

False Promises of Protection: Black Women, Trans People & the Struggle for Visibility as Victims of Intimate Partner and Gendered Violence

Samone Ijoma

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/rrgc>

Recommended Citation

Samone Ijoma, *False Promises of Protection: Black Women, Trans People & the Struggle for Visibility as Victims of Intimate Partner and Gendered Violence*, 18 U. Md. L.J. Race Relig. Gender & Class 255 (2018).

Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol18/iss1/24>

This Notes & Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

**FALSE PROMISES OF PROTECTION: BLACK WOMEN, TRANS PEOPLE
& THE STRUGGLE FOR VISIBILITY AS VICTIMS OF INTIMATE
PARTNER AND GENDERED VIOLENCE**

Samone Ijoma*

While new gun laws in Tennessee and Indiana aimed at victims of gendered violence are supposedly an added layer of protection, these laws assume that all victims of domestic violence receive equal treatment, both in the civil and criminal legal systems. Such laws are problematic because they would have a disparate impact on Black¹ women and trans people of color. If victims of intimate partner violence wound or kill their abusers as a result of a law that encouraged them to carry a weapon to defend themselves, there is no guarantee that self-defense, battered woman syndrome, Stand-Your-Ground, or any of the other relevant defenses would apply to these groups, and that they would not end up in prison. Black women may suffer as a result of this type of law because cases like that of Marissa Alexander send the message that the Second Amendment² “Right to Bear Arms” is not evenly applied to all.

Though the Indiana and Tennessee laws provide certain victims of intimate partner violence—regardless of race or gender identity—with the right to carry a firearm without a permit, there are historical and institutional influences that complicate how Black women and trans people may experience this legislation. Statistics show that Black women suffer from intimate partner violence at a higher rate than white

© 2018 Samone Ijoma

* J.D. Candidate, 2019, University of Maryland Francis King Carey School of Law. I would like to thank my parents for their unwavering support—especially, my mother, Lisa Jacobs, who has been a constant exemplar of strength and resilience. I would also like to thank Professor Leigh Goodmark and the editors of the *University of Maryland Journal of Race, Religion, Gender, & Class* for their insights and contributions. Finally, I would like to dedicate this Comment to marginalized groups who have struggled with intimate partner and gender violence and have found that their stories, and their voices, have been erased from the discussion of intimate partner abuse and gun violence.

¹ Throughout this paper, the word “Black” will be capitalized because blackness functions as much more than just skin color. “Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). I have also chosen to capitalize “Black,” and not “white” as to emphasize the stories and experiences of Black women and trans people as victims of rape and intimate partner violence.

² U.S. CONST. amend. II.

women,³ and most women who defend themselves against their attackers using deadly force find themselves in prison.⁴ Research also shows that trans people⁵ are at an increased risk for intimate partner violence. This paper argues that Black women and trans people of color who use deadly force against their abusers may face severe repercussions because these gun laws provided them with false hope in a system that is still deeply prejudiced.

INTRODUCTION

The National Rifle Association (“NRA”)⁶ is advocating for gun ownership as a solution to intimate partner violence (“IPV”) and other

³ See NAT’L. CTR. FOR INJURY PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 39 (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf (finding that “rape, physical violence, and/or stalking by an intimate partner” was more prevalent among Black women than white women); see also Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003–2014*, 66 CDC MORBIDITY & MORTALITY WKLY. REP. 741, 742 (Jul. 21, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf> (“From 2003 through 2014, a total of 10,018 female homicides were captured by NVDRS; among these, 1,835 (18.3%) were part of a homicide-suicide incident (i.e., suspect died by suicide after perpetrating homicide). Homicide victims ranged in age from 18 to 100 years. The overall age-adjusted homicide rate was 2.0 per 100,000 women. By race/ethnicity, non-Hispanic black women had the highest rate of dying by homicide (4.4 per 100,000), followed by AI/AN (4.3), Hispanic (1.8), non-Hispanic white (1.5), and A/PI women (1.2).”). Not only do Black women suffer from higher rates of intimate partner violence, they are also at a greater risk of death. See Feminista Jones, *Why Black Women Struggle More with Domestic Violence*, TIME (Sept. 10, 2014) (explaining that Black women are especially vulnerable to victimization by intimate partners, particularly deadly intimate partner violence).

⁴ Kit Kinports, *The Myth of Battered Woman Syndrome*, 24 TEMP. POL. & C.R. L. REV. 313, 314 (2015) (“In the clear majority of [cases where abused women have killed their intimate partners]—seventy to ninety percent—battered women kill in the midst of a confrontation. Although one might therefore assume that these would be textbook cases of self-defense, even here female defendants encounter resistance. . . . Whatever the explanation, battered women who kill their abusers are convicted at higher rates and receive longer sentences than men who kill their intimate partners.”).

⁵ “Trans” or “transgender” refers to “people whose gender identity or gender expression is different from the one typically associated with the sex assigned at birth.” ANDREA J. RITCHIE, *INVISIBLE NO MORE* 253 n.1 (2017).

⁶ In a call to “America’s women,” National Rifle Association Executive Vice

various forms of gendered violence.⁷ According to the narrative pushed by gun advocacy groups, women⁸ who are survivors of gendered violence—like sexual assault and intimate partner violence—need guns to protect themselves against their attackers.⁹ Several states have

President Wayne LaPierre has stated that “you aren’t free if you aren’t free to defend yourself.” Evan DeFilippis & Devin Hughes, *Ted Cruz Is Wrong: Owning Guns Does Not Make Women Safer*, VICE (May 2, 2016, 6:15 PM), https://www.vice.com/en_us/article/8ge4gp/gun-rights-advocates-claim-owning-a-gun-makes-a-woman-safer-research-says-theyre-wrong. Marion Hammer, a past NRA President, accused opponents of a guns-on-campus bill of “engaging in a war on women.” *Id.* Catherine Mortensen, a spokeswoman for the NRA who supported the Indiana and Tennessee bills, claimed that “victims of domestic abuse don’t always have time on their side—they need immediate protection beyond a court issued piece of paper.” Melissa Jeltsen, *The NRA Wants to Solve Domestic Violence by Arming Victims. It Probably Won’t Work*, HUFFINGTON POST (Jul. 15, 2017, 8:01 AM), https://www.huffingtonpost.com/entry/nra-guns-domestic-violence_us_5967dd57e4b01741862645f2. Gun shops and marketers have also tried to make gun ownership more appealing to women. Alessandra Ram, *Girls with Guns: How Arming Women Could Change America*, ATLANTIC (July 27, 2012), <https://www.theatlantic.com/national/archive/2012/07/girls-with-guns-how-arming-more-women-could-change-america/260421/>. Some stores have begun offering firearms marketed specifically to women looking to purchase a gun. *Id.* “The online store Gun Goddess, for instance, sells ‘fun and feminine shooting accessories’ ranging from concealment purses and holsters to ‘gun bling’ and ‘ballistic jewelry.’” *Id.*

⁷ The term intimate partner violence (IPV) is defined as “physical, sexual, or psychological harm by a current or former partner or spouse.” *Intimate Partner Violence*, CENTERS FOR DISEASE CONTROL & PREVENTION (Aug. 22, 2017), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>. Intimate partner violence can occur between heterosexual or same-sex couples and “does not require sexual intimacy.” *Id.*

⁸ Although men can also be victims of intimate partner violence, the majority of victims of intimate partner violence are women. *See* NAT’L CTR. FOR INJURY PREVENTION & CONTROL, *supra* note 3, at 39 (finding that more than one in three women and more than one in four men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner at some point in their lifetime). Women are also at a greater risk of being killed by a romantic partner than men are. *See* DOMESTIC VIOLENCE, NAT’L COALITION AGAINST DOMESTIC VIOLENCE (2015), https://www.speakcdn.com/assets/2497/domestic_violence.pdf. (stating that one in three female murder victims and one in twenty male murder victims are killed by intimate partners).

⁹ For example, Indiana lawmaker Rep. Jim Lucas suggested that women who carry handguns are “taking steps” to defend themselves, and “learning how not to be a victim” of rape. Mary Papenfuss, *Women Need to Pack A Gun to Avoid Rape, Says GOP Indiana Lawmaker*, HUFFINGTON POST (June 13, 2017),

proposed, and others have passed, legislation reflecting this idea that vulnerable women are safer carrying guns.¹⁰

Indiana and Tennessee are among the most recent states to adopt legislation that expedites concealed-carry permits for victims of intimate partner violence, sexual assault, and stalking¹¹ who have sought protection orders against their abusers.¹² According to the NRA, this type of legislation empowers *innocent*¹³ victims who have appealed to the court system for help, while recognizing that the process for approving an application for a gun permit may take too long for some victims.¹⁴ Senator Aaron Freeman (R-Indianapolis) sponsored the bill

https://www.huffingtonpost.com/entry/empowered-rape-victims_us_593ce794e4b0c5a35ca0379b. Former Republican presidential candidate Ted Cruz made similar comments promoting gun ownership for women during a 2016 campaign appearance on Good Morning America, in which he said, “if you’re a single mom living in a tough neighborhood, the Second Amendment protects your right, that if someone comes through the window trying to harm your kids . . . you have a right to be armed to protect your family.” DeFilippis & Hughes, *supra* note 6, at 2.

¹⁰ For a discussion of such legislation and the idea that vulnerable women are safer carrying guns, see Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women’s Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1102, 1109 (2014) (discussing the popular narrative among gun rights advocacy groups like the NRA that encourages women to carry guns); *see also* Jeltsen, *supra* note 6 (discussing a similar bill that was proposed, but vetoed in Virginia during the 2016 and 2017 legislative sessions).

¹¹ In both Indiana and Tennessee, in order for someone to seek a protection order, they must be a victim of (1) domestic or family violence; (2) stalking; or (3) a sex offense. IND. CODE § 34-26-5-2 (2016); TENN. CODE ANN. § 36-3-602(a) (West 2017).

¹² The Indiana law states, “certain persons protected by a civil protection order may carry a handgun without a license for (1) sixty-days after the date the civil protection order is issued; or (2) sixty-days after the date the person applies for a license to carry a handgun, if the person applies for the license during the sixty-day period following issuance of the civil protection order.” IND. CODE ANN. § 35-47-2-2.1 (West 2017). In Tennessee, a person who is granted an order of protection is authorized, for twenty-one calendar days after the order of protection is granted, to carry a handgun, as long as the person also carries the protection order in their possession at all times while carrying the handgun. TENN. CODE ANN. § 36-3-626 (West 2017).

¹³ For a discussion of who is considered “innocent,” *see infra* Part III.

¹⁴ *See* Jeltsen, *supra* note 6, at 2 (“The National Rifle Association, which pushed for the passage of both [the Indiana and Tennessee] bills, says this type of legislation

in Indiana and has insisted that the law prioritizes victims' safety by allowing them to carry a handgun while they wait for their permit.¹⁵ States like Maryland and Virginia have considered similar legislation in recent years.¹⁶ In Maryland, thirteen Republican senators sponsored proposed legislation that would expedite handgun permits for qualified applicants who are protected under a peace order or order of protection.¹⁷ Like Senator Freeman in Indiana, Maryland Senator Justin Ready (R-Carroll County) claims that the law is "common sense

empowers victims while they are waiting for permit applications to be approved, a process that can take months in some states.").

¹⁵ Javonte Anderson, *Warnings Issued as Firearms Permit Bill Signed into Law*, CHI. TRIBUNE (May 1, 2017, 2:10 PM), <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-handgun-domestic-violence-victims-st-0429-20170501-story.html>.

