



Article

Legal Interpretations of Trauma: The U.S. Circuit Court of Appeals and Gender-Based Asylum Claims

Connie Oxford

Department of Gender and Women's Studies, State University of New York, Plattsburgh, NY 12901, USA; oxfordcg@plattsburgh.edu

Abstract: This article is based on exploratory research on how the U.S. Circuit Court of Appeals uses the language of trauma in gender-based asylum claims. Gender-based asylum claims include female genital mutilation (FGM), coercive population control (CPC) in the form of forced abortions and forced sterilizations, rape, forced marriage, and domestic violence. The Circuit Courts have reviewed appeals from petitioners with asylum claims since 1946, yet the language of trauma did not appear in the Court's decisions until 1983. From 1983 to 2023, only 385, 3.85% or less, of the over 10,000 asylum cases before the Circuit Courts used the language of trauma in its legal interpretation of persecution. I have identified 101 gender-based asylum cases that were reviewed by one of the eleven U.S. Circuit Court of Appeals that apply the language of trauma in its legal interpretation of persecution for this analysis. The research question guiding this study is: how does the U.S. Circuit Court of Appeals use the language of trauma when reviewing gender-based asylum cases? This study found that U.S. Circuit Courts use the language of trauma in four ways: precedent cases, policies and reports, physical trauma, and psychological trauma when reviewing gender-based asylum claims. This study provides the first data set of gender-based asylum claims under review at the U.S. Circuit Court of Appeals that use the language of trauma.

Keywords: trauma; asylum; gender-based persecution; U.S. Circuit Court of Appeals



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1. Introduction

This article focuses on how the U.S. Circuit Court of Appeals uses the language of trauma in gender-based asylum claims. Gender-based asylum claims include female genital mutilation (FGM), coercive population control (CPC) in the form of forced abortions and forced sterilizations, rape, forced marriage, and domestic violence. After an immigration judge adjudicates a case, the applicant or the U.S. government, through the office of the U.S. Immigration and Customs Enforcement (USICE), may appeal the judge's decision to the Board of Immigration Appeals (BIA). If an applicant or USICE appeals a BIA decision, the case is heard in the U.S. Circuit Court of Appeals where the immigration court that initially ruled on the case is located. While immigration law in the United States is federal law, the appellate court system allows for regional variation based on Circuit Court decisions. The research question guiding this study is: how does the U.S. Circuit Court of Appeals use the language of trauma when reviewing gender-based asylum cases? This study found that U.S. Circuit Courts use the language of trauma in four ways: precedent cases, policies and reports, physical trauma, and psychological trauma when reviewing gender-based asylum claims. This study is exploratory research as the topic of how the U.S. Circuit Courts use the language of trauma in gender-based asylum claims has yet to be studied in-depth. This study provides the first data set of gender-based asylum claims under review at the U.S. Circuit Court of Appeals that use the language of trauma.

1.1. Persecution and Trauma

To gain asylum in the United States, asylum seekers must show that they have a "well-founded fear of persecution", as outlined in the U.S. Refugee Act of 1980 [1]. This act

draws from the language of international legal documents such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol [2,3]. Persecution is continuously being redefined in the legal system as immigration officials and judges adjudicate asylum claims [4]. Asylum seekers must show that they were persecuted or fear persecution. They do so through their written declarations and other materials in their asylum application as well as in their oral testimony before an immigration official. Asylum seekers narrate physical injury and psychological harm that they have either experienced or fear will happen if they return to their country.

It is paramount that asylum seekers demonstrate that they were persecuted and/or that they fear they will be persecuted to receive a favorable decision [5]. This task is insurmountable at times as asylum seekers must marshal evidence to support their claim of persecution. During the asylum interview or immigration court hearing, asylum officers and immigration judges expect applicants to be credible, which means conveying their story in a way that is believable. Testimony is expected to be linear, detailed, and have internal consistency [6]. Credibility includes the story itself that asylum seekers tell as well as how they tell it [7]. Persuading immigration officials that they have been or fear that they will be persecuted is the cornerstone of the asylum process. The conundrum for asylum seekers is that as a population that has experienced traumatic events, their ability to remember details and articulate harm is challenging. The effects of trauma are the antithesis of the expectations of credibility [8]. This is due in part to how trauma affects memory and the ability to recall events [9,10].

The field of trauma studies is rich with scholarship that showcases two competing camps, one being that traumatic events make one more likely to remember what happened and the other that trauma acts to suppress memories [11–13]. The significance of how immigration law in general and Circuit Court judges in particular use the term trauma is that it is overwhelmingly linked to establishing credibility [14]. One means of establishing credibility is to include expert reports and testimony in asylum applications and proceedings by medical professionals who document the physical and psychological effects of persecution. In 1999, the UN adopted the Istanbul Protocol, a set of international guidelines for documenting torture [15]. The protocol was a result of the integration of healthcare professionals and legal advocates who bridged the medical and legal professions using a human rights framework [16,17]. The protocol standardized how trauma is documented, ushering in both praise and criticism from the medical community; some welcomed the directives, but others were cautious of the victim narrative that it demanded [18].

The term trauma is not found in the 1951 and 1967 UNHCR legal documents or the 1980 Congressional Act. As this article shows, the language of trauma did not appear in asylum claims under review in the U.S. Circuit Court of Appeals until 1983 in the Eleventh Circuit case *Jean v. Nelson* [19]. This case dealt with Haitian immigrants held in detention and their discriminatory treatment compared to other groups, such as Cubans who had been recently paroled into the country. The heart of the case dealt with voluntary withdrawal or voluntary departure, which allows asylum seekers to withdraw their claim and return to their country. Investigations into the treatment of Haitians in detention found that the experience of temporary incarceration caused “emotional trauma”, resulting in them withdrawing their asylum claims. This case was reviewed just three years after Post-Traumatic Stress Disorder (PTSD) became a mental health diagnosis and was listed in the Diagnostic and Statistical Manual (DSM) III [12]. PTSD was updated in the DSM IV in 1994 and classified as an anxiety disorder, and again in 2013 in the DSM V, when it was classified as a Trauma and Stressor-related disorder [13].

While there are several ways that trauma is referenced in legal proceedings, PTSD is among the most common discussions of psychological trauma. Its major significance is that it locates the cause of the disorder in external events rather than individual pathology [20]. The general criteria for diagnosis are exposure to a traumatic event, persistently reexperiencing the event, avoidance of stimuli associated with the event, and increased arousal [20]. The first population under study were Vietnam Veterans who were diagnosed based on

symptoms of “shell shock” [13,20]. The general population has a rate of around 6%, and refugees from war-torn countries have rates as much as ten times higher [21]. Not only is PTSD high for asylum seekers, but among the asylum-seeking population, PTSD rates are even higher for those who wait extended periods of time between interviews [22], have failed claims [23], and are held in detention [24].

This was most likely true of refugees and asylum seekers before PTSD was understood as psychological studies of refugees after World War II referred to them as having “concentration camp syndrome” [25]. The DSM III defined trauma as “outside the range of usual human experience”, which is quite different from the experiences of asylum seekers, where trauma is integrated into so many aspects of their lives [13]. One reason that asylum seekers have high rates of PTSD is that it is determined by the intensity and duration of the traumatic event, which is elevated for this group. Yet, when questioned about traumatic events, some asylum seekers deny them since violence is a “normal part of daily life in a war zone” [26].

Not everyone who experiences trauma develops PTSD, and PTSD is not the only reaction to trauma. Approximately 20% of people exposed to trauma develop PTSD [27]. Yet, it has become the “dominant construct” of Western psychiatry for diagnosing trauma [21,28–30]. Most studies have been with populations that are middle class, white, and who are not refugees, leading some to deem it pathology entrenched in Western ideas [21]. Some question if PTSD is found in other cultures and time periods [27,30]. Health care providers who work with asylum seeking and asylee populations have developed culturally specific techniques for working with patients from a range of backgrounds [26].

To the benefit of asylum seekers, current training materials for USCIS asylum officers instruct them to consider the “effects of trauma” during an asylum interview [31]. PTSD is briefly addressed in the current USCIS training materials that cite it as a “common condition” in response to trauma. It directs asylum officers to be aware of the seeming contradiction between intrusive memories and the defenses one uses, such as sensory reliving, to deflect them. It emphasizes that those with PTSD are doing more than simply recounting the facts [32]. While these educational modules explain why and how asylum seekers narrate stories of persecution in a particular fashion, asylum seekers are still expected to tell a consistent and highly detailed story. Those who do not are suspected of fabricating their account of the events as immigration officials believe that stories that have fewer details are fictitious [22,33].

