

REIMAGINING THE VIOLENCE AGAINST WOMEN ACT FROM A TRANSFORMATIVE JUSTICE PERSPECTIVE: DECARCERATION AND FINANCIAL REPARATIONS FOR CRIMINALIZED SURVIVORS OF SEXUAL AND GENDER-BASED VIOLENCE

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While the Violence Against Women Act (VAWA) has long been venerated as a major legislative victory for those subjected to sexual and gender-based violence (S/GBV), VAWA is less often understood as the funding boon that it is for police, prosecutors, and prisons. A growing literature on the harms of carceral feminism has shown that VAWA has never ensured the safety of Black and Brown women; queer, trans, and gender-nonconforming people; sex workers; drug users; poor, working class, homeless, and housing insecure people; migrants; and others who do not fit the “everywoman” archetype; nor has it recognized their right to protect themselves from violence.

I contribute to this literature in three ways: First, drawing from the rich narrative traditions of critical race theory and critical legal studies, I tell untold and undertold stories of state violence against victims of S/GBV. Second, I weave together knowledge produced by scholars across disciplines, as well as by transformative justice organizers and practitioners, to situate my illustrations in a landscape of carceral violence. Third, I build on the written work of those scholars, organizers, and practitioners to propose transformative justice approaches to S/GBV. Specifically, I propose that we use VAWA to meet the demand that all criminalized survivors be freed by incentivizing the expanded use of state executives’ clemency powers, as well as by expanding the use of clemency at the federal level. I also argue that an anti-carceral VAWA must include financial reparations for criminalized survivors, as compensation for the harms that the state has inflicted on them through unjust prosecutions and imprisonment, as well as for the violence they have been forced to endure in prisons, jails, and the custody of police officers.

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INTRODUCTION	913
I. AN AUTOETHNOGRAPHIC ILLUSTRATION: HOW POLICE INTERVENTIONS EXACERBATE HARM	918
II. HOW CARCERAL APPROACHES TO S/GBV CAME TO DOMINATE: A BRIEF HISTORY OF CARCERAL FEMINISM	921
III. WHAT WE CAN LEARN FROM THE STORIES OF CRIMINALIZED SURVIVORS	931
A. <i>Shamika Crawford</i>	931
B. <i>The New Jersey Four</i>	933
C. <i>Tomiekia Johnson</i>	935
D. <i>Betsy Ramos</i>	937
IV. CRUEL IRONIES: HOW PRISONS MIRROR THE DYNAMICS OF DOMESTIC VIOLENCE	940
A. <i>Surveillance and Control of Everyday Life</i>	940
B. <i>Economic Exploitation and Subjugation</i>	942
C. <i>Erosion of Parent-Child Relationships</i>	944
D. <i>Reproductive Abuses</i>	946
E. <i>Sexual Violence and Degradation</i>	948
V. REIMAGINING THE VIOLENCE AGAINST WOMEN ACT FROM A TRANSFORMATIVE JUSTICE PERSPECTIVE	951
A. <i>VAWA and the Costs of a Carceral Feminist Agenda</i>	952
B. <i>A Missed Opportunity: The 2022 Reauthorization</i> ...	955
C. <i>Envisioning an Anti-Carceral VAWA: Immediate Decarceration and Financial Reparations for Criminalized Survivors of Sexual and Gender-Based Violence</i>	957
CONCLUSION	960

INTRODUCTION

As feminists, we prize individual autonomy and condemn interpersonal violence, particularly violence understood to be rooted in patriarchy.¹ We organize against sexual harassment in the workplace, protest rape on college campuses, and demand that perpetrators be

¹ See, e.g., UNITED NATIONS POPULATION FUND, MY BODY IS MY OWN: CLAIMING THE RIGHT TO AUTONOMY AND SELF-DETERMINATION 4 (2021), https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report_-_EN_web.3.21_0.pdf [<https://perma.cc/H68K-VSKH>] (“Each of us has a right to bodily autonomy and should therefore have the power to make our own choices about our bodies, and to have those choices supported by everyone around us, and by our societies at large.”).

held accountable for their actions.² We renounce victim blaming and slut shaming.³ We teach our sisters and our daughters that their bodies are their own, not to be degraded by abusive bosses⁴ nor regulated by Republican legislators.⁵ We reject school dress codes⁶ and disrespectful dates,⁷ and denounce anti-abortion policies.⁸ We teach each other that domestic violence and sexual assault can happen to anyone

² See, e.g., Dani Anguiano, *#AppleToo: Employees Organize and Allege Harassment and Discrimination*, GUARDIAN (Sept. 3, 2021, 8:56 AM), <https://www.theguardian.com/technology/2021/sep/03/appletoo-apple-employees-organize-allege-harassment-discrimination> [https://perma.cc/B9H2-SS4X]; Rebecca Nathanson, *How ‘Carry That Weight’ Is Changing the Conversation on Campus Sexual Assault*, ROLLING STONE (Dec. 1, 2014), <https://www.rollingstone.com/politics/politics-news/how-carry-that-weight-is-changing-the-conversation-on-campus-sexual-assault-77543> [https://perma.cc/7HMY-JGX6] (describing an undergraduate student’s protest against Columbia University’s handling of sexual assault on campus, and the protest’s contribution to a nationwide movement to reform campus sexual assault policies).

³ See, e.g., Michael Gold & Jonah E. Bromwich, *Charlotte Bennett, a Cuomo Accuser, Says Governor Is ‘Victim Blaming.’*, N.Y. TIMES (Aug. 3, 2021), <https://www.nytimes.com/2021/08/03/nyregion/charlotte-bennett-cuomo.html> [https://perma.cc/77AL-5W3B]; Jessica Valenti, *Opinion, SlutWalks and the Future of Feminism*, WASH. POST (June 3, 2011), https://www.washingtonpost.com/opinions/slutwalks-and-the-future-of-feminism/2011/06/01/AGjB9LIH_story.html [https://perma.cc/SBL4-L8MG] (describing demonstrations to combat the idea that a woman is “asking for it”—with the “it” being rape—when she dresses or behaves in a particular way).

⁴ See, e.g., Anemona Hartocollis, *A Lawsuit Accuses Harvard of Ignoring Sexual Harassment by a Professor*, N.Y. TIMES (Feb. 9, 2022), <https://www.nytimes.com/2022/02/08/us/harvard-sexual-harassment-lawsuit.html> [https://perma.cc/4TK4-HYGZ] (describing a lawsuit filed against Harvard University by three women graduate students who accuse the university of ignoring allegations that Dr. Comaroff, a well-known anthropologist, had engaged in a years-long pattern of sexual harassment and had threatened students with retaliation if they reported his actions).

⁵ See Shefali Luthra, *Kansas Voters Reject Effort to Eliminate State Abortion Protections*, THE 19TH (Aug. 2, 2022, 9:53 PM), <https://19thnews.org/2022/08/kansas-abortion-vote-constitutional-protections> [https://perma.cc/G8AE-R3Y4] (reporting on a referendum in which Kansas voters rejected a state constitutional amendment that would have put abortion rights on the chopping block).

⁶ E.g., Li Zhou, *The Sexism of School Dress Codes*, ATLANTIC (Oct. 20, 2015), <https://www.theatlantic.com/education/archive/2015/10/school-dress-codes-are-problematic/410962> [https://perma.cc/HW47-MC6F] (describing protests at schools around the country in response to dress codes that discriminate against women, transgender, and gender-nonconforming students).

⁷ See Nancy Jo Sales, *Apps Promised to Revolutionize Dating. But for Women They’re Mostly Terrible*, GUARDIAN (May 17, 2021, 6:15 AM), <https://www.theguardian.com/commentisfree/2021/may/17/apps-tinder-dating-women> [https://perma.cc/YC77-5JWD] (describing the author’s decision to reject dating apps after several negative experiences, and arguing that all women should delete these apps because they make women less happy and put them at greater risk for sexual violence).

⁸ See, e.g., Ellie Silverman, Lizzie Johnson, Perry Stein & Peter Jamison, *Protests Erupt in D.C., Around the Country as Roe v. Wade Falls*, WASH. POST (June 24, 2022, 10:10 PM), <https://www.washingtonpost.com/dc-md-va/2022/06/24/supreme-court-abortion-protests-roe> [https://perma.cc/LC57-GP79].

and that the victim is never to blame.⁹ At the same time, liberal feminists—and particularly fellow white feminists—often turn the other way when it comes to violence inflicted on those in state custody.

The carceral state functions much like an abusive marriage, recreating the very harms that liberal feminists denounce in other contexts. Police, prosecutors, and prisons strip individuals of their autonomy; inflict physical, emotional, and sexual violence upon them; and punish them for speaking out and fighting back. People in prison are exploited for their labor, as well as for profit and political advantage, and permanently cast as sub-citizens. These abuses are suffered disproportionately by Black and Brown women; queer, trans, and gender-nonconforming (GNC) people of color; sex workers; drug users; poor, working class, disabled, homeless, and housing insecure people; migrants; and others who do not fit the perfect victim archetype that white feminism dictates.¹⁰

Black and Brown women, as well as queer and GNC people, have long reckoned with the connection between state violence and interpersonal violence.¹¹ They are the visionaries of transformative justice and abolition feminism, both of which seek to “reclaim[] ‘accountability’ from the carceral regime”¹² and transform the conditions that make people vulnerable to violence in the first place.¹³ They have long struggled against what Beth E. Richie has described as “the buildup of a prison nation,”¹⁴ what Mimi E. Kim has called the “carceral creep,”¹⁵ and what Aya Gruber has dubbed “the feminist war on

⁹ See, e.g., Deborah Tuerkheimer, *How U.S. Sexual-Harassment Law Encourages a Culture of Victim Blaming*, TIME (Oct. 5, 2021, 7:00 AM), <https://time.com/6103760/sexual-harassment-law-victim-blaming> [<https://perma.cc/S4TF-EAX9>].

¹⁰ See, e.g., ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, ABOLITION. FEMINISM. NOW. 103–04 (2022) [hereinafter ABOLITION. FEMINISM. NOW.] (explaining that, within the dominant, gender essentialist anti-violence framework, “the legitimate victim of gender and sexual violence could not be a sex worker, a queer person, a woman of color, and certainly could not be an incarcerated person”).

¹¹ See, e.g., *id.* at 19 (using the organizing campaign to free CeCe McDonald, a Black trans woman who was jailed in a men’s prison after defending herself against racist and anti-trans street violence, to elucidate the “ideological connections between state violence, street violence, and interpersonal violence”); Naomi Murakawa, *Foreword to WE DO THIS ‘TIL WE FREE US xvii, xviii* (Tamara K. Nopper ed. 2021) (“Rather than neutralizing or countering interpersonal violence, state violence enables and reinforces the same oppression of racialized gender terror.”).

¹² ABOLITION. FEMINISM. NOW., *supra* note 10, at 14.

¹³ See *id.* at 65 (“It is simply not possible to tear down prisons and leave everything else intact, including the structural racism that links the prison to the larger society or the heteropatriarchy and transphobia that fuels gender and sexual violence.”).

¹⁴ BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* 101–02 (2012).

¹⁵ Mimi E. Kim, *The Carceral Creep: Gender-Based Violence, Race, and the Expansion of the Punitive State, 1973–1983*, 67 SOC. PROBLEMS 251, 254 (2020) (“I use the term

crime”¹⁶—phenomena in which white feminists played, and continue to play, a central role.¹⁷

In this Note, I urge fellow feminists and anti-violence advocates, and particularly fellow white women, to follow the lead of abolition feminists and embrace a transformative justice approach to anti-violence work.¹⁸ I do so in three ways. *First*, through my own¹⁹ and others’ stories, I illustrate how the criminal legal system not only fails to keep people safe from sexual and gender-based violence (S/GBV) but also actively exposes them to and inflicts upon them such violence. In so doing, I draw from the rich narrative traditions of critical race theory and critical legal studies, which have long recognized storytelling as a “powerful means for destroying mindset”—where “mindset” refers to the “presuppositions, received wisdoms, and shared understandings” by which “members of the dominant group justify the world as it is” to keep white supremacy and other social hierarchies intact.²⁰ *Second*, I weave together knowledge produced by

carceral creep to suggest the incremental and often imperceptible advance of carceral forces that led to the eventual domination of crime control within a feminist social movement field that was once almost devoid of its presence.”).

¹⁶ AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION* (2020).

¹⁷ See generally RICHIE, *supra* note 14, at 76–78 (tracing the criminalization of sexual assault to mainstream white feminists in the anti-violence movement); GRUBER, *supra* note 16, at 28–32 (describing the role of nineteenth- and early twentieth-century British and U.S. feminists in promulgating the narrative that prostitution constituted a form of slavery worse than that inflicted upon enslaved Black persons, as well as in the detention of the very women and girls that “anti-white slavery campaigns” and laws purported to help).

¹⁸ “Transformative Justice seeks to provide people who experience violence with immediate safety, long-term healing and reparations; to demand that people who have done harm take accountability . . . while holding the possibility for their transformation and humanity; and to mobilize communities to shift . . . oppressive social and systemic conditions that create . . . violence.” GENERATION FIVE, *ENDING CHILD SEXUAL ABUSE: A TRANSFORMATIVE JUSTICE HANDBOOK* 45 (2017) (on file with journal). When I refer to transformative justice, this is the definition I have in mind.

¹⁹ Cf. Maybell Romero, “Ruined”, 111 *GEO L.J.* 237 (2022). Professor Romero describes her own childhood experiences of rape and sexual assault, while shining a critical light on the dehumanizing language judges often use to describe rape and sexual assault victims during their assailants’ prosecutions. *Id.* at 240, 242–44. In so doing, she makes a case for the value of autoethnographic methods in legal scholarship. *Id.* at 255–56 (explaining that an autoethnographic methodology aims “to connect personal experience to larger social and cultural contexts”). She pointedly tells us that while her own approach is not neutral or objective, neither are the approaches of most other legal scholars who “root their own scholarship in models, vocabularies, or methods that only appear to be objective.” *Id.* To the extent that judges’ characterizations of sexual assault victims as “ruined,” “broken,” and “destroyed” tell one story, Professor Romero offers a compelling “counterstory.” *Id.* at 253, 279 (quoting Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 *VAND. L. REV.* 665, 670–71 (1993)).

²⁰ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *MICH. L. REV.* 2411, 2413–14 (1989); see *id.* at 2415 (explaining that legal stories “are

scholars across disciplines, as well as by transformative justice organizers and practitioners, to situate my illustrations in a historical landscape of carceral violence and resistance. *Third*, I build on the written work of those scholars, organizers, and practitioners to propose transformative justice approaches to S/GBV. Specifically, I propose that we use the Violence Against Women Act (VAWA) to decarcerate criminalized survivors of S/GBV and to pay them financial reparations²¹ for the violence the state has inflicted upon them. This Note is, in part, a response to Leigh Goodmark's proposal for an anti-carceral VAWA,²² as well as to the advocacy of groups like Survived and Punished, which have made urgent and persistent demands that all criminalized survivors be freed.²³ I expand on this

insinuate, not frontal; they offer a respite from the linear, coercive discourse that characterizes much legal writing"); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 325 (1987) (arguing that "imagining oneself black and poor in some hypothetical world is less effective than studying the actual experience of black poverty" and that when we examine legal and moral issues "not from an abstract position but from the position of groups who have suffered throughout history, moral relativism recedes and identifiable normative priorities emerge").

²¹ I have chosen the term "reparations" with several considerations in mind. First, it seemed more fitting for my purposes than "restitution" or "compensation," which have subtly different emphases: Restitution is focused on divesting a party of an unjustly acquired benefit and compensation endeavors to reimburse an injured party for concrete costs associated with the injury. Reparations instead invokes the repair of harm done as its guiding principle. Second, use of the term "reparations" is in keeping with the definition and framework that I have in mind for transformative justice, which emphasize the need to provide S/GBV survivors with "immediate safety, long-term healing and reparations." See *supra* note 18. That said, I recognize the wide-reaching meaning of the term and particularly its use by those who have justly demanded reparations for Black people facing the intergenerational harms of chattel slavery, Jim Crow, and other forms of systematic anti-Black violence. See Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [<https://perma.cc/CL5N-AP76>]. Indeed, the criminalization of Black women who defend themselves against S/GBV is closely connected to the legacy of chattel slavery and Jim Crow. See, e.g., Mariame Kaba, *Black Women Punished for Self-Defense Must Be Freed from Their Cages*, GUARDIAN (Jan. 3, 2019, 6:00 AM), <https://www.theguardian.com/commentisfree/2019/jan/03/cyntoia-brown-marissa-alexander-black-women-self-defense-prison> [<https://perma.cc/6RD3-2UPX>]. Kaba ties the story of Celia—an enslaved Black woman who was tried and hanged in 1855 for killing Robert Newman, a white man who enslaved and routinely raped her—to that of Marissa Alexander, a Black woman who was prosecuted and sentenced to twenty years in prison for firing a single warning shot to ward off her estranged and abusive husband in 2010. *Id.* In Celia's case, a judge ruled that she could not avail herself of a self-defense law that applied to women defending themselves against rape, because it was directed at women, which implied a personhood not compatible with the view of Celia as property. In Marissa's, a judge forbade her from invoking the "Stand Your Ground" defense because she did not "appear afraid." *Id.*

²² Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 VIOLENCE AGAINST WOMEN 84 (2020).

²³ *About S&P*, SURVIVED & PUNISHED, <https://survivedandpunished.org/about> [<https://perma.cc/R3Q9-XX3V>]; #SurvivedAndPunished (@survivepunish), TWITTER (Mar. 3,

work by introducing several untold and undertold stories of criminalized S/GBV survivors into the scholarly landscape, which illustrate the imperative for both decarceration and reparations. I also offer VAWA as a practically and symbolically appropriate platform for decarceration and reparations.

The Note proceeds in five Parts. Part I provides an autoethnographic account of my own experience with childhood poverty and sexual abuse and explains how police intervention, in tandem with an inadequate social safety net, only made me and my family more vulnerable. Part II summarizes the literature on how carceral approaches to S/GBV came to dominate, driven largely by white women in the battered women's and anti-rape movements over the objections of Black feminists and other feminists of color who recognized policing and prisons as violent institutions of white supremacy. Part III details the stories of several criminalized survivors of S/GBV who have been prosecuted and punished for the conduct of their abusers or for fighting back against their abusers and assailants. These stories have received little or no attention in legal scholarship on S/GBV and little or no sympathetic coverage in mainstream media. Part IV draws an extended analogy to illustrate how prisons mirror the dynamics of an abusive relationship by subjecting individuals to rampant emotional, physical, and sexual violence. Part V proposes that we reimagine VAWA as a platform for transformative justice approaches to S/GBV, and specifically as a mechanism to decarcerate criminalized survivors and pay them financial reparations.

