

## Openings and Retrospectives



**RISA CROMER**

**Stanford University**

**Purdue University**

 <https://orcid.org/0000-0002-7647-9500>

Thousands of unaccompanied, undocumented, and immigrant minors are currently in the custody of the U.S. federal government. The Office of Refugee Resettlement (ORR), under the leadership of a longtime antiabortion activist and Donald Trump appointee, Scott Lloyd, established new rules in March 2017 that require shelter operators, who provide day-to-day care for these children while they are in U.S. custody, to notify the ORR whenever a girl expresses interest in ending her pregnancy. According to Lloyd, “the unborn child is a child in our care” (Vasquez 2017). Under Lloyd’s direction, the ORR has barred federally funded shelters from taking “any action that facilitates” abortion for unaccompanied minors, including “scheduling appointments, transportation, or other arrangement,” without “direction and approval” from Lloyd himself (Vasquez 2017). In a statement to staff, Lloyd said that “[shelter] grantees should not be supporting abortion services pre- or post-release; only pregnancy services and life-affirming options counseling” (Vasquez 2017). Immigration, like all politics, is reproductive politics too.

A few months after the new policy was instituted, a seventeen-year-old girl from Central America challenged its constitutionality in a high-profile lawsuit against the Trump administration. On September 11, 2017, this young woman, referred to as Jane Doe in court filings, was apprehended trying cross the border between the United States and Mexico. After being taken to a shelter for unaccompanied minors in South Texas to await immigration proceedings, she learned that she was pregnant and requested an abortion. Following the new rules, she was instead taken to a so-called crisis pregnancy center, where she received an ultrasound and antiabortion counseling. To obtain the abortion she still desired while adhering to Texas's parental consent law, Doe sought a judicial bypass from a Texas judge, which she did with help from Jane's Due Process, a nonprofit legal organization that provides representation to pregnant minors in Texas. The judge assigned Doe a guardian to facilitate the process, but ORR officials refused her transportation to the medical facility and refused to let her leave the shelter with her guardian. Doe's attorneys from the American Civil Liberties Union challenged the administration in federal court for obstructing the process for multiple weeks. In its defense, the Justice Department argued that its "interest in promoting fetal life and childbirth over abortion" (Sacchetti and Marimow 2017) justified its refusal to let Doe, a minor, obtain an abortion.

Two contentious issues in America—abortion and immigration—intersect in Doe's story. At the crux of these issues arises a question that I consider here in greater depth: what interest does the Trump administration have in a detained Latina migrant teen's fetus? Legally, the language of governmental interest in fetuses refers to Supreme Court decisions on abortion, from *Roe v. Wade* (1973) to *Whole Woman's Health v. Hellerstedt* (2016), which provide guidance on how the government can restrict abortion based on state interest in fetal life. Yet in this essay, I want to think about *interest* beyond its legal meaning to consider what else might explain the government's claim of wanting to promote and preserve Doe's fetus. To pursue this question, I invoke what Sarah Franklin and Faye Ginsburg (2019, 1, 5) call the "familiar grammar" grounded in an American legacy of white Christian nationalism that links reproduction, race, gender, religion, and nation "into an established syntax of national belonging under threat." Examining what *interest* is meant to signify in Jane Doe's case reveals the seamless alignment between antiabortion and anti-immigration politics in Trump's America. Tracing the grammars that make this alignment intelligible contributes to the feminist project of revealing reproduction as politics (Ginsburg and Rapp 1995; Roberts 1997; Franklin and Ragoné 1998; Gal and Kligman 2000; Briggs 2017), an alignment that is pronounced in the

enduring legacies of white Christian nationalism that animate the current administration.

One could wonder why the government wanted to protect Doe's fetus given Trump's vocal disdain for Latino immigrants, especially pregnant ones. For many years he has described them in dehumanizing terms—as rapists, animals, gangsters, and murderers. He has also categorized their countries of origin as “the most dangerous places in the world,” some of which he crassly reduced to “shithole countries.” Trump alleges that pregnant Latinas crossing the border intend to deliver “anchor babies,” a derisive term premised on the erroneous idea that children born to noncitizens of color in the United States can secure legal status for their parents (see [Chavez 2017](#)). He agrees with Americans who he claims are “disgusted when a woman who's nine months pregnant walks across the border, has a baby, and you have to take care of that baby for the next eighty-five years” ([Finnegan and Lee 2015](#)). Trump also remains deeply indifferent to the well-being of undocumented youth. In addition to phasing out DACA (Deferred Action for Childhood Arrivals) protections for 800,000 children of undocumented migrants, he has demonized unaccompanied migrant minors as “future criminals” who pose a threat to national security, warning: “They look so innocent; they're not innocent” ([Hunter 2018](#)). In light of Trump's sustained contempt for migrating pregnant Latinas and their children, why wouldn't his administration happily take Doe to the abortion clinic? Couldn't we expect a racist, xenophobic, misogynistic government to be eager to limit the reproductive capacities of those deemed threats to the greatness, whiteness, and rightness of the nation, as they have long been for the poor and people of color ([Roberts 1997](#); [Silliman and Bhattacharjee 2002](#); [Stern 2005](#))? Again, what *interest* does it have in protecting Doe's fetus?