¹⁶ See News Release, Governor Terry McAuliffe, Governor McAuliffe Vetoes Bills That Would Put Virginians at Risk (Mar. 24, 2017), <https://governor.virginia.gov/newsroom/newsarticle?articleId=19853>. Former Governor Terry McAuliffe of Virginia vetoed House Bill 1852, which would have allowed a person protected by a protective order to concealed carry for forty-five days after the protective order was issued. *Id.* Gov. McAuliffe argued that the bill promotes a "dangerous fiction that the victims of domestic violence will be safer by arming themselves," and this type of law "would inject firearms into a volatile domestic violence situation, making that situation less safe, not more." *Id.* Maryland has rejected a variation of this type of bill in the past. See H.B. 827, 2017 Leg., 437th Sess. (Md. 2017) (proposing a bill that would have allowed the Secretary of Police to waive the requirement that an applicant for a handgun permit participate in a firearms training course if the applicant had obtained a peace order or protection order). Most recently, on February 13th, 2018, Senator Justin Ready sponsored legislation that would expedite handgun permits for qualified applicants who are protected under a peace order or order of protection. S.B. 497, 2018 Leg., 438th Sess. (Md. 2018). This bill failed to pass in the last legislative session.

¹⁷ S.B. 497, 2018 Leg., 438th Sess. (Md. 2018).; see also MARYLAND NETWORK AGAINST DOMESTIC VIOLENCE, JULY 2015–JUNE 2016: 55 TOTAL DOMESTIC VIOLENCE RELATED FATALITIES IN MARYLAND 1-3 (2017), http://mnadv.org/_mnadvWeb/wp-content/uploads/2017/02/3-Pager-Fatalities.pdf. According to the Maryland Network Against Domestic Violence statistics, there were fifty-five total domestic violence fatalities in Maryland from July 2015-June 2016, 58% of those homicides were committed with a firearm, and eighteen of those deaths occurred in Prince George's County—a county that is 65% Black or African American. *Id.* Of the thirteen abuser deaths, only one of those deaths was a homicide, the other twelve were death by suicide. *Id.*

legislation” that helps people who are in danger protect themselves from their abusers by expediting the permit application process.¹⁸

Laws that expedite concealed-carry permits for victims of intimate partner violence do not solve gender violence. Instead, these gun laws further endanger the people the laws are intended to protect, particularly Black women¹⁹ and trans people of color.²⁰ Not only do these laws fail to adequately address factors that may increase the likelihood that someone will become a victim or perpetrator of intimate partner violence,²¹ legislation like this effectively excludes Black women and trans people, especially trans people of color.²² More than fifty percent of female homicide victims between the ages of eighteen and forty-four are killed by an intimate partner, and Black women are killed at a rate almost three times that of white women.²³ Transgender persons are also at an increased risk for intimate partner violence because of transphobia within their intimate relationships.²⁴ While this

¹⁸ *Senate Committee Judicial Proceedings: Hearing on SB497*, GENERAL ASSEMBLY OF MD. (Feb. 13, 2018), <http://mgahouse.maryland.gov/mga/play/09f34ad8-69de-4414-a7d9-63192f85fb12/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c>, at 3:41:09-3:42:05.

¹⁹ See *infra* Part II.

²⁰ See *infra* Section II.C.

²¹ *Intimate Partner Violence: Risk and Protective Factors*, CENTERS FOR DISEASE CONTROL & PREVENTION (Aug. 27, 2017), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/riskprotectivefactors.html> (finding that “[p]ersons with certain risk factors are more likely to become perpetrators or victims of intimate partner violence . . . A combination of individual, relational, community, and societal factors contribute to the risk of becoming an IPV perpetrator or victim.”). These factors include: low income, prior history of being physically abused or abusive, unemployment, desire for power and control in relationships, poverty, need to fulfill traditional gender norms, etc. *Id.*

²² See *infra* Part II.

²³ See Maiysha Kai, *Dancing with the Devils We Know: What the CDC’s New ‘Intimate Partner Violence’ Report Tells Us About the Value of Black Women*, ROOT (Jul. 26, 2017, 10:15 AM), <http://www.theroot.com/dancing-with-the-devils-we-know-what-the-cdc-s-new-in-1797219681> (stating that non-Hispanic black women are killed at a rate nearly three times that of white women and that 98% of the homicides committed against non-Hispanic black women are committed by men).

²⁴ Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R. L. REV. 51, 91–93 (2013). Intimate partner violence is largely about maintaining control and enforcing gender norms within intimate relationships, and as a consequence of their failure to conform to societal gender norms,

legislation was supposedly enacted to protect victims from their abusers,²⁵ it will not protect the groups most impacted by intimate partner violence.²⁶ Black women and trans people, in particular, will not be protected by these laws because the criminal justice system is biased against them.²⁷ These biases often keep Black women and trans people of color from claiming the status of the victim, which proves especially problematic when they fight back against their abusers.²⁸

Part I of this paper will draw parallels between these new gun laws and Stand-Your-Ground laws, particularly the double-standard that exists when Black women and trans people of color argue they acted in self-defense.²⁹ Part II will look at the relationship between Black women and the American legal system, focusing on the resistance of white mainstream culture to see Black women as victims, and the impact that “controlling narratives”³⁰ lingering from slavery have in situations involving self-defense and guns.³¹ This section will also look at a similar problem of victimization for trans people and the impact these dominant cultural narratives have on trans persons who are abused by their intimate partners.³² Part III will offer recommendations for addressing these problems by centering legislation and criminal justice

transgender people are uniquely vulnerable to this type of abuse in their intimate relationships. *Id.* at 55.

²⁵ See Anderson, *supra* note 15 (explaining that a sponsor of the bill, Senator Aaron Freeman of Indianapolis, believes the bill will “lend victims an extra measure of protection”).

²⁶ See *infra* Part I.

²⁷ See *infra* Part II.

²⁸ See *infra* Part I.

²⁹ See *infra* Part I.

³⁰ See generally PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, & THE POLITICS OF EMPOWERMENT 76–106 (1990) (discussing the view that society oppresses and subordinates Black women using a number of “controlling narratives” originating from slavery). According to Patricia Hill Collins, “[t]he dominant ideology of the slave era fostered the creation of several interrelated, socially constructed controlling images [or narratives] of Black womanhood, each reflecting the dominant group’s interest in maintaining Black women’s subordination.” *Id.* at 79. The four controlling images that Collins emphasizes are (1) the mammy—“the faithful obedient domestic servant,” (2) the matriarch or backbone of the Black family, (3) “the welfare mother,” and (4) the promiscuous Jezebel. *Id.* at 80–89.

³¹ See *infra* Sections II.A., II.B.

³² See *infra* Sections II.C.

policies around the most vulnerable—poor³³ Black women and transgender people.³⁴

I. STAND-YOUR-GROUND DEFENSES AND OTHER ANALOGS TO THE RECENT TENNESSEE AND INDIANA GUN LAWS

Recent legislation passed in Indiana and Tennessee that allows individuals with protection orders to concealed-carry without a permit are similar to Stand-Your-Ground laws because of the potentially disproportionate impact these laws would have on communities of color.³⁵ The alleged purpose of both Stand-Your-Ground and the Indiana and Tennessee gun laws is to keep potential victims safe;³⁶ however, Stand-Your-Ground and these new gun laws encourage lethal self-defense without acknowledging racial and gender bias within the justice system.³⁷

More than twenty states have passed some version of a Stand-Your-Ground law since 2005.³⁸ These laws allow for lethal force in self-

³³ See *supra* note 21 (explaining that Black women are more likely than white women to be killed as a result of intimate partner violence, and this is not because Black men are more likely to engage in this type of violence against their spouses and partners. Poverty is a major contributing factor to this issue.).

³⁴ See *infra* Part III.

³⁵ *Stand Your Ground Laws*, EVERYTOWN FOR GUN SAFETY 1, 2 (Nov. 14, 2016), <https://everytownresearch.org/documents/2018/03/stand-ground-march-2018.pdf>.

³⁶ See Jeltsen, *supra* note 6 (noting the NRA's support of the Indiana and Tennessee laws is based on the fact that the legislation "empowers victims" and provides them with "immediate protection").

³⁷ See Elizabeth Esther Berenguer, *The Color of Fear: A Cognitive-Rhetorical Analysis of How Florida's Subjective Fear Standard in Stand Your Ground Cases Ratifies Racism*, 76 MD. L. REV. 726, 727, 730–35 (2017) (discussing how the "impact of a subjective fear standard" in Stand-Your-Ground cases "absolves racially biased acts").

³⁸ *Self-Defense and "Stand Your Ground,"* NAT'L. CONF. OF STATE LEGIS. (Mar. 9, 2017), <http://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx>. "Laws in at least 24 states allow there is no duty to retreat an attacker in any place in which one is lawfully present. [They are] Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia. At least nine of those states include language stating one may 'stand his or her ground.' [These states are] Alabama, Florida, Georgia, Kansas, Kentucky, Louisiana, Oklahoma, Pennsylvania, and South Carolina. Pennsylvania's

defense without an accompanying duty to retreat.³⁹ When the first version⁴⁰ of a Stand-Your-Ground law was proposed in Florida, the NRA argued that laws expanding self-defense were designed to protect women.⁴¹ While pro-gun rights groups and conservative legislators may push the picture of a woman toting a gun to protect herself from a potential rapist,⁴² or a battered wife using a handgun to fight back against an abusive husband, the women in these images are often white, heterosexual, cisgender, and middle-class.⁴³

law, amended in 2011, distinguishes use of deadly force outside one's home or vehicle. It provides that in such locations one cannot use deadly force unless he has a reasonable belief of imminent death or injury, and either he or she cannot retreat in safety or the attacker displays or uses a lethal weapon." *Id.*

³⁹ See *Stand Your Ground Laws*, *supra* note 35, at 1 ("Stand Your Ground laws upend centuries of traditional self-defense doctrine. These laws encourage armed vigilantism by allowing a person to kill another person even when they can clearly and safely walk away from the danger, and even in public areas. . . . Under traditional self-defense law, a person can use force to defend himself anywhere, but when he is outside his home he cannot use force likely to kill or seriously injure someone if there is a safe way to avoid it.").

⁴⁰ FLA. STAT. ANN. § 776.013 (West 2005) (amended 2014). Florida's initial Stand Your Ground law stated "[a] person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another." *Id.* at § 776.013(3).

⁴¹ Franks, *supra* note 10, at 1101–02.

⁴² Josh Sugarmann, *For Women, Gun Violence Often Linked to Domestic Violence*, HUFFINGTON POST (Oct. 1, 2014, 11:11 AM), https://www.huffingtonpost.com/josh-sugarmann/for-women-gun-violence-of_b_5913752.html. Although the NRA and other pro-gun groups frequently talk about the threat of an unknown assailant attacking a woman to garner support for gun ownership, research shows that the majority of women murdered by men are not murdered by a stranger, but by someone they know. *Id.*

⁴³ Madiba Dennie, *Black and Blue: The Inadequacy of Police Responses to Violence in the African-American Community*, HUFFINGTON POST (Jul. 12, 2016, 12:27 PM), https://www.huffingtonpost.com/entry/black-and-blue-the-inadequacy-of-police-responses_us_578519a5e4b04041a985b645#_ftn16. See *infra* Part II.B.1.

Black women who have attempted to use defenses like Stand-Your-Ground⁴⁴ to argue that they also “feared for their lives”⁴⁵ have not been as successful as white women and men⁴⁶ in their attempts—

⁴⁴ See Franks, *supra* note 10, at 1116. In February 2012, George Zimmerman made national news when he pursued and killed an unarmed Black teenager named Trayvon Martin. Zimmerman, who is both white and Hispanic, was later found not-guilty of second-degree murder in *State v. Zimmerman*. *Id.* Zimmerman argued that he acted in self-defense and that he “feared for his life” before shooting and killing seventeen-year-old Martin. *Id.* at 1117. Although Zimmerman did not formally assert a “Stand-Your-Ground” defense at his trial, this case, alongside other cases involving white gun-owners and unarmed Black teenagers, sparked a national conversation surrounding self-defense laws and race. *Id.* The *Zimmerman* case is often compared to the case of Marissa Alexander—a thirty-six-year-old Black woman—who attempted to use a “Stand-Your-Ground” defense after she fired a “warning shot” at her abusive ex-husband. *Id.* at 1119–20.

