



6-24-2018

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Recommended Citation

Shawna C. Quast, *The Impact of Domestic Violence on Immigrant Women*, 7 DePaul J. Women, Gender & L. (2018)

Available at: <https://via.library.depaul.edu/jwgl/vol7/iss2/3>

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THE IMPACT OF DOMESTIC VIOLENCE ON IMMIGRANT WOMEN

*Shawna C. Quast**

INTRODUCTION

Courts and lawmakers have historically treated domestic violence as a private issue.¹ The term *domestic violence*² itself suggests an inherent removal from the public sphere. Violence which occurred in the home, not subject to the public gaze, has been, and often continues to be treated as a private matter to be addressed or ignored at the discretion of the familial unit.³ In recent history, however, academic and political movements have illuminated the previously secreted issue, prompting not only discourse, but also palpable legal and cultural change.⁴ Despite the strides made in recognizing the plight of those subject to

* B.A., International Studies and Political Science, Rhodes College, 2012; J.D. Candidate, University of Missouri School of Law, 2019. Thank you to Professor Mary Beck for her support and guidance through the writing process; to the editors of the DePaul Journal of Women, Gender & the Law for their thoughtful comments and feedback through the editing process; and to my family and friends for their unwavering support.

¹ See Peggy Solic, *Private Matter or Public Crisis? Defining and Responding to Domestic Violence*, 8 ORIGINS: CURRENT EVENTS IN THE HIST. PERSP. 10 (July 2015).

² For the purpose of this paper, domestic violence is defined broadly to include physical, emotional, economic, and sexual violence. This includes violence perpetuated by an intimate partner, such as a spouse, or an unmarried person within a dating or romantic relationship. This may also include acts perpetuated by other members of the family unit, where noted.

³ See Brian R. Decker, *Violence and the Private: A Girardian Model of Domestic Violence in Society*, 11 U. PENN. J. L. SOC. CHANGE 105, 106 (2007).

⁴ See Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L.Q. 353, 354–59 (2008) (citing Section II “The Recognition of Intimate Violence”).

domestic violence, many women's experiences—particularly those of women of color—have been left to linger in the shadows.⁵ Immigrant women are among those who have historically been overlooked when assessing domestic violence within the United States.

Immigrant victims of domestic violence face unique challenges in escaping their abusers. Where language barriers, financial dependence, or social isolation are present, domestic violence victims can encounter distinct difficulties in achieving security from abusive partners.⁶ These difficulties are compounded in situations where victims lack legal status, or otherwise occupy intersectional⁷ spaces (where, for example, victims are LGBT-identifying or disabled persons).⁸

This paper will focus primarily on Hispanic and Latino Immigrant populations. Section I of this article will review some of the legal protections available to immigrant victims of domestic violence, particularly focusing on access to visas under the Violence Against Women Act, the Victims of Trafficking and Violence Protection Act, and the Battered Women Protection Act. Section II will review some of the unique challenges faced by immigrant, nonimmigrant, and undocumented victims of domestic violence. Section III will review how immigrant status intersects with LGBT-identity, ability, and substance abuse to exacerbate the impact of domestic violence. Finally, Section IV will discuss the potential impact of the current sociopolitical climate on the ability

⁵ Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1242, 1242–43 (1993) (explaining that “Contemporary feminist . . . discourse[] [has] failed to consider intersectional identities such as women of color”).

⁶ Marry 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, 301 (2000).

⁷ The term “intersectional” is used here to reflect the multiple cultures or sub-cultures that a single person can belong to. One's race, ethnicity, religion, national origin, sexual orientation, gender identity, ableness, all interact to shape one's experience. Crenshaw, *supra* note 5.

⁸ See *infra* Parts III & IV.

or willingness of domestic violence victims to seek escape from abuse.

I. LEGAL PROTECTIONS AVAILABLE TO IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE

Domestic violence legal remedies are generally dispensed by state courts. Typically, the abused will seek relief in the form of Orders of Protection, which restrict the abuser's interactions and communications with the abused.⁹ Acts of domestic violence may also yield criminal charges for the abuser.¹⁰ These remedies are available to domestic violence victims, generally, while the federal law offers additional protections specific to non-citizen persons.

Over the past three decades, the United States government has made tremendous strides in the remedies available to immigrant domestic violence victims. Whether in the form of temporary benefits, shelter, or visas, the U.S. legislature has made multiple commendable attempts to address some of the unique needs of battered immigrants. Though not without error, legislation has sought to grant immigrant domestic violence victims equal access under the law to protection from their abusers. Further, the legislature has sought to ameliorate some of the challenges that are unique to immigrant populations, specifically those that are tied to legal status. Part A will review aspects of the Violence Against Women Act; Part B will review the Victims of Trafficking and Violence Protection Act; and Part C will review the Battered Women Protection Act.

⁹ See, e.g., Missouri Domestic Violence Act, MO. REV. STAT. § 455 (2018) (showing that Orders of Protection are a form of relief permitted pursuant to state statutes). “Any person who has been subject to domestic violence by a present or former family or household member . . . may seek relief . . . by filing a verified petition alleging such domestic violence . . .” *Id.* at § 455.020 (showing that in Missouri, for example, a petitioner can seek an Order of Protection if she has been subject to domestic violence).

¹⁰ See, e.g., MO. REV. STAT. §§ 565.072 – 575.076 (displaying the “domestic assault” penalties in the first, second, third, and fourth degrees); see also MO. REV. STAT. § 565.002(6) (defining “domestic victim”).

