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LEFT AT THE BORDERS: ADDRESSING THE ISSUE OF INCLUSIVITY FOR FEMALE IMMIGRANTS

Elizabeth S. Castillo and Brooklyn Bird¹

The respondent married at the age of seventeen, and her now-ex-husband began beating her weekly soon after the first of their three children was born. He threw paint thinner on the respondent, burning the flesh of her breast; broke her nose; raped her repeatedly; and threatened her with death if she called the police—who, when they finally did come, did not arrest him, even with evidence of recent physical abuse. When she fled to her father, this now-ex-husband followed her and threatened to kill her unless she returned. The abuse continued once she had returned home after running away—twice.²

The respondent and her three children, of Guatemala, were denied asylum in the United States because the immigration judge determined that she did not “demonstrate that she had suffered past persecution or ha[d] a well-founded fear of future persecution on account of a particular social group.”

Immigration to the United States is a topic fraught with a complicated history and charged with intense political discourse. Notwithstanding the fact that the US would have neither formed nor grown without it, immigration has evolved into a hotly disputed concept. Anyone who has watched a presidential primary debate

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2 26 I&N Dec. 388 (BIA 2014).

can recognize that the issue is not easily resolved. Presidents of the United States have addressed the nuance and necessity of immigration in various ways. Since President Donald Trump's election, his administration adopted a particularly aggressive stance,³ citing the protection of American labor as grounds for limiting immigration to unprecedentedly low rates. Asylum seekers' success rests on their ability to pass a certain set of screenings—a process the Trump administration has made adjustments to, impacting the lives of those attempting to immigrate.

The existing immigration laws dictate certain nonnegotiable regulations in order to protect both immigrants and the United States. These laws are primarily derived from the United Nations 1951 Convention Relating to the Status of Refugees as well as legislation created during the immigration spikes of the nineteenth and twentieth centuries. Different administrations, however, have implemented ideology-based changes to immigration as a result of campaign promises, global circumstances, and the like. Most recently, in 2018, President Trump's then-attorney general, Jeff Sessions, overturned a particularly poignant immigration case—that of the abused Guatemalan woman who we described previously. After her case was denied twice in immigration court, the Department of Homeland Security (DHS) referred her case to the original immigration judge for further proceedings. However, Sessions halted this third investigation and overturned the undecided ruling, declaring that domestic abuse is not considered valid in the credible-fear screening of asylum seekers. Our article seeks not only to unveil how disregarding domestic abuse disproportionately affects migrant women but also to discuss how women's existing disadvantage renders the law unfair in a system responsible for achieving justice for both aspiring and current Americans.

Accordingly, this article pertains particularly to the female immigration process. Throughout the paper, we argue the need for fundamental change in the existing policies and laws in order to

3 *Remarks by President Trump on the Illegal Immigration Crisis and Border Security*, Trump White House Archives (Nov. 1, 2018, 4:19 PM), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/>.

properly establish the treatment of women seeking asylum within the United States. In presenting the unique problems that women face and outlining the gender-biased language in American immigration policy, we lay the foundation necessary to understanding the existent strain on females. By illustrating the great burden of proof women must demonstrate while attempting to attain asylum, we are able to enumerate and demonstrate the consequences of Attorney General Sessions' decision—consequences that further attenuate the ability of women to seek asylum. The subsequent complications, as exhibited in research citation and case law, are those that we seek to remedy in our prescriptive suggestions to current law.

I. BACKGROUND

While the challenges and needs of all asylum seekers are unique and diverse, women and girls encounter especially trying circumstances in their migration to the United States. In recent years, a significant increase in gender-related crimes, especially among gang populations in Central America, has rendered women and girls incapable of safely remaining within their home countries. Women are motivated to flee their countries of origin in order to avoid rampant female homicides, abuse, domestic violence, and forced sexual relationships with gang members. These circumstances should reasonably afford any afflicted woman consideration for asylum within the United States. Yet many women are refused refugee status under the current legislation and procedures.