⁴⁵ This phrase is commonly used in self-defense cases to justify the use of force against a would-be attacker. See, e.g., *id.* at 1117 (noting that Zimmerman claimed to have shot Martin because he was “in fear for his life”); see Berenguer, *supra* note 37, at 745 (explaining that individuals claiming Stand-Your-Ground as a defense do not need to “self-assess the rationality of the fear itself” because the claimed fear will not be questioned).

⁴⁶ See Katie Halper, “Stand Your Ground” Law Helps White Defendants a lot more than Black Ones, SALON (June 11, 2013, 4:10 PM), https://www.salon.com/2013/06/11/stand_your_ground_law_helps_white_defendants_a_lot_more_than_black_ones/. In March 2013, Ralph Wald—an elderly white man from Florida—found his wife having sex with a man named Walter Conley. He went back to his bedroom and grabbed his gun. When he returned, he shot Conley three times, killing him. At trial, Wald invoked a “Stand-Your-Ground” defense and argued that he believed his wife was being raped by an unknown assailant when he pulled the trigger. However, the man having sex with his wife was his neighbor, and Wald knew that the two had been having an affair before that night. Prosecutors argued that Wald was actually jealous of Conley’s relationship with Wald’s wife, and Wald killed him in a jealous rage. After deliberating for just two hours, a jury found Wald not guilty. *Id.* See also Laura Bult, *Florida Woman who Killed her Violent Husband Is Protected Under ‘Stand Your Ground’ Laws due to ‘Reasonable Fear’ for Family Members’ Safety*, N.Y. DAILY NEWS (May 26, 2016, 6:23 PM), <http://www.nydailynews.com/news/national/florida-woman-killed-husband-protected-stand-ground-article-1.2651341>. Michelle Dinkins-Penland—a white woman who was a concealed-carry gun owner like Alexander—shot and killed her abusive husband because she feared her husband was going to kill her and her teenage son. The charges were dropped after a state attorney’s office investigation found that Penland was justified in killing her husband under the Florida “Stand-Your-Ground” law because she had a “reasonable fear” she and her loved ones were in danger. *Id.*

particularly in cases involving intimate partner violence.⁴⁷ This difficulty is due in large part to racial bias and stereotypes that influence the societal perception of Black women.⁴⁸ Like Black women, trans persons of color who have been assaulted and responded to their assault with physical, sometimes lethal, force face significant barriers while presenting their case because of prevailing ideas of what a victim is supposed to look like.⁴⁹ As analogs to these recent gun laws, the stories of Marissa Alexander and Ky Peterson help to problematize victimization and frame the discussion surrounding the potentially disproportionate impact that exists when legislators pass laws like Stand-Your-Ground.

A. *The Story of Marissa Alexander and Racial Bias in “Stand-Your-Ground”*

Marissa Alexander—a battered Black woman, and lawful gun-owner, charged with three counts of aggravated assault against her abusive husband—finally regained her freedom in January of 2017.⁵⁰ Alexander spent more than three years in prison serving a twenty-year sentence for firing what she described as “a warning shot” in the air.⁵¹

On August 1, 2010, Alexander left her cell phone with Rico Gray—her estranged husband and the father of her newborn daughter—while she went to the bathroom.⁵² Seeing text messages that Alexander had exchanged with her ex-husband, Gray became belligerent.⁵³ He blocked the bathroom doorway and prevented her from exiting, called her a “whore” and a “bitch,” and made threatening statements like,

⁴⁷ See *infra* Section II.A.

⁴⁸ See *infra* Section II.B.

⁴⁹ See *infra* Section II.C.

⁵⁰ Alexander was on house arrest after being released from prison in January 2015. It was not until January 2017 that she had completed her time on house arrest and could live life as a free woman. See Irin Carmon, *Marissa Alexander Released from Jail*, MSNBC (Jan. 27, 2015, 9:17 PM), <http://www.msnbc.com/msnbc/marissa-alexander-may-be-released>; see also Victoria Uwumarogie, *After 3 Years in Jail and 2 Years of House Arrest, Marissa Alexander Is Finally Free*, MADAME NOIRE (Feb. 1, 2017), <http://madamenoire.com/784478/house-arrest-marissa-alexander-free/>.

⁵¹ See Franks, *supra* note 10, at 1118 (citing Deposition of Rico Gray at 28:8–12, State v. Alexander, 2012 WL 10738699 (2012) No. 16-2010-CF-008579).

⁵² *Id.*

⁵³ *Id.*

“Bitch, I’ll kill you” and “[i]f I can’t have you, nobody [is] going to have you.”⁵⁴ Alexander eventually escaped to the garage where she grabbed her handgun.⁵⁵ She then went into her kitchen where Gray was standing.⁵⁶ Alexander argued that Gray “threatened her life”⁵⁷ while she was there, which prompted Alexander to “[fire] a shot into the ceiling as a way to scare Gray off.”⁵⁸ According to Alexander, this was not the first time her estranged husband had threatened her.⁵⁹ Gray admitted that he was not only violent towards Alexander, but that he had also been abusive towards each of his children’s mothers.⁶⁰ This abuse was well-documented.⁶¹ Alexander even had a protective order against Gray, which she applied for after Gray beat her so badly that she had to be hospitalized.⁶² When asked about what transpired, Gray initially corroborated Alexander’s account of the events in a deposition but later changed his story.⁶³

Despite her estranged husband’s corroboration, Stand-Your-Ground was still not a viable defense for Alexander.⁶⁴ Not only was Alexander denied this defense at trial, she was arrested immediately

⁵⁴ *Id.*

⁵⁵ *Id.* According to Alexander, the garage door was locked so she could not actually leave her house. Instead, she grabbed the gun for protection. *Id.*

⁵⁶ See Franks, *supra* note 10, at 1118.

⁵⁷ *Id.*

⁵⁸ *Id.* (citing Gray Dep. 15:00).

⁵⁹ *Id.*

⁶⁰ *Id.* During his deposition, Gray proudly admitted to “physically” abusing four of his five “baby mammas,” including Marissa Alexander. *Id.* (citing Gray Dep. 36:11–12). He stated, “I got five baby mammas and I put my hands on every last one of them except for one.” *Id.* (citing Gray Dep. 36:06–08).

⁶¹ Franks, *supra* note 10, at 1118 (“Rico Gray had been arrested twice before on misdemeanor charges of domestic battery and Alexander had obtained a protective order against him.”).

⁶² Touré, *Where Was ‘Stand Your Ground’ for Marissa Alexander?*, TIME (Apr. 30, 2012), <http://ideas.time.com/2012/04/30/where-was-stand-your-ground-for-marissa-alexander/>. See Victoria Law, *Freeing Marissa Alexander*, TRUTHOUT (Oct. 16, 2013), <http://www.truth-out.org/speakout/item/19447#ixzz2284C0qHb>. When Alexander learned she was pregnant with Gray’s child, she amended the protective order to allow for contact between the two parties. But, she maintained the rest of the protective order. *Id.*

⁶³ Franks, *supra* note 10, at 1118.

⁶⁴ *Id.* at 1119 (citing *Alexander v. State*, 121 So.3d 1185, 1186 (Fla. Dist. Ct. App. 2013)).

after Gray called the police, in contrast to the experience of George Zimmerman who was not arrested for six weeks following the shooting death of Trayvon Martin.⁶⁵ In the *Zimmerman* case, the Sanford police chief claimed that, under Florida law, the officers who came to the scene were “prohibited from making an arrest based on the facts and circumstances they had at the time.”⁶⁶ Alexander, on the other hand, was arrested and charged, and subsequently sentenced to a twenty-year mandatory minimum sentence.⁶⁷ The jury that convicted Alexander deliberated for just eleven or twelve minutes before finding her guilty.⁶⁸ The Florida State’s Attorney who prosecuted Alexander claimed that Alexander’s actions were based on anger, not fear. Thus, she was “anything but a victim.”⁶⁹ Alexander remained in prison until she pleaded guilty to the charges against her and agreed to serve two years of house arrest.⁷⁰

Alexander’s story illustrates the double-standard that exists when Black women attempt to argue they acted in self-defense. Battered Black women like Alexander are often ignored as victims of abuse because they do not fit the traditional—and more palatable—mold of a victim.⁷¹ Though there was a well-documented history of abuse, a protective order, and her estranged husband was not injured when she “fought back,” Alexander was still harshly prosecuted for defending

⁶⁵ *Id.* at 1119–20.

⁶⁶ *Id.* at 1117. (“Sanford Police Chief Bill Lee, facing a barrage of public criticism, issued a statement claiming that the police were not allowed to arrest Zimmerman given the immunity provision of Florida’s self-defense law: ‘[W]hen the Sanford Police Department arrived at the scene of the incident, Mr. Zimmerman provided a statement claiming he acted in self-defense, which at the time was supported by physical evidence and testimony.’”).

⁶⁷ *Id.* at 1119 (citing Julia Dahl, *Fla. Woman Marissa Alexander Gets 20 Years for “Warning Shot”: Did She Stand her Ground?*, CBS NEWS (May 16, 2012, 4:21 PM), <https://www.cbsnews.com/news/fla-woman-marissa-alexander-gets-20-years-for-warning-shot-did-she-stand-her-ground/>).

⁶⁸ *Id.*

⁶⁹ Trymaine Lee, *Marissa Alexander, Mom Facing 20 Years, Shot at Abusive Husband in Anger, Prosecutor Says*, HUFFINGTON POST (last updated Dec. 6, 2017), https://www.huffingtonpost.com/2012/05/09/marissa-alexander-prosecutor_n_1504428.html.

⁷⁰ Uwumarogie, *supra* note 50.

⁷¹ *See infra* Section III.A.

herself.⁷² While race and the perceived threat that Black men pose to white men and women have been used successfully to justify the killings of young Black men like Trayvon Martin,⁷³ a battered Black woman who tries to use the same defense as a justification for her actions faces significant barriers in doing so because of a cultural inability and resistance to see Black women as victims.⁷⁴

B. Ky Peterson and the Georgia Stand-Your-Ground Defense

Ky Peterson, a Black transgender man from Georgia, was abruptly hit in the head by a stranger—a stranger whose advances he had rejected earlier that night.⁷⁵ When he awoke, Peterson saw the man straddled on top of him.⁷⁶ The man was naked and making homophobic remarks as he forced himself inside Peterson.⁷⁷ In an interview with *The Advocate*, Peterson explained that, at that moment, he was screaming, both in panic and in physical pain, but he knew the police would not help him.⁷⁸ This was not the first-time Peterson had been raped on his walk home, and both times the police failed him.⁷⁹ According to Peterson, the last time he was raped, the police “could barely be bothered to file a [police] report” so he knew the likelihood of the police investigating, or even arresting his rapist, was very slim.⁸⁰ Because of this distrust in the police and their unwillingness to protect him, Peterson started carrying a handgun on his walks home.⁸¹

⁷² Uwumarogie, *supra* note 50.

⁷³ There is some debate about whether George Zimmerman should be considered white. Jefferson M. Fish, *What Race is George Zimmerman?*, PSYCHOL. TODAY (Aug. 6, 2013), <https://www.psychologytoday.com/us/blog/looking-in-the-cultural-mirror/201308/what-race-is-george-zimmerman>.

⁷⁴ See *infra* Section III.A.

⁷⁵ Sunnive Brydum & Mitch Kellaway, *This Black Trans Man Is in Prison for Killing His Rapist*, ADVOCATE (Apr. 8, 2015, 11:15 AM), <https://www.advocate.com/politics/transgender/2015/04/08/black-trans-man-prison-killing-his-rapist>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Brydum & Kellaway, *supra* note 75.

