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## Immigrant Women in the Shadow of #MeToo

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# IMMIGRANT WOMEN IN THE SHADOW OF #METOO

Nicole Hallett\*

## I. INTRODUCTION

We hear Daniela Contreras's voice, but we do not see her face in the video in which she recounts being raped by an employer at the age of sixteen.<sup>1</sup> In the video, one of four released by a #MeToo advocacy group, Daniela speaks in Spanish about the power dynamic that led her to remain silent about her rape:

I couldn't believe that a man would go after a little girl. That a man would take advantage because he knew I wouldn't say a word because I couldn't speak the language. Because he knew I needed the money. Because he felt like he had the power. And that is why I kept quiet.<sup>2</sup>

Daniela's story is unusual, not because she is an undocumented immigrant who was victimized by sexual assault, but because her story was being told at all.<sup>3</sup> Though immigrant women are more vulnerable to sexual assault, domestic violence, and other gender-based crimes,<sup>4</sup> their stories are often absent from the public debate.<sup>5</sup>

When historians write the story of the last few years, two storylines are likely to play prominent roles.<sup>6</sup> The first is the #MeToo movement, which entered the public consciousness in October 2017 and has been responsible for the takedown of famous artists, musicians, politicians, TV personalities, and CEOs for crimes against

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1. Hornet, *Me Too "Daniela,"* VIMEO (Jan. 30, 2019, 5:13 PM), [vimeo.com/314359864](https://vimeo.com/314359864) [<https://perma.cc/9XVN-C5MH>].

2. *Id.*

3. *See infra* notes 53–54 and accompanying text.

4. *See infra* Part II.

5. *See* Grace Huang, *How to Make Sure Immigrant Women Aren't Left Out of #MeToo*, HUFFINGTON POST (June 6, 2018, 8:00 AM), [https://www.huffpost.com/entry/opinion-huang-immigrant-women-me-too\\_n\\_5b33f9dee4b0b5e692f3f7e6?ncid=engmodushp mg00000003](https://www.huffpost.com/entry/opinion-huang-immigrant-women-me-too_n_5b33f9dee4b0b5e692f3f7e6?ncid=engmodushp mg00000003) [<https://perma.cc/P7TW-W6PA>].

6. *See infra* notes 7–8 and accompanying text.

women.<sup>7</sup> The second is the rise in anti-immigrant rhetoric that fueled Donald Trump's electoral victory and the policy that has been the centerpiece of his Administration's agenda.<sup>8</sup>

However, it is less frequently told how these two storylines have interacted—or sometimes failed to interact—in ways that have excluded immigrant women from the movement.<sup>9</sup> Specifically, the #MeToo movement has yet to have any discernible impact on the slew of anti-woman immigration policies that the Trump Administration has implemented over the past three years.<sup>10</sup> Though a few individual woman, such as Daniela Contreras,<sup>11</sup> have come forward to tell their stories, the #MeToo movement has yet to connect the dots between the vulnerability of women like Daniela and Trump's anti-woman immigration policies.<sup>12</sup> This stands in stark contrast to the movement's focus on policy solutions in other areas, such as in the workplace, that have arisen in the wake of the high profile scandals.<sup>13</sup>

The Trump Administration has targeted all immigrants, not just women.<sup>14</sup> But many of the new and harmful immigration policies have had a disproportionate impact on immigrant women.<sup>15</sup> From limiting the availability of asylum for domestic violence victims,<sup>16</sup> to targeting victims of gender-based violence for interior enforcement,<sup>17</sup> the Administration has made being an immigrant woman more dangerous than ever before.<sup>18</sup> Moreover, these policies have been viewed as anti-immigrant policies, rather than anti-woman policies,<sup>19</sup>

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7. Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES, <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html> [<https://perma.cc/7QB8-VZSL>] (last updated Oct. 29, 2018).
  8. See Marc Hooghe & Ruth Dassonneville, *Explaining the Trump Vote: The Effect of Racist Resentment and Anti-Immigrant Sentiments*, 50 POL. SCI. & POL. 528, 531 (2018) (“Dividing respondents according to their level of partisanship, it became clear that anti-immigrant sentiments strongly affected the choice of leaning Republicans . . .”).
  9. See *infra* Part V.
  10. See *infra* Part V.
  11. See Hornet, *supra* note 1.
  12. See *infra* Part V.
  13. See *infra* notes 55–66 and accompanying text.
  14. See *infra* notes 73–76 and accompanying text.
  15. See *infra* Sections IV.A–C.
  16. See *infra* Sections IV.A–B.
  17. See *infra* Sections IV.C–D.
  18. See *infra* Part IV.
  19. See Andy J. Semotiuk, *Immigrants Troubled by Trump's New Immigration Policy Restrictions*, FORBES (Aug. 23, 2019, 6:48 AM), <https://www.forbes.com/sites/andyjs>

and the coordinated response to them has been part of the immigrants' rights movement rather than part of #MeToo.<sup>20</sup> Given the success of #MeToo in advancing women's rights to be free from gender-based violence, this omission is a missed opportunity that has led to the further marginalization of immigrant women.<sup>21</sup>

## II. IMMIGRANT WOMEN AND GENDER-BASED VIOLENCE

Gender-based violence<sup>22</sup> is endemic in the immigrant community.<sup>23</sup> Immigrant women experience gender-based violence at higher rates than the native-born population for several reasons.<sup>24</sup> First, many immigrant women will already have experienced gender-based violence when they arrive in the United States.<sup>25</sup> Domestic violence rates in many parts of the world are sky high<sup>26</sup> and rape is often used as a tool of war in conflict regions.<sup>27</sup> Other women experience gender-based violence on their journey to the United States.<sup>28</sup> A recent study of women fleeing Central America found that up to 80% of them are sexually assaulted on their journey to the United States.<sup>29</sup>

Once in the United States, immigrant women remain at high risk for sexual assault, sexual harassment, and domestic violence.<sup>30</sup> One

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emotiuk/2019/08/23/immigrants-troubled-by-trumps-new-immigration-policy-restrictions/#30f313dd3b34 [https://perma.cc/VRG8-4MN9].

20. See *infra* Part V.

21. See *infra* Part V.

22. For purposes of this article, I define gender-based violence as violence that is inflicted disproportionately on women because they are women, including rape, sexual assault, domestic violence, and sexual harassment.

23. See *infra* notes 24–33 and accompanying text.

24. See *infra* notes 25–41 and accompanying text.

25. See Laurie Heffron, *Central American Women Fleeing Violence Experience More Trauma After Seeking Asylum*, PRI (Apr. 25, 2019, 11:45 AM), <https://www.pri.org/stories/2019-04-25/central-american-women-fleeing-violence-experience-more-trauma-after-seeking> [https://perma.cc/K8PU-NM55].

26. See, e.g., UN WOMEN VIRTUAL KNOWLEDGE CTR. TO END VIOLENCE AGAINST WOMEN AND GIRLS, *VIOLENCE AGAINST WOMEN PREVALENCE DATA: SURVEYS BY COUNTRY* (2012), [http://www.endvawnow.org/uploads/browser/files/vawprevalence\\_matrix\\_june2013.pdf](http://www.endvawnow.org/uploads/browser/files/vawprevalence_matrix_june2013.pdf) [https://perma.cc/N5CW-SXYH].

27. See Darren Anne Nebesar, *Gender-Based Violence as a Weapon of War*, 4 U.C. DAVIS J. INT'L L. & POL'Y 147, 151–52 (1998).

28. See, e.g., Deborah Bonello & Erin Siegal McIntyre, *Is Rape the Price for Migrant Women Chasing the American Dream?*, SPLINTER (Sept. 10, 2014, 5:51 PM), <https://splinternews.com/is-rape-the-price-to-pay-for-migrant-women-chasing-the-1793842446> [https://perma.cc/S9LB-VAYE].

29. See *id.* A previous Amnesty report put the number at 60%. See AMNESTY INT'L, *INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO* 15–16 (2010).

30. See *infra* notes 31–33 and accompanying text.

study found that immigrant girls and young women are twice as likely to be victims of sexual assault as their native-born counterparts.<sup>31</sup> In another study of immigrant farmworkers, almost all of the fifty-two women interviewed had experienced sexual harassment or assault or knew someone who had.<sup>32</sup> A study of immigrant women working in Iowa meatpacking plants found similar levels of victimization with 84% saying they had experienced one or more forms of sexual harassment.<sup>33</sup>

The fact that immigrant women do not report such high rates of gender-based violence is not surprising.<sup>34</sup> They often do not speak English, are not familiar with the laws in the United States, and fear deportation, particularly if they are undocumented.<sup>35</sup> Perpetrators may target them because of these vulnerabilities, and their fear of reporting may cause them to be repeat victims.<sup>36</sup> Normal power imbalances in the workplace are heightened.<sup>37</sup> Domestic abusers of immigrant women may have more power over them than they otherwise would, particularly when the abuser holds the keys to lawful immigration status.<sup>38</sup> Cultural factors may make some victims less likely to recognize they are abused and thus, less likely to report.<sup>39</sup> Indeed, research suggests that most immigrant victims of

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31. See Michele R. Decker et al., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 VIOLENCE AGAINST WOMEN 498, 503 (2007).
  32. HUMAN RIGHTS WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE US TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT 3 (2012).
  33. Bernice Yeung & Grace Rubenstein, *Female Workers Face Rape, Harassment in US Agricultural Industry*, REVEAL (June 25, 2013), <https://www.revealnews.org/article/female-workers-face-rape-harassment-in-us-agriculture-industry> [<https://perma.cc/JES6-EGTG>].
  34. See *infra* notes 35–41 and accompanying text.
  35. See Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 272 (2000) (noting that 25% of battered immigrant women reported not being able to speak English, and 21% reported fear of immigration as a barrier to leaving abusive partners).
  36. See BERNICE YEUNG, IN A DAY'S WORK 30–32 (2018).
  37. See Travis Putnam Hill, *Big Employers No Strangers to Benefits of Cheap, Illegal Labor*, TEX. TRIB. (Dec. 19, 2016, 12:00 AM), <https://www.texastribune.org/2016/12/19/big-name-businesses-exploit-immigrant-labor/> [<https://perma.cc/7CSJ-VM2R>].
  38. See Mariela Olivares, *A Final Obstacle: Barriers to Divorce for Immigrant Victims of Domestic Violence in the United States*, 34 HAMLIN L. REV. 149, 173–74 (2011).
  39. See Jacqueline P. Hand & David C. Koelsch, *Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence*, 25 WIS. J.L. GENDER & SOC'Y 185, 191 (2010) (“[M]any women who grew up in a foreign country and come to the United States as adults often struggle with unique cultural, language, economic, and informational challenges, which can restrict their ability to recognize and terminate abusive relationships.”).

gender-based violence never report their assaults,<sup>40</sup> demonstrating a general problem with gender-based violence is exacerbated in the context of immigrant victims.<sup>41</sup>

### III. THE #METOO MOVEMENT AND INVISIBILITY OF IMMIGRANT WOMEN

The #MeToo movement has triggered a cultural shift in our understanding and awareness of gender-based violence, including sexual assault, harassment, and domestic violence.<sup>42</sup> It has dominated headlines and social media,<sup>43</sup> its leaders were named Time Magazine's Person of the Year in 2017,<sup>44</sup> and it has led to a reckoning for many powerful men who had victimized women with impunity for many years.<sup>45</sup> However, its track record in protecting the most vulnerable women—including immigrant women—has been decidedly more mixed.<sup>46</sup>

The #MeToo movement had inclusivity problems from the very beginning.<sup>47</sup> The phrase was popularized by white actress Alyssa Milano in October 2017 after the Harry Weinstein scandal<sup>48</sup> but was created more than a decade earlier by Tarana Burke, a black activist and community organizer.<sup>49</sup> Early criticism of #MeToo centered on

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40. *See id.* at 204.

