Recent accounts of unconsented hysterectomies in detained immigrants give modern relevance to a history of government-sanctioned reproductive control in the United States. In September 2020, Dawn Wooten, a nurse at the Irwin County Detention Center (ICDC) in Georgia, reported reoccurring instances of medical neglect and medically unnecessary and unconsented sterilizing procedures in immigrant women in ICDC custody. The initial report included five women who reported hysterectomies between October and December 2019. The women held in U.S. Immigration and Customs Enforcement (ICE) custody received inadequate and misleading information about the hysterectomy procedure in language that was not their own, invalidating informed consent (Cuffari, Quinn, Giles, Paulk, & Cuffari, 2020). Since this initial report, dozens more women have come forward reporting medically aggressive and/or unconsented gynecological procedures. Investigation of these reports by U.S. Department of Homeland Security (DHS), and patient medical and psychological follow-up evaluations, have been compromised by deportation (McEvoy, 2020).

The events described by Ms. Wooten represent another manifestation of a disquieting historical narrative that immigrants, incarcerated, poor, mentally and physically disabled, and Black and Brown individuals are reproductively controllable and disposable. The founders of the Reproductive Justice (RJ) framework recognized that the reproductive rights movement was created largely by and for White women, some of whom were active in anti-immigration movements (Kulish & McIntire, 2019). The RJ framework centers individuals who have been historically denied the full range of reproductive health services and protections, and recognizes the inextricable link between reproductive health, social justice, and the health systems’ role in maintaining inequity. The tenets of RJ detail the right to 1) maintain personal reproductive autonomy, 2) have children or to not have children as one desires, 3) parent those children with dignity in a safe environment, and 4) dissociate sex from reproduction (Parker, 2020). Our analysis outlines violations of the first three tenets.

Immigrants’ Right to Maintain Personal Reproductive Autonomy

The unconsented hysterectomies at ICDC are only the most recent transgressions against immigrants’ personal reproductive autonomy by immigration authorities. In 2017, the American Civil Liberties Union (ACLU) filed lawsuits regarding multiple instances of unaccompanied immigrant minors in Office of Refugee Resettlement (ORR) custody being refused abortion services despite residing in a state that would otherwise allow them to exercise this request (ACLU, 2018). The ORR oversees the care of unaccompanied minors immigrating to the United States. Former federally appointed ORR Director Scott Lloyd upheld his reputation as an antiabortion activist over his tenure, using coercive techniques to deter abortion requests, even for pregnancies resulting from sexual assault (ACLU, 2018). ORR immigration staff were directed to refuse minors seeking judicial bypass for abortion laws, told to restrict access to meetings with attorneys.
Doctors without Borders (Médecins Sans Frontières [MSF]) found that 68.3% of migrants and refugee populations reported being victims of violence during migration, and nearly one-third of women had been sexually abused during their journeys (Medecins Sans Frontieres, 2017). Many migrants continue to experience sexual violence and harassment within detention centers, with the majority of perpetrators reported to be guards and detention officials (Ellmann, 2019). From January 2010 to September 2017, there were 1,224 complaints of sexual abuse reported in DHS custody, including in ICE and U.S. Customs and Border Protection facilities (Ellmann, 2019). Only 43 of these complaints were investigated. LGBTQ immigrants, particularly transgender women, experience sexual violence and assault at even higher rates (Ellmann, 2019). Although two-thirds of assaults on transgender women are perpetrated by guards, transgender women also face further risk of assault by being housed with men in detention (Ellmann, 2019). The Prison Rape Elimination Act aims to prevent, identify, and respond to reports of sexual assault and harassment (National PREA Resource Center, 2003). However, these standards have been inadequate in ensuring the safety of detained migrants owing in part to loopholes that undermine their efficacy, such as a religious exemption allowing providers to deny care to LGBTQ survivors or comprehensive reproductive care (Ellmann, 2019).

The bottlenecks in the processing of asylum seekers at the southern border as a result of “metering” and the Trump administration’s Migrant Protections Protocol (MPP) program—which forced over 68,000 asylum seekers to “remain in Mexico” pending their asylum court hearings—have left dozens of thousands of asylum seekers exposed to violence and limited access to health services, including abortion, in Mexican border towns (Totenberg, 2021). In addition to these experiences of violence, rates of gender-based homicides have been rising in Mexico, with more than 41,000 women victims of gender-based homicide in Mexico from 1985 to 2014 (CEDIMAC & Robert F. Kennedy Human Rights, 2018). In 2019, there were reportedly 1,006 femicides, although this is felt to reflect only one-quarter of all women murdered that year, because many of the victims’ bodies were never found (Vivanco, 2020). Thirty-one of the documented femicides were women located in the Chihuahua State of Ciudad Juarez, a prominent border city near El Paso, Texas (Chin & Schultz, 2020).