In order to provide clarification for the terms used most frequently in our argument, we rely on definitions provided by the international legal documents referenced throughout our argument. A *refugee*, as described in the Immigration and Nationality Act (INA), is “any person who is outside any country of such person’s nationality” or “is outside any country in which such person last habitually resided;” a person “who is unable or unwilling” to return to that country; and a person who is “unable or unwilling to avail himself or herself to the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

According to the INA, an *immigrant* is “every alien[,] except an alien who is within one of the following classes of nonimmigrant aliens.” These classes include diplomatic officers (including foreign government employees, their family members, and their employees) and aliens “having a residence in a foreign country which he has no intention of abandoning,” such as officers of international organizations. A *migrant* is a term similar in meaning to *immigrant* but with a more transient nature and with no entailment of necessary intent to stay within a new country.

Before moving forward, defining significant terms used in the discussion of the relationship between women, domestic violence, and immigration is important. According to the Department of Justice, a *domestic violence misdemeanor* is “any crime committed by an intimate partner, parent, or guardian of the victim that required the use of attempted use of physical force or threatened use of a deadly weapon.”⁴ *Gang violence* is defined as “criminal and non political [sic] acts of violence committed by a group of people who regularly engage in criminal activity against innocent people.”⁵ The term *gang* refers to three or more individuals who collectively identify themselves by creating an atmosphere of fear or intimidation and whose purpose is, at least in part, to engage in criminal activity.⁶ Defining *domestic violence* and *gang violence* is critical as these forms of violence are often the motivating factors for women seeking refuge within the United States. Gang violence is especially coercive of “forced migration” as gangs can impose threats not only within the home, as in cases of domestic violence alone, but throughout

4 *Federal Domestic Violence Laws*, THE U.S DEP’T OF JUST., <https://www.justice.gov/usao-wdtn/victim-witness-program/federal-domestic-violence-laws> (last updated May 26, 2020).

5 *Gang Violence Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/g/gang-violence/> (last visited Feb. 2, 2021).

6 *About Violent Gangs*, THE U.S DEP’T OF JUST., <https://www.justice.gov/criminal-ocgs/about-violent-gangs> (last updated May 28, 2015).

entire countries and regions as a whole.⁷ This understanding counters the argument that women might more aptly seek refuge within their home and neighboring countries than within the United States. Certain regions of the world experience a higher volume of gang involvement and criminality, including but not limited to developing countries.

The basis of United States law regarding asylum seeking can be found primarily in the United Nations 1967 Convention Relating to the Status of Refugees, the Immigration and Nationality Act of 1952, and the Refugee Act of 1980. Refugees who fit this definition are eligible for the protections of asylum, which include the United States' legal obligation to protect those already in the country or arriving at the borders.⁸

The asylum-seeking process follows one of two paths: affirmative or defensive. Both of these procedures require physical presence within the United States or at a port of entry. Upon arrival (with or without counsel), an asylum-seeker must provide the requisite evidence to meet the burden of proof that is required for refugee status. Individuals complete their claims of credible fear with Customs and Border Protection (CBP) officials. If the CBP officer determines that a migrant's claims are legitimate, the migrant is granted the ability to apply for the defensive asylum process within an immigration court. If the office determines a migrant's credible fear is not evident, the court orders the removal of the migrant. Declined migrants may appeal this decision before an immigration judge, who then determines whether migrants are indeed removed or else returned to the asylum-seeking process.

Asylum seekers must declare asylum within a year of arrival to the United States, but the process of obtaining citizenship can take years to complete. This timeframe results in increased instability, prolonged separation, and possible danger for asylum seekers awaiting conclusion. US law has historically allowed asylum seekers

7 SCH. OF ADVANCED STUDY, INST. OF LATIN AM. STUD., U. OF LONDON, *THE NEW REFUGEES: CRIME AND FORCED DISPLACEMENT IN LATIN AMERICA* 38 (David J. Cantor & Nicolas R. Serna eds., 2016).