A. *The Violence Against Women Act (VAWA)*

The Violence Against Women Act (VAWA) grants victims of gender-motivated violent crimes access to services and legal remedies while holding offenders and abusers accountable.¹¹ Signed into law in 1994 during the Clinton Administration, VAWA created federal criminal penalties for interstate domestic violence and interstate violation of protection orders.¹² VAWA has been reenacted multiple times, with additions and deletions.¹³ The Act further created new guidelines for states in dealing with domestic abuse and sex crimes; it also sought to provide resources for victims, law enforcement, and the judiciary.¹⁴ Importantly, VAWA prohibited the Department of Homeland Security from using information from the abuser of an undocumented immigrant to arrest or deport the victim.¹⁵ This provision demonstrates the legislature's desire to address some of the unique needs of abused immigrant women, particularly those without legal status.¹⁶

¹¹ Sally F. Goldfarb, *"No Civilized System of Justice": The Fate of the Violence Against Women Act*, 102 W. VA. L. REV. 499, 500, 504 (2000).

¹² *Id.* at 500.

¹³ Dutton et al., *supra* note 6, at 301.

¹⁴ Goldfarb, *supra* note 11, at 504 (stating that VAWA was passed as a part of the Violent Crime Control and Law Enforcement Act of 1994). *See* United States v. Morrison, 529 U.S. 598 (2000) (holding that the federal cause of action available to victims under VAWA, then codified under 42 U.S.C. § 13981, was unconstitutional because Congress lacked authority to enact the provision).

¹⁵ *See* P.R. Lockhart, *Immigrants Fear a Choice Between Domestic Violence and Deportation*, MOTHER JONES (Mar. 20, 2017), <http://www.motherjones.com/politics/2017/03/ice-dhs-immigration-domestic-violence-protections/> (noting that where the abuse victim has a prior conviction for a serious crime, DHS may use the information from the abuser to aid in the arrest or deportation of the victim).

¹⁶ *See* Section III.B.1. *See* Zach Stafford, *LGBT people face discrimination over domestic violence claims, report finds*, THE GUARDIAN (Oct. 18, 2016), <https://www.theguardian.com/world/2016/oct/18/lgbt-hiv-affected-people-domestic-violence-study> (showing that VAWA also offered protections against discrimination based on gender identity in its 2013 reauthorization).

B. The Victims of Trafficking and Violence Protection Act

The purpose of the Victims of Trafficking and Violence Protection Act (VTVPA) is to “combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.”¹⁷ The most important aspect in VTVPA, as it relates to this Article, is that it amended the Immigration and Nationality Act (INA) to allow nonimmigrant¹⁸ persons who are victims of trafficking to apply for “lawful temporary resident status” through a “T visa.”¹⁹ The T visa allows nonimmigrant victims of trafficking to live and work in the United States lawfully.²⁰ This provision again demonstrates the legislature’s awareness of some of the unique challenges faced by immigrant persons, and its desire to offer protections to the vulnerable population.

C. The Battered Women Protection Act (BIWPA)

¹⁷ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat 1464 (stating that “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”)

¹⁸ *Immigration Terms and Definitions Involving Aliens*, IRS (Jan. 18, 2018), <https://www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens> (stating that for visa qualification purposes, “immigrant,” “nonimmigrant,” and “undocumented immigrant” persons are treated differently). An immigrant is an individual who wishes to live in the United States permanently. *Id.* Such a person has acquired legal status in the US as a Lawful Permanent Resident. She can lawfully reside and work in the US indefinitely. *Id.* A nonimmigrant is a person who has been granted a temporary visa for tourism, education, or employment. *Id.* Nonimmigrants who stay in the US after their temporary visa has expired, or those who enter unlawfully, are classified as “undocumented” or “illegal aliens.” Such individuals lack legal status and are deportable. *Id.*

¹⁹ *Id.*

²⁰ *See id.*

Under the Battered Women Protection Act (BIWPA), alien victims of certain qualifying crimes can seek temporary legal status in the United States through a “U visa.”²¹ Qualifying crimes or criminal activities include (but are not limited to) domestic violence, sexual assault, abusive sexual contact, witness tampering, and rape.²² BIWPA requires the victim to have a “qualifying family member,” meaning they have a spouse or child; if the victim is under the age of twenty-one, the victim needs to be the spouse, child, parent, or unmarried sibling²³ of the criminal perpetrator to qualify for the U visa.²⁴

To be eligible for the U visa, victims must demonstrate the following:

- (1) Substantial physical or mental abuse as a result of being a victim of a qualifying crime;
- (2) possession of credible and reliable information to aid in the prosecution or investigation of the qualifying crime;
- (3) the ability to be helpful in the investigation or prosecution of the qualifying criminal activity; and
- (4) that the qualifying criminal activity took place in the United States territories.²⁵

The federal law offers multiple forms of assistance to immigrant victims of domestic violence. Despite the availability of such remedies, victims may not always seek assistance. The decision not to seek aid can be based on extrinsic factors, including those involving law enforcement and government agencies, and the limitations of personal resources.

II. CHALLENGES FACED BY IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE

Domestic violence does not operate in a vacuum. There are substantial external factors that victims must consider when

²¹ 8 C.F.R. § 214.14 (2018).

²² 8 C.F.R. § 214.14(a)(9).

²³ Must be under the age of eighteen. 8 C.F.R. 214.14(a)(10).

²⁴ 8 C.F.R. § 214.14(a)(10).