1.2. U.S. Circuit Court of Appeals and Asylum Cases

In the United States, migrants seeking relief from harm apply for asylum through two bureaucratic organizations that are the United States Citizenship and Immigration Services (USCIS) and the immigration court of the Executive Office for Immigration Review (EOIR). Prior to 1 March 2003, the asylum office of the Immigration and Naturalization Service (INS) processed asylum applications that have since been carried out by USCIS, which explains the references to the INS in cases that were adjudicated prior to 2003. These two bureaucracies are independent of each other, each with its own set of internal policies, the implementation of which is required only within each agency. However, adjudicators in both the USCIS asylum office and the EOIR immigration courts are required to implement immigration laws created by the U.S. Congress, the Board of Immigration Appeals (BIA), the appellate court for all immigration courts in the United States, U.S. Circuit Court of Appeals, and the Supreme Court of the United States.

The USCIS asylum office receives affirmative asylum applications, which are claims that an asylum seeker initiates before an order or deportation has been issued by the government. Asylum officers adjudicate asylum claims under USCIS. If the asylum officer is unable to reach a decision about a claim, it is referred to immigration court. Asylum claims in immigration court include referred cases from the USCIS asylum office and new claims by migrants in United States Immigration and Customs Enforcement (ICE) detention facilities. Immigration judges adjudicate cases in immigration court. After the judge rules on a case, the applicant or USICE (those representing the government

in appellate court) may appeal the judge’s decision to the BIA. The BIA relies on court transcripts and documentation filed in immigration court (by both USICE and the applicant) when upholding or overruling an immigration judge’s decision. There is no oral testimony from applicants or USICE during BIA adjudication. If an applicant or USICE appeals the BIA’s decision, the case is heard in the U.S. Circuit Court of Appeals where the immigration court that initially ruled on the case is located.

All immigration laws are federal laws, and published federal law cases are precedent cases and, therefore, legally binding. When an immigration case is published by the BIA, it is a legal precedent for the entire country, and when a U.S. Circuit Court of Appeals case is published, it is a legal precedent for that Circuit. When BIA cases are overturned by a U.S. Circuit Court, those cases are only legally binding for those Circuits. This is why many U.S. Circuit of Appeals rulings remand a case to the BIA and request that they rule on it so that the issue will be resolved for the entire country and not only a particular Circuit. The outcome of a Circuit Court decision includes denial (the Circuit Court denies the appeal, and the lower court finding will be legally binding), granted (the Circuit Court grants the appeal), affirmed (the Circuit Court agrees with the lower court’s decision), or remanded (the case is returned to either the BIA or immigration court with instructions on ruling). Some cases include a combination of these four outcomes for particular aspects of the case.

Asylum seekers are routinely denied asylum if they do not file their application within one year of arriving in the United States, as outlined under Section 208(a)(2)(B) of the Immigration and Nationality Act (INA) [34,35]. Exceptions include extraordinary circumstances such as serious abuse and serious illness, including those associated with Post Traumatic Stress Disorder (PTSD). Other reasons for denial include credibility, which includes issues of memory such as recall and the ability to remember dates. Consequently, the legal justification for denying a claim may be for “gender-neutral” reasons, while the outcome disproportionately affects women with gender-based persecution claims [36,37].

There are eleven U.S. Circuit Courts, and they are organized geographically. Consequently, there is regional variation in the decision of the Courts [38–40]. Yet, each Circuit Court draws from federal law that all immigration laws in the U.S. must follow [41]. Immigrant advocacy organizations provide materials to prepare immigration attorneys for the appeals process [42]. Circuit Courts review appeals from all lower courts in the U.S., and so many cases are not about immigration. The backlog of cases at each stage from an immigration court hearing to the BIA to the Circuit Court is growing, and it can take years for a case to make its way through the system [43,44]. Figure 1 shows the geographic boundaries of the U.S. Circuit Courts.

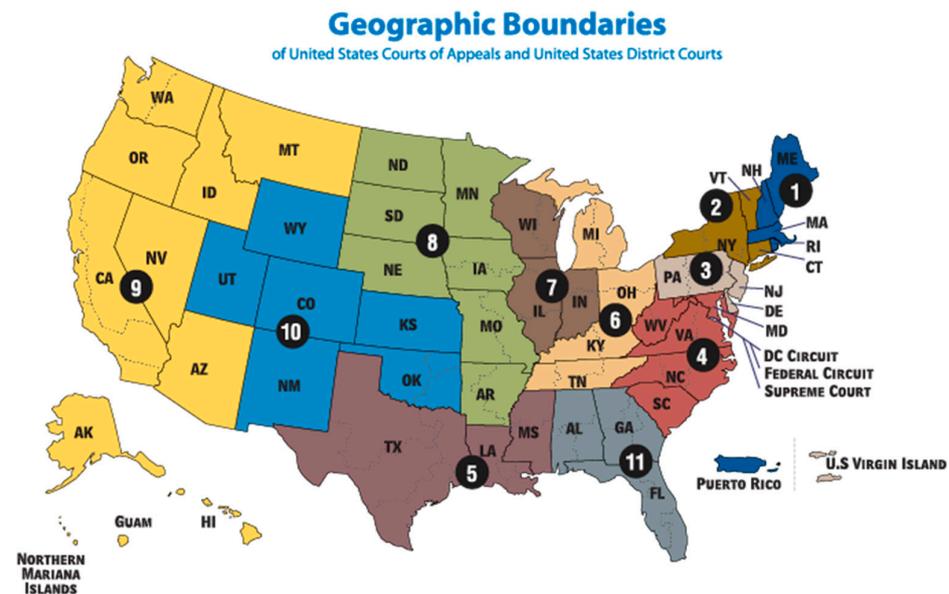


Figure 1. U.S. Circuit Court of Appeals. Source: United States Courts [45].

2. Materials and Methods

2.1. Data Collection

The Nexus Uni database produced results using keywords to identify cases. The keywords “Asylum” and “Board of Immigration Appeals” yield over 10,000 results dating from 1946 to 2023. Using these keywords together eliminates cases about asylum related to mental health facilities rather than immigration. When a third term, “trauma”, is added, the result is 385 cases from 1983 to 2023. This shows that a small percentage (3.85% or less) of asylum cases that use the language of trauma reach the U.S. Circuit Court of Appeals. To identify gender-based persecution cases that use the terminology of trauma, a fourth term was added to produce multiple lists of specific types of gender-based cases. These terms were “Female Genital Mutilation” or “Female Circumcision”, “Coercive Family Planning” or “Forced Sterilization” or “Forced Abortion”, “Rape” or “Sexual Assault”, “Forced Marriage”, “Domestic Violence”, and “Honor Crime” (which resulted in no cases). Some cases were eliminated from the analysis if the content of the case was not directly related to the category. For example, the keyword “forced marriage” includes a case that is not about forced marriage, but instead references other legal cases about forced marriage and country reports, and therefore, was not included in the sample. Using this keyword search method, the sample size was 101 cases.

2.2. Data Analysis

Once a list of cases was generated from the keyword searches, I analyzed all 101 case summaries and coded each case by the various uses of the term trauma. Cases included narrative responses from the U.S. Circuit Court of Appeals, and these narratives were coded using grounded theory, an inductive approach to qualitative analysis [46]. Grounded theory intends to build theory, rather than test it, by providing analytical tools for organizing data [47,48]. This approach is useful for exploratory research such as this study on the topic of how the language of trauma is used in gender-based asylum cases before the U.S. Circuit Court of Appeals.

The result was four categories that were coded accordingly: 1 = Precedent Case; 2 = U.S. Government Policies/Reports or International Reports; 3 = Physical Trauma; and 4 = Psychological Trauma. The first (coded 1) are precedent cases. This includes appeals that mention a precedent case that references trauma. The second (coded 2) are cases that reference U.S. government policies and reports, such as the USCIS Asylum Adjudicator’s Manual and INS Guidelines, or International Reports, such as United Nations Reports. The third (coded 3) are cases that refer to trauma in terms of physical trauma. The fourth (coded 4) are cases that refer to trauma in terms of psychological trauma. Table 1 summarizes the types of gender-based persecution by the four types of trauma codes that were assigned and how often they appear among the cases. The coding method is not mutually exclusive; some cases have two or more codes. Therefore, the total of 112 shown in Table 1 refers to the total number of codes, and the total of 101 shown in Table A1 refers to the total number of cases.

Table A1 categorizes 101 U.S. Circuit Court of Appeals cases that deal with gender-based asylum claims and the language of trauma. Cases are organized by type of harm and U.S. Circuit Court of Appeals. In some instances, there are multiple cases listed for one petitioner (counted as one case for a total of 101); prior and subsequent cases are listed when applicable and chronologically. The final decision and date are included. Among gender-based asylum cases, it is common for claimants to have experienced multiple types of harm. For example, a woman who has experienced domestic violence may also have been sexually assaulted. I have separated cases of combined harm when the substance of the case focused on more than one type of persecution. The most common type of combined harm was rape. The categories of gender-based asylum claims are female genital mutilation (N = 23, including combined cases with forced marriage and rape), domestic violence (N = 4, including combined cases with rape), coercive population control (N = 23,

including combined cases with rape), and rape (N = 51) for a total of 101 cases. Appendix A contains the complete data set used for this study.

