

**Zero Tolerance for Gender Considerations:  
Deconstructing Barriers in Trump’s America**

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*The issue of migration and asylum-seeking in North America has become increasingly visible in the era of President Trump, who has notably referred to undocumented immigrants as “animals” that “infest” American society. Yet at the global level, a different “epidemic” plagues human society, and drives vulnerable groups, particularly women, to seek asylum: intimate partner violence (IPV). Despite its labelling as a threat to national public health, American institutions have historically occluded two highly vulnerable groups in society from seeking formal relief from IPV: female migrants and female undocumented immigrants. A critical structuralist analysis of American immigration institutions and the global and American refugee regimes is used to probe this deficit through uncovering the socio-structural, economic, and heteropatriarchal factors that exert influence over women’s migration experiences and their degree of agency along the migration pathway. This essay argues principally that the Trump Administration’s Zero Tolerance policies and narrow redefinition of the “legal refugee”, in combination with the anti-immigrant rhetoric espoused by the White House, have created additional barriers which particularly disadvantage female (im)migrants seeking formal protection from IPV. More broadly, the findings of this essay demonstrate that the relationship between power, immigration, and institutionalized force which characterizes the American refugee regime—and the global refugee regime as a whole—contains inherent unequal and gendered dimensions.*

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In North America, the issue of migration and asylum-seeking has become increasingly visible in the era of President Trump, who has notably referred to undocumented immigrants as “animals”<sup>71</sup> that “infest” American society.<sup>72</sup> Yet at the global level, a different “epidemic”<sup>73</sup>

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<sup>71</sup>Gregory Korte and Alan Gomez, “Trump ramps up rhetoric on undocumented immigrants: ‘These aren’t people. These are animals,’” *USA Today*, May 17, 2018, <https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/>.

<sup>72</sup>Abigail Simon, “People Are Angry President Trump Used This Word to Describe Undocumented Immigrants,” *Time*, last updated June 19, 2018, <http://time.com/5316087/donald-trump-immigration-infest/>.

<sup>73</sup>Carmen Vives-Cases, Daniel La Parra, Isabel Goicolea, Emily Felt, Erica Briones-Vozmediano, Gaby Ortiz-Barreda, and Diana Gil-González, “Preventing and addressing intimate partner violence against migrant and ethnic

plagues human society, and drives vulnerable groups, particularly women, to seek asylum: intimate partner violence. Commonly adopted in 2000, the term “intimate partner violence” (hereafter IPV), recognizes that abuse can exist in any type of intimate partner relationship, irrespective of marital status, sexual orientation, or gender.<sup>74</sup> However, while IPV is perpetrated by both genders, research generally supports that IPV has gendered dimensions;<sup>75</sup> a collection of studies indicate that women experience greater fear in response to men’s violence than vice versa, and women are more likely to experience negative health consequences of being victimized (including symptoms of depression and post-traumatic stress disorder).<sup>76</sup>

Despite labelling IPV as a threat to national public health,<sup>77</sup> American institutions have historically neglected to protect two highly vulnerable groups in society: immigrant women and migrants seeking asylum on the basis of IPV. Significantly, female victims in these groups have reported that the issue of immigration status is a central reason for why they did not seek help, nor report abuse, to US authorities.<sup>78</sup> More broadly, their dilemma is reflective of the unequal, gendered dimensions inherent in the relationship between power, immigration, and institutionalized force. Indeed, as Allsopp argues, a border is simultaneously an “assertion of—and a threat to—men’s historic monopoly” of powerful governance structures and institutions.<sup>79</sup> It is therefore worthwhile to investigate how President Donald Trump’s restrictive immigration policies, in the broader construct of hegemonic masculinity, have created additional barriers that disadvantage migrants and undocumented immigrants of the female gender from accessing relief and protection from IPV.

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minority women: the role of the health sector,” *World Health Organization*, 2014: 2, [http://www.euro.who.int/\\_data/assets/pdf\\_file/0018/270180/21256-WHO-Intimate-Partner-Violence\\_low\\_V7.pdf](http://www.euro.who.int/_data/assets/pdf_file/0018/270180/21256-WHO-Intimate-Partner-Violence_low_V7.pdf).

<sup>74</sup> Ron Wallace, “Domestic Violence and Intimate Partner Violence: What’s The Difference?” *In Public Safety*, October 15, 2015, <https://inpublicsafety.com/2015/10/domestic-violence-and-intimate-partner-violence-whats-the-difference/>.

<sup>75</sup> Jennifer Langhinrichsen-Rohling, “Controversies Involving Gender and Intimate Partner Violence in the United States,” *Sex Roles* 62 no. 3-4 (2010): online, <https://link-springer-com.proxy.queensu.ca/article/10.1007%2Fs11199-009-9628-2>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Elizabeth Reed, “INTIMATE PARTNER VIOLENCE: A GENDER-BASED ISSUE?” *Am J Public Health* 98 no. 2 (2008): online, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2376897/>.

<sup>78</sup> Angela S. Reina and Brenda J. Lohman, “Barriers Preventing Latina Immigrants from Seeking Advocacy Services for Domestic Violence Victims: A Qualitative Analysis,” *Journal of Family Violence* 30 no. 4 (2015): online, <https://link.springer.com/article/10.1007%2Fs10896-015-9696-8>.

<sup>79</sup> Jennifer Allsopp, “Agent, victim, soldier son: Intersecting masculinities in the European “refugee crisis”,” in *A Gendered Approach to the Syrian Refugee Crisis*, ed. by Jane Freedman, Zeynep Kivilcim and Nurcan Özgür Baklacioğlu (New York: Routledge, 2017) 160.

Significantly, the findings of this paper may supplement existing scholarly discussion that largely concentrates on the implications of Trump's policies on the socio-political climate of the United States, wherein race, country of origin, or ethnicity are popular units of analysis.<sup>80</sup> Peer-reviewed sources that primarily investigate the effects of Trump's immigration policies on specific groups of migrants and immigrants (rather than their general implications on race or ethnicity) are scarce. Even less discussed in the scholarly literature is how Trump's Zero Tolerance policy and anti-immigrant rhetoric creates compounding layers of oppression on certain genders, races, and those who have experienced IPV. This could be a consequence of the short time period since Trump's election as President, and the fact that his immigration reforms are still in the process of being implemented. Furthermore, as women comprise approximately half of the undocumented immigrant population, it is worthwhile to explore the relation between gender and Trump's immigration laws, and vulnerable groups seeking formal aid for IPV in the US.<sup>81</sup> As such, both the contemporary political and academic context impresses upon the importance of this investigation. Therefore, this essay hopes to offer a worthwhile supplement to existing literature on Trump's policies and their impact on certain groups, and specifically inspire greater conversation about how Trump's immigration policies affect female immigrants or women seeking asylum protection from IPV.

Specifically, this paper seeks to answer the question, *How have the immigration policies formalized by the Trump Administration and the White House's rhetorical discourse affected existing institutional barriers faced by female migrants or immigrants seeking formal protection from IPV?* To answer this question, this essay employs a structuralist perspective to analyze how American institutions shape immigration policies, and how both of these formal, legally legitimized processes structure the American refugee regime.