I

AN AUTOETHNOGRAPHIC ILLUSTRATION: HOW POLICE INTERVENTIONS EXACERBATE HARM

Like many people who produce commentary and scholarship on sexual and gender-based violence, my work is informed by personal experience. And like some whose bravery I admire, I have chosen to share some of this experience to offer context for readers on what this work means to me and how I approach it.²⁴ It is my hope that my experience will also contribute to readers' understanding of how the carceral state, in hand with a regressive housing and social welfare

2022, 3:17 PM), <https://twitter.com/survivepunish/status/1499479040381501464> [<https://perma.cc/BK6L-BKH6>] (“By design, jails, prisons, and detention centers are fundamentally anti-survivor: they ARE domestic violence. We demand #FreeThemAll and organize alongside criminalized survivors, including immigrant & refugee survivors.”).

²⁴ See *supra* text accompanying note 19 (describing one such example by Professor Romero).

regime, fosters S/GBV among already vulnerable populations.²⁵ I hope that it will lead readers to question their assumptions about the efficacy of policing and prisons as an antidote to violence, or even as an evil necessary to prevent and respond to it.

For me, it is difficult to speak authentically about my experience of childhood sexual abuse without contextualizing it in my family's poverty, which was intensified by my father's arrest and decade-long incarceration. I was just ten or eleven years old when, within a year of my father's imprisonment, my mother, my siblings, and I were evicted from our home. Several days after collecting what we could of our belongings, which had been strewn on the street, we were placed in a shelter for homeless families. Fortunately, we learned we were eligible for housing vouchers that were sufficient to cover rent for some of the more dilapidated market-rate apartments. Unfortunately, we learned that landlords were almost universally unwilling to accept those vouchers. My mother dutifully circled ads in the *Pennysaver* every day, making call after call in her most saccharine telephone voice. But no quantum of courtesy could get her past the inevitable question about the source of her income. Whether through a half-hearted apology or an abrupt dial tone, the message was clear: We were to take our vouchers elsewhere.²⁶

The case workers at the shelter required my mother to keep a log of her housing search, and to report on it during regular case meetings. Sometimes they expressed sympathy. Other times they scolded my mother for not trying hard enough—an accusation that brought her to tears. This went on for the better part of a year until, eventually, we caught a break. We secured a rental home with three bedrooms and a backyard. There was enough space for my brother to have his own room and my two sisters and me to share. We no longer had to ride a designated bus for homeless children in the county, which took two hours to get us to school each morning because it had so many far-flung stops to make. Our new classmates would not have

²⁵ See Romero, *supra* note 19, at 255–56 (discussing the value of autoethnographic methods in legal scholarship).

²⁶ This practice, known as source-of-income discrimination, is unlawful in many jurisdictions but nonetheless widespread. See Antonia K. Fasanelli & Philip Tegeler, *Your Money's No Good Here: Combatting Source of Income Discrimination in Housing*, 44 HUMAN RIGHTS MAG., Nov. 30, 2019, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin [<https://perma.cc/AGS9-YJ8S>] (noting state and local protections against source-of-income discrimination, and attempts to enact federal protections); *What Is SID?*, NEIGHBORS TOGETHER, <https://www.stopsidnyc.com/about-us> [<https://perma.cc/K5FL-VPKW>] (noting that source-of-income discrimination violates New York City's Human Rights Law).

to know we had been homeless and we would have the fresh start we had yearned for—albeit, still without our father, who remained behind bars. My mother, who had suffered so much and still managed to take care of us, was afforded a measure of peace.

Our new landlord was a gregarious man around the same age as my parents, who lived part-time in the studio attached to our apartment. He worked construction and would bring his crew around at the end of the day. Members of his work crew—young men in their twenties and thirties—felt at liberty to grope me in the backyard or try to kiss me. I was twelve, but this behavior was familiar. My friends and I in the shelter had learned that pubescent and teenaged girls' bodies are regarded by some as public property—if not to fondle, then at least to ogle. I understand this now not as a sexually deviant proclivity unique to impoverished men, but as a consequence of living in such close quarters with strangers. Crowded, communal spaces with high turnover, and where women and girls enjoy little to no socioeconomic autonomy, are rife with opportunity for sexual harassment and abuse. This is true of homeless shelters.²⁷ And while the dimensions are different, it is also true, for example, of prisons,²⁸ detention centers,²⁹ and underregulated workplaces.³⁰

It did not trouble me much at the time when grown men would make unwanted advances, so long as I could push them away with

²⁷ Indeed, women in homeless shelters face sexual abuse from fellow residents and staff alike. See, e.g., Amy Julia Harris, *'Nobody Tells Daddy No': A Housing Boss's Many Abuse Cases*, N.Y. TIMES (Aug. 27, 2021), <https://www.nytimes.com/2021/02/07/nyregion/victor-rivera-bronx-homeless.html> [<https://perma.cc/Y44U-9G55>] (describing a string of sexual abuse complaints against Victor Rivera, who operated one of the largest networks of homeless shelters in New York City; one woman who formerly resided at one of Rivera's shelters reported that he invited her to live in a spare apartment at his home in the Bronx, only to threaten her with eviction if she did not give him oral sex); EVE GARROW & JULIA DEVANTHÉRY, ACLU OF SOUTHERN CALIFORNIA, "THIS PLACE IS SLOWLY KILLING ME.": ABUSE AND NEGLECT IN ORANGE COUNTY EMERGENCY SHELTERS 31–36 (2019), https://www.aclusocal.org/sites/default/files/aclu_social_oc_shelters_report.pdf [<https://perma.cc/6ATG-RGGQ>] (describing the rampant sexual abuse experienced by women in Orange County homeless shelters at the hands of shelter staff).

²⁸ COLETTE MARCELLIN & EVELYN F. MCCOY, URBAN INSTITUTE, PREVENTING AND ADDRESSING SEXUAL VIOLENCE IN CORRECTIONAL FACILITIES: RESEARCH ON THE PRISON RAPE ELIMINATION ACT (2021), <https://www.urban.org/research/publication/preventing-and-addressing-sexual-violence-correctional-facilities> [<https://perma.cc/K85W-QQXR>]; see also *infra* Part IV.

²⁹ Monica Ramsy, *Beyond the U Visa and Carceral Feminist "Crimmigration": Transforming the VAWA Self-Petition to Remedy Sexual Violence in Immigration Detention*, 45 N.Y.U. REV. L. & SOC. CHANGE 37, 48–52 (2021) (describing the high incidence of sexual violence in immigration detention).

³⁰ E.g., Ariel Ramchandani, *There's a Sexual-Harassment Epidemic on America's Farms*, ATLANTIC (Jan. 29, 2018), <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109> [<https://perma.cc/WAG4-8HZJ>].

relative safety. What did trouble me was when the unwanted advances came from someone I could not as easily push away, because I felt that my family's well-being depended on my acquiescence. I was not yet thirteen when our landlord began to touch me inappropriately, first under the cover of playful tickling. He never raped me, and I recall feeling more disgusted than fearful. My stomach turned each time he winked at me. I knew that he would try to find me in a corner, or sneak into our apartment after my mother had gone to bed and lay his body on top of mine.

This abuse continued over the course of several months before a friend told my mother, who soon called the police. I was visited by plainclothes officers from a special unit, who sat in our living room and asked me questions I found humiliating to answer, before telling me there was little that they could do. It wouldn't be worth it to testify against him in court, they said. Never mind that I hadn't wanted to anyway. I just wanted this all to go away.

As it turned out, following his own humiliating visit from the police, our landlord just wanted *us* to go away. Shortly thereafter, my siblings and I came home from school to find an eviction notice on the front door, despite our family owing no rent. I did not think to wonder back then where those "special victims unit" investigators were, or why they had not come to clean up the mess they helped make. Instead, as we faced homelessness yet again, I could not help but think that if I had just kept my mouth shut, my family would still have a place to live.

All these years later, I still have nagging questions: Was enduring sexual abuse or facing homelessness the better of my two options? Why were my "options" so bleak, as a thirteen-year-old girl? I do not expect that this Note will produce satisfying answers. But I do hope that my experience, in tandem with the stories to follow in Part III, will contribute to readers' understanding of how the carceral state, in hand with a regressive housing and social welfare regime and other neoliberal forces, fosters S/GBV among already vulnerable populations.

II

HOW CARCERAL APPROACHES TO S/GBV CAME TO DOMINATE: A BRIEF HISTORY OF CARCERAL FEMINISM

While today the criminal legal system is understood as the default solution to sexual and gender-based violence, this result was not inevitable. Feminists in the 1960s, '70s, and '80s generated an array of tools

for responding to S/GBV, including safe houses, rape crisis centers, and economic support for survivors.³¹ However, by the 1990s, the carceral approach came to dominate, culminating in the passage of the Violence Against Women Act³² as part of the notoriously racist 1994 Crime Bill.³³ The legislation was driven by a neoliberal political agenda, as well as by many white feminists' refusal to grapple with the anti-Black history of the criminal legal system and with resource disparities that leave some more exposed to violence and its fallout.³⁴ Contemporary anti-carceral feminists wrestle with this troubled history while looking to earlier models of mutual aid and care for inspiration as they build transformative responses to S/GBV.³⁵ In this Part, I summarize the history leading up to VAWA and the dynamics that continue to drive carceral policies today.

Sociologist Elizabeth Bernstein is credited with coining the term “carceral feminism” to describe the neoliberal law-and-order agenda pursued by a coalition of secular anti-prostitution feminists and white evangelicals.³⁶ Members of this coalition deny the existence of consensual sex work, compare sex work to Black chattel slavery and other forms of human trafficking, and fashion themselves as “modern-day abolitionists.”³⁷ They seize on the United States' fixation with white woman victimhood, post-bellum resentment, and anti-immigrant sen-

³¹ See RICHIE, *supra* note 14, at 68–71.

³² Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in 42 U.S.C. §§ 12291–12311).

³³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended at 34 U.S.C. §§ 12101–12643); see RICHIE, *supra* note 14, at 85–86 (discussing VAWA's focus on “criminal justice responses to violence against women,” and noting that the larger crime bill included “draconian provisions that had a very serious impact on disenfranchised people”); Noam Biale, Elizabeth Hinton & Elizabeth Ross, *The Discriminatory Purpose of the 1994 Crime Bill*, 16 HARV. L. & POL'Y REV. 115 (2021) (discussing archival evidence that lawmakers acted with a racially discriminatory purpose in enacting the 1994 Crime Bill and arguing that advocates should make use of such evidence to bring equal protection challenges to the legislation's facially neutral sentencing provisions).

³⁴ See RICHIE, *supra* note 14, at 71–72, 75–76 (describing a split in the anti-violence movement between liberal white feminists who “became apologists for the system” and women of color and grassroots activists who continued to advocate for structural change, and noting that the liberal ideology prevailed in the 1990s).

³⁵ See generally BEYOND SURVIVAL: STRATEGIES AND STORIES FROM THE TRANSFORMATIVE JUSTICE MOVEMENT (Ejeris Dixon & Leah Lakshmi Piepzna-Samarasinha eds., 2020) [hereinafter BEYOND SURVIVAL]; ABOLITION. FEMINISM. NOW., *supra* note 10; DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM (2021).

³⁶ Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism”*, 18 DIFFERENCES: J. FEMINIST CULTURAL STUD. 128, 137, 143 (2007).

³⁷ *Id.* at 128–29. Elsewhere in this Note, unless otherwise specified, when I refer to “abolition,” I intend to refer to the abolition of police and prisons; when I refer to “abolitionists,” I intend to refer to those calling for police and prison abolition.

timent, much like the orchestrators of the “White Slavery” scare of the early twentieth century and the Chinese exclusion policies of the late nineteenth century.³⁸ As Bernstein points out, the carceral orientation of those in the anti-prostitution camp stands in stark contrast to the work of feminists, predominantly women of color, in the movement for police and prison abolition.³⁹ Ironically, this carceral orientation has led liberal feminists to push policies that harm the people they purport to protect,⁴⁰ and to ally with a contingent that wants to roll back the clock on feminist advances in other areas.⁴¹

Similar coalitions emerged to cement criminalization and punishment as the default institutional response to domestic violence and sexual assault. Scholars like Richie and Gruber have chronicled the feminist anti-violence movement in the United States and its role in instituting mass incarceration. In her book *The Feminist War on Crime*, Gruber describes a battered women’s movement that began as radical and antiauthoritarian and, over the course of the 1970s and ’80s, transformed into a powerful lobbying bloc for criminalization, prosecution, and imprisonment.⁴²

Similarly, in *Arrested Justice*, Professor Richie recounts a feminist anti-violence movement born of grassroots activism in the 1960s.⁴³

³⁸ See *id.* at 132–33 (“Such narratives conjured scenarios of seemingly irrefutable moral horror: the widespread abduction of innocent women and girls who, en route to earn respectable livelihoods in metropolitan centers, were seduced, deceived, or forced into prostitution, typically by foreign-born men.”); GRUBER, *supra* note 16, at 28 (“By calling [prostitution] worse than ‘negro servitude’ because of its sexual nature, activists collapsed the sexual violence exacted on enslaved black [people] into less-invasive ‘labour harm’ and simultaneously presented white prostitutes’ often nonphysical . . . constraints as more dire than the physical torture inflicted on enslaved black people.”); *id.* at 28–29 (summarizing racist, anti-immigrant, and anti-prostitution statements of journalists and lawmakers who decried that “every [Chinese] female is a prostitute of the basest order” who “exist[s] here in a state of servitude, beside which African slavery was a beneficent captivity”).

³⁹ Bernstein, *supra* note 36, at 143. For another critique of this irony from a sex workers’ rights perspective, see MOLLY SMITH & JUNO MAC, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 115, 119 (2018).

⁴⁰ In another perversion of the anti-trafficking agenda, laws designed to criminalize traffickers are often instead invoked to criminalize sex workers, especially those who are Black or trans. Andrea J. Ritchie, #SayHerName: *Racial Profiling and Police Violence Against Black Women*, 41 *HARBINGER* 11, 18 (2016) (describing Louisiana’s discriminatory pattern of prosecuting poor Black women (trans and cis) under its “solicitation of crimes against nature” statute, which required them to register as “sex offender[s],” while prosecuting others arrested for the same conduct under the more lenient general prostitution statute, which has no registration requirement).

⁴¹ See Bernstein, *supra* note 36, at 134 (describing an “antitrafficking” panel organized by Concerned Women for America that “focused exclusively upon the perils posed to women by abortion and premarital sex, with prostitution only mentioned once—and briefly—during the two-hour session”).

⁴² GRUBER, *supra* note 16, at 45.

⁴³ RICHIE, *supra* note 14, at 67.

Emboldened by the examples of the Black civil rights and Black Power movements, women began to make public their private experiences of violence and declare that they had had enough.⁴⁴ This consciousness-raising was accompanied by mutual aid, with women across the country offering each other safe housing, along with economic and emotional support.⁴⁵ From these efforts grew battered women's shelters and rape crisis centers, which emerged in the 1970s as volunteer-run sanctuaries for women seeking reprieve from S/GBV.⁴⁶

At first, these typically non-hierarchical collectives operated independently from the state, often out of single-family homes and run by women who had themselves experienced violence.⁴⁷ As the movement evolved in the 1980s, anti-violence activists adopted a more rights-based orientation.⁴⁸ They critiqued state bureaucracies and community leaders for their complicity in S/GBV⁴⁹ and demanded institutional resources and interventions.⁵⁰ All the while, the movement wrestled with tensions between a more gender-essentialist framework, on the one hand,⁵¹ and a framework that understood racism and class stratification as co-determinants of women's oppression, on the other.⁵²

To help readers make sense of these internal tensions, Gruber identifies three distinct groups within the feminist anti-violence move-

⁴⁴ *Id.*

⁴⁵ *Id.* at 68.

⁴⁶ *Id.* at 69–71.

⁴⁷ *Id.*

⁴⁸ *Id.* at 71–73 (describing the oscillation of the anti-violence movement “between an oppositional relationship to state bureaucracies and attempts to work inside institutions to change them”).

⁴⁹ The institutional complicity was marked by neglect, victim-blaming, and outright hostility. Mental health professionals labeled women in abusive relationships as “codependent” and “masochistic” rather than interrogating the social and economic strains that kept them trapped. *See id.* at 71–72. Religious leaders and medical providers similarly placed blame on women for purportedly provoking their husbands and enticing their rapists. *Id.*

⁵⁰ *Id.* (“Survivors of male violence . . . demand[ed] a more accurate understanding of the causes of the problems, more institutional assistance in times of crisis, and more respectful treatment of women who exercised their right to protection as full and equal citizens.”).

⁵¹ *See id.* at 69 (“[E]arly-published accounts [of S/GBV] argued that money, region, age, and race were irrelevant: when male violence was left unchecked, it would escalate into a very dangerous situation for *any* woman.”); *id.* at 72 (arguing that the rights-based framework adopted by feminists in the 1970s often amounted to “gender essentialism” that “overshadowed the race- and class-specific dimensions of . . . institutional failure[s]”).

⁵² *See id.* at 74 (explaining that through coalition-building, feminist activists were challenged “to move explicitly beyond the singular gender analysis and to incorporate attention to race and class politics into their work”).

ment: leftist feminists who understood domestic violence as one symptom of a racist, warmongering, capitalist state and organized for welfare rights and safe housing to support victims; liberal feminists and lesbian separatists who believed heteropatriarchal family structures and the economic subjugation of women as a class relative to men drove domestic violence; and “legal feminists” who conceived of the problem primarily as a failure of the criminal law to recognize crimes against women and to mete out just punishments.⁵³

Legal feminists viewed domestic violence as a matter of law and order.⁵⁴ When faced with evidence that police failed to offer meaningful interventions to women reporting domestic violence, especially Black, Indigenous, and other racialized women, legal feminists galvanized around mandatory arrest and prosecution as the solution.⁵⁵ Leftist feminists, however, and especially those of color, warned that law enforcement would achieve its arrest and prosecution mandates by sending more Black and Brown men to prison—while doing nothing to alleviate the structural forces of racial capitalism that make Black and Brown women and GNC people vulnerable to S/GBV in the first place.⁵⁶ Leftist feminists understood capitalism, colonialism, and white supremacy as working in tandem with heteropatriarchy, exposing impoverished, colonized, and racialized women to a heightened risk of S/GBV and simultaneously limiting their defenses.⁵⁷ But

⁵³ GRUBER, *supra* note 16, at 45.

