

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

YANIRA YESENIA OLDAKER; et al.,
Petitioners-Plaintiffs,

v.

THOMAS P. GILES, et al.,
Respondents-Defendants.

Civil Action No. 7:20-cv-00224-WLS-MSH

**BRIEF OF AMICI CURIAE THE NATIONAL WOMEN'S LAW CENTER, THE
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, THE NATIONAL
LATINA INSTITUTE FOR REPRODUCTIVE JUSTICE, AND SISTERLOVE, INC.,
IN SUPPORT OF PETITIONERS-PLAINTIFFS AND GRANTING THE EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER AND PETITION FOR WRITS
OF HABEAS CORPUS AD TESTIFICANDUM**

CORPORATE DISCLOSURE STATEMENT

The National Women’s Law Center, the National Asian Pacific American Women’s Forum, the National Latina for Reproductive Justice, and SisterLove, Inc., are non-profit public interest organizations, none of which has corporate parents or stockholders.

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INTEREST AND IDENTITY OF AMICI CURIAE

Amici the National Women’s Law Center, the National Asian Pacific American Women’s Forum, the National Latina for Reproductive Justice, and SisterLove, Inc., are national and regional organizations committed to obtaining racial justice, economic security, gender equity, civil rights, and reproductive justice for all. We submit this brief to explain to the Court how the sexual violence committed by Respondents at the Irwin County Detention Center fits into the broader legacy of sexual violence committed by the government against women, and in particular women of color and immigrant women.¹ This context illustrates the bravery of the survivors to boldly reveal this abuse, and why, therefore, the public interest and the balance of the equities weigh in favor of protecting these truth-speakers from retaliation.²

¹Amici use the term “women” to include all women, including cisgender and transgender women. And while this case is on behalf of women alleging medical abuse at the Irwin County Detention Center, Amici also recognize that groups other than women have been subjected to similar sexual violence by the state, including many LGBTQ+ people.

² No counsel for a party authored this brief in whole or in part, and no person other than Amici Curiae and their counsel made a monetary contribution to fund the preparation or submission of this brief. Amici report that the Petitioners and the Federal Respondents consent to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The allegations in this lawsuit reflect a broad pattern, not only of the mistreatment of women at the Irwin County Detention Center, but also of the systemic abuse the government has long committed against women, specifically women of color and immigrant women.

The Petitioners-Plaintiffs in this case are women from Latin American, African, and other countries who were detained by Immigration Customs Enforcement (“ICE”) at the Irwin County Detention Center in Georgia. While under the care and protection of the government, these women needed routine and preventive health care, including gynecological care. Instead, they received non-consensual, medically unnecessary, and invasive gynecological procedures by a physician with a known history of medical abuse complaints against him. And when the women publicly spoke out or sought to testify before Congress, the government responded through a pattern of retaliatory actions against the survivors and witnesses, including solitary confinement, physical assault, withholding commissary, rationing water, cell restrictions, and, ultimately, deportations.

This brief uses a reproductive justice lens and historical background to place this case in the broader context of women’s struggle for reproductive freedom and to highlight the public’s interest in stopping the government from retaliating against Petitioners. After giving a brief overview of the reproductive justice framework, the brief traces the legacy of government restrictions on reproductive justice. That legacy began at this country’s founding, when settlers raped Native women and enslaved Black women; continued into the twentieth century, when the federal and state governments sterilized countless Native, Black, Latinx, and Asian American and Pacific Islander (“AAPI”) women; and is still manifesting itself today, when officers of the law sexually assault women both in open view and behind prison walls.

Finally, against this backdrop, this brief highlights the public’s interest in stopping

government retaliation. Retaliation is a tool for perpetrators to punish and silence those who reveal and resist their acts, and to send a message to anyone else who may follow their lead. In this case, it took great courage for the women to publicly call out abuse, especially when the abusers held the keys to their liberty and security. Thus, the public interest is served by an emergency order stopping the government from further retaliation.

Accordingly, we support the Petitioners' Emergency Motion for a Temporary Restraining Order and Petition for Writs of Habeas Corpus Ad Testificandum.

I. Reproductive Justice Is Founded in the Belief That All People Have the Right to Make Decisions About Themselves

“Reproductive justice” is a framework rooted in the belief that all individuals and communities should have the economic, social, and political power and the resources to make decisions about their bodies, health, sexuality, families, and communities in all areas of their lives with dignity and self-determination.

