

Building Bridges: Narrowing the Legal-Scientific Divide in Immigration Forensic Assessments

I. Significance of the Project

A. Background and Context: The Need for this Project

The documentation of trauma, brain injury, and mental illness plays a critical role in the adjudication of immigration cases. Yet, U.S. immigration laws and practices are not guided by trauma-informed scientific knowledge and best practices. Bridging the inter-disciplinary divides between trauma-informed science and law calls for robust and consistent collaborations in research and practice between legal and mental health professionals and researchers. Despite the immediate relevance and urgency, this work is not occurring due to the lack of resources to facilitate it.

This project brings together UC Davis legal and mental health academic faculty, and clinical practitioners working with immigrants and trauma to improve how immigration forensic assessments are conducted. Forensic assessments provide a meaningful point within the legal process where legal and health professionals can collaborate to 1) significantly improve the odds that immigration petitioners succeed in their claims, and 2) seize the opportunity to educate decision-makers about science-informed best practices to document trauma and assess credibility.

Currently, immigration forensic assessments occur in immigration cases ranging from those seeking to establish affirmative grounds to secure an immigration visa, to those seeking relief from removal or immigration detention. For example, a number of immigration humanitarian visas, including asylum, T (human trafficking) or U (victims of crime) visas, VAWA (Domestic Violence), and Special Immigrant Juvenile Status (SIJ), require applicants to prove significant trauma or harm wielded by persecution, psychological cruelty, violence, or child abandonment. As well, cases seeking family unification or defenses against family separation can only be successful if hardship waivers documenting harms likely to result from the immigration exclusion or removal are proved.

Currently, immigration cases unduly rely on the petitioning immigrant's testimony to satisfy the high burden of establishing the trauma or harm in humanitarian visas. Yet, due to flawed legal standards for assessing credibility, such as requiring consistency in the narrative and recollection of details about traumatic events, immigration petitioners fare poorly and are re-traumatized in the process. The lack of shared norms on issues of confidentiality and ethics that are needed to inform the collaboration between legal and health professionals presents a further challenge. Limits to confidentiality for forensic psychologists call for adherence to the traditional patient-medical professional relationship and do not apply equally in immigration forensic assessment. Lawyers and mental health practitioners are often unaware of the legal and ethical standards the other party must adhere to, which can result in miscommunication and failures to properly structure the forensic evaluation. Moreover, lawyers often seek forensic evaluations that could be at odds with what is ethically permissible and plausible in scientifically-grounded psychological assessments. Yet, due to a lack of regulation regarding who can provide forensic assessments, and a lack of training on how to do them well, mental health providers may feel compelled to attempt to assess these kinds of scientifically intractable and ethically problematic referral questions. Fortunately, over years of deep collaboration between highly ethical and highly trained lawyers and

psychologists, more nuanced best practices-- such as employing the Istanbul Protocol to reframe a question about *whether* trauma *occurred* to one assessing whether present psychological symptoms *are consistent* with client narrations of trauma—have emerged. These types of practices at a minimum should be shared more broadly, but also call for the adoption of new ethical and confidentiality norms and practices. Finally, there is also a need for the development of new tools and new skills to improve immigration forensic assessments across cultures and across languages.

- **Proposed Contributions and Contributors**

The proposed project is a continuation of an ongoing collaboration between the UC Davis law and medical schools in a project titled *Transforming Refugee Mental Health: Improving Legal Assessment of Credibility through Science*. Following two interdisciplinary symposiums, which brought together over seventy professionals, including lawyers, mental health providers, researchers and academics, refugee resettlement specialists, and medical professionals, from over twenty countries, this project led to the publication of a [report](#) titled *Stakeholder Perspectives Report: Focus Group Findings on Migrant Legal-Mental Health Intersectionality*. We now seek to implement some of the most important recommendations from the findings.

To do this, we have brought together an exceptional team of experts with significant experience working with immigrants and trauma that, in addition to the Drs. Aldana and Koga, include:

- Satinder Gill, Psy.D, is a psychologist who specializes in the treatment of mental health problems, such as anxiety and depression. She is currently Program Clinical Director for the UC Davis Academic & Staff Assistance Program and has collaborated with law faculty to develop coping mechanisms for vicarious trauma.
- Sharon Howard PhD, is a clinical and forensic psychologist in private practice in the Sacramento region. The bulk of her practice involves pre-trial criminal forensic evaluations for adults and juveniles. She has been providing immigration forensic evaluations for approximately five years. She is passionate about educating psychologists about the role they can play in immigration proceedings in ways that are ethical, research based, and culturally appropriate.
- Alea Corin Skawara, MA, is a PhD Candidate in the Department of Psychology at UC Davis, specializing in Cognitive Neuroscience. Her research focuses on compassion and responses to suffering, with a special interest in the basic psychological and social factors underlying adaptive engagement with suffering. She brings over a decade of teaching and research experience in psychology and neuroscience, strong scientific training in study design and statistical analysis, and a professional background in public relations and performance studies.
- Carmen C. Velázquez, PhD: Dr. Velázquez is a licensed clinical neuropsychologist with experience in forensics. She is an expert in cross-cultural issues and a Spanish-Speaking clinician with experience in immigration and disenfranchised individuals. She also provides consultation to clinicians and researchers regarding pertinent immigration, trauma, cultural, and linguistic concerns.

Together, we aim to achieve the following goals:

- Document how immigration forensic assessments are currently being conducted to inform what is already being done well and identify the most pressing areas that require reform, whether in norms or practice;
- Develop and deliver joint trainings of lawyers, mental health practitioners, and interpreters to improve how immigration forensic assessments are conducted by sharing best practices, assessment tools, and resources;
- Produce inter-disciplinary publications to (a) promote the dissemination of existing science-informed best practices in immigration forensic assessments based on surveys and interviews with legal and mental health professionals in the United States already doing this work and/or (b) make policy recommendations on changing norms and practices that are inconsistent with science, ethics, or best practices;
- Create a curriculum to be used in law schools, medical schools and other mental health-related programs to equip future legal and health professionals to work together to improve trauma-informed representation of immigrants, and to better equip them for dealing with vicarious trauma;
- Identify gaps and encourage research to promote the development of culturally responsive assessment measures to conduct forensic immigration evaluations

Our proposed activities and timeline to achieve the following goals are as follows:

- August-September 2020:
 - Develop a survey instrument for legal and health professionals to survey current practices
 - Conduct literature review
- October 2020-November 2020:
 - Collect survey data and redacted forensic immigration assessments
- November 2020-December 2020:
 - Analyze data from survey and redacted forensic immigration assessments
 - Start to write up research informed by research findings:
 - One for law journals
 - One for science or mental health journals
- January 2020-March 2020
 - Develop training on best practices on conducting immigration forensic assessments for lawyers, mental health providers and interpreters
 - Develop curriculum for joint courses at UC Davis law school and medical schools on trauma and immigrants
 - Continue research and writing of publications
 - Develop presentation for researchers to encourage the development of linguistically and culturally relevant trauma-assessments tools to conduct forensic immigration evaluations
- April-May 2020
 - Finish and submit research papers for publication
 - Deliver training on conducting forensic assessments
 - Deliver presentation for researchers to develop linguistically and culturally relevant trauma-assessment tools
 - Seek approval of course in law and medical school

- o Create a website presence for this project
- Fall 2021
 - o Offer first course on a trauma-informed representation and treatment of immigrants