41. *See Weekend Read: For Immigrant Survivors of Sexual Assault, Support Is Off the Books*, SOUTHERN POVERTY L. CTR. (Oct. 12, 2018), <https://www.splcenter.org/news/2018/10/12/weekend-read-immigrant-survivors-sexual-assault-support-books> [<https://perma.cc/E4MU-U2CA>].

42. *See infra* notes 43–72 and accompanying text.

43. The #MeToo hashtag was used on Twitter over 19 million times in the year following the Weinstein revelations. *See* Monica Anderson & Skya Toor, *How Social Media Users Have Discussed Sexual Harassment Since #MeToo Went Viral*, PEW RES. CTR. (Oct. 11, 2018), [http://www.pewresearch.org/fact-tank/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral/ft\\_18-10-11\\_metooanniversary\\_hashtag-used-19m\\_times](http://www.pewresearch.org/fact-tank/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral/ft_18-10-11_metooanniversary_hashtag-used-19m_times) [<https://perma.cc/8R54-YVAT>].

44. Stephanie Zacharek et al., *Time Person of the Year 2017: The Silence Breakers*, TIME (Dec. 18, 2017), <http://time.com/time-person-of-the-year-2017-silence-breakers> [<https://perma.cc/Z6WG-7QZW>].

45. *See* Audrey Carlsen et al., *supra* note 7.

46. *See infra* notes 47–72 and accompanying text.

47. *See infra* notes 48–54 and accompanying text.

48. *See* Alyssa Milano (@Alyssa\_Milano), TWITTER (Oct. 15, 2017, 1:21 PM), [https://twitter.com/Alyssa\\_Milano/status/919659438700670976/photo/1](https://twitter.com/Alyssa_Milano/status/919659438700670976/photo/1) [<https://perma.cc/4HLP-8AVM>].

49. *See* Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html> [<https://perma.cc/6G7E-5RU3>].

the exclusion of marginalized voices from the movement.<sup>50</sup> As Burke wrote in the Washington Post:

What history has shown us time and again is that if marginalized voices—those of people of color, queer people, disabled people, poor people—aren't centered in our movements then they tend to become no more than a footnote. I often say that sexual violence knows no race, class or gender, but the response to it does. "Me too." is a response to the spectrum of gender-based sexual violence that comes directly from survivors—all survivors. We can't afford a racialized, gendered or classist response.<sup>51</sup>

If women of color felt pushed to the sidelines by the focus on white middle-class women's experiences, then immigrant women were not in the picture at all.<sup>52</sup> With the exception of a few stories like Daniela Contreras's,<sup>53</sup> immigrant experiences with gender-based violence were almost completely absent.<sup>54</sup>

The #MeToo movement also struggled with whether to focus on individuals, so-called bad actors like Bill Cosby and Matt Lauer,<sup>55</sup> or to focus on the systemic causes of gender-based violence.<sup>56</sup> #MeToo would not have captured the public imagination without the

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50. See, e.g., P.R. Lockhart, *Women of Color in Low-Wage Jobs Are Being Overlooked in the #MeToo Movement*, VOX (Dec. 19, 2017, 4:10 PM), <https://www.vox.com/identities/2017/12/19/16620918/sexual-harassment-low-wages-minority-women> [<https://perma.cc/Y63T-HMS5>].
51. Tarana Burke, *#MeToo Was Started for Black and Brown Women and Girls. They're Still Being Ignored*, WASH. POST (Nov. 8, 2017), <https://washingtonpost.com/news/post-nation/wp/2017/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too> [<https://perma.cc/76H9-XSTA>].
52. See Morgan Weibel, *Despite the #MeToo Movement, Roll-Backs in Protection Endanger Immigrant Women: It Is Time for #ImmigrantWomenToo*, THINK IMMIGR. (Mar. 27, 2019), <https://thinkimmigration.org/blog/2019/03/27/despite-the-metoo-movement-roll-backs-in-protection-endanger-immigrant-women-it-is-time-for-immigrantwomentoo/> [<https://perma.cc/7SM6-SCRL>].
53. See Hornet, *supra* note 1.
54. See Huang, *supra* note 5.
55. See Jeannie Suk Gersen, *Bill Cosby's Crimes and the Impact of #MeToo on the American Legal System*, NEW YORKER (Apr. 27, 2018), <https://www.newyorker.com/news/news-desk/bill-cosbys-crimes-and-the-impact-of-metoo-on-the-american-legal-system>; see also Ramin Setoodeh & Elizabeth Wagmeister, *Matt Lauer Accused of Sexual Harassment by Multiple Women (EXCLUSIVE)*, VARIETY (Nov. 29, 2017, 12:34 PM), <https://variety.com/2017/biz/news/matt-lauer-accused-sexual-harassment-multiple-women-1202625959/> [<https://perma.cc/F95Q-JM4Q>].
56. See *infra* notes 57–60 and accompanying text.

sensational accusations against high-profile men.<sup>57</sup> Yet, the leaders of #MeToo understood early on that taking down individuals was never going to solve violence against women more broadly.<sup>58</sup> A new organization called Time's Up was formed to address "the systemic inequality and injustice in the workplace that have kept underrepresented groups from reaching their full potential."<sup>59</sup> Other groups who had been working on the issue of gender-based violence for years tried to capitalize on #MeToo to push their long-term policy goals.<sup>60</sup>

Despite these efforts, advocates have found it difficult to transform #MeToo into concrete policy gains.<sup>61</sup> The few policy reforms that have passed in the wake of #MeToo have mostly focused on sexual harassment training and education in the workplace and have been relatively limited in scope.<sup>62</sup> Broader reforms have been more elusive.<sup>63</sup> Still, the policies passed in the wake of #MeToo have represented modest improvements in the fight against gender-based violence and harassment.<sup>64</sup> For example, California banned non-disclosure agreements in settlements of sexual harassment

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57. See Joanna L. Grossman, *The Aftermath of the #MeToo Movement*, VERDICT (June 26, 2018), <https://verdict.justia.com/2018/06/26/the-aftermath-of-the-metoo-movement> [<https://perma.cc/ZP3D-G4RL>]; see also Jessica Bennett, *The #MeToo Moment: When the Blinders Come Off*, N.Y. TIMES (Nov. 30, 2017), <https://www.nytimes.com/2017/11/30/us/the-metoo-moment.html> [<https://perma.cc/2JA4-HZS9>].
58. See Monika Johnson Hostler & Moira O'Neil, *Reframing Sexual Violence from #MeToo to Time's Up*, STAN. SOC. INNOVATION REV. (Apr. 17, 2018), [https://ssir.org/articles/entry/reframing\\_sexual\\_violence\\_from\\_metoo\\_to\\_times\\_up](https://ssir.org/articles/entry/reframing_sexual_violence_from_metoo_to_times_up) [<https://perma.cc/V4X3-8ARW>].
59. *About Time's Up*, TIME'S UP, [https://www.timesupnow.com/about\\_times\\_up](https://www.timesupnow.com/about_times_up) [<https://perma.cc/FQ35-26AM>] (last visited Nov. 10, 2019).
60. See Bryce Covert, *What's Next for #MeToo?*, NATION (Aug. 1, 2018), <https://www.thenation.com/article/whats-next-metoo> [<https://perma.cc/QJ9A-V3ND>].
61. See *infra* notes 62–66 and accompanying text.
62. See Cherisse Jones, *#MeToo One Year Later: Cosby, Moonves Fall, Sex Harassment Fight at Work Far From Over*, USA TODAY (Oct. 9, 2018, 12:11 PM), <https://www.usatoday.com/story/money/2018/10/04/metoo-workplace-sexual-harassment-laws-policies-progress/1378191002> [<https://perma.cc/BS39-4T98>].
63. See Cara Kelly & Aaron Hegarty, *#MeToo Was a Culture Shock. But Changing Laws Will Take More than a Year*, USA TODAY (Oct. 5, 2018, 12:18 PM), <https://www.usatoday.com/story/news/investigations/2018/10/04/metoo-me-too-sexual-assault-survivors-rights-bill/1074976002> [<https://perma.cc/JW57-R4KD>].
64. See Christopher Wilkinson et al., *#MeToo One Year Later: The Legislative Reaction*, ORRICK: EMP. L. & LITIG. (Oct. 18, 2018), <https://blogs.orrick.com/employment/2018/10/18/metoo-one-year-later-the-legislative-reaction> [<https://perma.cc/DC9L-4MBP>].



allegations,<sup>65</sup> and New York passed a law requiring that employers adopt a sexual harassment policy.<sup>66</sup>

While #MeToo has had a small, positive effect on policies to protect women at the state and local level,<sup>67</sup> immigrant women have experienced setback after setback at the federal level.<sup>68</sup> Far from addressing gender-based violence, the Trump Administration has decided to implement policies that have worsened the problem.<sup>69</sup> Moreover, these attacks on immigrant women have received almost no attention from the #MeToo movement, despite the clear role that U.S. immigration policy has had in perpetuating gender-based violence.<sup>70</sup> Not a single federal reform passed in the wake of #MeToo has specifically targeted aiding immigrant victims.<sup>71</sup> Furthermore, efforts to push back on federal immigration policy have not been framed in terms of the #MeToo movement.<sup>72</sup>

#### IV. THE TRUMP ADMINISTRATION'S WAR ON IMMIGRANT WOMEN

It is no secret that the last two years under the Trump Administration have been catastrophic for immigrants.<sup>73</sup> Beginning just days after Trump's inauguration, the Administration issued three executive orders designed to increase immigration enforcement and decrease legal immigration,<sup>74</sup> including, most famously, the Muslim

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65. See Stacy Perman, *#MeToo Law Restricts Use of Nondisclosure Agreements in Sexual Misconduct Cases*, L.A. TIMES (Dec. 31, 2018, 3:00 AM), <https://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html> [<https://perma.cc/94SU-G8C9>].

66. Evandro Gigante et al., *New York State Issues Final Guidance on Sexual Harassment Policy and Training Requirements in Advance of October 9 Effective Date*, PROSKAUER: L. & WORKPLACE (Oct. 2, 2018), <https://www.lawandtheworkplace.com/2018/10/new-york-state-issues-final-guidance-on-sexual-harassment-policy-and-training-requirements-in-advance-of-october-9-effective-date> [<https://perma.cc/9BTL-AS6C>].

67. See Wilkinson et al., *supra* note 64.

68. See *infra* Part IV.

69. See *infra* Part IV.

70. See *infra* Part V.

71. See *infra* Part IV.

72. See *infra* notes 113–14, 133–34, 156–60, 237–41 and accompanying text.

73. See *infra* Sections IV.A–E.

74. See *President Trump's Executive Orders on Immigration and Refugees*, CTR. FOR MIGRATION STUD., <https://cmsny.org/trumps-executive-orders-immigration-refugees> [<https://perma.cc/9C77-NPFV>] (last visited Nov. 10, 2019).

Ban.<sup>75</sup> The Trump Administration has gone on what some have called a “reign of terror” against immigrant communities.<sup>76</sup> While Trump’s immigration actions have received a lot of attention, the ways in which these policies target immigrant women and, more specifically, victims of gender-based violence have received less attention.<sup>77</sup> An analysis of a few of these policies and the ways in which they have impacted immigrant women follows.<sup>78</sup> In many cases, the policies reversed or ended by the Trump Administration were hard fought over years and decades by advocates who understand the impact such policies can have for victims of gender-based violence.<sup>79</sup>

A. *Matter of A-B-*

In 2014, a landmark decision came down that recognized, for the first time, that domestic violence victims could qualify for asylum in the United States.<sup>80</sup> To be eligible for asylum, an individual must show that they have a well-founded fear of persecution on account of a protected ground: race, religion, national origin, political opinion, or membership in a particular social group.<sup>81</sup> Previously, some courts held that domestic violence victims were not members of a particular social group—the broadest and most malleable of the grounds—because the victims did not consider themselves a particular social group and abusers did not appear to target domestic violence victims on account of their membership in a group, but rather because of the private relationship between the two parties.<sup>82</sup>

But in *Matter of A-R-C-G-*, the Board of Immigration Appeals granted asylum on the grounds that a domestic violence victim was a

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75. See *US Expands Travel Ban to Include N Korea*, BBC NEWS (Sept. 25, 2017), <https://www.bbc.com/news/world-us-canada-41382585> [https://perma.cc/5QZD-CULQ].