The Trump administration's fiercely contested zero-tolerance border-enforcement policy, issued in May 2018, provides some clues. Widespread protests erupted in response to news from the U.S.–Mexico border of the massive detention and prosecution of adult migrants crossing the border illegally, including individuals seeking asylum at designated ports of entry. The public expressed particular outrage over the forced separation of more than 2,500 infants and children from their migrating families, hundreds of whom remain in U.S. custody. Parents received inadequate and inaccurate information about their children's whereabouts. Heart-wrenching evidence of mistreatment emerged from the rapidly overloaded shelters and detention centers where the children were initially held, raising concern about the risks of “irreparable harm” ([Rose 2018](#)). By order from federal judges, the administration began reuniting the separated families, but it claims that

about two hundred children remain ineligible for reunification or release. They are at particular risk of being permanently separated from their families through U.S. adoption (Burke and Mendoza 2018).

By design, the administration claimed, the policy would deter migrants from attempting to cross the border illegally (Bump 2018). Deterrence is a decades-old strategy wielded by many prior administrations concerned with illegal migration, as is family separation (Hunter 2018), although separating migrating families in this way is a new tactic. Then–White House chief of staff John Kelly told *NPR* that “a big name of the game [in border security] is deterrence” and said that separating families crossing the border “would be a tough deterrent” (National Public Radio 2018). Then–Attorney General Jeff Sessions justified family separations as a consequence of breaking the law:

If you’re smuggling a child, then we’re going to prosecute you, and that child will be separated from you, probably, as required by law. . . . If you don’t want your child separated, then don’t bring them across the border illegally. It’s not our fault that somebody does that. (Miroff and Horwitz 2018)

Sessions hoped enforcing the policy would reduce the flow of illegal migrants: “Hopefully people will get the message . . . and not break across the border unlawfully” (Bump 2018). According to the Trump administration, protecting the country from the perils of an open border justified these means of deterrence. “Politically correct or not, we have a country that needs safety and security,” said Trump (Miroff and Horwitz 2018), revealing immigrant children as strategic pawns.

Deterrence and related discourses about protecting America from perceived threats help explain the government’s interest in protecting Doe’s fetus. These discourses draw on a syntax of belonging under threat common in expressions of white Christian nationalism. White Christian nationalist ideologies are premised on the belief that America has been and should always be distinctively white and Christian in its identity, symbols, values, and policies (Goldberg 2006; Whitehead and Scheitle 2018). Proponents maintain that America’s whiteness and “Christian heritage” must be defended.

The administration invokes these grammars to justify not only its anti-immigration politics but also its dramatic expansion of antiabortion policy. White Christian nationalist ideologies align easily with antiabortion activism, which has long linked its goal of protecting the unborn with defending white Christian America (Mason 2002). Randall Terry, the founder of the militant antiabortion organization

Operation Rescue (now Operation Save America), often claimed that rescuing “babies and mothers” by opposing abortion was intended to “rescue the country” as well (Ginsburg 1993, 558). As seen in my own ethnographic research on the newest radical arm of the U.S. antiabortion movement (Cromer, forthcoming), which fights for the legal recognition of embryos and fetuses as persons, personhood advocates also promote the simultaneous rescue of embryos and America “from the impending judgment of a holy God,” in the words of one leader. For abortion opponents, Trump has received the title of “most prolife president in American history,” not merely for advancing antiabortion policy but also for “put[ting] America back on the solid foundation of her founding principles,” as a member of Trump’s religious advisory council told Breitbart News (Berry 2017). The familiar grammar of white Christian nationalism makes intelligible the links between Trump’s assertion that America “needs safety and security” from illegal migrants and his administration’s commitment to restoring its “founding principles” by eroding reproductive and sexual rights. These familiar grammars also clarify why the Trump administration maintained an interest in protecting Jane Doe’s fetus.