Table 1. The table shows the types of gender-based persecution and use of the term trauma.

Type of Harm	Trauma Code 1: Precedent Cases	Trauma Code 2: Policies and Reports	Trauma Code 3: Physical Harm	Trauma Code 4: Psychological Harm	Total
Female genital mutilation (FGM)	16	0	4	6	26
Coercive population control (CPC)	8	1	6	12	27
Rape	6	2	7	39	54
Domestic violence	0	0	2	3	5
Total	30	3	19	60	112

3. Results

The results are organized by how the U.S. Circuit Court of Appeals used the language of trauma: precedent cases, policies and reports, physical trauma, and psychological trauma. Because the data set is large, there is no space to attend fully to the narrative nuances of all cases. Instead, I give a brief overview of some cases and go more in-depth with fewer cases that demonstrate the themes of how trauma is used in U.S. Circuit Courts.

3.1. Precedent Cases

Precedent cases are important because they provide consistency both within and across the Courts when legal logic is applied to different cases with the same facts. For FGM claims, two key precedent cases—*Matter of Kasinga* (BIA) and *Mohammed v. Gonzales* (Ninth Circuit)—use the language of trauma. For CPC claims, *Qili Qu v. Gonzales* (Ninth Circuit) was the most cited case that uses the language of trauma. The rape claims in this study reference several precedent cases, and there is no unified definition of trauma among them. There are no references to precedent cases for domestic violence for the cases in this study.

In 1996, the BIA granted Fauziya Kassindja asylum based on her fear of being subjected to the practice of FGM [49]. Her case, *Matter of Kasinga*, set a precedent for FGM being a form of persecution [50]. It established the legal basis for extending protection to any immigrant woman claiming asylum for herself based on a fear of FGM (future persecution), the occurrence of FGM (past persecution), or the fear that her daughters would experience FGM in the future. The description of FGM outlined in *Matter of Kasinga* stated that

FGM is extremely painful and at least temporarily incapacitating. It permanently disfigures the female genitalia. FGM exposes the girl or woman to the risk of serious, potentially life-threatening complications. These include, among others, bleeding, infection, urine retention, stress, shock, psychological trauma, and damage to the urethra and anus. It can result in permanent loss of genital sensation and can adversely affect sexual and erotic functions [50].

It is this description of “psychological trauma” that contains the only use of the term trauma in the precedent case, even though the BIA mostly listed physical, not psychological, repercussions from the practice.

All but one of the sixteen FGM cases that use the term trauma when quoting the precedent case *Matter of Kasinga* do so by referring to the precedent case only and not in the context of the case that was under appeal. Only one case in this study referenced the trauma of the applicant as well as the precedent case [51]. As this case also addresses physical harm, I discuss it in the section on physical trauma. Several cases upheld the legal reasoning that FGM could not be repeated, making it impossible to argue that women should not be returned to a country that would harm them as the persecution was in the past. The

belief that FGM is a discrete rather than continuous act was raised in the case *Mohammed v. Gonzales* when the Court determined that FGM is a “permanent and continuing act of persecution” drawing from the language of a forced sterilization case that the same Circuit Court decided just two days prior [52,53]. In this case, Khadija Ahmed Mohamed described how she had fled Somalia as a young child during the civil war after her father and brother disappeared and her sister was raped. Her physician’s report stated that the “patient recalls having clitoris cut off with scissors at young age”, and is “absent” a “clitoris” and a “prepuce”, which resulted in the lower court denying the case as Mohamed had already been subject to FGM [52]. Mohamed argued that since Somalia practices infibulation, which is the more extreme form of FGM as defined by the World Health Organization, she could be further mutilated if returned [54].

The Court reiterated the language of psychological trauma that the BIA used in the *Matter of Kasinga* and added physical trauma to the legal interpretation of FGM claims:

Many women subjected to genital mutilation suffer psychological trauma. In addition, it “can result in permanent loss of genital sensation and can adversely affect sexual and erotic functions.” Thus, “in addition to the physical and psychological trauma that is common to many forms of persecution [female genital mutilation] involves drastic and emotionally painful consequences that are unending” [52].

In *Mohammed v. Gonzales*, the Court moved past the sole reference to trauma as “psychological” from the *Kasinga* case and expanded the boundary of what might be considered trauma by including the language of “physical trauma” that the same Court had established in the case *Qili Qu v. Gonzales*, which I discuss next.

For CPC claims, *Qili Qu v. Gonzales* was the precedent case most cited in the U.S. Circuit Court of Appeals claims that referenced trauma regarding forced sterilizations and abortions [53]. In 1996, the U.S. Congress passed the Illegal Immigration Reform and Responsibility Act (IIRRA). While IIRRA overwhelmingly made immigration to the U.S. more restrictive, it provided an opening for migrants from China fleeing coercive population control measures such as forced abortions and forced sterilizations. The Act defined political opinion as the ground on which the persecution was linked. Soon after, several immigration cases made their way to the BIA, challenging how the IIRRA was being implemented [55–57].

Six of the eight CPC cases reference the term trauma in the context of the precedent case *Qili Qu v. Gonzales*, including the case itself. Qu and his wife were denied a birth permit because of their political affiliation with an organization that was a Christian group that supported pre-communist government policies. They defied the Chinese government by having a child without permission, for which their punishment was to have Qu’s wife forcibly sterilized. The Court found that Qu was eligible for asylum based solely on his wife’s persecution (he was not sterilized). Drawing from the logic of a BIA decision, the Ninth Circuit found that

In addition to the physical and psychological trauma that is common to many forms of persecution, sterilization involves drastic and emotionally painful consequences that are unending: The couple is forever denied a procreative life together [53].

The Court expanded this logic to forced abortion and stated the following about psychological trauma in a footnote: “Forced abortion, as a form of persecution, possesses similar unusual characteristics. Again the pain, psychological trauma, and shame are combined with the irremediable and ongoing suffering of being permanently denied the existence of a son or daughter” [53]. Here, the Court applied its notion of permanency of how forced abortion is persecution borrowed from the *Qili Qu v. Gonzales* case that dealt with sterilization.

The legal win for advocates of petitioners with gender-based asylum claims is that the harm of FGM and CPC is considered both past and future persecution. The significance of the Court’s decisions in *Mohammed v. Gonzales* and *Qili Qu v. Gonzales* regarding the use of the term trauma is that it also expanded legal understandings of trauma to include physical

and psychological trauma. Unlike FGM and CPC cases that tend to coalesce around one or two precedent cases, none of the cases that use the language of trauma for rape claims when referencing a precedent case cite the same case. Of the six rape cases that reference precedent cases, the themes across these cases as related to trauma are memory, family member's trauma, and war-time trauma. Only one case references a case that substantively deals with both rape and trauma [58]. Two cases reference precedent cases that use the language of trauma in the context of a family member's persecution [59,60]. Three of these six cases are discussed in the subsection on psychological trauma.

3.2. Policies and Reports

Only three cases use the language of trauma when referencing government policies and reports: one CPC claim and two rape claims. Policies and reports discuss trauma in the context of sensitivity to asylum seekers as survivors of trauma, the effects of trauma that may cause memory lapse, and how sexual violence causes psychological trauma.

In *Ming Dai v. Sessions*, the petitioner, Dai, testified that he was arrested, beaten, and deprived of food, water, and medical care after he tried to stop family planning officials from forcing his wife to have an abortion as they had violated the one child policy and attempted to have a second child. In his interview with the asylum officer, Dai stated that he came to the U.S. so that his daughter could attend school and gave testimony concerning travel that was unrelated to fleeing China due to being persecuted by state officials. The immigration judge and BIA denied his claim due to credibility, but the Circuit Court remanded it based on the persecution he experienced in China. In his dissent, a Circuit Court Judge cited the United States Citizen and Immigration Service (USCIS) Asylum Adjudicator's Manual section on "Points to Keep in Mind When Conducting a Non-Adversarial Interview" that stated:

If the interviewee is a survivor of severe trauma (such as a battered spouse), he or she may feel especially threatened during the interview. As it is not always easy to determine who is a survivor, officers should be sensitive to the fact that every interviewee is potentially a survivor of trauma [61].

The dissenting judge cited this policy because he disagreed with the Court's majority opinion and sought to emphasize that asylum officers are trained to work with trauma survivors and, therefore, would have been sensitive to Dai's testimony. Moreover, as it may not be possible to ascertain who is a survivor of severe trauma, asylum officers are instructed to treat all applicants as potentially having experienced severe trauma.