## **Methodological approach**

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<sup>80</sup> For instance, refer to "Race and Gender in Immigration: A Continuing Saga With Different Encryptions" by Edward Joaquin and Juanita Johnson-Bailey (2015): <https://onlinelibrary.wiley.com/doi/pdf/10.1002/ace.20133> ; "Passports in the Time of Trump" by Leti Volp (2017): <https://muse.jhu.edu/article/685024>; or "The threat of increasing diversity: Why many White Americans support Trump in the 2016 presidential election" by Brenda Major, Alison Blodorn, and Gregory Major Blascovich, (2018): <https://journals.sagepub.com/doi/abs/10.1177/1368430216677304>.

<sup>81</sup> Ariel G. Ruiz, Jie Zong, and Jeanne Batalova, "Immigrant Women in the United States," *Migration Policy Institute*, March 20, 2015, <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

It is first important to note that in the literature about domestic and intimate partner violence, controversy exists as to whether the IPV is a form of gender violence. Although it is certainly an important issue to discuss, that debate is not the aim of this paper's investigation. This essay advances a viewpoint that agrees with feminist scholars, who argue that male-perpetrated IPV and female victimization can be seen as the exertion of male dominance and control.<sup>82</sup> For the purposes of this essay, the term IPV (rather than domestic violence) is preferred in order to investigate the effects of US institutions and immigration policies on both married *and* unmarried female migrants and immigrants seeking relief from abusive relationships.

A critical structuralist analysis of American immigration institutions (including governmental policies and laws) may help uncover the socio-structural, economic, and heteropatriarchal factors that exert influence over women's migration experiences and their degree of agency along the migration pathway.<sup>83</sup> As Abrego aptly declares, "[w]hen we refuse to...locate the source of the violence in the state and its various social structures, we create a void that then is filled...in ways that can be erroneous and detrimental."<sup>84</sup> Employing such a lens, then, will uncover how American institutional structures (specifically its legal, judicial, and Immigration and Customs Enforcement institutions) may create barriers to female migrants seeking relief from IPV and constrain their agential power within the refugee/asylum regime. To supplement this approach, a critical discourse analysis of anti-immigrant rhetoric by the Trump Administration will be employed in order to determine how relevant US officials affect the construction of narratives in the U.S. that are especially detrimental to female migrants' access to asylum and IPV. Primary source material, such as political speeches, Tweets, and legal commentary will be analyzed with respect to how these sources further develop and sustain the anti-immigrant sentiment within the American political and social environment. Secondary sources, including a 2018 study of a Latino immigrant community in southeastern United States, will also inform this paper's argumentation.

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<sup>82</sup> Caryn Bell Gerstenberger and Kirk R. Williams, "Gender and Intimate Partner Violence," *Journal of Interpersonal Violence*, December 24, 2012, <https://journals.sagepub.com/doi/abs/10.1177/0886260512468325?journalCode=jiva>.

<sup>83</sup> Chie Noyori-Corbett and David P. Moxley, "Inequality of women as a factor influencing migration from countries of origin to the United States and its implications for understanding human trafficking," *International Social Work* 59, no. 6 (2016): 891.

<sup>84</sup> Leisy J. Abrego, "On silences: Salvadoran refugees then and now," *Latino Studies* 15 no. 1 (2017): 81, <https://search-proquest-com.proxy.queensu.ca/docview/1891616275?pq-origsite=summon>.

By means of the outlined methodological approaches, this paper hypothesizes that the Trump Administration's Zero Tolerance policies and narrow redefinition of the "legal refugee", in combination with the anti-immigrant rhetoric espoused by the White House, have particularly disadvantaged female migrants and immigrants who seek formal protection from intimate partner violence. Before engaging in an analysis of American institutional policies and the contemporary American refugee regime, this essay will first provide a brief historical background on the global and American refugee regimes, their gendered dimensions, and the relation of gender and migration to IPV. Next, Section I discusses pre-Trump era policies that have been identified by scholars as detrimental to women seeking formal help for IPV, particularly in the legal areas of asylum/immigration. In doing so, it will take into account external forces, such as culture shock and gender norms that have been flagged to pose obstacles to female migrants' applications for asylum.<sup>85</sup> Sections II and III will consider the previously highlighted institutions in the context of the Trump-era in order to determine whether the Trump Administration, through its institutions, legal commentary, and rhetorical discourse, has added additional barriers to female migrants seeking refuge from or formal aid for domestic violence and IPV. In its conclusion, this essay discusses the implications of the discursive and institutional barriers on female (im)migrants in the Trump era.

### **A review of the global and American refugee regimes, gender, and IPV**

Initially formalized by the United Nations in 1951, the global refugee regime consists of a set of humanitarian norms built upon the principle of nonrefoulement, or the obligation for states to not return an individual back to a country where that person encounters a "well-founded fear of persecution".<sup>86</sup> According to the UN 1951 Convention relating to the Status of Refugees, states are responsible for asylum (the obligation to provide protection for refugees who have reached their territory) and burden-sharing.<sup>87</sup> The legal definition of a refugee, and the basis on which refugee status can be granted, was further defined in the 1967 Protocol. It stipulates that a refugee is a person unable or unwilling to return back to their home country due to a well-

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<sup>85</sup> Katherine E. Melloy, "Telling Truths: How the REAL ID Act's Credibility Provisions Affect Women Asylum Seekers," *Iowa Law Review* 92 (2007): 660.

<sup>86</sup> Alexander Betts, "The Normative Terrain of the Global Refugee Regime," *Ethics & International Affairs*, October 2015, <https://www.ethicsandinternationalaffairs.org/2015/the-normative-terrain-of-the-global-refugee-regime/>.

<sup>87</sup> *Ibid.*

founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>88</sup> As a signatory of the 1976 Protocol, the United States is bound to protect migrants who qualify as refugees, and according to the American Immigration Council, this obligation is further reinforced through its immigration laws.<sup>89</sup>

Despite gender’s historical identification as a variable in American immigration policies, it has not resulted in equal conditions for male and female refugees in applying for asylum. In 1995, the US issued guidelines on gender-based persecution, which distinguishes it as one of the first countries to provide its judges with formal recognition of the gendered nature of persecution, and how persecution itself can occur on account of gender.<sup>90</sup> Yet, while these guidelines recognize gender harm, they are only binding on US Citizenship and Immigration Services (USCIS) asylum officers, not immigration judges; notably, the latter are charged with adjudicating most asylum applications and may, at their discretion, overturn the decisions of USCIS officers.<sup>91</sup>

Moreover, although both the global and American refugee regimes were founded using gender-neutral terms, both regimes have inherent underlying gendered dimensions. Although gender-neutral language forms the basis for the Refugee Convention and the U.S. Refugee Act, their practical application primarily envisages the male refugee,<sup>92</sup> thereby disadvantaging female migrants applying for asylum. Problematically, harm against women (including sexual violence and IPV) has not been equated with persecution under global and American asylum requirements; its tendency to be perpetrated by private or non-state actors causes the task of producing documentation especially onerous for the asylum applicant.<sup>93</sup> Indeed, Freedman

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<sup>88</sup> “Asylum in the United States,” *American Immigration Council*, May 14, 2018,

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

<sup>89</sup> In particular, when a migrant reaches a US border, they are subject to expedited removal, which is the rapid deportation of noncitizens from the US. At this time, however, a person must notify a US official that they fear returning to their country, and immigration authorities will refer them to a “credible” or “reasonable” fear screening process. If the migrant passes the screening interview, they are eligible to apply for asylum. *Ibid.*

<sup>90</sup> Susan F. Martin and Elizabeth Ferris, “US leadership and the international refugee regime,” *Refuge* 33 no.1 (2017): online,

<http://go.galegroup.com/ps/i.do?p=AONE&u=queensulaw&id=GALE%7CA491909267&v=2.1&it=r&sid=summon>

<sup>91</sup> Aubra Fletcher, “The REAL ID Act: Furthering Gender Bias in U.S. Asylum Law,” *Berkeley Journal of Gender, Law and Justice* 21, no. 1 (2006): 114.