The fear of physical violence is compounded by the emotional and psychological trauma of family separation. Under the Trump Administration’s Zero Tolerance Policy, thousands of immigrant families were separated when the program was implemented in 2017. During this period, immigration authorities forcibly removed children from their families or separated children while parents were occupied receiving medical care or in court (Camaj, Habbach, & Hampton, 2020). In a sample of psychological evaluations conducted by Physicians for Human Rights, nearly all children and parents who were separated showed symptoms and behavior associated with major trauma and met the diagnostic criteria for at least one mental health condition, including post-traumatic stress disorder, major depressive disorder, and/or generalized anxiety disorder. Children in particular exhibited developmental delays and regression in age-appropriate behavior (Camaj et al., 2020). The experience of family separation likely exacerbated preexisting trauma exposures from migrants’ countries of origin and the perilous journey seeking asylum. Four years later the parents of 628 children who were separated at the border still cannot be found; many are believed to have been returned to their home countries (MS. I vs. U.S.
Reunification efforts have been stalled owing to the coronavirus pandemic and left many children in limbo, continuing to have to endure the physical, emotional, and psychological impacts of forced separation. President Biden has created a task force committed to family reunification; however, the timeline and legal procedures to decrease the risk of reseparation for undocumented parents remain undetermined (Sieff, 2021). Meanwhile, even since the formal end of the Zero Tolerance Policy on June 20, 2018, family separations have continued, because many parents have felt compelled to make the impossible decision to allow children to cross the border alone to be processed as unaccompanied minors as perhaps their only real chance to escape the deplorable conditions in the border towns (Congressional Research Service, 2021).

The Future of Reproductive Justice at the U.S. Southern Border

The Biden Administration, including Alejandro Mayorkas as Secretary of Homeland Security, has a critical window of opportunity to reevaluate policies that violate immigrants’ reproductive rights and to reinstate standards and processes that promote RJ. Clear protocols for evaluation, accountability, and policy enforcement are essential to promote justice at the border. Gaps in accountability and policy enforcement exacerbate opportunities for medical neglect and abuse. Findings from a 2019 investigation by DHS found that ICE does not have standards in place to adequately hold contracted detention centers accountable and inconsistently includes the agencies’ quality assurance surveillance plan in contract terms (U.S. DHS, 2019). Quality assurance surveillance plans should be included in all contracts, with clear financial penalties outlined for facilities that are noncompliant. Mandatory data reporting is also essential to monitoring progress and targeting areas for further intervention.

The Biden Administration has already begun to dismantle the MPP. DHS began the first phase of rectifying pending cases on February 19, 2021. Migrants with pending asylum cases are required to register with international organizations and undergo coronavirus testing before their hearings. Those who enter through the program may not be placed in detention centers but may still be under security monitoring (DHS, 2021; Hesson & Dwyer, 2021).

In addition to repealing MPP, the Biden Administration should end the so-called Safe Third Country Agreements negotiated by the outgoing Trump Administration with El Salvador, Guatemala, and Honduras (Gil-Bazo, 2015). These Northern Triangle countries constitute three of the top five countries of origin for asylum seekers to the United States. With some of highest femicide rates in the world, these countries do not provide adequate protection or legal processes for those seeking asylum, particularly women fleeing intimate partner violence and gang-related sexual violence (World Vision, 2020).

Furthermore, we recommend the reinstatement of the “presumption of release,” ordering release or expedited removal of pregnant women from custody to reduce their exposure to physical and psychological trauma. Likewise, providing access, referral, and linkage to care grants the opportunity to receive appropriate medical services. Reconsideration of this policy along with other ratified international human rights protocols that are committed to reducing undue exposure to harm of migrants, providing comprehensive reproductive health education, maternal health care, contraception and abortion access, and reporting procedures for gender-based violence are essential to achieving RJ (International Justice Resource Center, 2020).

Many existing organizations already fight for RJ and human rights of asylum seekers through the provision of health services and litigation. In addition to advocacy efforts, qualified volunteers can provide clinical support, conduct telephone evaluations, review medical records for detained families, or provide virtual or in-person forensic medical examinations for detainees. Several organizations provide health and legal resources for migrants including the Refugee Health Alliance (2019), RAICES (2020), Doctors Without Borders (MSF, 2020), Doctors for Camp Closure (2019), Al Otro Lado (2020), Families Belong Together (2021), Border Angels (2020), Catholic Legal Immigration Network (2019), and Global Response Management (2019).

Strong advocacy efforts and on-the-ground and virtual participation coupled with U.S. government enforcement of immigration policies and procedures that protect migrants’ rights are critical steps to empowering individuals to make reproductive decisions for themselves. All people, regardless of citizenship, who flee to the U.S. deserve comprehensive reproductive care free from coercion and with respect of full bodily autonomy. Medical and public health professionals must remain informed about the current events in reproductive health for asylum seekers to prevent further violations of RJ for our most vulnerable communities.

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