In *Fiadjoe v. AG*, the petitioner had been held as a slave by her father, during which time she was physically and sexually abused. A psychologist submitted a report about the effects of trauma relating to Fiadjoe:

Ms. Fiadjoe has been complicated by the long history of multiple traumas and the underlying fear of being returned home. As with many incest survivors, she has learned to endure trauma by dissociating, emotionally removing herself from her surroundings until the pain has subsided [62].

The case also cited the 1995 Immigration and Naturalization Service (INS) Gender Guidelines that explain how "trauma caused by sexual abuse may influence ability to present testimony" [63]. These guidelines stated the following:

Women who have been subject to domestic or sexual abuse may be psychologically traumatized. Trauma can be suffered by any applicant, regardless, of gender, and may have a significant impact on the ability to present testimony. The demeanor of traumatized applicants can vary. They may appear numb or show emotional passivity when recounting past events of mistreatment. Some applicants may give matter-of-fact recitations of serious instances of mistreatment. Trauma may also cause memory loss or distortion, and may cause other applicants to block certain experiences from their minds in order not to relive their horror by the retelling. [62,63]

The intention of the INS Guidelines was to help asylum officers understand how trauma can explain behaviors that may make asylum seekers seem noncredible. The guidelines help adjudicators recognize how traumatized asylum seekers behave during interviews with government officials, particularly those who have been subjected to gender-based violence. It also alerts asylum officers to some of the behaviors of trauma survivors related to memory recall and affect that are routinely interpreted as a negative credibility finding.

In *Kaur v. Wilkinson*, Chanpreet Kaur testified about a physical assault and attempted gang rape due to her political activities in India, after which she and her family were threatened by the assailants [64]. The Court cited the United Nations High Commissioner for Refugees (UNHCR) Handbook for the Protection of Women and Girls that stated that “sexual and gender-based violence” of all forms leads to “emotional and psychological trauma” [65]. The Court admonished the BIA for not considering attempted rape persecution.

Because attempted rape is a form of sexual assault, and sexual assault is a form of persecution, attempted rape also constitutes a form of persecution. The BIA committed legal error by requiring Kaur to produce additional evidence of ongoing trauma or psychological treatment to establish a claim to past persecution on account of attempted rape [64].

In this case, the Court ruled that once persecution has been established based on sexual assault, there is no need to demonstrate ongoing trauma as the attempted assault itself constitutes ongoing trauma. This logic provides an opening for understanding the sustained effects of emotional harm sexual assault survivors face. Yet, it also implies that once assaulted, always traumatized.

Government policies and reports provide an alternative legal means of defining trauma rather than precedent cases. These policies and reports provide guidance for asylum officers on how to conduct interviews with trauma survivors and caution adjudicators about how trauma affects memory and the ability to recall instances of harm. The Court’s use of the UNHCR guidelines came the closest to defining trauma as it relates to rape. In its reprimand of the BIA for not considering attempted rape persecution, the Court argued that the petitioner did not need to prove “ongoing trauma” as the attempted sexual assault was itself not only persecution but also traumatic.

3.3. Physical Trauma

Two themes emerge of how the Courts referenced physical trauma. These are how gender-based harm is physically traumatic for the petitioner and instances when family members experience physical trauma. I discuss three cases of how gender-based harm constitutes physical trauma in more detail and briefly highlight three cases of a family member of the petitioner experiencing physical trauma. Some cases include both physical and psychological trauma, and those are noted as they are discussed in this section and the next one on psychological trauma.

In *Mame Fatou Niang v. Gonzales*, the petitioner, Mame Fatou Niang, sought asylum from Senegal based on her own experiences with FGM (past persecution) and fear that her U.S. citizen daughter would be subjected to the practice (future persecution) by members of the Toucouleur ethnic group that Niang is a member of and that practices it at an “alarmingly high rate” [51]. Niang recounted her own genital cutting as physically traumatic and argued that she would experience psychological harm if her U.S. citizen daughter were forced to undergo FGM. The following is how she described her past physical trauma:

Niang also asserted that her psychological development was “considerably hampered”, by the physical trauma that she experienced as a young girl. She stated that “[t]he pains that I went through and the blood that was shed on [the day she was mutilated] keeps on revisiting me up until today” [51].

In this example, the petitioner’s retelling of her own experience focused on how physical trauma affected her psychological development.

The second part of her claim dealt with the fear that her husband's family would insist on their daughter being subjected to FGM if Niang were returned to Senegal. While the Court criticized the practice of FGM, it ruled that a derivative claim cannot stand on the potential of psychological harm alone.

It is important to note that FGM—a barbaric practice unbecoming of a civilized society—is prohibited by law in this and many other countries, including Senegal. . .

Thus, to establish a claim for withholding an applicant cannot rely solely on psychological harm or a threat of such harm to others, but must also establish injury or a threat of injury to the applicant's person or freedom . . . In sum then, because "persecution" cannot be based on a fear of psychological harm alone, Niang's withholding claim fails as a matter of law because it focuses solely on the psychological harm she claims she will suffer if her daughter accompanies her to Senegal and is there subjected to FGM [51].

The Court's insistence that psychological harm must also accompany physical injury demonstrates how the physical aspects of persecution are more germane to a case than psychological. Yet, the Court failed to rule that Niang's genital cutting was sufficient as past persecution as other Circuit Courts have done, particularly in the case *Mohammed v. Gonzales* discussed earlier.

A second case that uses the language of trauma regarding gender-based harm as physical trauma is *Chen v. Ashcroft*. The petitioner, Chen, and his wife, Ni, married and soon after had a daughter. One month later, family planning officials took Ni and forcibly inserted an IUD to prevent future pregnancies. A year later, Ni discovered she was pregnant, and when she missed a routine examination for the IUD, government officials learned that she was pregnant, forcibly aborted the fetus, and inserted a new IUD immediately after the abortion procedure. Two years later, Chen and his wife contacted a private physician who removed the IUD. Soon after, Ni was pregnant, and family planning officials again took her for a second forced abortion and inserted an IUD immediately afterward. The next year, Ni became pregnant and gave birth to a son. After the birth of their son, Ni was forcibly sterilized.

In this case, Chen sought asylum based on the forced abortions and sterilization his wife had experienced at the hands of the Chinese government. The Court reiterated the immigration judge's finding that Chen was not credible and referred to the "physical trauma" of a forced abortion.

In reaching his conclusions, the IJ found that Chen's testimony lacked credibility in several respects. First, the IJ explained that he found Chen's testimony that on two occasions his wife had an IUD inserted on the same day she had an abortion as "not only incredible but also implausible." The IJ reasoned that "due to the physical trauma of an abortion, the Court finds that it is unlikely and most likely physically impossible to insert an IUD in an individual who has earlier that day suffered an abortion" [66].

In this case, the Court found the petitioner to be noncredible given the traumatic physical experience of forced abortion and what is reasonable regarding other procedures such as inserting an IUD immediately afterward. Here, the immigration judge, not Chen, uses the language of physical trauma to describe a forced abortion.

A third case that illustrates how the Court uses the language of physical trauma to describe gender-based harm is *De Pena-Paniagua v. Barr*, a domestic violence case of a petitioner from the Dominican Republic. The petitioner, Jacelys Miguelina De Pena-Paniagua (De Pena), fled from her abusive husband who raped her multiple times and "threw [her] against the wall" during her pregnancy [67]. After their son was born, De Pena's husband threatened to kill her and "pulled her hair and tried to strangle her. De Pena fell down with the baby in her arms, and her C-section scar opened. De Pena's neighbors took her to the hospital" [67]. De Pena reported the incident to the police and testified that they did not protect her. De Pena lived with her abusive husband for several years until after one incident when he tried to kill her. Neighbors took De Pena to the

hospital, and De Pena submitted medical records as part of her application. The Court noted that

Medical records from the hospital visit indicated that she had “bruised trauma of the face, chest, and right arm.” De Pena reported this attack to the local police, who labeled the incident, “Death Threat & Attempted Homicide.” Arias [De Pena’s husband] was not arrested [67].

The medical record’s use of trauma that characterizes the physical harm De Pena experienced is the only use of the term trauma in this case. The immigration judge found that she had not experienced persecution because she did not detail all her abusive interactions with her husband, including the multiple rapes. The Court summarized the immigration judge’s findings:

The IJ ruled against De Pena for several reasons. First, after noting that “[p]ersecution is an extreme concept requiring more than a few isolated incidents of verbal harassment or intimidation”, the IJ stated that De Pena “has only testified to two isolated incidents” of abuse, describing the incidents as “being pushed up against a wall and . . . having been supposedly choked.” In so stating, the IJ made no mention of De Pena’s claim to have been repeatedly raped prior to 2006 [67].

The Court remanded the case to the BIA and found that the harm experienced by De Pena was indeed persecution.