<sup>92</sup> Fletcher, 112; see also Jared Allen, “WOMEN QUA WOMEN: USING FEMINIST THEORY TO CATALYZE THE GENDER IMMIGRATION DEBATE,” *Georgetown Immigration Law Journal* 32 no. 2 (2018): online, <http://go.galegroup.com.proxy.queensu.ca/ps/i.do?p=LT&u=queensulaw&id=GALE|A545714287&v=2.1&it=r&sid=summon>.

<sup>93</sup> Fletcher 113.

argues that this is “particularly acute” in claimants filing for reasons of escaping domestic violence—although these female claimants are unable to secure protection from authorities in their home country, seeking protection from domestic abuse is often considered “irrelevant” to asylum claims.<sup>94</sup> As a result, an applicant’s documentation must also establish that the harm done by the perpetrator was a consequence of the victim’s status in a particular “social group”.<sup>95</sup> Therefore, by requiring female applicants to prove that gender-harm is linked to the umbrella term of “particular social group”, the gender-neutral definition of “refugee” does not recognize that gender-motivated harm is itself a valid legal claim for asylum.

Allen attributes the origin of this deficiency to the UN definition of the refugee. He notes that under the UN Refugee definition, to qualify as part of a “particular social group” (PSG), female migrants must demonstrate harm against them that:

- “1) satisfies the standard of persecution;
- 2) occurred on account of one of the five conventional grounds of the refugee definition; with
- 3) a causal nexus between the persecution and that ground.”<sup>96</sup>

As such, female migrants must prove their belonging in a PSG, which is then subject to the discretion of the court.<sup>97</sup> Therefore, gender-based harm is not equally recognized as a form of persecution under the UN definition in comparison to the other five grounds for asylum.

Other scholars have argued that gender-motivated harm is inadequately recognized in American immigration institutions. Fletcher, for instance, argues that the possibility of defining a social group in exclusively gendered terms is still rejected by political and social forces in the US.<sup>98</sup> Indeed, the failure of El Salvadoran women and children to achieve recognition as refugees under US law demonstrates the severe difficulties faced by asylum applicants seeking protection from gender-based persecution. On this case, Abrego emphasizes the problematic nexus between heteropatriarchal gendered ideals generated by the American intervention in El Salvador and El Salvadoran gang violence against women, which in turn prompted a mass exodus of El Salvadoran women and children to the US (many of whom, on their journey to America, became further victimized by gendered violence).<sup>99</sup> In the American system, therefore, the burden is

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<sup>94</sup> Jane Freedman, “Gender and Asylum in International Law—The Geneva Convention Revisited”, in *Gendering the International Asylum and Refugee Debate: Second Edition* (New York: Palgrave MacMillan, 2015), 78.

<sup>95</sup> Fletcher 113.

<sup>96</sup> Jared Allen.

<sup>97</sup> *Ibid.*

<sup>98</sup> Fletcher, 116; a similar argument is also made by Jared Allen.

<sup>99</sup> Abrego, 77.

placed on victims of gender-motivated harm to demonstrate that their claims for refuge are applicable to the legally recognized qualifications for refugee status. Yet despite instances in which American judges have interpreted violence against women and children to qualify for asylum under the PSG grounds<sup>100</sup>, not all courts/adjudicators have chosen to interpret migrants who primarily seek protection from gender-motivated harm as members of a PSG. Accordingly, Abrego claims that if the applicant “cites sexual assault as evidence of having suffered persecution, the institutionalized character of the crime may go unrecognized, thereby disqualifying the abuse as a claim for political asylum.”<sup>101</sup>

A gendered critique of the global and American refugee regimes indicates that the issue of IPV in contemporary societies intersects with the gendered aspects of migration and asylum. Indeed, prior to departure, gender-based violence (such as IPV) often serves as a push factor for women to flee Global South countries for protection in Global North countries such as the US.<sup>102</sup> Compared to other groups, female migrants (due to their vulnerability and economic disempowerment) are at a higher risk of experiencing violence—particularly sexual abuse and trafficking—as they travel to their destination country.<sup>103</sup> In 2018, Human Rights Watch reported that most female migrants seeking refuge in the US left their home countries due to gender-based violence, and many had experienced violence along the migration pathway.<sup>104</sup> In their precarious position upon arriving in their destination country, these women are also most vulnerable to experiencing domestic violence/IPV in comparison to other groups in American society.<sup>105</sup> The extensive obstacles faced by female migrants who are seeking physical, mental and economic security therefore expose the ways in which negligent and/or apathetic state structures perpetuate the cycle of violence and oppression against women.

### **Pre-Trump Institutional Obstacles for Female (Im)migrants Seeking Relief From IPV**

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<sup>100</sup> Maureen Meyer and Elyssa Pachico, “Fact Sheet: U.S. Immigration and Central American Asylum Seekers,” *Washington Office on Latin America*, February 1, 2018, <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>.

<sup>101</sup> Abrego, 78-79.

<sup>102</sup> Noyori-Corbett and Moxley, 891.

<sup>103</sup> *Ibid.*

<sup>104</sup> “In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells,” *Human Rights Watch*, February 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>105</sup> Monica Scott, Shannon Weaver and Akiko Kamimura, “Experiences of Immigrant Women Who Applied for Violence Against Women Act (VAWA) SelfPetition in the United States: Analysis of Legal Affidavits,” *Diversity and Equality in Health and Care* 15 no. 4 (2018): 145, <http://diversityhealthcare.imedpub.com/experiences-of-immigrant-women-who-applied-for-violence-against-women-act-vawa-self-petition-in-the-united-states-analysis-of-lega.pdf>.

