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Accessing Justice: A Call for Reparations for the Survivors of Medical Abuse at the Irwin County Detention Center

AMELIA WILSON[†]

INTRODUCTION

The immigrant women of Irwin County Detention Center (ICDC) who survived gynecological abuse while held at a for-profit detention center in rural Georgia spoke out about their experiences to the media, investigators, and Congress—and faced reprisals from ICE for doing so.¹ Their communication was monitored, curtailed, or revoked;² some were placed in punitive isolation; one woman was physically assaulted while handcuffed;³ another had her health issues following the medical abuse ignored by ICDC staff,⁴ and a number of women were targeted for expedited removal from the United States.⁵

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1. See Consolidated Am. Pet. for Writ of Habeas Corpus and Class Action Complaint for Declaratory and Inj. Relief and for Damages, *Oldaker v. Giles*, No. 7:20-cv-00224-WLS-MSH (M.D. Ga. Dec. 21, 2020), https://www.nipnlg.org/PDFs/practitioners/our_lit/impact_litigation/2020_21Dec_oldaker-v-giles-complaint.pdf. [hereinafter "Oldaker Complaint"]

2. *Id.* at 79 ("On November 17, 2020, two officers began intimidating Ms. Adan Cajigal, not allowing her to use her phone or communicate with anyone. Ms. Adan Cajigal's mother spoke to Univision 34, a TV channel, about the conditions at ICDC, and connected Ms. Adan Cajigal briefly to speak about her experiences. The officers then informed Ms. Adan Cajigal that she was 'going to be deported tomorrow.'").

3. *Id.* at 1.

4. *Id.* at 48.

5. Jasmine Aguilera, *More Than 40 Women File Class Action Lawsuit Alleging Medical Misconduct by ICE Doctor at Georgia Detention Center*, TIME (Dec. 22, 2020), <https://time.com/5924021/women-lawsuit-irwin-detention-ice/>; Gianna Toboni et. al., *Woman Says Georgia ICE Facility Gave Her Unwanted Gynecological Surgery. Now She's Being Deported.*, VICE NEWS (Nov. 23, 2020), <https://www.vice.com/en/article/pkdgpk/woman-in-ice-gynecology-scandal-faces-deportation-almost-a-death-sentence>; Gianna Toboni et al., *ICE Tried to Deport Yet Another*

Both the abuse and the subsequent retaliation inflicted serious harm on the women—harm that is physical as well as psychological and may take a lifetime (if ever) to overcome.

As investigations into the abuse continue and ICE’s conduct is the subject of ongoing federal litigation, the women remain uncompensated and without permanent immigration relief in the United States. This comment lays out three immediate actions that government parties can take to bring meaningful remedy and protection to the formally detained women of ICDC who survived this horrific ordeal. Such redress is part of a constellation of acts that need to happen to address the deep moral injury that is immigration detention as a whole, our treatment of women’s health and women’s bodies, and the violence of our deportation system. Nevertheless, reparations in the form of monetary damages and putting the women on the path to permanent status is a beginning and will signal a powerful rebuke of institutional oppression.

I. OVERVIEW OF THE ABUSE AT IRWIN COUNTY DETENTION CENTER

The allegations seemed outrageous, even during a year when news about immigration could not seem to get any worse (children detained in inhumane conditions,⁶ separated families,⁷ rampant COVID outbreaks⁸). Immigrant women—predominantly of color—were alleging that they had been subject to unnecessary,

Potential Witness in the Gynecology Scandal, VICE NEWS (Nov. 10, 2020), <https://www.vice.com/en/article/wx85k5/ice-tried-to-deport-yet-another-potential-witness-in-the-gynecology-scandal>.

6. See Lizzie O’Leary, *Children Were Dirty, They Were Scared, and They Were Hungry*, THE ATLANTIC (June 25, 2019), <https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/> (“Over the past week, reports have emerged of hundreds of migrant children being held in unbelievably harsh conditions at government facilities on and near the southern U.S. border”).

7. Teo Armus, *The Parents of 545 Children Separated at the Border Still Haven’t Been Found*, WASH. POST (Oct. 21, 2020), <https://www.texastribune.org/2020/10/21/donald-trump-immigration-parents-children-separated/> (“[lawyers] have not yet been able to reach the parents of 545 separated children. About two-thirds of those parents are believed to be somewhere in Central America — without their children”).

