

Assessing Lethality to Support Asylum Claims Based on Intimate Partner Violence

by Laurie Cook-Heffron*

During the last two years, while the United States government and public were focused on increases in unaccompanied Central American migrant children arriving at the U.S.-Mexico border, border patrol also apprehended more than 100,000 immigrant families, primarily Central American women traveling with their children.¹ In particular, women and children are migrating from what is referred to as the Northern Triangle of Central America, which includes El Salvador, Guatemala, and Honduras.

Those working on the frontlines of immigrant family detention sites in Texas, for example, increasingly hear reports of women fleeing severe domestic violence in Central America. Empirical evidence is beginning to emerge, confirming that Central American women's motivations to migrate are often tied to gender-based violence, including domestic violence.^{2,3}

Global estimates suggest that one-third of the world's women experience some type of interpersonal violence, and women in the Northern Triangle of Central America experience a range of violence from domestic violence to femicide or the killing of women.^{4,5} Femicide rates are extremely high in Central America: El Salvador has the highest rate of femicide in the world, followed by Honduras with the second highest rate, and Guatemala with the fourth.⁶

Violence against women in the Northern Triangle remains a severely underreported crime due to societal pressures, fear of reprisal, fear of publicity and stigmatization, discriminatory practices by the authorities, and low confidence in the justice system.⁷ Impunity rates remain high, and existing laws are minimally enforced.⁸

This article examines the context surrounding the migration of Central American women, including migration as a strategy of protection or survival against domestic violence. Furthermore, it will describe the utility of lethality assessments, in particular the Danger Assessment for Immigrant Women (DA-I),⁹ in exploring risk of reabuse and lethality and as an empirically-based tool to educate the court, adjudicators, and attorneys about the context of violence in the Northern Triangle.

began to see a dramatic increase in the arrival of immigrant families, primarily Central American women and their children. Those apprehended by border patrol rose to a peak of more than 60,000 in 2014. During fiscal years 2014 and 2015, border patrol apprehended 108,522 families.¹²

While migration from Central America to the United States continues to be officially recognized as economic migration, and the migrants as economic migrants, some disagree with this categorization. Given the

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Migration From the Northern Triangle to the United States

With shared roots in histories of colonization, natural disasters, and political instability and conflict, the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras) is joined together by a current array of interconnected trends: criminal gang networks, international drug trade, high rates of homicide and violent crime, similar socio-economic circumstances, and increasing migration northward.¹⁰ While the region has a long history of migration from the southern hemisphere to the northern hemisphere, Central American immigration to the United States has increased substantially in the last decade. Between 2000 and 2010, the Central American immigrant population in the U.S. grew from 2 million to 3.1 million, and the numbers of unauthorized Central American immigrants increased by 44% (El Salvador), 79% (Guatemala), and 106% (Honduras).¹¹ In 2011, the United States

social violence, corruption, and criminal gang activity that many migrants are fleeing, some experts argue that this migration is better understood as "forced displacement from violence and crime" or "forced migration."¹³ These distinctions are important and political in nature because they entail protections and open pathways to immigration status remedies.

Violence Against Women in the Northern Triangle

Domestic violence is a well-recognized and well-documented social problem and women's health issue across the globe. An estimated three in 10 women worldwide are impacted by domestic violence, including physical violence, rape, and/or stalking by an intimate partner.¹⁴ A growing body of literature is beginning to recognize the role violence plays in motivations to migrate and transnational migration as a strategy to escape or resist violence and oppression.¹⁵ Women

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are differently impacted by physical, sexual, and socio-economic violence and these types of violence contribute to migration and displacement.¹⁶

Despite positive policy and program initiatives in Central America, violence against women remains a pervasive and underreported crime, and existing laws are minimally enforced. Domestic violence is severely underreported due to societal pressures, fear of reprisal, fear of publicity and stigmatization, discriminatory practices by authorities, and low confidence in the justice system.¹⁷ During a mission to El Salvador in 2011, the United Nations (UN) special rapporteur reported “the failure of authorities to investigate, prosecute and punish those responsible for gender-based violence contributed to an environment of impunity that resulted in little confidence in the justice system; impunity for crimes, socioeconomic disparities and the machista culture fostered a generalized state of violence, subjecting women to a continuum of multiple violent acts, including murder, rape, domestic violence, sexual harassment and commercial sexual exploitation.”¹⁸

An extreme form of gender-related violence towards women, femicide, is described by the UN as “the ultimate act of violence which is experienced in a continuum of violence.”¹⁹ The term femicide is preferred over the more neutral term homicide, because it highlights the crucial components of inequality and oppression faced by women.²⁰ Femicide is also often directly tied to domestic violence, in that femicide is often perpetrated by current or former intimate partners.²¹ High rates of femicide typically accompany high levels of tolerance for violence against women, or climates of impunity.²²