Prior to the Trump era, specific immigration laws within the US, such as the the Violence Against Women Act II (VAWA II) and the Real ID Act have either fortified barriers to migrant women seeking asylum on the basis of IPV or have failed to protect specific groups of immigrant women. While the VAWA II provides relief for married women, widows, or women who filed divorce on the grounds of domestic violence and IPV in the past two years, it does not offer protection for unmarried women or immigrant women who are not legally married.<sup>106</sup> As a consequence, the law's failure to protect these female immigrants contributes to their precarious position in seeking formal help for IPV. Furthermore, the REAL ID Act of 2005 holds that US immigration court adjudicators must assess the overall consistency between the applicant's written and oral statements, and can therefore find the applicant "not credible" because of their failure to mention rape or sexual assault in an earlier interview.<sup>107</sup> While this is a barrier to applicants of all genders, other clauses in the REAL ID Act's "credibility" provisions render this act especially disadvantageous to women. One such provision is the demeanor clause, which instructs the adjudicator to assess "demeanor, candor or responsiveness."<sup>108</sup> Problematically, this clause fails to account for the psychological implications of trauma, in which emotional numbness, dysregulation and amnesia are common coping mechanisms for survivors.<sup>109</sup> Moreover, in American society, engendered cultural standards of emotion expect higher levels of emotional expression, or affect, in female applicants compared to male applicants. As such, a lack of emotional affect in a female claimant at a court hearing is significantly more detrimental to her credibility compared to a male claimant in the same situation.<sup>110</sup>

In sum, important American immigration and legal institutions prior to Trump's inauguration have either failed to protect unmarried and undocumented female immigrants (under the VAWA II) or have imposed a high evidentiary and "credibility" burden on the applicant (evidenced by

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<sup>106</sup> Indira Balram, "The Evolving, Yet Still Inadequate, Legal Protections Afforded Battered Immigrant Women" *University of Maryland Law Journal of Race, Religion, Gender & Class* 387 (2005), 407, <https://digitalcommons.law.umaryland.edu/rrgc/vol5/iss2/10>.

<sup>107</sup> Melloy, 640.

<sup>108</sup> Ibid.

<sup>109</sup> These implications are widely accepted as common symptom in the psychological and the psychiatric academic communities. A number of scholarly works corroborate this. For example, refer to, "Understanding the Effects of Sexual Violence," *Samuel Merritt University*, [https://www.samuelmerritt.edu/sexual\\_violence/effects](https://www.samuelmerritt.edu/sexual_violence/effects); see also, Thomas Ehring and Dorothea Quack, "Emotion Regulation Difficulties in Trauma Survivors: The Role of Trauma Type and PTSD Symptom Severity," *Behaviour Therapy* 41 (2010): [https://journals-scholarsportal-info.proxy.queensu.ca/pdf/00057894/v41i0004/587\\_erditsttapss.xml](https://journals-scholarsportal-info.proxy.queensu.ca/pdf/00057894/v41i0004/587_erditsttapss.xml).

<sup>110</sup> Melloy summarizes the issue well: "With insensitivity and thoughtlessness, judges may use the demeanor and inconsistent-statements provisions of the REAL ID Act to send the women that the U.S. asylum law is supposed to protect back to their persecutors." (In "Telling Truths: How the REAL ID Act's Credibility Provisions Affect Women Asylum Seekers," *Iowa Law Review* 92 (2007): 675.)

the REAL ID Act). In particular, the REAL ID Act enables adjudicators to grant refugee status and asylum in the US according to hegemonic gender norms and cultural biases that collectively shape officials' expectations about how a female survivor of IPV should behave. Moreover, these engendered cultural norms—whether prevalent within a female immigrant's community or within the American society at large—pose additional social obstacles that female migrants must confront in their efforts to seek formal aid in the US. As a consequence, the disadvantaged position of female migrants and immigrants in the American refugee regime is reflective of inherent issues at the global level, in which inadequate legal provisions for gender-motivated harm prevent female asylum claimants from easily acquiring refugee status on the grounds of gender violence and/or IPV.

Apart from institutional obstacles, 'battered' female immigrants also face informal cultural barriers in the US which impede or discourage the reporting of IPV to authorities. Generally, immigrant women generally face greater challenges to finding relief from domestic violence and IPV compared to other identity groups. Multiple compounding factors, including language barriers, social isolation, lack of financial resources, and inability access to social services have contributed to this unfortunate reality.<sup>111</sup> Social networks are furthermore instrumental to constructing an immigrant's experiences of the host country and the level of support they receive for relief from IPV.<sup>112</sup> In particular, an unsupportive social network can frame the process of seeking formal help as undesirable and or even insurmountable to the victim. Within this setting, the cultural norms of the individual's immigrant communities can perpetuate stigma towards reporting IPV and/or leaving an abusive relationship. Significantly, if domestic violence and/or IPV is not recognized as a crime in the immigrant's homeland or it is normalized within her (im)migrant community, she may not be aware that IPV is a criminal offence in the US—knowledge that could have empowered her to seek formal help.<sup>113</sup> As a result, language barriers and the cultural norms which structure the gender roles and relationships of the female (im)migrant may pose as additional social obstacles to seeking formal help.

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<sup>111</sup>“ The Facts on Immigrant Women and Domestic Violence,” *Futures Without Violence*, accessed November 30, 2018, [https://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/Immigrant.pdf](https://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf).

<sup>112</sup> As gendered critiques of Migrant Social Network Theory point out, social networks of immigrants are imbued with power, and are not indifferent to gender or gender roles. This was discussed by Marin Beck, in “Gendered Critiques of Migration Social Network Theories,” (presentation, POLS 485 Lecture on Migration Theories, Kingston, ON, September 18, 2018).

<sup>113</sup> Balram, 390.

## **II. Zero Tolerance and strengthening barriers to female (im)migrants' access to formal help for IPV**

A critical structuralist analysis of Trump-era immigration policies reveals how the current administration has built upon and created new barriers that obstruct women and vulnerable groups from easily accessing protection by the American refugee regime and its social and legal services. Further complications faced by women and vulnerable groups include prolonged separation from family members at the border, higher risk of exposure to human trafficking along the border, inhumane conditions in federal detention, restricted access to healthcare for detained pregnant women (including abortion services), and most significantly, a reduced chance for acquiring asylum protection under American legislation.

Since the announcement of the Zero Tolerance policy in April 2018 (which included the goal of prosecuting 100 percent of migrants illegally crossing the US border), mass numbers of undocumented migrant families were detained, criminally prosecuted, and separated from each other.<sup>114</sup> This is a remarkable change; under the pre-2016 Operation Streamline prior to Trump's presidency, migrant parents traveling with children were not subject to criminal prosecution and prolonged separation.<sup>115</sup> Unsurprisingly, then, Human Rights Watch claims that the harms associated with the American state's prosecution of undocumented immigrants are compounded by the Zero Tolerance policy and the Trump Administration's efforts to separate migrant families<sup>116</sup>, and these harms are particularly impactful on vulnerable groups. In the case of Central American asylum seekers, for example, Abrego claims that the Trump administration has not only failed to protect applicants but has continued to violate their human rights<sup>117</sup> through increased criminal prosecution of undocumented immigrants for misdemeanours and separating migrant families at the US border. Notably, restrictive immigration policies increase the risk of female migrants' exposure to human trafficking networks, as traffickers capitalize on the disadvantaged position of women within the patriarchal global system. In particular, they exploit women's vulnerability and their desperation to acquire better economic, emotional, and physical security within their destination countries.<sup>118</sup> This offers an explanation for why human

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<sup>114</sup> Q&A: Trump Administration's "Zero-Tolerance" Immigration Policy," *Human Rights Watch*.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> Leisy J. Abrego, 79.