76. See Raul Reyes, *End ICE’s Reign of Terror over Immigrants and Latinos*, USA TODAY (July 3, 2018, 3:47 AM), <https://www.usatoday.com/story/opinion/2018/07/03/abolish-ice-end-reign-terror-latinos-immigrants-column/751742002> [https://perma.cc/4TKZ-KRMW].

77. See *infra* Sections IV.A–E.

78. See *infra* Sections IV.A–E.

79. See *infra* Sections IV.A–E.

80. See *In re A-R-C-G-*, 26 I. & N. Dec. 388, 392–94 (B.I.A. 2014), *overruled by In re A-B-*, 27 I. & N. Dec. 316 (Att’y Gen. 2018).

81. 8 U.S.C. § 1101(a)(42) (2012).

82. See *In re R-A-*, 22 I. & N. Dec. 906, 917–25 (B.I.A. 1999), *vacated*, 22 I. & N. Dec. 906 (Att’y Gen. 2001); see also Jessica Marsden, Note, *Domestic Violence Asylum After Matter of L-R-*, 123 YALE L.J. 2512, 2528–30 (2014).

member of the particular social group defined as “married women in Guatemala who are unable to leave their relationship.”<sup>83</sup> The Board reasoned that the particular scenario met the three requirements that particular social groups must meet: membership was immutable, it was defined with particularity (*i.e.*, it was clear who was a member of the group and who was not), and it was socially distinct within the society in question.<sup>84</sup> Though the Board’s reasoning is partly obscured by the court’s technical analysis of these three factors, it is clear that the court understood that domestic violence is not just a “private” phenomenon, but rather a symptom of a patriarchal society.<sup>85</sup> It pointed to Guatemala’s “culture of ‘machismo and family violence.’”<sup>86</sup> The decision also recognized that women in Guatemala are targeted by their spouses not randomly or arbitrarily, but because they know that Guatemalan society provides these women with so little power over their own lives that staying is the only option.<sup>87</sup>

Advocates and scholars working in the domestic violence space had understood the political and social dimensions of domestic violence for decades.<sup>88</sup> But this was the first time that the U.S. immigration system recognized it,<sup>89</sup> and it was viewed as nothing short of transformative for domestic violence victims seeking asylum.<sup>90</sup> Studies about the impact of *Matter of A-R-C-G-* found that many domestic violence-based asylum claims were granted whereas few were granted previously.<sup>91</sup> The decision coincided with an influx of refugees from Central America,<sup>92</sup> where domestic violence

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83. *In re A-R-C-G-*, 26 I. & N. Dec. at 390.

84. *See id.* at 392–93.

85. *See id.* at 393, 395.

86. *See id.* at 394 (quoting *Guatemala Failing Its Murdered Women: Report*, CAN. BROADCASTING CORP. (July 18, 2006, 11:22 AM), <https://www.cbc.ca/news/world/guatemala-failing-its-murdered-women-report-1.627240> [<https://perma.cc/27K9-6TC8>]).

87. *See id.*

88. *See* Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 392.

89. *See supra* notes 80–87 and accompanying text.

90. *See* Recent Adjudication, *Membership in a Particular Social Group – Board of Immigration Appeals Holds that Guatemalan Woman Fleeing Domestic Violence Meets Threshold Asylum Requirement.* – *Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (B.I.A. 2014), 128 HARV. L. REV. 2090, 2097 (2015).

91. *See* Blaine Bookey, *Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards of Fair Application of the Law*, 22 SW. J. INT’L L. 1, 11, 19 (2016).

92. *See id.* at 3–4.

is a pervasive problem,<sup>93</sup> and led to protection for many women who would have been previously ineligible for protection.<sup>94</sup>

When Trump took office, it was immediately apparent that he intended to limit the number of people eligible for asylum.<sup>95</sup> He found a co-conspirator in Jeff Sessions who, after assuming the office of Attorney General, issued a series of decisions overturning previous precedents of the Board of Immigration Appeals (BIA)<sup>96</sup> through a seldom-used provision that allows the Attorney General to certify to himself any BIA decision.<sup>97</sup> In March 2018, the writing was on the wall when Sessions certified an asylum case to himself concerning domestic violence, and framed the question presented as “[w]hether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal.”<sup>98</sup>

On June 11, 2018, Sessions issued a decision in *Matter of A-B-*, which overturned *Matter of A-R-C-G-*, and held that most domestic violence victims would be ineligible for asylum.<sup>99</sup> The decision categorically rejected the idea that domestic violence is a political as well as a personal act.<sup>100</sup> Sessions reasoned that: “[T]here is significant room for doubt that Guatemalan society views these women, as horrible as their personal circumstances may be, as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances.”<sup>101</sup>

By characterizing domestic violence as an individual act without a political dimension, Sessions turned the law back to a time when domestic violence was seen as a private matter not amenable to intervention by public authorities.<sup>102</sup> Sessions further opined that there was no evidence that domestic abusers commit violent acts

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93. Azam Ahmed, *Women Are Fleeing Death at Home. The U.S. Wants to Keep Them Out*, N.Y. TIMES (Aug. 18, 2019), <https://www.nytimes.com/2019/08/18/world/america-as/guatemala-violence-women-asylum.html> [<https://perma.cc/FU49-SMB4>].

94. See Bookey, *supra* note 91, at 11, 19.

95. See Ruby Robinson, *How the U.S. Attorney General Tried (but Failed) to Stop Domestic-Violence-Based Asylum Claims*, 98 MICH. B. J. 30, 30 (2019).

96. See Kat Greene, *Sessions Refers Latest BIA Case to Himself for Review*, LAW360 (Mar. 23, 2018, 8:37 PM), <https://www.law360.com/articles/1025702/sessions-refers-latest-bia-case-to-himself-for-review> [<https://perma.cc/U87H-G8FR>].

97. See 8 C.F.R. § 1003.1(h) (2018).

98. See *In re A-B-*, 27 I. & N. Dec. 227, 227 (Att’y Gen. 2018).

99. See *In re A-B-*, 27 I. & N. Dec. 316, 316, 320 (Att’y Gen. 2018).

100. See *id.* at 337.

101. *Id.* at 336.

102. See *id.*

against their partners because of their membership in a particular social group, reasoning that because “the alleged persecutor is not even aware of the group’s existence, it becomes harder to understand how the persecutor may have been motivated by the victim’s ‘membership’ in the group to inflict the harm on the victim.”<sup>103</sup> In other words, if the abuser cannot articulate the social and political causes of domestic violence, then the social and political causes do not exist.<sup>104</sup>

In remarks made the same day he issued the decision, Sessions explained that “[a]sylum was never meant to alleviate all problems—even all serious problems—that people face every day all over the world” and that the decision would “restore[] sound principles of asylum and long standing principles of immigration law.”<sup>105</sup> According to Sessions, restoring sound principles meant removing protection for thousands of women who have experienced gender-based violence and who have sought protection in the United States.<sup>106</sup>

Condemnation of the decision was swift and unforgiving.<sup>107</sup> Karen Musalo, the executive director of the Center for Gender and Refugee Studies at the University of California Hastings and A-B-’s attorney, put it this way: “This is not just about domestic violence . . . . What Sessions is doing is a broader, frontal assault on women’s [sic]

103. *Id.* at 339 (quoting *In Re R-A-*, 22 I. & N. Dec. 906, 919 (B.I.A. 2001)).

104. *See id.*

105. *Attorney General Sessions Delivers Remarks to the Executive Office for Immigration Review Legal Training Program*, U.S. DEP’T JUST. (June 11, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-executive-office-immigration-review-legal> [<https://perma.cc/9VU5-GD2P>].

106. *See id.*

107. *See Retired Immigration Judges and Former Members of the Board of Immigration Appeals Statement in Response to Attorney General’s Decision in Matter of A-B-*, AILA (June 12, 2018), <https://www.aila.org/File/DownloadEmbeddedFile/76304> [<https://perma.cc/8ZTN-RXHL>] (“As former Immigration Judges with decades of experience at the trial and appellate level, we consider the Attorney General’s decision an affront to the rule of law.”); *see also Statement by KIND President Wendy Young on Matter of A-B*, KIND (June 12, 2018), <https://supportkind.org/media/statement-by-kind-president-wendy-young-on-matter-of-a-b> [<https://perma.cc/Z3HC-YMYZ>] (“The decision shows callous disregard for the horrific and unchecked domestic violence, sexual violence, femicide, and other forms of sexual and gender-based violence in El Salvador, Ms. A-B-’s home country, as well as in the region, which includes Honduras and Guatemala.”); *see also Mark Joseph Stern, Jeff Sessions’ Latest Immigration Ruling Is a Violation of International Law*, SLATE (June 14, 2018), <https://slate.com/news-and-politics/2018/06/jeff-sessions-ruling-in-matter-of-a-b-is-a-violation-of-international-law.html> [<https://perma.cc/HH56-R779>] (“The attorney general’s decision will result in violations of international law.”).

rights.”<sup>108</sup> Though at least one court has enjoined the decision in the context of the credible fear process,<sup>109</sup> it remains good law in asylum hearings in immigration court.<sup>110</sup> Because the Attorney General has broad discretion to interpret ambiguities in immigration laws, the prospect that *Matter of A-B-* will be completely overturned remains uncertain.<sup>111</sup> Even if it does get overturned, it will be catastrophic in the short term for asylum-seekers working through the process now.<sup>112</sup>

Although *Matter of A-B-* will have severe ramifications for immigrant women who have experienced gender-based violence, only one commentator made the connection between the #MeToo movement and Sessions’s decision.<sup>113</sup> It was seen as a setback for immigrants and asylum-seekers more generally—even though most of the people affected by the decision will be women escaping gender-based violence.<sup>114</sup>

### B. Other Asylum Policies

Many other Trump Administration asylum policies have also had a harmful effect on victims of gender-based violence.<sup>115</sup> In some cases, the U.S. government has either made it more likely that asylum-seekers will experience gender-based violence or taken steps

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108. Reade Levinson & Sarah N. Lynch, *U.S. Attorney General Curbs Asylum for Immigrant Victims of Violence*, REUTERS (June 11, 2018) (quoting Karen Musalo, attorney for A-B-), <https://www.reuters.com/article/us-usa-immigration-asylum/sessions-expected-to-issue-decision-on-u-s-asylum-for-domestic-violence-victims-idUSKBN1J7246> [<https://perma.cc/U3JT-CJ6L>].

109. *See* Grace v. Whitaker, 344 F. Supp. 3d 96, 125–26 (D.D.C. 2018).

110. *See, e.g., In re Maria Ren-Lopez*, No.: AXXX-XX3-857, 2019 WL 2160109, at \*1 (B.I.A. Jan. 31, 2019) (“Moreover, a fear of domestic violence in one’s home country is generally not a basis for relief from removal.”).

111. *See Practice Advisory: Applying for Asylum After Matter of A-B-*, NAT’L IMMIGR. JUST. CTR., <https://immigrantjustice.org/for-attorneys/legal-resources/file/practice-advisory-applying-asylum-after-matter-b> [<https://perma.cc/74EH-4ER6>] (last updated Jan. 2019).

112. *See id.*

113. *See* Eunice Lee, *Grace v. Sessions—Suing to Stop Shutting Down Asylum Claims at the Border*, JUST SECURITY (Aug. 7, 2018), <https://www.justsecurity.org/60169/grace-v-sessions-suing-stop-shutting-asylum-claims-border> [<https://perma.cc/WE9U-E5RV>] (“At its core, it fundamentally rejects women’s rights as human rights, characterizing over 15 years of rape and physical violence perpetrated against Ms. A.B. as a ‘personal’ dispute outside the scope of refugee protection. In the era of #MeToo, this view is downright shocking.”).