The following examples are from petitioners who experienced physical trauma but did not themselves have a gender-based asylum claim. Instead, they were family members of someone who experienced gender-based harm. In *Lian v. Holder*, Lian’s wife was taken by family planning officials for a forced abortion and to have an intrauterine device (IUD) inserted. Lian testified that the officials “pushed him and caused him to hit his head”, resulting in “head trauma” [68]. The Court agreed with the BIA that “this physical mistreatment did not constitute past persecution, as Lian was not detained at the time and did not establish that he suffered any significant harm as a result”, and instead Lian’s experience was merely “physical mistreatment” [68]. With respect to the head trauma, the Court did not accept the harm Lian described as persecution as Lian:

did not present any medical evidence of a head injury, the hearing transcript did not indicate any cognitive impairment, and neither Lian nor his counsel mentioned any cognitive problems resulting from a head injury at the merits hearing [68].

The Court’s ruling shows that testimony of physical trauma must be accompanied by medical evidence of sustained cognitive effects to be considered persecution.

In *Lleshi v. Holder*, Antoneta and Pjeter Lleshi, a married couple from Albania, were politically active in anti-communist organizations. Antoneta was raped, and Pjeter was arrested and severely beaten by the police. On one occasion, the secret police hit Pjeter with a metal rod to the back of his head. Consequently, Pjeter was temporarily comatose and suffered memory problems from his “head trauma” [69]. The immigration judge denied their claim, in part, arguing that there was no nexus for the rape, even though the Lleshi were persecuted because of their political opinions.

In *Marouf v. Lynch*, petitioners Nancy and Saed Marouf were stateless Christian Palestinians who argued that they were persecuted because of their religion on several occasions. There were separate incidents of attacks when Muslim men attempted to rape Nancy and broke Saed’s nose, for which Saed underwent surgery. They provided medical records that indicated that Saed continued to suffer from a “deviated septum and nasal obstruction”, and the report stated that “trauma is one of the most common causes of a deviated septum” [70]. This evidence notwithstanding, the immigration judge denied their claim and believed their story to be fabricated; the Circuit Court disagreed and remanded the case to the lower court.

The examples provided show how the Courts use the language of trauma and the variation in how they interpret physical trauma as a justification for granting asylum. In

Mame Fatou Niang v. Gonzales, the Court expected a narrative of physical injury that was not based on psychological harm alone when considering Niang's fear of her daughter being subjected to FGM, even though the petitioner described the "physical trauma" of her own experience of FGM. In *Chen v. Ashcroft*, the Court accepted that forced abortion was physically traumatic, so much so that it found it "physically impossible" for family planning officials to insert an IUD after having one, making the petitioner appear as noncredible. In *Marouf v. Lynch*, the lower court also found the petitioners noncredible even though they provided evidence of physical trauma. In *De Pena-Paniagua v. Barr* and *Lian v. Holder*, the lower Courts rejected the evidence that the physical trauma the petitioners had experienced was persecution, with it instead being deemed "isolated instances of verbal harassment" and "physical mistreatment", respectively. Additionally, in *Lleshi v. Holder*, the Court denied the claim even though the petitioner had experienced physical trauma. These examples demonstrate how, even in the face of medical evidence, the Courts do not always consider the physical trauma of both petitioners and the persecution of their family members.

3.4. Psychological Trauma

Of the four ways that trauma is discussed in Circuit Court cases of gender-based harm, psychological trauma was referenced the most. Several cases detailed how the harm itself and its effects were inherently traumatic and caused psychological trauma for the petitioner. Like physical trauma, some cases emphasize the psychological trauma that family members experienced because of a spouse and parent who had endured gender-based harm. I briefly discuss three cases where the petitioner argued they experienced psychological trauma because of a family member's persecution and give a more in-depth review of four cases where the petitioner had experienced psychological trauma themselves.

In *Qin Liu v. United States AG*, Liu and his wife were married in a traditional ceremony that was not legally recognized by the Chinese government, although they were later legally married. His wife was subjected to forced abortion and sterilization, and he evaded officials who sought to sterilize him as well. On appeal, which the Court denied, Liu argued that "his wife's forced abortion and sterilization resulted in his emotional trauma and psychological persecution" [71].

In *Rusak v. Holder*, the petitioner testified that her family is part of a religious minority in Belarus, Seventh Day Adventists. Consequently, her parents were targeted because of their religion. Her mother was arrested, beaten, and raped by the police, and her father died from a heart attack after a beating by the police when she was eleven years old. Rusak was harassed because of her religious affiliation and because she is deaf and claimed that this disability made her vulnerable to widespread hostility. The Court found that while Rusak had been "treated badly", her experiences did not rise to the level of persecution [59]. The Court overturned the BIA's reasoning that the parent's persecution did not provide a legal basis for Rusak's claim and quoted a separate case about children that stated that "a child's reaction to injuries to his family is different from an adult's. The child is part of the family, the wound to the family is personal, the trauma apt to be lasting" [59,72].

In *Katyal v. Gonzales*, the petitioner and her parents were arrested by the police in India. Katyal's father was beaten severely twice, which on one occasion resulted in a two-week hospitalization. The police raped her mother and harassed Katyal, threatening her with rape as well. The Court referenced a case to support the position that the fear of persecution can be traumatic even if more severe harm came to other family members when it stated that "emotional and psychological trauma, as well as harm to family members, can rise to the level of persecution" [60].

The most common references to psychological trauma were linked to the petitioner's credibility concerning memory recall and demeanor caused by psychological trauma. I discuss four of these cases in more detail below. It is common for medical experts to testify in immigration court and submit medical affidavits that document asylum seekers' physical and psychological health. Of the cases examined in this study, there were more of these for

petitioners with a rape claim than any other type of harm. In several cases, the petitioner was diagnosed with PTSD [73–82]. In addition to a PTSD diagnosis, medical professionals routinely documented trauma as a reason why applicants did not file within the one-year deadline and omitted rape and sexual assault in the application materials, as well as the inconsistencies in their testimony.

In *Angoucheva v. INS*, Natasha Angoucheva testified that she left Bulgaria after being sexually assaulted in an attempted rape incident by a state security officer who was questioning her about her political activities in the United Macedonia Organization. Her social worker, Heidi Kon, described their sessions and concluded that

Angoucheva was suffering from post-traumatic stress disorder and that she was moving from the denial to the reorganization stage of rape trauma syndrome. Kon also related what Angoucheva had told her of the assault and described the recurrent recollections and flashbacks, as well as nightmares, that Angoucheva still experiences. Kon indicated that the smell of cigarette smoke, which reminds Angoucheva of Major Beltchev, can cause a flashback, and that Angoucheva will then experience the same numbness in her hands and feet that she experienced in the days following the assault. Angoucheva had related to Kon a particular incident that occurred at a shopping mall in this country—Angoucheva saw a man in the mall who resembled Major Beltchev, and she fled from the mall, became nauseous and disoriented, and was unable to find her car in the parking lot. Kon testified that “it would be nearly impossible [for someone] to fake the symptoms which [Angoucheva] has described, in the manner in which she seems to describe them, with emotion and detail.” Given the severity of the trauma from which Angoucheva still suffers, Kon opined that it would be “extraordinarily detrimental” to force her to return to Bulgaria—the place where the assault occurred [80].

The social worker’s statement supported the ways that Angoucheva continued to experience psychological trauma from the assault. This accounting of how the petitioner continues to live with trauma supports Angoucheva as a credible witness, as Kon emphasizes the impossibility of simulating trauma-related symptoms.

A second case that deals with psychological trauma and rape is *Munyu v. Barr*. The petitioner, Mirabel Munyu, is a Cameroonian national who was arrested along with a friend who was suspected of participating in an anglophone separatist group. She was beaten and taken into custody. Several hours later, she and several other detainees were taken by truck to a prison facility. On their way to the prison, the guards removed several women from the truck, including Munyu, and assaulted them; the petitioner was raped by two different men. Munyu was able to escape and traveled by foot until the next morning, when she called her husband from a nearby town. During her testimony, the immigration judge found Munyu not to be credible because of the discrepancy between Munyu’s declaration and oral testimony about the distance a police truck had traveled before it broke down and she was able to escape from the officers who had had “brutally attacked, beaten multiple times, [and] raped [the petitioner] within a span of less than about 24 h” [83] Her counsel argued that

It is reasonable and plausible that the trauma caused by multiple physical and sexual assaults would impair Ms. Munyu’s focus at the time on peripheral matters and therefore on her memory of those matters [and that] considering the harm and trauma that [she] suffered, it would be highly unlikely that [she] would remember precisely everything that happened to her” [83].

In this example, the petitioner’s attorney argues that trauma from the sexual assaults caused partial memory of the rape that led to inconsistent testimony.