Increasingly a topic of concern among human rights advocates, the UN describes femicide as increasing in prevalence, particularly in Central America where femicide rates are extremely high. El Salvador has the highest rate of femicide in the world, followed by Honduras with the second highest rate, and Guatemala with the fourth.²³ Between 2000 and 2011, more than 6,500 cases of

femicide were reported in Guatemala.²⁴ Recently, Honduras has witnessed the largest increase in the rate of femicide, followed by El Salvador.²⁵

Recent research with Central American women who migrated to the United States shows that women are fleeing violence in their home countries in response to having experienced desperate situations with highly lethal consequences.²⁶ Many women perceive a single option—leaving the country to save their own and/or their children’s lives—and make spontaneous and desperate decisions with no, or very little, planning or preparation. Many Central American women also describe the precarious intersection of domestic violence with gang violence, particularly among those who experience controlling and abusive relationships in communities that also endure gang control. Abusers use the existence and proximity of gang violence, along with media reports of femicide, to bolster the threats they make to their partners.²⁷

Asylum Based on Domestic Violence

A variety of legal remedies are available to undocumented migrant women who have experienced violence and abuse. Asylum, for example, may be granted to immigrants who have suffered persecution or fear that they will suffer persecution due to race, religion, nationality, membership in a particular social group, and/or political opinion. Asylum claims based on domestic violence provide an interesting dynamic in immigration policy responses to violence against women, as illustrated by the case of Rodi Alvarado, often referred to as the *Matter of R-A*.²⁸ Rodi Alvarado applied for asylum after fleeing Guatemala in 1995 to escape the sexual and physical violence of her husband.²⁹ Unsuccessful in finding help or assistance in Guatemala, she fled to the U.S. in search of protection and assistance. Originally, she was granted asylum by an immigration judge but then the government appealed to the Bureau of Immigration Appeals (BIA). The BIA overturned the decision finding that, while she had demonstrated a well-founded fear of persecution and that Guatemala was unable or unwilling to protect her from her husband, her harm did not fit the categories of persecution

outlined in the statute (gender is not listed as a category of persecution). Alvarado was deported back to Guatemala, although in December 2009, she was ultimately granted asylum after the Department of Homeland Security issued a brief on the *Matter of L-R* (the case of a Mexican woman who suffered severe domestic violence) to the BIA. The brief allowed for women fleeing domestic violence to be understood as members of a particular social group (articulated as women unable to leave an abusive domestic relationship) and thus considered for asylum.³⁰

The landmark decision of *Matter of L-R* was bolstered by *Matter of A-R-C-G* in 2014 (which offered binding precedent), in which the Department of Homeland Security further established that domestic violence was an eligible basis for asylum. However, there is very little transparency in how decisions are made regarding asylum for those who have been victimized by an abusive intimate partner.³¹ These rulings remain narrow and fail to give adequate guidance to immigration courts. Drawing from descriptive analysis of more than 200 cases, Bookey states that “whether a woman fleeing domestic violence will receive protection in the United States seems to depend not on the consistent application of objective principles, but rather on the view of her individual judge, often untethered to any legal principles at all.”³² Furthermore, Bookey argues that “the lack of training for immigration judges on the dynamics and sensitivities of domestic and other gender-based violence has continued to result in inconsistent and arbitrary decision-making in immigration courts.”³³

Danger Assessment and Likelihood of Continued Violence for Women Seeking Asylum

In cases of asylum based on domestic violence, immigration attorneys and their clients often seek written or oral testimony from experts (mental health professionals or academic scholars) in the field of gender-based violence. General and case-specific experts are sometimes used to help attorneys and immigration judges understand the dynamics of relationships that involve intimate partner violence.

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Experts may be able to provide empirical evidence to explain particular elements of a case, for example, why someone may remain in an abusive relationship, why someone may not seek help from law enforcement, or the impact of domestic violence on a woman's psycho-social well-being. Experts may also be asked to provide country-specific information about the dynamics of domestic violence and available services and criminal justice responses. Finally, expert witnesses may be asked to give an opinion about the likelihood of continued violence if an asylum-seeker is denied asylum and deported.

The Danger Assessment (DA) may be a particularly useful tool in these cases. Jacquelyn Campbell's original DA³⁴ was recently adapted and validated for use with immigrant women.³⁵ This version, known as the Danger Assessment for Immigrant women or the DA-I, was developed with inclusion of 15 items from the original DA, plus an additional 11 culturally responsive risk factors. Modifications from the original DA reflect specific vulnerabilities associated with immigration status. The DA-I offers an empirically-grounded, culturally-competent tool that predicts reabuse and severe intimate partner violence among immigrant women.

Although the DA-I was not developed specifically for use with immigrant women in the U.S. who have fled domestic violence in another country, immigrant women seeking asylum based on domestic violence have often experienced a range of risk factors that predict reabuse, severe violence, and femicide. While women may be considered physically "safe" from reabuse from intimate partners while in the U.S., many live with precarious immigration status and risk deportation at any time. Upon return to the home country, women face similar, if not heightened, danger to the danger that they fled. Furthermore, access to safety and justice may remain elusive.