The same discourse of deterrence used to justify Trump’s zero-tolerance policy also featured in the administration’s defense of its obstruction of Doe’s abortion. In court, the Justice Department argued that it was in the public’s interest not to help Doe obtain an abortion because doing so “could incentivize illegal immigration by pregnant minors by compelling the federal government to facilitate an unaccompanied alien child’s request for an elective abortion.” Incentivizing illegal migration would undermine the administration’s primary goal of deterrence. The attorney general of Texas, joined by representatives of six other states, filed a supporting brief that invoked these familiar grammars to underline the government’s claim of “legitimate and substantial interest in preserving and promoting fetal life” (Vasquez 2017). Attorney General Ken Paxton wrote:

If “Doe” prevails in this case, the ruling will create a right to abortion for anyone on earth who enters the U.S. illegally. And with that right, countless others undoubtedly would follow. Texas must not become a sanctuary state for abortions. (Vasquez 2017)

Paxton predicted that a “free-for-all” (Brown 2017) would occur if the court sided with Doe, claiming that it would erode any “meaningful limit on the constitutional rights an unlawfully present alien can invoke simply by crossing the border” (Thompson 2017).

For the Trump administration, protecting Jane Doe's fetus from abortion while in the custody of the U.S. government was imperative to protect the country from a greater threat: becoming a haven for pregnant migrants, whose right to abortion represents a slippery slope of constitutional protections for those entering the country unlawfully. In Jane Doe's story, and in myriad others like hers, anti-abortion policies conspire seamlessly with the administration's xenophobic, racist, and nativist America First agenda. The government's interest in Doe's fetus signifies not the administration's care for the well-being of her potential child but rather its protectionist politics. The protective walls the Trump administration attempted to build between Jane Doe and her own uterus, to borrow [Elise Andaya's \(2019\)](#) insightful metaphor, parallel the symbolic and material walls that Trump strives to build around the United States to ensure that white Christian America comes first.

Doe's case ultimately prevailed. She obtained an abortion on October 25, 2017, when fifteen weeks pregnant, one month after her first attempt. But her story and the issues it raises are far from settled. The ORR has continued to prevent dozens of other Janes in U.S. custody from obtaining desired abortions, despite numerous court orders requiring the agency to comply. Following news in November 2018 of Scott Lloyd's reassignment from directing the ORR, it remains to be seen whether his successor will continue the agency's antiabortion agenda. Earlier in the year, though, Doe's case came under scrutiny in the confirmation hearings for then-Supreme Court nominee Brett Kavanaugh, a federal judge who had ruled on Doe's case in support of the administration's obstruction. In an accompanying statement on the ruling in *Garza v. Hargan* (874 F.3d 735 [D.C. Cir. 2017]), though, Kavanaugh had argued that permitting Doe's abortion would authorize "a new right for unlawful immigrant minors in U.S. government detention to obtain immediate abortion on demand," revealing how he will likely side in immigration and abortion cases brought before him on the Supreme Court. While the future of reproductive justice for all Janes remains tensely uncertain, we can be confident that the American legacies of white Christian nationalism will ensure that "there is no outside of reproductive politics" ([Briggs 2017](#), 4).

## REFERENCES

Andaya, Elise

- 2019 "I'm building a wall around my uterus': Abortion Politics and the Politics of Othering in Trump's America." *Cultural Anthropology* 34, no. 1: 10–17. <https://doi.org/10.14506/ca34.1.03>.

