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Commentary

Reproductive Injustice at the Southern Border and Beyond: An Analysis of Current Events and Hope for the Future

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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. Immigrations 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

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(ACLU, 2021), and instructed that they "should not be supporting abortion pre- or post-release; only pregnancy services and life-affirming options counseling" (Messing, Rosen, & Fabi, 2020).

Previous protections under the Obama Administration allowed a pregnant minor in ORR custody to receive abortion services, although federal funds could only pay for services when the pregnancy resulted from a rape or cases of medical emergency. However, the Trump Administration granted additional privileges to the ORR Director to personally decide whether abortions were in the best interest of the teens, leading to the denial of abortion services (S. Ehrlich, JD, Interview, July 1, 2020; ACLU, 2018).

Immigrants' Right to Have Children or Not Have Children as One Desires

Deplorable holding conditions and a lack of access to comprehensive obstetric and gynecological services directly undermine migrants' reproductive rights. Detained asylum seekers frequently experience shackling during labor and inadequate health care, resulting in poor maternal and neonatal health outcomes (Messing et al., 2020). The Obama Administration's "presumption of release" policy ordered detention centers to release, or undertake expedited removal of, pregnant women from federal custody except under extraordinary circumstances (Ellmann, 2019). However, this protective regulation was revised under the Trump Administration's new policy, which took effect in December 2017. Under the new directive, pregnant women were no longer exempt from detention, and reporting guidelines that mandated timely centralized tracking of all people in detention by ICE Health Services Corps Headquarters, the overseer of health care in detention facilities, were removed (Ellmann, 2019). The American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and the American Academy of Family Physicians voiced their opposition to the policy change, arguing that "all pregnant women and adolescents held in federal custody, regardless of immigration status, should have access to adequate, timely, evidence-based, and comprehensive health care" (AILA, 2018).

Policies designed to protect detained migrants are continuously underused or distorted. The *ICE Performance-Based National Detention Standards (PBNDS)* (2016) (ICE, 2016) and the *ORR Guide: Children Entering the United States Unaccompanied* (2015) (ORR, 2015) were established under the Obama Administration. The updated 2019 standards require adherence to more comprehensive medical care (U.S. ICE, 2019). However, more than 70% of ICE detainees reside in subcontracted detention centers such as ICDC, leading to inevitable gaps in effecting these policies. Eighty percent of facilities use outdated guidance lacking critical information on women's health and comprehensive care (Ellmann, 2019). This lack of standardization causes the quality and availability of care to vary greatly by location, and makes it extraordinarily challenging to monitor care across facilities.

Immigrants' Right to Parent with Dignity in a Safe Environment

Families seeking asylum navigate the risks of physical and sexual violence, and psychological trauma, in an effort to escape precarious conditions in their home countries. Women and gender minorities seeking asylum are particularly vulnerable to gender-based violence during migration. A study conducted by Doctors without Borders (Médecins Sans Frontieres [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. L vs. U.S.

Immigration and Customs Enforcement, 2020). 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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References

American Civil Liberties Union (ACLU). (2018). Court orders Trump administration to stop blocking abortion for young immigrant women in U.S. custody. Available: www.aclu.org/press-releases/court-orders-trump-administration-stop-blocking-abortion-young-immigrant-women-us. Accessed: February 28, 2021.

American Civil Liberties Union (ACLU). (2021). J.D. v. Azar (formerly Garza v. Azar and Garza v. Hargan) - Challenging Trump administration's refusal to permit teenage immigration detainees to access abortion services. Available: www.acludc.org/en/cases/jd-v-azar-formerly-garza-v-azar-and-garza-v-hargan-challenging-trump-administrations-refusal. Accessed: February 28, 2021.

American Immigration Lawyers Association (AILA). (2018). Letter from medical professionals to ICE against inhumane detention policies for pregnant women. Available: www.aila.org/infonet/medic-professionals-against-ice-deten-policies?utm_source=aila.org&utm_medium=InfoNet Search. Accessed: February 28, 2021.

Al Otro Lado. (2020). Get involved. Available: https://alotrolado.org/get-involved. Accessed: February 28, 2021.

Border Angels. (2020). Volunteer.. Available: www.borderangels.org/volunteer.html. Accessed: November 1, 2020.

Camaj, L., Habbach, H., & Hampton, K. (2020). "You will never see your child again." The persistent psychological effects of family separation. Available: https://phr.org/wp-content/uploads/2020/02/PHR-Report-2020-Family-Separation-Full-Report.pdf. Accessed: February 28, 2021.

Catholic Legal Immigration Network, Inc. (CLINIC). (2019). The Estamos Unidos Asylum Project offers legal guidance to migrants waiting to ask for protection. Available: https://cliniclegal.org/issues/estamos-unidos. Accessed: February 28, 2021.

Centro para el Desarrollo Integral de la Mujer, A.C. (CEDIMAC), & Robert F. Kennedy Human Rights. (2018). Alternative report on violence against women in Ciudad Juarez, Chihuahua, Mexico ninth periodic report of Mexico Committee on the Elimination of Discrimination against Women seventieth session. Available: https://observatoriofeminicidio.files.wordpress.com/2018/05/enviando-informe. Accessed: February 28, 2021.