⁵⁴ *Id.* (describing the legal feminist position that criminal punishment is the correct remedy for harmful behaviors such as battering).

⁵⁵ *See id.* at 105–06 (describing feminist lawyers’ belief that they knew better than victims of S/GBV what policies would make victims safe).

⁵⁶ *See id.* at 42–43, 45; RICHIE, *supra* note 14, at 83. This followed a familiar pattern, whereby lawmakers have exploited the perils of Black women subjected to domestic violence for political gain. Laws criminalizing domestic violence were selectively enforced, with the primary goal being to disenfranchise Black voters, rather than to keep Black women safe. *See* GRUBER, *supra* note 16, at 36 (“Southern policy makers invoked the image of the inebriated woman-beating Negro to champion voting restrictions. . . . One Alabama lawmaker explained that adding ‘the crime of wife-beating alone [to the list of disenfranchising offenses] would disqualify sixty percent of the Negroes.’”). Of course, the stereotype animating this claim only underscores its racist intent. *See* Andrew L. Shapiro, *Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy*, 103 *YALE L.J.* 537, 541 (1993) (describing how Southern legislators played on racist stereotypes to deny Black people the franchise, including that Black men have a greater propensity to commit domestic violence and rape). Black people are just as zealously criminalized today and, not coincidentally, the disenfranchisement of people with criminal records is ubiquitous. *See* JEAN CHUNG, THE SENTENCING PROJECT, VOTING RIGHTS IN THE ERA OF MASS INCARCERATION: A PRIMER 1–2, 6 (2021), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer> [<https://perma.cc/ESK5-Q757>] (linking the disproportionate representation of Black Americans within the criminal legal system to the disenfranchisement of Black adults).

⁵⁷ *See* GRUBER, *supra* note 16, at 42–43 (“[S]helter feminists saw DV [domestic violence] as a phenomenon at the intersection of many interlocking social inequalities that

their voices were largely silenced and ignored by policymakers, as well as by prominent liberal white women in the anti-violence movement.⁵⁸

These tensions culminated in a professionalization and institutionalization of anti-violence work that won its legitimacy amidst the increasingly conservative political backdrop of the 1980s.⁵⁹ But increased feminist legitimacy came at a high cost to Black and other multiply marginalized women. As Professor Richie tells it, influential feminists “won the mainstream but lost the movement.”⁶⁰ She and other scholars have identified the passage of the Violence Against Women Act as a key turning point in the feminist anti-violence movement that calcified criminalization as the hegemonic institutional response to S/GBV.⁶¹

Indeed, the group that Professor Gruber dubs “legal feminists”⁶² pursued its carceral agenda, via VAWA, over ardent dissent from S/GBV survivors of color and their advocates,⁶³ especially Black feminists and other feminists of color who warned that the costs of a carceral approach to S/GBV would fall hard on marginalized survivors

occupied the Left’s protest agenda. DV, they believed, was rooted in patriarchy, exploitative capitalism, and race- and class-based subordination.”).

⁵⁸ See, e.g., *id.* at 51, 53–56. Gruber recounts an exchange at the 1978 hearings on “wife abuse” before the federal Commission on Civil Rights. Latina shelter feminist Shelly Fernandez spoke from the perspective that racial discrimination and socioeconomic hardship contribute to femicide. *Id.* Judge Richette, a prominent white feminist and a graduate of Yale Law School, was agitated enough by Fernandez’s remarks to insist that domestic violence had nothing to do with a white racial order while, paradoxically, urging “black and Chicano women” to confront the sexism “*inherent* in that culture.” *Id.*

⁵⁹ RICHIE, *supra* note 14, at 75, 93 (“There was a sense of entrepreneurialism and professionalism that began to be valued as part of the goal of the work with scant attention to the initial political motivations.”).

⁶⁰ *Id.* at 97.

⁶¹ See, e.g., *id.* at 85–86 (describing VAWA as “the pinnacle legislative effort to secure funding for shelters, rape crisis centers, and other institutions designed to respond to the problem [of S/GBV]” but explaining that it “was part of a larger, more controversial Violent Crime Control and Law Enforcement Act of 1994” that has done major harm to those in communities most vulnerable to S/GBV); LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* 15 (2018) (“By the time VAWA was adopted in 1994, the antiviolence movement’s embrace of the criminalization agenda was clear. VAWA provided funding incentives that firmly entrenched that agenda.”); GRUBER, *supra* note 16, at 148 (“Although often held up as a stunning liberal victory, VAWA was no less carceral than the rest of [the] Crime Control Bill. . . . Thus some scholars regard VAWA as the very exemplar of carceral feminism.”).

⁶² *Supra* text accompanying note 53.

⁶³ See Robin McDuff, Deanne Pernell & Karen Saunders, *Letter to the Anti-Rape Movement* (1977), reprinted in *OPEN LETTER TO THE ANTI-RAPE MOVEMENT* (Mariame Kaba ed., 2020), <https://issuu.com/projectnia/docs/letter-to-the-antirape-movement> [<https://perma.cc/J7JM-43Z6>].

and their communities.⁶⁴ VAWA dissenters counseled that while mandatory arrest policies and forced separation might be viable for wealthy white women who had networks of family and friends to which they could turn after leaving abusive husbands, these outcomes were not viable for everyone.⁶⁵ Their warnings bore out: Poor and working class women, a disproportionate share of whom are Black and Brown, are often rendered homeless or otherwise destitute when their partners are arrested and their precarious balance of housing, income, and child care is thrown off.⁶⁶

Black and Brown feminists continue to warn us that funneling millions of dollars to police, prosecutors, and prisons⁶⁷ will not free our society from domestic violence and sexual assault any more than it will free racialized communities from the effects of Black chattel slavery and anti-Black terror, white settler colonialism, and acts of genocide against Indigenous peoples.⁶⁸ Yet, like our foremothers, many white feminists continue to discount and undermine these warnings, favoring policies that privilege us as the archetypal victims most worthy of public attention and protection.⁶⁹

⁶⁴ See, e.g., RICHIE, *supra* note 14, at 159; GRUBER, *supra* note 16, at 92; Mari J. Matsuda, *Crime and Punishment*, Ms., Nov. 1994, at 86, 88 (warning “[w]e [can] never hire enough cops, build enough prisons, add enough death penalty offenses, [or] lock up enough teenagers . . . to prevent crime through the patriarchal model”).

⁶⁵ See GRUBER, *supra* note 16, at 57 (“Imagining the prototypical victim as a rich white woman hiding behind enormous sunglasses at the [country] club prefigures certain remedies. Imagining her as a poor welfare recipient points to radically different ones.”); GOODMARK, *supra* note 61, at 35 (explaining that “[s]eeking protection from intimate partner violence results in economic penalties and contributes to income instability” among victims who must already struggle with food, job, and housing insecurity and “chronic[ally] cycl[e] between work and welfare”).

⁶⁶ GOODMARK, *supra* note 61, at 35, 37. Researchers at the ACLU, CUNY School of Law, and the University of Miami School of Law conducted a national survey of 900 advocates, service providers, attorneys, and nonprofit professionals working with those who have experienced domestic violence or sexual assault. DONNA COKER, SANDRA PARK, JULIE GOLDSCHIED, TARA NEAL & VALERIE HALSTEAD, *RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 2* (2015), [hereinafter *RESPONSES FROM THE FIELD*] <https://www.aclu.org/report/sexual-assault-domestic-violence-and-policing> [<https://perma.cc/SZ6H-98PX>]. Seventy percent of respondents reported that contacting police about S/GBV routinely results in the loss of housing, employment, or welfare benefits. *Id.*

⁶⁷ See *infra* Section V.A.

⁶⁸ See Grace L. Carson, Comment, *Tribal Sovereignty, Decolonization, and Abolition: Why Tribes Should Reconsider Punishment*, 69 UCLA L. REV. 1076, 1118, 1124 (2022) (arguing that “there is no decolonial future without abolition” and that Native communities should adopt abolitionist reforms on reservations and “look to traditional means of tribal justice that are rooted in care and liberation as opposed to punishment”).

⁶⁹ See ABOLITION. FEMINISM. NOW., *supra* note 10, at 77–81. Davis and her coauthors describe the anti-carceral efforts behind a “Moment of Truth” statement issued in the summer of 2020 by nearly fifty domestic violence coalitions across twenty states, acknowledging the anti-violence movement’s failure to listen to Black feminists and other

Beth Richie has traced this dynamic, wherein white feminists privilege white victims, back to at least the early 1960s, when anti-violence advocates began trumpeting now familiar slogans that domestic violence and sexual assault “can happen to anyone.”⁷⁰ On the one hand, the “everywoman” narrative, as Professor Richie calls it, was arguably designed to challenge racist and classist stereotypes about who could perpetrate and fall victim to S/GBV, as well as the understanding of S/GBV as an individualized pathology rather than a structural problem.⁷¹ On the other hand, the “everywoman” narrative has often been used to produce the opposite effect, obfuscating the race and class structures that characterize many survivors’ experiences with S/GBV.⁷² In so doing, we have failed to build real, sustained cross-racial gender solidarity—in part because we white women are often unwilling to dig deeper than is necessary to personally benefit from a feminist analysis.

White women had little use for race-consciousness when it was sufficient to simply acknowledge that even the wealthy among us can fall victim to S/GBV in our own homes and communities. Racist caricatures that have long villainized Black and Latino men as threats to white women’s “purity”⁷³ simultaneously shield white men from accountability for the violence that they perpetrate against the very same women they claim to protect. And, as Professors Kimberlé Crenshaw, Angela Y. Davis, and other activist-scholars have written, for Black women, rape is often a form of racial terror, and has been for centuries in the United States.⁷⁴ The same is true for Indigenous

feminists of color who warned against a law-and-order approach to S/GBV. *Id.* (citing *Moment of Truth: Statement of Commitment to Black Lives*, WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE (June 30, 2020), <https://wscadv.org/news/moment-of-truth-statement-of-commitment-to-black-lives> [<https://perma.cc/G6HQ-377H>]). The statement was met with backlash and denialism by conservative funders, carceral stakeholders, and white leadership in the mainstream anti-violence movement who broadly claimed that “survivors do not support defunding the police.” *See id.* (citing Casey Gwinn & Gael Strack, *Another Perspective on “The Moment of Truth,”* 26 DOMESTIC VIOLENCE REPORT 17 (2021)).

⁷⁰ RICHIE, *supra* note 14, at 110.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139, 159–60 (1989) (explaining that “the protection of white female sexuality was often the pretext for terrorizing the Black community” through lynching).

⁷⁴ *Id.* at 158–59 (“[R]ape [was] . . . a weapon of racial terror. When Black women were raped by white males, they were being raped . . . as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection.”); ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* 19–20 (1981) (“It would be a mistake to regard the institutionalized pattern of rape during slavery as an expression of white men’s sexual urges Rape was a weapon of

women who have long suffered grievous sexual terrorism at the hands of European colonizers and who now face higher rates of rape and sexual assault than both Black and white women in the United States.⁷⁵ Moreover, as Professor Richie explains, white feminists' willful color-blindness has had important consequences in terms of the distribution of movement resources and the dominant modes of intervention:

[T]he image of the everywoman becomes a white, middle-class woman who can turn to a counselor, a doctor, a police officer, or a lawyer to protect her from abuse. Researchers ask her about her experiences and then describe them in the literature; intervention strategies are based on her needs, she is featured in public awareness campaigns, and she is reflected in the recognized national leadership on the issue of violence against women.⁷⁶

Meanwhile, in the shadows of the "everywoman," Black, Indigenous, Latina, and Asian American and Pacific Islander (AAPI) women who experience S/GBV are prosecuted and imprisoned for fighting back against their abusers and assailants.⁷⁷ Women seeking reprieve from domestic violence are accused of endangering their chil-

domination . . . [and] repression, whose covert goal was to extinguish slave women's will to resist, and . . . to demoralize their men.").

⁷⁵ RONET BACHMAN, HEATHER ZAYKOWSKI, RACHEL KALLMYER, MARGARITA POTEYEVA & CHRISTINA LANIER, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN 6 (2008), <https://www.ojp.gov/pdffiles1/nij/grants/223691.pdf> [<https://perma.cc/Q7UP-QKKH>]. Compared to women of other racial groups, American Indian and Alaska Native women are more likely to be sexually assaulted by someone outside their race, more likely to face an armed attacker, and more likely to require medical care for injuries sustained during an assault. Ronet Bachman, Heather Zaykowski, Christina Lanier, Margarita Poteyeva & Rachel Kallmyer, *Estimating the Magnitude of Rape and Sexual Assault Against American Indian and Alaska Native (AIAN) Women*, 43 AUSTL. & N.Z.J. CRIMINOLOGY 199, 211–12 (2010).

⁷⁶ RICHIE, *supra* note 14, at 92.

⁷⁷ E.g., Victoria Law, *The Worst Abuser You Could Ever Have*, NATION (July 18, 2022), <https://www.thenation.com/article/society/tracy-mccarter-suived-punished> [<https://perma.cc/QQD5-PY6Z>] (telling the story of Tracy McCarter, a 44-year-old nurse and new grandmother who faced a potential prison sentence of 25 years to life on charges that she murdered her estranged husband, just months after she moved out to free herself from his abuse). Manhattan District Attorney Alvin Bragg called Ms. McCarter's prosecution a "travesty of justice" during his campaign but refused to drop the charges against McCarter for almost a year after taking office. See Jonah E. Bromwich, *Manhattan D.A. Slams Brakes on Prosecution of Woman in Husband's Death*, N.Y. TIMES (Nov. 18, 2022), <https://www.nytimes.com/2022/11/18/nyregion/tracy-mccarter-alvin-bragg.html> [<https://perma.cc/9Q2W-QWG2>]; see also Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J. L. & FEMINISM 75 (illustrating how women who fight back, particularly lesbians and women of color, are disfavored and disadvantaged by judges and other actors in the legal system, because they diverge from stereotypical understandings of the helpless, battered woman).

dren.⁷⁸ Those children are then ripped from their mothers' care by racist family courts and child "welfare" agencies.⁷⁹ Poor women are degraded when they ask the state for help and punished when they turn to informal economies to survive, as are trans and GNC people.⁸⁰ Sex workers are harassed and raped by the police and thrown in jail.⁸¹ Black, Latina, and Native girls face violent and sometimes deadly encounters with police officers.⁸² Parts III and IV illustrate how carceral feminism has abandoned many of the most vulnerable survivors of S/GBV.

⁷⁸ See, e.g., Goodmark, *supra* note 22 (telling the story of Tondalao Hall, who served fifteen years in prison for "failure to protect" her children from her abusive boyfriend; Hall's boyfriend was sentenced to two years for breaking the children's femurs and ribs).

⁷⁹ E.g., Kathryn Joyce, *She Said Her Husband Hit Her. She Lost Custody of Their Kids: How Reporting Domestic Violence Works Against Women in Family Court*, MARSHALL PROJECT (July 8, 2020), <https://www.themarshallproject.org/2020/07/08/she-said-her-husband-hit-her-she-lost-custody-of-their-kids> [<https://perma.cc/23WJ-W5TD>]. See DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 27 (2022) (explaining that what is commonly referred to as the "child welfare system" is actually better understood as a system of "family policing" that "relies on racist beliefs about Black family dysfunction" to terrorize Black families and forcibly tear them apart).

⁸⁰ See S. Lamble, *Transforming Carceral Logistics*, in *CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX* 190, 194 (Eric A. Stanley, Nat Smith & CeCe McDonald eds. 2015) (describing the high incidence of homelessness among queer and trans youth, who are often denied access to shelters and welfare benefits and left with little choice but to turn to the drug and sex trades to survive); Mariame Kaba & Brit Schulte, *Not a Cardboard Cutout: Cyntoia Brown and the Framing of a Victim*, in *WE DO THIS 'TIL WE FREE US*, *supra* note 11 at 35, 37 ("The realities faced by most teenagers engaged in survival sex are shaped by unsafe homes and housing, lack of access to employment, affordable housing, health care including gender affirming health care, mental health resources, and by poverty, racism, queerphobia, and misogyny.").

⁸¹ Anne Gray Fischer, *Sexual Policing*, INQUEST (Apr. 27, 2022), <https://inquest.org/sexual-policing> [<https://perma.cc/5GQX-8QSD>]; ANDREA J. RITCHIE, *INTERRUPTING CRIMINALIZATION, SHROUDED IN SILENCE: POLICE SEXUAL VIOLENCE: WHAT WE KNOW & WHAT WE CAN DO ABOUT IT* (2021) [hereinafter RITCHIE, *SHROUDED IN SILENCE*], <https://www.interruptingcriminalization.com/breaking-the-silence> [<https://perma.cc/42TE-XKUD>].

⁸² See, e.g., Abby VanSickle & Weihua Li, *Police Hurt Thousands of Teens Every Year. A Striking Number Are Black Girls*, MARSHALL PROJECT (Nov. 2, 2021), <https://www.themarshallproject.org/2021/11/02/police-hurt-thousands-of-teens-every-year-a-striking-number-are-black-girls> [<https://perma.cc/BQ46-5NEP>]; Lily Herman, *A Black Teenager Is Suing the White Cop Who Slammed Her Into the Ground for \$5 Million*, TEEN VOGUE (Jan. 4, 2017), <https://www.teenvogue.com/story/a-black-teenager-is-suing-the-white-cop-who-slammed-her-into-the-ground-for-dollar5-million> [<https://perma.cc/MB36-QP29>]; Cerise Castle & Jon Peltz, *LAPD Officer William Dorsey Jones Jr. Kills Two People, Including 14-Year-Old Valentina Orellana Peralta*, KNOCKLA (Dec. 30, 2021), <https://knock-la.com/lapd-officer-william-dorsey-jones-valentina-orellana-peralta-north-hollywood-shooting> [<https://perma.cc/FSS4-JXAZ>].