8. See Seth Fred Wessler, *Fear, Illness and Death in ICE Detention: How a Protest Grew on the Inside*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/magazine/covid-ice.html> (“For months in ICE’s detention centers, nobody really knew how many immigrant detainees had Covid-19, because the agency was scarcely testing...”).

nonconsensual, invasive gynecological procedures at a remote detention center in rural Georgia at the hands of an ICE-contracted doctor.⁹ The abuse spanned years.¹⁰ The doctor at the center of the allegations, Dr. Mahindra Amin, had been previously investigated by the Department of Justice for engaging in similar behavior years earlier in order to file false insurance claims.¹¹ A nurse named Dawn Wooten, who used to work at the facility, described in vivid detail the unsanitary conditions, rotting food, and of particular horror, how she witnessed multiple women exiting surgical procedures not knowing what had just happened to their bodies.¹²

Detained and formally detained women shared their own harrowing accounts—and in increasing numbers—of the medical abuse and neglect that they had survived at the Irwin County Detention Center (ICDC).¹³ A team of medical professionals reviewed over 3,000 pages of Dr. Amin’s former patients at ICDC and found a pattern of unindicated and unnecessary procedures performed on scores of women—often without informed consent.¹⁴ The procedures ranged

9. Michelle Hackman & Alicia A. Caldwell, *Pattern of Unnecessary Gynecological Treatments Identified at Georgia ICE Facility*, WALL ST. J. (Oct. 27, 2020), <https://www.wsj.com/articles/pattern-of-unnecessary-gynecological-treatments-identified-at-georgia-ice-facility-11603803379>.

10. John Washington & José Olivares, *Number of Women Alleging Misconduct by ICE Gynecologist Nearly Triples*, THE INTERCEPT (Oct. 27, 2020), <https://theintercept.com/2020/10/27/ice-irwin-women-hysterectomies-senate/>.

11. Complaint, *United States v. Hospital Authority of Irwin County*, No. 7:13-cv-00097-HL (M.D. Ga. July 8, 2013); *see also Hospital Authority of Irwin County Resolves False Claims Act Investigation For \$520,000*, U.S. DEP’T OF JUST. (Apr. 29, 2015), <https://www.justice.gov/usao-mdga/pr/hospital-authority-irwin-county-resolves-false-claims-act-investigation-520000>.

12. Letter from the Gov. Accountability Project & Project South to members of the House Comm. on Homeland Sec., Senate Comm. on the Judiciary, and House Comm. on Oversight and Reform, 6-7 (Sept. 17, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/ICE-ICDC-Whistleblower-Disclosure-to-Congress-091720.pdf>.

13. *See* Adam Gabbatt, *‘He Hurt Me’: Migrants Who Accused ICE Gynecologist of Abuse Speak Out*, THE GUARDIAN (Nov. 21, 2020), <https://www.theguardian.com/us-news/2020/nov/21/congress-ice-gynecologist-abuse-allegations-petition>.

14. TED ANDERSON ET AL., EXECUTIVE SUMMARY OF FINDINGS BY THE INDEPENDENT MEDICAL REVIEW TEAM REGARDING MEDICAL ABUSE ALLEGATIONS AT THE IRWIN COUNTY DETENTION CENTER (2020), [https://www.scribd.com/document/481646674/Executive-Summary-of-Medical-Abuse-Findings-About-IrwinDetention-Center#download](https://www.scribd.com/document/481646674/Executive-Summary-of-Medical-Abuse-Findings-About-IrwinDetention-Center#download;); *see* Letter from U.S. House of Reps. Comm. on Oversight & Reform & Comm. on Homeland Sec. to Tony Pham, Senior Off. Performing the Duties of the Dir., U.S. Immigr. & Customs Enforcement (Nov. 12, 2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-11-12.Thompson%20CBM%20Rice%20JR%20Cooper%20to%20Pham-ICE%20re%20Agency%20Policy.pdf>.

from ovarian cystectomies for women complaining of menstrual cramps,¹⁵ painful and unexplained vaginal insertions without lubrication,¹⁶ removal of reproductive organs,¹⁷ women receiving birth control shots without knowing it,¹⁸ and, in one instance, a transvaginal ultrasound for a woman who did not have a uterus.¹⁹ The revelations summoned specters of our nation's indefensible history of forced sterilization of communities of color and incarcerated persons.²⁰

The ICDC story went viral, leading to Congressional inquiries,²¹ a class action lawsuit,²² a criminal investigation by multiple federal agencies,²³ and eventually, the facility's closure.²⁴ Counsel for the women was able to negotiate the release of all the plaintiffs and witnesses.²⁵ The ICDC survivors with prior orders of

15. Oldaker Complaint, *supra* note 1, at 69 (“Alarming, Respondent Amin performed dilation and curettage, a laparoscopy, and an ovarian cystectomy without Ms. Ndonga’s knowledge while Ms. Ndonga was under general anesthesia”).

16. *Id.* at 29, 39, 77.

17. *Id.* at 93 (“An ICDC staff member told Jane Doe #25 that Respondent Amin had removed her right ovary. Earlier, she had been told that there was a cyst on her left ovary”).

18. *Id.* at 50 (“Jane Doe #6 did not know what a Depo shot was, but took the injection because she thought she needed it to survive and wanted to live for her children”).

19. *Id.* at 28.

