35.

166. *This American Life*, *supra* note 149.

167. H.B. 56 § 5(e)–(f).

168. H.B. 56 § 12(a), (d).

169. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 15.

170. See H.B. 56 § 10; Georgia H.B. 87 § 5(b) (2011).

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

172. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 15.

173. Memorandum from John Morton on Prosecutorial Discretion 3 (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.

lives of their children.<sup>174</sup>

#### F. *H.B. 56 Undermines Attorney-Client Trust*

H.B. 56 severely undermines both attorney-client privilege and confidentiality, thereby eviscerating an immigrant's trust in her attorney. The purpose of attorney-client privilege is to preserve "one of the oldest forms of confidential communications known to common law."<sup>175</sup> This privilege has been "indelibly ensconced" in the American legal system.<sup>176</sup> Courts have found this important privilege in the language of the Constitution within the Sixth Amendment, which guarantees that all defendants have the right to an attorney.<sup>177</sup> This privilege is so fundamental that the Supreme Court has ruled that attorney-client privilege lasts even after the client's death.<sup>178</sup> The policy rationale behind both attorney-client privilege and confidentiality is to encourage open and frank communication between client and attorney, so the attorney is able to provide effective legal representation.<sup>179</sup>

An attorney who breaches client confidentiality risks more than losing client confidence. The attorney also risks upsetting the delicate balance between what a defendant must reveal and what a prosecutor must prove. H.B. 56 severely undermines the rationale and purpose of attorney-client confidentiality and places attorneys in the position of having to choose between upholding a legal duty to their client and complying with state law.

Sections 5 and 6 of H.B. 56 state that:

No official or agency of this state or any political subdivision thereof, including, but not limited to, an *officer of a court* of this state, may adopt a policy or practice that limits or restricts the enforcement of federal immigration laws . . . . Every person working for the State of Alabama or a political subdivision thereof, including, but not limited to a law enforcement agency in the State of Alabama or a political subdivision thereof, shall have a duty to report violations of this act . . . . All state officials, agencies, and personnel, including but not limited to, an officer of a court of this state, shall fully comply with and, to the full extent permitted by law, support the enforcement of this act.<sup>180</sup>

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174. Alabama Coalition *Amicus Curiae* Brief, *supra* note 67, at 15–16.

175. Christine M. Gentile, Note, *Balancing Security v. Liberty: The Attorney-Client Privilege in the Age of Terrorism*, 6 N.Y. CITY L. REV. 87, 87 (2003).

176. *Id.*

177. *Walstad v. State*, 818 P.2d 695, 697 n.2 (Alaska Ct. App. 1991) (stating that attorney-client privilege is "inextricably tied to right to counsel").

178. *Swindler & Berlin v. United States*, 524 U.S. 399, 410 (1998).

179. Gentile, *supra* note 175, at 87.

180. H.B. 56 §§ 5(a), (e), 6(e) (emphasis added).

“Officer of the court” includes attorneys.<sup>181</sup> This means that H.B. 56 could require attorneys to turn over information about their clients in order to comply with H.B. 56.<sup>182</sup> Failure to follow H.B. 56 “is a crime and can result in civil penalties of up to \$5,000 per day . . . .”<sup>183</sup> This provision of H.B. 56 is in direct conflict with the Alabama Rules of Professional Conduct Rule 1.6, which prevents lawyers from revealing client information without client consent, unless disclosure is necessary “to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm” or in order “to establish a claim or defense on behalf of the lawyer.”<sup>184</sup>

This restriction on attorney-client confidence has obvious implications for victims of domestic violence. A woman who seeks out an attorney to help her file a VAWA application might put her attorney in the position of having to reveal her unlawful status to authorities. Shortly after the law was enacted, Melissa Fridlin, a Spanish-speaking court interpreter in Troy, Alabama received a call from a court-appointed criminal defense attorney; the attorney represented an undocumented immigrant and was confused as to his legal disclosure obligations under the new law.<sup>185</sup> Eventually, the presiding judge told the attorney that she was obligated to disclose her client’s immigration status.<sup>186</sup> Similarly, a local bar association in Alabama advised its members that the requirements of H.B. 56 would override their obligations to their clients.<sup>187</sup>

Some commentators are more hesitant to so easily dismiss their professional obligations. Susan Pace Hamill, an ethics professor at the University of Alabama School of Law, pointed out that any assurance by the Alabama Bar that it would not pursue ethical character charges against attorneys attempting to comply with the law would provide “little comfort.”<sup>188</sup> She went on to say that “[w]ithout attorney-client confidentiality, there is no effective legal representation.”<sup>189</sup> The president of

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181. See, e.g., ALA. CODE. § 15-12-21(b); ALA. STATE BAR LAWYERS RENDER SERVICE, <http://www.alabar.org/brochures/law-as-a-career.cfm> (last visited Mar. 22, 2012).