Longwe v. Keisler also reveals assumptions regarding trauma and memory. Brenda Longwe, a citizen of Malawi, was targeted by United Democratic Front (UDF) members because of her fiancé’s political activities. While Longwe was not part of the organizations like her fiancé, she qualified for asylum based on her imputed political opinion. She

testified that UDF members physically harmed her, including being raped. The Circuit Court remanded the case and admonished the lower courts because:

the fact that Longwe failed to provide a specific date for her alleged rape did not undermine her credibility. Although the record reflects that Longwe's testimony regarding her alleged rape was minimal, there was nothing in the record to support the IJ's [immigration judge] speculation that "one normally doesn't forget" the date of such a "traumatic event" [58].

Here, the Court criticizes the lower court's ruling and creates an opening for understanding rape survivors' ability to recall traumatic events.

In another case, the language of trauma is used to reveal a judge's assumptions about memory when the petitioner seemingly has completely forgotten how many times she was assaulted. Petitioners Minya Zeru, along with her husband, sought asylum from Eritrea based on the persecution they faced from their political activities in a group that advocated Eritrean independence. In *Zeru v. Gonzales*, Zeru testified that she was arrested, detained for six months, beaten, and raped several times. The immigration judge "pointed out that Zeru claimed on different occasions to have been raped once, twice, or three times" [75] Even though the psychological report indicated that "what can sometimes happen with trauma patients is that they may dissociate" and that their memories "may be repressed" the judge responded with "it would not be unusual for a victim of trauma to confuse dates or sequences of events, but it would be very unusual . . . to simply forget that an event occurred" [75].

Here, the immigration judge assumes that trauma is never completely erased from one's memory. Yet, the medical community often argues that, in fact, it is quite common to have no memory or partial memory of the event itself.

These cases provide insight into how the Courts use the language of psychological trauma when adjudicating cases. In *Qin Liu v. United States AG*, the petitioner argued that his wife's forced abortion and sterilization caused him psychological trauma, which the Court rejected even though the precedent case, *Qili Qu v. Gonzales*, determined forced abortions and sterilization to be "emotionally painful consequences that are unending" as [t]he couple is forever denied a procreative life together." In this case, the Court did not accept the psychological trauma of the petitioner based on his wife's persecution. In *Rusak v. Holder* and *Katyal v. Gonzales*, the Courts embraced the argument that the petitioner's psychological trauma based on the harm of a family member was indeed persecution. Both cases were from petitioners of parents who had been targeted and where the mothers had been raped. The Courts justified their decision based on how children experience a family member's persecution, even if they are not physically harmed themselves.

The four cases that deal with the psychological trauma of the petitioner show how the Courts use and respond to the language of trauma regarding demeanor and memory recall for rape survivors. In *Angoucheva v. INS*, the social worker's testimony emphasized that the petitioner's symptoms were genuine because the severity of the trauma made it impossible to fake. The other three cases, *Munyah v. Barr*, *Longwe v. Keisler*, and *Zeru v. Gonzales*, show how the Courts interpreted trauma to argue that it was either reasonable that rape survivors forget details of their assault or even the incident altogether or that it was preposterous that one would not remember such a devastating act that caused profound psychological trauma for the petitioner.

4. Discussion

This exploratory study seeks to offer insight into how the U.S. Circuit Court of Appeals uses the language of trauma when reviewing gender-based asylum cases. The results section focussed on the four ways the Courts use the language of trauma, which are precedent cases, policies and reports, physical trauma, and psychological trauma. In the discussion, I draw out the implications from the results. First, the dearth of cases is astonishing. There were only 385 asylum cases that used the language of trauma in a forty-year span—from the first case in 1983 through to 2023. The number of cases for gender-based asylum claims was 101, reducing the total by nearly a quarter. Why is this

shocking? A central theme in the literature on asylum seekers is that this population has been traumatized [84,85]. This includes trauma as a motivating factor for migrating, trauma throughout the migration process, trauma in resettlement in their new country, and the ways in which the process of seeking asylum is itself traumatic [86–88]. If trauma is the sine qua non of the asylum-seeking experience, it seems likely that it would be part of the legal record of their stories. Yet, its near absence is deafening.

I address two potential reasons for this omission. It is possible that the language of trauma is remarkably more integrated into the various facets of the legal system at the lower levels of adjudication, which includes asylum officers and immigration judges, and that those cases have a higher approval rate. If the cases that use the language of trauma are less likely to be appealed, then it makes sense that fewer of them would make their way to the U.S. Circuit Court of Appeals. A more likely answer is that the concern of judges and other immigration officials who adjudicate asylum claims is to decide whether the applicant has been persecuted rather than traumatized. Asylum law in the U.S. and across the globe uses the legal standard of persecution, not trauma, to determine the outcome of a case. As demonstrated in the cases discussed here, several Circuit Courts use the language of trauma and persecution nearly interchangeably. Yet, it is persecution, not trauma, that they must find the petitioner to have experienced or fear that they will experience to be eligible for asylum.

This study shows four ways that the Courts use the language of trauma in gender-based asylum cases. The first two, precedent cases and policies and reports, are few in number. With only two precedent cases for FGM claims, *Matter of Kasinga* and *Mohammed v. Gonzales*, and only one for CPC claims, *Qili Qu v. Gonzales*, the logic of how these types of harm cause trauma is limited to a small number of cases. The advantage for some petitioners is that precedent cases provide an opening for understanding how gender-based harm is traumatic. Yet, the overwhelming reliance on the use of trauma in the precedent case rather than the case at hand shows that the heavy lifting of how trauma is understood is tethered to the precedent case rather than the petitioner's own harm. The number of precedent cases that referenced trauma for rape claims was higher, yet none had defined language in the same way that FGM and CPC cases did to establish what exactly is traumatic about the harm itself. There were none for domestic violence claims, showing how the language of trauma has not yet made its way into these types of claims. There were even fewer examples of cases of government reports and policies that referenced the language of trauma; the ones that did were dated.

The examples of how the Court references physical and psychological trauma for gender-based asylum cases show the following. First, physical trauma alone was not sufficient for claiming persecution. This was true even when the petitioner offered medical evidence of physical trauma. In some cases, the Court deemed the petitioner noncredible, not because the harm was not traumatic, but because of its assumptions of what is reasonable once one has experienced trauma, such as having an IUD inserted after a forced abortion. In several cases, the Court reasoned that instances of harm that were traumatic did not meet the legal standard of persecution. Traumatic memory was a common reason why petitioners who were sexually assaulted were not seen as credible. Rape survivors routinely could not give detailed testimony about the circumstances of their assault. Many immigration judges ruled on their understanding of how trauma impacts memory, from those who acknowledged memory lapses as expected to those who were in disbelief that something so traumatic as rape could be wiped from one's mind.

As the first study of how the U.S. Circuit of Appeals uses the language of trauma in gender-based asylum cases, this work seeks to contribute to the literature on legal interpretations of trauma [8]. Future endeavors may include how trauma informs adjudicators' decisions at the lower levels, such as those by asylum officers and immigration judges, the variation among the U.S. Circuit Courts and how each Court uses the language of trauma, or how the U.S. Supreme Court incorporates trauma into its decision-making for cases that make their way to the highest court in the United States. Hopefully, this study is the first

of many that seeks to identify the legal understanding of trauma and its consequences for asylum seekers fleeing gender-based persecution in cases under review by the U.S. Circuit Court of Appeals.

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Appendix A

Table A1. The table shows gender based persecution cases in the U.S. Circuit Court of Appeals. Total cases (N = 101).

Type of Gender-Based Persecution	Trauma Coding
Female genital mutilation, Total (N = 23)	
Female genital mutilation, only (N = 16)	
Abankwah v. INS, 185 F.3d 18 Abankwah v. Lynch, 632 Fed. Appx. 670 Persecution: Fear of Future Decision: Denied, 2015 Circuit Court: 2	1
Bah v. Mukasey, 529 F.3d 99 Bah v. Mukasey, 281 Fed. Appx. 26 Persecution: Past Decision: Denied (non-FGM claim) and Granted (FGM claim), 2008 Circuit Court: 2	1
Moshud v. Blackman, 68 Fed. Appx. 328 Persecution: Fear of Future Decision: Reversed Denial and Remanded 2003 Circuit Court: 3	1
Mazzi v. Lynch, 662 Fed. Appx. 227 Persecution: Fear of Future Decision: Remanded, 2016 Circuit Court: 4	1
Abay v. Ashcroft, 368 F.3d 634 Persecution: Fear of Future (daughter) Decision: Reversed Denial and Remanded, 2004 Circuit Court: 6	1
Olowo v. Ashcroft, 368 F.3d 692 Persecution: Fear of Future (daughters) Decision: Denied, 2004 Circuit Court: 7	1
Nwaokolo v. INS, 314 F.3d 303 Persecution: Fear of Future (petitioner and daughters, one a U.S. Citizen) Decision: Motion to Stay Granted, 2002 Circuit Court: 7	1