Founded in 1994 by a group of Black women activists called Women of African Descent for Reproductive Justice,³ reproductive justice advances the human right to maintain personal bodily autonomy, have children, not have children, and decide when and how to parent.⁴ Reproductive justice is broad and intersectional: issues such as immigration, health care, and economic justice are part of the considerations to parent or not.⁵

³ Natelegé Whaley, *Black Women and the Fight for Abortion Rights: How This Brochure Sparked the Movement for Reproductive Freedom*, NBC (March 25, 2019), <https://nbcnews.to/2NLHRJ6>; see generally Loretta Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *A Critical J. of Black Politics, Culture, and Soc’y* 286 (2017).

⁴ Loretta Ross, *What is Reproductive Justice?*, in *Reproductive Justice Briefing Book: A Primer on Reproductive Justice and Social Change* 4.

⁵ Maria Nakae, *Reproductive Justice Issues for Asian and Pacific Islander*, in *Reproductive Justice Briefing Book*, *supra* note 4, at 16; Jessica Gonzalez-Rojas & Aishia Glasford, *Immigrant Rights and Reproductive Justice*, in *Reproductive Justice Briefing Book*, *supra* note 4, at 19; Priscilla

The government denies reproductive justice when it restricts people’s self-determination over their lives, families, and communities, and when it perpetrates sexual violence against people historically denied reproductive freedom.⁶ In the current case, Petitioners allege that the government has committed acts of medical battery against women in their custody at the Irwin County Detention Center, denying them autonomy over their bodies and their ability to parent in violation of their reproductive rights.

II. The Facts Alleged in this Case Echo a Long History of Sexual Violence Against Women of Color in This Country.

In colonial times, before this country’s founding, Native and kidnapped African women were displaced, raped, murdered, and denied autonomy over their bodies. Black and Brown women were denied agency to make decisions about whether or not to give birth, keep custody, or raise their own children. Colonizers used rape as an act of power, a tool to control the lives of Native and Black women. When the Mission of Monterey was founded in 1770, reports of sexual assaults against Native women increased, and the founding of each new mission brought new reports of sexual violence and terror.⁷ Similarly, rape was similarly used by colonizers against Black women, whom slave owners legally treated like property.⁸

Huang, *Made in the USA: Advancing Reproductive Justice in the Immigration Debate*, in *Reproductive Justice Briefing Book*, *supra* note 4, at 20.

⁶ Sexual violence is any type of unwanted sexual contact. Forms of sexual violence include, but are not limited to, rape, sexual assault, sexual harassment, sexual exploitation, and trafficking, to name a few. *About Sexual Assault*, Nat’l Sexual Violence Res. Ctr., <https://bit.ly/3pU7PHy> (last visited March 2, 2021).

⁷ Antonia I. Castaneda, *Sexual Violence in the Politics and Policies of Conquest: Amerindian Women and the Spanish Conquest of Alta California*, in *Sexual Violence in Conflict Zones* 15, 15–18 (Univ. Penn. Press 2011).

⁸ Liz Barnes, Book Review, *Inst. Historical Research* (Oct. 2019) (reviewing Rachel A. Feinstein, *When Rape Was Legal: The Untold History of Sexual Violence During Slavery* (2019)).

Another tool of depriving Black women of their agency was medical violence. In fact, the earliest account of a forced hysterectomy was performed by Dr. J. Marion Sims, an Alabama surgeon and slave owner who carried out a series of experimental operations on enslaved Black women between 1845 and 1849.⁹ Sims, often called the Father of Gynecology, practiced these surgeries on enslaved women, who had no capacity to consent, without anesthesia or anything to dull the pain.¹⁰

Slavery gave way to twentieth century policies, practices, and laws that encouraged and coerced women of color, individuals with disabilities, and LGBTQ+ people to refrain from reproduction; these policies culminated in forced sterilizations without informed consent.¹¹ In 1907, Indiana passed a law sanctioning involuntary sterilizations—widely considered the first sterilization legislation passed in the world.¹² Thirty-one states followed suit,¹³ and the U.S. became an international leader in the practice of eugenics—or controlling populations and breeding out “undesirable” genes.¹⁴ Indeed, U.S. laws even influenced Nazi Germany’s genocidal eugenics policies,¹⁵ where doctors performed sterilization experiments in concentration camps as

⁹ Cynthia Prather et al., *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2 *Health Equity* 249, 251–52 (2018), <https://bit.ly/3r03Jz2>.