III WHAT WE CAN LEARN FROM THE STORIES OF CRIMINALIZED SURVIVORS

In this Part, I present four case studies to show how the carceral system is not designed to protect poor and working-class Black and Brown women, trans, and GNC people who defend themselves against abusive partners; how carceral feminism abandons survivors who betray our image of the “everywoman,” such as survivors with histories of trauma, substance use disorders, or stigmatized health conditions; and how the same forces that advocate for a law-and-order approach to anti-violence work fail to come to the aid of queer and GNC people of color who face harassment and street violence.⁸³

The stories that follow, while enraging and revealing, do not even scratch the surface of the countless survivors of S/GBV who face prosecution and imprisonment for speaking out and fighting back, or for simply trying to survive. Nonetheless, I hope they will lead readers to question whose interests we are really trying to protect when we insist that police and prosecutors are flawed but worth fixing.⁸⁴ I hope that readers will keep these stories in mind when considering my proposal in Part V to reimagine VAWA from a transformative justice perspective.⁸⁵

A. *Shamika Crawford*

For three months, Shamika Crawford was effectively banished from her home and separated from her children.⁸⁶ She had little choice but to sleep in her car, when she could withstand the cold, and on a friend’s couch when the New York City winter grew harsher.⁸⁷ Crawford had not been formally evicted, but a criminal court in the Bronx had entered an order requiring her to vacate her apartment and

⁸³ See Kat Chow, *Video Calls Out Catcallers, But Cuts Out White Men*, NPR (Nov. 1, 2014), <https://www.npr.org/sections/codeswitch/2014/11/01/360422087/hollaback-video-calls-out-catcallers-but-cuts-out-white-men> [<https://perma.cc/J6BN-VB2Q>] (noting how an anti-street-harassment organization’s viral video about catcalling furthered racist stereotypes about Black and Latino men through racially selective editing).

⁸⁴ See, e.g., Editorial, *Abolish the Police? No. Reform Policing? Absolutely*, L.A. TIMES (May 30, 2021), <https://www.latimes.com/opinion/story/2021-05-30/reform-dont-abolish-police> [<https://perma.cc/L9WU-2DNL>]; Cari Shane, *The U.S. Needs Sweeping Police Reform. Start by Hiring More Women.*, MS. MAGAZINE (June 8, 2020), <https://msmagazine.com/2020/06/08/police-reform-women> [<https://perma.cc/N4X2-K72B>].

⁸⁵ See *infra*, Part V (advocating for immediate decarceration and financial reparations for criminalized S/GBV survivors).

⁸⁶ Andy Newman, *Barred from Her Own Home: How a Tool for Fighting Domestic Abuse Fails*, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2021/06/17/nyregion/of-protection-domestic-violence-abuse.html> [<https://perma.cc/8KK6-7VDR>].

⁸⁷ *Id.*

stay away from her boyfriend, Keivian Mayers, with whom she had two young children.⁸⁸ The prosecution hinged its request for the stay-away order on a thin misdemeanor complaint against Crawford, filed by Mayers, and a reference to approximately seventeen prior reports of domestic violence in the household.⁸⁹ The prosecutor conveniently neglected to mention, and the judge did not elicit, that each of the prior reports of domestic violence identified Shamika Crawford as the victim and Keivian Mayers as the aggressor.⁹⁰

Crawford's defense counsel pleaded with the judge to modify the stay-away order, explaining that Crawford had lived in the same apartment for six years and had nowhere else to take her children.⁹¹ Crawford was in danger of losing her public housing, as Mayers refused to leave and was neither named on the lease nor authorized to live there.⁹² But the judge was uninterested, remarking that he did not want to "dive so much into the property rights" in Crawford's case—despite having effectively evicted her from her home.⁹³

During the three months that she was effectively homeless, Crawford continued to pay rent so that she could hold onto her lease.⁹⁴ But, due to the pending charges, she was fired from her job caring for adults with intellectual and developmental disabilities.⁹⁵ All the while Mayers stayed in the apartment with their children.⁹⁶

The full stay-away order remained in effect until, finally, a different judge took notice of the "very lengthy history of incidents" where the police "failed to protect" Crawford from the same man she now stood accused of assaulting.⁹⁷ Only then was Crawford permitted to return to her home and reunite with her children—after eighty-eight days of forced family separation and a life upended.⁹⁸ The prosecution let another month go by before dismissing all charges.⁹⁹

Shamika Crawford's story sticks out in my mind because of its resonance with my own. Like Crawford, I suffered homelessness fol-

⁸⁸ *Id.*; Crawford v. Ally, 97 A.D.3d 27, 30 (N.Y. App. Div. 2021).

⁸⁹ Newman, *supra* note 86; Brief for Petitioner-Appellant, Crawford, 197 A.D.3d 27 (No. 2020-04520), 2021 WL 2459011, at *9 [hereinafter *Crawford's Brief*].

⁹⁰ *Crawford's Brief*, *supra* note 89, at *10.

⁹¹ *Id.* at *10–11.

⁹² *Id.*; Goodmark, *supra* note 22 at 90–91 (noting a criminal conviction results in ineligibility for public housing).

⁹³ *Crawford's Brief*, *supra* note 89, at *11.

⁹⁴ Newman, *supra* note 86.

⁹⁵ *Id.*

⁹⁶ *Crawford's Brief*, *supra* note 89, at *16.

⁹⁷ *Id.*

⁹⁸ *Id.* at *23 ("[T]he three full temporary orders of protection issued against Ms. Crawford were in effect for five days, 42 days, and 41 days.").

⁹⁹ Crawford v. Ally, 197 A.D.3d 27, 31–32 (N.Y. App. Div. 2021).

lowing an “intervention” by law enforcement that not only failed to offer meaningful protection but also made my family and me more vulnerable. Nonetheless, my status as a white teenage girl—even one from a troubled and impoverished family—helped insulate me from the hostile treatment Black S/GBV survivors like Shamika Crawford regularly endure from the criminal legal system.

Again and again, the NYPD were notified of the pattern of abuse in Crawford’s home—including allegations that Mayers had strangled her and beaten her with a stick.¹⁰⁰ But all it took was a single criminal complaint against Crawford for prosecutors and judges to treat her as a menace in need of restraint, rather than as a person in need of support or protection.¹⁰¹ Technically speaking, she faced no criminal punishment. But due to the carelessness and outright hostility exhibited by the various police officers, prosecutors, and judges who oversaw her case, Shamika Crawford suffered greatly.¹⁰²

B. *The New Jersey Four*

In *Arrested Justice*, Beth Richie tells the stories of Venice Brown, Terrain Dandridge, Patreese Johnson, and Renata Hill, a group of young Black lesbians who were prosecuted for fighting back against anti-lesbian sexual harassment and assault.¹⁰³ The group of friends, later dubbed the “New Jersey 4,”¹⁰⁴ were walking in New York City’s Greenwich Village on a summer evening in 2006 when a man began to

¹⁰⁰ Leigh Goodmark, *Commentary: Orders of Protection Need Reform*, TIMES UNION (Sept. 18, 2021), <https://www.timesunion.com/opinion/article/Orders-of-protection-need-reform-16468623.php> [<https://perma.cc/Z9JG-JXAH>].

¹⁰¹ *Id.*

¹⁰² After her case was dismissed, Crawford and her counsel at the Bronx Defenders won a ruling requiring criminal court judges to hold a prompt evidentiary hearing before issuing a stay-away order. *Crawford v. Ally*, 197 A.D.3d at 34. This ruling is of great consequence for the countless New Yorkers who have been rendered homeless by overbroad pretrial stay-away orders. Press Release, The Bronx Defenders, In a Legal First, NY State Appeals Court Mandates Review of Problematic Orders of Protection (June 24, 2021), <https://www.bronxdefenders.org/in-a-legal-first-ny-state-appeals-court-mandates-review-of-problematic-orders-of-protection> [<https://perma.cc/RCV8-8P8B>]. But see Sam Mellins, *New York Judges Lock the Accused Out of Their Homes, Skirting Review Required by Landmark Ruling, Critics Charge*, THE CITY (July 23, 2021), <https://www.thecity.nyc/2021/7/23/22589634/new-york-judges-lock-out-accused-despite-ruling> [<https://perma.cc/569A-GJ5B>] (describing efforts by judges and prosecutors to roll back the protections won by Crawford). However, it does little to repair the harm done to Crawford, who was separated from her children, fired from her job, and banned from her own home. Nor does it transform the way actors in the criminal legal system treat Black and other multiply marginalized women who are subjected to S/GBV—especially those who dare to fight back.

¹⁰³ RICHIE, *supra* note 14, at 12–14.

¹⁰⁴ The “New Jersey 4” were actually accompanied by three other friends, each of whom took plea agreements. *Id.* at 13.

follow them, groping his genitals and hurling degrading insults like “I will fuck you straight.”¹⁰⁵ The women tried to get away, but their assailant, Dwayne Buckle, persisted.¹⁰⁶ When they confronted him, he spit at one of the women and threw a lit cigarette at another.¹⁰⁷

A fight ensued. The man yanked hair out of Venice’s head and choked Renata.¹⁰⁸ Patreese pulled a knife from her purse to protect herself and her friends.¹⁰⁹ Two white men jumped in to defend the women, and their assailant was stabbed.¹¹⁰ Their assailant, who is Black, initially reported to police that he had been stabbed by one of the white men who intervened.¹¹¹ But the police never interviewed the men, instead rounding up the four women and charging them with gang assault and attempted murder.¹¹² Buckle was never charged for harassing and assaulting them.

The media coverage of the attack was highly racialized and anti-lesbian, vilifying the women as a violent “wolf pack” and a “gang of killer lesbians” who had pounced in response to a compliment from a harmless admirer.¹¹³ The prosecution was no better, rarely even using the names of the four Black women, who were convicted by a jury comprised mostly of white women.¹¹⁴ Renata, Venice, and Terrain each spent two years in prison.¹¹⁵ Patreese was incarcerated for nearly eight years before she was released in 2013.¹¹⁶

Professor Richie criticizes the failure of mainstream anti-violence organizations to come to the aid of the New Jersey 4.¹¹⁷ Their silence

¹⁰⁵ *Id.*

¹⁰⁶ Nicole Pasulka, *How 4 Gay Black Women Fought Back Against Sexual Harassment—And Landed In Jail*, NPR (June 30, 2015), <https://www.npr.org/sections/codeswitch/2015/06/30/418634390/how-4-gay-black-women-fought-back-against-a-sexual-harasser-and-landed-in-jail> [<https://perma.cc/9HSM-T5YL>].

¹⁰⁷ RICHIE, *supra* note 14, at 12.

¹⁰⁸ *About the Film*, OUT IN THE NIGHT, <https://www.outinthenight.com/about-2> [<https://perma.cc/XK3B-LKK8>].

¹⁰⁹ *Id.*

¹¹⁰ RICHIE, *supra* note 14, at 12.

¹¹¹ *Id.* at 12.

¹¹² *Id.* at 13; Pasulka, *supra* note 106.

¹¹³ Pasulka, *supra* note 106; Cara Buckley & Kate Hammer, *Man Is Stabbed in Attack After Admiring a Stranger*, N.Y. TIMES (Aug. 19, 2006), <https://www.nytimes.com/2006/08/19/nyregion/19stab.html> [<https://perma.cc/75SA-4SZT>].

¹¹⁴ RICHIE, *supra* note 14, at 13.

¹¹⁵ *Id.* at 13.

¹¹⁶ *Free Patreese Johnson*, INCITE! (June 12, 2013), <https://incite-national.org/2013/06/12/free-patreese-johnson> [<https://perma.cc/R7KP-Q86R>].

¹¹⁷ RICHIE, *supra* note 14, at 15–17. Prominent groups working on issues of racial justice and LGBTQ rights similarly failed to respond. *See id.* at 30, 120; Yasmin Nair, *Beth Richie on Race, Gender and the ‘Prison Nation,’* WINDY CITY TIMES (May 22, 2013), <https://www.windycitytimes.com/lgbt/Beth-Richie-on-race-gender-and-the-prison-nation/> 42902.html [<https://perma.cc/5YMX-SCGR>].

illustrates that a feminist politics that rests on “a sense of generalized vulnerability based on gender oppression” is of little use to Black, queer, poor, or working class women if it “does not incorporate other manifestations of power imbalances and abuse.”¹¹⁸ Professor Richie attributes the willingness of influential anti-violence groups to overlook the violence done to the New Jersey 4 and other multiply marginalized Black women to the buildup of a “prison nation.”¹¹⁹ She argues that this path was not inevitable; rather, it was the result of a compromise between elite law-and-order feminists and conservative politicians, to the detriment of nearly everyone else.¹²⁰

C. Tomiekia Johnson

Tomiekia Johnson is currently serving a sentence of fifty years to life in prison for defending herself against her abusive husband, Marcus Lemons.¹²¹ Johnson, who is Black, had worked as a California highway patrol officer for seven years, even appearing in ads promoting a career in law enforcement.¹²² One night in 2009, Johnson and her husband were returning home from a bar, where he had become angry over her speaking with a male friend.¹²³ Lemons berated Johnson as they drove home, calling her “disrespectful” and a “ho.”¹²⁴ Johnson, in the driver’s seat, tried her best to ignore him and focus on the road.¹²⁵ All the while Lemons lashed out at her, at one point grabbing her neck and threatening to kill her.¹²⁶

Having had enough, Johnson pulled over and told her husband to walk home.¹²⁷ Lemons snatched the keys from the ignition and

¹¹⁸ RICHIE, *supra* note 14, at 20. *Accord* Crenshaw, *supra* note 73, at 140 (“Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”).

¹¹⁹ RICHIE, *supra* note 14, at 16–18.

¹²⁰ *See id.* at 16–19.

¹²¹ Lauren Effron, *California Patrol Officer Collapses After Found Guilty of Murdering Husband*, ABC NEWS (Jan. 23, 2012), <https://abcnews.go.com/US/california-patrol-officer-collapses-found-guilty-murdering-husband/story?id=15423775> [<https://perma.cc/3QF2-TVPU>].

¹²² THE STORY, Tomiekia Johnson Innocence Fund, <https://tomiekiainnocencefund.wordpress.com/about> [<https://perma.cc/CNZ8-FS3M>].

¹²³ *People v. Johnson*, No. B239867, 2013 BL B239867, at *7 (Cal. Ct. App. 2013), *modified*, 164 Cal.Rptr.3d 864.

¹²⁴ *Id.*

¹²⁵ Richard Winton, *CHP Officer Found Guilty in Husband’s Shooting Death*, L.A. TIMES (Jan. 24, 2012), <https://www.latimes.com/archives/la-xpm-2012-jan-24-la-me-chp-verdict-20120124-story.html> [<https://perma.cc/MX97-6HXR>].

¹²⁶ *People v. Johnson*, No. B239867, 2013 BL B239867, at *8 (Cal. Ct. App. 2013), *modified*, 164 Cal.Rptr.3d 864.

¹²⁷ *Id.*

grabbed for Johnson's purse, where she kept a gun.¹²⁸ The two struggled for the gun and, knowing that her life was in danger, Johnson fired a single fatal shot at her husband.¹²⁹ She then drove to her parents' house and had her mother call 911 to report what had happened.¹³⁰ Johnson voluntarily gave a statement to the police and, inexplicably, was not charged with a crime until two years later.¹³¹ At trial, a jury of mostly men rejected her claim of self-defense.¹³² Upon hearing the guilty verdict, Johnson collapsed onto the courtroom floor in despair.¹³³ She has been fighting for her freedom ever since.

Mariame Kaba, co-founder of the abolitionist collective Survived and Punished, which advocates for the release of incarcerated S/GBV survivors like Johnson, reminds us that this outcome is not unusual: "While self-defense laws are interpreted generously when applied to white men who feel threatened by men of color, they are applied very narrowly to women and gender nonconforming people, and particularly [those] trying to protect themselves in domestic violence and sexual assault cases."¹³⁴ As Johnson herself put it in a 2020 interview for the Guardian, "They didn't treat me like I was a human being."¹³⁵ When it comes to Black women subjected to domestic violence, she explained, "they look at us like we're not victims."¹³⁶

When her mother was first incarcerated, Tomiekia Johnson's daughter, Nevaeh, was just four years old.¹³⁷ At age thirteen, Nevaeh penned a gut-wrenching letter to California Governor Gavin Newsom, pleading with him to grant her mother clemency.¹³⁸ "I used to cry myself to sleep," she wrote, "because [my mom] was never home for

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Caroline Black, *California Highway Patrol Officer Tomiekia Johnson Charged with Husband's Murder*, CBS NEWS (Jan. 12, 2011), <https://www.cbsnews.com/news/california-highway-patrol-officer-tomiekia-johnson-charged-with-husbands-murder> [<https://perma.cc/D33W-DUM3>].

¹³² Winton, *supra* note 125.

¹³³ *Id.*

¹³⁴ MARIAME KABA, *Black Women Punished for Self-Defense Must Be Freed from Their Cages*, in *WE DO THIS 'TIL WE FREE US*, *supra* note 11, at 49, 50.

¹³⁵ Sam Levin, 'Governor, Let Me See My Kids Before I Die': Pressure Mounts to Release Elderly Women from Prisons, GUARDIAN (June 3, 2020), <https://www.theguardian.com/us-news/2020/jun/03/california-prisons-elderly-women-clemency-coronavirus> [<https://perma.cc/72TZ-JFCA>] (quote from audio embedded in this Article).

¹³⁶ *Id.*

¹³⁷ *Tomiekia Johnson's Daughter Writes to Governor Newsom Calling for Tomiekia's Clemency*, SURVIVED AND PUNISHED (Nov. 24, 2020), <https://survivedandpunished.org/2020/11/24/tomiekia-johnsons-daughter-writes-to-governor-newsom-calling-for-tomiekias-clemency> [<https://perma.cc/P8JL-V6TV>].

¹³⁸ See *id.*

me to crawl up in her bed at night and just hug her.”¹³⁹ Thus far, Governor Newsom has issued no public response and Tomiekia Johnson remains behind bars.

D. Betsy Ramos

Betsy Ramos was incarcerated for twenty-four years following a deadly shootout between her abusive boyfriend and the police.¹⁴⁰ For the two years they were together, Joseph Serrano physically, emotionally, and sexually abused Ramos.¹⁴¹ He beat her, choked her, and, at one point, held her down while he forcibly sodomized her.¹⁴² He used Ramos’s HIV status to keep her from leaving, telling her that no one else would ever love her.¹⁴³ After a lifetime of abandonment, first by her parents as a teenager, and then by the state as she sought treatment for her drug addiction and sanctuary from Serrano’s abuse, she believed him.¹⁴⁴

In May 1998, two NYPD officers came to Ramos’s apartment to serve a warrant on Serrano for missing a court date.¹⁴⁵ Serrano hid in a closet and instructed Ramos to tell the officers he was not there.¹⁴⁶ Fearing his wrath, Ramos complied.¹⁴⁷ She could not have known that when the police found Serrano, he would grab for one of the officer’s guns.¹⁴⁸ Nor could she have known that Serrano and the other officer would both shoot, killing one another.¹⁴⁹ Ramos went on to spend the next quarter century in prison for her abusive boyfriend’s actions.¹⁵⁰

Ramos did not fit prosecutors’ mold for a victim of domestic violence, at least not one worthy of protecting. At trial, they accused her of helping Serrano grab the other officer’s gun.¹⁵¹ She was acquitted of second-degree murder but convicted on a manslaughter charge that

¹³⁹ *Id.*

¹⁴⁰ See Victoria Law, *Betsy Ramos’ Abusive Boyfriend Killed a Cop. She Has Been Locked Up for 21 Years*, FILTER (Jan. 3, 2019), <https://filtermag.org/betsy-ramos-abusive-boyfriend-killed-a-cop-she-has-been-locked-up-for-21-years> [<https://perma.cc/XMF8-BVCF>].