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Female genital mutilation, Total (N = 23)	
Female genital mutilation, only (N = 16)	
Abebe v. Ashcroft, 379 F.3d 755 Abebe v. Gonzales, 400 F.3d 690 Abebe v. Gonzales, 432 F.3d 1037 Persecution: Fear of Future (daughter) Decision: Remanded, 2005 Circuit Court: 9	1
Mohammed v. Gonzales, 400 F.3d 785 Persecution: Past Decision: Granted and Remanded, 2005 Circuit Court: 9	1
Niang v. Gonzales, 422 F.3d 1187 Persecution: Past Decision: Reversed Denial and Remanded, 2005 Circuit Court: 10	1
Seck v. United States AG, 663 F.3d 1356 Seck v. United States AG, 816 Fed. Appx. 315 Persecution: Fear of Future (daughter, U.S. Citizen) Decision: Denied, 2020 Circuit Court: 11	1
Jalloh v. Lynch, 662 Fed. Appx. 97 Persecution: Fear of Future (daughters) Decision: Denied, 2016 Circuit Court: 2	3
Kone v. Holder, 620 F.3d 760 Persecution: Fear of Future (daughter) Decision: Vacated BIA decision, Remanded, 2010 Circuit Court: 7	4
Kipkemboi v. Gonzales, 211 Fed. Appx. 530 Kipkemboi v. Holder, 587 F.3d 885 Persecution: Fear of Future (self and daughter) Decision: Affirmed BIA decision, 2009 Circuit Court: 8	4
Azanor v. Ashcroft, 364 F.3d 1013 Azanor v. INS, 1999 U.S. App. LEXIS 12789 Persecution: Fear of Future (daughter, U.S. citizen) Decision: Denied Asylum, Granted CAT, 2004 Circuit Court: 9	4
Mame Fatou Niang v. Gonzales, 492 F.3d 505 Persecution: Fear of Future (daughter) Decision: Affirmed Denial, 2007 Circuit Court: 4	1, 3, 4
Female genital mutilation and rape (N = 4)	
Diallo v. Mukasey, 2007 U.S. App. LEXIS 29641 Diallo v. Mukasey, 268 Fed. Appx. 373 Persecution: Past Decision: Affirmed BIA, 2008 Circuit Court: 6	1

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Female genital mutilation and rape (N = 4)	
Bah v. Gonzalez, 230 Fed. Appx. 547 Persecution: Past Decision: Denied, 2007 Circuit Court: 6	1
Sene v. United States AG, 679 Fed. Appx. 463 Bijou Sene v. Sessions, 2017 U.S. App. LEXIS 11614 Persecution: Fear of Future (daughter) Decision: Denied, 2017 Circuit Court: 6	4
Sene v. Gonzales, 168 Fed. Appx. 61 Sene v. Gonzales, 180 Fed. Appx. 551 Mame Mbengue Sene v. Gonzales, 453 F.3d 383 Persecution: Past Decision: Denied, 2006 Circuit Court: 6	3, 4
Female genital mutilation and forced marriage (N = 3)	
Haoua v. Gonzales, 472 F.3d 227 Persecution: Fear of Future Decision: Remanded to BIA, 2007 Circuit Court: 4	1
Gomis v. Holder, 571 F.3d 353 Persecution: Fear of Future Decision: Denied, 2009 Circuit Court: 4	1
Manani v. Filip, 552 F.3d 894 Persecution: Fear of Future (daughters) Decision: Denied, 2009 Circuit Court: 11	3
Coercive population control; total (N = 23)	
Coercive population control; only (N = 21)	
Shi Liang Lin v. United States DOJ, 494 F.3d 296 Zhen Hua Dong v. DOJ, 2008 U.S. LEXIS 4223 Zhen Hua Dong v. DOJ, 2008 U.S. LEXIS 4223 (SC) Persecution: Past (forced abortion for unmarried partners) Decision: Denied, 2008 Circuit Court: 2	1
Hui Chen v. Gonzales, 190 Fed. Appx. 75 Persecution: Past Decision: Denied, 2006 Circuit Court: 2	1
Yuqing Zhu v. Ashcroft, 382 F.3d 521 Yuqing Zhu v. Gonzales, 493 F.3d 588 Persecution: Past (forced abortion) Decision: Denied (asylum) Granted (withholding), 2007 Circuit Court: 5	1
Zhang v. Gonzales, 434 F.3d 993 Persecution: Past (wife, forced abortion) Decision: Granted, 2006 Circuit Court: 7	1

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Coercive population control; total (N = 23)	
Coercive population control; only (N = 21)	
Zhongxiang Zhou v. Lynch, 618 Fed. Appx. 907 Persecution: Past (wife forced abortion) Decision: Denied, 2015 Circuit Court: 9	1
Zi Zhi Tang v. Gonzales, 489 F.3d 987 Persecution: Past (wife forced abortion) Decision: Granted and Remanded, 2007 Circuit Court: 9	1
Biru Chen v. United States AG, 181 Fed. Appx. 951 Persecution: Past (wife sterilized) Decision: Denied, 2006 Circuit Court: 11	1
Ming Dai v. Sessions, 884 F.3d 858 Dai v. Barr, 916 F.3d 731 Dai v. Sessions, 2018 U.S. App. LEXIS 17286 Ming Dai v. Barr, 940 F.3d 1143 Barr v. Ming Dai, 2020 U.S. LEXIS 3705 Garland v. Ming Dai, 141 S. Ct. 1669 Persecution: Past (wife forced abortion) Decision: Granted and Remanded, 2022 Circuit Court: 9	2
Lian v. Holder, 405 Fed. Appx. 524 Persecution: Past (wife, forced abortion) Decision: Denied, 2010 Circuit Court: 2	3
Chen v. Ashcroft, 376 F.3d 215 Persecution: Past (wife forced abortion and sterilization) Decision: Denied, 2004 Circuit Court: 3	3
Shijie Huang v. United States AG, 330 Fed. Appx. 871 Persecution: Past (wife forced abortion) Decision: Denied, 2009 Circuit Court: 11	3
Hong Mei Zhang v. Gonzales, 469 F.3d 51 Persecution: Past (forced abortion) Decision: Dismissed, 2006 Circuit Court: 1	4
Bing Shui Lin v. Gonzales, 232 Fed. Appx. 54 Persecution: Past (parents targeted) Decision: Denied, 2007 Circuit Court: 2	4
Zhao v. Barr, 791 Fed. Appx. 265 Persecution: Past (forced abortion) Decision: Denied, 2019 Circuit Court: 2	4
Xian Gui Chen v. Gonzales, 157 Fed. Appx. 430 Persecution: Past and Future (forced abortion, fear of sterilization) Decision: Denied, 2005 Circuit Court: 2	4

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Coercive population control; total (N = 23)	
Coercive population control; only (N = 21)	
Zhang v. AG United States, 632 Fed. Appx. 680 Persecution: Past (forced abortion) Decision: Denied, 2015 Circuit Court: 3	4
Zhang v. Gonzales, 408 F.3d 1239 Persecution: Past (child of forcibly sterilized parent) Decision: Remanded, 2005 Circuit Court: 9	4
Qin Liu v. United States AG, 252 Fed. Appx. 964 Persecution: Past (wife forced abortion and sterilization) Decision: Denied, 2007 Circuit Court: 11	4
Lin v. Holder, 570 Fed. Appx. 4 Persecution: past (wife forcibly sterilized) Decision: Denied, 2014 Circuit Court: 1	3, 4
Wensheng Yan v. Mukasey, 509 F.3d 63 Persecution: Future (fear of forcible sterilization) Decision: Denied, 2007 Circuit Court: 2	3, 4
Qili Qu v. Gonzales, 399 F.3d 1195 Persecution: Past (wife forcibly sterilized) Decision: Granted, 2005 Circuit Court: 9	1, 3, 4
Coercive population control and rape (N = 2)	
Meishan Zhao v. AG of the United States, 388 Fed. Appx. 135 Persecution: Past (forced abortion) Decision: Denied, 2010 Circuit Court: 3	4
Han v. Garland, 2022 U.S. App. LEXIS 16753 Persecution: Past (forced abortion) Decision: Denied, 2022 Circuit Court: 9	4
Rape; total (N = 51)	
Olmos-Colaj v. Sessions, 886 F.3d 168 Persecution: Past (relatives raped) Decision: Denied, 2008 Circuit Court: 1	1
Longwe v. Keisler, 251 Fed. Appx. 718 Persecution: Past Decision: Remanded to BIA, 2007 Circuit Court: 2	1
Jalloh v. Gonzales, 498 F.3d 148 Persecution: Past (wife raped) Decision: Denied, 2007 Circuit Court: 2	1