¹⁰ *Id.*; see also Deborah Gray White, *Ar’n’t I a Woman?: Female Slaves in the Plantation South* 10 (1999).

¹¹ Carole Joffe & Willie J. Parker, *Race, Reproductive Politics and Reproductive Health Care in the Contemporary United States*, 86 *Contraception* 1, 1 (2012); see also *Proud Heritage: People, Issues, and Documents of the LGBT Experience*, Vol. 2, at 205 (Chuck Stewart, ed. 2015).

¹² *Indiana Eugenics: History & Legacy 1907–2007*, Project Overview, <https://bit.ly/37SmUmz>.

¹³ Sanjana Manjeshwar, *America’s Forgotten History of Forced Sterilization*, *Berkeley Pol. Rev.* (Nov. 4, 2020), <https://bit.ly/3aXTmpC>.

¹⁴ *Id.*

¹⁵ *Id.* (Hitler is quoted as saying: “There is today one state in which at least weak beginnings toward a better conception [of citizenship] are noticeable. Of course, it is not our model German Republic, but the United States.”).

part of their plan for the mass sterilization of Jews, Roma, and others considered racially or genetically undesirable.¹⁶

Forced sterilization in the United States was ultimately sanctioned by the U.S. Supreme Court in the decision, *Buck v. Bell*.¹⁷ That case—which has never been overturned—upheld the involuntary sterilization of Carrie Buck, who was deemed “feeble minded” by the state.¹⁸

According to Justice Oliver Wendell Holmes:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. . . . Three generations of imbeciles are enough.”¹⁹

With the Supreme Court’s blessing, state-sanctioned sterilizations flourished. Throughout the twentieth century, the government sterilized untold numbers of women without their consent, overwhelmingly targeting women of color.²⁰ Though sterilizations reached their peak in the 1930s and 1940s,²¹ the rate of sterilizations for women of color has since ebbed and flowed, coinciding with different cycles of racism and xenophobia.

The sterilization rates for Black women rose again during desegregation, especially in the American South. In Mississippi, the forced sterilization of Black women became so widespread it

¹⁶ *Nazi Medical Experiments*, Holocaust Encyc. (Aug. 30, 2006), <https://bit.ly/3kxcazb>.

¹⁷ 274 U.S. 200 (1927).

¹⁸ *Id.* at 205.

¹⁹ *Id.* at 207.

²⁰ Manjeshwar, *supra* note 13; see also Kathryn Krase, *The History of Forced Sterilizations in the United States, Our Bodies Our Selves* (Oct. 1, 2014), <https://bit.ly/3kwcG0h>.

²¹ See Alexandra Minna Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – And Lasted into the 21st Century*, *The Conversation* (Aug. 26, 2020), <https://bit.ly/3bJRv7c>.

was dubbed a “Mississippi appendectomy.”²² In 1961, Fannie Lou Hamer, a civil rights activist, was sterilized by a white doctor who performed a hysterectomy without her consent while removing a uterine tumor. Her experience later mobilized the women’s rights and civil rights movement in Mississippi.²³ In North Carolina, known for having the third highest rate of forced sterilizations (after California and Virginia),²⁴ Black women were disproportionately sterilized, more than three times the rate of white women.²⁵ Often, people with low incomes in the South were forced to agree to sterilization when doctors threatened to withhold welfare benefits or medical care, including for childbirth.²⁶ In other instances, women were misled into giving consent. One of the most famous cases was of the Relf sisters, two young Black girls living in Alabama.²⁷ The girls, aged 12 and 14 at the time, were targeted because they had mental disabilities, lived in poverty, and relied on government assistance. Their mother, who was illiterate, was convinced to take the girls to the hospital and granted her consent for what she thought was birth control, unwittingly signing an “X” on what was actually a sterilization release.²⁸

The government also used these population control measures to target Japanese Americans. During World War II, the government forcibly placed Japanese Americans in internment camps.²⁹ Research suggests that some Japanese-American women were coerced into undergoing

²² Debra Michals, *Fannie Lou Hamer*, Nat’l Women’s History Museum (2017), <https://bit.ly/3szwEdC>.

²³ *Id.*

²⁴ Chris Kardish, *States Confront Past and Present Forced Sterilization*, *Governing* (Sept. 2014), <https://bit.ly/3kygLBn>.

²⁵ Stern, *supra* note 21.