¹⁴¹ See *Betsy Ramos*, SURVIVED AND PUNISHED NEW YORK, <https://www.survivedandpunishedny.org/betsy-ramos> [<https://perma.cc/7PZC-32RX>].

¹⁴² *Id.*

¹⁴³ *Id.*; see also Law, *supra* note 140.

¹⁴⁴ See SURVIVED AND PUNISHED NEW YORK, *supra* note 141 (detailing Ramos’s history of trauma and Serrano’s manipulation and abuse); see also Law, *supra* note 140 (describing how Serrano maintained coercive control over Ramos).

¹⁴⁵ Law, *supra* note 140.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

typically carried a maximum sentence of fifteen years imprisonment.¹⁵² But at the urging of prosecutors, the judge sentenced her to fifteen years to *life*, using her prior drug convictions to justify the enhancement.¹⁵³

The New York State Board of Parole denied Ramos's application four times before finally granting it in late 2019.¹⁵⁴ But Ramos, who is HIV-positive and has cancer,¹⁵⁵ was not released for another two years. Her parole was met with outrage by the deceased officer's family, who consistently opposed her release.¹⁵⁶ Their public outcry no doubt influenced a federal judge's decision to sentence Ramos to an additional twenty-four months—a maneuver made possible because she had been on federal probation for a drug conviction at the time of the officer's death.¹⁵⁷

The struggle is not over, as evidenced by the work of grassroots organizers—often queer women and transgender people of color—who agitate for the freedom of people like Shamika Crawford, Venice Brown, Terrain Dandridge, Patreese Johnson, Renata Hill, Tomiekia Johnson, and Betsy Ramos. Indeed, in recent years, the movement for prison abolition has grown stronger.¹⁵⁸ In turn, it has prompted recognition by some in the feminist anti-violence movement that carceral policies have directly harmed many of those they purport to protect and have neglected many others who are subjected to S/GBV.¹⁵⁹ But,

¹⁵² Anthony Ramirez, *Brooklyn Jury Rejects Charge of Murder in Officer's Killing*, N.Y. TIMES (Mar. 3, 1999), <https://www.nytimes.com/1999/03/03/nyregion/brooklyn-jury-rejects-charge-of-murder-in-officer-s-killing.html> [<https://perma.cc/4AAP-Y7H5>].

¹⁵³ SURVIVED AND PUNISHED NEW YORK, *supra* note 141.

¹⁵⁴ See Law, *supra* note 140; Jaime DeJesus, *Outrage Follows Granting of Parole in Bensonhurst Cop's Murder*, BROOK. REP. (Dec. 11, 2019), <https://brooklynreporter.com/2019/12/outrage-follows-granting-of-parole-in-bensonhurst-cops-murder> [<https://perma.cc/MC6F-XHWP>].

¹⁵⁵ Law, *supra* note 140.

¹⁵⁶ See *Exclusive: Convicted Cop Killer to Be Released on Parole, Widow of Officer Says She Wasn't Notified About Latest Hearing*, CBS NEWS N.Y. (Nov. 22, 2019), <https://www.cbsnews.com/newyork/news/betsy-ramos-released-anthony-mosomillo-widow> [<https://perma.cc/2ABS-WQ6S>].

¹⁵⁷ See *Convicted Cop Killer Sentenced to More Prison Time After Being Released by New York's Controversial Parole Board*, CBS NEWS N.Y. (Dec. 20, 2019), <https://www.cbsnews.com/newyork/news/cop-killer-prison-time-parole> [<https://perma.cc/QKR6-76LL>].

¹⁵⁸ See MARIAME KABA, *So You're Thinking About Becoming an Abolitionist, in WE DO THIS 'TIL WE FREE US*, *supra* note 11, at 2.

¹⁵⁹ See, e.g., *Moment of Truth: Statement of Commitment to Black Lives*, WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE (June 30, 2020) <https://wscadv.org/news/moment-of-truth-statement-of-commitment-to-black-lives> [<https://perma.cc/6GMT-JADH>] (statement issued by forty-six domestic violence and sexual assault coalitions, acknowledging, *inter*

that muffled recognition has not yet given way to the reckoning that is needed. It has not drowned out the backlash by Republican and Democratic politicians alike,¹⁶⁰ nor has it quelled deceitful and incendiary propaganda from both right-wing and liberal news organizations.¹⁶¹

Further, greater recognition of racial injustice in feminist anti-violence work has not yet fulfilled the demands that Black and Brown women punished for self-defense be freed from their cages, that all of those criminalized for their means of survival be freed, and that the hundreds of billions of dollars spent annually on the carceral apparatus be redirected to repair the havoc wreaked on marginalized communities and reinvested in the social infrastructure and policies that allow people to thrive.¹⁶² Until then, countless survivors of S/GBV

alia, that “[w]e have failed to listen to Black feminist liberationists and other colleagues of color in the movement who cautioned us against the consequences of choosing increased policing, prosecution, and imprisonment as the primary solution to gender-based violence”).

¹⁶⁰ See, e.g., Carl Hulse, *Biden Bows to Republicans on Blocking D.C. Crime Law, Avoiding Veto Fight*, N.Y. TIMES (Mar. 2, 2023), <https://www.nytimes.com/2023/03/02/us/politics/biden-no-veto-dc-criminal-code.html> [<https://perma.cc/2HDR-LF95>] (detailing President Biden’s recent decision to overturn the will of D.C. voters on local sentencing reforms).

¹⁶¹ See Robin Andersen, *The “Copaganda” Epidemic: How Media Glorifies Police and Vilifies Protesters*, SALON (Jan. 8, 2023), <https://www.salon.com/2023/01/08/the-copaganda-epidemic-how-media-glorifies-police-and-vilifies> [<https://perma.cc/V3DP-AWGP>] (describing how *The New York Times*, *The Washington Post*, *NPR*, *NBC*, *The Hill*, and *The Guardian* sensationalized an FBI crime data report with headlines about homicides having “spiked” and “soared,” with little critical analysis and scant attention to the fact that all other major crimes had declined); Scott Hechinger, *A Massive Fail on Crime Reporting* by The New York Times, *NPR*, NATION (Oct. 6, 2021), <https://www.thenation.com/article/society/crime-reporting-failure> [<https://perma.cc/BE8D-GN8R>] (noting how this coverage falsely suggested that racial justice protests and bail reform were to blame for increased homicide rates); see also Alec Karakatsanis, *Police Departments Spend Vast Sums of Money Creating “Copaganda,”* JACOBIN (July 20, 2022), <https://jacobin.com/2022/07/copaganda-police-propaganda-public-relations-pr-communications> [<https://perma.cc/F7RC-XQ4Z>] (offering a brief explainer on copaganda).

¹⁶² See Mariame Kaba, *Black Women Punished for Self-Defense Must Be Freed from Their Cages*, GUARDIAN (Jan. 3, 2019), <https://www.theguardian.com/commentisfree/2019/jan/03/cytoia-brown-marissa-alexander-black-women-self-defense-prison> [<https://perma.cc/3GXT-6Q4N>] (discussing the systemic criminalization of self-defense by Black and Brown women facing abuse); MON MOHAPATRA, LEILA RAVEN, NNEENAYA AMUCHIE, REINA SULTAN, K. AGBEBIYI, SARAH T. HAMID, MICAH HERSKIND, DERECKA PURNELL, ELI DRU & RACHEL KUO, 8 TO ABOLITION: ABOLITIONIST POLICY CHANGES TO DEMAND FROM YOUR CITY OFFICIALS (2020), https://static1.squarespace.com/static/5edbf321b6026b073fef97d4/t/5ee0817c955eaa484011b8fe/1591771519433/8toAbolition_V2.pdf [<https://perma.cc/SV88-UFSW>] (outlining abolitionist policy priorities like defunding the police, removing police from schools and communities, freeing people from incarceration, repealing laws criminalizing survival of violence, and investing in “care, not cops”).

will remain behind bars.¹⁶³ The next Part discusses the treatment they face while in government custody.

IV

CRUEL IRONIES: HOW PRISONS MIRROR THE DYNAMICS OF DOMESTIC VIOLENCE

While Part III examined the criminalization of Black and Brown S/GBV survivors, Part IV discusses what happens to them, and to so many others, behind bars. Through an extended analogy, I show that carceral policies are in direct conflict with the values that many feminists hold most dear—especially those embracing individual autonomy and rejecting interpersonal violence.¹⁶⁴ People in prison are subjected to physical assaults and emotional abuse, as well as to rape and other forms of sexual violence. Carceral policies also mirror the types of sexual and gender-based violence that feminists ardently denounce.¹⁶⁵ Police, prosecutors, and prisons strip people of their autonomy, isolate them from their loved ones, trap them with their abusers, and punish them for speaking out and fighting back. Moreover, prisons exploit people for their labor, as well as for profit and political advantage, and permanently cast them as sub-citizens.

A. *Surveillance and Control of Everyday Life*

Victims of intimate partner violence (IPV) and domestic violence (DV) suffer from relentless surveillance and control at the hands of their abusers, often enforced by physical assaults and rape.¹⁶⁶ They

¹⁶³ See, e.g., *Survivor Stories*, SURVIVED AND PUNISHED NEW YORK, <https://www.survivedandpunishedny.org/mass-commutation-clemency/survivor-stories> [<https://perma.cc/K4JX-77DM>] (reporting on the stories of survivors of violence who remain incarcerated).

¹⁶⁴ Cf. ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 27 (Greg Ruggiero ed., 2003) (explaining how the prison industrial complex mirrors the institution of Black chattel slavery).

¹⁶⁵ See RICHIE, *supra* note 14, at 51 (“The sexual abuse of women in state custody . . . exploits one of the most vulnerable aspects of women’s lives in a way that parallels sexual abuse by an intimate partner and rape perpetrated by community members and acquaintances.”); see also *id.* at 23 (explaining that because “few scholars or activists respond to incidents of police brutality as the gender violence that it sometimes is,” victimization statistics often fail to account for much of the gender-based violence Black women endure).

¹⁶⁶ See ANNA ULRICH, *CTR. FOR CT. INNOVATION, INTIMATE PARTNER SEXUAL ABUSE: A GUIDE FOR LISTENING AND RESPONDING TO SURVIVORS 2* (2013), <https://www.courtinnovation.org/publications/intimate-partner-sexual-abuse-guide-listening-and-responding-survivors> [<https://perma.cc/LV3T-K7HG>] (describing sexually abusive conduct and dynamics within intimate relationships).

are isolated from their friends and family members.¹⁶⁷ Their phone calls, text messages, emails, and other communications are monitored and censored.¹⁶⁸ Their abusers dictate where they go, what they eat, how they dress, and who they talk to.¹⁶⁹ At the fickle whims of their abusers, victims may be subject to verbal attacks, physical assaults, and rape.¹⁷⁰ Meaningful help is often unavailable and victims may face blame, prosecution, or even deportation¹⁷¹ if they seek it—especially if they use drugs or engage in sex work.¹⁷² Conversely, when they do not seek help, many S/GBV survivors are blamed for their “complicity.”¹⁷³

All of this is true for victims of the carceral state as well. Prisons strip people of their autonomy, subjecting them to constant surveillance and control. Prisoners are often held hundreds of miles away from friends and family on the outside, who generally cannot afford to

¹⁶⁷ RICHIE, *supra* note 14, at 35 (“Emotional manipulations typically include being shamed in front of, or forcibly isolated from, one’s family, having constraints placed on employment and educational opportunities, being denied control over household finances, and facing unreasonable domestic demands.”).

¹⁶⁸ *Types of Abuse*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/types-of-abuse> [https://perma.cc/PL9T-ZVZR].

¹⁶⁹ *See, e.g.*, RICHIE, *supra* note 14, at 28 (describing one woman’s experience of having her home, food, and whereabouts controlled by her abuser).

¹⁷⁰ *See, e.g., id.* at 32 (describing one woman’s experience of marital abuse, which included her husband’s daily demands for sex, monitoring of her clothing, sabotage of her friendships, and constant insults and degradation).

¹⁷¹ *See* Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass & Nawal Ammar, *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13 UCLA WOMEN’S L.J. 43, 67–69 (2003) (explaining that for immigrant women, fear of deportation is a significant barrier to seeking help); Cecelia M. Espenosa, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 20 IMMIGR. & NAT’Y L. REV. 221, 226 n.17, 273 (1999) (urging repeal of the “good moral character” requirement placed on noncitizens seeking cancellation of removal, a form of immigration relief that is unfairly denied to those who have engaged in sex work or who have criminal histories).

¹⁷² MAC & SMITH, *supra* note 39, at 17 (“[I]t is routine for police to threaten to arrest or deport migrant sex workers, even when the worker in question has come to them as a victim of violence.”); RESPONSES FROM THE FIELD, *supra* note 66, at 28 (“Sex workers, survivors with criminal histories, and those with drug addiction problems were at particular risk for arrest were they to request assistance.”).

¹⁷³ *See supra* note 49 and accompanying text. Further, when marginalized women disappear—particularly Black and Indigenous women—the state regards their missing person status as a natural consequence of their perceived deviance. *See* RICHIE, *supra* note 14, at 37 (relaying that police dissuaded the families of the victims of serial killer Anthony Sowell from reporting their loved ones missing and insisted that substance abuse and sex work were conclusive explanations for the women’s disappearance); Audrey Huntley, *From Breaking Silence to Community Control: Community-Controlled Databases, Murder Investigations, and Ceremony to Find Missing and Murdered Indigenous Women, Girls, and Two-Spirit People*, in BEYOND SURVIVAL, *supra* note 35, at 40 (describing how police assumed a missing woman of the Syilx and Nlaka’pamux tribes in Vancouver was just “out partying”).

visit.¹⁷⁴ Every activity is dictated or scrutinized; every communication monitored. People in prison are told when to eat, when to bathe, and when to shit. An anti-Black, misogynist, and anti-queer dress code is strictly enforced.¹⁷⁵ Prisoners are denied any privacy in their most intimate activities. For example, one state official's investigation of conditions inside a women's prison in Alabama found that guards engaged in "deliberate cross-gender viewing of prisoners showering, urinating, and defecating."¹⁷⁶

B. *Economic Exploitation and Subjugation*

Those subjected to IPV and DV are often prevented from accessing their own money, denied means for basic sustenance and hygiene, and exploited for their labor.¹⁷⁷ Similarly, prisoners are compelled to work for next to nothing.¹⁷⁸ This is, perhaps counterintuitively, in keeping with the Thirteenth Amendment's qualified prohibition on

¹⁷⁴ See *infra* notes 197–99 and accompanying text.

¹⁷⁵ See Gabriel Arkles, *Correcting Race and Gender: Prison Regulation of Social Hierarchy Through Dress*, 87 N.Y.U. L. REV. 859, 897–905 (2012) (describing how prisons enforce racialized gender norms through restrictive dress codes, with punishments for violations varying from loss of good time credit to solitary confinement); Lori Girshick, *Out of Compliance: Masculine-Identified People in Women's Prisons*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 189, 197–99 (Eric A. Stanley & Nat Smith eds. 2011) (explaining that masculine-identified people incarcerated in women's prisons are prohibited from wearing boxer shorts and are ordered to remove their facial hair). In addition to regulating sex-gender relationships, prison rules about undergarments invite sexual harassment and abuse. RICHIE, *supra* note 14, at 49–50. Riker's Island, the infamous jail complex in New York City, prohibits women from wearing men's underwear. The prohibition gives guards "blatant authority" at any time "to examine the women's underwear and deem it acceptable or not." *Id.* at 50.

¹⁷⁶ See Letter from Jocelyn Samuels, Acting Assistant Att'y Gen., to Robert Bentley, Governor of Alabama 1 (Jan. 17, 2014) [hereinafter Letter from Jocelyn Samuels], https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/tutwiler_findings_1-17-14.pdf [<https://perma.cc/VNB2-RLFZ>] (describing rampant sexualized abuse of incarcerated women by prison staff, including the "deliberate cross-gender viewing of prisoners showering, urinating, and defecating"); see also RICHIE, *supra* note 14, at 50–51 (describing one incarcerated woman's sense of vulnerability arising out of these practices).

¹⁷⁷ This labor exploitation may take on more "ordinary" forms—as in the case of women who perform the lion's share of care and household work but are denied equitable access to household income, or those who work outside of the household but have their paychecks seized and controlled by their intimate partners. It also takes on more "deviant" forms, as with people who are exploited for their sexual labor by intimate partners or pimps. It is outside the scope of this Note to distinguish between the very different types of labor exploitation that occur in intimate relationships. The relevant point is that the labor exploitation suffered by incarcerated people mirrors in important ways the labor exploitation suffered by people in abusive relationships.

¹⁷⁸ Prisoners are often prohibited from even touching money. See, e.g., *In the Visiting Room*, CAL. DEP'T OF CORRS. AND REHAB., <https://www.cdcr.ca.gov/visitors/in-the-visiting-room> [<https://perma.cc/WH4W-CU7Q>] ("Although . . . prisoners are allowed to go to the vending machines with their visitors in order to select . . . food items . . . , no prison allows the prisoners to touch either the money or the vending machines. An incarcerated

slavery, which approves of involuntary servitude as punishment for a crime.¹⁷⁹ Most incarcerated workers are compensated far less than one dollar per hour for their labor, a large proportion of which may be deducted for payments to crime victims' compensation funds or other fines and fees.¹⁸⁰ What little prisoners are paid may be spent only on approved goods and services,¹⁸¹ which come at a significant markup to fuel voracious corporate interests that lobby for ever-harsher prison sentences.¹⁸²

One might think that if prisoners' wages are set so low, it's because prisons already provide for the basic needs of those in their custody. Not so.¹⁸³ People in prison often go without toilet paper,¹⁸⁴ menstrual hygiene products,¹⁸⁵ soap,¹⁸⁶ and other basic necessities.

person who handles money is subject to having his/her visit terminated and may be disciplined.”).