20. See Lisa Ko, *Unwanted Sterilization and Eugenics Programs in the United States*, PBS (Jan. 29, 2016) <https://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/>; Corey G. Johnson, *Female Inmates Sterilized in California Prisons Without Approval*, REVEAL NEWS (July 7, 2013), <https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

21. Caitlin Dickerson, *Inquiry Ordered into Claims Immigrants Had Unwanted Gynecology Procedures*, N.Y. TIMES (Sept. 14, 2020), <https://www.nytimes.com/2020/09/16/us/ICE-hysterectomies-whistleblower-georgia.html> (“The complaint details medical procedures ordered or undertaken by a physician who has treated patients detained at the Irwin County Detention Center, which is run by a private company, LaSalle Corrections, in Ocilla, Ga.”).

22. Oldaker Complaint, *supra* note 1.

23. Tina Vásquez, *EXCLUSIVE: FBI investigates Georgia doctor accused of sterilizing detained women*, PRISM (May 6, 2021), <https://prismreports.org/2021/05/06/exclusive-fbi-investigates-georgia-doctor-accused-of-sterilizing-detained-women/>.

24. Press Release, Dep’t of Homeland Sec., “ICE to Close Two Detention Centers” (May 20, 2021), <https://www.dhs.gov/news/2021/05/20/ice-close-two-detention-centers>; Maria Sacchetti, *ICE To Stop Detaining Immigrants at Two County Jails Under Federal Investigation*, WASH. POST (May 20, 2021), https://www.washingtonpost.com/immigration/ice-detentions-county-jails-halted/2021/05/20/9c0bdd1e-b8de-11eb-a6b1-81296da0339b_story.html.

25. See Molly O’Toole, *ICE closing Georgia Irwin detention center amid federal probe*, L.A. TIMES (May 21, 2021), <https://www.latimes.com/politics/story/2021-05-20/ice->

removal have had their deportations delayed.²⁶ Many of the women—including some who were already deported from the United States—are either cooperating with investigating agencies or wish to do so in an effort to ensure that their experiences are not replicated in the lives of other immigrant women.²⁷

II. JUSTICE DELAYED IS JUSTICE DENIED

It did not take long for other immigration-related events and imagery to permanently stain our nation, such as whip-wielding border control agents on horseback chasing Haitian migrants.²⁸ Now, a year and a half later, the women of ICDC remain uncompensated. The *Oldaker v. Giles* lawsuit that alleges multiple constitutional and civil rights violations, including that ICE sought to silence the women after they spoke out about the medical abuse, is still pending in the Middle District of Georgia.²⁹

The ICDC survivors need more than stays of removal. First, stays of removal are discretionary grants made by ICE³⁰ and must be renewed annually (or semi-annually)—for a fee.³¹ They offer no path to permanent residence and confer no means of pursuing status for family members; they often carry reporting requirements and other

irwin-detention-center-georgia-immigrant-women-alleged-abuse (reporting that all the women formally held at ICDC had been released).

26. Emily Green, *Trump's DOJ Backs Down on Deporting Women Alleging ICE Gynecological Abuse*, VICE NEWS (Nov. 24, 2020), <https://www.vice.com/en/article/dy87ka/trumps-doj-backs-down-on-deporting-women-alleging-ice-gynecological-abuse>.

27. Oldaker Complaint, *supra* note 1, at 67 (“Because of Ms. Floriano Navarro’s deportation to Mexico, she has never been unable to participate in any federal investigation. She actively wants to speak out and assist the authorities to prevent what happened to her in detention from happening to others”).

28. Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage*, N.Y. TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

29. *Oldaker v. Giles*, No. 7:20-cv-00224-WLS-MSH, (M.D. Ga.). The lawsuit was filed on behalf of 14 women who were detained at ICDC. Each was subjected to non-consensual, medically unindicated, and/or invasive gynecological procedures by Dr. Mahendra Amin, with the knowledge or participation of other Respondents (ICE, ICDC personnel). 40 other women provided sworn statements.

30. *Application for a Stay of Deportation or Removal*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/doclib/forms/i246.pdf> (last visited March 18, 2022) (“A decision in a stay of deportation or removal application is within the sole discretion of the Secretary of Homeland Security or his or her designee, including the Field Office Director. You may not appeal this decision”).

31. *Id.* (stating that the fee is \$155.00 and is non-refundable).

conditions;³² the stay applicant must forfeit their passport to ICE,³³ and a stay beneficiary cannot travel internationally. Finally, a stay of removal does not undo a person's "undocumented" status, meaning that they cannot access most federal benefits.³⁴

The ICDC survivors need permanent, lasting immigration relief, and they need financial recompense. Advocates are asking for both, though at the writing of this comment, no government or law enforcement agency has done the right thing on either front.