182. Eric Fleischauer, *Alien Law v. Ethics*, DECATUR DAILY (Nov. 2, 2011), <http://decaturdaily.com/stories/Alien-law-vs-ethics,87138>.

183. H.B. 56 §§ 5–6; Eric Fleischauer, *Lawyers Say Clients’ Rights Supersede New State Law*, DECATUR DAILY (Nov. 6, 2011), <http://www.decaturdaily.com/stories/Lawyers-say-clients-rights-supersede-new-state-law,87350>.

184. ALA. R. PROF. CONDUCT 1.6(b)(1)–(2); Amanda Peterson Beadle, *Alabama’s Anti-Immigrant Law Forces Attorneys to Choose Between Their Ethics and the Law*, THINK PROGRESS (Nov. 8, 2011, 9:50 AM), <http://thinkprogress.org/justice/2011/11/08/362873/alabama-immigration-law-attorney-client-privilege/>.

185. HUMAN RIGHTS WATCH, *supra* note 29, at 31.

186. *Id.*

187. AFL-CIO, *supra* note 141, at 6.

188. Beadle, *supra* note 184.

189. *Id.*

a local bar association in Alabama, Nick Roth, stated that there are “many lawyers” who would challenge the law before revealing confidential and privileged client information.<sup>190</sup> Attorneys are then left with a catch-22: “They can either follow their ethical code or follow the law, but not both.”<sup>191</sup>

While Micky Hammon, the Republican House Majority Leader and sponsor of H.B. 56, said he had not considered that attorneys would be included as officers of the court, the implications of these provisions are clear.<sup>192</sup> H.B. 56 will erode attorney-client trust and further hinder victims of domestic violence from coming forward—a fact that is especially disturbing given that there is already significant underreporting of domestic violence in immigrant communities.<sup>193</sup> Moreover, the “no contract” provision of Section 27 further undermines the attorney-client relationship because an undocumented woman, who is a victim of domestic violence, will have no recourse if the lawyer simply stole her money. Similarly, “the lawyer would have no recourse if she did the work and the unauthorized client did not pay her.”<sup>194</sup>

Judges, as officers of the court, may also be obligated to check immigration status in their courtrooms. Some judges vow to remain neutral arbiters and not delve into such inquiries,<sup>195</sup> but at least one Birmingham judge announced that anyone appearing in court without proper documentation would be arrested.<sup>196</sup> The courtroom is no longer a place of resolution and protection but rather another immigration checkpoint.

## VI. CONCLUSION

H.B. 56 gives battered immigrant women nowhere to turn. Under a broad interpretation of H.B. 56, one that Alabama legislators, state bar officers, and scholars all agree is likely, attorneys will be forced to betray their clients, and private citizens will be punished if they offer a helping hand to an undocumented immigrant. Furthermore, police are required to investigate the immigration status of any person the officer stops, arrests, or detains if there is “reasonable suspicion” that the person is unlawfully present.

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190. Fleischauer, *supra* note 183.

191. Beadle, *supra* note 184.

192. *Id.*

193. Arcidiacono, *supra* note 5, at 194 (stating that of the immigrant women who contact the police, 43.1% have a stable immigration status; 20.8% have a temporary status; and 18.8% are undocumented).

194. FRIEDLAND, *supra* note 145, at 4.

195. HUMAN RIGHTS WATCH, *supra* note 29, at 32.

196. *Id.*

This Note highlights the many negative unforeseen effects of H.B. 56 and of the “sweeping new state regimes”<sup>197</sup> of immigration reform, which stem from the flawed concept of self-deportation. The effects of laws like H.B. 56 are just beginning to be understood as they play out in real time. In South Carolina, civil rights groups filed suit to enjoin a new strict immigration law requiring police officers to check a person’s immigration status.<sup>198</sup> Similar laws were also passed in Georgia and Indiana.<sup>199</sup> If states are able to create their own patchwork of strident anti-immigrant laws, then legislators should be held accountable for the unintended consequences of those laws.<sup>200</sup> At a time when some presidential candidates are calling for increasingly punitive approaches to immigration, including electric fences and a “double wall” model to keep out “anchor babies,”<sup>201</sup> it is important to understand that over-reaction to perceived immigration problems can have severe, detrimental effects on already marginalized and disenfranchised populations of our country. Undocumented immigrants who are victims of domestic violence are just one such population. H.B. 56 has caused significant damage by discouraging, even preventing, immigrant victims of domestic violence from coming forward.<sup>202</sup> We must not allow the same mistake to happen again. “Nativist rumblings” and laws like H.B. 56 should not further oppress this group or any marginalized group of people.<sup>203</sup>

The sad reality, however, is that anti-immigrant rhetoric and laws such as H.B. 56 have not yet run their course. With some estimates claiming that a majority of Alabamians support H.B. 56,<sup>204</sup> and with strident rhetoric marking this year’s elections, we can expect other states to join the anti-immigration bandwagon.