¹⁷⁹ U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, *except as a punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”) (emphasis added).

¹⁸⁰ Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLICY INITIATIVE, (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages> [<https://perma.cc/9KU7-5Z4R>]. For example, prisoners of New York State are paid as little as ten cents per hour, and an average of just sixty-two cents per hour. *Id.* Efforts in recent years to raise prisoners' wages to three dollars per hour have failed in the state legislature, and former Governor Cuomo refused to take executive action on the issue. See Reuven Blau, *Sanitizer Squeezed from State Prison Labor Amplifies Calls to Hike Paltry Pay*, THE CITY (Mar. 11, 2020, 6:34 PM), <https://www.thecity.nyc/coronavirus/2020/3/11/21210454/sanitizer-squeezed-from-state-prison-labor-amplifies-calls-to-hike-paltry-pay> [<https://perma.cc/KQC6-RYFY>].

¹⁸¹ See Emily Brown & Rebecca McCray, *New York Prisons Set to Ban Most Packages from Family and Friends*, N.Y. FOCUS (May 12, 2022), <https://www.nysfocus.com/2022/05/12/prisons-ban-care-packages> [<https://perma.cc/KV2Y-4JHS>].

¹⁸² See, e.g., JOE MASCHMAN, COMMON CAUSE, DEMOCRACY BEHIND BARS 15 (2018), <https://www.commoncause.org/resource/democracy-behind-bars> [<https://perma.cc/JA4B-G26L>] (explaining how prison commissary vendors protect their monopoly status through lobbying, and take advantage of that status by price gouging, such that a can of soup can cost a prisoner as much as five times the retail price).

¹⁸³ Tiana Herring, *For the Poorest People in Prison, It's a Struggle to Access Even Basic Necessities*, PRISON POLICY INITIATIVE (Nov. 18, 2021), <https://www.prisonpolicy.org/blog/2021/11/18/indigence> [<https://perma.cc/XDR2-UMSJ>].

¹⁸⁴ *Id.* See also *Harris v. Fleming*, 839 F.2d 1232, 1235–36 (7th Cir. 1988) (finding no constitutional violation where a prisoner was isolated in filthy, roach-infested cell and deprived of toilet paper for five days and of soap and toothpaste for ten days); *Semelbauer v. Muskegon Cnty.*, 2015 WL 9906265 (W.D. Mich.) (collecting cases).

¹⁸⁵ See, e.g., Samantha Michaels, *Jail Is a Terrible Place to Have a Period. One Woman Is on a Crusade to Make It Better.*, MOTHER JONES (Feb. 21, 2019), <https://www.motherjones.com/crime-justice/2019/02/jail-california-tampons-menstruation-paula-canny-sanitary-pads> [<https://perma.cc/LF4C-XR56>] (reporting that people in California state prisons were rationed only ten pads per month, that the products are of such poor quality that multiple pads must be worn at once to avoid leaking, and that women were punished when they bled on their uniforms); ACLU, *THE UNEQUAL PRICE OF PERIODS: MENSTRUAL EQUITY IN THE UNITED STATES* [hereinafter *THE UNEQUAL PRICE OF PERIODS*], https://www.aclu.org/sites/default/files/field_document/111219-sj-

These indignities are not merely incidental to confinement in an imperfect prison bureaucracy. Rather, they are designed to humiliate.¹⁸⁷ In one facility, thirty women were ordered to share a pack of twelve menstrual pads.¹⁸⁸ Kimberly Haven, a former prisoner of Maryland, testified before the state legislature that she suffered toxic shock syndrome and underwent an emergency hysterectomy, all because she resorted to using makeshift tampons when she could not afford to purchase menstrual hygiene products from the prison commissary.¹⁸⁹ Others in prison report feeling compelled to perform sexual favors for guards if they want to get their hands on menstrual hygiene products and other necessities.¹⁹⁰

C. *Erosion of Parent-Child Relationships*

Those subject to DV or IPV often face insults and obstacles to their parenting by both their abusers and the state.¹⁹¹ Their love for their children is a sword brandished against them as they fight to keep their children close to them and insulated from family and state violence.¹⁹² For parents in prison, family separation is part and parcel of the punishment, and it harms children as much as it does parents.

periodequity.pdf [https://perma.cc/38V8-7T2U] (describing widespread denial of menstrual hygiene products to incarcerated women, often for the sake of humiliation and control and as leverage for sexual coercion); *Hearing on H.B. 797 Before the H. Jud. Comm.*, 2018 Leg. (Md. 2018) (statement of Kimberly Haven) (testimony by formerly incarcerated woman who, faced with a lack of adequate menstrual hygiene products, used toilet paper as a makeshift tampon; she suffered toxic shock syndrome and was forced to have an emergency hysterectomy as a result); Letter from Jocelyn Samuels, *supra* note 176, at 14–15 (explaining that sex is a form of currency in the Julia Tutwiler Prison for Women in Alabama, and that prisoners must submit to guards' sexual advances in exchange for basic necessities, like tampons and pads).

¹⁸⁶ Herring, *supra* note 183.

¹⁸⁷ See THE UNEQUAL PRICE OF PERIODS, *supra*, note 185; RICHIE, *supra* note 14, at 51 (“In many instances, this abuse [by prison guards and other government employees] is used to create shame and fear, and to further compromise women’s sense of self-worth . . .”).

¹⁸⁸ THE UNEQUAL PRICE OF PERIODS, *supra* note 185, at 3; Semelbauer v. Muskegon County, 2015 WL 9906265 (W.D. Mich.).

¹⁸⁹ THE UNEQUAL PRICE OF PERIODS, *supra* note 185, at 4.

¹⁹⁰ Letter from Jocelyn Samuels, *supra* note 176, at 14–15.

¹⁹¹ See Dorothy Roberts, *How the Child Welfare System Polices Black Mothers*, 15 SCHOLAR & FEMINIST ONLINE (2019), <https://sfoonline.barnard.edu/unraveling-criminalizing-webs-building-police-free-futures/how-the-child-welfare-system-polices-black-mothers> [https://perma.cc/Z8EC-Y9T4] (“The child welfare system serves as a way for the government to blame Black mothers for the structural injustices that disadvantage their children.”); RESPONSES FROM THE FIELD, *supra* note 66, at 25 (reporting that women who call the police for help are met with threats that they too will be arrested and their children taken into foster care).

¹⁹² See *id.* (arguing that child welfare systems work hand-in-hand with prisons: both seek to punish Black women for their own marginalization by separating them from their children, rendering both mother and child vulnerable to abuse in government custody).

Readers may recall from Part III the heartbreaking letter that then-thirteen-year-old Nevaeh sent to California Governor Gavin Newsom, pleading with him to send her mother, Tomiekia Johnson home.¹⁹³ Neveah is one of more than an estimated five million children in the United States who have had a parent in prison.¹⁹⁴ I, too, know firsthand the trauma of being forcibly separated from a parent by law enforcement. I also know firsthand that the fallout leaves children more vulnerable to homelessness, food insecurity, educational interruptions, and other stigmatized adverse life experiences.¹⁹⁵

Maintaining parental relationships can help both incarcerated parents and their children cope with the trauma of family separation.¹⁹⁶ However, geographic distance, limited visiting hours, and artificially inflated telecommunications costs present huge barriers.¹⁹⁷ As a child, I had to ride a crowded bus five hours each way to visit my father in prison, a trip my family could only afford to make once or twice per year at most. This is not unusual. Most people incarcerated in state prisons are held more than 100 miles from their homes.¹⁹⁸ For federal prisoners, the distance is often five times that.¹⁹⁹ For poor and working-class families, especially those without a reliable means of

¹⁹³ See *supra* notes 138–41 and accompanying text.

¹⁹⁴ *Children Who Had a Parent Who Was Ever Incarcerated by Race and Ethnicity in the United States*, ANNIE E. CASEY FOUND.: KIDS COUNT DATA CTR., <https://datacenter.kidscount.org/data/tables/9734-children-who-had-a-parent-who-was-ever-incarcerated-by-race-and-ethnicity#detailed/1/any/false/1696,1648,1603/10,11,9,12,1,13/18995,18996> [<https://perma.cc/Q2LV-6VPZ>] (displaying data from the National Survey of Children's Health by the U.S. Department of Health and Human Services). When compared with white children, Black children are more than twice as likely and Native American children are more than three times as likely to have had an incarcerated parent. *Id.*

¹⁹⁵ See, e.g., Kristin Turney & Rebecca Goodsell, *Parental Incarceration and Children's Wellbeing*, 28 FUTURE OF CHILDREN 147 (2018); Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, MARSHALL PROJECT (Dec. 2, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever> [<https://perma.cc/L8N3-E46A>].

¹⁹⁶ Nazish Dholakia, *Bans on Holiday Cards and \$30 Phone Calls—the Isolation of Prison*, VERA INST. OF JUST. (Dec. 21, 2021), <https://www.vera.org/news/bans-on-holiday-cards-and-30-phone-calls-the-isolation-of-prison> [<https://perma.cc/LJC7-27V5>].

¹⁹⁷ *Id.*; Beatrix Lockwood & Nicole Lewis, *The Long Journey to Visit a Family Member in Prison*, MARSHALL PROJECT (Dec. 18, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/12/18/the-long-journey-to-visit-a-family-member-in-prison> [<https://perma.cc/T456-5JYT>].

¹⁹⁸ Bernadette Rabuy & Daniel Kopf, *Separation by Bars and Miles: Visitation in State Prisons*, PRISON POL'Y INITIATIVE (Oct. 20, 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html> [<https://perma.cc/ATN8-ZS8U>].

¹⁹⁹ See CHRISTOPHER J. MUMOLA, BUREAU OF JUST. STATS., INCARCERATED PARENTS AND THEIR CHILDREN 5 (2000), <https://bjs.ojp.gov/library/publications/incarcerated-parents-and-their-children> [<https://perma.cc/48JN-65DG>]; OFF. OF THE ATT'Y GEN, FIRST STEP ACT ANNUAL REPORT 40 (2022), <https://www.ojp.gov/library/publications/first-step-act-annual-report-april-2022> [<https://perma.cc/BUD4-XJGZ>].

transportation, these barriers can be insurmountable. Phone calls are also financially prohibitive. In some states, a fifteen-minute phone call can cost more than thirty dollars.²⁰⁰

Moreover, even before the COVID-19 pandemic, incarcerated parents have often been prevented from hugging their children during visits altogether or have only been permitted to do so at specified times, such as the first or last few seconds of a visit.²⁰¹ All of these policies and practices are designed with two real purposes in mind: punishment and profit. And their costs are borne disproportionately by Black, Brown, and poor children, along with their parents.²⁰²

D. Reproductive Abuses

Pregnant people are especially vulnerable to gender-based violence by their intimate partners and by the state.²⁰³ And as has long been the case,²⁰⁴ but with increased fervor in the wake of *Dobbs*,²⁰⁵

²⁰⁰ Dholakia, *supra* note 196.

²⁰¹ E.g., Ellie Silverman, 'It Was Wonderful': Incarcerated Parents Hug the Children They Usually See Through a Barrier, WASH. POST (Dec. 16, 2017), https://www.washingtonpost.com/local/public-safety/it-was-wonderful-incarcerated-parents-hug-the-children-they-usually-see-through-a-barrier/2017/12/16/55b7e882-e0ea-11e7-bbd0-9dfb2e37492a_story.html [<https://perma.cc/8RCU-W34N>] ("The Arlington jail has held these special events for at least 10 years to allow children a contact visit with their parents. The rest of the year, a glass barrier separates inmates and visitors."); Emily Corwin, *Inmates Protest New Rules Limiting Kissing and Hugging Visitors at N.H. Prisons*, N.H. PUB. RADIO (Feb. 2, 2017, 5:42 PM), <https://www.nhpr.org/nh-news/2017-02-02/inmates-protest-new-rules-limiting-kissing-and-hugging-visitors-at-n-h-prisons> [<https://perma.cc/Y6TT-S55M>] ("There's to be no more kissing, and no hugs lasting more than three seconds in New Hampshire's prison visiting rooms as of this week.").

²⁰² See ASHLEY NELLIS, SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS (2021), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons> [<https://perma.cc/8NQW-9CXT>]; ANNIE E. CASEY FOUND.: KIDS COUNT DATA CTR., *supra* note 194.

²⁰³ *Abuse During Pregnancy*, MARCH OF DIMES, <https://www.marchofdimes.org/pregnancy/abuse-during-pregnancy.aspx> [<https://perma.cc/ATM9-UFNW>]; Jana L. Jasinski, *Pregnancy and Domestic Violence: A Review of the Literature*, 5 TRAUMA, VIOLENCE, & ABUSE 47 (2004); TAMAR KRAFT-STOLAR, CORR. ASS'N OF N.Y., REPRODUCTIVE INJUSTICE: THE STATE OF REPRODUCTIVE HEALTH CARE FOR WOMEN IN NEW YORK STATE PRISONS (2015) [hereinafter REPRODUCTIVE INJUSTICE], <https://static.prisonpolicy.org/scans/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf> [<https://perma.cc/8KBK-HWJD>]; CORNELL L. SCH. INT'L HUM. RTS. CLINIC & SURVIVED AND PUNISHED N.Y., MASS RELEASE NOW: NEW YORK STATE'S OBLIGATION TO DELIVER REPARATIONS FOR CRIMINALIZED SURVIVORS 22 (2021) [hereinafter MASS RELEASE NOW], <https://www.survivedandpunishedny.org/wp-content/uploads/2021/10/Mass-Release-Now-Report-Final-2021.pdf> [<https://perma.cc/W4EU-3FLJ>] (recounting the experience of Ethel Edwards, whose abusive partner threw her out of a car, forcing her to miscarry).

²⁰⁴ Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POLITICS, POL'Y & L. 299 (2013); *Arrests and Prosecutions of Pregnant People, 1973-2020*, PREGNANCY JUST. (2021), <https://www.pregnancyjusticeus.org>.

women and other pregnant people are criminalized and punished for their pregnancy choices and outcomes. Pregnant prisoners are often forced to give birth in the presence of male prison guards,²⁰⁶ who place handcuffs around their wrists, irons on their legs, and chains around their waists²⁰⁷—over the objections of medical staff and to the detriment of both parent and fetus.²⁰⁸ In many jurisdictions, this form of cruelty is not the exception but the rule,²⁰⁹ compounding months of medical neglect.²¹⁰ Pregnant prisoners may be needlessly denied pain medication²¹¹ and the comfort of having a loved one in their hospital room during childbirth.²¹² After childbirth, incarcerated mothers are separated from their babies, with little opportunity to bond and breastfeed.²¹³

org/arrests-and-prosecutions-of-pregnant-women-1973-2020 [https://perma.cc/97TN-M9KP].

²⁰⁵ *Dobbs v. Jackson Whole Women’s Health Org.*, 142 S. Ct. 2228 (2022); see Craig Monger, ‘Self-Managed’ Abortions Could Still Bring Criminal Prosecution Under Child Chemical Endangerment Laws, 1819 NEWS (Jan. 7, 2023), https://1819news.com/news/item/self-managed-abortion-could-still-bring-criminal-prosecution-under-child-chemical-endangerment-laws [https://perma.cc/PR3H-F9QN].

²⁰⁶ REPRODUCTIVE INJUSTICE, *supra* note 203. One woman reported feeling “like I was on show” because she was having a cesarean section and “they were right there with all of my body exposed.” *Id.* Another recalled feeling nervous and scared, with the officer “watching [her] vagina the whole time.” *Id.*

²⁰⁷ See, e.g., *id.*; Christina Scotti, *Generating Trauma: How the United States Violates the Human Rights of Incarcerated Mothers and Their Children*, 23 CUNY L. REV. 38, 60–63 (2020); Lorie S. Goshin, D.R. Gina Sissoko, Grace Neumann, Carolyn Sufrin & Lorraine Byrnes, *Perinatal Nurses’ Experiences with and Knowledge of the Care of Incarcerated Women During Pregnancy and the Postpartum Period*, 48 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 27, 28 (2019).

²⁰⁸ Goshin et al., *supra* note 207, at 28.

²⁰⁹ *Shackling of Pregnant Women in Jails and Prisons Continues*, EQUAL JUST. INITIATIVE (Jan. 29, 2020), https://eji.org/news/shackling-of-pregnant-women-in-jails-and-prisons-continues [https://perma.cc/Z4DU-49BQ]. A 2019 study of perinatal nurses found that eighty-three percent of those who cared for incarcerated patients during their pregnancies or after childbirth reported that shackles were used sometimes or all of the time, with twelve percent reporting that their incarcerated perinatal patients were always shackled. Goshin et al., *supra* note 207, at 32.

²¹⁰ REPRODUCTIVE INJUSTICE, *supra* note 203.

²¹¹ *Id.* at 111, 122.

²¹² *Id.* at 112 (describing New York State’s policy).

²¹³ *Id.* at 117–18. One parent reported that it took one to two hours for guards to transport her from the prison ward to see her son and “by then, the nurse had gotten impatient and fed him.” *Id.* at 118. Others choose not to breastfeed because of the lack of privacy, with too many male officers around. *Id.*

E. Sexual Violence and Degradation

Prisoners are subject to sexual assault behind bars in astounding numbers.²¹⁴ These abuses are most often perpetrated by guards and other prison staff, sometimes in retaliation for disobeying orders or speaking up.²¹⁵ One woman reported being raped in a California prison by her work supervisor, an electrician on staff.²¹⁶ Afterwards, she was thrown in “administrative segregation” and denied meals because she refused to pin the rape on another prisoner.²¹⁷ Her assailant came after her in solitary confinement too, threatening to cut her throat and kill her family if she told anyone.²¹⁸

Prisoners are also subjected to invasive and degrading bodily searches, which are often little more than a thin veil for their jailers to sexually assault them.²¹⁹ During these “searches,” prisoners can expect to have their breasts, buttocks, and genitals groped by corrections officers.²²⁰ Their body cavities are probed and penetrated, sometimes with foreign objects.²²¹ Prisoners may be kicked, struck, or spat on—sometimes by multiple assailants at once.²²²

²¹⁴ National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37111 (2012) (“[I]n 2008 more than 209,400 persons were victims of sexual abuse in prisons, jails, and juvenile facilities, [including] at least 78,500 [adult] and 4,300 youth [cases] . . . of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.”).