<sup>118</sup> Chie Noyori-Corbett and David P. Moxley, 898.

trafficking has increased along the US-Mexico border since the implementation of Trump's Zero Tolerance policy.<sup>119</sup>

Furthermore, the process of seeking relief from IPV has become increasingly difficult under the harsh border policies implemented by the Trump Administration. The Trump Administration appears to ignore or devalue the impact of their unforgiving detention policy on battered women or survivors of sexual violence, who must already cope with the repercussions of IPV. As emphasized by the National Coalition Against Domestic Violence, pregnancy, other reproductive health complications, and neurological disorders are only a few possible effects of IPV.<sup>120</sup> Problematically, the White House's proposed 2019 budget indicates that pregnant mothers in detention facilities may be further restricted from access to abortion care, some of whom may have been subject to gender violence, domestic violence and IPV, and rape. In 2017, CNN reported that an undocumented teenager in a federal shelter for minors had to undergo a rigorous legal battle against the Trump Administration in order to obtain an abortion<sup>121</sup>, which is only one example of the legal difficulties female immigrants face in their attempts to access social services in the Trump era. Under the new 2019 budget, female undocumented immigrants and migrants detained in ICE centres *may lose access to abortion entirely*, as Section 219 of Trump's budget stipulates that, "None of the funds appropriated by this Act for U.S. Immigration and Customs Enforcement shall be used to require any person to perform, or facilitate...abortion." Although Section 220 further acknowledges that, "Nothing in the preceding section shall remove the obligation...to provide escort services necessary for a female detainee to receive such service outside the detention facility," it stipulates that ICE officials may decline a detainee's request for transportation to an abortion site on the grounds of their "philosophical" or religious beliefs,<sup>122</sup> thereby denying them access to abortion services in

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<sup>119</sup> Holly Yan, "The deadly toll of human smuggling and trafficking in the US," *CNN*, July 28, 2017, <https://www.cnn.com/2017/07/28/us/migrant-deaths-and-human-trafficking-by-the-numbers/index.html>.

<sup>120</sup> "Statistics," *NCADV*, last accessed December 4, 2018, <https://ncadv.org/statistics>.

<sup>121</sup> Ariane de Vogue, "Undocumented immigrant teen obtains abortion after legal battle," *CNN*, October 25, 2017, <https://www.cnn.com/2017/10/25/us/undocumented-teen-immigrant-abortion-case/index.html>.

<sup>122</sup> Tina Vasquez, "Trump Wants ICE Agents to Determine Who Gets Abortion Care," *Rewire.News*, February 14, 2018, <https://rewire.news/article/2018/02/14/trump-wants-ice-agents-determine-gets-abortion-care/>. Section 220 written in full: "Nothing in the preceding section shall remove the obligation of the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement to provide escort services necessary for a female detainee to receive such service outside the detention facility: Provided, That nothing in this section in any way diminishes the effect of section 219 intended to address the philosophical beliefs of individual employees of U.S. Immigration and Customs Enforcement."

practice. This creates further obstacles for female migrants seeking relief from IPV, particularly those who are pregnant as a result of rape by their abusive partners. Evidently, the restrictive legal barriers associated with policies of zero tolerance have physical and mental health implications in which women are especially affected, especially those who have experienced trauma and abuse such as IPV.

In 2005, Balram argued that for immigrant battered women, US immigration laws present one of the greatest obstacles they face for finding relief.<sup>123</sup> Such barriers, outlined in Section I, are buttressed by the efforts of the Trump Administration to narrow the definition of eligibility for asylum under US immigration law. In particular, the recent ruling by former A.G. Jeff Sessions established that asylum applications based on IPV/domestic violence are insufficient grounds for approval for refuge in the US.<sup>124</sup> Beyond demonstrating that the applicant's home country is willing or unable to help them, asylum applicants must also prove that "the government condoned the private actions [of gang or domestic violence] or demonstrated an inability to protect the victims."<sup>125</sup> Before this ruling, immigration courts had interpreted—in some cases—that Central American women escaping abusive partners qualified for asylum, on account of the constraining social and structural norms in their home countries. Earlier this year, Sessions decided that the Board of Immigration Appeal's 2014 decision was wrongly held, and any future rulings on these matters granting such protections would be overturned.<sup>126</sup> The case in question, *Matter of A-R-C-G-*, had established a precedent for qualifying domestic violence claims as valid for eligible asylum protection.<sup>127</sup> Now, asylum seekers must prove that their membership in a PSG is independent of the alleged harm (of IPV), and that "their persecutors harmed them on account of their membership in that group rather than for personal reason, and establish that the government protection from such harm in their home country is so lacking that their persecutors' actions can be attributed to the government."<sup>128</sup> Consequently, it is even more difficult (if not pointless) to seek protection on the basis of IPV due to the Sessions'

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<sup>123</sup> Balram, 391.

<sup>124</sup> Office of the Attorney General, *Matter of A-B-, Respondent*, 27 I&N Dec. 320 (2018), <https://www.justice.gov/eoir/page/file/1070866/download>.

<sup>125</sup> Tal Kopan, "Trump admin drops asylum protections for domestic violence victims" *CNN Politics*, June 11, 2018, <https://www.cnn.com/2018/06/11/politics/jeff-sessions-asylum-decision/index.html>.

<sup>126</sup> Ibid

<sup>127</sup> Laura Gottesdiener and John Washington, "They're Refugees, Fleeing Gang Violence and Domestic Abuse. Why Won't the Trump Administration Let Them In?" *The Nation*, November 28, 2018, <https://www.thenation.com/article/trump-asylum-gangs-domestic-violence/>.

<sup>128</sup> Tal Kopan.

classification of the harm against the applicant as personal/private, not on the basis of persecution against a PSG.

Sessions' decision to roll back the interpretation of PSGs to no longer include victims of gang or domestic violence by non-state actors significantly disadvantages Central American applicants, especially Central American women. Since 2014, the application for asylum on the basis of gender-based persecution and IPV is one predominantly sought by female Central American asylum seekers.<sup>129</sup> This coincides with the reality that Central America and Mexico, as opposed to other areas of the world, are currently the sites of heightened gender-based crises.<sup>130</sup> In so doing, Sessions changed the approach by immigration courts towards the interpretation of PSGs approving asylum to become more restrictive, to the significant detriment of a particular group: Central American female 'battered' migrants. Evidently, gender and race are embedded in how the Administration frames its immigration reforms, and racialized immigrant women, particularly Central American females seeking protection from IPV, are devalued within the American refugee regime.

Moreover, the Trump-era practice of US Immigration and Customs Enforcement (ICE) arrests in American courthouses have instilled fear of deportation within immigrant victims of violence (including domestic violence and IPV) and witnesses, which has further discouraged battered women from seeking help from the American legal system. Graber cites a survey about IPV conducted in Washington, in which 81 percent of respondents reported heightened concerns about going to court to seek help on matters of domestic violence and IPV, and 73 percent of those surveyed expressed increased doubt about contacting police due to their fear of ICE.<sup>131</sup> In this way, the Trump administration has exploited access to American legal institutions to suit the aims of his immigration policies to the significant detriment of mostly-female immigrant victims of IPV. By establishing IPV as a private and individualized (or "personal") issue, American immigration institutions such as the Justice Department have turned a blind eye to the underlying

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<sup>129</sup> Katie Benner and Caitlin Dickerson, "Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum," *The New York Times*, July 11, 2018. <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

<sup>130</sup> "Women on the Run," *UNHCR*, accessed December 6, 2018, <https://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.