²⁵ 8 C.F.R. §§ 214.14(b)(1)–(4).

seeking escape from abusive relationships. These factors can include socioeconomic status, the presence of children in the household, and potential sources of support from family members and the community. The difficulties in seeking escape can be compounded for the immigrant victim of domestic violence who may have to challenge deep-seeded cultural or religious norms, may have to face language barriers, or may lack access to public benefits that would otherwise serve as an important source of support. This section will review some of the challenges faced by immigrant and nonimmigrant domestic violence victims, including those that are unique to undocumented immigrants. This section will also discuss how intersectional issues can further inhibit victims from seeking escape or legal protection from their abusers. Part A will review the impact of language barriers and social isolation; Part B will review the influence of culture and religion; Part C will discuss access to public benefits; and Part D will review the influence of legal status and fear of deportation.

A. Language Barriers and Social Isolation

Immigrant victims of domestic abuse often encounter language barriers, which can discourage them from seeking help in escaping their abusers.²⁶ Not only do these language barriers have the potential to isolate victims from larger society, but they can also inhibit victims from obtaining public assistance, employment, or otherwise establishing independent financial security.²⁷ Because lack of financial security is one of the largest factors contributing to abuse victims staying in abusive relationships, it is important that service providers employ bilingual staff to better address immigrant populations.²⁸

Immigrant persons, particularly recent immigrants, often lack social contacts sufficient to motivate them to report abuse. If the individual lacks familial ties or friendships in the U.S., they are often more dependent on their abusers, not only financially, but

²⁶ Dutton et al., *supra* note 6, at 254.

²⁷ *Id.*

²⁸ This assertion is made in reference to Spanish-speaking individuals.

also socially and emotionally.²⁹ As with non-immigrant populations, inadequate social or emotional support increases the likelihood that battered women stay in abusive relationships. This is a particularly difficult factor to overcome, especially in remote areas, as it is difficult to communicate the presence of a community or support system to an unknown victim.³⁰ However, proper funding for governmental and not-for-profit organizations can increase visibility within a community, and make apparent such an organization's presence for those seeking assistance.³¹

B. Culture and Religion

Culture and religion can play a role in how and where immigrant, nonimmigrant, and undocumented individuals seek escape from domestic violence. Because of the nature of spirituality and religiosity within Latino culture, some victims turn to "healing arts" rather than seeking legal or social assistance.³²

There is a stigma amongst some in the Latino community surrounding reporting abuse to police, or even discussing it with others; it is often viewed as a source of shame and dishonor for one's self and one's community.³³ Such populations often

²⁹ Rachel Gonzalez Settlage, *Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U. L. REV. 1747, 1781 (2016) (stating that for some sub-sets of the population, geographical isolation is also a factor in non-reporting; this is particularly true with farmworkers).

³⁰ Robin L. Page, et. al, *Empowerment in Latina Immigrant Women Recovering from Interpersonal Violence: A Concept Analysis*, 28 J. TRANSCULTURAL NURSING 535, 537 (2017). *See id.* at 534-37 (describing an instance in which a Latina abuse victim escaped her abuser with the aid of a bilingual nurse who influenced her to go to a shelter, compared to an abused Latina who was unaware of her options, fearful of deportation, and isolated). *See generally id.* (suggesting that nurses can play a particularly useful role in empowering Latinas suffering intimate partner violence to seek escape).

³¹ *See id.*

³² Dutton et al., *supra* note 6, at 253.

³³ Settlage, *supra* note 29, at 1781.

perceive disclosure as perpetuating unfavorable stereotypes about one's culture, religion, nationality, or race.³⁴

Many immigrants come from a staunchly patriarchal cultural background in which gender roles are strictly adhered to. In such situations, women often view abuse as a normal occurrence or as a matter of fate.³⁵ Globally, many cultures do not view domestic abuse as a crime.³⁶ While immigrant women frequently adapt to new ideologies and social norms more quickly than men through the course of assimilating into U.S. culture and custom, this can read as a cue to the abuser to exercise greater control over the abused.³⁷ Further, in cultures that emphasize the importance of particular attributes, like "looks, cooking ability, mothering, or sexual modesty[,]” verbal and emotional abuse citing alleged inadequacies can be particularly humiliating and dehumanizing.³⁸ This can increase the source of shame surrounding domestic abuse, enhance the belief that the victim is at fault, and ultimately prevent her from seeking refuge outside of the abusive relationship.

C. Access to Public Benefits

Prior to 1996, many public benefits were not available to nonimmigrants, including the Supplemental Nutritional Assistance Program (SNAP; formerly "Food Stamp Program"), Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF).³⁹ Even for those who immigrated lawfully, seeking public assistance can be problematic for non-naturalized citizens. "Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the

³⁴ *Id.*

³⁵ Anita Raj & Jay Silverman, *Violence Against Immigrant Women: The Role of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367, 371 (2002).

³⁶ *Id.*

³⁷ *Id.* at 370.

³⁸ *Id.* at 377.

³⁹ Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, NAT'L IMMIGR. L. CTR. (2015).

United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (green card)” is not permitted to acquire legal status if it is likely that she will become a public charge.⁴⁰ One can be deemed a “public charge” if it appears that one is “likely to become primarily dependent on the government for subsistence.”⁴¹ This potential classification can prevent individuals from seeking public assistance as it can adversely impact their ability to acquire legal status. By doing so, an individual can become “inadmissible,” meaning that the government will neither grant admission to the United States, nor grant “adjustment of status” if already present.⁴²

While the classification as a “public charge” does not apply in the naturalization process (meaning if an individual has lawful status and is in the process of becoming naturalized, this determination will not be made), for nonimmigrant and undocumented persons seeking adjustment in status, utilizing public benefits—especially long term—can adversely impact legal status.⁴³ Fortunately, some individuals may be exempt, or eligible for a waiver from such a classification. This includes people applying for “T visas” and “U visas,” as well as those in possession of the same who are working to become permanent residents.⁴⁴

Even with such exceptions available, undocumented individuals bear a unique burden in obtaining public benefits. Undocumented immigrants are not eligible for most federally funded assistance programs in the first place. This includes TANF, SNAP, and SSI.⁴⁵ Some federally funded programs are available to undocumented persons, including Special Supplemental

⁴⁰ *Public Charge*, U.S. CITIZENSHIP AND IMMIGR. SERV.’S (June 26, 2017), <https://www.uscis.gov/greencard/public-charge>.