²¹⁵ See MARCELLIN & MCCOY, *supra* note 28 at 5 (“In 2015, more than half of allegations [reported to the Bureau of Justice Statistics] (58 percent) involved victimization of incarcerated people by staff, while 42 percent involved victimization of incarcerated people by other incarcerated people.”); *infra* notes 224–27 and accompanying text; see also DANIELLE SERED, UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR 75 (2019) (“For example, when a woman complains about an officer blackmailing her for sex or raping her, she is promptly thrown into ‘The Box’ for months, even years. Why does the inmate, a woman, get punished for that kind of accusation? It is piling abuse on top of abuse.” (quoting Donna Hylton)).

²¹⁶ *Survivor Stories: Johanna*, JUST DET. INT’L, <https://justdetention.org/story/johanna> [<https://perma.cc/MRS7-NV56>].

²¹⁷ *Id.*

²¹⁸ *Id.* Johanna’s efforts to report her rapist were subverted and sabotaged at every turn by prison officials and local law enforcement. *Id.* Eventually, her rapist took a plea to a charge of consensual sex with a prisoner, for which he was fined \$100 and received a relatively meager sentence of just thirty days in the county jail, which he was permitted to serve on the weekends. *Id.*

²¹⁹ See, e.g., RICHIE, *supra* note 14, at 51 (“It is not uncommon . . . for women to complain about a guard groping rather than ‘pat searching,’ forcefully inserting foreign objects in them as a way to conduct a ‘cavity search,’ or ‘taunting them in sexually explicit terms’ while observing them during bathing and dressing routines.”).

²²⁰ *Id.*

²²¹ *Id.*

²²² See, e.g., Corey Devon Arthur, *Life Inside: I’ve Been Strip-Frisked Over 1,000 Times in Prison. I Consider It Sexual Assault*, MARSHALL PROJECT (Feb. 4, 2021), <https://www.themarshallproject.org/2021/02/04/i-ve-been-strip-frisked-over-1-000-times-in-prison-i-consider-it-sexual-assault> [<https://perma.cc/99EM-ETMM>].

For Black and Brown people, these “searches” do not begin behind bars but in their homes and communities, often before they have reached the age of adulthood.²²³ And while women and those who do not conform to heteropatriarchal gender roles are the more obvious targets for sexual assault while in government custody, cis-gender men suffer S/GBV as well. Corey Devon Arthur, a Black man who has been incarcerated in New York State prisons since 1997, draws a straight line from the strip searches he regularly endures behind bars to the one he endured at the hands of the NYPD when he was just fourteen years old.²²⁴ In an essay for the Marshall Project, he recalled his fear as a teenager after being arrested for “menacing,” when he was ordered to strip naked in front of two policemen who then forced him to spread his buttocks and expose his anus for their inspection.²²⁵

As an adult, Arthur regularly faces threats of rape from his jailers: “If any of you fuck this up, my stick is gonna get some action. Bend over at the waist and spread ‘em.”²²⁶ He has now come to understand this treatment as sexual assault. What followed when he once dared to say “no” to a strip search was barbaric:

[S]everal more guards armed with batons ran into the room, jumped me, pinned me down and cut off my clothes. I fought back as hard as I could, but gloved fingers penetrated every hole in my body. It was no longer about searching for contraband. The true nature of the strip frisk had finally surfaced. Snuffs to my face and body were followed by well-placed shots from closed fists, snot and slivers of spit. My blood was the only thing that didn’t feel disgusting.

Arthur’s firsthand account is a harrowing example of how prisons function as sites of unbridled violence, sexual degradation, and racial terror.²²⁷ These abuses should outrage and concern all feminists. And while many have spoken out in opposition, the plight of prisoners and others in state custody too often remains on the periphery of white feminist discourse.²²⁸ Feminist inattention to the ubiquity of rape and

²²³ *Id.*; Paul Butler, *Sexual Torture: American Policing and the Harassment of Black Men*, GUARDIAN (Aug. 14, 2017), <https://www.theguardian.com/us-news/2017/aug/14/stop-and-frisk-policing-black-men-torture-sexual-harassment-paul-butler> [<https://perma.cc/UK47-9YA2>].

²²⁴ Arthur, *supra* note 222.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ See Butler, *supra* note 223.

²²⁸ See ANDREA RITCHIE, NATIONAL BLACK WOMEN’S JUSTICE INITIATIVE, EXPANDING OUR FRAME: DEEPENING OUR DEMANDS FOR SAFETY AND HEALING FOR BLACK SURVIVORS OF SEXUAL VIOLENCE (2019), <https://incite-national.org/wp-content/uploads/2019/07/ritchie-Expanding-Our-Frame-Deepening-our-Demands-for-Safety-and-Healing-for-Black-Survivors-of-Sexual-Violence.pdf> [<https://perma.cc/B5BP-84FR>]

other forms of sexual assault in prisons betrays an ugly (though not immutable) hypocrisy. We cannot in one breath denounce rape culture and victim blaming and in another imply that the hundreds of thousands of people who are raped and sexually assaulted in prisons each year somehow deserve it.²²⁹

It is a bleak concept of feminism that takes little issue with holding millions of people captive; let alone subjecting them to a regime of extreme censorship, forced and exploitative labor in dangerous and unsanitary conditions, family separation, reproductive abuses, and emotional, physical, and sexual abuse.²³⁰ White women in the feminist anti-violence movement cannot continue to ignore the profound violence that takes place behind bars in the United States, nor can we continue to justify it based on flawed understandings of safety and accountability.²³¹

The magnitude of carceral violence can seem insurmountable. But, as Mariame Kaba teaches, “hope is a discipline.”²³² We must practice it daily, and not wither in the face of state violence that may seem too big to take on. In Part V, I propose some steps we can take to atone for the violence inflicted on those whom carceral feminism

(describing police sexual violence against Black women, girls, trans, gender nonconforming and nonbinary people as a “largely hidden epidemic”); SMITH & MAC, *supra* note 39, at 118 (“Mainstream feminism too often puts ‘police violence’ and ‘male violence against women’ into different conceptual categories—if, indeed, it considers police violence to be a topic of feminist concern at all.”).

²²⁹ See *supra* notes 214–15 and accompanying text.

²³⁰ Some readers may be wondering what courts have to say about the abuses inflicted on those in prison. One answer is, far less than they should, thanks in large part to the Prison Litigation Reform Act (PLRA). While the 1994 Crime Bill (including VAWA) fueled mass incarceration, the PLRA was enacted just two years later to strip prisoners’ access to legal representation and the courts. Among other barriers, the PLRA imposes a damning administrative exhaustion requirement on prisoners who bring civil rights lawsuits, caps attorneys’ fees at levels that are unparalleled in other civil lawsuits, requires judges to throw out meritorious complaints based on procedural rules that are both unprincipled and exceedingly difficult to navigate without an attorney, and sharply circumscribes judges’ ability to order damages *and* prospective relief, as well as to approve settlements that would grant plaintiffs more favorable terms. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555 (2003); ANDREA FENSTER & MARGO SCHLANGER, PRISON POL’Y INITIATIVE, SLAMMING THE COURTHOUSE DOOR: 25 YEARS OF EVIDENCE FOR REPEALING THE PRISON LITIGATION REFORM ACT (2021), https://www.prisonpolicy.org/reports/PLRA_25.html [<https://perma.cc/L28K-MSRS>] (calling for a repeal of the PLRA).

²³¹ See generally VICTORIA LAW, “PRISONS MAKE US SAFER” AND 20 OTHER MYTHS ABOUT MASS INCARCERATION (2021).

²³² *Hope Is a Discipline* feat. Mariame Kaba, BEYOND PRISONS (Jan. 5, 2018), <https://www.beyond-prisons.com/home/hope-is-a-discipline-feat-mariame-kaba> [<https://perma.cc/J778-R4LJ>].

leaves behind and help create the conditions necessary for marginalized S/GBV survivors to heal and thrive.

V

REIMAGINING THE VIOLENCE AGAINST WOMEN ACT FROM A TRANSFORMATIVE JUSTICE PERSPECTIVE

In this Note, I argue that the carceral system fails to deliver on its promise of safety and justice for those who are subjected to sexual and gender-based violence and, indeed, recreates the very same types of harms it purports to sanction. By divesting from social infrastructure and safety nets in favor of police, prosecutors, and prisons, carceral feminism has abandoned those at society's margins and left them more vulnerable to S/GBV in their homes and communities, as well as in government custody.

In light of this, I argue that fellow feminists and anti-violence advocates, and particularly fellow white women, should follow the lead of abolition feminists and embrace a transformative justice approach to anti-violence work. But what is “transformative justice” anyway? Generation FIVE, a survivor-led group that uses community organizing and public education to further its vision of ending the sexual abuse of children within five generations,²³³ offers one helpful definition:

Transformative [j]ustice seeks to provide people who experience violence with immediate safety, long-term healing and reparations; to demand that people who have done harm take accountability for their harmful actions, while holding the possibility for their transformation and humanity; and to mobilize communities to shift the oppressive social and systemic conditions that create the context for violence.²³⁴

Whereas the criminal legal system purports to identify and punish individual bad actors, transformative justice is concerned first and foremost with meeting the needs of those who have been subjected to violence. That said, transformative justice work necessarily addresses itself to both those who suffer violence and those who commit it, recognizing that notions of “perpetrator” and “victim” are often two sides of the same coin.²³⁵ In this Note, I focus on the first prong of the above definition of transformative justice, and specifically on the need

²³³ GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE: A LIBERATORY APPROACH TO CHILD SEXUAL ABUSE AND OTHER FORMS OF INTIMATE AND COMMUNITY VIOLENCE 2 (2007) (on file with journal).

²³⁴ GENERATION FIVE, *supra* note 18, at 45.

²³⁵ SERED, *supra* note 215, at 4.

to provide immediate safety and reparations to those who have suffered violence. But my hope is that this Note will also be of service to the larger vision of transformative justice, to “shift the oppressive social and systemic conditions that create the context for violence.”²³⁶

With that guiding framework in mind, in Part V I discuss VAWA and urge readers to reimagine it as a platform for transformative justice interventions, rather than as a pocketbook for police, prosecutors, and prisons. I first summarize VAWA’s carceral bent, drawing from the research of scholars like Leigh Goodmark, Aya Gruber, and Beth Richie, among others.²³⁷ I then build on their research and on existing calls to decarcerate criminalized S/GBV survivors with my own proposal that we do so through VAWA and that we likewise use VAWA to fund and deliver financial reparations to criminalized survivors. While I propose some ideas for how a VAWA-funded decarceration and reparations initiative might work and point to some examples, my intention is that they serve as a conversation starter rather than as a detailed policy plan. My hope is that others will expand upon and push to actualize this proposal before VAWA is next due for reauthorization. In the meantime, I encourage those administering or seeking funding from VAWA’s existing grant programs to think creatively about how those programs can be used to direct cash payments to criminalized and incarcerated survivors of sexual and gender-based violence.

A. *VAWA and the Costs of a Carceral Feminist Agenda*

While commentators have long venerated VAWA as a resounding legislative victory for those subjected to S/GBV, they less often understand it as the funding boon that it is for police, prosecutors, and prisons. Since VAWA was enacted in 1994, the Department of Justice has allocated more than \$9 billion through VAWA’s grant programs.²³⁸ The lion’s share of this funding has gone to the criminal legal system, rather than to S/GBV survivors themselves or to programs designed to meet their most urgent needs. Funding for carceral actors has been expressly conditioned on adopting more punitive policies, like those mandating or incentivizing arrest and prosecution, which disempower and often punish survivors of S/GBV.²³⁹ In the first year of its enactment, VAWA allocated the bulk of its funds (approximately 62%) to the criminal legal system and the balance (38%) to an array

²³⁶ GENERATION FIVE, *supra* note 18, at 45.

²³⁷ GOODMARK, *supra* note 61; GRUBER, *supra* note 16; RICHIE, *supra* note 14.

²³⁸ *About the Office*, OFF. ON VIOLENCE AGAINST WOMEN, <https://www.justice.gov/ovw/about-office> [https://perma.cc/5FUR-YRN6].

²³⁹ *Id.*

of social services.²⁴⁰ But even this balance has grown more lopsided: In 2013, the most recent reauthorization before 2022,²⁴¹ a whopping 85% of VAWA funds went to carceral measures and only 15% to social services.²⁴² This means that although VAWA's total budget in 2013 had reached \$3.1 billion—and despite consistent reports of acute needs for housing and other material and financial supports²⁴³—a smaller dollar amount was allocated to social services in 2013 than had been allocated to social services nearly two decades earlier.²⁴⁴

VAWA's two largest grant programs allocate some \$268 million to police, prosecutors, and the courts each year.²⁴⁵ In fiscal year 2021, for example, the Office on Violence Against Women (OVW) awarded approximately \$184 million to the criminal legal system through its two largest grant programs, the Services, Training, Officers, and Prosecutors (STOP) and Arrest Programs, respectively.²⁴⁶ This figure does not include numerous other programs that fund the carceral system either directly, such as the Rural Program (\$34.6 million

²⁴⁰ Jill Theresa Messing, Allison Ward-Lasher, Jonel Thaller & Meredith E. Bagwell-Gray, *The State of Intimate Partner Violence Intervention: Progress and Continuing Challenges*, 60 Soc. WORK 305, 306 (2015).

²⁴¹ Congress has reauthorized VAWA four times: in 2000 through the Victims of Trafficking and Violence Protection Act (P.L. 106-386), in 2005 through the Violence Against Women and Department of Justice Reauthorization Act (P.L. 109-162), in 2013 through the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4), and, most recently, in 2022 through the Violence Against Women Reauthorization Act of 2022. EMILY J. HANSON & LISA N. SACCO, CONG. RSCH. SERV., RL46742, THE VIOLENCE AGAINST WOMEN ACT (VAWA) REAUTHORIZATION: ISSUES FOR CONGRESS 1, n.2 (2021). The 2013 reauthorization expired in December 2018, followed by short-term spending legislation and several failed attempts at reauthorization before March 2022, when the Act was reauthorized for a fourth time. Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, 136 Stat. 840 (2022) [hereinafter VAWA Reauthorization Act of 2022].

²⁴² Messing et al., *supra* note 240, at 306.

²⁴³ See NAT'L NETWORK TO END DOMESTIC VIOLENCE, 14TH ANNUAL DOMESTIC VIOLENCE COUNTS REPORT 8–9 (2020), https://nnedv.org/wp-content/uploads/2020/03/Library_Census-2019_Report_web.pdf [<https://perma.cc/4L6J-NXGM>] (quantifying the unmet needs for emergency shelters and other housing services among survivors of domestic violence).

²⁴⁴ Messing et al., *supra* note 240, at 306.

²⁴⁵ Goodmark, *supra* note 22, at 85 (citing LISA N. SACCO, CONG. RSCH. SERV., RL42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING (2015), <https://www.utsystem.edu/sites/default/files/offices/police/files/annual-promotional-exams/vawa.pdf> [<https://perma.cc/L6QC-C5L3>]).

²⁴⁶ DEPT. OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, *FY 2021 OVW Grant Awards by Program*, DEP'T. OF JUST. (2021), <https://www.justice.gov/ovw/awards/fy-2021-ovw-grant-awards-program> [<https://perma.cc/5BPJ-YYP2>]. Note that as of the 2022 Reauthorization, the “Grants to Encourage Arrest Policies” program, popularly known as the “Arrest Program,” has been officially renamed the “Grants to Improve the Criminal Justice Response” program. VAWA Reauthorization Act of 2022 § 102.

awarded in 2021),²⁴⁷ or indirectly by imposing law enforcement “partnerships” on nonprofit and community-based organizations, such as the College Campus Program (\$16.2 million awarded in 2021).²⁴⁸

Grants for housing and other social and economic supports for survivors in that same year were meager by comparison. For example, OVW awarded \$28.2 million through its Sexual Assault Services Program in 2021²⁴⁹ and \$35.3 million through its Transitional Housing Program²⁵⁰—despite consistent annual reports from service providers that housing and emergency shelter are the number one most unmet need.²⁵¹

Moreover, not only are law enforcement agencies the primary beneficiaries of VAWA in terms of dollars allocated, but even the provisions designed to provide cash and other forms of relief to survivors skew carceral. As Professor Gruber has explained, victims are typically not entitled to restitution under VAWA unless their abusers are convicted, and S/GBV victims facing deportation are granted relief only if they fully cooperate with prosecutors.²⁵² This means, for example, that a domestic violence victim who refuses to help send her abusive partner to prison may be cut off from a valuable source of financial support that could help her repair and rebuild her life.²⁵³ It also means that an undocumented woman may face deportation if she calls the police after being raped, unless she submits to a prosecutor’s

²⁴⁷ DEPT. OF JUST., *supra* note 246.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ For example, the most recent iteration of an annual, twenty-four-hour snapshot survey of service providers found that sixty-eight percent of unmet requests for services were for housing and emergency shelter. NAT’L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 243, at 8.

²⁵² GRUBER, *supra* note 17, at 148. *See also* RESPONSES FROM THE FIELD, *supra* note 66, at 20 (reporting that police often presume Latina women to be lying about S/GBV in the hopes of securing immigration relief).

²⁵³ Indeed, prosecutors often use the subpoena process to compel the participation of S/GBV victims as “material witnesses,” regardless of whether the victim-witness is seeking compensation. *See* Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 773–74 (2007). This process has frequently resulted in the detention of S/GBV victims who refuse to cooperate with the prosecution, *id.*, a practice which some have claimed is necessary to “send a clear message that domestic violence is criminally unacceptable,” GRUBER, *supra* note 17, at 107. *E.g.*, Cheryl Hanna, *No Right to Choose: Mandated Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1888 (1996). While the 2022 reauthorization appears to acknowledge the trauma of mandatory participation among S/GBV victims, it still misses the mark. While it requires prosecutors’ offices that take VAWA funding to develop a protocol regarding material witness petitions and bench warrants, it leaves ample room for prosecutors to continue subverting victims’ needs and misses an opportunity to incentivize diversion away from the criminal system altogether. VAWA Reauthorization Act of 2022, §§ 102, 2017.

demands that she testify in court against her assailant—an experience that many find retraumatizing.²⁵⁴

B. A Missed Opportunity: The 2022 Reauthorization

VAWA was first passed in 1994 and has since been reauthorized four times: in 2000, 2005, 2013 and, most recently, in March 2022 after several lapses.²⁵⁵ Prior to the 2022 reauthorization, Leigh Goodmark, law professor and anti-violence advocate, argued that the legislation's expiration presented an opportunity to divest from harmful carceral policies in favor of more effective and humane interventions that prioritize the needs of marginalized survivors and address the underlying causes of violence.²⁵⁶

Such a transformation would be in keeping with the demands of countless victims and survivors of police-perpetrated violence, whose calls to defund the police and invest in communities reached a crescendo following the highly-publicized police-perpetrated murders of George Floyd and Breonna Taylor in the summer of 2020, as well as with the leadership of S/GBV survivors of color who advocate for abolitionist and transformative justice approaches to address interpersonal and state violence.²⁵⁷ Indeed, as the early critics of VAWA understood, the struggle against rape and domestic violence is deeply intertwined with the struggle against police-perpetrated violence, white supremacy, and racial capitalism.²⁵⁸

Unfortunately, Congress and the Biden administration missed the memo on the costs of carceral feminism, or else chose to ignore it in favor of more of the same: more funding for police and prosecutors and the same meager offerings for women and other survivors of

²⁵⁴ See COMMUNITY JUSTICE EXCHANGE, SAFETY PLANNING AND INTIMATE PARTNER VIOLENCE: A TOOLKIT FOR SURVIVORS AND SUPPORTERS 43 (2022), https://survivedandpunished.org/wp-content/uploads/2022/05/SafetyToolkit_5.2.22.pdf [<https://perma.cc/CJP4-QEE8>].