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Rape; total (N = 51)	
Rusak v. Holder, 734 F.3d 894 Persecution: Past (mother raped) Decision: Granted, 2013 Circuit Court: 9	1
Katyal v. Gonzales, 204 Fed. Appx. 661 Persecution: Past (mother raped, petitioner attempted rape) Decision: Remanded, 2006 Circuit Court: 9	1
Kaur v. Wilkinson, 986 F.3d 1216 Persecution: Past (attempted rape) Decision: Remanded, 2021 Circuit Court: 9	2
Lleshi v. Holder, 460 Fed. Appx. 520 Lleshi v. Holder, 542 Fed. Appx. 511 Persecution: Past Decision: Denied, 2013 Circuit Court: 6	3
Nikolajuk v. Holder, 527 Fed. Appx. 439 Persecution: Past Decision: Denied, 2013 Circuit Court: 6	3
Marouf v. Lynch, 811 F.3d 174 Marouf v. Lynch, 648 Fed. Appx. 572 Persecution: Past (attempted) Decision: Granted, 2016 Circuit Court: 6	3
Bobo v. Holder, 344 Fed. Appx. 269 Persecution: Past (sister raped) Decision: Denied, 2009 Circuit Court: 7	3
Yakovenko v. Gonzales, 477 F.3d 631 Persecution: Past Decision: Denied, 2007 Circuit Court: 8	3
Narayan v. Gonzales, 220 Fed. Appx. 691 Persecution: Past Decision: Denied, 2007 Circuit Court: 9	3
Ixcuna-Garcia v. Garland, 25 F.4th 38 Persecution: Past Decision: Granted and Remanded, 2022 Circuit Court: 1	4
Rivera-Medrano v. Garland, 47 F.4th 29 Persecution: Past Decision: Granted and Remanded, 2022 Circuit Court: 1	4
Zeru v. Gonzales, 503 F.3d 59 Persecution: Past Decision: Affirmed BIA decision, 2007 Circuit Court: 1	4

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Rape; total (N = 51)	
Mukamusoni v. Ashcroft, 390 F.3d 110 Persecution: Past Decision: Remanded, 2004 Circuit Court: 1	4
Amicy v. Gonzales, 133 Fed. Appx. 745 Persecution: Past Decision: Denied, 2005 Circuit Court: 1	4
Kaweesa v. Ashcroft, 345 F. Supp. 2d 79 Kaweesa v. Gonzales, 450 F.3d 62 Persecution: Past Decision: Remanded, 2006 Circuit Court: 1	4
Dia v. Ashcroft, 353 F.3d 228 Persecution: Past (wife raped) Decision: Remanded to BIA, 2007 Circuit Court: 2	4
Bravo v. AG United States, 2021 U.S. App. LEXIS 32305 Bravo v. AG of the United State, 21 F.4th 236 Persecution: Past (relatives) Fear of Future (self) Decision: Remanded, 2021 Circuit Court: 3	4
Mikhail v. Ashcroft, 78 Fed. Appx. 187 Persecution: Past (attempted rape) Decision: Denied, 2003 Circuit Court: 3	4
Sapunzhiu v. AG of the United States, 148 Fed. Appx. 131 Persecution: Past (sister raped) Decision: Denied, 2005 Circuit Court: 3	4
Plumbay v. AG of the United States, 213 Fed. Appx. 144 Persecution: Past Decision: Denied, 2007 Circuit Court: 3	4
Siauwan Lan Tjin v. AG of the United States, 191 Fed. Appx. 144 Persecution: Fear of Future Decision: Denied, 2006 Circuit Court: 3	4
Ilunga v. Holder, 777 F.3d 199 Persecution: Past (he and wife were raped) Decision: Remanded, 2015 Circuit Court: 4	4
Tchaya v. Ashcroft, 106 Fed. Appx. 174 Persecution: Past Decision: Denied, 2004 Circuit Court: 4	4

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Rape; total (N = 51)	
Gandziami-Mickhou v. Gonzales, 445 F.3d 351 Persecution: Past Decision: Denied, 2006 Circuit Court: 4	4
Lopez v. Garland, 852 Fed. Appx. 758 Persecution: Past Decision: Remanded, 2021 Circuit Court: 5	4
Kompany v. Gonzales, 236 Fed. Appx. 33 Persecution: Past Decision: Denied, 2007 Circuit Court: 5	4
Harmon v. Holder, 758 F.3d 728 Persecution: Past Decision: Denied, 2014 Circuit Court: 6	4
Perlaska v. Holder, 361 Fed. Appx. 655 Persecution: Past Decision: Denied, 2010 Circuit Court: 6	4
Slyusar v. Holder, 740 F.3d 1068 Slyusar v. Holder, 2014 U.S. App. LEXIS 11088 Slyusar v. Sessions, 2018 U.S. App. LEXIS 27878 Persecution: Past Decision: Denied, 2019 Circuit Court: 6	4
Mansare v. Holder, 383 Fed. Appx. 522 Persecution: Past Decision: Denied, 2010 Circuit Court: 6	4
Angoucheva v. INS, 106 F.3d 781 Persecution: Past (attempted rape) Decision: Remanded, 2007 Circuit Court: 7	4
Tolosa v. Ashcroft, 384 F.3d 906 Persecution: Past (sister raped) Decision: Remanded, 2004 Circuit Court: 7	4
Weiwei Chen v. Holder, 549 Fed. Appx. 567 Persecution: Past (attempted rape) Decision: Granted, 2013 Circuit Court: 7	4
Holmes v. Garland, 37 F.4th 520 Persecution: Past Decision: Denied, 2022 Circuit Court: 8	4
Mambwe v. Holder, 572 F.3d 540 Persecution: Past Decision: Denied, 2009 Circuit Court: 8	4

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Rape; total (N = 51)	
Redd v. Mukasey, 535 F.3d 838 Persecution: Past (wife raped) Decision: Denied, 2008 Circuit Court: 8	4
Marenco-Hernandez v. Garland, 2021 U.S. App. LEXIS 20669 Persecution: Past Decision: Remanded, 2021 Circuit Court: 9	4
Morgan v. Mukasey, 529 F.3d 1202 Persecution: Past (husband and wife raped) Decision: Remanded, 2008 Circuit Court: 9	4
Zhu v. Mukasey, 537 F.3d 1034 Persecution: Past Decision: Remanded, 2008 Circuit Court: 9	4
Birru v. Barr, 2020 U.S. Dist. LEXIS 68132 Birru v. Barr, 2020 U.S. Dist. LEXIS 83782 Persecution: Past Decision: Denied, 2020 Circuit Court: 9	4
Lugo v. Garland, 2022 U.S. App. LEXIS 12562 Merino v. Garland, 2023 U.S. App. LEXIS 15797 Persecution: Past Decision: Denied, 2023 Circuit Court: 9	4
Kabba v. Mukasey, 530 F.3d 1239 Persecution: Past (wife raped) Decision: Remanded, 2008 Circuit Court: 10	4
Liana Tan v. United States AG, 446 F.3d 1369 Persecution: Past (attempted rape) Decision: Remanded, 2006 Circuit Court: 11	4
Mbi v. United States AG, 348 Fed. Appx. 486 Persecution: Past Decision: Denied, 2009 Circuit Court: 11	4
Fiadjoe v. AG, 411 F.3d 135 Persecution: Past Decision: Remanded, 2005 Circuit Court: 3	2, 4
Lopez-Galarza v. INS, 99 F.3d 954 Persecution: Past Decision: Granted, 1996 Circuit Court: 9	3, 4
Munyuh v. Barr, 2020 U.S. App. LEXIS 6377 Munyuh v. Garland, 11 F.4th 750 Persecution: Past Decision: Remanded, 2021 Circuit Court: 9	3, 4

Table A1. Cont.

Type of Gender-Based Persecution	Trauma Coding
Rape; total (N = 51)	
Alvizuriz-Lorenzo v. United States AG, 791 Fed. Appx. 70 Persecution: Past Decision: Denied, 2019 Circuit Court: 11	1, 4
Domestic violence; total (N = 4)	
Domestic violence; only (N = 1)	
Martinez-Martinez v. Sessions, 743 Fed. Appx. 629 Persecution: Past and Future Decision: Denied, 2018 Circuit Court: 6	4
Domestic violence and rape (N = 3)	
De Pena-Paniagua v. Barr, 957 F.3d 88 Persecution: Past and Future Decision: Remand to BIA, 2020 Circuit Court: 1	3
Gasparyan v. Holder, 707 F.3d 1130 Persecution: Past and Future Decision: Denied, 2016 Circuit Court: 9	4
Ferreira v. Lynch, 831 F.3d 803 Ferreira v. Lynch, 2016 U.S. App. LEXIS 14607 Persecution: Past and Future Decision: Granted, 2016 Circuit Court: 7	3, 4

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