⁴¹ *Id.* (stating that classifications are made on a case by case basis, considering the individual’s age, health, assets, resources, education and skills, and familial and financial status).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Tara Watson, *Do Undocumented Immigrants Overuse Government Benefits?*, ECONOFACT (Mar. 28 2017), <http://econofact.org/undocumented-immigrants-overuse-government-benefits>.

Nutrition Program for Women, Infants, and Children (WIC), Head Start, and Emergency Medicaid.⁴⁶ These benefits are generally limited to short-term use or require a young child in the household.⁴⁷ This can limit the aid available to undocumented women without children. Where children are present, however, undocumented women can qualify for more public assistance programs; further, the children of undocumented immigrants may be independently eligible for public benefits.⁴⁸

D. Barriers to Acquiring Legal Status and Fear of Deportation

For nonimmigrant or undocumented immigrants in violent relationships, the prospect of escape can seem impossible in the face of possible deportation. Many immigrants rely on their abusers as sponsors to maintain legal status or seek naturalization.⁴⁹ Where this is the case, sponsors often utilize this reliance to control their victim by failing to file a petition, retracting a petition, failing to reply to information requests, or threatening to do any of the aforementioned.⁵⁰ Further, if abusers control what mail the abused receives, the later may never know when proceedings are scheduled; failure to show can result in the initiation of deportation proceedings against the abused.⁵¹

⁴⁶ *Id.* (showing that the estimated cost of emergency Medicaid is approximately \$2 billion). *Id.* (showing that undocumented immigrants contribute up to, by some estimates, 12 billion dollars to the Social Security trust fund, which accounts for approximately one percent of the Medicaid budget).

⁴⁷ *Id.*

⁴⁸ Watson, *supra* note 45.

⁴⁹ *How Immigration Laws Impact Immigrant Victims of Domestic Violence*, IOWA LEGAL AID (Sept. 8, 2005), <https://www.iowalegalaid.org/resource/how-immigration-laws-impact-immigrant-victims>.

⁵⁰ *Id.*

⁵¹ *Id.*

Undocumented immigrants may not seek escape from their abusers out of fear of deportation.⁵² While this has been the case in the past, recent events have demonstrated that this is a current and legitimate fear for many people. For example, in El Paso, Texas, a transgender Mexican immigrant sought a Protective order against her abusive partner. Her abuser reported her to Immigration and Customs Enforcement (ICE) in response to the Order; she was subsequently detained and charged with illegal reentry to the United States.⁵³ While anecdotal in nature, such narratives serve to intensify the fear of being deported while seeking legal aid to escape abuse.

III. IMMIGRATION AND INTERSECTIONAL ISSUES⁵⁴

Domestic violence is an issue that spans across races, classes, religions, sexual orientations, national origins, physical or cognitive abilities, and ethnicities. The term intersectional refers to the multiple elements that contribute to one's experience, especially in reference to the unique oppression one may experience in light of one's race, class, sex, and sexual orientation. In the past, sociopolitical actors seeking to support victims and survivors of domestic violence have done so through a "one-size-fits-all" approach.⁵⁵ In recent history, activists and scholars have sought to dismantle the simplified "universal woman" approach to encourage individuals and lawmakers alike to recognize the

⁵² Dutton et al., *supra* note 6, at 252–53 (showing that “Latinas who are undocumented or have unstable legal residency status may mistakenly believe that seeking help from social services will lead to their deportation.”).

⁵³ Lockhart, *supra* note 15; Mya Rhodan, *Deportation Fears Silence Some Domestic Violence Victims*, TIME (May 30, 2017), <http://time.com/4798422/domestic-violence-deportation-immigration/> (stating that the victim, legally called Irvin Gonzalez, had previously been deported; she subsequently reentered the United States).

⁵⁴ Given the limitations of this paper, three intersectional perspectives are discussed.

⁵⁵ LETTIE L. LOCKHART & FRAN S. DANIS, DOMESTIC VIOLENCE: INTERSECTIONALITY AND CULTURALLY COMPETENT PRACTICE 1, 16 (2010).

complex reality of domestic violence.⁵⁶ As a result, there has been a cultural shift in the treatment of domestic abuse survivors, and a change in support offered to those seeking escape.⁵⁷ Domestic violence has shed much of its association with the “private sphere,” becoming more widely recognized as a public health issue.⁵⁸

Many intersectional identities and issues exist. Part A will discuss domestic violence within the context of sexual orientation and transgender identity; Part B will discuss abuse of disabled persons; and Part C will discuss how the presence of substance abuse problems can impact abuse victims.

A. LGBT Identity

Transgender and LGBT-identifying individuals are less likely than non-queer individuals to report abuse to law enforcement.⁵⁹ There is a sentiment within the LGBT community that doing so reflects a “lack of solidarity” with the queer community.⁶⁰ Many queer-identifying people fear perpetuating stereotypes of dysfunction or moral depravity within the community, thus hiding abuse and failing to report it to outside entities.⁶¹ This failure can be even more prevalent in the trans community given the combination of societal trans-phobia and the fact that trans women face intimate partner violence at rates three times higher than other LGBT people.⁶²

⁵⁶ *Id.*

⁵⁷ *Id.* at 2.