8 AM. IMMIGR. COUNCIL, *ASYLUM IN THE UNITED STATES*, 1 (2020).

the right to remain within the United States while their claims are pending. However, asylum seekers are often held in detention centers during this time, which decreases the likelihood that they will be granted asylum⁹. Asylum, if attained, is finally granted when a Customs and Immigration Service officer affirmatively adjudicates a claim.

This already complicated asylum-seeking process has only become further convoluted in recent years. In June of 2018, Attorney General Jeff Sessions overruled *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014). His decision resulted in the discontinuation of the Obama administration's policy¹⁰ that made it possible for more women to claim credible fear due to domestic abuse. In Sessions' words, "Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by nongovernmental actors will not qualify for asylum." Many women and girls seeking asylum to the United States are fleeing domestic abuse, rape, and torture, which is often a direct result of gang violence or otherwise incited by gang members¹¹. Often such violence is a direct result of governmental negligence, corruption, or even gang involvement, which further incentivizes immigrants' attempts at American citizenship.

As it currently operates, the American legal system of asylum-seeking, immigration, and naturalization is ostensibly gender neutral. However, given the variant socioeconomic statuses, wartime instabilities, and cultural pressures faced by female migrants, the immigration juridical process in America is inherently unequal. Because the current administration's stance disregards domestic violence, a primary reason for which women seek asylum and by which they are able to prove well-founded fear, the administration has disarmed women of their ability to find refuge in the United

9 National Public Radio Morning Edition, *Responding To Conditions At Migrant Detention Centers*, NAT'L PUB. RADIO, at 07:03 (Jul. 4, 2019), <https://www.npr.org/2019/07/04/738737313/responding-to-conditions-at-migrant-detention-centers>.

10 26 I&N Dec. 388 (BIA 2014).

11 DAVID A. MARTIN ET AL., *FORCED MIGRATION: LAW AND POLICY*, 380, 380-461 (4th ed. 2013).

States when, in reality, they are entitled to such by both American and international law.

In consideration of these injustices, the 1967 Convention Relating to the Status of Refugees and Immigrant and Nationality Act should be altered to include gender-specific provisions in its statutory fiat: it should be amended with proper intent to include groups threatened as a result of their gender. The current law is insufficient to protect women whose situations deem them worthy of asylum declaration through a combination of the enumerated precepts of the law. We specifically call for the following amendments: (1) the removal of gender-biased language from immigration law (including but not limited to United States immigration law and all United Nations legislation that implicates the United States) in order to avoid marginalization of either gender, (2) a provision identifying gender as a qualifying group to which a refugee may belong and claim fear of danger within, and (3) the reform of current asylum-seeking procedures (e.g., interviews, hearings) in order to properly address the crises faced by women seeking refuge within the United States.

II. DESCRIPTION OF DISCREPANCIES AND PRESCRIPTIVE REVISIONS

A. The Disadvantages of Asylum-Seeking Women under The Convention Relating to the Status of Refugees, 1967–Present

Both the United States law and the asylum process as it currently functions work against women seeking asylum. Migrant women have faced unjust obstacles in their pursuit of American asylum since 1951. Despite the fact that the risk of physical and psychological danger due to domestic violence is extremely high in many of the countries from which women flee to America, the 1967 Convention Relating to the Status of Refugees (the Convention) failed to recognize, and the United States' legal system still fails to recognize, such crises of domestic violence as a basis for "well-founded fear." This omission occurs largely because this group of migrant women's fears of domestic violence are related to gender discrimination. As the United States law currently interprets the Convention, persecution on account of gender is not accepted as a cause for "well-founded

fear.” Qualifying fears must be born of “reasons of race, religion, nationality, membership in a particular social group, or political opinion.”¹² Thus, many violence-fleeing migrant women are denied refugee status.