As for solutions, there are many. The notion of self-deportation

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197. *Court Delivers a Mixed Ruling on Alabama Immigration Law*, NPR (Oct. 14, 2011), <http://www.npr.org/2011/10/14/141362870/court-delivers-mixed-ruling-on-ala-immigration-law>.

198. *Id.*

199. *Alabama’s Shame*, N.Y. TIMES, Oct. 3, 2011, <http://www.nytimes.com/2011/10/04/opinion/alabamas-shame.html>; *Delay in Immigration Law Hearing Sought by Alabama, Georgia*, ALA. LIVE BLOG (Dec. 15, 2011, 3:29 PM), [http://blog.al.com/wire/2011/12/delay\\_in\\_immigration\\_law\\_heari.html](http://blog.al.com/wire/2011/12/delay_in_immigration_law_heari.html); see also Brandon Smith, *Alabama Immigration Law Could Affect Indiana Legislation*, IND. PUB. MEDIA (Nov. 7, 2011), <http://indianapublicmedia.org/news/comparing-indiana-alabama-immigration-laws-22996/>.

200. HUMAN RIGHTS WATCH, *supra* note 29, at 6.

201. BLOOMBERG, *supra* note 41.

202. *Testimony*, *supra* note 66 (“A victim of domestic violence went to court to obtain a protective order. The clerk told her that she would be reported to ICE if she proceeded.”).

203. BLOOMBERG, *supra* note 41.

204. Campbell Robertson, *In Alabama, Calls for Revamping Immigration Law*, N.Y. TIMES, Nov. 16, 2011, <http://www.nytimes.com/2011/11/17/us/in-alabama-calls-for-revamping-immigration-law.html?pagewanted=all>; Kim Chandler, *Majority Support Immigration Law but Also Want Changes*, ALA. LIVE BLOG (Mar. 21, 2012, 12:08 PM), [http://blog.al.com/spotnews/2012/03/majority\\_support\\_immigration\\_l.html](http://blog.al.com/spotnews/2012/03/majority_support_immigration_l.html).

should be eschewed as a policy-making tool. Rather than sending immigrants back to their country of origin, “Alabama’s anti-immigrant law will push immigrants further underground, especially those [who] are crime victims.”<sup>205</sup> Instead of further marginalizing this group through myopic and reactive local immigration regimes, state governments should protect them—exactly as the more enlightened federal immigration laws have done over the last decade. Most forms of immigration relief for domestic violence victims require reporting or cooperation with law enforcement. Therefore, the government must make sure that local communities, police, and the courts recognize that immigrant women and children are particularly vulnerable. State officials must train lawyers, judges, and officers to assist immigrant domestic violence victims—not ignore or punish them. They must inform and educate immigrant women of their rights in this country and empower them to leave their abusers through the use of education and outreach in the immigrant communities—not frighten them into further submission. Additionally, the federal government must prioritize deportation of immigrants who are a danger to the public safety and national security<sup>206</sup>—not those who are victims of domestic violence.

As a nation, we do not have the resources to deport the undocumented immigrants in our midst *en masse*.<sup>207</sup> The federal government should clearly communicate this prioritization to the states so that law enforcement partnerships are harmonious, not combative. While proponents of H.B. 56 might rejoice in the exodus of undocumented immigrants from the state, they must face the economic, legal, and moral consequences of this law. It should go without saying that immigration reform should be thoughtful and compassionate, rather than “empty[ing] the clip, and do[ing] what has to be done.”<sup>208</sup>

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205. Dhuga, *supra* note 1.

206. IMMIGRATION POLICY CTR., A Q & A GUIDE TO STATE IMMIGRATION LAWS: WHAT YOU NEED TO KNOW IF YOUR STATE IS CONSIDERING ANTI-IMMIGRANT LEGISLATION 10 (Feb. 2012), available at <http://www.immigrationpolicy.org/special-reports/qa-guide-state-immigration-laws> (“Laws like SB1070 will inundate DHS with requests to determine the immigration status of individuals police have ‘reasonable suspicion’ to believe are unlawfully present . . . As a result, ICE will have fewer resources to target noncitizens who pose a terrorist threat or a threat to the community.”).

207. CTR. FOR AM. PROGRESS, THE COST OF MASS DEPORTATION 4 (2011), available at [http://www.americanprogress.org/issues/2010/03/pdf/cost\\_of\\_deportation.pdf](http://www.americanprogress.org/issues/2010/03/pdf/cost_of_deportation.pdf) (stating that the estimated cost of mass deportation is \$285 billion);

208. HUMAN RIGHTS WATCH, *supra* note 29, at 2.