⁵⁸ See Scolic, *supra* note 1.

⁵⁹ Sara Qureshi, *Utilizing Florida's Stance on Domestic Violence Laws Regarding Same-Sex Couples as an Effective Model for National Uniformity*, 28 U. FLA. J. L. & PUB. POL'Y 143, 149 (2017) (Stating that trans women face intimate partner violence at rates three times higher than other LGBT people).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Zach Stafford, *LGBT People Face Discrimination Over Domestic Violence Claims, Report Finds*, GUARDIAN, (Oct. 18, 2016), <https://www.theguardian.com/world/2016/oct/18/lgbt-hiv-affected-people-domestic-violence-study>.

Additionally, people in same-sex relationships are more likely to fight back, creating the appearance of mutual combat, rather than abuse.⁶³ This can color how abusers and victims are treated by law enforcement.⁶⁴ Abusers in same-sex relationships have additional psychological leverage over their victims, often threatening “outing” and taking advantage of fears of further isolation from family, friends, and community.⁶⁵ Reports of intimate partner violence more than doubled from 2015 to 2016 for undocumented LGBT people.⁶⁶

Being a member of the LGBT community can compound the impact of domestic violence for undocumented immigrants. In general, LGBT people have high rates of contact with law enforcement; immigrants, however, face even higher rates of policing.⁶⁷ This can contribute to a greater fear of deportation, and allow abusers to exploit victims using threats of violence in their nation of origin, if deported.⁶⁸ Further, the impact of societal “homophobia and transphobia, combined with being undocumented, puts some low-income LGBT people at greater risk from trafficking.”⁶⁹

B. Disability

⁶³ *Domestic Violence in the LGBT Community*, CTR. FOR AM. PROGRESS (Jun. 14, 2011), <https://www.americanprogress.org/issues/lgbt/news/2011/06/14/9850/domestic-violence-in-the-lgbt-community/>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Stafford, *supra* note 62 (Stating that undocumented queer and trans-identifying people accounted for four percent of reported instances intimate partner violence in 2015 and this rose to nine percent in 2016).

⁶⁷ Sharita Grueberg, *How Police Entanglement with Immigration Enforcement Puts LGBTQ Lives at Risk*, CTR. FOR AM. PROGRESS (Apr. 12, 2017),

<https://www.americanprogress.org/issues/lgbt/reports/2017/04/12/430325/police-entanglement-immigration-enforcement-puts-lgbtq-lives-risk/>.

⁶⁸ *Id.*

⁶⁹ *Poverty Is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People*, LEGAL SERVS. NYC 1, 26

<http://www.legalservicesnyc.org/storage/PDFs/lgbt%20report.pdf> (last visited Mar. 24, 2018).

Women with disabilities⁷⁰ are more vulnerable to multiple forms of intimate partner violence.⁷¹ Intimate partner violence can include “rape, sexual violence other than rape, physical violence, stalking, psychological aggression, and control of reproductive or sexual health.”⁷² Not only can women with disabilities suffer multiple forms of intimate partner violence, but the innate vulnerabilities encountered by such women can also leave them more susceptible to abuse from health care providers or attendants.⁷³ These experiences can become even more dire due to the fact that women with disabilities are also more likely to suffer other types of abuse, such as emotional abandonment, withholding of medication or hygiene, forced isolation, or withholding of mobility devices.⁷⁴

A number of deficiencies in the screening process exist when it comes to disabled persons. Many screening questionnaires fail to screen for forms of abuse specific to disabled persons.⁷⁵ Further, if a person is physically disabled, she may have little opportunity to seek help outside of the presence of her abuser.⁷⁶

⁷⁰ In discussing disabilities, the author includes physical and cognitive impairments, including developmental disabilities. This section does not, however, reference mental disorders independently, though it should be noted that persons with disabilities referenced in this section may also have mental health issues.

⁷¹ Matthey J. Breiding & Brian S. Armour, *The Association Between Disability and Intimate Partner Violence in the United States*, ANNALS OF EPIDEMIOLOGY 1, 4 (June 1, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4692458/pdf/nihms745956.pdf>.

⁷² *Id.* at 3.

⁷³ Margaret A. Nosker & Rosemary B. Hughes, *Violence Against Women with Disabilities - Fact Sheet #1*, BAYLOR COLL. OF MED. (2002), <https://www.bcm.edu/research/centers/research-on-women-with-disabilities/topics/violence/overview/fact-sheet-one>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ This is a common scenario for domestic violence victims, generally. For example, abusers exerting control over their victims attempt to accompany or speak on behalf of their partners in the presence of health care providers out of fear that the abused will disclose the abuse. *See* Quality in Practice

And if a person has a disability that impacts cognitive functions or communication, she may not have the ability to disclose the abuse at all.⁷⁷ Women with disabilities are more likely to become subject to multiple abuses given an increased likelihood that they will become “low-income, unemployed, and socially isolated.”⁷⁸ While studies exploring the impact of the exact intersectional identities discussed in this paper are limited, one can logically assume that the culmination of factors attributed to immigration status and physical or cognitive disability may yield an increased risk of domestic abuse.

C. Substance Abuse

Long-term separation from family, difficult working conditions, and social isolation can contribute to alcohol and drug dependence (often to cope with stress, depression, or anxiety), particularly for migrant workers.⁷⁹ With upwards of forty percent of the Mexican and Central American immigrant population residing in California, some Latino migrant workers “have identified prevalence rates as high as eighty percent for regular binge drinking . . . thirty-nine percent for alcohol dependence, and twenty-five percent for methamphetamine and/or cocaine use.”⁸⁰ Such individuals are less likely to obtain treatment for dependence

Committee, *Domestic Violence: A Guide for Practice*, IRISH COLLEGE OF GENERAL PRACTITIONERS 6 (2014), <https://www.icgp.ie/speck/properties/asset/asset.cfm?type=LibraryAsset&id=2C56608F%2DCA68%2D6E0F%2D6759108AE097057B&property=asset&revision=tip&disposition=attachment&app=icgp&filename=ICGP%5FDomestic%5FViolence%5FONLINE%2Epdf>.