Laid out below are three actions that could go a long way in indemnifying the women of ICDC. The first is for law enforcement agents investigating Dr. Amin—or the members of Congress who have held hearings on the medical abuse at ICDC—to certify that Dr. Amin's survivors are in fact victims of a crime, which would, in turn, entitle them to seek a U visa. The second is to agree to monetary damages stemming from the women's civil claims filed pursuant to the Federal Torts Claims Act (FTCA). The third is to settle the *Oldaker v. Giles* litigation and award damages and protection to the plaintiffs.

Taking these actions would help create a replicable model for other current and former detainees who have had their rights and dignity violated to seek redress before the United States. Signing U visa certifications would validate the founding principles of that visa, which were to protect survivors of serious crimes and to assist law enforcement in efforts to hold perpetrators accountable. Settling the *Oldaker* litigation would serve as an important acknowledgment that the medical abuse at ICDC, and ICE's subsequent retaliation against the survivors, is a human rights atrocity.

32. Introduction to Detention and Removal Operations Policy and Procedure Manual (FIM-DDOFMN), Ch. 17.12, U.S. Immigr. & Customs Enf't; 8 C.F.R. § 241.13(h)(1).

33. Application for a Stay of Deportation or Removal, *supra* note 30 (directing applicants to provide an original passport that is valid for at least six months after its surrender).

34. MEDICAID, *Citizenship and Residency FAQs*, <https://medicaid.georgia.gov/citizenship-and-residency-faqs> (last visited Jan. 21, 2022) ("To obtain full Medicaid benefits in Georgia, you must be a Georgia resident and either a U.S. citizen or a legally residing noncitizen. Noncitizens (residing legally or illegally) can qualify for coverage for emergencies and labor and delivery services if income requirements are met").

III. THREE MEANS OF RESTORATION AND ACKNOWLEDGEMENT

Use of the term “restoration” in relation to the women of ICDC is meant to be a legal one. True and complete emotional and psychological healing will take time—possibly a lifetime—as many of whom had prior trauma and post-traumatic stress disorders that were amplified by their experience with Dr. Amin. One excruciatingly painful procedure was described by one of the women as “being raped again.”³⁵ Some suffered nightmares and insomnia, developed severe anxiety and suicidal ideation after their treatment at ICDC,³⁶ or saw their existing mental health issues worsen.³⁷ And still, others literally cannot be made whole, as parts of their bodies were removed³⁸ or they now live with permanent disabilities stemming from the medical abuse.³⁹ Some women may not be able to bear children.⁴⁰

That said, damages and immigration relief can bring justice to the ICDC women in two direct ways. First, the women can obtain health benefits that will support them in seeking follow-up, independent gynecological, and mental health care (of their choosing) to address some of the issues that were produced or exacerbated by the abuse at ICDC. Financial redress will help pay for it. Settling for significant damages will also serve as a deterrent for ICE and other agencies who interface with immigrant populations while putting the

35. Oldaker Complaint, *supra* note 1, at 28.

36. Oldaker Complaint, *supra* note 1, at 86 (“Jane Doe #24 has suffered from severe depression since her detention at ICDC. She attempted suicide after being deported to Nigeria”).

37. *Id.* at 48 (“[Jane Doe #5] has several large scars on her abdomen. Her anxiety and depression have gotten worse, and she is also suffering from insomnia. She is unable to sleep on most nights. She was never treated for her hernia.

38. Nicole Narea, *A woman in ICE detention says her fallopian tube was removed without her consent*, VOX (Sept. 17, 2020), <https://www.vox.com/2020/9/17/21440001/ice-hysterectomies-whistleblower-irwin-fallopian>; Oldaker Complaint, *supra* note 1, at 47-48 (“[A subsequent] doctor told her that Respondent Amin ‘cut or burned’ part of her uterus, but she does not know exactly what was done”).

39. Oldaker Complaint, *supra* note 1, at 48 (“Ms. Terrazas Silas has ongoing chronic pelvic pain which was exacerbated by Dr. Amin’s unnecessary and invasive procedures and treatment. Since her experiences with Dr. Amin, she has suffered from depression and is taking medications for her depression. Her medical conditions have substantially limited her ability to perform major life tasks. For example, she is unable to sleep at night because of the pain and sometimes, the pain is so severe that she is unable to get out of bed”).

40. *Id.* (“A specialist who reviewed Jane Doe #5’s medical records found that she may no be able to carry a child”).

onus on agency leaders to engage in meaningful reform of immigration policies and standards.

A. U Visa certification: protection, benefits, and a path to permanency

U nonimmigrant classification (“U visa”) provides lasting immigration relief for individuals who suffered grievous mental or physical harm resulting from certain enumerated crimes and who actively aided—or are willing to aid—law enforcement in the investigation and/or prosecution of that criminal activity.⁴¹ The visa’s purpose is to protect crime-survivors while promoting the effective administration of justice.⁴² The qualifying crimes are numerous but include felonious assault, sexual assault, witness tampering, female genital mutilation, and “other related crimes” where the elements of the crime are substantially similar to one of the enumerated crimes.⁴³ Law enforcement or another authorized official must sign Form I-918, Supplement B (often referred to as a “U visa certification”), attesting to the survivor’s availability to assist them in their investigation or prosecution.⁴⁴ The certification is a prerequisite to obtaining U visa status.