²⁶ Maya Manian, *Immigration Detention and Coerced Sterilization: History Tragically Repeats Itself*, ACLU (September 29, 2020), <https://bit.ly/3szloxL>.

²⁷ *Relf v. Weinberger*, 372 F. Supp. 1196 (D.D.C. 1974), *vacated*, 565 F.2d 722 (D.C. Cir. 1977).

²⁸ See Krase, *supra* note 20; Manian, *supra* note 26.

²⁹ See *Japanese Internment Camps*, History.com (Feb. 21, 2020), <https://bit.ly/3b2xKbN>.

sterilizations during this time.³⁰ In 1945, when discussing Japanese American in camps, Representative Jed Johnson suggested that Congress “should make an appropriation to sterilize the whole outfit.”³¹ After the war, at a 1981 public hearing about the internment of Japanese Americans, Alice Tanabe Nehira testified that her mother’s physician had performed a tubal ligation without her consent at the Tule Lake Internment Camp.³²

Similar to the anti-Asian sentiment during World War II, the criminalization of immigrants likewise coincided with the use of forced sterilizations to control immigrant populations, impacting Latinx women.³³ A 1965 survey conducted in Puerto Rico found that one-third of all mothers aged 20-49 were sterilized, a procedure so common it was simply called “la operación.”³⁴ In New York, Latinx women were specifically targeted by the government for sterilizations in the 1960s and 1970s.³⁵ And California, believed to account for a third of all sterilizations performed in the United States,³⁶ became infamous for its systematic sterilization of many Mexican Americans without their consent in the twentieth century.³⁷ In the 1975 case, *Madrigal v. Quilligan*,³⁸ ten Chicana women filed a class-action lawsuit against physicians at the Los Angeles County-USC Medical

³⁰ See, e.g., Comm’n on Wartime Relocation and Internment of Civilians, *Speak Out for Justice Viewer’s Companion* 12 (1988), <https://bit.ly/3b8MVAo>; Judith Michaelson, *Quiet Americans Break Silence: Hearings a Catharsis for Internees*, L.A. Times (1981), <https://bit.ly/3sEy5HH>.

³¹ Dale M. Hellegers, *I We, the Japanese People: World War II and the Origins of the Japanese Constitution*, Volume 67 (Stanf. Univ. Press 2001).

³² Comm’n Wartime Relocation, *supra* note 30; Michaelson, *supra* note 30.

³³ See Nicole L Novak & Natalie Lira, *California Once Targeted Latinxs for Forced Sterilization*, *Smithsonian Mag.* (March 22, 2018), <https://bit.ly/37VWlgm> (finding Latinxs sterilized at 59 percent higher rates than non-Latinxs).

³⁴ Krase, *supra* note 20.

³⁵ *Id.*

³⁶ Kardish, *supra* note 24.

³⁷ See Novak & Lira, *supra* note 33.

³⁸ No. CV-75-2057 (C.D. Cal. June 7, 1978), *aff’d* 639 F.2d 789 (9th Cir. 1981).

Center for sterilizing them without their knowledge or consent.³⁹ Dolores Madrigal, a factory worker and mother of two who became the lead plaintiff, was assured that her tubes could be “untied” later.⁴⁰ Other women, such as plaintiff Jovita Rivera, who was sterilized at the age of 27, were never informed that they could no longer bear children.⁴¹

Native women, like their predecessors of earlier generations, continue to experience sterilizations, often without their consent or knowledge. In the 1960s and 1970s, the U.S. Indian Health Service, under the guise of “family planning services,” targeted Native women for forced sterilizations.⁴² A federal report found that four IHS facilities sterilized 3,406 Native women between 1973 and 1976.⁴³ Despite a moratorium on sterilizations for those under age 21, it was discovered that 36 Native women and girls under 21 were sterilized.⁴⁴ Overall, it is estimated that 1 in 4 Native women were sterilized by the 1970s.⁴⁵

In the 21st century, sexual violence by the state is still rampant, and this is especially troublesome for those in custody who are stripped of their agency to resist. Accounts of involuntary sterilizations in state and federal facilities are not uncommon. One study found that between 1997 and 2010, approximately 1,400 women were forcibly sterilized in California prisons.⁴⁶ In a recent documentary about California prisons, *Belly of the Beast*, Kelli Dillon recounts her traumatic

³⁹ Renee Tajima-Peña, “Más Bebés?": *An Investigation of the Sterilization of Mexican-American Women at Los Angeles County-USC Medical Center During the 1960s and 70s*, 11.3 Scholar & Feminist Online, Summer 2013, <https://bit.ly/3bRAA2q>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Krase, *supra* note 20.