⁷⁷ See also Kelsey Hegarty, *Domestic Violence: The Hidden Epidemic Associated with Mental Illness*, 198(3) BRITISH J. PSYCH. 169-170 (2011) (noting the inadequacies of screening for abuse in mental health settings).

⁷⁸ Marry Anne Curry, et. al, *Abuse of Women with Disabilities: An Ecological Model*, 7 VIOLENCE AGAINST WOMEN 60, 69 (2001).

⁷⁹ Ana Pagano, *Barriers to Drug Abuse Treatment for Latino Migrants: Treatment Providers' Perspective*, NAT'L CTR. FOR BIOTECHNOLOGICAL INFO. (Apr. 7, 2015),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4388552/>.

⁸⁰ *Id.*

due to stigma, language barriers, inability to pay associated costs, and demanding work schedules.⁸¹

According to some researchers, the rate of co-occurrence of domestic violence and substance abuse rests between twenty-five and fifty percent.⁸² While there are different theories regarding the relationship between alcoholism and domestic violence, alcohol does increase the likelihood that an abuser will become abusive.⁸³ In other words, domestic abusers, especially if alcoholic, are more likely to become physical with their partners when they have been drinking compared to when they are sober.

IV. THE IMPACT OF THE CURRENT SOCIOPOLITICAL CLIMATE ON IMMIGRANT DOMESTIC VIOLENCE VICTIMS

While the Trump Administration has had the enthusiastic support of many voters, it has not been without controversy. From the start of his presidential campaign, Donald Trump's stance on immigration has increased an already vast ideological gap.⁸⁴ With the political atmosphere becoming more polarized over time, Trump has utilized right-wing stances on several issues, including immigration.⁸⁵ Playing to the economic fears of his voters, he has promised to "make America great again" by building a wall on the

⁸¹ *Id.*

⁸² Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PENN ST. L. REV. 337, 385 (2015).

⁸³ *Id.* at 386-87 (showing that some scholars debate whether alcoholism is a catalyst for domestic violence, a further display of power and control, or a separate condition with similar underlying conditions).

⁸⁴ *The Partisan Divide on Political Values Grows Even Wider*, PEW RES. CTR. (Oct. 5, 2017), <http://www.people-press.org/2017/10/05/the-partisan-divide-on-political-values-grows-even-wider/>.

⁸⁵ Michèle Lamont, Bo Yun Park & Elena Ayala-Hurtado, *Trump's Electoral Speeches and His Appeal to the White Working Class*, BRITISH J. SOC. (Nov. 8, 2017), <http://onlinelibrary.wiley.com/doi/10.1111/1468-4446.12315/full> (stating that "Immigrants are the group Trump most often referenced in his electoral speeches, with 364 mentions, including 74 negative and 12 positive references"). *See also id.* at S156, S160, Tables 1 & 4.

U.S.-Mexican border,⁸⁶ repealing Deferred Action for Childhood Arrivals (DACA),⁸⁷ terminating provisional residencies,⁸⁸ increasing deportations,⁸⁹ and decreasing the budgets of multiple governmental organizations.⁹⁰ Such policies, whether proposed or actualized, have contributed to a sense of fear among immigrant communities. Given the current political climate,⁹¹ immigrant

⁸⁶ *Trump: We will build a great wall along the southern border* (Fox Business broadcast Aug. 31, 2016), https://www.youtube.com/watch?v=2J9y6s_ukBQ.

⁸⁷ Michael D. Shear & Julie Hirschfeld Davis, *Trump Moves to End DACA and Calls on Congress to Act*, N.Y. TIMES (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>.

⁸⁸ *See e.g.*, Sophie Tatum, *Trump Administration to End Protected Status for Haiti*, CNN (Nov. 21, 2017), <https://www.cnn.com/2017/11/20/politics/dhs-temporary-protected-status-haiti/index.html>; *see also* Nick Miroff, *DHS Ends Protected Immigration Status for Nicaraguans, but Hondurans Get Extension*, WASH. POST (Nov. 6, 2017), https://www.washingtonpost.com/world/national-security/immigrants-from-central-america-haiti-await-dhs-announcement-on-protected-status/2017/11/06/7b690c80-c305-11e7-84bc-5e285c7f4512_story.html?utm_term=.7d695d886533.

⁸⁹ *See* Jessie Hellmann, *Trump Vows to Deport Millions Immediately*, THE HILL (Nov. 13, 2016), <http://thehill.com/blogs/ballot-box/presidential-races/305774-trump-vows-to-deport-millions-of-criminal-undocumented>. On the campaign trail, Trump promised to deport millions of illegal immigrants. *Id.*

⁹⁰ Kim Soffen & Denise Lu, *What Trump Cut in his Agency Budgets*, WASH. POST (May 23, 2017), https://www.washingtonpost.com/graphics/politics/trump-presidential-budget-2018-proposal/?utm_term=.0f3fe2b6939c (stating that if implemented, Trump's proposed budget for 2018 will cut the discretionary spending of a number executive agencies, including the Department of Justice, Housing and Urban Development, Education, and Health and Human Services).