- Berry, Susan  
2017 "One Year Later: Trump Hailed as 'Most Pro-Life President in Modern History.'" *Breitbart*, November 8. <https://www.breitbart.com/politics/2017/11/08/one-year-later-trump-ailed-pro-life-president-modern-history>.
- Briggs, Laura  
2017 *How All Politics Became Reproductive Politics: From Welfare Reform to Foreclosure to Trump*. Oakland: University of California Press.
- Brown, Laurretta  
2017 "Judge Rules Government Must Let Immigrant Minor Obtain Abortion in Texas." *Townhall.com*, October 18. <https://townhall.com/tipsheet/laurrettabrown/2017/10/18/judge-rules-government-must-let-immigrant-minor-access-abortion-in-texas-n2397028>.
- Bump, Phillip  
2018 "Here Are the Administration Officials Who Have Said That Family Separation Is Meant as a Deterrent." *Washington Post*, June 19. <https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent>.
- Burke, Garance, and Martha Mendoza  
2018 "AP Investigation: Deported Parents May Lose Kids to Adoption." *Associated Press*, October 9. <https://apnews.com/97b06cede0c149c492bf25a48cb6c26f>.
- Chavez, Leo R.  
2017 *Anchor Babies and the Challenge of Birthright Citizenship*. Stanford, Calif.: Stanford University Press.
- Cromer, Risa  
Forthcoming "Racial Politics of Frozen Embryo Personhood in the U.S. Antiabortion Movement." *Transforming Anthropology*.
- Finnegan, Michael, and Kurtis Lee  
2015 "Trump, Taunted by Protesters, Delivers Barbs on Immigration in L.A. Harbor Speech." *Los Angeles Times*, September 15. <http://www.latimes.com/nation/politics/la-na-trump-national-security-20150915-story.html>.
- Franklin, Sarah, and Faye Ginsburg  
2019 "Reproductive Politics in the Age of Trump and Brexit." *Cultural Anthropology* 34, no. 1: 3–9. <https://doi.org/10.14506/ca34.1.02>.
- Franklin, Sarah, and Helena Ragoné, eds.  
1998 *Reproducing Reproduction: Kinship, Power, and Technological Innovation*. Philadelphia: University of Pennsylvania Press.
- Gal, Susan, and Gail Kligman  
2000 *The Politics of Gender after Socialism*. Princeton, NJ.: Princeton University Press.
- Ginsburg, Faye  
1993 "Saving America's Souls: Operation Rescue's Crusade against Abortion." In *Fundamentalisms and the State: Remaking Politics, Economies, and Militance*, edited by Martin E. Marty and R. Scott Appleby, 557–88. Chicago: University of Chicago Press.
- Ginsburg, Faye D., and Rayna Rapp, eds.  
1995 *Conceiving the NewWorld Order: The Global Politics of Reproduction*. Berkeley: University of California Press.
- Goldberg, Michelle  
2006 *Kingdom Coming: The Rise of Christian Nationalism*. New York: W.W. Norton.
- Hunter, Tera W.  
2018 "The Long History of Child-Snatching" *New York Times*, June 3. <https://www.nytimes.com/2018/06/03/opinion/children-border.html>.
- Mason, Carol  
2002 *Killing for Life: The Apocalyptic Narrative of Pro-Life Politics*. Ithaca, N.Y.: Cornell University Press.

- Miroff, Nick, and Sari Horwitz  
 2018 “Trump Didn’t Invent Family Separation, But His Administration Was Willing to Try It.” *Washington Post*, June 19. [https://www.washingtonpost.com/world/national-security/trump-didnt-invent-family-separation-but-his-administration-was-eager-to-try-it/2018/06/19/f32f11f6-73d6-11e8-b4b7-308400242c2e\\_story.html](https://www.washingtonpost.com/world/national-security/trump-didnt-invent-family-separation-but-his-administration-was-eager-to-try-it/2018/06/19/f32f11f6-73d6-11e8-b4b7-308400242c2e_story.html).
- National Public Radio (NPR)  
 2018 “Transcript: White House Chief of Staff John Kelly’s Interview with NPR.” National, May 11. <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.
- Roberts, Dorothy  
 1997 *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. New York: Pantheon.
- Rose, Joel  
 2018 “Doctors Concerned about ‘Irreparable Harm’ to Separated Migrant Children.” NPR, June 15. <https://www.npr.org/2018/06/15/620254326/doctors-warn-about-dangers-of-child-separations>.
- Sacchetti, Maria, and Ann E. Marimow  
 2017 “Appeals Court to Review Judge’s Order Allowing Abortion for Undocumented Immigrant.” *Washington Post*, October 19. [https://www.washingtonpost.com/local/immigration/appeals-court-to-review-judges-order-allowing-abortion-for-undocumented-teen-immigrant/2017/10/19/5ece7202-b4ca-11e7-9e58-e6288544af98\\_story.html](https://www.washingtonpost.com/local/immigration/appeals-court-to-review-judges-order-allowing-abortion-for-undocumented-teen-immigrant/2017/10/19/5ece7202-b4ca-11e7-9e58-e6288544af98_story.html).
- Silliman, Jael Miriam, and Anannya Bhattacharjee, eds.  
 2002 *Policing the National Body: Sex, Race, and Criminalization*. Cambridge, Mass.: South End Press.
- Stern, Alexandra Minna  
 2005 *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. Berkeley: University of California Press.
- Thompson, Dee  
 2017 “Paxton Files Amicus Brief in Case Regarding Unaccompanied Minor’s Request for Abortion.” *Southeast Texas Record*, October 18. <https://setexasrecord.com/stories/511243130-paxton-files-amicus-brief-in-case-regarding-unaccompanied-minor-s-request-for-abortion>.
- Vasquez, Tina  
 2017 “‘Anti-Choice Fanaticism’ in the U.S. Immigration System: The Real Reason Jane Doe’s Abortion Request Is Being Denied.” *Rewire.News*, November 16. <https://rewire.news/article/2017/10/16/anti-choice-fanaticism-u-s-immigration-system-real-reason-jane-abortion-request-denied>.
- Whitehead, Andrew L., and Christopher P. Scheitle  
 2018 “We the (Christian) People: Christianity and American Identity from 1996 to 2014.” *Social Currents* 5, no. 2: 157–72. <https://doi.org/10.1177/2329496517725333>.