Records from the federal courts and Board of Immigration Appeals (BIA) indicate that although some claims of gender-based violence are processed and received in recognition of gender-based violence, there is still ample inconsistency. Immigration attorney Rodel Rodis argues, “The difference in the immigration judges’ contrasting decision[s] . . . show[s] that applying for political asylum is like playing Russian roulette—land the right judge and you win, land the wrong judge and you lose.”¹³ Some judges provide women extended protections for their claims of gender-based violence, while other judges deny women with similar cases and circumstances. A study in 2007 found that “there is remarkable variation in decision making from one official to the next, from one office to the next, from one region to the next, from one Court of Appeals to the next, and from one year to the next, even during periods where there has been no intervening change in the law. . . . A Chinese [asylum seeker] unlucky enough to have her case heard before the Atlanta Immigration Court had a 7% chance of success on her claim, as compared to 47% nationwide.”

It is thus necessary that the United States amends its application of the Convention. A provision must be added asserting that gender-based abuse claims qualify as “well-founded fear,” especially due to the fact that, owing to such fear, many women are unable and/or unwilling to avail themselves of the protection of their countries of origin.

12 United Nations Convention Relating to the Status of Refugees, Jul. 28, 1967, U.N.T.S. 189.

13 Lucy Akinyi Orinda, *Securing Gender-Based Persecution Claims: A Proposed Amendment to Asylum Law*, 17 Wm. & Mary J. Women & L. 665 (2011). https://heinonline-org.erl.lib.byu.edu/HOL/Page?collection=journals&handle=hein.journals/wmjwl17&id=671&men_tab=srchresults.

B. Gender-Biased Language in The Convention Relating to the Status of Refugees, 1967–Present

While the United States may claim that its current judicial system employs gender-neutral policy, a close reading of the standing laws reveals that this cannot be true. As provided by the Convention, the very definition of a refugee includes gender-biased pronouns; the Convention defines a refugee as anyone who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of *his* nationality and is unable or, owing to such fear, is unwilling to avail *himself* of the protection of that country; or who, not having a nationality and being outside the country of *his* former habitual residence as a result of such events” (emphasis added). For example, Article 17 of the Convention states, “A refugee may not invoke the benefits of this provision if he has abandoned his spouse.” Gender-specific diction (e.g., *he* and *his*), such as these terms of male responsibility, is not gender neutral. Therefore, the law containing such language cannot claim to be gender neutral. Such gendered language is evidence that the Convention, as it now stands in the United States, consequently lacks language that properly construes gender responsibility. In other words, if there is a specification regarding a man’s exclusion from asylum-seeker benefits due to spousal abandonment, legislators must also address what legal specifications are provided for all persons whose spouses have abandoned them. The United States must reflect this in its law.

C. The Heavy Burden of Proof for Immigrant Women

Females are faced with unique circumstances that are deserving of unique recognition in their claims of credible fear. One prominent challenge that women face and are prompted to flee from is the “ruined property” phenomenon.¹⁴ This is when women or girls have been sexually mistreated, had a child out of wedlock, participated in an extra-marital affair, or otherwise breached cultural

14 Immigration and Nationality Act, 8 U.S.C. § 1152 (1952).

codes of conduct. As a result, women are regarded with a permanently degraded status. Furthermore, they are subject to physical, emotional, and sexual abuse for a lifetime. This issue is particularly salient when immigration officers determine whether women have adequate opportunity for “recourse to state protection,” or, in other words, whether they are able to find safety in another part of their home countries. Applicants for asylum must show that their “feared persecution” will either be carried out by the government or by a party that the government is “unwilling or unable to control.” This burden of proof can be extremely difficult to substantiate for women affected by the “ruined property” phenomenon. In contrast, men very rarely face similar plights. It is the combination of this issue with other untoward circumstances of need-based asylum seeking that renders the current gender-neutral language incomplete.