⁸¹ *Id.*

With the help of his brothers who appeared at the scene, Peterson was able to escape his rapist's hold, but it was not long before his rapist aggressively charged at him.⁸² Peterson grabbed his gun and pulled the trigger.⁸³ Certain that no one would believe him or his brothers, both of whom had criminal records, Peterson left his rapist's dead body on the side of the road.⁸⁴ Peterson later went to report the rape to the police who did not believe him.⁸⁵ He was charged with "armed robbery, aggravated assault, malicious murder, two counts of felony murder, and three counts of possession of a firearm in the commission of a felony."⁸⁶

Peterson is currently serving a twenty-year sentence.⁸⁷ At trial, Peterson's public defender did not seek immunity under Georgia's Stand-Your-Ground law.⁸⁸ His lawyer did not even present Peterson with a Stand-Your-Ground defense as an option because he knew such a defense would likely be unsuccessful given Peterson's racial and gender identity.⁸⁹ Many trans people of color,⁹⁰ like Peterson, fail to report violent crimes committed against them because of the perception that trans people are dishonest and predatory.⁹¹ These biases keep trans

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Brydum & Kellaway, *supra* note 75.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*; CAROLINE LIGHT, STAND YOUR GROUND: A HISTORY OF AMERICA'S LOVE AFFAIR WITH LETHAL SELF-DEFENSE 183 (2017).

⁹⁰ LIGHT, *supra* note 89, at 181 (stating that CeCe McDonald, a twenty-three-year-old Black transgender woman, was attacked by a mob in Minneapolis, Minnesota. She was verbally assaulted and physically attacked by multiple white men and women outside of a bar. One of the patrons, a white woman, used a broken glass to cut her face. Dean Schmitz, who initially approached McDonald and incited the brutal attacking, was eventually stabbed. He later died from his injuries, and McDonald was arrested and charged with second-degree murder. The woman who slit McDonald's cheek was never investigated or charged with any crime. McDonald's attorneys were prohibited from introducing evidence that the attack was a hate crime that was motivated by McDonald's racial and gender identities.).

⁹¹ Goodmark, *supra* note 24, at 79–82. See also Katy Steinmetz, *Why LGBT Advocates Say Bathroom 'Predators' Argument Is a Red Herring*, TIME (May 2, 2016), <http://time.com/4314896/transgender-bathroom-bill-male-predators->

victims of color from successfully asserting immunities like “Stand Your Ground,” when they are forced to take their safety and protection into their own hands. Peterson’s case highlights the unique difficulties that laws promoting “do-it-yourself” security from rape and assault pose for marginalized groups.⁹² A legal system that purports to support self-defense with the passage of laws like Stand-Your-Ground, virtually robs trans people of that right because their gender identity does not conform to “tidy delineations of masculinity or femininity.”⁹³

II. THE PROBLEM OF VICTIMIZATION: BLACK WOMEN, TRANS PEOPLE OF COLOR, AND THE PRIVILEGE OF VICTIMHOOD

Black women and trans people of color are fighting for visibility in the legal system, particularly as victims of intimate partner and other forms of gendered violence.⁹⁴ Like in cases involving Stand-Your-Ground defenses, laws that would allow people who seek protective orders to concealed-carry without a permit will place members of these vulnerable populations⁹⁵ in particularly challenging positions when they exercise their right to defend themselves against their abusers. Though this type of legislation purports to protect victims of intimate partner violence and sexual abuse, it does not protect Black women and trans people of color because the criminal justice is biased against them.

A. The Myth of the Angry and Lascivious Black Woman: The Impact of Holdovers from Slavery on the Battered Black Women Attempting to Claim the Status of “Victim”

Self-Defense and other legal justifications for murdering an abusive partner often fail Black women who fight back against their abusers because of biases within the criminal justice system. Like

argument/ (discussing how the idea that trans people are “predators” is becoming increasingly popular as a result of proposed “bathroom bills” in a number of states).

⁹² LIGHT, *supra* note 89, at 183.

⁹³ *Id.*

⁹⁴ Abeni Jones, *Not Just Murder Victims: A Plea on Trans Day of Visibility*, AUTOSTRADDE (Mar. 31, 2018, 9:25 AM), <https://www.autostraddle.com/not-just-murder-victims-a-plea-on-trans-day-of-visibility-415642/>.

⁹⁵ The term “vulnerable populations” is being used to refer to groups at particularly high risk for intimate partner violence.

Stand-Your-Ground, Battered Woman Syndrome⁹⁶ is a legally recognized defense to murder in some states.⁹⁷ It is often presented at trial when a woman murders her abusive boyfriend or spouse.⁹⁸ Lenore Walker developed the concept of Battered Woman Syndrome in an effort to explain “the effects of recurring abuse in domestic relationships” and “why conventional assumptions about reasonableness and imminence fail to account for the real-life circumstances of the battered woman defendant.”⁹⁹ However, whether society believes victims of intimate partner violence who killed their partners did so because of the abuse is largely dependent upon how much the abused woman adheres to a white heteronormative victim narrative.¹⁰⁰ In cases where these defenses have been successful, the battered woman has been portrayed as weak, “psychologically impaired,” and “lacking hostility” towards her abuser.¹⁰¹ When a battered woman does not hold these characteristics, white normative culture questions the authenticity of her fear.¹⁰² Her fear is delegitimized because the strong and resilient woman killing her abuser does not fit into the traditional understanding of victimhood.¹⁰³ The stereotypes that are often imposed upon Black women are antithetical to the weak battered women stereotype that is perpetuated in the legal

⁹⁶ See LENORE WALKER, *THE BATTERED WOMAN SYNDROME* 41 (3d ed. 2009) (“The term, Battered Woman Syndrome (BWS), was first used in 1977 as the title of [Lenore Walker’s] U.S. National Institute of Mental Health (NIMH) funded research grant that collected data on over 400 self-referred women who met the definition of a battered woman that formed the basis for this original research.”).

⁹⁷ See, e.g., *Weiland v. State*, 732 So.2d 1044, 1054 (Fla. 1999) (stating that the court has “authorized the admission of battered spouse syndrome evidence to rebut the common myths concerning battered women and explained the very real dangers faced by women in these relationships.”); MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 2018) (allowing evidence of past repeated abuse by the person the defendant is accused of harming and expert testimony on Battered Spouse Syndrome to “explain the defendant’s motive or state of mind.”).

⁹⁸ Sharon Angella Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 *UCLA WOMEN’S L.J.* 191, 192 (1991).

⁹⁹ Christine M. Belew, *Killing One’s Abuser: Premeditation, Pathology, or Provocation?*, 59 *EMORY L.J.* 669, 770 (2010).

¹⁰⁰ See *infra* text accompanying notes 104–36.

¹⁰¹ Allard, *supra* note 98, at 191.

¹⁰² *Id.* at 197.

¹⁰³ See *infra* Section II.A.

system.¹⁰⁴ Black bodies are often deemed as less sympathetic in these situations because of a long history of racial stereotypes portraying the Black body as threatening.¹⁰⁵ This perception of Black women is largely due to the controlling narrative that Black women are angry.¹⁰⁶

In many cases, the “Strong Black Woman”¹⁰⁷ is also read as aggressive.¹⁰⁸ As such, these women are expected to fight back.¹⁰⁹ Consequently, when these women do resort to lethal force, the system seems to tell us that they are not deserving of our sympathy because they were never lacking in the strength they needed to stop the abuse, and subsequently, the abuse should have never reached the point of life or death.¹¹⁰ Because women who are successfully able to use defenses like Battered Women Syndrome and Stand-Your-Ground, often fit into a specific white, heterosexual archetype of what a battered woman is supposed to look like,¹¹¹ Black women—caught at the intersection of

¹⁰⁴ See Allard, *supra* note 98, at 197–98 (explaining that Lenore Walker relies on the idea that a jury wants to see the perfect battered women, and for a woman to successfully convince a jury that they were fearful of their abuser and killing their abuser was the only option, they must present themselves as docile and weak—stereotypes of white women that exclude the battered Black women).

¹⁰⁵ See *infra* text accompanying notes 106–25.

¹⁰⁶ See Allard, *supra* note 98, at 197 (discussing how the stereotype that all Black women are “angry” can affect a jury’s perception of a battered Black woman defendant).

¹⁰⁷ HILLARY POTTER, *BATTLE CRIES: BLACK WOMEN AND INTIMATE PARTNER ABUSE* 1 (2008) (“Popular rhetoric often portrays Black women as being strong, independent, and resilient. Although these are seemingly positive qualities to possess, they also have the potential to stereotype Black women in ways that can restrict their seeking help or needed support.”).

¹⁰⁸ See *id.* at 136 (“Black women are raised in the United States with the stereotype of being strong, angry, and more masculine than White women.”); see also Allard, *supra* note 98, at 196 (stating that battered women are often stereotyped as being “very uncomfortable about being aggressive”).

¹⁰⁹ POTTER, *supra* note 107, at 136–37 (noting that Black mothers pass down this idea of the “strong woman,” and this belief that Black women should be strong “aids in battered Black women’s proclivity to fight back” against their abusers).

¹¹⁰ *Id.* at 137 (“[F]ormal institutions of social control deny or devalue Black women as victims and often see them as *criminals* when they fight back, which denies them a recourse that White women in a similar situation would receive.”).

¹¹¹ Kirsten Powers, *Angela Corey’s Overzealous Prosecution of Marissa Alexander*, DAILY BEAST (Jul. 19, 2013, 4:45 AM), <https://www.thedailybeast.com/angela-coreys-overzealous-prosecution-of-marissa-alexander>. In an interview with the Daily Beast discussing the Alexander case, Rita Smith of the National Coalition Against

race and gender—face unique challenges when they use lethal force in response to the violence against them.

Despite the fact that Black women are physically and sexually abused by intimate partners at higher rates than women of other races,¹¹² cultural stereotypes and portrayals of the “angry” and “independent” Black woman have contributed to the perception that Black girls and women need “less protection”¹¹³ than other women, especially white women.¹¹⁴ Beginning with the enslavement of Black people in the United States, Black women have been depicted as promiscuous and hypersexual.¹¹⁵ Sexual abuse and violence against Black women were used to maintain the hierarchical system that existed among white slave owners and Black slaves.¹¹⁶ According to Angela Davis, sexual abuse was as common and routine a practice as whippings.¹¹⁷ She writes, “[e]xcessive sex urges, whether they existed among individual white men or not, had nothing to do with the virtual institutionalization of rape. Sexual coercion was, rather, an essential dimension of the social relations between slavemaster and slave.”¹¹⁸

Domestic Violence noted, “Most battered women who kill in self-defense end up in prison. There is a well-documented bias against women [in these cases].” *Id.* (alteration in original). Alexander’s lawyer told Smith that “[w]hen a woman or minority is claiming they are defending themselves, they don’t get the benefit of the doubt.” *Id.*

¹¹² See NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *supra* note 3, at 39. Multi-racial and Native American women have the *highest* rates of sexual assault, stalking, and physical violence by intimate partners. *Id.* at 39.

¹¹³ REBECCA EPSTEIN ET AL., *GIRLS INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD* 8, <http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/girlhood-interrupted.pdf> (last visited Apr. 26, 2018).

¹¹⁴ *Id.*

¹¹⁵ See Kali Nicole Gross, *African American Women, Mass Incarceration, and the Politics of Protection*, 102 J. OF AM. HIST. 26 (2015) (explaining that “mainstream attitudes” negated the victimization of Black women who were raped and sexually assaulted because of “ruinous myths about [B]lack women’s libidinous sexual proclivities”).

¹¹⁶ *Id.* at 27 (“[B]lack women’s bodies [were] the terrain upon which white men aimed to reinscribe old racial hierarchies.”).

¹¹⁷ ANGELA DAVIS, *WOMEN, RACE & CLASS* 9 (1981).

¹¹⁸ *Id.* at 175.