The United States Citizenship & Immigration Service (USCIS), the agency that adjudicates U visa applications, is severely backlogged with over 268,000 cases pending in 2021.⁴⁵ To address ballooning wait-times, USCIS began issuing “bona fide determinations” to applicants who appeared to meet the U visa requirements on a prima facie level.⁴⁶ Holders of a bona fide determination are granted protection from deportation and are eligible for a work permit.⁴⁷ Beneficiaries of a fully approved U visa petition

41. 8 C.F.R. § 214.14(b).

42. *Policy Manual*, U.S. CITIZENSHIP & IMMIGR. SERVS., [https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1#:~:text=Updates%20\(2\)-.A.,Women's%20Protection%20Act%20\(BIWPA\)\)](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1#:~:text=Updates%20(2)-.A.,Women's%20Protection%20Act%20(BIWPA))) (last visited March 18, 2022).

43. 8 U.S.C. § 1101(a)(15)(U)(iii).

44. 8 C.F.R. § 214.14(a)(2).

45. *Number of Form I-918, Petition for U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2021_qtr1.pdf (last visited March 18, 2022).

46. *U Nonimmigrant Status Bona Fide Determination Process FAQs*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/records/electronic-reading-room/u-nonimmigrant-status-bona-fide-determination-process-faqs> (last visited March 18, 2022).

47. *Id.*

may remain in the United States, work,⁴⁸ access public benefits, and apply for temporary status for certain family members.⁴⁹ Most importantly, they are on the path to permanent residence.⁵⁰

Since the fall of 2020, the Department of Homeland Security (DHS)'s Office of the Inspector General and the Department of Justice's Federal Bureau of Investigation (FBI) has been investigating ICDC.⁵¹ In March of 2021, advocates for the ICDC survivors asked that law enforcement recognize and formally acknowledge that the women were (1) survivors of a crime, and (2) that they had been helpful in the investigation of that criminal activity.⁵²

Any of the investigators from either agency could sign the certifications for both the women who have actively provided testimony and for those who have made themselves available to testify (but have not yet been interviewed). And yet, at the writing of this comment, no U visa certification has been signed for any of the ICDC abuse survivors.⁵³

The complete inaction by DHS and FBI investigators is indefensible. It is also counter-intuitive, as ensuring that valuable witnesses and evidence remain in the United States and are easily accessible would seemingly benefit the investigation. Witnesses and

48. See INA 214(p)(6) ("The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).").

49. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status> (last visited March 18, 2022).

50. 8 CFR § 245.24 - Adjustment of aliens in U nonimmigrant status.

51. OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE., *Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center* (2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-14-Jan22.pdf>; see also *supra* note 10.

52. NAT'L IMMIGR. PROJ. OF THE NAT'L LAWS. GUILD et. al., *Practice Advisory: Advocating for Immigrant Survivors of Medical Abuse at the Irwin County Detention Center* 20, 21 (May 4, 2021)

https://nipnl.org/PDFs/practitioners/practice_advisories/pr/2021_05May_irwin-survivors.pdf. ("In March 2021, about three dozen survivors of medical abuse at ICDC requested U Visa certifications from federal officials. As of April 2021, the survivors have not yet received U Visa certifications from federal officials based on the abuse they suffered while detained at ICDC").

53. *Id.*

evidence that is outside the United States might be lost to investigators forever.

That said, DHS and FBI investigators are not the only individuals with the authority to sign the U visa certifications. Members of Congress who have conducted inquiries into the abuse at ICDC are also empowered to do so.⁵⁴ Under the Immigration and Nationality Act (INA), a crime survivor needs to have been “helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to *other Federal, State, or local authorities investigating or prosecuting [the] criminal activity...*”⁵⁵ USCIS’ Form I-918 instructions confirm that certifying authorities assume many forms, including “other agencies with criminal investigative jurisdiction.”⁵⁶ The Department of Homeland Security’s regulation controlling U visa certification arguably grants the most expansive certifying authority, as it permits the Supplement B to be signed by any “Federal, State, or local law enforcement agency, or prosecutor, judge or *other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity.*”⁵⁷ Section 214.14(a)(2) defines a “certifying agency” to “include[] agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.”⁵⁸

54. *See, e.g.,* *Watkins v. United States*, 354 U.S. 178 (1957) (finding Congress has the power to “expose corruption” in federal departments); *see also* 2 U.S.C. §§ 194, 196, (granting Congress the authority to certify that persons who refuse to testify in congressional investigations are in criminal contempt).