If and when females are finally able to move forward in the asylum-seeking process, their chances of actually obtaining asylum are slim due to an overloaded immigration court system as well as several procedures that place a heavy burden of proof upon migrant women. The standards for acceptable evidence of necessity of asylum are extraordinarily high for female migrants. Per the guidelines of the Immigration and Nationality Act (INA), asylum applicants must demonstrate that they have no possible recourse to state protection. In other words, asylum seekers must provide evidence that they are unable to relocate to another part of their country of origin in order to escape threats of danger, nor are they able to receive adequate protection from their own government. Given that many girls are raised in cultures in which women are dependent on fathers, brothers, and husbands, this requirement of the INA is inherently unfair.¹⁵ They are not equipped with the cultural nor fiscal mobility necessary to represent themselves before immigration officials. Additionally, in the Matter of D-V-, the applicant moved around her home country several times before fleeing to the US for safety—evidence that for hers and others’ cases, relocation can be an insufficient remedy

15 Nils Muižnieks, *Human Rights of Refugee and Migrant Women and Girls Need to be Better Protected*, COUNCIL OF EUROPE PORTAL (Mar. 7, 2016), <https://www.coe.int/en/web/commissioner/-/human-rights-of-refugee-and-migrant-women-and-girls-need-to-be-better-protected>.

for the danger women face. It must be understood that women are not treated as equals to men outside the United States. Once women are within the United States, they will enjoy equal protection under the law. However, the lack of specificity in the INA denies them of attaining such protection because they are not “playing” on a proverbial even field.

As a world leader, the United States has the opportunity and obligation to exemplify the concept that women’s rights are human rights, both within and without the immigration process.

D. Further Discrimination under the Trump Administration, 2016–Present

In recent years, the conditions for women seeking asylum within the United States have only degenerated. “The [Trump] administration has undertaken more than 400 executive actions on immigration” since January of 2017.¹⁶ Given these changes implemented by the Trump administration under Attorney General Jeff Sessions, female asylum-seekers are faced with true inequality: a condition that is contrary to both international statutes and American law and must be righted through prompt amendment.

One effect of these recent amendments to immigration policy is that women and other migrants are often forced to wait for extensive periods of time before receiving legal assistance or a hearing in front of an immigration judge. This waiting has historically occurred within United States detention centers. In recent years, increased Migrant Protection Protocols (MPP) have forced roughly 60,000 asylum seekers to wait just south of the United States border in Mexico.¹⁷ For almost all migrants, the environments of migrant

16 Sarah Pierce and Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, MIGRATION POLICY INSTITUTE (Jul. 2020), <https://www.migrationpolicy.org/research/us-immigration-system-changes-trump-presidency>.

17 National Public Radio, *U.S. Supreme Court Allows ‘Remain in Mexico’ Program to Continue*, NAT’L PUB. RADIO, at 15:38 (Mar. 11, 2020), <https://www.npr.org/2020/03/11/814582798/u-s-supreme-court-allows-remain-in-mexico-program-to-continue>.

camps in Mexico are both “filthy and dangerous.” Young women face threats of rape, hunger, exposure, and neglect.¹⁸ Such conditions draw attention to the need for expedited claim processing. Lengthy waiting periods at the border render the United States culpable for the reinforcement of fear—even the very credible fear from which female asylum seekers are most commonly fleeing.¹⁹

E. General Difficulties Faced by Young Women Fleeing to the United States, Present

Young migrant women are uniquely impaired in their efforts to seek asylum in America due to several causes. Among these unique difficulties is the extreme risk of violence that women face as they migrate to the United States. “The United Nations High Commissioner for Refugees (UNHCR), United Nations Population Fund (UNFPA), and the Women’s Refugee Commission recently assessed protection risks for women and girls on their journey to [asylum]. They established that women and girls, especially those traveling alone, face particularly high risks of certain forms of violence, including sexual violence by smugglers, criminal groups, and individuals in coun-

18 National Public Radio, *Migrants Allege They Were Subjected to Dirty Detention Facilities, Bad Food and Water*, NAT’L PUB. RADIO, at 04:44 (Jul. 18, 2018), <https://www.npr.org/2018/07/18/629998961/lawsuit-charges-migrants-subjected-to-dirty-detention-facilities-bad-food-and-wa>.

