

# A Historic Opportunity to Update Asylum Law's Outdated Assumptions About Trauma and Memory

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As Congress debates a significant overhaul of the country's immigration laws, the urgency of asylum reform is increasing as migrants flock to the U.S. southern border and the Biden administration faces a backlog of 1.3 million immigration cases (1). When asylum seekers finally have their asylum interview or court hearing, the Immigration and Nationality Act requires that they convince the adjudicator that they cannot return to their home country because of past persecution or "a well-founded fear of persecution."

An asylum seeker's memories about persecution are central to the legal process. Under the REAL ID Act of 2005, adjudicators are instructed to consider any possible discrepancies in an asylum applicant's verbal and written testimonies, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim" (2). As a result, applicants with narrative inconsistencies—even those that may be considered peripheral or understandable given a history of trauma-related distress—often are found not credible and are denied asylum (3). In this way, the system adjudicates asylum claims under the unspoken assumption that memory is like a videotape and that any inconsistency in recall of episodic memory is evidence of a deliberate lie. This hidden assumption in asylum law regularly contributes to the rejection of asylum claims that deserve greater consideration. It is also fundamentally inconsistent with current scientific understanding of trauma-related distress and human memory.

## HOW TRAUMA AFFECTS AUTOBIOGRAPHICAL STORYTELLING AND CREDIBILITY

A wide body of research in psychology, neuroscience, and related fields has found that autobiographical memory is particularly vulnerable to interference at the encoding, storage, and retrieval stages. When a specific event is encoded and stored as memory under stressful conditions, subsequent recollection of certain aspects of the event may be less accurate than those encoded under less stressful conditions. For example, subjects in a psychology study watched a slideshow depiction of either a traumatic or a nontraumatic version of the same event, and although those who watched the traumatic version recalled its central details with greater accuracy, they were less capable of recognizing specific slides (4). Furthermore, the effect of trauma on memory may be noted during the retrieval stage given that people with objective signs of trauma-related distress (though not necessarily a history of trauma alone) often demonstrate reduced specificity when recalling episodic

memories (5). All of this suggests that persons from non-U.S. cultures with histories of trauma, trauma-related distress, or both may provide honest recollections of their asylum-seeking narratives that inadvertently include inconsistencies and thus seem misleading to asylum officers or immigration judges.

To complicate matters, there is evidence that cultural background may affect the content of autobiographical descriptions of traumatic as well as nontraumatic memories (6). For example, people from collectivist cultures, which tend to prioritize the goals of the group, may describe "shorter, less egocentric" memories of trauma than those from more individualist cultures, which tend to prioritize the goals of individuals (6). These culturally mediated styles of recalling events may be misinterpreted by officials in the U.S. asylum system.

The effects of trauma and stress on episodic memory may be amplified among children and adolescents—a critical observation, given the surge of unaccompanied minors at the southern border. Depression and trauma-related distress are prevalent among child and adolescent asylum seekers with histories of trauma (7). Consequently, young asylum seekers often "provide less event-specific autobiographical memories" during asylum interviews and tell stories with "less emotional and sensory content" and "from an observer perspective," seemingly detached from their memories (7). Thus, they may be viewed skeptically by an asylum system that equates a failure to provide specific details with an intention to deceive.

The law's adherence to outdated assumptions about memory has significant consequences for asylum seekers. For example, a woman from Guinea fled her country after government soldiers invaded her home, arrested her and her husband, and sexually assaulted her each night for several months (8). In the United States, she was diagnosed with posttraumatic stress disorder. However, the immigration judge who heard her case denied her asylum because of testimonial inconsistencies. For example, she had described the scars on her back as resulting from being beaten with belts but had not reported that her captors had also burned her with cigarettes—a detail she had discussed in sessions with her counselor.

## CALL TO ACTION

As the Biden administration and Congress embark on widespread immigration reform, there is a historic opportunity to update asylum law's deeply flawed assumptions about episodic memory. At the systemic level,

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clinicians and their professional societies can advocate for a scientifically informed approach to determining credibility in asylum cases—an approach that recognizes rather than ignores the effects of trauma, stress, and culture on memory formation and recall.

At the individual level, clinicians can volunteer their services in asylum clinics. These clinics, which are often associated with medical and law schools, need more medical professionals to provide expert evaluations and affidavits—both to corroborate individual asylum claims through documentation of asylum seekers' injuries (including psychological injuries) and to contextualize narrative discrepancies as a common byproduct of trauma-related distress.

Clinicians from diverse backgrounds—including clinical psychology, psychiatry, neurology, and most major medical specialties—can contribute such evaluations. Specialized training is readily available through Physicians for Human Rights (9), and the Massachusetts General Hospital Center for Law, Brain & Behavior offers opportunities for clinicians to learn how expert affidavits can be developed for use in asylum cases. Because some immigration lawyers and unrepresented asylum seekers may lack access to an asylum clinic, researchers, physician-scientists, and clinicians should also prepare more generalized affidavits on the science of trauma, stress, and episodic memory for use in asylum interviews or court hearings. At least 1 study, from 2004, suggests that individualized evaluations make a significant difference in the success of asylum claims (10). Affidavits with guidance on how to appropriately evaluate inaccuracies in episodic recall might also have a significant effect on asylum outcomes.

The current moment presents a rare opportunity for medical professionals to help in updating the outdated rules that govern asylum evaluations. We urge the medical and scientific communities to seize this opportunity by collaborating with the legal community to better account for the effects of trauma-related distress on memory and credibility. Such collaboration will produce a more just and more effective asylum system.

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