114. *See Practice Advisory: Applying for Asylum After Matter of A-B-*, *supra* note 111.

115. *See infra* notes 119–21, 137–44 and accompanying text.

that inflict additional trauma on immigrant women who are already the victims of gender-based violence.<sup>116</sup> Although these policies represent setbacks for survivors of gender-based-violence, neither garnered any attention from the #MeToo movement.<sup>117</sup>

### 1. Forced Childbirth of Rape Victims

In 2017, the Trump Administration began preventing unaccompanied minors in its custody from obtaining abortions, even in cases where the pregnancy was the result of rape.<sup>118</sup> The Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), the agency tasked with the care and custody of unaccompanied minors who come to the United States seeking asylum,<sup>119</sup> revised its policies in March 2017 “to prohibit all federally funded shelters from taking ‘any action that facilitates’ abortion access for unaccompanied minors in their care without ‘direction and approval from the Director of ORR.’”<sup>120</sup> In the following months, Scott Lloyd, the Director of ORR, denied at least five requests from unaccompanied minors seeking abortions.<sup>121</sup>

Lloyd was a conservative lawyer for the Knights of Columbus, a Catholic organization, prior to assuming the post at ORR.<sup>122</sup> He had little experience with resettling refugees, which is the primary work of ORR, but had spent much of his career advocating for legal positions consistent with Catholic teachings.<sup>123</sup> During a previous stint at HHS, he had written a “conscience rule” for doctors who object morally to providing medical services such as abortions and

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116. See *infra* notes 119–21, 137–44 and accompanying text.

117. See *infra* notes 118–35, 160 and accompanying text.

118. See Renuka Rayasam, *Trump Official Halts Abortions Among Undocumented, Pregnant Teens*, POLITICO (Oct. 16, 2017, 7:05 PM), <https://www.politico.com/story/2017/10/16/undocumented-pregnant-girl-trump-abortion-texas-243844> [<https://perma.cc/VR2H-BNXX>].

119. Complaint for Injunctive Relief and Damages at 5, ¶ 20–22, *Garza v. Hargan*, 304 F. Supp. 3d 145 (D.D.C. 2018) (No. 17-cv-02122).

120. *Id.* at 8, ¶ 31.

121. Mark Joseph Stern, *Scott Lloyd Tells All*, SLATE (Apr. 5, 2018, 6:34 PM), <https://slate.com/news-and-politics/2018/04/aclu-deposition-shows-scott-lloyd-abused-power-to-prevent-undocumented-minors-from-getting-abortions.html> [<https://perma.cc/6DCM-G787>].

122. Betsy Woodruff, *Trump’s Pick for Refugee Czar Never Resettled Refugees*, DAILY BEAST (Apr. 10, 2017, 2:29 PM), <https://www.thedailybeast.com/trumps-pick-for-refugee-czar-never-resettled-refugees> [<https://perma.cc/979Z-HU9R>].

123. See *id.*

had lent his services to a variety of pro-life, anti-abortion causes over the years.<sup>124</sup>

In litigation brought by the American Civil Liberties Union (ACLU), Lloyd admitted that he could not conceive of a circumstance in which it would be in a minor's best interest to terminate a pregnancy,<sup>125</sup> that he had forced pregnant minors to attend crisis pregnancy centers to try to dissuade them from having abortions,<sup>126</sup> that he had called minors personally to try to convince them to continue with the pregnancy,<sup>127</sup> that he had considered trying to reverse an abortion already in progress,<sup>128</sup> and that he had questioned whether a minor had actually been the victim of rape.<sup>129</sup>

The ACLU succeeded in the lawsuit, and in March 2018, the D.C. Circuit Court of Appeals ruled that ORR had violated the constitutional rights of the pregnant minors in their custody, finding “that ORR’s policies and practices infringe on female UC’s constitutional rights by effectively prohibiting them from ‘making the ultimate decision’ on whether or not to continue their pregnancy prior to viability—a quintessential undue burden.”<sup>130</sup> Still, for months after this ruling, ORR continued to track the pregnancies of minors in their custody with startling detail, including information about their menstrual cycles and the manner in which they got pregnant.<sup>131</sup> The case, which had gone up on a preliminary injunction, is still winding its way through the courts.<sup>132</sup>

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124. *Id.*; see also *Pro-life Attorney Named Director of Office of Refugee Resettlement*, ASYLUMIST (Apr. 6, 2017), <http://www.asylumist.com/2017/04/06/pro-life-attorney-named-director-of-office-of-refugee-resettlement> [https://perma.cc/8GW6-9CX8].

125. See Videotaped Deposition of Scott Lloyd, Esq. at 153, *Garza v. Hargan*, 304 F. Supp. 3d 145 (D.D.C. 2018) (No. 17-cv-02122), <https://www.aclu.org/legal-document/garza-v-hargan-scott-lloyd-deposition> [https://perma.cc/6LAV-JUTN].

126. See *id.* at 148–51.

127. See *id.* at 130–32.

128. See *id.* at 146.

129. See Videotaped Deposition of Scott Lloyd, Esquire, Volume II at 215, *Garza v. Hargan*, 304 F. Supp. 3d 145 (D.D.C. 2018) (No. 17-cv-02122), <https://www.aclu.org/legal-document/garza-v-hargan-scott-lloyd-second-deposition> [https://perma.cc/CY56-NMT4].

130. *Garza v. Hargan*, 304 F. Supp. 3d 145, 163, 165 (D.D.C. 2018).

131. See Rachel Maddow, *Trump Admin Tracked Individual Migrant Girls’ Pregnancies*, MSNBC (Mar. 15, 2019), <https://www.msnbc.com/rachel-maddow/watch/trump-admin-tracked-individual-migrant-girls-pregnancies-1459294787849> [https://perma.cc/VZS7-KBEK].

132. See *J.D. v. Azar*, 925 F.3d 1291, 1330 (D.C. Cir. 2019) (upholding the preliminary injunction).



The leaders of #MeToo have understood the connection between reproductive rights and the fight against gender-based violence.<sup>133</sup> When Alabama passed one of the most restrictive abortion bills in the country that did not contain exceptions for rape and incest, Tarana Burke slammed the bill, saying that “[t]hose of us in the work recognize that it’s not just a reproductive justice issue – it’s a sexual violence issue.”<sup>134</sup> One #MeToo Twitter account stated the connection more clearly: “Banning abortion is sexual violence against women.”<sup>135</sup> However, the connection between the reproductive rights of immigrants in United States custody and #MeToo was not made, despite the similarities.<sup>136</sup>

## 2. Remain in Mexico

In January 2019, the Trump Administration began to implement a policy called “Migrant Protection Protocol,” informally known as “Remain in Mexico.”<sup>137</sup> Under the policy, asylum-seekers who arrived at the border would be detained, processed, and screened for asylum eligibility.<sup>138</sup> If they received a positive screen, they would be returned to Mexico to await a hearing in immigration court to determine whether they would be granted asylum.<sup>139</sup> The program began at ports of entry in San Diego, Calexico (CA), and El Paso.<sup>140</sup> In June 2019, the Trump Administration announced that it had entered into an agreement to expand the program to all ports on the southern border, though that agreement has not yet been implemented fully.<sup>141</sup> More than 40,000 asylum-seekers have been sent back to

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133. See *infra* notes 134–35 and accompanying text.

134. Emily Jacobs, *#MeToo Founder Slams Alabama Lawmakers in Wake of Abortion Law*, N.Y. POST (May 16, 2019, 8:48 PM), <https://nypost.com/2019/05/16/metoo-founder-slams-alabama-lawmakers-in-wake-of-abortion-law> [<https://perma.cc/8Q7F-8L38>].

135. Me Too. (@MeTooMVMT), TWITTER (May 16, 2019, 6:53 AM), <https://twitter.com/MeTooMVMT/status/1129022104328970241> [<https://perma.cc/7FWH-47DT>].

136. See *supra* notes 118–35 and accompanying text; see also *infra* Part V.

137. Lizbeth Diaz, *No Expansion Yet of U.S.-Mexico Asylum Program After Trump Deal*, REUTERS (June 9, 2019), <https://www.reuters.com/article/us-usa-trade-mexico-border-deal/no-expansion-yet-of-us-mexico-asylum-program-after-trump-deal-idUSKCN1TA0VM> [<https://perma.cc/4SM2-TKBK>]; *Migrant Protection Protocols*, DEP’T HOMELAND SEC. (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> [<https://perma.cc/6ZQ5-QFYX>].

138. See *Migrant Protection Protocols*, *supra* note 137.

139. *Id.*

140. Diaz, *supra* note 137.

141. *Id.*

Mexico to await their asylum hearings.<sup>142</sup> The program was challenged, and though the District Court initially enjoined the program,<sup>143</sup> the injunction was later lifted by the Ninth Circuit.<sup>144</sup>

When the Trump Administration announced Remain in Mexico, it claimed that it would “decrease . . . the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, national security, and public safety, while ensuring that vulnerable populations receive the protections they need.”<sup>145</sup> But the Administration also admitted that one of the primary reasons for the policy was to “decrease the number of those taking advantage of the immigration system,” i.e. reduce the number of asylum-seekers that are allowed in the country.<sup>146</sup> Although the policy applies to all migrants who seek asylum at the United States-Mexico border, it was implemented specifically to deter women and children from Central America, many of whom are victims of gender-based violence, from bringing successful asylum claims in the United States.<sup>147</sup>

Far from being a safe haven for these asylum-seekers, Mexico is potentially as dangerous as the countries these women have fled.<sup>148</sup> In a study of recently arrived asylum-seekers, 90.3% said that they did not feel safe in Mexico, and 46% said that they had actually suffered some form of harm on their journey through Mexico.<sup>149</sup> A 2017 Doctors Without Borders Report found that nearly one-third of

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142. Gustavo Solis, *Remain In Mexico: Migrants Who May Not Be Subject to Policy Continue to End Up in Mexico*, SAN DIEGO TRIB. (Oct. 14, 2019), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-10-14/remain-in-mexico-migrants-who-should-not-be-subject-to-policy-continue-to-end-up-in-mexico> [https://perma.cc/G4LR-7GNL].

143. *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 506 (9th Cir. 2019) (per curiam).

144. *Id.* at 512.

145. *Migrant Protection Protocols*, *supra* note 137.

146. *Id.*

147. *Id.* (“While not an all-time high in terms of overall numbers, record increases in particular types of migrants, such as family units, travelling to the border who require significantly more resources to detain and remove (when our courts and laws even allow that), have overwhelmed the U.S. immigration system, leading to a ‘system’ that enables smugglers and traffickers to flourish and often leaves aliens in limbo for years.”).

148. See Manny Fernandez, ‘You Have to Pay with Your Body’: *The Hidden Nightmare of Sexual Violence on the Border*, N.Y. TIMES (Mar. 3, 2019), <https://www.nytimes.com/2019/03/03/us/border-rapes-migrant-women.html> [https://perma.cc/9TTT-CHYQ] (collecting accounts of women assaulted on the border).