María: A Case Example

Consider a recent case in which the DA-I assisted in describing empirically-based risk factors of reabuse and

lethal abuse for the purposes of an asylum case in immigration court. María,³⁶ a 31-year old woman from Guatemala, met her partner as a teenager. Her partner became controlling and violent early in their relationship, and the violence escalated over time. He used multiple strategies to control and abuse her, including physical violence, sexual violence, emotional abuse, stalking behaviors, and coercive control. The physical abuse he used to control her included shoving her, hitting her in the head, pulling her by her hair, and pushing her to the floor and into walls or furniture. He also threw household items and threatened her with a kitchen knife on multiple occasions. He forced her to have sex with him when she did not want to and told her she was worthless if she resisted. When María was outside of the home, he sometimes watched her and followed her. After a while, he prohibited her from leaving the home and asked neighbors to report to him if she left. He bought her a cell phone so that he could monitor her and he reviewed all her calls to make sure she wasn't calling anyone else. While she was pregnant with their daughter, he refused to take her to the clinic when she needed medical attention and ultimately beat her so brutally that she was severely injured and hospitalized.

Her attempts to leave the relationship were thwarted by lack of accessible help and fear about what would happen if she sought help. She could see no way out of her situation and felt that she could no longer endure it. María ultimately left Guatemala in order to find safety and lived in the United States with her mother and her daughter for several years. While María was in the U.S., her partner threatened her and told her she was going to pay when she returned.

María was eventually apprehended by immigration officials and deported to Guatemala. Upon returning, the abuse and stalking resumed. He watched her and followed her when she was out, and physically and sexually assaulted her. Again, María fled to the U.S., where she was detained and was able to secure legal representation.

María's attorney sought the assistance of an expert witness, who used the DA-I to describe risk factors

present in her relationship that are associated with an increased risk of violence. Relevant lethality risk factors present in the relationship included recent escalation of violence, threats with a lethal weapon, threats to kill her, her belief that he was capable of killing her, forced sex, abuse during pregnancy, stalking behaviors, and social isolation. In addition, María's partner was a problem drinker, with violence sometimes occurring when her partner used alcohol. While the expert testimony and inclusion of the DA-I as a tool were useful, they represented only a small portion of a full, comprehensive asylum application that included María's courageous testimony. María ultimately won her asylum case and was permitted to remain in the U.S. with her daughter.

Further Considerations

The practice of using lethality assessments in asylum claims based on domestic violence has yet to be formally tracked or evaluated. However, the DA-I offers an opportunity to assess the impact of the outcome in an asylum case for a survivor of domestic violence by using a validated tool based on empirical evidence to emphasize risk of continued violence should deportation be ordered. Assessing for lethality using the DA-I is most appropriately done by trained mental health or social service practitioners who are engaged by attorneys to conduct psychological evaluations or psycho-social assessments and describe results via written or oral testimony. However, understanding relevant risk factors for lethality can also serve as useful background information for attorneys building asylum cases, even if a lethality assessment instrument is not used directly with a client.

The DA and DA-I were designed to facilitate a dialogue with women about their risk and to empower them to plan and strategize for safety. From a practice perspective, particularly for women with precarious immigration status, this consciousness-raising aspect of the tool is important. Attorneys, advocates, and mental health practitioners should take care to act sensitively and cautiously in using lethality assessments with immigrant

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women who have precarious immigration status. Their return to the home country and to the abuser is often likely and not under the survivor's control. Those detained and awaiting a decision on an asylum case have great likelihood of being deported and returned to a dangerous situation. Given limited legal representation and even further limited mental health and social services available to women in detention or following deportation, the opportunity for strategizing around safety may be non-existent. Nonetheless, employing this tool for purposes beyond the legal benefit, to include information about risk, dialogue, and safety planning with women, is a valuable activity that fosters empowerment and self-determination among survivors.

Despite the promising uses of lethality assessments with women seeking asylum based on domestic violence, considerable questions remain. First, virtually all immigration relief strategies involve women engaging formally with large governmental systems such as the Department of Homeland Security or U.S. Citizenship and Immigration Services. Given that undocumented women experiencing abuse are unlikely to seek help from formal systems, remedies such as asylum based on domestic violence often remain out of their reach.^{37,38} When legal representation is accessible, and a tool such as the DA-I predicts a high likelihood of future re-assault and lethal re-assault, the ramifications of such information must be considered. What preparations and supports are in place to prepare women for their return when empirical evidence predicts continued danger? What are the implications for immigration officials, and who carries the responsibility of ensuring that women have the information and access to the safety and justice that they need? Most importantly, we must carefully and courageously consider our ethical responsibilities, as practitioners and as a nation, to intervene and prevent deportation in cases that involve likely reabuse and/or femicide. As long as Central American women continue to flee lethal abuse at home

and make the harrowing journey to the U.S. in search of safety, we must continue to pose these questions and to explore and open up new pathways towards strong legal representation, psycho-social support, as well as freedom and protection from continued violence.

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