⁹¹ *See* Renée Graham, *Oppose Domestic Violence? Trump's Policies Facilitate It*, BOSTON GLOBE (Feb. 15, 2018), <https://www.bostonglobe.com/opinion/2018/02/15/oppose-domestic-violence-trump-policies-facilitate/0hSNaU8BKdG9ywqeIlsGNN/story.html> (showing the problematic nature of Trump's policies impacting domestic

victims of domestic violence must balance concerns of physical and emotional safety against legitimate fears of detention or deportation for themselves or their loved ones.⁹²

This section will review how Donald Trump 's ideas—as candidate, president-elect, and President—have contributed to a justified fear among immigrant persons. It will argue that recent events in conjunction with a deeply polarized political climate in effect discourage immigrant victims of domestic violence from seeking legal recourse. Part A will explore the potential impact of campaign rhetoric on Hispanic- and Latino-Immigrant Populations; and Part B will discuss the potential impact of immigration policies on domestic violence victims.

A. The Potential Impact of Campaign Rhetoric on the Immigrant Population

From the start of his campaign, Donald Trump utilized a national platform to express an anti-immigration sentiment. In the speech announcing his candidacy, he said of Mexico, “They’re not

violence victims and noting that former White House staff secretary, Rob Porter, resigned amidst allegations of domestic abuse). Anthony Zurcher, *Rob Porter and Trump: Explaining the Story in Three Simple Ways*, BBC NEWS (Feb. 15, 2018), <http://www.bbc.com/news/world-us-canada-43063719> (explaining that in response, Trump’s Chief of Staff, John Kelly, hailed Porter as “a man of true integrity. . . .”). Graham, *supra* (describing that Trump himself, via Twitter, recounted Porter’s assertion of innocence, and noted the destructive power of an allegation of domestic abuse) *See id.* (noting that Trump stated that he is “totally opposed” to all forms of domestic violence, despite his support for policies that oppose gun regulation or threaten undocumented immigrant stability to remain in the United States).

⁹² See Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*, NPR (Mar. 21, 2017), <https://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>. See Mark Curnutte, *ICE detains young Kentucky mother who has legal status*, USA TODAY (Aug. 23, 2017), <https://www.usatoday.com/story/news/nation-now/2017/08/23/ice-detains-young-ohio-mother-who-has-legal-status/595355001/> (stating that a DACA recipient with temporary legal status was detained by ICE and told she could be deported).

sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."⁹³ In addressing his audience, Trump vilified Latin American immigrants, branding them as criminals; his speech signaled the dangerous trend toward anti-immigrant rhetoric that plagued his candidacy.

Expressing anti-immigrant sentiments is not inconsequential, especially when done on a nationwide platform. As a candidate, Trump frequently mentioned immigrants, often in a negative way. Analysis of Trump's electorate speeches demonstrates that he referenced immigrants and immigration 364 times, seventy-four of which were clearly negative, while only twelve were positive.⁹⁴ While taking a stance against certain immigration policies is not inherently problematic, when "anti-immigration" becomes "anti-immigrant," the already-vulnerable immigrant population bears the effect.

Following the 2016 presidential election, the nation experienced a surge in reports of "bias-related harassment and intimidation." The Southern Poverty Law Center catalogued such reports from November 9 to December 12, 2016 finding 1,094 reports in the thirty-three-day period.⁹⁵ Of the reports, 315 were

⁹³ *Full Text: Donald Trump announces a presidential bid*, WASH. POST (June 16, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.182a680ff83b#annotations:7472690.

⁹⁴ See LAMONT, ET AL., *supra*, note 85; see also *id.* at S156, S160, Tables 1 & 4.

⁹⁵ *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, S. POVERTY L. CTR. (Dec. 16, 2016), <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election> (showing reports of bias related incidents in the month following Trump's election). While many of the reports were anecdotal in nature, they do help to demonstrate the potential impact of incendiary speech. While many suggest that attempts to limit the expression of bias violate their right to speak freely, it is important to note that individuals ought not be subject to verbal (or physical) attacks based on their actual or perceived race, religion, sexual orientation, political affiliation, gender, or national origin. The reported instances discussed in the report that did not amount to a crime do not become unimportant based

identified as “anti-immigrant,” the most commonly identified sub-group. Of this sub-group, a majority of incidents were classified in the “anti-Latino” category.⁹⁶ Thirty-seven percent of the total incidents directly referenced Donald Trump, his campaign slogans, or directly quoted him.⁹⁷

The Trump campaign utilized an anti-immigration platform to engage voters, but at times cries for border enforcement and immigration reform converged with anti-immigrant sentiment; this too frequently associated immigrant populations with words like “illegal” or “criminal” influencing the way people view and interact with immigrant persons. This becomes particularly problematic when rhetoric translates into policy and programs.

B. The Potential Impact of the Trump Administration’s Immigration Policies on Victims of Domestic Violence

On the campaign trail, then-candidate Trump made several statements suggesting that undocumented immigrants have a propensity toward violent crime.⁹⁸ Following his inauguration, Trump signed a number of Executive Orders (EOs), including those aimed exclusively at reforming immigration policies.⁹⁹ These EOs are manifestations of the same campaign-stage rhetoric conflating “immigrant” to “violent criminal.”

Fears of deportation have increased following EOs pertaining to immigration enforcement and the extent of ICE’s authority. Previously, ICE and Customs and Border Protection

on that fact, but instead demonstrate that such acts occur to multiple degrees.

⁹⁶ *Id.* (noting that other incidents in the “anti-immigrant” category include “anti-Asian” and “anti-Muslim”).

⁹⁷ *Id.*

⁹⁸ *See, e.g., supra* note 93.