⁴³ *1976: Government Admits Unauthorized Sterilization of Indian Women*, U.S. Nat'l Library of Medicine, <https://bit.ly/3aYBPxv>.

⁴⁴ *Id.*

⁴⁵ Krase, *supra* note 20.

⁴⁶ Stern, *supra* note 21.

experience of receiving a non-consensual sterilization in prison at the age of 24.⁴⁷ She later testified before the California Legislature to support a law banning the sterilization of incarcerated people.⁴⁸

Beyond sterilizations, medical abuse of people behind bars also manifests as sexual abuse. Around the country, doctors working in prisons have sexually assaulted incarcerated people, under the guise of performing medical exams. One prison doctor, referred to as “Dr. Feelgood” and “The Finger,” was found to have performed unnecessary rectal exams, often without gloves, and fondled patients’ genitals without any medical purpose.⁴⁹ Another doctor was convicted of sexually assaulting a patient while she was tethered to machines and receiving treatment for asthma.⁵⁰ Yet another doctor was sentenced for sexually assaulting three incarcerated people in federal prison.⁵¹

Sexual violence by state actors is an ongoing threat.⁵² One six-year study conducted between 2009 and 2014 revealed that 154 officers lost their licenses for sexually assaulting people incarcerated in jails or prisons.⁵³ Another study revealed more than 700 credible cases of police sexual violence in a span of ten years, including cases of groping, stripping, and assault.⁵⁴ In fact,

⁴⁷ Stephanie Guerilus, *‘Belly of the Beast’ Doc Exposes Illegal Sterilizations in California*, The Grio (Nov. 23, 2020), <https://on.thegrio.com/3bJS3dg>.

⁴⁸ *Id.*

⁴⁹ Sean O’Sullivan, *Inmates Allege Sexual Abuse by Prison Doctor*, USA Today (May 22, 2014), <https://bit.ly/3uO6ZzQ>.

⁵⁰ Associated Press, *Doctor Convicted of Sexual Assault of Patient Gets Probation Rather Than Prison*, NBC News (Aug. 20, 2018), <https://nbcnews.to/3uGy1cq>.

⁵¹ U.S. Dep’t of Justice, *Former Bureau of Prisons Doctor Sentenced for Sexual Abuse of Three Inmates* (Feb. 7, 2013), <https://bit.ly/3uELpNR>.

⁵² John H. Tucker, *Rape at Rosie’s: When the Bad Guys at Rikers Are the Guards*, The Cut (June 25, 2018), <https://bit.ly/3q3WSmG>; Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*, <https://bit.ly/3rdEB7K> (last visited March 2, 2021); Elizabeth Trovall, *Federal Suit Accuses Houston Immigration Officers of Raping 3 Women Before Deportation*, Hous. Pub. Media (May 28, 2020), <https://bit.ly/3ssPIde>.

⁵³ See *AP Investigation into Officer Sex Misconduct, by the Numbers*, Associated Press (Oct. 31, 2015), <https://bit.ly/3kBDht1>.

⁵⁴ See Matthew Spina, *When a Protector Becomes a Predator*, Buff. News (Nov. 22, 2015), <https://bit.ly/37TrelT>.

sexual misconduct is the second most frequently reported form of police misconduct, after excessive force.⁵⁵ Black, Latinx, and Native women and LGBTQ+ people face a higher risk of sexual assault by state actors than heterosexual white women.⁵⁶

Our country’s history of taking away agency from women of color continues, egregiously demonstrated by the case at hand. The allegations of nonconsensual physical exams and forced sterilizations on undocumented immigrants at the Irwin County Detention Center is appalling, but by no means surprising, given the horrific history of this practice in the United States. The allegations are not simply isolated and individualized actions by one doctor nicknamed “the Uterus Collector,” but are part of a long legacy of sexual and medical violence and battery against marginalized and incarcerated women. Given this historical backdrop of trauma, our society must support, not punish, survivors who bravely step forward to speak truth.