55. Immigration and Nationality Act § 101(a)(15), 8 U.S.C. § 1101(a)(13)(U)(i)(III) (emphasis added).

56. *Form I-918 Supplement B, U Nonimmigrant Status Certification*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/sites/default/files/document/forms/i-918supbinstr.pdf>.

57. Immigration and Nationality Act § 101(a)(15), 8 U.S.C. § 1101(a)(13)(U); 8 C.F.R. § 214.14(c)(2)(i) (2021) (emphasis added).

58. 8 CFR § 214.14(a)(2) (“Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor”).

In September 2020, a dozen members of Congress traveled to ICDC to inspect conditions and interview detained women about the medical conditions in the facility;⁵⁹ there, the delegation interviewed several of the then-detained women regarding the unconsented procedures and the retaliation they faced after speaking out.⁶⁰ Both the House Oversight and Reform Committee and the Homeland Security Committee formally launched investigations into ICE and ICDC following the Wooten whistleblower complaint.⁶¹ In November 2020, the Committees issued a subpoena to LaSalle Corrections, the private for-profit company that runs ICDC,⁶² for documents “regarding disturbing allegations of mistreatment at the Irwin County Detention Center (ICDC).”⁶³

Members of Congress who participated in the inquiries into Dr. Amin and ICDC fall within the ambit of the “other authority” provision of those who have investigated qualifying criminal activity for a U visa. They are certifying officials per 8 U.S.C. § 214.14(a)(3) because they are either the head of the agency (i.e., Carolyn Maloney who chairs the House Committee on Oversight and Reform, or Bennie Thompson who chairs the Committee on Homeland Security), or “in a supervisory role [] specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that

59. See Ellen Eldridge, *Congressional Members Describe 'Horror Show' At Georgia ICE Detention Center*, GA PUB RADIO (Sept. 26, 2020), <https://www.gpb.org/news/2020/09/26/congressional-members-describe-horror-show-at-georgia-ice-detention-center>.

60. Alan Judd, *Ga. ICE Detainees Tell Congressional Delegation of Unwanted Gynecological Procedures*, ATLANTA JOURNAL-CONST. (Sept. 26, 2020), <https://www.ajc.com/news/georgia-news/ga-ice-detainees-tell-congressional-delegation-of-unwanted-gynecological-procedures/M5INTOHETFFB7OVE7OJXYE74MY/>.

61. Letter from U.S. House of Reps. Comm. on Oversight & Reform & Comm. on Homeland Sec. to Tony Pham, Senior Off. Performing the Duties of the Dir., U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Sept. 21, 2020), <https://homeland.house.gov/imo/media/doc/ICDC%20investigation%20letter.pdf>; see also Charles R. Davis, *The House immigration subcommittee is investigating a whistleblower complaint accusing doctors at an ICE detention center of surgically removing detainees' wombs*, BUS. INSIDER (Sept. 15, 2020), https://www.businessinsider.com/house-investigating-ice-hysterectomies-complaint-2020-9?utm_source=yahoo.com&utm_medium=referral.

62. *Our Locations*, LASALLE CORRECTIONS, <https://lasallecorrections.com/locations/> (last visited March 21, 2022).

63. HOUSE OF REPS. COMM. ON OVERSIGHT & REFORM, *Chairs Thompson and Maloney Announce Subpoena Regarding Allegations of Mistreatment at Irwin County Detention Center* (Nov. 25, 2020), <https://oversight.house.gov/news/press-releases/chairs-thompson-and-maloney-announce-subpoena-regarding-allegations-of>.

agency.”⁶⁴ The criminal activity investigated could be felonious assault, sexual assault, or witness tampering on account of ICE’s attempt to deport potential, victims and plaintiffs in criminal or civil matters. Members of Congress could also certify that the ICDC survivors had been victims of “other related crimes”⁶⁵ connected to felonious assault, sexual assault, or witness tampering.⁶⁶

The investigators looking into Dr. Amin’s potential crimes have directly benefited from the ICDC survivors’ contributions and cooperation, and yet have not (to date) extended the most basic protection to their key witnesses. Members of Congress should intervene by signing U visa certifications to put the survivors on the path to stabilization and safety.

B. Federal Torts Claims Act damages: financial stability, protection against removal, and an opportunity for reform

Survivors of Dr. Amin’s medical abuse suffered grievous psychological, physical, medical, and reproductive harm. Awarding reparations is a public sanction of injurious conduct and will have a direct positive impact on those who were injured.

The Federal Torts Claims Act permits individuals to pursue damages against the United States government for injuries caused by the negligent or intentional acts or omissions of federal employees where the employee is acting within the scope of their employment.⁶⁷ The FTCA does not authorize claims against contract employees (such as Dr. Amin), or contract facilities (such as ICDC). That said, the government is still liable for the tortious conduct of a contractor or contract facility where the federal employee fails to prevent the negligent or intentional harm caused by a contractor or facility, and the contractor or facility was under the supervision of a federal

64. 8 CFR § 214.14(a)(3)(i).