The use of stereotypes to normalize and justify violence against Black women did not end with slavery.¹¹⁹ While there are now criminal punishments for the rape and assault of Black women that did not exist during slavery,¹²⁰ these same negative stereotypes contribute to the white normative view that Black women are “less credible” victims of rape, and other types of violence.¹²¹ These same images that portray Black women as lascivious or deserving of physical and sexual violence also have an impact on the cultural response to Black women who accuse their intimate partners of abusing them.¹²²

Historical correlations drawn between whiteness and victimhood exclude Black women from certain protections.¹²³ Stereotypes that posit Black women “opposite of the stereotypical, traditional middle and upper class white woman”¹²⁴ prove problematic because they often perpetuate the belief that Black women are strong enough to bear the emotional and physical burdens of battered womanhood without state intervention.¹²⁵ In *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, Sharon Allard

¹¹⁹ Carolyn West, *Black Women and Intimate Partner Violence: New Directions for Research*, 19 J. INTERPERSONAL VIOLENCE 1487, 1491 (2004) (“Even in contemporary times, these stereotypes may lead some to believe that Black women are less credible rape victims and that domestic violence directed toward them is more justified.”).

¹²⁰ RITCHIE, *supra* note 5, at 28 (“[T]he rape of a Black woman was not a crime under most slave codes, or at common law.”). Not only was the rape and sexual assault of Black women permissible in many states, law enforcement also participated in violating Black women. *Id.* at 28–29. For example, Slave patrols, which were established for the purpose of policing Black slaves, subjected Black women to physical and sexual abuses as punishment. *Id.* at 28 (citing SALLY E. HADDEN, *SLAVE PATROLS: LAW & VIOLENCE IN VIRGINIA AND THE CAROLINAS* 117 (2001)).

¹²¹ West, *supra* note 119, at 1491.

¹²² Gross, *supra* note 115, at 27–28 (“Sexual violence visited upon black women took the form of rapes . . . such encounters ‘were considered consensual, even coerced by the seductions of black women’s lascivious nature.’”) *Id.* at 27–28.

¹²³ Lisa M. Martinson, *An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin*, 16 WIS. WOMEN’S L.J. 259, 261–62 (2001).

¹²⁴ *Id.* at 260.

¹²⁵ *Id.* at 261 (“Being viewed as the ‘strong black woman’ is positive, but unfortunately, it leaves African-American women in caregiver roles with no opportunities when they need care.”).

discusses the stereotypes that color the white normative culture's understanding of victimhood.¹²⁶ According to Allard, for a battered woman to successfully justify killing her abusive husband she must assure the jury that she is "a 'normal' woman—weak, passive, and fearful [of her abuser]."¹²⁷ When a battered woman differs from this expectation, her credibility and the severity of her claims are questioned.¹²⁸ The success of defenses like Battered Woman Syndrome and Stand-Your-Ground laws is largely dependent upon whether a judge or jury believes the defendant was also a *victim*.¹²⁹ Because innocence—particularly in cases where a battered woman has killed an abusive spouse—is so deeply intertwined with these notions of victimhood, Black women who do not fit neatly into these stereotypical depictions of a victim have a harder time using these defenses to make their case.¹³⁰ In the case of Marissa Alexander, the prosecutor claimed that the facts of the case did not support Alexander's assertion that she was acting in self-defense.¹³¹ In particular, the prosecution used the fact that Alexander told Gray, "I got something for your ass," before going into the garage to grab her pistol as evidence that Alexander was "angry," not afraid.¹³² To the attorney that prosecuted Alexander—and likely the jury that convicted her—this so-called display of anger implied that she was not a victim when she pulled the trigger.¹³³

¹²⁶ Allard, *supra* note 98.

¹²⁷ *Id.* at 193–94. "In contrast to these stereotypes, both the stereotypical images and the historical reality of Black women's experiences in the United States are interpreted by the dominant society as a manifestation of Black women's deviance from 'normal' women. This deviance is reflected in the omnipresent images of the hostile Sapphire, the wanton Jezebel, and the strong and assertive Sojourner Truth [originating from slavery]." *Id.* at 196.

¹²⁸ *Id.* at 194 ("If the battered woman deviates from these characteristics, the jury may not associate her situation with that of the stereotypical battered woman.").

¹²⁹ *Id.* at 204 ("[B]attered woman syndrome is based on the traditional view of the 'normal,' passive woman.").

¹³⁰ *Id.* See *supra* Part II.A.

¹³¹ Franks, *supra* note 10, at 1127 ("Angela Corey, the prosecutor in Marissa Alexander's case, used the following terms to condemn Marissa Alexander: 'She was angry' when she fired the warning shot, '[s]he was not in fear.' (As if it were not possible to be both angry and afraid, and as if a woman does not have a right to be angry after being beaten and threatened in her own home by a man who refuses to leave.))" (alteration in original).

¹³² Lee, *supra* note 69.

¹³³ *Id.*

Now contrast the case of Marissa Alexander to that of Karla Porter—a middle-aged white woman from a suburb in Baltimore, Maryland who was convicted of hiring a hitman to kill her husband.¹³⁴ Karla Porter argued that she was abused by her husband for twenty-four years, which led her to believe her husband would kill her if she did not kill him first.¹³⁵ Mrs. Porter attempted to assert a battered spouse defense under the Maryland Battered Spouse Syndrome Statute,¹³⁶ which, if successful, may have resulted in a lesser charge of manslaughter.¹³⁷ While Porter was initially denied an imperfect self-defense jury instruction and sentenced to life in prison, the Maryland Court of Appeals overturned the trial court decision and held that a woman who solicits help in taking defensive action against another does not waive her right to an imperfect self-defense jury instruction by doing so.¹³⁸

Porter—a white woman from suburban Baltimore, who hired someone to murder her husband, and then blamed it on a “young Black man”¹³⁹—was entitled to an imperfect self-defense claim.¹⁴⁰ Alexander—a Black woman with a documented history of abuse against her who did not hurt anyone in the commission of her “crime”—was

¹³⁴ *Porter v. State*, 166 A.3d 1044 (Md. 2017). On the morning of the killing, Mrs. Porter told her husband that the alarm had gone off at the gas station they co-owned. *Id.* at 1049. When her husband went to the gas station, the hitman that Mrs. Porter hired approached her husband and shot him twice. *Id.*

¹³⁵ *Id.* at 1049.

¹³⁶ MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 2018); *Porter*, 166 A.3d at 1048.

¹³⁷ *Porter*, 166 A.3d at 1050–51. In her opinion for the majority, Judge Adkins explained that “Maryland law allows a woman on trial for harming her abuser to present evidence explaining battered spouse syndrome and its psychological effects regardless of whether she was the first aggressor, used excessive force, or failed to retreat.” *Id.* at 1051.

¹³⁸ *Id.* at 1065.

¹³⁹ Jessica Anderson, *Karla Porter Found Guilty of First-Degree Murder in Husband’s Death*, BALT. SUN (Aug. 13, 2013, 8:17 PM), http://articles.baltimoresun.com/2013-08-13/news/bs-md-co-karla-porter-jury-20130813_1_karla-porter-ray-porter-seamus-coyle (“Karla Porter called 911 and told police that a young black man did it. She would later relay the false description to homicide detectives until finally confessing, telling them that she just wanted the abuse to stop.”).

¹⁴⁰ *Porter*, 166 A.3d at 1061.

denied a Stand-Your-Ground defense.¹⁴¹ Despite the fact that Maryland and Florida have differing approaches to self-defense,¹⁴² Alexander was not afforded the same leniency as Porter.¹⁴³ Even though both women alleged that their husbands subjected them to physical and emotional abuse, Alexander did not use lethal force and was sentenced to twenty years in prison.¹⁴⁴ Meanwhile, Porter executed a sophisticated murder-for-hire, and Maryland's highest court found that she was entitled to a jury instruction that would allow for a lesser sentence.¹⁴⁵ This leniency and differences in the way the actions of two battered women were perceived can be attributed, at least in part, to racial bias that impacts our understanding of victimhood.¹⁴⁶

B. Guns and Unchecked Bias: A Deadly Combination for Black Victims of IPV

Guns increase danger in any situation, but Black women—by virtue of their racial and gender identity—are uniquely vulnerable in disputes involving a firearm because police officers often rely on controlling narratives of Black women. Because of the biases that impact law enforcement and their policing of Black bodies, Black women who have been abused by their intimate partners risk re-victimization by police, especially when carrying a weapon.

1. Guns Increase Danger Regardless of Who Has Them

Domestic violence and gun violence are inextricably linked. In cases where men murdered their intimate partners, the most commonly used weapon was a handgun.¹⁴⁷ According to Everytown for Gun Safety, “when a gun is present in a domestic violence situation, it

¹⁴¹ Christine Hauser, *Florida Woman Whose ‘Stand Your Ground’ Defense Was Rejected Is Released*, N.Y. TIMES (Feb. 7, 2017), <https://www.nytimes.com/2017/02/07/us/marissa-alexander-released-stand-your-ground.html>.

¹⁴² See *supra* Section I.A.

¹⁴³ See *supra* Section I.A.

¹⁴⁴ See *supra* Section I.A.

¹⁴⁵ *Porter*, 166 A.3d at 1061.

¹⁴⁶ See *supra* Section III.A.

¹⁴⁷ VIOLENCE POLICY CENTER, WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2015 HOMICIDE DATA 5 (2016), <http://www.vpc.org/studies/wmmw2016.pdf>.

increases the risk of homicide by 500 percent.”¹⁴⁸ In Indiana, fatalities related to domestic violence are very common.¹⁴⁹ Research also shows that the threat of death by gun is increased when a woman tries to leave her abuser.¹⁵⁰ Between fifty and seventy-five percent of abused women who are murdered by their intimate partners are killed after they have left the abusive relationship.¹⁵¹

The narrative pushed by conservative legislators and the NRA is that women need guns to protect themselves from potential rapists and abusive spouses, but the research shows that women who carry firearms for protection are likely to have that firearm used against them.¹⁵² In fact, gun use in self-defense is uncommon.¹⁵³ The Violence Policy Center found that guns are 100 times more likely to be used by men to harm women than they are to be used by women against men in self-defense.¹⁵⁴ In 2014, more than 1,600 women were killed by men—

¹⁴⁸ EVERYTOWN FOR GUN SAFETY, GUNS AND VIOLENCE AGAINST WOMEN: AMERICA’S UNIQUELY LETHAL DOMESTIC VIOLENCE PROBLEM 4 (2017) (citing J.C. Campbell et al., *Risk Factors for Femicide Within Physically Abuse Intimate Relationships: Results from a Multi-state Case Control Study*, 93 AM. J. PUBLIC HEALTH 1089, 1089–97 (2003)).

¹⁴⁹ CENTER FOR AMERICAN PROGRESS, INDIANA DOMESTIC VIOLENCE AND GUNS 1 (2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/10/CAP-DV-IN.pdf>. According to the FBI, “there were 270 domestic violence homicides in Indiana, from 2003 to 2012, which includes both male and female victims.” *Id.* 58.5% of those homicide victims were killed with a gun. *Id.* Between 2002 and 2011, firearms were used to murder 435 women in Indiana. *Id.*

¹⁵⁰ See EVERYTOWN FOR GUN SAFETY, *supra* note 148, at 6 (stating that “the most dangerous time for a victim of domestic violence is the period immediately after she leaves her abuser”).

¹⁵¹ Jana Kasperkevic, *Private Violence: Up to 75 Percent of Abused Who Are Murdered Are Killed After They Leave Their Partners*, GUARDIAN (Oct. 20, 2014, 5:00 PM), <https://www.theguardian.com/money/us-money-blog/2014/oct/20/domestic-private-violence-women-men-abuse-hbo-ray-rice>.

¹⁵² Evan DeFilippis & Devin Hughes, *Gun-Rights Advocates Claim Owning a Gun Makes a Woman Safer. The Research Says They’re Wrong*, TRACE (May 2, 2016), <https://www.thetrace.org/2016/05/gun-ownership-makes-women-safer-debunked/>.

¹⁵³ VIOLENCE POLICY CENTER, FIREARM JUSTIFIABLE HOMICIDES & NON-FATAL SELF-DEFENSE GUN USE: AN ANALYSIS OF FEDERAL BUREAU OF INVESTIGATION AND NATIONAL CRIME VICTIMIZATION SURVEY DATA 7 (2017), <http://www.vpc.org/studies/justifiable.pdf>.