III. The Public Interest Is Served by Preventing Retaliation Against Immigrants Who Report Sexual Violence by the State.

Retaliation is a powerful weapon of punishment. As the Supreme Court has recognized, “[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination.”⁵⁷ Accordingly, “courts will more readily grant [injunctive] relief where allegations of retaliation are involved, because such conduct is likely to cause irreparable

⁵⁵ Andrea J. Ritchie, *How Some Cops Use the Badge to Commit Sex Crimes*, Wash. Post (Jan. 12, 2018), <https://wapo.st/3bV24o8>.

⁵⁶ See Steven Yoder, *Officers Who Rape: The Police Brutality Chiefs Ignore*, Al Jazeera (Jan. 19, 2016), <https://bit.ly/3sCULrV>; Tasha Fierce, *Black Women Are Beaten, Sexually Assaulted and Killed by Police. Why Don’t We Talk About It?*, AlterNet (Feb. 26, 2015), <https://bit.ly/2O4yqo1>; Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 Geo. L.J. 1479, 1501 (2016); Cara E. Trombadore, *Police Officer Sexual Misconduct: An Urgent Call to Action in a Context Disproportionately Threatening Women of Color*, 32 Harv. J. Racial & Ethnic Just. 153, 153–55 (2016).

⁵⁷ *Crawford v. Metro. Gov’t of Nashville & Davidson Cty., Tenn.*, 555 U.S. 271, 279 (2009) (quoting Deborah Brake, *Retaliation*, 90 Minn. L. Rev. 18, 20 (2005)).

harm to the public interest in enforcing the law by deterring others from filing charges,” and “[t]he harm is a continuing one so long as the retaliation remains in effect.” *Garcia v. Lawn*, 805 F.2d 1400, 1405–06 (9th Cir. 1986); *see also Westin v. McDaniel*, 760 F. Supp. 1563, 1570 (M.D. Ga.), *aff’d*, 949 F.2d 1163 (11th Cir. 1991) (“If [plaintiff] ultimately wins his civil suit, the public interest will have been served by the granting of a preliminary injunction preventing unjust retaliation against him by state officers.”).

The public interest in preventing retaliation is of great consequence in the context of sexual violence. It is widely understood that sexual assault, though prevalent,⁵⁸ is grossly underreported. According to the Department of Justice, nearly 75 percent of rapes and sexual assaults go unreported, the lowest reporting of all violent crimes.⁵⁹ And fear of retaliation is the most common reason given for not reporting.⁶⁰ That fear is understandable: multiple studies confirm that those who report sexual assault experience negative outcomes.⁶¹ For example, more than 7 in 10 survivors who experienced workplace sex harassment faced some form of retaliation, including being terminated, denied promotions, and sued for defamation.⁶² And in the military, 87 percent

⁵⁸ *See Victims of Sexual Violence: Statistics*, RAINN, <https://bit.ly/3e4zHqh> (last visited March 1, 2021) (someone is sexually assaulted every 73 seconds in America); Asian Pac. Inst. on Gender-Based Violence (APIGBV), Factsheet: Sexual Violence in Asian and Pacific Islander Communities 4–6 (April 2018), <https://bit.ly/2OeEavG> (23 percent of AAPI women experienced some form of contact sexual violence, 10 percent experienced completed or attempted rape, and 21 percent had non-contact unwanted sexual experiences during their lifetime).

⁵⁹ Rachel E. Morgan & Barbara A. Oudekerk, U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal Victimization*, 2018, at 8 (Sept. 2019), <https://bit.ly/2MC0Wx2>.

⁶⁰ Michael Planty et al., Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994–2010*, at 7 (March 2013), <https://bit.ly/3dMVuCC>.

⁶¹ *See Brake*, *supra* note 57, at 38 fn.58 & fn.59 (2005) (collecting studies)

⁶² Jasmine Tucker & Jennifer Mondino, Nat’l Women’s Law Ctr. & Time’s Up Legal Def. Fund, *Coming Forward Key Trends and Data from the TIME’S UP Legal Defense Fund* 4, <https://bit.ly/3b8B9Wq> (last visited March 2, 2021).

of all reports of retaliation—such as reprisals, ostracism, cruelty, and maltreatment—came from people who had filed a report of sexual assault or a complaint of sexual harassment.⁶³