149. Letter from Dilley Pro Bono Project to Kirstjen M. Nielson, Sec’y, U.S. Dep’t of Homeland Sec. (Feb. 6, 2019), <https://cliniclegal.org/sites/default/files/advocacy/19020631.pdf> [https://perma.cc/S26C-YDFE].

women migrants who transited through Mexico were sexually assaulted there.<sup>150</sup> Anjali Fleury, an expert consultant on migration, stated that “[g]iven the frequency of sexual and gender-based violence, many migrant women take contraceptives before migrating to avoid the risk of pregnancy from rape by armed criminal groups, locals, or their smugglers.”<sup>151</sup> The union representing asylum officers filed an amicus brief challenging the policy and stated unequivocally: “Mexico is simply not safe for Central American asylum seekers.”<sup>152</sup>

Indeed, since the implementation of Remain in Mexico, horrific stories of sexual assault and gender-based violence have begun to surface.<sup>153</sup> Human Rights First has compiled at least 340 public reports of rape, kidnapping, torture, and other violent attacks against asylum seekers—most of them women—returned to Mexico under the program.<sup>154</sup> An article in the *Intercept* detailed story after story of female asylum-seekers returned to Mexico and targeted by gangs, traffickers, and even Mexican police officers for rape and sexual assault.<sup>155</sup>

Remain in Mexico will have several negative effects on victims of gender-based violence seeking protection in the United States.<sup>156</sup> First, facing violence and other harms in Mexico, many asylum-seekers may give up and return home, where they face persecution.<sup>157</sup>

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150. DOCTORS WITHOUT BORDERS, FORCED TO FLEE CENTRAL AMERICA’S NORTHERN TRIANGLE: A NEGLECTED HUMANITARIAN CRISIS 5 (2017).
  151. Anjali Fleury, *Fleeing to Mexico for Safety: The Perilous Journey for Migrant Women*, UNITED NATIONS U. (May 4, 2016), <https://unu.edu/publications/articles/fleeing-to-mexico-for-safety-the-perilous-journey-for-migrantwomen.html> [https://perma.cc/9JH3-WNBG].
  152. Brief of Amicus Curae Local 1924 in Support of Plaintiffs-Appellees’ Answering Brief and Affirmance of the District Court’s Decision, *Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9th Cir. 2019) (No. 19-15716), 2019 WL 2894881, at \*22.
  153. See *infra* notes 154–55 and accompanying text.
  154. HUMAN RIGHTS FIRST, ORDERS FROM ABOVE: MASSIVE HUMAN RIGHTS ABUSES UNDER TRUMP ADMINISTRATION RETURN TO MEXICO POLICY 2 (2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf> [https://perma.cc/ZXS5-36W9].
  155. Debbie Nathan, *Trump’s “Remain in Mexico” Policy Exposes Migrants to Rape, Kidnapping, and Murder in Dangerous Border Cities*, INTERCEPT (July 14, 2019), <https://theintercept.com/2019/07/14/trump-remain-in-mexico-policy> [https://perma.cc/X2H5-25LD].
  156. See *infra* notes 157–60 and accompanying text.
  157. See Jose A. Del Real et al., *With Trump’s Tough Deterrents, Many Asylum Seekers on the Border Are Giving Up*, N.Y. TIMES (Feb. 16, 2019), <https://www.nytimes.com/2019/02/16/us/border-migrants-asylum-mexico-aclu.html> [https://perma.cc/8CSH-ERVK].

Second, asylum-seekers who decide to stay in Mexico and await their asylum hearings may experience additional gender-based violence.<sup>158</sup> Though the policy applies to all asylum-seekers, some of whom are men, it will undoubtedly have a disproportionate effect on women.<sup>159</sup> Yet, this policy—like the others already discussed—has not been viewed as a fundamentally anti-woman policy, nor has it been connected to the broader #MeToo movement.<sup>160</sup>

### C. *The End of Prosecutorial Discretion*

One of the most impactful changes made by the Trump Administration is the end of the broad prosecutorial discretion that characterized immigration enforcement during the Obama era.<sup>161</sup> Though most have focused on the rescission of the Johnson Memo, which deprioritized most undocumented immigrants for deportation,<sup>162</sup> two less-publicized policy changes have the potential to impact immigrant victims of gender-based violence: courthouse arrests<sup>163</sup> and United States Citizenship and Immigration Services' new policy regarding the issuance of notices to appear (NTAs) after petition denials.<sup>164</sup> Again, while both policies have been widely criticized in immigration circles and the mainstream media, they received almost no attention as a setback for the #MeToo movement, despite their likely impact on immigrant sexual abuse survivors.<sup>165</sup>

#### 1. Courthouse Arrests

Shortly after the Trump Administration came into office, reports began to surface of Immigration and Customs Enforcement (ICE) arresting immigrants, including domestic violence victims, at courthouses.<sup>166</sup> The first reported instance was in El Paso, when six

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158. *See New Policy Will Keep Asylum Seekers in Mexico*, TAHIRIH JUST. CTR. (Jan. 28, 2019), <https://www.tahirih.org/news/new-policy-will-keep-asylum-seekers-in-mexico> [<https://perma.cc/27BJ-32FQ>] (detailing stories of female asylum-seekers raped or sexually assaulted in Mexico).

159. *See id.*

160. *See infra* Part V.

161. *See infra* Sections IV.C.1–2.

162. *See* Jeh Charles Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, DEP'T HOMELAND SEC. (Nov. 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf) [<https://perma.cc/9HCR-WVCG>].

163. *See infra* Section IV.C.1.

164. *See infra* Section IV.C.2.

165. *See infra* Sections IV.C.1–2; *see also infra* Part V.

166. *See infra* notes 167–81 and accompanying text.

ICE agents showed up in court and arrested a woman who was seeking a protective order from her abusive boyfriend.<sup>167</sup> Sources believed that the tip came from the boyfriend, who was the only other person who knew the hearing was taking place.<sup>168</sup> This was the first, but unfortunately not the last, arrest at a courthouse of someone seeking protection from gender-based violence.<sup>169</sup> A report by the Immigrant Defense Project found that in New York State, courthouse arrests had risen 1700% between 2016 and 2018.<sup>170</sup> In some cases, ICE may be going even further.<sup>171</sup> Advocates have begun to report immigration arrests made at domestic violence shelters,<sup>172</sup> which is generally prohibited by the Violence Against Women Act.<sup>173</sup>

The condemnation from state and local law enforcement and courts was immediate.<sup>174</sup> Chief Judges from California, New Jersey, Oregon, Connecticut, and Washington demanded that ICE cease the courthouse arrests.<sup>175</sup> In New York, the State Assembly introduced

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167. See Katie Mettler, *'This is Really Unprecedented': ICE Detains Woman Seeking Domestic Abuse Protection at Texas Courthouse*, WASH. POST (Feb. 16, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm\\_term=.858b03dff07a](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.858b03dff07a) [https://perma.cc/2NYU-DUE4].

168. *Id.*

169. See *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018*, IMMIGRANT DEF. PROJECT 10–11 (Jan. 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf> [https://perma.cc/GK65-YC4H].

170. *Id.* at 3, 6.

171. See *id.* at 3–4, 7–14.

172. Bernice Yeung, *How the ICE Crackdown Is Affecting Immigrant Victims of Crime*, REVEAL NEWS (May 3, 2018), <https://www.revealnews.org/blog/how-the-immigration-crackdown-is-affecting-immigrant-victims-of-crime> [https://perma.cc/VL5P-YKEH].

173. 8 U.S.C. § 1229(e) (2012).

174. See *infra* notes 175–177 and accompanying text.

175. See Cathal Conneely, *Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses*, CAL. CTS. NEWSROOM (Mar. 16, 2017), <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses> [https://perma.cc/P8FS-2G3V]; see Ryan Haas & Conrad Wilson, *Oregon Supreme Court Chief Justice Tells ICE to Stay Out of Courthouses*, OR. PUB. BROADCASTING (Apr. 7, 2017), <https://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter> [https://perma.cc/QT5G-5LDW]; see Mary O'Leary, *Connecticut Judge Seeks to Protect Courthouses from ICE*, NEW HAVEN REG. (June 8, 2017), <https://www.nhregister.com/connecticut/article/Connecticut-judge-seeks-to-protect-courthouses-11316610.php> [https://perma.cc/4GCP-4KBE]; see Joseph O'Sullivan, *Chief Justice Asks ICE Not to Track Immigrants at State Courthouses*, SEATTLE TIMES (Apr. 5, 2017, 4:53 PM), <https://www.seattletimes.com/seattle-news/politics/chief-justice-asks-ice-not-to-track-immigrants-at-state-courthouses/> [https://perma.cc/W8QH-SM87]; see S.P. Sullivan, *N.J.'s Chief Justice Asks ICE to Stop Arresting Immigrants at Courthouses*, NJ.COM (Apr. 19, 2017),

the “Protect Our Courts Act,” which would have prohibited ICE arrests at state courthouses.<sup>176</sup> California Governor Jerry Brown signed a bill that prohibited the disclosure of immigration status in open court in order to try to limit courthouse arrests.<sup>177</sup>

After the backlash, ICE clarified that officers “should generally avoid enforcement actions in courthouses” in guidance it issued in January of 2018.<sup>178</sup> However, the reports of courthouse arrests continued.<sup>179</sup> In one particularly egregious example, ICE arrested a woman and her sixteen-year-old son when they came to court for a domestic violence dispute in Charlotte, North Carolina.<sup>180</sup> A public defender who witnessed the arrest stated: “How in the world is anybody going to get justice if both the victims and the defendants are not going to come to court because they’re all afraid of being deported? This is crazy.”<sup>181</sup>

Although the number of courthouse arrests is relatively low,<sup>182</sup> it does not take many well-publicized incidents before victims of gender-based violence decide not to come forward or decide to stay in abusive relationships.<sup>183</sup> Law enforcement reported that they have seen a drop in reporting in immigrant communities.<sup>184</sup> One study

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[https://www.nj.com/politics/index.ssf/2017/04/nj\\_top\\_judge\\_asks\\_ice\\_to\\_stop\\_arresting\\_immigrants.html](https://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html) [<https://perma.cc/G4W2-NAZH>].

176. See N.Y. Assemb., A11013, 2018 Gen. Assemb. (N.Y. 2018).

177. See SB-785, 2018 Cal. Legis. Serv. Ch. 12, Reg. Sess. (Cal. 2018).

178. U.S. IMMIGRATION & CUSTOMS ENF’T, DIRECTIVE NUMBER 11072.12, CIVIL IMMIGRATION ENFORCEMENT ACTIONS INSIDE COURTHOUSES (2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> [<https://perma.cc/NVA9-3Y2H>].

179. See *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018*, *supra* note 169, at 4, 12.

180. See Michael Gordon, *A Mother and Her Son Turned Up for a Domestic-Violence Case. Then ICE Arrested Them*, CHARLOTTE OBSERVER (July 23, 2018), <https://www.charlotteobserver.com/news/local/crime/article215232500.html> [<https://perma.cc/9Y78-4UB5>].

181. *Id.*

182. See *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018*, *supra* note 169, at 5–7.

183. See *infra* notes 184–85 and accompanying text.

184. See AM. CIVIL LIBERTIES UNION, FREEZING OUT JUSTICE: HOW IMMIGRATION ARRESTS AT COURTHOUSES ARE UNDERMINING THE JUSTICE SYSTEM 1 (2018), <https://www.aclu.org/report/freezing-out-justice> [<https://perma.cc/XZ6V-3R5W>] (finding that 22% of police officers found immigrants less likely to report crimes after change in ICE practices); see *Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, TAHIRIH JUST. CTR. (2017), <https://www.tahirih.org/pubs/key-findings-2017-advocate-and-legal-service-survey-regarding-immigrant-survivors/> [<https://perma.cc/6F5F-6FXX>] (finding that 78% of

found that domestic violence reporting by Latinos—many of whom are undocumented—was down 18% in the city of San Francisco.<sup>185</sup> In another study, 40% of prosecutors said that immigrant victims were less likely to work with them in 2017 than in previous years.<sup>186</sup>

While a subsequent administration may reverse this policy, it will be extremely hard to repair the damage done to immigrant communities and their trust of law enforcement.<sup>187</sup> As a result of the increase in courthouse arrests, fewer immigrant women will report gender-based violence at a time when the #MeToo movement is prompting higher reporting rates overall.<sup>188</sup> The consequence will undoubtedly be higher rates of victimization of immigrant women.<sup>189</sup>

However, this change—like other changes in immigration policy—has elicited a muted response from women’s rights organizations.<sup>190</sup> This is perhaps more surprising than the lack of focus on other immigration policies, because of its potential to affect domestic violence victims directly and the similarity between abusers who use other law enforcement agencies to punish victims of domestic violence and gender-based violence for speaking out.<sup>191</sup>

## 2. USCIS NTA Policy

One of the most important developments for immigrant victims of gender-based violence in the last twenty years was the creation of special immigration statuses available to some victims of crime.<sup>192</sup> The Violence Against Women Act (VAWA) of 1994<sup>193</sup> included a provision that provided a path to lawful permanent residence for victims of domestic violence who were married to U.S. citizens or lawful permanent residents.<sup>194</sup> VAWA visas were specifically intended to address a problem in our immigration system: often

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immigrant survivors of domestic violence reported being fearful to go to the police because of the fear of deportation).