65. § 1101(a)(15)(U)(iii). Other related crimes include similar activity where the elements of the crime are substantially similar.

66. 8 CFR § 214.14(a)(9) (“Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: ... sexual assault... felonious assault; witness tampering.... The term ‘any similar activity’ refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities”).

67. See 28 U.S.C. §§ 1346(b), 2671 et seq.; 28 C.F.R. §§ 14.1-14.11 (2021).

employee.⁶⁸ Put another way that directly speaks to the situation at hand, ICE may be liable for Dr. Amin's negligent medical care because ICE knew (or should have known) of Dr. Amin's negligent care, and ICE was responsible for ensuring the health and well-being of those in its custody.

Claims must be filed within two years of the conduct that gave rise to the complaint.⁶⁹ Many of the women who survived Dr. Amin's abuse have done so.⁷⁰ These claims can take a long time to administratively resolve, but the women need relief more immediately.

Settling the claims for monetary damages is just one of the ways the women could be indemnified. The government could also settle the claims by additionally providing the women with immigration relief. The federal agency responsible for the tortious conduct (ICE, in this context) can sign U visa certifications.⁷¹ ICE could offer stays of removal for the women under prior orders of removal, rescission of their Notice to Appear, and even close or terminate proceedings before the immigration court.⁷² These procedural acts would ensure that the women of ICDC are fully able to pursue their rightful civil and administrative remedies in the United States without the fear of deportation during the pendency of these efforts.

***C. Oldaker v. Giles* settlement: admission of wrongdoing and an end to ICE's illegal repression of protected speech**

The *Oldaker* litigation joins a chorus of legally significant First Amendment cases brought throughout the United States that allege retaliatory action by ICE against individuals who exercise protected speech. ICE has long engaged in a wide range of retributive conduct

68. 28 U.S.C. § 1346(b)(1) (governing negligent torts); 28 U.S.C. § 2680(h) (governing intentional torts).

69. 28 U.S.C. § 2401(b).

70. *Oldaker* Complaint, *supra* note 1, at 150.

71. 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); *see supra* Part III(B) (discussing benefits and requirements of obtaining a U visa).

72. *See* Memorandum from U.S. Immigr. & Customs Enforcement on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

(surveilling,⁷³ infiltrating,⁷⁴ fining,⁷⁵ raiding, detaining,⁷⁶ threatening to deport,⁷⁷ and actually deporting) activists, whistleblowers, protestors, and critics. ICE's targets have ranged from nationally recognized immigrants' rights activists to workers advocating for better working conditions, to the detained women of ICDC.

Claudio Rojas had no criminal record and was complying with the terms of his order of supervision when he was arrested by ICE, detained, and deported after traveling to the Sundance Film Festival to attend the screening of a documentary that featured his abolitionist activism.⁷⁸ Jean Montrevil was a well-known, vocal critic of ICE's detention and deportation policies and prominent immigrants' rights organizer who was surveilled, covertly detained, and expeditiously deported to Haiti in 2018.⁷⁹ ICE admitted that their tactics relating to Mr. Montrevil were designed to remove a high profile leader without

73. Joel Rose, *Immigrant Activists Say ICE Is Purposely Targeting Them. They're Urging Biden To Help*, NPR (Aug. 4, 2021), <https://www.npr.org/2021/08/04/1024348198/immigrant-activists-ask-biden-administration-to-ban-ice-from-retaliating-against> ("Another [ICE officer] responded that Mora-Villalpando was a 'well-known local illegal alien,' and suggested that trying to deport her might 'take away some of her 'clout.'").

74. See First Amended Complaint at 13, *Migrant Just. v. Nielsen*, No. 5:18-cv-192 (D. Vt. Feb. 7, 2019) (alleging that ICE placed at least one informant within Migrant Justice, a nonprofit that defends farmworkers' rights in Vermont; see also *Migrant Justice*, MIGRANT JUST., <https://migrantjustice.net/about> (last visited March 24, 2022)).

75. John Burnett, *Immigr. Advocates warn ICE is retaliating for activism*, NPR (Mar. 16, 2018), <https://www.npr.org/2018/03/16/593884181/immigration-advocates-warn-ice-is-retaliating-for-activism#SeeThe%2020+%20Immigration%20Advocates%20Arrested%20Under%20Trump> ("But the American Civil Liberties Union and other groups say they have documented two dozen cases of immigrant activists and volunteers who say they have been arrested or face fines for their work").

76. Joel Burnett, *See the 20+ immigration activists arrested under Trump*, NPR (Mar. 16, 2018), <https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump>.