The threat of retaliation is especially pernicious for people in government custody, who are abused by the very people charged with safeguarding them. Numerous examples abound of retaliation against people in prisons and detention centers. A Department of Justice report found pervasive sexual abuse in Michigan’s prisons for women, where “nearly every woman . . . interviewed reported various sexually aggressive acts of guards,” and where there was “an almost universal fear of retaliation.”⁶⁴ Those who chose to report sexual misconduct through the grievance or investigatory process, and even those whose abuse was revealed by others, were subjected to retaliation such as room searches, pat-frisks, disciplinary tickets, and derisive comments.⁶⁵ At the Rikers Island facility, several lawsuits challenging sexual assault have alleged retaliation in the form of controlling commissary, denying food, or locking in solitary confinement.⁶⁶ And in immigration settings, the use and threat of solitary confinement can dissuade people from reporting. For example, a gay man detained in an ICE facility in Georgia decided to report a verbal and sexual abuse. Then, he was put in solitary confinement for 10 days. After later experiencing an attempted rape, he did not report that incident because he was afraid of being punished and sent to solitary again.⁶⁷

⁶³ See e.g., Dep’t of Defense, Sexual Assault Prevention and Response, Appendix B: Statistical Data on Sexual Assault, at 10 (2019), <https://bit.ly/381BvMR>.

⁶⁴ Human Rights Watch, *Nowhere to Hide*, *supra* note 52.

⁶⁵ Human Rights Watch, *All Too Familiar, Sexual Abuse of Women in U.S. State Prisons* (Dec. 1996), <https://bit.ly/3r6189j>.

⁶⁶ Tucker, *supra* note 52.

⁶⁷ Julie Moreau, *LGBTQ Migrants 97 Times More Likely to Be Sexually Assaulted in Detention, Report Says*, NBC News (June 6, 2018), <https://nbcnews.to/3r5U8qf>.

The Petitioners in this case, in addition to being detained women and primarily of color, are also immigrants without legal documentation. For immigrant communities, language barriers pose yet another barrier to reporting sexual violence.⁶⁸ Many immigrants today do not hail from English-speaking countries. Of the 44.8 million immigrants living in the United States in 2018, the majority came from Asia (28 percent), Mexico (25 percent) and other Latin American countries (25 percent).⁶⁹ AAPI people represent the fastest growing group in the United States,⁷⁰ and nearly two-thirds of AAPIs are immigrants to this country.⁷¹ Similarly, among the 10.5 million unauthorized immigrants living in the United States, about 4.95 million came from Mexico, 1.9 million from Central America, and 1.45 million from Asia.⁷²

The fear of immigration-related retaliation also keeps many immigrant survivors from reporting. Perpetrators often use women's immigration status to threaten and abuse them.⁷³ And

⁶⁸ See APIGBV, Factsheet, *supra* note 58; Leslye Orloff et. al., Nat'l Immigrant Women's Advocacy Project, Am. Univ. Wash. Coll. of Law, Ensuring Language Access to Immigrant Victims of Sexual Assault 1–3, <https://bit.ly/3kB5KOA> (last visited March 2, 2021).

⁶⁹ Abby Budiman et al., *Facts on U.S. immigrants, 2018*, Pew Res. Ctr. (Aug. 20, 2020), <https://pewrsr.ch/37Z9NQC>. After Mexico, immigrants from India and China (including those born in Hong Kong and Macao but not Taiwan) were the next two largest immigrant groups, each making up about 6 percent of the foreign-born population. Other top countries of origin include the Philippines (5 percent); El Salvador, Vietnam, Cuba, and the Dominican Republic (each accounting for 3 percent); and Guatemala and Korea (each 2 percent). Jeanne Batalova et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Pol'y Inst. (Feb. 11, 2021), <https://bit.ly/3aZiDQL>.

⁷⁰ Jennifer Lee, et. al., *Accurately Counting Asian Americans Is a Civil Rights Issue*, 677 *The ANNALS of the Am. Acad. of Pol. & Soc. Sci.* 191 (2018).

⁷¹ Sam Roberts, *Census Figures Challenge Views of Race and Ethnicity*, *N.Y. Times* (Jan. 21, 2020), <https://nyti.ms/3kyzzQW>.

⁷² Jeffrey S. Passel & D'Vera Cohn, *Mexicans Decline to Less Than Half the U.S. Unauthorized Immigrant Population for the First Time*, Pew Res. Ctr. (June 12, 2019), <https://pewrsr.ch/3r4V8Lo>.