¹⁵⁴ Women in the World News Media, *Firearms 100 Times More Likely to Kill Woman Than Protect Them*, N.Y. TIMES (Sept. 19, 2016),

the majority of whom were killed by men they knew.¹⁵⁵ There were only fifteen instances involving women using firearms to kill men in self-defense.¹⁵⁶ According to Indiana lawmaker and former police officer, Linda Lawson (D-Hammond), who opposed the new gun law in Indiana: “when you add a gun to a domestic violence situation it only increases the probability that someone is going to get killed by that gun. And my opinion is that it is going to be the woman.”¹⁵⁷

Under both the Indiana and Tennessee laws, victims of intimate partner violence, stalking, or sexual assault must first seek a civil protection order before the state would allow them to concealed-carry without a permit.¹⁵⁸ In many cases, women seek a civil protection order as one of the first steps in the process of leaving an abusive partner or in sending the message to their abuser that the abuse must stop.¹⁵⁹ According to *The Goals of IPV Survivors Receiving Orders of Protection: An Application of the Empowerment Process Model*—a survey of women who had received a protective order against a present or past intimate partner—the most common reason petitioners sought protection orders was because they “wanted to move forward with [their lives].”¹⁶⁰ Of the sample, 56.1% indicated that they sought a protective order to “stop the respondent from trying to continue the relationship”

<http://nytlive.nytimes.com/womenintheworld/2016/09/21/firearms-100-times-more-likely-to-kill-women-than-protect-them-according-to-new-data/>.

¹⁵⁵ See VIOLENCE POLICY CENTER, *supra* note 153, at 3 (“In 2014, there were 1,613 females murdered by males in single victim/single offender incidents that were submitted to the FBI for its Supplementary Homicide Report. . . . For homicide in which the victim to offender relationship could be identified, 93 percent of female victims (1,338 of 1,495) were murdered by a man they knew.”).

¹⁵⁶ *Id.* at 2.

¹⁵⁷ Post-Tribune Editorial Board, *New Gun Law Puts Victims in More Jeopardy*, CHI. TRIBUNE (May 12, 2017, 6:37 PM), <http://www.chicagotribune.com/suburbs/post-tribune/opinion/ct-ptb-editorial-domestic-violence-victims-guns-st-0514-20170512-story.html>.

¹⁵⁸ IND. CODE ANN. § 35–47–2–2.1 (West 2017); TENN. CODE ANN. § 36–3–625 (West 2010).

¹⁵⁹ See Lauren Bennett Cattaneo et al., *The Goals of IPV Survivors Receiving Orders of Protection: An Application of the Empowerment Process Model*, 31 J. INTERPERSONAL VIOLENCE 2889 (stating the many reasons for why women may seek a protective order).

¹⁶⁰ *Id.* at 2898–99.

and 36.9% “wanted to stop themselves from returning to the relationship.”¹⁶¹

In some cases, abusers may get angry when women seek protection orders because the protection order represents a loss of power and control over their intimate partner.¹⁶² While protection orders may be designed to help victims stay safe, the abuser may become more dangerous at this stage because the abuser is put on notice and may fear their partner is leaving the relationship for good.¹⁶³ For example, fifty percent of African American women who were killed by their intimate partners were killed in the process of leaving the relationship.¹⁶⁴ This statistic underscores the fact that women are at an increased risk of death or serious harm when the abuser feels the relationship is over.¹⁶⁵ Based on this information, we know that: (1) gun violence and domestic violence are interconnected; (2) that women are in increased danger of death or serious injury during the period of separation; and (3) that seeking a protection order is one of the steps women take when they are trying to stop the abuse.¹⁶⁶ Because of this, laws that incentivize gun possession by expediting concealed-carry permits for victims of domestic violence or by allowing victims who have sought protection orders to concealed-carry without a permit are more harmful than helpful in solving these issues.

¹⁶¹ *Id.*

¹⁶² *See id.* at 2905 (finding that survivors of intimate partner violence may “ally with the court system to increase their power” and to regain a “sense of control over their lives”). *See also* Margaret L. Johnson, *Redefining Harm, Reimagining Remedies, & Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1113 (2009) (stating that research indicates that “the systematic operation of power and control is at the center of most abuse”).

¹⁶³ *See supra* text accompanying note 151.

¹⁶⁴ UNIV. OF MINN. INST. ON DOMESTIC VIOLENCE IN THE AFR. AM. CMTY., FACT SHEET: INTIMATE PARTNER VIOLENCE IN THE AFR. AM. CMTY., http://www.freemariisanow.org/uploads/2/4/9/8/24987034/factsheet.idvaac_aapcfv-community_insights.pdf.

¹⁶⁵ *Id.*

¹⁶⁶ *See supra* text accompanying notes 137–42; *see also* EVERYTOWN FOR GUN SAFETY, *supra* note 148, at 6.

2. Black Women and Police Violence

Black women face unique vulnerabilities when they possess a gun, especially in situations involving intimate partner abuse where the police are called. Black women and girls account for a third of all women killed by police.¹⁶⁷ The strained relationship between Black women and law enforcement, resulting from a long history of violence at the hands of police officers, makes many Black women who are abused by their significant others hesitant to call the police at all.¹⁶⁸ Instead, these women may forego police intervention and take their safety into their own hands, which seems to be the type of response that is encouraged by the Indiana and Tennessee laws. However, when Black women take their safety into their own hands, they face both racism and sexism from law enforcement.¹⁶⁹ Often times, when the police are called, Black women who are abused by their partners are at an increased risk of being re-victimized by police.¹⁷⁰

In *Invisible No More*, Andrea Ritchie tells the story of Cherae Williams—a thirty-seven-year-old Black woman who was attacked by her boyfriend.¹⁷¹ Williams called the police that night—unlike a lot of woman of color who are abused by their partners.¹⁷² The responding officers placed her under arrest and drove her to an abandoned parking lot where they pepper-sprayed and beat her until she was bloody.¹⁷³ In her testimony in front of the New York City Council, she stated, “They left me there dazed and with a warning. They told me if they saw me on the street, that they would kill me . . . I called the police to prevent a serious incident, and they brutalized me.”¹⁷⁴ Here, Williams was not armed, and she did not respond to her abuser with physical violence.¹⁷⁵

¹⁶⁷ #SayHerName, THE AFR. AM. POL'Y F., <http://www.aapf.org/sayhername/> (last visited Apr. 18, 2018).

¹⁶⁸ RITCHIE, *supra* note 5, at 189–90 (highlighting the strained relationship between police and women of color).

¹⁶⁹ *Id.* at 187–90.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 183.

¹⁷² *Id.*

¹⁷³ RITCHIE, *supra* note 5, at 184.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

She trusted law enforcement to protect her, and she was re-victimized in the process.¹⁷⁶

If Williams had been carrying a weapon, as a result of a law like that of Indiana and Tennessee, which encouraged her to arm herself against her abuser, she may have ended up dead. Charleena Lyles—a thirty-year-old pregnant Black woman—was shot by police seven times after she called 911 to report a burglary.¹⁷⁷ Like Charae Williams, Charleena Lyles was an abuse victim.¹⁷⁸ In the year and a half before her death, police had responded to twenty-three different 911 calls involving Lyles and an abusive ex-boyfriend.¹⁷⁹ The local police department was well aware of a history of domestic violence, as well as her mental health challenges before police gunned Lyles down.¹⁸⁰ According to the police officers who responded to the 911 call, Lyles approached them with kitchen knives before they opened fire.¹⁸¹ In this case, the presence of a weapon worsened the situation for Lyles. Here, you have a Black woman with a history of domestic violence and severe mental health issues who called law enforcement for help and was shot.¹⁸²

Even when Black people “do everything right,” they find themselves at risk of being a victim of police violence. In 2016, Philando Castile—a licensed gun owner—was murdered by a Minnesota police officer during a traffic stop.¹⁸³ Castile explained that

¹⁷⁶ *Id.*

¹⁷⁷ Sam Levin, *Seattle Police Shot Charleena Lyles Seven Times, Autopsy Says*, GUARDIAN (Aug. 30, 2017, 5:27 PM), <https://www.theguardian.com/us-news/2017/aug/30/charleena-lyles-seattle-police-shooting>.

¹⁷⁸ Angela Helm, *Autopsy Shows Pregnant, Mentally Ill Woman Shot 7 Times by Police*, ROOT (Sept. 2, 2017, 10:00 AM), <http://www.theroot.com/autopsy-shows-charleena-lyles-was-hit-7-times-by-police-1798726962>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Daniel Beekman & Paige Cornwell, *Charleena Lyles Loved her Children, Dancing and Fourth of July, Says Brother of Woman Killed by Seattle Police*, SEATTLE TIMES (June 19, 2017, 9:16 PM), <https://www.seattletimes.com/seattle-news/charleena-lyles-loved-her-children-dancing-and-fourth-of-july-says-brother-of-woman-slain-by-seattle-police>.

¹⁸³ Donald T. Tibbs, *Racial Profiling in the Era of Black De-Constitutionalism*, 23 WASH. & LEE J. C.R. & SOC. JUST. 181, 183 (2016).

he had a gun in his vehicle and that he also had a gun permit.¹⁸⁴ The existence of a gun coupled with preexisting notions of Black bodies as threatening proved dangerous for Castile.¹⁸⁵ Cherae Williams could have faced the same fate because of the negative, “controlling narratives” of Black people as perpetrators, and not victims of violence.¹⁸⁶

In light of the precarious relationship between marginalized groups, such as Black women, and police officers, legislation that would expedite gun permits for victims of intimate partner violence or allow them to carry guns without a license is ill-advised. Regardless of the reason she was armed, the surrounding rhetoric deviates from that of a vulnerable woman carrying a gun to protect herself when the armed woman is Black. Because of these biases, the potential injury to Black women in this scenario has multiple dimensions—dimensions that legislators must acknowledge when they start passing legislation aimed at addressing gendered violence.

C. Institutional Transphobia and Other Barriers to Trans People Who Kill in Self-Defense

Like Black women, trans people of color would be negatively impacted by these gun laws because of ideas about race and gender nonconformity that are perpetuated in the legal system. The same perceptions of victimhood that dictate how Black women would experience these new gun laws also impact trans people of color who are victimized by their intimate partners. In particular, battered trans people are portrayed as being inherently deceitful and deceptive because of their inability to conform to socially constructed gender norms.¹⁸⁷ As a result of these biases, laws that would allow victims of intimate partner violence to concealed-carry would not protect trans victims when they act in self-defense.

¹⁸⁴ *Id.* at 185.

¹⁸⁵ *See supra* Section II.A.

¹⁸⁶ RITCHIE, *supra* note 5, at 189–90 (“Racial profiling informs not only officers’ perception of who is committing violence, but also who is a victim. Black woman, indigenous woman, and other woman of color are defined as inherently existing outside the bounds of womanhood—rending the status of ‘good victim’ unattainable.”).

¹⁸⁷ *See* Goodmark, *supra* note 24, at 97.

Not only do these laws offer a false promise of protection for people who have been violated, they could also lead to the re-victimization of trans people by the criminal justice system. For example, battered trans people who try to explain killing an abusive intimate partner with something like Battered Woman Syndrome may be denied this type of defense because the prosecution—employing transphobic language and traditional gender norms—successfully portrays them as untrustworthy.¹⁸⁸ Much of the success of these types of defenses depends on whether the party accused of killing an abusive partner is believable.¹⁸⁹ Because narratives surrounding domestic violence are still incredibly gendered—portraying abuse victims as “weak women,” and their abusers as “strong men”—transgender people have a hard time getting juries, judges, prosecutors, and police officers to understand their experiences as victims of intimate partner violence.¹⁹⁰

Despite the fact that trans men and women are under attack in their intimate relationships and as victims of hate-motivated violence,¹⁹¹ laws that seek to solve these problems by encouraging victims of sexual assault, stalking, and domestic violence to concealed-carry are problematic. The legal system, which is needed to support trans people who fight back in self-defense also dismisses trans people as victims of

¹⁸⁸ JOEY L. MOGUL ET AL., *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 71–75 (2011).