185. See James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. TIMES (Oct. 9, 2017), <https://www.latimes.com/local/lanow/la-me-ln-undocumented-crime-reporting-20171009-story.html> [<https://perma.cc/NF7V-7PQ8>].

186. Yeung, *supra* note 172.

187. See, e.g., *id.*

188. Mettler, *supra* note 167.

189. See sources cited *supra* note 184.

190. See *supra* notes 51–54.

191. See sources cited *supra* note 184.

192. See *infra* notes 193–95 and accompanying text.

193. Violence Against Women Act of 1994, Pub. L. No. 103-322, §§ 40001–40703, 108 Stat. 1796 (codified as amended in scattered sections of 8 U.S.C.).

194. 8 U.S.C. § 1154(a) (2012).

battered spouses could only obtain lawful immigration status through their abusers, who frequently withheld their consent in order to keep the spouse from leaving.<sup>195</sup>

The reauthorization of VAWA in 2000 included two new forms of relief: the U visa, which provides immigration relief to victims of certain crimes including domestic violence, rape, and sexual assault;<sup>196</sup> and the T visa, which provides immigration relief to victims of human trafficking.<sup>197</sup> These three forms of relief together represented a revelation in the fight against gender-based violence in immigrant communities.<sup>198</sup> The U and T visas were created with law enforcement objectives in mind.<sup>199</sup> Police and prosecutors could use the U and T visas to help alleviate the fears of immigrant victims too scared to come forward otherwise.<sup>200</sup> Over the years, they have proven to be a very effective law enforcement tool for increasing reporting rates of gender-based violence in the immigrant community.<sup>201</sup>

USCIS, the agency within the Department of Homeland Security (DHS) that grants or denies VAWA, U, and T visa petitions, previously had a policy that if a petition was denied, it would not typically refer those individuals for removal proceedings.<sup>202</sup> This made sense if the goal of the programs was to increase crime

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195. H.R. REP. NO. 101-723, pt. 1, at 71 (1990) (“The purpose of this provision is to ensure that when the U.S. citizen or permanent resident spouse or parent engages in battering or cruelty against a spouse or child, neither the spouse nor child should be entrapped in the abusive relationship by the threat of losing their legal resident status.”).

196. 8 U.S.C. § 1101(a)(15)(U) (2012).

197. *Id.* § 1101(a)(15)(T).

198. *See supra* notes 194–97 and accompanying text.

199. *See infra* notes 200–01 and accompanying text.

200. *See* Mariela Olivares, *Battered by Law: The Political Subordination of Immigrant Women*, 64 AM. U. L. REV. 231, 250 (2014) (discussing the effects VAWA had on communications between law enforcement and immigrants).

201. *See U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants*, SUBJECT TO DEBATE (Police Exec. Research Forum, Washington, D.C.), June–Aug. 2017, at 1, 3–6, [https://www.policeforum.org/assets/docs/Subject\\_to\\_Debate/Debate2017/debate\\_2017\\_junaug.pdf](https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2017/debate_2017_junaug.pdf) [<https://perma.cc/VD8M-FYM8>]; *see* Madeline Sloan, *T Visas Protect Victims of Human Trafficking and Strengthen Community Relationships*, POLICE EXECUTIVE RES. F. 2 (2018), <https://www.policeforum.org/assets/TVisas.pdf> [<https://perma.cc/VD8M-FYM8>].

202. *See* U.S. CITIZENSHIP & IMMIGRATION SERV., PM-602-0050, REVISED GUIDANCE FOR THE REFERRAL OF CASES AND ISSUANCE OF NOTICES TO APPEAR (NTAs) IN CASES INVOLVING INADMISSIBLE AND REMOVABLE ALIENS (2011), [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf) [<https://perma.cc/K36V-EGGR>].



reporting in immigrant communities.<sup>203</sup> If victims were worried that applying for a visa would potentially put them in the crosshairs of ICE, they would be much less likely to apply.<sup>204</sup> If they did not have the protection the visas offered, victims would be less likely to cooperate with law enforcement.<sup>205</sup>

However, in June 2018, USCIS announced a new policy under which they would begin to issue NTAs, which initiate removal proceedings in immigration court, in case of visa denials.<sup>206</sup> In November 2018, USCIS announced that they would begin to issue NTAs in denied VAWA, U, and T petitions.<sup>207</sup> Because petitions can be denied for a number of technical reasons, the new guidance will undoubtedly put many victims of gender-based violence at risk for deportation.<sup>208</sup>

Similar to courthouse arrests, the Trump Administration has decided that indiscriminate immigration enforcement is more important than protecting immigrant victims.<sup>209</sup> USCIS's new NTA policy will likely have a chilling effect in immigrant communities,

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203. *See id.* (citing the purpose for employing the new policy as more efficient use of the justice and immigration systems).

204. AM. IMMIGRATION LAWYERS ASS'N, DOC. NO. 118112737, AILA POLICY BRIEF: EXPANDED NTA GUIDANCE WILL HAVE DEVASTATING EFFECTS ON SURVIVORS OF DOMESTIC ABUSE, TRAFFICKING, AND OTHER SERIOUS CRIMES 1 (2018) [hereinafter AILA POLICY BRIEF], <https://www.aila.org/infonet/aila-policy-brief-expanded-nta-guidance-will-have> [<https://perma.cc/HVS2-EXGZ>]; *see also* Stuart Anderson, *New USCIS Policy Will Carry Harsh Consequences for Applicants*, FORBES (July 11, 2018, 12:15 AM), <https://www.forbes.com/sites/stuartanderson/2018/07/11/new-uscis-policy-will-carry-harsh-consequences-for-applicants/#2d01a8734615> [<https://perma.cc/L9NP-7SM5>] (explaining the negative effects resulting from USCIS policy).

205. AILA POLICY BRIEF, *supra* note 204, at 1.

206. U.S. CITIZENSHIP & IMMIGRATION SERVS., PM0-602-0050.1, UPDATED GUIDANCE FOR THE REFERRAL OF CASES AND ISSUANCE OF NOTICES TO APPEAR (NTAs) IN CASES INVOLVING INADMISSIBLE AND DEPORTABLE ALIENS (2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf> [<https://perma.cc/3WRR-6MK8>].

207. U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS TELECONFERENCE ON NOTICE TO APPEAR (NTA) UPDATED POLICY GUIDANCE 3 (2018), [https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS\\_Updated\\_Policy\\_Guidance\\_on\\_Notice\\_to\\_Appear\\_NTA\\_11.15.18.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Updated_Policy_Guidance_on_Notice_to_Appear_NTA_11.15.18.pdf) [<https://perma.cc/YZS6-L35B>].

208. AILA POLICY BRIEF, *supra* note 204, at 1; *see also* Daniel Moattar, *US Immigration Is Stuck in the Stone Age—and It's Putting Lives in Danger*, NATION (Mar. 5, 2019), <https://www.thenation.com/article/us-immigration-is-stuck-in-the-stone-age-and-its-hurting-immigrants> [<https://perma.cc/67PQ-KP2V>].

209. *See supra* Section IV.C.1.

which will result in lower reporting and higher rates of violence.<sup>210</sup> Even more so than courthouse arrests, this policy targets crime victims to the exclusion of all others.<sup>211</sup> Yet even this change has not received the attention of #MeToo advocates.<sup>212</sup>

#### D. Public Charge Rule

On October 10, 2018, DHS issued a proposed federal regulation that expanded the definition of “public charge” under the immigration laws.<sup>213</sup> On August 14, 2019, DHS issued an interim final rule adopting the changes, which were slated to go into effect on October 15, 2019.<sup>214</sup> For more than a hundred years, individuals applying for admission to the United States or individuals applying for lawful permanent residence once in the United States, and are “likely at any time to become a public charge” have been inadmissible.<sup>215</sup> The public charge determination has always taken into account whether an immigrant has accessed certain benefits such as cash assistance, otherwise known as Temporary Assistance for Needy Families (TANF).<sup>216</sup> Because most immigrants are ineligible for TANF with the exception of individuals who have had lawful permanent residence for more than five years, it did not drastically limit the public benefits that most immigrants could access.<sup>217</sup>

The new public charge regulation radically expands the list of public benefits that the government could consider in determining whether someone was likely to be a public charge.<sup>218</sup> The new list would include Medicaid, the Supplemental Nutritional Assistance Program (SNAP), and Section 8 housing vouchers.<sup>219</sup> Whereas 3% of non-citizens receive cash assistance, 47% use one or more of these

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210. *See supra* notes 206–08 and accompanying text.

211. *See supra* notes 206–08.

212. *See infra* Part V.

213. *See* Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248).

214. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (issued Aug. 14, 2019).

215. Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1520 (1995). The modern inadmissibility grounds can be found at 8 U.S.C. § 1182(a)(4) (2012).

216. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, 28,692 (Mar. 26, 1999).

217. 8 U.S.C. §§ 1611, 1641 (2012).

218. *See infra* notes 219–23 and accompanying text.

219. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. at 41,295.

other programs.<sup>220</sup> Lawsuits challenging the new rule were filed immediately upon issuance of the interim final rule, and shortly before the rule was scheduled to go into effect, several courts issued injunctions blocking it.<sup>221</sup> If it does eventually go into effect, it is likely to have a severe impact on the ability of immigrants to access essential benefits.<sup>222</sup> As Protecting Immigrant Families, an immigrants' rights advocacy group, explained, the new regulation:

[M]ark[s] a significant and harmful departure from the current policy. For over a hundred years, the government has recognized that work supports like health care, nutrition and housing assistance help families thrive and remain productive. And decades ago, the government clarified that immigrant families can seek health care, nutrition and housing assistance without fear that doing so will harm their immigration cases . . . *we can no longer offer that assurance.*<sup>223</sup>

Unlike some of the other policies implemented by the Trump Administration, the effect of the new public charge regulation on victims of gender-based violence is not clear on first glance.<sup>224</sup> For one thing, certain categories of immigrants, including asylees as well as U, T, and VAWA visa holders, would continue to be exempt from or have a waiver available for the public charge inadmissibility grounds.<sup>225</sup> That means that many victims of gender-based violence will be unaffected by the new regulations when they go into effect.<sup>226</sup>

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220. JEANNE BATALOVA ET AL., MIGRATION POLICY INST., CHILLING EFFECTS: THE EXPECTED PUBLIC CHARGE RULE AND ITS IMPACT ON LEGAL IMMIGRANT FAMILIES' PUBLIC BENEFITS USE 3 (2018).

221. *Casa De Md., Inc. v. Trump*, No. PWG-19-2715, 2019 WL 5190689 (D. Md. Oct. 14, 2019); *Cook Cty. v. McAleenan*, No. 19 C 6334, 2019 WL 5110267 (N.D. Ill. Oct. 14, 2019); *New York v. U.S. Dep't of Homeland Sec.*, No. 19 CIV. 7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019); *City & County of San Francisco v. U.S. Citizenship & Immigration Servs.*, No. 19-CV-04717-PJH, 2019 WL 5100718, at \*1 (N.D. Cal. Oct. 11, 2019).

222. *See Proposed Changes to Public Charge: Analysis and Frequently Asked Questions*, PROTECTING IMMIGRANT FAMILIES, <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/07/PIFdeportationFAQjuly.pdf> [<https://perma.cc/8S8Y-BCJ3>] (last updated July 10, 2019).

223. *Id.*

224. *See infra* notes 225–26 and accompanying text.

225. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. at 51,156–57.

226. Those that hold U, T, or VAWA visas are persons who have been victims of certain crimes, human trafficking, or are the abused spouse, child, or parent of a U.S. Citizen

However, that discounts the severe chilling effect that the new regulation will have in immigrant communities, even for individuals who are not actually affected by the changes.<sup>227</sup> The Migration Policy Institute has predicted that “many immigrants and their families who are otherwise eligible may decide to forgo public benefits and services out of fear of real or perceived immigration consequences.”<sup>228</sup> That exact thing occurred after the 1996 welfare reform bill, which barred many legal immigrants from receiving benefits.<sup>229</sup> Legal non-citizens were still eligible for public benefits, but benefit use declined drastically.<sup>230</sup> The Brookings Institution reported that between 1994 and 1999, TANF enrollment declined 78%, SNAP enrollment declined by 53%, and Medicaid enrollment declined by 36% by low-income refugee families despite the fact that their eligibility did not change.<sup>231</sup>

There are several ways that the new public charge regulation could have a negative effect on immigrant survivors of gender-based violence.<sup>232</sup> Immigrant women experiencing domestic violence at home or sexual harassment in the workplace might believe that they cannot access public benefits without risking their immigration status, and this fear may cause them to stay in situations they would otherwise leave.<sup>233</sup> Moreover, immigrant women who have already left abusive situations will be more likely to be victimized again without public assistance.<sup>234</sup> Public benefits give victims agency and self-determination.<sup>235</sup> Even if they are still eligible for the benefits,

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or Lawful Permanent Resident. *See generally* *U Visa/T Visa/VAWA*, IMMIGRANT LEGAL RESOURCE CTR., <https://www.ilrc.org/u-visa-t-visa-vawa> [<https://perma.cc/A2DB-6JWZ>] (last visited Nov. 10, 2019) (describing the types of people eligible for each type of visa). As such, victims of gender-based violence are likely to hold one of these types of visas and will therefore, be unaffected by the new proposed regulations. *See* *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. at 51,156–57.

227. AILA POLICY BRIEF, *supra* note 204, at 1.

228. BATALOVA ET AL., *supra* note 220, at 2.

229. *See* Michael Fix & Ron Haskins, *Welfare Benefits for Non-citizens*, BROOKINGS (Feb. 2, 2002), <https://www.brookings.edu/research/welfare-benefits-for-non-citizens/> [<https://perma.cc/DF5S-H35Q>].

230. *Id.*

231. *Id.*

232. *See infra* notes 233–36 and accompanying text.

233. *See* Dutton et al., *supra* note 35, at 297.

234. *See id.* at 302–05.

235. *Id.* at 253–54.

the messaging around the new public charge regulations may make victims feel powerless.<sup>236</sup>

The #MeToo movement has had some success at raising the economic reasons why women stay silent about gender-based violence.<sup>237</sup> However, immigrant women have additional economic barriers that other women do not face.<sup>238</sup> Many immigrant women have long dealt with the fact that they were not eligible for most public benefits, though the ability to apply for VAWA, U, and T visas has somewhat alleviated that problem.<sup>239</sup> The new public charge regulation will mean even more immigrant women have to make the difficult decision to leave abusive relationships or work environments without the support of public benefits.<sup>240</sup> The #MeToo movement could, but has not yet, made this connection.<sup>241</sup>

#### *E. Workplace Enforcement*

The national conversation around #MeToo has included some stories of immigrant women and the particular vulnerabilities they face in the workplace.<sup>242</sup> When talking about these vulnerabilities, however, the focus is much more on individual factors that may make immigrant women more vulnerable, such as lack of English ability, fear of deportation, or inability to easily get another job.<sup>243</sup> How the Trump Administration's workplace enforcement policies have made immigrant women even more vulnerable to sexual harassment and other abuse is less understood.<sup>244</sup>

As #MeToo has recognized, workers are at risk of sexual harassment and other abuse because of the natural power imbalance between employees and employers.<sup>245</sup> That power imbalance is particularly pronounced with undocumented immigrants, who fear that any contact with law enforcement will result in their deportation.<sup>246</sup> Employers use this fear to their advantage by either implicitly or explicitly threatening to call immigration if their

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236. See BATALOVA ET AL., *supra* note 220, at 14.

237. See Weissman, *supra* note 88, at 434–35.

238. See *supra* notes 192–201, 218–23 and accompanying text.

239. See *supra* notes 192–201 and accompanying text.

240. See *supra* notes 218–23 and accompanying text.

241. See *infra* Part V.

242. See Hornet, *supra* note 1.

243. See Dutton et al., *supra* note 35, at 252–54.

244. See *infra* notes 262–70 and accompanying text.

245. See Zacharek et al., *supra* note 44.

246. See AM. CIVIL LIBERTIES UNION, *supra* note 184, at 5.

employees report abuse.<sup>247</sup> In some cases, employers actually make the call.<sup>248</sup>

Government agencies that investigate workplace abuse have long understood this dynamic and have tried to mitigate the practice by putting into place a series of deconfliction memoranda of understanding (MOUs)<sup>249</sup> between immigration enforcement authorities and other agencies that enforce workplace laws.<sup>250</sup> Under the current deconfliction MOUs signed by DHS and the Department of Labor (DOL), ICE is supposed to refrain from engaging in civil immigration enforcement when there is an open DOL investigation.<sup>251</sup> The MOU also states that:

ICE further agrees to be alert to and thwart attempts by other parties to manipulate its worksite enforcement activities for illicit or improper purposes. ICE will continue its existing practice of assessing whether tips and leads it receives concerning worksite enforcement are motivated by an improper desire to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws.<sup>252</sup>

These deconfliction MOUs also cover investigations by the Equal Employment Opportunity Commission,<sup>253</sup> the federal agency tasked with investigating sexual harassment and other kinds of sex

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247. See *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, HUM. RIGHT WATCH 41 (June 1, 2001), <https://www.hrw.org/report/2001/06/01/hidden-home/abuse-domestic-workers-special-visas-united-states> [<https://perma.cc/5GJ8-N322>].

248. See *Singh v. Jutla*, 214 F. Supp. 2d 1056, 1057 (N.D. Cal. 2002).

249. Generally, an MOU is a non-binding agreement outlining the responsibilities of each party to that agreement. *Memorandum of Understanding*, BLACK'S LAW DICTIONARY (10th ed. 2014).

250. See U.S. DEP'T OF HOMELAND SEC. & U.S. DEP'T OF LABOR, REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING ENFORCEMENT ACTIVITIES AT WORKSITES (2011) [hereinafter REVISED MEMORANDUM], <https://www.dol.gov/asp/media/reports/dhs-dol-mou.pdf> [<https://perma.cc/9J95-9ZTT>]; *Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION [hereinafter *Addendum to the Revised Memorandum*], [https://www.eeoc.gov/laws/mous/dhs\\_labor\\_mou\\_addendum.cfm](https://www.eeoc.gov/laws/mous/dhs_labor_mou_addendum.cfm) [<https://perma.cc/2WS6-QAWU>] (last visited Nov. 10, 2019).

251. REVISED MEMORANDUM, *supra* note 250.

252. *Id.*

253. See *Addendum to the Revised Memorandum*, *supra* note 250.

discrimination in the workplace.<sup>254</sup> Thus, in theory, a worker who files a sexual harassment complaint against her employer should be protected from the employer calling ICE out of retaliation or to thwart the investigation.<sup>255</sup> Though the deconfliction policies don't explicitly cover investigations by state labor agencies, ICE traditionally avoided interfering with those investigations.<sup>256</sup>

Though the deconfliction MOUs are still in effect, several developments may change the calculus for workers who are victims of gender-based violence or harassment in the workplace.<sup>257</sup> First, the end of the Obama-era prosecutorial discretion guidelines<sup>258</sup> has left ICE officers with very little discretion to handle incoming tips.<sup>259</sup> ICE has been directed to "take enforcement action against all removable aliens encountered in the course of their duties."<sup>260</sup> ICE has not clarified how this directive interacts with the deconfliction MOUs, but the safeguards put in place during the Obama Administration to protect most undocumented immigrants from deportation are gone.<sup>261</sup>

Second, the Trump Administration has amped up its workplace enforcement operations, increasing the general fear that workers have of being arrested at work and subject to deportation.<sup>262</sup> Though the Obama Administration deported over 3.1 million people between

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254. *Id.*

255. *See* sources cited *supra* note 250.

256. *See* Adam Ashton, *Boss Tells State Workers: Kick ICE Out of California Labor Offices*, SACRAMENTO BEE: ST. WORKER 1–2 (Aug. 3, 2017, 6:59 PM), <https://www.sacbee.com/news/politics-government/the-state-worker/article16511192.html> [<https://perma.cc/KX3T-TCF3>].

257. *See infra* notes 258–67 and accompanying text.

258. *The End of Immigration Priorities Under the Trump Administration*, AM. IMMIGR. COUNCIL 1–2 (Mar. 7, 2018), <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration> [<https://perma.cc/9FJR-ZFLL>].

259. *Id.* at 1.

260. Matthew T. Albence, *Implementing the President's Border Security and Interior Immigration Enforcement Priorities*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Feb. 27, 2017), <https://assets.documentcloud.org/documents/3889695/doc00801320170630123624.pdf> [<https://perma.cc/DA4F-MN2F>].

261. *See* John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest*, U.S. DEP'T HOMELAND SECURITY (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) [<https://perma.cc/VU78-AXGU>].

262. *See* Muzaffar Christi et al., *Shifting Gears, Trump Administration Launches High-Profile Worksite Enforcement Operations*, MIGRATION POL'Y INST. 1–2 (Jan. 24, 2018), <https://www.migrationpolicy.org/article/shifting-gears-trump-administration-launches-high-profile-worksite-enforcement-operations> [<https://perma.cc/Q62H-MUA7>].

2009 and 2016,<sup>263</sup> it largely ceased the mass arrests of undocumented workers that was common during the Bush Administration.<sup>264</sup> Under a policy promulgated by then-DHS Secretary Janet Napolitano, ICE was directed to focus workplace enforcement efforts on employers, not workers.<sup>265</sup> ICE adopted an enforcement strategy that relied heavily on so-called “silent raids,” which involved an audit of the paperwork a business must maintain to show compliance with the immigration laws.<sup>266</sup> Due to this policy shift, the number of workers arrested in workplace raids plummeted while employer audits and fines rose during the Obama Administration.<sup>267</sup>

The Trump Administration has done an about-face on workplace enforcement, increasing the number of workplace enforcement actions six fold between 2017 and 2018.<sup>268</sup> Moreover, these workplace enforcement actions have garnered national news attention.<sup>269</sup> Though none of the workplace raids are known to have come from a tip by an employer or a worker who made a report about sexual harassment to a government agency, the raids have added to

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263. Muzaffar Christi et al., *The Obama Record on Deportations: Deporter in Chief or Not?*, MIGRATION POL’Y INST. 3 (Jan. 26, 2017), <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not> [https://perma.cc/88YG-TJCD].

264. *Id.*

265. Marcy M. Forman, *Worksite Enforcement Strategy*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Apr. 30, 2009), [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/worksite\\_enforcement\\_strategy4\\_30\\_2009.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/worksite_enforcement_strategy4_30_2009.pdf) [https://perma.cc/WK6X-EABS] (“ICE must prioritize the criminal prosecution of the actual employers . . . because such employers are not sufficiently punished or deterred by the arrest of their illegal work force.”).

266. Julia Preston, *A Crackdown on Employing Illegal Workers*, N.Y. TIMES (May 29, 2011), <http://www.nytimes.com/2011/05/30/us/politics/30raid.html> [https://perma.cc/4M2S-A5CY].

267. ANDORRA BRUNO, CONG. RESEARCH SERV., R40002, IMMIGRATION-RELATED WORKSITE ENFORCEMENT: PERFORMANCE MEASURES 6, 9 (2015), <https://fas.org/sgp/crs/homesecc/R40002.pdf> [https://perma.cc/3UYF-X5P3].