⁷³ APIGBV et al., *Immigrant Survivors Fear Reporting Violence* (May 2019), <https://bit.ly/2O5teAi>; see also *Future Without Voices, Power and Control Tactics Used Against Immigrant Women*, <https://bit.ly/3kxvPz2> (discussing ways in which immigrant women are abused in a domestic violence context).

in recent years, local law enforcement has teamed up with federal immigration enforcement, compounding the fear of reporting.⁷⁴ Due to these barriers and this environment of fear, many incidences of sexual violence among immigrant women go unreported. For example, in an interview with immigrant farmworkers, several reported that fear of deportation was a major reason they chose not to report sexual violence, sexual harassment, or other workplace abuses.⁷⁵ These fears rang true even for those with legal documentation.⁷⁶ Notably, in 2017, there was a sharp downturn in reports of sexual assault and domestic violence among Latinx people throughout the country, and many experts attributed the decline to increased fears of deportation.⁷⁷

As a society, we have a strong public interest in supporting survivors of sexual violence and encouraging them to report abuses, especially when perpetrated by the government. This is critical to ending this country's shameful history of sexual and medical violence against marginalized and incarcerated women. In this case, the government, in line with this legacy, denied these women their reproductive justice by performing invasive and medically unnecessary procedures that impacted their ability to parent, all while the women were under the state's control. By denying them access to interpreters and forcing them into procedures they did not understand and could not consent to, the state exploited existing barriers to health care, chief among them language barriers and access to culturally informed health care.⁷⁸ And when the women bravely

⁷⁴ APIGBV et al., *Immigrant Survivors*, *supra* note 73.

⁷⁵ Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment* 49–50 (2012), <https://bit.ly/2OdNMXe>.

⁷⁶ *Id.*; *see also* Sara Kominers, OxFam America, *Working in Fear Sexual: Violence Against Women Farmworkers in the United States* 4–5, 27 (2015), <https://bit.ly/2PiIP11>.

⁷⁷ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, N.Y. Times (April 30, 2017), <https://nyti.ms/2Ody3HE>.

⁷⁸ Quyen Ngo-Metzger et. al., *Linguistic and Cultural Barriers to Care*, 18 J. Gen. Internal Med. 44, 49 (2003); Ashley K. Morisako et. al., *Beyond the Ability to Pay: The Health Status of Native Hawaiians and Other Pacific Islanders in Relationship to Health Insurance*, 76 Haw. J. Med. Pub. Health 36, 39–40 (2017); Caraway L. Timmins, *The Impact of Language Barriers on the Health*

spoke out, the government responded by isolating them, physically assaulting them, withholding their money, denying them essentials, and ultimately deporting them.⁷⁹

The retaliatory acts being committed at the Irwin County Detention Center are alarming. These acts of retaliation were intended to punish the complainants and deter other challenges. Yet these women still spoke out, despite this country's long history of denying reproductive justice to women of color, and despite the fact that the government was the perpetrator and controlled the women's immigration status, daily lives, and ability to remain in the country.

The public interest demands an end to the government's retaliatory tactics. If these acts continue unchecked, the Petitioners are at a continued risk of harm, and other immigrants will be discouraged from speaking up about sexual violence perpetrated by the state. This direct harm, as well as the harm to the public interest that arises from an institutional culture of retaliation against sexual assault complainants, greatly outweighs any perceived harm to the government. This Court can forbid the government from further retaliation against the women in this suit as an important step in protecting survivors and encouraging others to report instances of sexual violence—for their own benefit and for society as a whole.

CONCLUSION

The allegations of human rights violations in this lawsuit are indicative of a long history of denying reproductive justice to women of color. By stopping the government from abusing and retaliating against the women in this case, this Court can begin the process of delivering

Care of Latinos in the United States: A Review of the Literature and Guidelines for Practice, 47 J. of Midwifery & Women's Health 80 (2002); Associated Press, *Fear, Language Barriers Hinder Immigrant Contact-Tracing*, Modern Healthcare (Aug. 15, 2020), <https://bit.ly/3b173Eg>; Ogbonnaya I. Omenka et. al., *Understanding the Healthcare Experiences and Needs of African Immigrants in the United States: A Scoping Review*, 20 BMC Pub. Health 1 (2020).

⁷⁹ See Amended Complaint 24, ECF No. 54.

reproductive justice and send a message to undocumented and detained women here and around the country that they will not be subjected to such treatment. Accordingly, the Court should grant Petitioners' Emergency Motion for a Temporary Restraining Order and Writs of Habeas Corpus.

Respectfully submitted, March 4, 2021,

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