¹⁸⁹ *See supra* Part II.B.

¹⁹⁰ *See* Goodmark, *supra* note 24, at 88.

¹⁹¹ Research conducted by The National Coalition of Anti-Violence Programs (“NCAVP”) found that there were fifteen reported homicides of lesbian, gay, bisexual, transgender, or queer (“LGBTQ”) people killed by their intimate partners in 2016. However, that number is likely much more because the sexual orientation and gender identity of murder victims are often not reported. Of the fifteen known cases of intimate partner violence involving LGBTQ people that resulted in death, the majority of those victims were people of color. NAT’L. COAL. OF ANTI-VIOLENCE PROGRAMS, *LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE IN 2016* 10 (2017), <http://avp.org/wp-content/uploads/2017/11/NCAVP-IPV-Report-2016.pdf>. According to a 2011 study by the NCAVP, “transgender people of color were [also] 1.85 times more likely to experience discrimination, 1.28 times more likely to experience physical violence, and 2.38 times more likely to experience police violence than other survey respondents.” Goodmark, *supra* note 24, at 61.

gender violence, and this type of law ignores the existence of anti-trans bias in the legal system.

1. Gendered Stereotypes and the Treatment of Trans People in the Criminal System

According to Leigh Goodmark in *Transgender People, Intimate Partner Abuse, and the Legal System*, a significant part of intimate partner violence is about “controlling and enforcing gender norms within relationships,” and because of their inability to conform to these gender stereotypes, transgender people are particularly vulnerable to relationship violence.¹⁹² While transgender people experience high rates of abuse within their intimate relationships, the enforcement of gender norms that contribute to violence against trans people is not limited to the home.¹⁹³ “Gender policing”—the enforcement of the gender binary—also occurs when trans-identifying people have contact with the legal system.¹⁹⁴

In cases involving transgender people who kill in response to abuse or sexual assault, cisgender people question the legitimacy of their fear instead of sympathizing with them because of pervasive anti-trans bias in the court system.¹⁹⁵ Much of this is due to a cultural refusal to accept transgender people as victims of gendered crimes.¹⁹⁶ In the same way that notions of victimhood are intertwined with race, they are also connected with notions of acceptable gender performance.¹⁹⁷ Goodmark writes, “[t]ransgender people who do report abuse often find

¹⁹² Goodmark, *supra* note 24, at 55.

¹⁹³ MOGUL ET AL., *supra* note 188, at 64 (“Law enforcement officers have fairly consistently and explicitly policed the borders of the gender binary.”).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 72 (“Close scrutiny of the nation’s courts reveals a judicial system rife with anti-LGBT bias. Within it, discriminatory laws are enforced, queers are often treated with derision, if not outright contempt, and queer criminalizing archetypes are deployed in full force.”). The cultural refusal to accept transgender people as victims of gender violence, and instead, to portray them as criminal, is the “product of persistent melding of homosexuality and gender nonconformity with concepts of *danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery, and violence.*” *Id.* at 23.

¹⁹⁷ Goodmark, *supra* note 24, at 88.

that their claims are greeted with skepticism.”¹⁹⁸ Sometimes police “categorize transgender women as ‘bad victims,’ with their gender nonconformity interpreted as failure to behave accordingly.”¹⁹⁹ These same stereotypes of transgender men and women as “bad victims” impact the experiences of transgender litigants when their attorneys argue these cases in front of judges and juries.²⁰⁰ According to Goodmark:

Some judges are skeptical of gender-based claims of violence made by transgender litigants, insisting that because a transgender woman is not “biologically female” in the traditional sense, the abuse must instead be mutual violence within a same-sex relationship. Others have suggested that a claim of abuse is not credible because, by virtue of hir²⁰¹ gender, the petitioner should be able to protect himself.²⁰²

Goodmark also notes that the police arrests of transgender people who report intimate partner violence and sexual assault are frequent.²⁰³ In *Invisible No More*, Ritchie cites a number of cases involving violence against trans women to call attention to the police response, or lack thereof. She writes:

Advocates also told us that, where domestic violence against transgender women is concerned, officers often laugh, or say, “You’re a man, too. You can handle yourself,” or “Oh, guys, forget it; this is a man.” One young Black trans woman living in Los Angeles repeatedly called police for assistance when her

¹⁹⁸ *Id.* at 75–76.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 78–79.

²⁰¹ *Id.* at 58 (“Some transgender people have adopted the ‘hir’ and ‘ze’ as generic pronouns for both genders, others choose not to use those terms because they identify solely and strongly as a particular gender—as him or her rather hir, she or he rather than ze.”).

²⁰² Goodmark, *supra* note 24, at 89.

²⁰³ *Id.* at 76.

boyfriend was abusive. Each time, despite the visible bruises on her body, officers said there was nothing they could do.²⁰⁴

This account demonstrates a stark reality for many transgender people, especially transgender women of color. These women “are treated by police as if they have the right to neither protection nor self-defense.”²⁰⁵ Because of the “politics of protection”²⁰⁶—the idea that certain marginalized groups are excluded from state and other forms of legal protection, but are punished under the same systems—transgender women would be further marginalized by laws that encourage the use of guns in self-defense.²⁰⁷ These gun laws simply should not exist because transgender people do not have the protection that they need once they act on this “right.”

Transgender men, like Ky Peterson, are stereotyped as being “butch women” who are simply “acting” as men.²⁰⁸ Because of this, law enforcement officers and other agents may trivialize their claims of gendered violence.²⁰⁹ When Peterson reported his rape, and he was taken to the hospital for the rape kit, the counselor told him that his rape kit showed signs of forcible rape, but he “did not seem like a rape victim.”²¹⁰ The policing of gender nonconforming and transgender identities is important in the context of intimate partner violence and sexual assault because of its influence on how we perceive victims. For trans victims of intimate partner and other forms of gender violence who buy into the narrative that they are safer with guns, the potential harm is tremendous.

²⁰⁴ RITCHIE, *supra* note 5, at 191. Another Black transgender woman, CeCe McDonald, was arrested and convicted of manslaughter after she defended herself against a racist, transphobic attack by a Neo-Nazi. *Id.*

²⁰⁵ *Id.*

²⁰⁶ Gross, *supra* note 115, at 25.

²⁰⁷ See generally MOGUL ET AL., *supra* note 188.

²⁰⁸ Evan Urquhart, *A Dispatch from the Shifting, Porous Border Between Butch and Trans*, SLATE (Apr. 25, 2015, 3:48 PM), http://www.slate.com/blogs/outward/2015/04/24/butch_and_trans_a_dispatch_from_the_shifting_border.html.

²⁰⁹ RITCHIE, *supra* note 5, at 191.

²¹⁰ See Brydum & Kellaway, *supra* note 75.

While laws that would arm victims of intimate partner violence and sexual assault claim to empower victims, that is not the case for trans people of color because gender policing and ideas about who is suspicious are closely related.²¹¹ For example, Ky Peterson never carried a firearm until he was violently raped on his walk home, and police officers failed to respond to his pleas for help.²¹² When Peterson was raped a *second* time, he used that same gun to kill his rapist.²¹³ Because Peterson was an armed Black trans man, he ended up in prison. It did not matter that a positive rape kit supported his rape allegations.²¹⁴ The police were suspicious of Peterson and his rape allegations, in large part, because he did not conform to traditional gender norms.²¹⁵ Racism and the perceptions of Peterson as deceitful and untrustworthy also prevented him from asserting a “Stand-Your-Ground” defense at trial. The public defender who represented Peterson claimed that Peterson had “two strikes against him”—first, he is Black and second, he looks “stereotypically gay.”²¹⁶ According to his attorney, he did not assert a formal defense under “Stand-Your-Ground” because, given these “strikes” against Peterson, he knew it was a losing argument to say he acted in self-defense.²¹⁷ Ky Peterson’s case and his attorney’s approach to defending him, underscore how difficult it is for transgender people of color to “claim the status of victim.”²¹⁸ As a result, transgender women and men would be negatively impacted by Indiana and Tennessee gun laws that incentivize victims to exercise a right to self-defense, where these vulnerable groups seem to have none.

²¹¹ See discussion *supra* Section II.C.

²¹² See discussion *supra* Section II.B.

²¹³ See discussion *supra* Section II.B.

²¹⁴ See discussion *supra* Section II.C. The police officers who questioned him were convinced the murder was the result of a botched robbery. Brydum & Kellaway, *supra* note 75.

²¹⁵ See Brydum & Kellaway, *supra* note 75.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ RITCHIE, *supra* note 5, at 200 (“What [the Ky Peterson] case highlights is how difficult it is for trans people of color to claim the status of victim.”).

2. Problematizing the Trans Panic Defense

The use of the trans panic defense²¹⁹ illustrates how transphobia, toxic masculinity, and heteronormativity impact the experiences of trans people as victims of intimate partner violence. When trans women and men are murdered, the trans panic defense is a common defense strategy used by the person who committed the murder.²²⁰ Under the trans panic defense, a man accused of killing a transgender woman with whom he had a sexual relationship could be convicted of a lesser charge for the killing by arguing that he “became upset and lost control of his actions upon discovering that he engaged in sexual relations with someone he thought was [biologically] female, but was biologically male.”²²¹ The prevalence of this defense strategy in cases involving violence against trans people is evidence of the fact that the law and the legal system do not treat transgender people as victims, but instead, transgender men and woman are treated like an “other” that we should fear.

The trans panic defense justifies and legitimizes fear that is based on transphobia²²² and toxic concepts of masculinity.²²³ Because of controlling narratives regarding gender roles, men in the United States have been socialized to associate their manhood or masculinity with heterosexuality.²²⁴ The legal system has also adopted these narratives. In legitimizing an irrational fear of transgender people, trans

²¹⁹ Aimee Wodda & Vanessa R. Panfil, *Don't Talk to Me About Deception: The Necessary Erosion of the Trans Panic Defense*, 78 ALB. L. REV. 927, 933 (2015). “To clarify, ‘[t]here is no official, freestanding gay or trans panic defense’ that exists within the legal sphere as a recognized affirmative defense.” *Id.* “However, trans panic is a defense strategy that is based on transphobia.” *Id.* at 934. “The simplest definition involves a pathological fear of people who do not conform to gender norms.” *Id.*

²²⁰ Cynthia Lee & Peter Kwan, *Trans Panic Defense: Heteronormativity, and the Murder of Transgender Women*, 66 HASTINGS L.J. 79, 105 (2014).

²²¹ *Id.* at 105–06.

²²² *See id.* at 109 (explaining that in cases where a male defendant kills a transgender woman with whom he had been intimate, the male defendant often fears that others will see him as “gay” and “less masculine”).

²²³ *Id.* at 109–10.

²²⁴ *See id.* at 109 (“Scholars in the field of masculinities theories observe that in the United States, men are socialized to believe that being a man means not being a woman and not being gay.”).

victims of violent abuse at the hands of their partners are portrayed as “predatory” or deceitful.²²⁵ This portrayal of transgender people is significant because it impacts their experiences as victims, and the justice they receive. By justifying the actions of people who commit these crimes with a trans panic defense, we strip transgender people of their right to victimhood when crimes are committed against them.

Gwen Araujo—a transgender Latina woman²²⁶—was murdered by four of her friends, two of whom she had sexual relationships with.²²⁷ The two teens Araujo had been intimate with became suspicious of Araujo’s gender when she refused to have vaginal intercourse with them.²²⁸ The young men forced Araujo into a bathroom and beat her to death when they discovered she had male genitals.²²⁹ The defense attorney argued that the young men who killed Araujo killed her in a “heat of passion” because they were so distraught over finding out that Araujo was not a “real” woman.²³⁰ It took a jury two separate trials to convict the killers of second-degree murder.²³¹ Even more significant is that neither jury found her killers guilty of a hate crime.²³² The absence of the hate crime conviction was due, at least in part, to the trans panic defense.²³³ The trans panic defense ultimately distracted from the hateful nature of the crime committed against Araujo because she was a transgender woman.²³⁴ When trans panic defenses are raised, male jurors “who themselves may be extremely uncomfortable with the thought of unwanted male sexual contact,” may feel sympathy for the person who committed the crime, instead of the trans victim.²³⁵ In essence, trans panic shifts our ideas about who is the victim in the situation.