<sup>131</sup> Lena Graber, "Preserving Access to Justice for Immigrants in State Court Systems," *Criminal Justice* 32 no. 4 (2018), <http://link.galegroup.com/apps/doc/A545697774/AONE?u=queensulaw&sid=AONE&xid=a1ba705b>.

patriarchal norms and socio-structural realities that perpetuate gender-based violence and IPV, which is one of the primary reasons for why female migrants flee in the first place.

### **III. Constructing a climate of fear: The White House's institutionalization of racialized and feminized discrimination**

A critical discourse approach is employed in this section to analyze how the discursive strategies used by political elites and institutions in the Trump era have established a dominant narrative that has sought to legitimize policymaking that restricts granting asylum to certain claimants. Importantly, this approach uncovers the way in which gender operates as “a primary way of signifying relationships of power”.<sup>132</sup> Within patriarchal American society, the female/feminine gender has been systemically positioned as less powerful and subordinate to the male/masculine gender. The patriarchal and colonial character of American institutions further privileges the white, male voice and the valuation of the male-dominated public sphere over other elements of society.

In particular, the structural dominance of (white) men as an instrument of control over (racialized) women is reinforced by the legal and political discourse of the Trump Administration, which dictates the degree of access to the American refugee regime on the basis of gender and race. Within this current climate, the White House's pervasive anti-immigrant rhetoric deepens social stratifications on the basis of citizenship status. Their dominant, anti-immigrant narrative aims to legitimize the ways in which American institutions facilitate American citizens' easier access to formal protection from IPV compared to “illegal” immigrants, who are already more likely to experience such violence. Unsurprisingly, a 2018 study found that anti-immigrant sentiment has occluded undocumented Latina women from seeking relief for domestic violence/IPV.<sup>133</sup>

Powerful institutions, such as the American immigration courts and the Justice Department, reinforce hegemonic discourse and help to structure “normal” social relations and

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<sup>132</sup> Joan Scott, “Gender: A Useful Category for Historical Analysis,” *American Historical Review* 91 no. 5, (1986): 1053–75, quoted in Mary Hawkesbury, “Engendering Political Science: An Immodest Proposal,” *Politics and Gender* 1, no.1 (2005): 143, [https://journals-scholarsportal-info.proxy.queensu.ca/pdf/1743923x/v01i0001/141\\_epsaip.xml](https://journals-scholarsportal-info.proxy.queensu.ca/pdf/1743923x/v01i0001/141_epsaip.xml).

<sup>133</sup> Rebecca Rodriguez, Lillianne R. Macias, Reyna Perez-Garcia, Griselda Landeros and Aida Martinez, “Action Research at the Intersection of Structural and Family Violence in an Immigrant Latino Community: a Youth-Led Study,” *Journal of Family Violence* 33, no. 8 (2018), online, <https://link.springer.com/article/10.1007%2Fs10896-018-9990-3>.

gender roles. Gorman argues that Sessions' re-interpretation of what legally qualifies as a refugee is an act of "interpretive control", in which legal discourse surrounding the change has socially constructed Central American people as illegally within US borders.<sup>134</sup> Sessions justified his decision to disqualify IPV as an eligible grounds for asylum protection through the use of legal commentary that frames IPV as a personal/private issue rather than one faced by a particular group (although this essay has shown that such a decision targets a particular group: female Central American immigrants). His treatment of IPV as a "private" and "personal" issue reaffirms the hegemonic narrative about violence against women, which frames sexual violence and gender-motivated harm (within which IPV can be included) as "private acts" and not a violation of human rights.<sup>135</sup> Sessions' legal commentary therefore reinforces the normalization of the private sphere as feminine and the political/public sphere as masculine,<sup>136</sup> a narrative that has historically resulted in the portrayal of the persecution of women as "invisible or irrelevant" within the refugee regime at both the global and national levels.<sup>137</sup> In doing so, his discourse has pushed productive conversation about combatting IPV to the peripheral, private sphere, which has made it more difficult for battered female immigrants to seek formal help, as they already face considerable social and institutional barriers. Furthermore, apart from Sessions' re-definition of refugee, the White House has remained silent on solving the issue of immigrants experiencing higher rates of IPV/domestic violence compared to American citizens. Conceivably, the deliberate absence of positive or productive discourse about how to support undocumented 'battered' female immigrants contributes to the invisibility of a demographic already discouraged from seeking formal help in Trump's America.

For immigrant women, furthermore, the widespread, negative impacts of the White House's anti-immigrant narrative is compounded by the President's discursive position towards women and gender-based violence. Both Trump's informal and formal commentary on the topic serves to further discourage female migrants from attempting to access American institutions for protection against IPV. Infamously, Trump has declared, "[When I meet beautiful women, I feel

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<sup>134</sup> Cynthia S. Gorman, "Redefining refugees: Interpretive control and the bordering work of legal categorization in U.S. asylum law," *Political Geography* 58 (2017): 36, [https://journals-scholarsportal-info.proxy.queensu.ca/pdf/09626298/v58icomplete/36\\_rricatlcual.xml](https://journals-scholarsportal-info.proxy.queensu.ca/pdf/09626298/v58icomplete/36_rricatlcual.xml).

<sup>135</sup> Ibid.

<sup>136</sup> Jane Freedman, "A Gendered Approach to Refugee and Asylum Studies," in *Gendering the International Asylum and Refugee Debate: Second Edition*, 19.

<sup>137</sup> Jane Freedman, "Gender and Asylum in International Law—The Geneva Convention Revisited," in *Gendering the International Asylum and Refugee Debate: Second Edition*, 78-79.

that I can] grab them by the pussy...[I] can do anything”)<sup>138</sup>. His tendency to support the accused (male) in recent sexual assault allegations made by women against American political figures reinforces the interpretation that he will take the side of the white, powerful male if their position of authority is brought into question. Despite assuring reporters that he is “totally opposed to domestic violence,”<sup>139</sup> he tweeted before a 2018 interview that,

“Peoples lives are being shattered and destroyed by a mere allegation. Some are true and some are false. Some are old and some are new. There is no recovery for someone falsely accused - life and career are gone. Is there no such thing any longer as Due Process?”<sup>140</sup>

Trump’s articulation of an “innocent until proven guilty” view towards domestic violence largely focuses on ruinous effects of “false accusations” on the abuser’s life, and not the impact of the action on the victim.<sup>141</sup> As such, this standpoint coheres with his outright skepticism towards several women’s allegations of sexual assault against Supreme Court Justice Nominee Brett Kavanaugh.<sup>142</sup> On November 3, Trump tweeted,

“Can you imagine if [Kavanaugh] didn’t become a Justice of the Supreme Court because of...disgusting False Statements. What about the others?”

In reaction to the Kavanaugh hearing, NYU Professor Ruth Ben-Ghiat responded,

“This is about white men keeping their power, as Trump said quite openly. It transcends any particular hearing or appointment. It distills the need to control bodies and decide on their right to autonomy.”<sup>143</sup>

Trump’s arguably misogynistic opinion is comparable to his derogatory position on immigrants of colour, another vulnerable group that he seeks to regulate, control, and potentially render obsolete under Zero Tolerance. Although Trump proclaimed October as National Domestic Violence Awareness Month in 2017, his address makes no mention of undocumented immigrant women, who are face a higher risk of experiencing IPV in the US than American

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<sup>138</sup> Ben Jacobs, Sabrina Siddiqui and Scott Bixby, “‘You can do anything’: Trump brags on tape about using fame to get women,” *The Guardian*, October 2016, <https://www.theguardian.com/us-news/2016/oct/07/donald-trump-leaked-recording-women>.