77. See UNIV. OF WASH. SCH. OF LAW, *Targeted But Not Silenced: A Report on Government Surveillance and Retaliation Against Immigration Organizers in the United States* 21 (2021); Nick Pinto, *Across the U.S., Trump Used ICE To Crackdown on Immigration Activists*, THE INTERCEPT (Nov. 1, 2020), <https://theintercept.com/2020/11/01/ice-immigration-activists-map/>.

78. See Amended Complaint, *Rojas v. Moore*, No. 1:19-cv-20855-JLK (S.D.F.L. Mar. 14, 2019); see also Tim Elfrink & Isaac Stanley-Becker, *He Stars In A New Film About Infiltrating An ICE Detention Center. Now ICE Has Locked Him Up Again*, WASH. POST (Mar. 4, 2019), <https://www.washingtonpost.com/nation/2019/03/04/he-stars-new-film-about-infiltrating-an-ice-detention-center-now-ice-has-locked-him-up-again/>.

79. See Petition for Writ of Habeas Corpus, *Montrevil v. Decker*, No. 1:20-cv-00264 (E.D.N.Y. 2020).

sparking public backlash.⁸⁰ Eight days later, ICE detained another activist, Ravi Ragbir,⁸¹ who is one of the nation’s most recognizable and influential immigrants’ rights activists and a leader (alongside Mr. Montrevil) of the New Sanctuary Coalition.⁸² The husband of immigrants’ rights activist and leader in the sanctuary movement, Ingrid Latorre,⁸³ was detained the same week as Mr. Ragbir and Mr. Motrevil.⁸⁴

These are just a few of the numerous documented examples of ICE’s unlawful silencing of free expression, assembly, and protest through intimidation and force. The women of ICDC’s participation in a federal investigation, they’re coming forward to the media, and their complaints against the facility were all protected speech. They are now entitled to injunctive, declaratory, and monetary relief.

Awarding compensatory and punitive damages serves the most immediate goal of bringing some security to the survivors. It would also act as a public admission that the treatment of women held at ICDC—and the subsequent reprisals they experienced after coming

80. Letter to Katherine Culliton-González, Dept. of Homeland Sec., from NYU Immigrant Rights Clinic and the Cornell Law School First Amendment Clinic, 21 (citing a September 17, 2020 discovery letter in the *Montrevil v. Decker* lawsuit, No. 1:20-cv-00264 (E.D.N.Y. 2020)) (“ICE officials have admitted that Mr. Montrevil’s abrupt, covert detention was intentionally designed to take out a ‘high profile’ leader in a way that would circumvent public backlash”), available at https://www.law.nyu.edu/sites/default/files/NYU%20Cornell%20DHS%20OCRCL%20Complaint_First%20Amendment%20Retaliation_Final%20Letter%20and%20Index%207%2019%202021%20web%20version.pdf; see also *Montrevil v. Decker*, Case 1:20-cv-00264, 8-9.

81. See Amended Complaint for Declaratory, Injunctive, and Habeas Relief, *Ragbir v. Homan*, No. 18-cv-1159 (PKC), 2018 WL 2338792 (S.D.N.Y. July 19, 2018).

82. Liz Robbins, *Activists and ICE face off over detained immigrant leader*, N.Y. TIMES (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/nyregion/immigration-activist-deportation.html> (“An escalating legal battle played out on Friday in the case of Ravi Ragbir, an immigrant rights activist whose detention on Thursday by federal immigration authorities sparked protests that led to the arrest of 18 people, including members of the New York City Council”).

83. See Julie Turkewitz and Todd Heisler, *For undocumented mom, somewhere to shelter, but nowhere to run*, N.Y. TIMES (June 5, 2017), https://www.nytimes.com/2017/06/05/us/ingrid-encalada-latorre-deportation-denver.html?_r=0.

84. Jenn Fields & Amanda Trejos, *Eliseo Jurado Fernandez, partner of peruvian woman living in sanctuary, posts bond in immigration court*, DENVER POST (Feb. 5, 2018), <https://www.denverpost.com/2018/02/05/eliseo-jurado-fernandez-posts-bond-sanctuary/> (“Jurado Fernandez, 30, was detained by ICE officers on Jan. 11 after he left his home in Westminster to run an errand. As he was pulled over, he texted the family’s emergency code to Encalada Latorre, who is currently living in sanctuary at Unitarian Universalist Church of Boulder, to let her know about the encounter”).

forward—was illegal. A settlement would hold ICE accountable while putting pressure on the agency to reform its practices vis-à-vis other detained individuals and those seeking immigrant justice for all noncitizens.

IV. CONCLUSION

The goal of many in the immigrants' rights community is the abolition of all immigration detention and an outright end to our deportation system. That fight continues. But while the cruelty of detention remains, we must demand oversight, serious structural and policy changes to how medical care is provided to those in ICE custody, and indemnification of those who have been injured by this terrible institution.

The onus is now on the agency actors, government leaders, and criminal investigators who have touched the ICDC abuse to repair the wrongs—or be complicit in the injustice.