²²⁵ Lee & Kwan, *supra* note 220, at 113–14.

²²⁶ Linda Heidenreich, *Learning from the Death of Gwen Araujo? - Transphobic Racial Subordination and Queer Latina Survival in the Twenty-First Century*, 6 CHICANA/LATINA STUDIES 50, 51 (2006).

²²⁷ Lee & Kwan, *supra* note 220, at 113–14.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.* at 106–07.

²³² Lee & Kwan, *supra* note 220, at 106–07.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.* at 108.

Given the cultural narratives surrounding transgender people, particularly as victims of violence, legislation that would allow victims of intimate partner violence to concealed-carry without a permit, gives trans people a false sense of security. This false promise of state protection is dangerous because trans people face unique difficulties when they try to protect themselves.²³⁶ The difficulties they face are the result of a problem of victimization in the legal system that becomes clear when we look at interactions between trans people and law enforcement, as well as the prevalence and success of defenses that send the message that trans people cannot be victims of intimate partner and sexual violence.²³⁷

III. CONCLUSION AND RECOMMENDATIONS: RIDDING AMERICAN INSTITUTIONS OF THE WHITE & GENDER NORMATIVE VICTIM NARRATIVE

The problems of gender violence cannot be addressed without a shift in American cultural attitudes. When legislators make laws like those in Indiana and Tennessee, they claim that these laws are designed to protect victims, but they do not mention that Black women and trans people of color are often criminalized for fighting back against their abusers. They never mention that white normative cultural portrays Black women and trans people as frightening and undeserving of the status of the victim. In an ideal world, centering domestic violence legislation around the most marginalized groups of people helps achieve the goals that legislators supposedly intended with the creation of these laws²³⁸—keeping *all* victims of intimate partner and sexual violence

²³⁶ See *supra* Section II.C.1.

²³⁷ See *supra* Section II.C.

²³⁸ See U.S. DEPT. OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, THE IMPACT OF INCARCERATION AND MANDATORY MINIMUMS ON SURVIVORS: EXPLORING THE IMPACT OF CRIMINALIZING POLICIES ON AFRICAN AMERICAN WOMEN AND GIRLS 8–9 (2017), <https://www.justice.gov/ovw/page/file/926631/download> (noting that criminal justice policies and practices should be centered around the most marginalized women). “As one participant noted, in exploring safe ways to do this work it is important to remember one of the primary tenets of Gandhi’s philosophy: to create justice, policies and practices should be focused on how they impact the last girl, the most marginalized girl.” *Id.* at 9.

safe. Approaching legislation from an intersectional perspective²³⁹—one that recognizes the ways in which identities, such as race and gender, intersect to oppress members of these groups—helps ensure legislators do not pass laws that are insensitive to the unique experiences of Black women and trans people of color. However, it is not until we change the narrative surrounding blackness and gender identity that we can actually address issues concerning intimate partner violence.

A. *Changing the Narrative*

1. Holding others Accountable

The radical changes in cultural attitudes surrounding race and gender identity that are needed to fix prejudices within our legal system require that white people (especially heterosexual, cisgender men)—some of whom are responsible for creating the very laws that impact us—acknowledge that these prejudices are deeply rooted in American institutions.²⁴⁰ It is not the job of Black women and trans people to render the controlling narratives surrounding race and gender powerless. Instead, these changes begin when white, gender-conforming people acknowledge these prejudices and recognize their own complicity in the endurance of racial and gender stereotypes. One of the ways this change is facilitated is by calling out these biases in our everyday interactions. If white Americans take responsibility for checking their friends and family when they tell a racially insensitive remark about an “angry Black woman,” or when they purposely misgender a trans person, the narrative slowly begins to change.

Lawyers are especially important in the process of rendering these controlling narratives powerless. When prosecutors and defense

²³⁹ See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STANFORD L.R. 1241, 1243–44 (1991) (arguing that “the experiences of women of color are frequently the product of intersecting patterns of racism and sexism, and how these experiences tend not to be represented within the discourses of either feminism or antiracism. Because of their intersectional identity as both women and of color within discourses that are shaped to respond to one or the other, women of color are marginalized within both.”).

²⁴⁰ See Berenguer, *supra* note 37, at 730.

attorneys rely on rhetoric that is steeped in transphobia and misogynoir²⁴¹ to advocate for the parties they represent,²⁴² they perpetuate negative stereotypes about Black women and trans persons of color. Lawyers must think twice about the language they use and the stereotypes they rely on in zealously advocating for their clients. These biases impact our understanding of victimhood and may also lead to convictions, acquittals, or lesser charges where inappropriate.²⁴³ Instead of jumping to a trans panic defense strategy when a client is accused of murdering a trans woman,²⁴⁴ or portraying a battered Black woman accused of killing an abusive husband as the “angry Black woman,”²⁴⁵ defense attorneys and prosecutors should focus on developing appropriate legal theories based on the facts, not negative cultural attitudes about blackness and gender nonconformity.

2. Representation Matters

Another way to change the cultural narratives surrounding Black women and trans people, and the power these narratives hold, is through increased exposure and representation. While judges, juries, and law enforcement do not make law, their enforcement of laws is complicated by ideas concerning race, gender normativity, and victimhood. Often, law enforcement and legislators, and even judges, are unacquainted

²⁴¹ See Eliza Anyangwe, *Misogynoir: Where Racism and Sexism Meet*, BOS. GLOBE (Oct. 5, 2015), <https://www.theguardian.com/lifeandstyle/2015/oct/05/what-is-misogynoir> (discussing that the term “misogynoir” was coined by queer black feminist Moya Bailey to refer to prejudice and discrimination aimed specifically at Black women because of both their race and gender).

²⁴² See *supra* Sections III.A., III.C.2.

²⁴³ See *e.g.*, *supra* Section III.A.

²⁴⁴ See *supra* Section III.C.2.

²⁴⁵ UATV Studio, *A Conversation with Officer Tommy Norman*, YOUTUBE (Oct. 7, 2016), 8:19–8:44, <https://www.youtube.com/watch?v=wiW8xy-v36o>. Officer Norman, a white police officer in Little Rock, Ark., has received significant media attention for his approach to policing. The majority of the residents in the town where Norman serves are Black. According to Norman, “Community policing is getting out of your police car . . . if you see my police car, I’m probably not going to be inside of it. I’m probably going to be in neighborhoods walking, sitting on front porches . . . that’s community policing.” *Id.* He also says that community policing requires two components: (1) building relationships and (2) doing the work to maintain those relationships. *Id.*

with the communities they serve.²⁴⁶ In order to change the implications of these new gun laws for Black women and trans people of color, lawmakers, judges, and other law enforcement agents must interact with and listen to Black and transgender community members.²⁴⁷ If police officers are required to engage these communities before a domestic violence incident occurs, the police officers responding to these calls involving Black women and trans people of color may approach these situations with less bias, or at least, an awareness of the existing bias. Police departments can encourage this engagement by requiring officers to live in the communities they serve or attend monthly community meetings with local activists and community members.²⁴⁸ By establishing these requirements for service, officers may become more aware and sensitive to the unique difficulties Black women and trans people of color face because of their racial and gender identities.²⁴⁹ These “residency requirements”²⁵⁰ and increased community engagement could help change the way officers perceive people in the neighborhoods they serve.

²⁴⁶ SAMUEL BIELER ET AL., ENGAGING COMMUNITIES IN REDUCING GUN VIOLENCE: A ROADMAP FOR VIOLENCE PREVENTION 18 (2016), <https://www.urban.org/sites/default/files/publication/80061/2000760-engaging-communities-in-reducing-gun-violence-a-road-map-for-safer-communities.pdf>.

²⁴⁷ See *id.* (emphasizing the importance of building relationships with the people you serve). Members of the judiciary, policymakers, and law enforcement should be tasked with getting to know diverse groups of people so that their first interaction with a trans person of color is not in a courtroom or during a domestic violence incident. *Id.*

²⁴⁸ See James DiGiovanni, *Community Policing & Residency Requirements*, AM. CONSTITUTION SOC’Y. FOR L. & POL’Y., HARVARD L. SCH’L. CHAPTER, (Apr. 23, 2015), <https://orgs.law.harvard.edu/acs/2015/04/23/community-policing-and-residency-requirements/>; see also BIELER ET AL., *supra* note 246, at 18 (2016) (recommending that “police reflect the diversity of their community”). According to this report, having a police force that reflects the diversity of the community, (1) “suggests to communities that agency’s practices are equitable,” (2) increases the agency’s ability to understand a broader range of perspectives that police may encounter in their neighborhoods,” and (3) “increases the probability that officers will encounter a wider array of perspectives through daily workplace exposure and learn to better understand these perspectives.” *Id.*

²⁴⁹ BIELER ET AL., *supra* note 246.

²⁵⁰ DiGiovanni, *supra* note 248.

More representation of Black women and openly transgender people of color in the legislature, in state and local politics,²⁵¹ and in law enforcement may also help ensure that the experiences of all victims of intimate partner violence and sexual assault are being prioritized. Because Black women are not fully represented in policy-making, their voices and experiences are easily overlooked. The same is true for trans people of color. However, it must be acknowledged that these goals are not achieved with numbers alone. In addition to increased representation of these groups in politics, we must take down the barriers Black elected officials—and likely openly transgender elected officials—face to implementing their policy suggestions.²⁵² It is not enough to merely have a seat at the table, but they must have an active role in formulating the policies that impact us. Once negative cultural attitudes start to change with regard to blackness and the gender binary—on the ground and in our institutions—more space is created for Black women and trans people of color in places where such space did not exist before. Until then, the real problems underlying gun laws like those passed in Indiana and Tennessee cannot be addressed.

The fact of the matter is that the Indiana and Tennessee gun laws send the message that, if you are a battered person, the legal system is here to protect you, but the experiences of Black women and trans persons of color who have been victimized tell a different story.²⁵³ These laws essentially encourage abuse victims to use lethal force in

²⁵¹ See Marwa Eltagouri, *Meet Andrea Jenkins, the First Openly Transgender Black Woman Elected to Public Office in the U.S.*, WASH. POST (Nov. 8, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/11/08/meet-andrea-jenkins-the-openly-transgender-black-woman-elected-to-public-office-in-the-u-s/?utm_term=.3c2c2d55d504 (“The nation’s transgender community, after a year of tremendous opposition from state legislatures and the president, is rejoicing Tuesday over the election of Andrea Jenkins, who gender advocates say has made history as the first openly transgender black woman elected to public office in the United States.”). For some people, Jenkins’s election indicates that attitudes around race and gender identity are changing.

²⁵² See Nicholas Stephanopoulos, *The False Promise of Black Political Representation*, ATLANTIC (Jun. 11, 2015), <https://www.theatlantic.com/politics/archive/2015/06/black-political-representation-power/395594/> (explaining that Black policymakers often face obstacles to seeing their policies implemented despite increases in overall representation of Black people in politics).

²⁵³ See *supra* Sections II, III.

self-defense without taking into account that members of the groups most vulnerable to intimate partner violence and sexual assault are treated differently by the criminal justice system, and such laws would further marginalize these groups instead of keeping them safe.²⁵⁴ This type of legislation is useless, and potentially very dangerous, because the laws falsely promise people that the legal system protects those who act in self-defense, regardless of their race or gender identity.²⁵⁵ However, the laws do not account for the bias that rears its ugly head when Black women and trans people start carrying guns.²⁵⁶

²⁵⁴ *See supra* Section II.

²⁵⁵ *See supra* Section II.

²⁵⁶ *See supra* Sections I, II.