<sup>139</sup> Callum Borchers, “Why Trump needed to condemn domestic violence in his own words,” *The Washington Post*, February 14, 2018, [https://www.washingtonpost.com/news/the-fix/wp/2018/02/14/why-trump-needed-to-condemn-domestic-violence-in-his-own-words/?utm\\_term=.a1028b503033](https://www.washingtonpost.com/news/the-fix/wp/2018/02/14/why-trump-needed-to-condemn-domestic-violence-in-his-own-words/?utm_term=.a1028b503033)

<sup>140</sup> Ibid.

<sup>141</sup> See his February 2018 tweet quoted in, Callum Borchers, “Why Trump needed to condemn domestic violence in his own words.”

<sup>142</sup> Allie Malloy, “Trump unleashes on Kavanaugh accuser,” *CNN Politics*, September 22, 2018, <https://www.cnn.com/2018/09/21/politics/donald-trump-brett-kavanaugh-accuser-tweets/index.html>.

<sup>143</sup> Ruth Ben-Ghiat, Twitter post, September 27, 8:15am, [https://twitter.com/ruthbenghiat/status/1045331086828556290?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1045331086828556290&ref\\_url=https%3A%2F%2Fwww.cnn.com%2F2018%2F09%2F27%2Fopinions%2Fkavanaugh-hearing-in-tweets-opinion%2Findex.html](https://twitter.com/ruthbenghiat/status/1045331086828556290?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1045331086828556290&ref_url=https%3A%2F%2Fwww.cnn.com%2F2018%2F09%2F27%2Fopinions%2Fkavanaugh-hearing-in-tweets-opinion%2Findex.html).

citizens. Notably, his language largely concentrates on American nationals, rather than conveying a universal appeal (*italics are added for emphasis*):

“During National Domestic Violence Awareness Month, I encourage *Americans* affected by domestic violence to seek help. Your neighbors, places of worship, community, and *Nation* stand ready to support you.”<sup>144</sup>

Of course, this presupposes—and expects—that victims of IPV are American citizens, who are therefore able to access formal support without fear of deportation.

Additionally, Sessions’ legal commentary is narratively supported by White House’s championing of the white “legal” male American citizen as desirable and more deserving of American services above other groups, including women. Trump’s hierarchical positioning of race in American society is exemplified by the Administration’s recent release of a racially-charged video that portrays Central Americans as “cop-killers” who are “invading the country.”<sup>145</sup> In doing so, Trump represents non-white migrants (particularly Central American migrants) as non-American who form part of the dangerous, racial Other. Furthermore, in the case of white Americans, it can be inferred that men’s life chances in American society are more highly valued compared to those of women. This is discernible from the President’s consistent, vocal support of the accused white male perpetrator of sexual assault, including Supreme Court Nominee Brett Kavanaugh<sup>146</sup> and his resistance to siding with the affected female victim on multiple occasions, as discussed previously. Therefore, Trump’s inflammatory vocalization of “zero tolerance” towards “illegal aliens”<sup>147</sup> further discourages affected women in these communities—who already face legal additional challenges to seeking American legal and social services under the current Trump Administration—to break their silence and escape abusive situations. As such, ‘battered’ female Central Americans are especially disadvantaged within the

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<sup>144</sup> Donald J. Trump, “President Donald J. Trump Proclaims October 2017 as National Domestic Violence Awareness Month,” *Proclamations*, September 30, 2017 <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-proclaims-october-2017-national-domestic-violence-awareness-month/>.

<sup>145</sup> Stephen Collinson, “Trump shocks with racist new ad days before midterms,” *CNN Politics*, November 1, 2018, <https://www.cnn.com/2018/10/31/politics/donald-trump-immigration-paul-ryan-midterms/index.html>. The ad is viewable at the top of this article.

<sup>146</sup> Accounts of Trump supporting an accused white male in positions of power are abundant; for instance, he supported Kavanaugh at the expense of Christine Blasey-Ford (see his Tweet in endnote 70), and are further exemplified by this CNN article by Holly Yan and Nicole Chavez, “Trump says it’s a ‘scary time’ for men. Here are the stats on false sexual assault claims,” *CNN*, October 3, 2018, <https://www.cnn.com/2018/10/03/health/sexual-assault-false-reports/index.html>.

<sup>147</sup> Donald J. Trump, “Remarks by President Trump on the Illegal Immigration Crisis and Border Security,” *Remarks*, November 1, 2018. <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/>.

patriarchal American system, as they face additional barriers seeking formal help for IPV on account of their gender in addition to their race. His statement, "It is a very scary time for young men in America,"<sup>148</sup> renders invisible the terrifying experiences of (mostly female) victims of IPV in the US, who may also fear deportation and the significant reduction of their life chances.

Despite rampant anti-immigrant sentiment aiming to legitimize the restrictive 'zero-tolerance' policy in the US, counternarratives to Trump's rhetoric are intelligible in popular discourse. Since the Kavanaugh hearing and Sessions' ruling on domestic violence for immigration courts, several opinion pieces have speculated about why Trump is apathetic towards undocumented immigrant victims of domestic violence. These articles have generally commented on the linkages between his anti-immigrant sentiment, misogynistic comments in a variety of public situations, and his standpoint on the Kavanaugh nomination. In *The New Yorker*, for example, Winter connected Trump's tendency to blame external parties (including immigrants) for domestic problems to generate fear of the racial 'Other' within the American populace with the technique of gaslighting, an instrument of coercion and control that is frequently employed by perpetrators of IPV.<sup>149</sup> Moreover, following First Lady Melania Trump's recent choice to wear a jacket with the statement, "I really don't care, do u?" to a migrant detention facility, the popular counter-slogan "I really do care" was trending on Twitter,<sup>150</sup> inspiring public criticisms of the Trump Administration's apathetic response to its objectionable practice of separating migrant families.

Nevertheless, within these counternarratives, as in the predominantly white #MeToo movement, the voices of racialized and undocumented immigrants remain largely unheard. This can be partially attributed to the White House's fear-mongering/blaming the racial 'Other' and its social construction of "illegality". For instance, the effects of the White House's political and legal anti-women and anti-immigrant discourse have redirected conversation from addressing issues of immigrant women's rights and their access of protections against IPV to issues of legitimacy and eligibility. The social assignment of individuals or groups with certain racial

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<sup>148</sup> Holly Yan and Nicole Chavez.

<sup>149</sup> Jessica Winter, "The Language of the Trump Administration Is the Language of Domestic Violence," *The New Yorker*, June 11, 2018, <https://www.newyorker.com/culture/cultural-comment/the-language-of-the-trump-administration-is-the-language-of-domestic-violence>.