19 Since the writing of this article, President Joe Biden has been inaugurated into office as the President of the United States. We recognize that his administration has already made timely and significant plans for reform to the United States immigration system. However, these plans still lack the necessary acknowledgment of gender as a persecuted social group to which qualified refugees might belong. See *FACT SHEET: President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System*, THE WHITE HOUSE (Feb. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet-president-biden-outlines-steps-to-reform-our-immigration-system-by-keeping-families-together-addressing-the-root-causes-of-irregular-migration-and-streamlining-the-legal-immigration-syst/>.

tries along the route.”²⁰ Domestic abuse is so prevalent in both the developing and developed world that the World Health Organization (WHO) declared such offenses to be a “wide-spread phenomenon.”²¹

An additional point of importance in the evaluation of female asylum-seeking, the attorney general’s overruling, and the credible-fear screening is that, because of the threat of life-altering and life-threatening ostracization (not to mention punishment by death), many rape and abuse survivors are unlikely to report their assault to anyone in their home country. In other words, the woman’s word is the only “evidence” she has to present to the asylum officer. It must thus be taken into account, when properly recognizing women’s credible-fear claims, that women can easily lack external corroboration of their stories. Moreover, it is possible that when women do indeed report their abuse (e.g., unwanted approaches from a potential suitor, incest) they will face dangerous retribution. While initially it might seem that reporting such harassment to government officials could easily constitute a woman as eligible for an interview with a United States asylum officer, in many countries revealing the abuse ultimately poses a serious threat to a woman’s imminent well-being. Thus, women are often unable to rely on the support of the government of their countries of origin in the validation of their claims of credible fear.

Even without the risk of punishment and ostracization for acknowledging harassment, women are still hindered in their ability to express themselves before immigration officers due to their social customs. “In some cultures, men normally do not share the details of their political, military, or even social activities with spouses, sisters, daughters, or mothers Some women may not be able to explain which male relatives were politically active or, if they are aware of the relatives’ political activity, may be unable to provide any details about it.” Women of this particular circumstance are rendered further incapable of indicating that the abuse they suffer is a direct result of political affiliation. In other words, if they were privy to the knowledge of their abuser’s political associations, they

20 Muižnieks, *supra* note 15.

21 MARTIN, *supra* note 11.

would be likely to qualify for asylum because they could be classified as facing persecution on account of membership in a particular social group. However, because of their gender-specific, culturally driven characterization, they are unaware and therefore further disabled from the protection they deserve but know not how to obtain (Martin, 459).²²

Communicative challenges, like the previously described inability to identify abuse as affiliated with a political party, are important to note because they affect the most key moments of a woman's transition from migrant to potential status as refugee: the interview with an immigration official and the hearing before an immigration court judge. "Women taught not to make eye contact with men"—and taught to never speak about matters of sexuality to anyone, let alone men or authority figures—"will have difficulty appearing credible before a male judge. Women suffering from post-traumatic stress disorder [(PTSD)] will have difficulty recounting their ordeal confidently, coherently, and consistently. Ironically, the precise manifestations of PTSD, such as selective memory and difficulty recounting certain details, are the same indicators that judges use to assess an applicant's credibility."