268. *See ICE Worksite Enforcement Investigations in FY18 Surge*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Dec. 11, 2018), <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge> [https://perma.cc/NFX2-C7LR].

269. *See Hamed Aleaziz, ICE Arrests More than 130 Workers in Multistate Workplace Raids*, BUZZFEED NEWS (Aug. 8, 2018), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-arrests-more-than100-workers-in-multi-state-workplace> [https://perma.cc/8ZNL-6YQS]; *see Samantha Schmidt, ‘Utter Chaos’: ICE Arrests 114 Workers in Immigration Raid at Ohio Gardening Company*, WASH. POST (June 6, 2018), <https://www.washingtonpost.com/news/morning-mix/wp/2018/06/06/utter-chaos-ice-arrests-114-workers-in-immigration-raid-at-ohio-gardening-company> [https://perma.cc/J5J3-UHSJ].



the culture of fear that has gripped immigrant workers since Trump's election.<sup>270</sup>

Finally, there have been several high-profile instances of workers being arrested at hearings related to complaints they filed against their employer.<sup>271</sup> For instance, the LA Times reported that two undocumented immigrants were arrested by ICE in separate incidents when they arrived at their hearings at the California Department of Labor.<sup>272</sup> Like the courthouse arrests,<sup>273</sup> the numbers of workers arrested after filing a labor complaint are not high, but even a few high-profile cases can have a severe chilling effect on other workers.<sup>274</sup> The #MeToo movement has failed to understand how current federal immigration policy has made immigrant women even more vulnerable in the workplace, despite the fact that other women now feel more empowered to speak out.<sup>275</sup>

## V. THE FUTURE OF IMMIGRANT WOMEN AND #METOO

Why have immigrant women faced such setbacks at a time of immense social and cultural advances for women as a whole? In part, the answer to this question is an extension of the criticism of exclusion that has plagued #MeToo from the beginning.<sup>276</sup> Immigrant women have little political power, and their stories are often marginalized.<sup>277</sup> But, I would posit that something else is going on that explains why #MeToo has failed to understand the connections between the Trump Administration's immigration

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270. See Aleaziz, *supra* note 269.

271. See generally Natalie Kitroeff, *Officials Say Immigration Agents Showed Up at Labor Dispute Proceedings. California Wants Them Out*, L.A. TIMES (Aug. 3, 2017), <https://www.latimes.com/business/la-fi-ice-california-labor-20170802-story.html> [<https://perma.cc/AE27-LMHT>] (discussing the measures taken by the California Labor Commission to protect immigrants and their complaints).

272. *Id.*

273. See *supra* notes 182–86 and accompanying text.

274. See Rebecca Smith et al., *Iced Out: How Immigration Enforcement Has Interfered with Workers' Rights*, NAT'L EMP. L. PROJECT 6 (Oct. 27, 2009), [https://www.nelp.org/wp-content/uploads/2015/03/ICED\\_OUT.pdf](https://www.nelp.org/wp-content/uploads/2015/03/ICED_OUT.pdf) [<https://perma.cc/JJ9P-87BY>].

275. See *infra* Part V.

276. See Bernice Yeung, *The People #MeToo Leaves Behind*, REVEAL (Nov. 27, 2017), <https://www.revealnews.org/blog/the-people-metoo-leaves-behind/> [<https://perma.cc/LF38-AXMQ>].

277. See Morgan Weibel, *Despite the #MeToo Movement, Roll-Backs in Protection Endanger Immigrant Women: It is Time for #ImmigrantWomenToo*, THINK IMMIGR. (Mar. 27, 2019), <https://thinkimmigration.org/blog/2019/03/27/despite-the-metoo-movement-roll-backs-in-protection-endanger-immigrant-women-it-is-time-for-immigrantwomentoo/> [<https://perma.cc/8ZX6-QLYZ>].

policies and the movement's goal of addressing gender-based violence.<sup>278</sup>

First, #MeToo has succeeded in large part through social and political pressure that has provoked a response by individuals, companies, and state governments.<sup>279</sup> For example, Les Moonves was pushed out of CBS not because the Board found his behavior abhorrent—which was widely known before his downfall<sup>280</sup>—but because of the public backlash following the *New Yorker* article that exposed his misdeeds.<sup>281</sup> Likewise, states with Democratic majorities in their legislatures responded to public pressure from their constituents and passed legislation in response to #MeToo.<sup>282</sup>

The individuals implementing the anti-woman, anti-immigrant policies in the Trump Administration do not have the same democratic accountability to the sector of the population most likely to push for changes in the wake of #MeToo.<sup>283</sup> They work for a President whose political base is supportive of these policies, and they have no incentive to moderate.<sup>284</sup> Only when a policy loses the support of a supermajority of the public—such as the family

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278. See *infra* notes 279–97 and accompanying text.

279. See *infra* notes 280–82 and accompanying text.

280. Bloomberg, *CBS Board Knew of Les Moonves Allegations Prior to New Yorker Story: Report*, *FORTUNE* (Aug. 2, 2018), <http://fortune.com/2018/08/02/les-moonves-cbs-board> [<https://perma.cc/7PGT-53PK>].

281. See generally Ronan Farrow, *Les Moonves and CBS Face Allegations of Sexual Harassment*, *NEW YORKER* (July 27, 2018), <https://www.newyorker.com/magazine/2018/08/06/les-moonves-and-cbs-face-allegations-of-sexual-misconduct> [<https://perma.cc/62YF-MWLH>] (discussing Moonves and his relationship with CBS).

282. Nikki Graf, *Sexual Harassment at Work in the Era of #MeToo*, *PEW RES. CTR.* 5 (Apr. 4, 2018), <http://assets.pewresearch.org/wp-content/uploads/sites/3/2018/04/03161853/Pew-Research-Center-Sexual-Harassment-Report-April-2018-FINAL.pdf> [<https://perma.cc/C9AG-7RGS>] (showing Democratic voters are more likely to see sexual harassment as a problem than Republican voters).

283. See generally Darla Mercado, *#MeToo Reveals Stark Differences Among Republicans, Democrats on Sexual Misconduct at Work*, *CNBC* (Apr. 4, 2018), <https://www.cnn.com/2018/04/04/metoo-reveals-stark-differences-among-republican-s-democrats-on-sexual-misconduct-at-work.html> [<https://perma.cc/CFB5-L2TP>] (discussing the difference of opinion between republicans and democrats on sexual misconduct at work and the #MeToo movement).

284. See David Leonhardt, *The People vs. Donald J. Trump*, *N.Y. TIMES* (Jan. 5, 2019), <https://www.nytimes.com/2019/01/05/opinion/sunday/trump-impeachment.html> [<https://perma.cc/H4MZ-PBT2>].

separation policy<sup>285</sup>—does it cause the Trump Administration to change course.<sup>286</sup>

President Trump can afford to lose half of the country without harming his electoral prospects.<sup>287</sup> However, no company wants to write off half the country and harm its bottom line.<sup>288</sup> Thus, one explanation of why the #MeToo movement hasn't focused on the Trump Administration's immigration policies is that it has focused on targets that it has a greater ability to influence.<sup>289</sup>

The byzantine nature of the immigration system itself also explains the oversight.<sup>290</sup> The policies discussed above are obscure and complex enough that it is very hard for a casual observer to understand them.<sup>291</sup> A story about a single instance of sexual harassment can be told in a compelling, sensational way.<sup>292</sup> It is harder to get a general audience to understand how systems and institutions created the conditions by which such sexual harassment could occur.<sup>293</sup> The disconnect between stories and the policies that

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285. See Philip Bump, *Two-Thirds of Americans Oppose Trump's Family-Separation Policy*, WASH. POST (June 18, 2018), [https://www.washingtonpost.com/news/politics/wp/2018/06/18/two-thirds-of-americans-oppose-trumps-family-separation-policy/?no\\_redirect=on](https://www.washingtonpost.com/news/politics/wp/2018/06/18/two-thirds-of-americans-oppose-trumps-family-separation-policy/?no_redirect=on) [https://perma.cc/VJ7X-UDQR].

286. See Michael D. Shear et al., *Trump Retreats on Separating Families, but Thousands May Remain Apart*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html> [https://perma.cc/44F7-XYLC].

287. See David Wasserman, *How Trump Could Lose by 5 Million Votes and Still Win in 2020*, NBC NEWS (July 19, 2019), <https://www.nbcnews.com/politics/2020-election/how-trump-could-lose-5-million-votes-still-win-2020-n1031601> [https://perma.cc/X2EX-UWTK].

288. See Nedra Pickler & Mark S. Smith, *Obama: Romney Writing Off Half the Country*, NBC WASH. (Sept. 21, 2012), <https://www.nbcwashington.com/blogs/first-read-dmv/Obama-Appearing-at-Rally-in-Northern-Virginia-170707676.html> [https://perma.cc/V5KY-9VZR].

289. See generally Nancy Cook, *Trump Muddles Republicans' #MeToo Message*, POLITICO (Oct. 4, 2018), <https://www.politico.eu/article/donald-trump-muddles-republicans-metoo-message/> [https://perma.cc/LS4T-6T7E] (explaining that Trump and the conservative group have stood in opposition to the #MeToo movement).

290. See generally Michelle Mark, *Jeff Sessions Said Immigrants Should 'Wait Their Turn' to Come to the US – Here's How Complicated That Process Can Be*, BUS. INSIDER (May 3, 2018), <https://www.businessinsider.com/how-to-green-card-visa-legal-immigration-us-news-trump-2017-4> [https://perma.cc/9KN7-YRRV] (arguing that the U.S. immigration pathways for asylum-seekers and refugees are very difficult to navigate).

291. See *supra* Part IV.

292. See Rachel Haas, *One Year On from the #MeToo Movement, What Exactly Has Changed?*, WORLD ECON. F. (Nov. 26, 2018), <https://www.weforum.org/agenda/2018/11/metoo-women-equality-one-year-later/> [https://perma.cc/X2C6-6R6B].

293. See *supra* Section IV.B.

made them possible explains why the #MeToo movement has struggled to accomplish its policy goals across the board.<sup>294</sup> This difficulty exists to an even greater degree in immigration policy.<sup>295</sup>

Finally, it must be recognized that one reason why the #MeToo movement has failed to engage with the immigration policy debate is because many of the women who are affected by these policies are poor immigrants of color.<sup>296</sup> Though the movement has made strides in improving its inclusivity, it continues to prioritize the experiences of a particular subset of women—white, middle-class, and native-born.<sup>297</sup> If the movement is going to solve the problem of gender-based violence, it will need to do better.

## VI. CONCLUSION

One could argue that #MeToo's failure to address these policies is not that important. Trump's attacks on immigrant women certainly have not gone unnoticed; they have received a lot of criticism from immigrants' rights advocates and attention from the mainstream press.<sup>298</sup> But if immigrant women—and the policies that are putting them at increased risk of gender-based violence—are excluded from #MeToo, then they will not be able to take advantage of the social power the #MeToo movement has built over the past two years.<sup>299</sup> There is power in the plight of immigrant women being included in the #MeToo agenda. At this point, the movement has yet to understand how the Trump Administration's immigration policy is increasing the risk of gender-based violence.<sup>300</sup> Until it does, immigrant women will continue to suffer in the shadows.

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294. See *supra* notes 277–93 and accompanying text.

295. See *supra* Part IV.

296. Lockhart, *supra* note 50.

297. Melissa Chan, 'Our Pain Is Never Prioritized.' #MeToo Founder Tarana Burke Says We Must Listen to 'Untold' Stories of Minority Women, TIME (Apr. 23, 2019), <https://time.com/5574163/tarana-burke-metoo-time-100-summit/> [<https://perma.cc/L6PT-L9LP>].

298. See *supra* notes 107–08, 162–65 and accompanying text.

299. See Huang, *supra* note 5.

300. See *supra* Parts IV–V.