<sup>150</sup> Heidi Stevens, "Melania's frosty jacket inspires a we-really-do-care movement," *The Seattle Times*, June 22, 2018, <https://www.seattletimes.com/opinion/melanias-frosty-jacket-inspires-a-we-really-do-care-movement/>.

profiles as “illegally present” in American society generates the stereotyping of certain people as “illegal”, regardless of their actual legal status.<sup>151</sup> These groups are generally POC, and recently, as evidenced by Trump’s racially-charged video release, they are primarily Central American. Under these conditions, women immigrants of colour who fit the profile of socially-defined “illegality” may feel unable to access legal and formal institutions, as their agential status is undermined by questions of their legitimacy in the country. Moreover, social discourse about the legality of women’s status as immigrants may further perpetuate the (unfounded) belief that female immigrants do not deserve the same access to legal/institutional protection against IPV compared to other women in America. As such, the female (im)migrant is both bombarded by shame-inducing questions about the “believability” of her experiences with sexual or domestic violence and general suspicion about the “credibility” and “legality” of her right to access social services and the protection of the American refugee regime. Abrego compares the asylum application process to rape trials, as both demand that the female victim to retell her story of trauma and neither system guarantees that her testimony will be believed.<sup>152</sup> Consequently, the stakes are extremely high for a female migrant to establish the “credibility” of her claims, as it is also tied to her credibility as an asylum applicant—if her claims judged as illegitimate, she loses her legitimacy for asylum and her place of refuge in the US.

It is therefore quite conceivable that the White House’s anti-immigrant, anti-women rhetoric has exacerbated the occurrence of adverse health consequences in immigrant women. The physical health consequences for serving as a target of the Trump Administration are exemplified by research that found a significant increase in preterm birth rates following Trump’s inauguration, particularly among foreign-born Latina women.<sup>153</sup> This is one of several recent studies discovering a linkage between racial profiling and negative health consequences on a politically targeted group.<sup>154</sup> Therefore, in a similar way that issues of IPV have been relegated to the “private” sphere under Sessions’ ruling, the voices of female immigrants who fit

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<sup>151</sup> René D. Flores, Ariela Schachter, “Who are the “Illegals”? The Social Construction of Illegality in the United State,” *American Sociological Review* (2018), <https://doi-org.proxy.queensu.ca/10.1177/0003122418794635>.

<sup>152</sup> Abrego 78.

<sup>153</sup> Erika Stallings, “The Effects of Trump’s Anti-Immigrant Rhetoric Are Starting to Show in Preterm Birth Rates,” *Rewire.News*, November 2, 2018, <https://rewire.news/article/2018/11/02/the-effects-of-trumps-anti-immigrant-rhetoric-are-starting-to-show-in-preterm-birth-rates/>.

<sup>154</sup> Erika Stallings, “The Effects of Trump’s Anti-Immigrant Rhetoric Are Starting to Show in Preterm Birth Rates,” *Rewire.News*, November 2, 2018, <https://rewire.news/article/2018/11/02/the-effects-of-trumps-anti-immigrant-rhetoric-are-starting-to-show-in-preterm-birth-rates/>.

the “illegal” racial profile are silenced, and their bodies are pushed to the fringes of American society while being held under constant threat of deportation and racial discrimination.

Evidently, the Trump Administration’s anti-immigrant narrative takes traditional gendered stereotypes of migrants to an extreme level, as it uniformly portrays female migrants as victims swept up in the flow of “mostly criminals” to the border and male migrants as dangerous aggressors.<sup>155</sup> Trump’s portrayal of immigrant women as agentless victims and Sessions’ association of IPV with the private sphere asserts patriarchal and racialized hierarchies that structurally aim to restrict the ability of female (im)migrants—especially women of colour—to seek protection in the American refugee regime. Particularly, Trump’s “[y]ou can do anything [to women]” discourse advances the notion of the powerful white male’s ability control and manipulate female bodies. This ideological position underlies both the federal practice of detaining female migrants (a vector through which ICE officers exert greater control over the access to abortion) and Sessions’ overturning of the 2014 precedent that established women fleeing IPV qualified for asylum protection. Only within these restrictive patriarchal and gender-specific boundaries are female migrants able to exert their agency.

### **Evaluating the overall implications of Trump-era institutional and social barriers on female (im)migrants seeking protection from IPV**

Overall, Trump’s Zero Tolerance policy, Session’s recent redefinition of ‘refugee’ under US immigration law, and the White House’s new budget priorities implicate the construction of additional obstacles occluding female (im)migrants from acquiring formal relief and protection from IPV. As demonstrated in Sections I and II, the discretion of American immigration adjudicators is a key component of the immigration regime, which has a significant effect on which applicants are granted asylum protection under US law. Problematically, the clauses for determining a refugee’s “credibility” within the REAL ID Act create opportunities for adjudicators to reproduce detrimental social and cultural norms, which have been powerfully constructed by the current administration, onto the subject of the female applicant. Furthermore, it is possible that the anti-immigrant political leanings of Sessions and the Trump government have bled into adjudicators’ subjective interpretations of which groups can qualify for asylum. As such, this discourse may have contributed to the enforcement of narrower asylum eligibility

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<sup>155</sup> Allsopp, 156.

criteria in American law to ensure more restrictive and conservative decisions. Rather than challenging hegemonic patriarchal narratives, which may intrinsically serve as push factors for women's migration in the first place, the Trump Administration has instead reified these norms within their current immigration policies. Sessions' ruling that IPV is a private act—and therefore an invalid claim for asylum—can be interpreted to align with traditional scripts about violence against women, which has been significantly disadvantaged female applicants. Consequently, these legal measures have disproportionately impacted female migrants, particularly those fleeing Central America, who are seeking protection on the basis of IPV or gender-motivated harm. In sum, Sections I-III have attempted to show that harm against female immigrants, namely IPV, is rhetorically and legally discounted or devalued under the protective provisions of American federal institutions and in the definition of what constitutes a legal refugee in US immigration law.

More broadly, the findings of this paper reveal that the feminization of violence and the structural oppression of women, often associated with the Global South, are issues that are not only outside of US borders; rather, they pervade American institutions as identifiable barriers to female migrants seeking protection within the American refugee regime. When the discursive, social context of Trump's opinions towards the #MeToo movement and immigrants of colour are analysed, it is possible to determine how gender, race, and IPV intersect under the current Zero Tolerance policy. The Trump Administration's preoccupation with controlling vulnerable groups' access to social services and victim-blaming (revealed through the Secs. 219 and 220 of the 2019 budget and Trump's standpoint on women and sexual violence) can be understood to pose uniquely challenging barriers to female (im)migrants of colour in the current political climate. Indeed, the implications of Trump's Zero Tolerance policies on female undocumented immigrants and asylum seekers communicates to these groups that his government has Zero Tolerance for those seeking formal help from domestic violence and IPV. Therefore, the previously outlined institutional barriers faced by female (im)migrants and the social construction of anti-immigrant, anti-woman discourse by the Trump Administration places female (im)migrants in a highly disadvantaged position for seeking help for and protection from IPV. Central American women, who are statistically the most likely to seek asylum protection on the basis of IPV, face additional barriers in the American refugee regime on account of their race compared to female applicants who 'pass' as White. In conclusion, the Trump-era American

refugee regime has placed female migrants and undocumented female immigrants in the US at a disproportionately disadvantaged position for seeking formal protection and relief against IPV.

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