Another difficulty in communication that female migrants face is the trend of appearing before immigration authorities with relatives who may very well be the perpetrators of abuse. "For a variety of reasons, the presence of relatives, particularly a husband or father, may impede an asylum applicant's willingness to discuss gender-related persecutory acts or fears. For example,

- I. The applicant's relatives may not be aware of the harm experienced by the applicant. She may wish that a relative remain unaware of her experience, or she may be ashamed to say what she fears or has experienced in front of a relative.
- II. The applicant's claim may be based, in part, on fear of a male relative who is present.
- III. In some cases, a woman may be accustomed to having a male relative speak for her, meaning she could be consequently unprepared for an immigration officer's screening and could

22 *Id.* at 459.

inadvertently fail to provide necessary details. This is especially true for younger women when they are coming from circumstances and cultures in which they are conditioned to be subservient to men.

IV. However, sometimes a woman is *more* comfortable when her male relatives are present—the decision must be up to her.

“These all exhibit the fact that immigration procedures must not remain insensitive to gender, given that this is a problem that experts find women face and men do not.”²³

We present one final—but certainly not summative—gender-specific issue faced by women. This prejudice surrounds women’s physical nature in a very literal way: women’s bodies are often classified as physical territory of the country during military and political struggles. This is not experienced by men in these same places or circumstances of unrest. In certain countries, rape is recognized as an instrument of war rather than just a “byproduct of the lawlessness that accompanies armed conflict.”²⁴ We argue that this could classify women with “membership in a particular social group” of sorts but feel that gender-specific provisions would be more efficient and honorable in providing the protection that they need.

F. Necessary Provisions to Current United States Immigration Law

In response to the reprehensible circumstances faced by women seeking asylum within the United States, the attorney general’s stance precludes the dual consideration of women fleeing abuse in countries experiencing political and military disruption. Domestic abuse is not a monolith and cannot be treated as such in US immigration law. We reemphasize the fact that women do not self-select into the category of female, and due to the inconsistency of immigration court rulings, their status as female deserves separate recognition and protection. This necessitates amendment to current American immigration law.

23 Muižnieks, *supra* note 15.

24 MARTIN, *supra* note 11.

Such amendment begins with the inclusion of gender-specific provisions in the United States' application of statutes like The 1967 Convention Relating to the Status of Refugees and other documents that fail to properly recognize women and their unique gender-based circumstances within the immigration process. "The main problem facing women as [asylum seekers] is the failure of decision makers to incorporate the gender-related claims of women into their *interpretation* of the existing enumerated groups and their failure to recognize the political nature of seemingly private acts of harm to women" (emphasis added) (Rodger Haines, 380).²⁵ In essence, so long as the Convention (and therefore US law) is absent of discrimination in its interpretation and application, these policies should provide all the protection necessary to asylum applicants regardless of their gender. We raise concern, as Haines does, that the problem is not necessarily limited to the fact that the language is not gender specific, but rather that "[the present system of immigration] has often been approached from a partial perspective and interpreted through a framework of male experiences."

Certain conditions that are currently considered grounds for credible fear, like female genital mutilation, run parallel to the domestic violence that migrant women face, demonstrating that such violence should earn women similar due process under the law. "The regulations and Matter of Chen, Itl . . . state that severe and atrocious past persecution is enough for asylum, absent future persecution. If immigration judges and asylum officers appropriately applied these standards, as opposed to marginalizing or overlooking women, women facing gender-based abuses might more readily find the justice that they deserve. For example, it is hard to dispute that a woman's tortuous experience of forcible genital mutilation as a child constitutes severe and atrocious persecution. As such, genital mutilation's effects may continue to haunt her throughout her life in very concrete ways, such as an irreversible lack of sexual sensation,

25 *Id.* at 459.

scarring, miscarriages, and chronic abdominal pain.”²⁶ Female genital mutilation cases are often accepted as a valid case of credible fear. Because such cases deserve and often do receive recognition as past persecution and grounds for credible fear, other similarly traumatic circumstances under which females are seeking asylum should similarly be considered as grounds for credible fear. Granted that these issues directly correlate with the fear women face from domestic abuse (by parents, spouses, would-be spouses, former spouses, and siblings), we again illustrate the unfairness of, and demand reform to, the attorney general’s statement. In doing so, women would be better served by their asylum officers and immigration judges according to the gender-specific issues they face: “credibility” in a fear-based analysis needs to be understood in terms of cultural context.