²⁵⁵ See HANSON & SACCO, *supra* note 241.

²⁵⁶ Leigh Goodmark has proposed, for example, the reallocation of VAWA's law enforcement funding to employment assistance programs and programs that send nurses to the homes of new parents, both of which have been correlated with decreased rates of IPV among vulnerable families; prevention programs that educate adolescents about relationship violence; increased emergency funds for those leaving violent relationships and other dangerous circumstances; and community intervention programs that work within, rather than against, the reality that most who experience domestic violence or sexual assault cannot and do not turn to the police for help. Goodmark, *supra* note 22; GOODMARK, *supra* note 61.

²⁵⁷ See generally PURNELL, *supra* note 35; *About*, DEFUNDTHEPOLICE, <https://defundthepolice.org/about> [<https://perma.cc/B4EV-HJ7J>].

²⁵⁸ See, e.g., ABOLITION. FEMINISM. NOW., *supra* note 10, at 108–09 (citing Annanya Bhattacharjee, *Whose Safety? Women of Color and the Violence of Law Enforcement* (Am. Friends Serv. Comm. Working Paper, 2001)).

sexual and gender-based violence. While the reauthorization gestures at a more progressive approach, the lifeblood of the legislation remains carceral, with no notable cuts to police or prosecutors.

For example, the reauthorization establishes a pilot program on “restorative practices.”²⁵⁹ However, the legislation allocates only \$11 million to this pilot program,²⁶⁰ representing a small fraction of the estimated \$268 million in VAWA funding handed out to police, prosecutors, and the courts each year.²⁶¹ Further, the pilot program assures carceral stakeholders that restorative practices are “not intended to function as a replacement for criminal justice intervention”²⁶² and requires that grantees rely on so-called evidence-based risk assessment tools, which have notorious and pervasive racial biases.²⁶³ The legislation also takes great pains to exclude people with certain prior or contemporaneous criminal legal system contact from restorative justice processes.²⁶⁴ Potential participants with prior domestic violence complaints against them are to be “screened for suitability”²⁶⁵ for the program. The choice to exclude this population ignores that parties with a history of police involvement in domestic violence incidents are among those who stand to benefit most from anti-carceral interventions.

Other gestures at progressive reform include grants to fund “trauma-informed” training for law enforcement to the tune of an additional \$5 million per year.²⁶⁶ However, police anti-bias training, in its various forms, has been widely critiqued as ineffectual and counter-productive.²⁶⁷ Indeed, the billions of dollars already funneled to law enforcement through VAWA over the past quarter century show that no amount of money will ensure that police and prosecutors treat

²⁵⁹ 34 U.S.C.A. § 12514.

²⁶⁰ Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49.

²⁶¹ See Goodmark, *supra* note 22, at 85.

²⁶² VAWA Reauthorization Act of 2022, § 109.

²⁶³ See Vincent M. Southerland, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System*, 80 MD. L. REV. 487 (2021); Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [<https://perma.cc/4UHM-RRKQ>].

²⁶⁴ VAWA Reauthorization Act of 2022, § 41801(i).

²⁶⁵ VAWA Reauthorization Act of 2022, § 41801(e)(1)(A)(i).

²⁶⁶ VAWA Reauthorization Act of 2022, § 205.

²⁶⁷ See e.g., Jocelyn Simonson, *Power over Policing*, BOSTON REV. (June 8, 2020), <https://www.bostonreview.net/articles/jocelyn-simonson-compstat-power> [<https://perma.cc/A9EG-39YE>] (explaining that even given “the full spa treatment of police reform,” including “new use-of-force standards, implicit bias training, de-escalation training, diversity of police leadership, [and] body cameras,” police still murder Black people because “they view control and domination as their job”).

Black, Brown, poor, queer, disabled, migrant, drug-using, and sex-working S/GBV survivors with dignity and respect.²⁶⁸

Of course, VAWA spending represents just a tiny fraction of the estimated \$295 billion that we spend on the criminal legal system each year in the United States.²⁶⁹ We can and should reclaim *all* of those funds and instead invest in social infrastructure and safety nets, which we know increase stability and socioeconomic autonomy among marginalized women, trans, and GNC people and, accordingly, reduce their vulnerability to violence.²⁷⁰ VAWA is an excellent place to start.

C. *Envisioning an Anti-Carceral VAWA: Immediate Decarceration and Financial Reparations for Criminalized Survivors of Sexual and Gender-Based Violence*

VAWA has never ensured the safety of Black and Brown women; queer, trans, and gender-nonconforming people; sex workers; drug users; poor, working class, homeless, and housing insecure people; migrants; and others who do not fit the everywoman archetype dictated by carceral feminism. Nor has it recognized their right to protect themselves from violence.²⁷¹ As a result, countless survivors are punished for fighting back, for trying to survive, or for the conduct of their abusers.²⁷² And once in government custody, criminalized survivors are subjected to evermore violence and abuse.²⁷³ An anti-carceral VAWA should facilitate the release and healing of criminalized survi-

²⁶⁸ See OFFICE ON VIOLENCE AGAINST WOMEN, *supra* note 238 (“Since its inception, OVW has awarded over \$9 billion in grants and cooperative agreements . . .”). As discussed in Section V.A, *supra*, most of this funding has gone to carceral actors and measures.

²⁶⁹ *Budget Justice*, VERA INST. OF JUST., <https://www.vera.org/spotlights/election-2020/budget-justice> [<https://perma.cc/PT6J-WAVE>].

²⁷⁰ See GOODMARK, *supra* note 61, at 9–10 (exploring how community-based solutions succeed only when economic justice is a priority).

²⁷¹ See *supra* notes 70–76 and accompanying text. For example, Ky Peterson, a Black trans man, was prosecuted and imprisoned after he shot and killed an assailant who knocked him unconscious on the street and raped him. Victoria Law, *Trapped in a Transphobic Hell: Ky Peterson and the Trials of Trans People in Prison*, TRUTHOUT (Sept. 15, 2017), <https://truthout.org/articles/trapped-in-a-transphobic-hell-ky-peterson-and-the-trials-of-trans-people-in-prison> [<https://perma.cc/3XG8-SZAY>]. Medical personnel told Peterson, who lived with his brothers in a trailer park in Georgia, that he didn’t “look like” a rape victim. *Id.* Prosecutors rejected Peterson’s self-defense claim, theorizing instead that Peterson had killed his attacker as part of an armed robbery, despite DNA and other physical evidence proving that the assailant had forcibly raped him. *Id.* Peterson spent nine years in prison before he was released in July of 2020. Devin-Norelle, *After 9 Years of Incarceration, This Trans Sexual Assault Victim Is Finally Home*, THEM (July 30, 2020), <https://www.them.us/story/transgender-sexual-assault-victim-released-from-prison> [<https://perma.cc/27R6-6W6Y>].

²⁷² See *supra* Part III.

²⁷³ See *supra* Part IV.

vors by incentivizing the use of clemency, pardon, and commutation powers and by funding reparations for the harms of criminalization.

Building on the work of grassroots organizing collectives such as Survived and Punished, which campaign for the release of criminalized survivors from prisons, jails, and detention centers,²⁷⁴ advocates and researchers have called for the expanded use of clemency, pardon, and commutation powers to promote decarceration.²⁷⁵ For example, advocates in New York have called on Governor Kathy Hochul to grant mass clemency and full pardons to criminalized survivors as the most urgently needed form of reparations for human rights violations against them.²⁷⁶

The broader feminist anti-violence movement could follow their lead by demanding that VAWA prioritize the needs of criminalized survivors, starting with immediate freedom from confinement. VAWA could provide for such relief through, for example, authorization of funding incentives for expanded use of state executives' clemency, pardon, and commutation powers to free incarcerated survivors of S/GBV from prison and the collateral consequences of their convictions,²⁷⁷ as well as for expanded use of these mechanisms at the federal level. Moreover, to avoid the bureaucratic pitfalls of similar initiatives, such a program must require streamlined processes and directly tie attendant funding to actual release numbers.²⁷⁸

²⁷⁴ ABOLITION. FEMINISM. NOW., *supra* note 10, at 6.

²⁷⁵ Professor Rachel Barkow has written extensively on the disuse of these powerful “second-look mechanisms” over time and advocated for their expanded use to counteract the political forces behind ever-harsher criminal sentences in recent decades. *E.g.*, RACHEL ELISE BARKOW, PRISONERS OF POLITICS 98–99, 147 (2019); Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802 (2015). Researchers at the Urban Institute have urged state executives to use their clemency powers on a categorical basis for certain vulnerable populations, including survivors of human trafficking and gender-based violence. LEAH SAKALA, RODERICK TAYLOR, COLETTE MARCELLIN & ANDREEA MATEI, URBAN INST., HOW GOVERNORS CAN USE CATEGORICAL CLEMENCY AS A CORRECTIVE TOOL (2020), <https://www.urban.org/research/publication/how-governors-can-use-categorical-clemency-corrective-tool> [<https://perma.cc/B4LG-75CR>].

²⁷⁶ See Victoria Law, *Why Activists Are Calling on Kathy Hochul to “Free Them All,”* NATION (Oct. 15, 2021), <https://www.thenation.com/article/society/domestic-violence-clemency-hochul> [<https://perma.cc/XE6H-NJGA>]; MASS RELEASE NOW, *supra* note 203, at 48. Governor Hochul has yet to take up this demand and has yet to fulfill even her own modest promises of clemency reform more broadly. See Jacob Kaye, *Late to Her Own Deadline, Hochul Says Clemency Changes Are Coming*, QUEENS DAILY EAGLE (July 20, 2022), <https://queenseagle.com/all/2022/7/20/late-to-her-own-deadline-hochul-says-clemency-changes-are-coming> [<https://perma.cc/MP4J-GWBR>].

²⁷⁷ *Cf.* VAWA Reauthorization Act of 2022, § 1203 (issuing a blanket authorization for the Attorney General to make grants to states that pass laws prohibiting police officers from having sex with people in custody).

²⁷⁸ See, e.g., Courtney Friedman & Eddie Latigo, *Did You Know There’s a Clemency Application for Texas Abuse, Trafficking Survivors Wanting Pardons?*, KSAT (June 7,

To similar ends, an anti-carceral VAWA could create incentives for sentencing and resentencing mechanisms that would allow for the immediate release of incarcerated S/GBV survivors on time served. New York State's Domestic Violence Survivors Justice Act (DVSJA) is one example of a resentencing mechanism that has provided life-changing relief to certain criminalized survivors.²⁷⁹ Tanisha Davis, the first woman released under the DVSJA, was convicted of first-degree manslaughter in 2013 after she stabbed her long-abusive boyfriend in the shoulder in an act of self-defense.²⁸⁰ At her trial, prosecutors played on anti-Black tropes, referring to Davis as a "hood diva" and making disparaging remarks about "the culture she is from."²⁸¹ Davis was released in 2021 on time served; without the DVSJA, she was expected to serve another six years.²⁸² Still, the law could go further. For one, it needlessly limits relief to those who were sentenced to or are facing at least eight years imprisonment.²⁸³ Second, it remains vulnerable to the biases inherent in judicial discretion, as it allows a judge to find that a survivor's sentence was not "unduly harsh" in light of their "history, character, and condition."²⁸⁴ This is not to suggest that enacting similar laws through VAWA incentives would be futile; on the contrary, it is only to underscore that we must be vigilant in seeking the release of all S/GBV survivors and must not allow arbitrary or insidious distinctions to be drawn between them.

Not only do we owe criminalized S/GBV survivors their freedom, but we also owe them financial reparations for subjecting them to unjust prosecutions and confinement, as well as for the state violence they have been forced to endure in prisons, jails, and in the custody of

2021), <https://www.ksat.com/news/local/2021/06/07/did-you-know-theres-a-clemency-application-for-texas-abuse-trafficking-survivors-wanting-pardons> [<https://perma.cc/7D2Y-VSYV>] (describing a Texas program where, after sixteen months, only fifty people managed to apply for pardons and only five were granted them, despite advocates' expectation that thousands would qualify).

²⁷⁹ N.Y. CRIM. PROC. LAW § 440.47. The law also provides for reduced sentences in the first instance, i.e., for ongoing prosecutions. N.Y. PENAL LAW § 60.12.

²⁸⁰ E.g., Press Release, Sullivan & Cromwell LLP, Pro Bono Client Obtains Significant Resentencing in Domestic Violence Case (Mar. 15, 2021), <https://www.sullcrom.com/client-highlight-pro-bono-client-obtains-significant-resentencing-in-domestic-violence-case> [<https://perma.cc/V5XZ-XSE4>].

²⁸¹ *Tanisha Davis, SURVIVED AND PUNISHED N.Y.*, <https://www.survivedandpunishedny.org/tanisha-davis> [<https://perma.cc/XGQ6-GNHC>].

²⁸² See Sullivan & Cromwell LLP, *supra* note 280.

²⁸³ See N.Y. CRIM. PROC. LAW § 440.47.

²⁸⁴ N.Y. PENAL LAW § 60.12(1). See, e.g., MASS RELEASE NOW, *supra* note 203, at 22 (describing the lifelong trauma and abuse history of Ethel Edwards, who was denied resentencing relief under the DVSJA in September of 2021).

police officers.²⁸⁵ In addition to incentivizing mass clemency, I propose that we use VAWA to fund financial reparations paid directly to criminalized survivors.

It may be useful here to distinguish this proposal from existing victim compensation funds, which, as discussed *supra*, are targeted at those who cooperate in the criminal prosecutions of their abusers and assailants and are conceived of as compensation for the harm done to them by *private* actors.²⁸⁶ By contrast, the sort of reparations I refer to would be for the benefit of those who have themselves been criminally prosecuted—whether despite or because of their status as survivors of violence—and, oftentimes, subjected to further violence while in state custody. Thus, such reparations would be paid as compensation for the harm done by *state* actors. Further, it would signal a much-needed shift from a carceral approach to S/GBV to a transformative one that recognizes the symbiotic relationship between interpersonal and state violence and prioritizes reparations as a necessary component of accountability and healing.

These same avenues for relief, both immediate freedom from confinement and financial reparations for state violence, must also be made available to those who have been criminalized for their means of survival. This includes those who have been criminalized for their participation in the sex and drug economies, as well as those who are punished for the conduct of their abusers or for crimes they committed as a result of duress or coercion. Further, any person who has suffered rape, sexual assault, sexual exploitation, or other forms of S/GBV while detained or incarcerated should also qualify for relief. To continue to imprison victims of prison rape is to convey that some of us *deserve* sexual violence and degradation. This notion is at odds with core feminist values, and we must reject it.

CONCLUSION

In this Note, I have illustrated how the carceral system not only fails to account for the needs of marginalized survivors of S/GBV, but also recreates the very same types of harms it purports to sanction. It does so by prosecuting and punishing multiply marginalized S/GBV survivors as well as by subjecting detained and incarcerated people to physical, emotional, and sexual abuse. What's more, it hoards valuable resources, siphoning off hundreds of billions of dollars each year that

²⁸⁵ As advocates have pointed out in their calls for mass clemency in New York, “the state bears ultimate responsibility when it fails to prevent, protect and offer repair” for gender-based violence, and certainly when its agents perpetrate such violence themselves. MASS RELEASE NOW, *supra* note 203, at 10.

²⁸⁶ See GRUBER, *supra* note 16, at 148.

could otherwise be spent on the types of social and economic infrastructure and support that actually increase safety and autonomy among those most vulnerable to S/GBV. The effects fall disproportionately on Black and Brown women; queer, trans, and gender-nonconforming people of color; sex workers; drug users; poor, working class, disabled, homeless, and housing insecure people; migrants; and others who do not fit the perfect victim archetype that white feminism dictates. VAWA has been a key feature of this landscape, representing a massive financial and political investment in carceral feminist approaches to S/GBV. Accordingly, I have proposed that we begin to reshape VAWA from a transformative justice perspective, specifically as a means to facilitate the immediate release of incarcerated S/GBV survivors, as well as by reallocating VAWA funds towards financial reparations for criminalized survivors, including those who have endured S/GBV while incarcerated.

Of course, anti-violence work cannot stop there. We know that freedom from confinement and material resources are what many vulnerable people who experience S/GBV most need in order to *survive*. But we must also ask: What do survivors of S/GBV need to *heal*? Police, prosecutors, and courts do not often ask this question and when they do, they are ill-equipped and unmotivated to respond accordingly. Fortunately, many of those who do anti-violence work, particularly practitioners of transformative justice, have engaged deeply with survivors on this question. We should heed their wisdom and follow their example. One way to do so is by listening to the voices and acting on the stated needs of those survivors of S/GBV who the carceral system has abandoned and abused.

For example, Tomiekia Johnson, who readers will recall is currently serving a life sentence for fatally shooting her abusive husband in self-defense, told a reporter in 2020:

You need people to love you and care for you and show you the error of your ways to help you understand why you were in those positions in the first place—and not to be punished for actions that you may have taken to save your own life or save your loved one or save your child.²⁸⁷

We owe Tomiekia Johnson her freedom and we owe her reparations. And we owe it to her and to ourselves to build a world where no one is punished for defending themselves against sexual or gender-based violence. More still, we must imagine and build a world where Johnson and other survivors of interpersonal and state violence can heal and thrive among loved ones in their homes and communities.

²⁸⁷ Levin, *supra* note 135 (quote from audio embedded in this Article).