Chin, C., & Schultz, E. (2020). Disappearing daughters. Mothers search for justice and embrace fragile memories. Available: https://projects.seattletimes.com/2020/femicide-juarez-mexico-border/. Accessed: February 28, 2021.
Congressional Research Service. (2021). The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy. Available: https://crsreports.congress.gov. Accessed: February 28, 2021.
Cuffari, J. V., Quinn, C., Giles, T. P., Paulk, D., & Cuffari, D. (2020). Lack of medical care, unsafe work practices, and absence of adequate protection against COVID-19 for detained immigrants and employees alike at the Irwin County Detention Center. Available: https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf. Accessed: February 28, 2021.
Doctors For Camp Closure. (2019). What's next? Three things you can do. Available: https://d4cc.nationbuilder.com/take_action.
Ellmann, N. (2019). Immigration detention is dangerous for women's health and rights. Available: www.americanprogress.org/issues/women/reports/2019/10/21/475997/immigration-detention-dangerous-womens-health-rights/. Accessed: February 28, 2021.
Families Belong Together. (2021). Take action. Available: https://www.familiesbelongtogether.org/take-action/. Accessed: February 28, 2021.
Gil-Bazo, M. T. (2015). The safe third country concept in international agreements on refugee protection assessing state practice. *Netherlands Quarterly of Human Rights*, 33(1), 42–77.
Global Response Management. (2019). Volunteer. Available: www.global-response.org/volunteer. Accessed: February 28, 2021.
Hesson, T., & Dwyer, M. (2021). Biden to bring in asylum seekers forced to wait in Mexico under Trump program. Available: www.reuters.com/article/us-usa-biden-immigration-asylum/biden-to-bring-in-asylum-seekers-forced-to-wait-in-mexico-under-trump-program-idUSKBN2AC113. Accessed: February 28, 2021.
International Justice Resource Center (IJRC). (2020). Immigration & migrants' rights. Available: https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Protection_against_Torture_or_Inhuman_Treatment. Accessed: November 1, 2020.
Kulish, N., & McIntire, M. (2019). Why an heiress spent her fortune trying to keep immigrants out. Available: www.nytimes.com/2019/08/14/us/anti-immigration-cordelia-scaife-may.html. Accessed: February 28, 2021.
McEvoy, J. (2020). Report: U.S. Is Deporting Women Who Alleged Surgical Abuse At Georgia Detention Center. Available: www.forbes.com/sites/jemimamcevoy/2020/11/11/report-us-is-deporting-women-who-alleged-surgical-abuse-at-georgia-detention-center/?sh=15cce02810e7. Accessed: February 28, 2021.
Médecins Sans Frontieres. (2017). Forded to flee Central America's Northern Triangle: A neglected humanitarian crisis. Available: www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf. Accessed: February 28, 2021.
Medecins Sans Frontieres. (2020). Doctors Without Borders - USA. Available: www.doctorswithoutborders.org/takeaction. Accessed: November 1, 2020.
Messing, A. J., Rosen, J. D., & Fabi, R. E. (2020). Reproductive injustice at the US Border. *American Journal of Public Health*, 110(3), 339–344.
MS. L vs. U.S. Immigration and Customs Enforcement. (2020). Available: http://cdn.cnn.com/cnn/2020/images/12/02/ms.l.ice.joint.status.report.pdf. Accessed: February 28, 2021.
National PREA Resource Center. (2003). Prison Rape Elimination Act. Available: https://www.prearesourcecenter.org/about/prison-rape-elimination-act. Accessed: February 28, 2021.
Office of Refugee Resettlement (ORR). (2015). Children entering the United States unaccompanied. Available: www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied. Accessed: February 28, 2021.
Parker, W. J. (2020). The moral imperative of reproductive rights, health, and justice. *Best Practice and Research: Clinical Obstetrics and Gynaecology*, 62, 3–10.
Refugee Health Alliance. (2019). Refugee Health Alliance. Available: www.refugeehealthalliance.org. Accessed: February 28, 2021.
RAICES. (2020). Take action. RAICES. https://www.raicestexas.org/take-action/. Accessed: February 28, 2021.
Sieff, K. (2021). Trump family separations: Biden executive order task force to reunite migrants. Available: www.washingtonpost.com/world/the_americas/family-separation-migrant-biden-executive-order/2021/02/01/ebb6ada8-64bf-11eb-8c64-9595888caa15_story.html. Accessed: February 28, 2021.
Totenberg, N. (2021). Supreme Court cancels arguments in Trump-era immigration cases. Available: www.npr.org/2021/02/01/962997274/biden-administration-asks-supreme-court-to-delay-considering-2-key-trump-policie. Accessed: February 28, 2021.
U.S. Department of Homeland Security (DHS). (2019). OIG-19-18 - ICE does not fully use contracting tools to hold detention facility contractors accountable for failing to meet performance standards. Available: www.oig.dhs.gov. Accessed: February 28, 2021.
U.S. Department of Homeland Security (DHS). (2021). DHS announces process to address individuals in Mexico with active MPP cases. Available: www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases. Accessed: February 28, 2021.
U.S. Immigration and Customs Enforcement (ICE). (2016). Performance-based national detention standards 2011. Available: www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf. Accessed: February 28, 2021.
U.S. Immigration and Customs Enforcement (ICE). (2019). National detention standards for non-dedicated facilities. Available: www.ice.gov/doclib/detention-standards/2019/nds2019.pdf. Accessed: February 28, 2021.
Vivanco, J. M. V. (2020). Mexican government paralyzed in the face of a wave of femicides. Available: www.hrw.org/news/2020/03/03/mexican-government-paralyzed-face-wave-femicides#. Accessed: February 28, 2021.
World Vision. (2020). Northern Triangle: terrifying to live in, dangerous to leave. Available: www.worldvision.ca/stories/child-protection/northern-triangle. Accessed: February 28, 2021.

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