Furthermore, it is necessary to regard such reforms as categorical qualifications that women fulfill and men do not. More simply put, women are subject to female genital mutilation and other sorts of abuses that men are not. We readily recognize that there are specific forms of abuse that men face and experience. That fact is not a matter of dispute but rather further evidence of the need for gender-specific provisions so all parties might be best respected and properly treated.

United States immigration law must also be amended to account for the disadvantage that many women inherit from the gender-biased cultures from which they are fleeing. In many world cultures, women have little to no rights without the support and authority of a male spouse to whom they are married. “Refugee women who [are] the heads of their households and without an adult male relative [are] particularly at risk and [have] little or no protection or access to justice.”²⁷ We therefore suggest that women who are fleeing abusive husbands, are forced to seek asylum without their spouse, or have been separated from their spouse during the process be treated with

26 Irena Lieberman, Women and Girls Facing Gender-Based Violence, and Asylum Jurisprudence, 29 Human Rights 9, 9-12 (2002). https://heinonline-org.erl.lib.byu.edu/HOL/Page?public=true&handle=hein.journals/huri29&div=35&start_page=9&collection=journals&set_as_cursor=3&men_tab=srchresults.

27 Muižnieks, *supra* note 15.

added consideration to the fact that these circumstances drastically affect their well-being, process, and claims of credible fear. Men face similar issues too. It is for this reason that immigration laws and would-be immigrants deserve gender-specific provisions. What we propose is to alleviate undue inequality and to relieve, where applicable and appropriate under the law, unnecessarily heavy burdens of proof.

Interestingly, there are more men granted asylum than women. In the last three years, men surpassed women in numbers of accepted applications by more than 500, sometimes close to 800.²⁸ When this data is compared to DHS's statistics on refugee arrivals, we can conclude that men are granted asylum more often than women. As we are aware that cases are decided on an individual basis, we do not purport to find blatant sex discrimination here. However, as a result of the attorney general's 2018 overruling paired with the disadvantages that women already face while seeking US asylum, this has turned from an understandable and non-statistically significant difference to a true gender disparity. This gap may be remedied through appropriate amendments to asylee qualifications (e.g., a provision stating that migrants may gain refugee status due their fear of persecution on account of their gender)—the result being the admission of women whose claims of credible fear previously went unacknowledged.

III. CONCLUSION

This research, with its subsequent prescriptive changes, is independent of any political party or affiliation. In outlining the difficulties faced by women who seek asylum in the United States, we intend to engender general awareness and clarify that this issue should not be reduced to mere campaign promises or fluctuations in administrations' policy. Rather, the rights of asylum-seeking women must be treated for what they are: indelible, unchanging human rights,

28 Ryan Baugh, *Refugees and Asylees: 2019*, Department of Homeland Security, Office of Immigration Statistics, 9 (Sep., 2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylee_2019.pdf.

unaffected by elections or authority figures. The mistreatment that women face should be understood with the esteem endowed in the United Nations Charter and the US Constitution.

Attorney General Sessions' decision does not reflect the gender sensitivity deserved by applicants of all sexes, from all countries. Although the American legal system of asylum seeking, immigration, and naturalization is purportedly gender neutral, the policy adjustments we suggest are necessary to give proper recognition to gender and to provide the subsequent protection of credible claims that gender-marginalized women deserve. From the burden of proof to the immensity of gender-based abuse and discrimination, we find it important to fully clarify and address the plight that female asylum seekers face with an adaptation of immigration policy. These adaptations should include, but are not limited to, the removal of gender-biased language, the recognition that claims of gender-related abuse are grounds for credible fear, and the adjustment of asylum-seeking procedures to account for the unique difficulties faced by asylum-seeking women.