⁹⁹ *See Executive Order: Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>; *see also Executive Order: Border Security and Immigration Enforcement Improvements* (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

used “‘expedited removal’ only for immigrants caught within 100 miles of the border within fourteen days of entering the US or [for] those who arrived by sea but not at a port of entry.”¹⁰⁰ The Secretary of Homeland Security, John Kelly, has stated that the Department will no longer “exempt classes or categories of removable aliens from potential enforcement,” suggesting that the limits once placed on ICE agents have been diminished.¹⁰¹

Previous ICE guidelines suggested that “officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”¹⁰² Such individuals could potentially be eligible for a U visa under the Battered Immigrant Women Protection Act.¹⁰³ While this may continue to be the case in some instances, recent events involving ICE agents, when taken in conjunction with statements from Secretary Kelly, suggest that such people may not be safe from detention or deportation, even if they might otherwise be eligible for nonimmigrant status.

Immigration enforcement agents have arrested or detained multiple individuals while they were inside of or exiting the courthouse.¹⁰⁴ This, taken with recent EOs expanding ICE’s manpower, has prompted some previously willing to prosecute to drop pending charges.¹⁰⁵ In a recent survey, answered by 715 advocates and attorneys from 46 states and the District of Columbia, seventy-five percent of advocates reported that immigrant survivors had concerns about going to court for a matter related to the abuser or offender; seventy-eight percent of advocates reported that clients expressed concerns about

¹⁰⁰ Tal Kopan, *DHS Memos Describe Aggressive New Immigration, Border Enforcement Policies*, CNN (Feb. 20, 2017), <http://www.cnn.com/2017/02/18/politics/kelly-guidance-on-immigration-and-border-security/index.html>.

¹⁰¹ LOCKHART, *supra* note 15.

¹⁰² *Id.*

¹⁰³ *See infra* Section II.C.

¹⁰⁴ *See* Glenn, *supra* note 92.

¹⁰⁵ *Id.*

contacting police; and sixty-two percent of advocates reported an increase in immigration-related questions.¹⁰⁶ Even where individuals have not encountered ICE, abuse victims must weigh their personal safety against their presence in the United States.

Secretary of Homeland Security, John F. Kelly, has articulated that “ICE will no longer exempt any class of individuals from removal proceedings,” essentially stating that undocumented immigrants can be deported if their legal status is discovered.¹⁰⁷ This new policy has been evidenced by a rise in non-criminal arrests, which increased from approximately 4,200 in 2016 to more than 10,800 in 2017.”¹⁰⁸ Trump’s EOs have contributed to the arrest or detention of “more than 41,000 individuals who [were] either known or suspected of being in the country illegally[,]” reflecting an increase of 37.6 percent over the same time period in 2016.¹⁰⁹

ICE’s recent tactics contribute a climate of fear and discourage victims of abuse from seeking civil remedies, bringing criminal charges, or participating in the legal process in general. “[A]ttorneys and prosecutors in California, Arizona, Texas and Colorado have all reported teams of ICE agents—some in uniform, some not—sweeping into courtrooms or lurking outside court complexes, waiting to arrest immigrants who are in the country

¹⁰⁶ *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, TAHIRIH JUST. CTR., <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf> (last visited Mar. 24, 4:30 PM). It is important to note the limitations of this survey. *See id.* (noting that there exists some relationship between the responding advocates and the publishing organization). The reliance on responses from advocates known to or associated with specific associations or organizations suggests that the information may not be broad reaching.

¹⁰⁷ *ICE ERO immigration arrests climb nearly 40%*, DEPT. HOMELAND SEC. (Nov. 2, 2017), <https://www.ice.gov/features/100-days>.

¹⁰⁸ *Id.* (stating that “non-criminal arrest” means that the subject was not arrested as a result of criminal conduct).

¹⁰⁹ *Id.* (stating that almost seventy-five percent of the people arrested during this period in 2017 had been convicted of a crime at some point).

illegally.”¹¹⁰ Such action is not reserved for individuals who have committed criminal acts; instead, those who have sought legal protection have been detained or arrested based only on legal status.¹¹¹

Undoubtedly, the Trump administration has not intended to silence immigrant victims of domestic violence through increased ICE enforcement. Further, the desire to curb unlawful immigration is not inherently harmful; however, the tactics utilized—especially considering Trump’s expressions at the campaign stage—prompt a justifiable apprehension of law enforcement, even at the local level.

CONCLUSION

In the past few decades, Congress has made substantial gains in passing legislation aimed at protecting immigrant, nonimmigrant, and undocumented women from domestic abusers. Legislation, while a move in the right direction, has not been implemented in a way that directly addresses the unique needs of immigrant persons. An immigrant domestic violence victim’s classification as such does not shield her from the influences of culture, religion, socioeconomic class, or other intersectional identities; these various identities have a simultaneous impact on the motives and actions of such people. As such, access to the support that is purportedly available to immigrant domestic violence victims must be granted in a manner that addresses the challenges of immigrant persons, whether as a result of language, culture, or socioeconomic status.

The current sociopolitical climate has contributed—whether deliberately or unintentionally—to inflaming longstanding fears of immigrant victims of domestic violence and erecting barriers to assistance and protection provided by previous generations of legislators. Recent practices of ICE agents are further isolating immigrant populations from the legal protections available to them, reinstating and intensifying an enduring

¹¹⁰ See P.R. Lockhart, *supra* note 15.

¹¹¹ See *id.*; see also *supra* note 107.

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suspicion of law enforcement and the judicial process. To ensure that extraneous decisions do not adversely affect the already susceptible population, lawmakers and the executive branch must refrain from using mischaracterized rhetoric and must maintain enforcement policies that account for the specific vulnerabilities of immigrant victims of domestic violence.