

TEMPLE LAW REVIEW

© TEMPLE UNIVERSITY OF THE COMMONWEALTH SYSTEM OF
HIGHER EDUCATION

VOL. 91 NO. 2

WINTER 2019

ARTICLES

ARE DOMESTIC ABUSERS TERRORISTS? RHETORIC, REALITY, AND ASYLUM LAW

*Natalie Nanasi**

ABSTRACT

The terms terrorism and terrorist are highly charged but all too often imprecisely utilized in legal, media, and political arenas. The terminology has even entered the field of intimate partner violence, where the phrases terrorism in the home or intimate terrorism have been used to describe domestic abuse. This language has proliferated not only due to identified commonalities between intimate partner abuse and terrorist behaviors but also because of the rhetorical impact of the words in highlighting the gravity of domestic violence. However, expanding the legal framework of terrorism into new areas has potentially serious and far-reaching consequences. It is therefore critical to carefully analyze the impact of reconceptualizing intimate partner abuse as a form of terrorism.

This Article undertakes such an analysis with a focus on asylum law. It ultimately concludes that even though reconceptualizing intimate partner abuse as terrorism in the home may accurately describe the political and societal implications of domestic abuse (as well as the state's complicity in perpetuating it) and has the potential to expand access to asylum for survivors, the terrorist label should be applied with caution. The decision to designate a violent act a terrorist act is often political in nature, and race and religious affiliation are frequently

* Assistant Professor and Director, Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women, SMU Dedman School of Law. My thinking about these ideas benefited greatly from exchanges at the Emerging Immigration Scholars Conference, the AALS Clinical Conference, and the NYU Clinical Law Review Writers' Workshop. The research and assistance of librarian Donna Wolff improved this Article significantly. Lastly, I am grateful to Rachel Camp, Michelle Gilman, Joanna Grossman, Maritza Karmely, Laurie Kohn, David Koplow, Naomi Mann, and Fatma Marouf for their generosity in exploring my ideas and contending with drafts.

decisive factors in assigning the label. Moreover, significant criminal and immigration consequences exist for those who are branded terrorists and those who harbor or materially support terrorists, potentially including survivors themselves. Recognizing these drawbacks, this Article calls for selective and limited use of the intimate terrorism framework—effectively defining the phenomenon without utilizing the label—in the asylum law system.

TABLE OF CONTENTS

INTRODUCTION.....	216
I. “DEFINING” TERRORISM	219
II. DEFINING INTIMATE PARTNER VIOLENCE.....	225
III. REFRAMING INTIMATE PARTNER VIOLENCE AS TERRORISM	227
IV. IMPLICATIONS FOR ASYLUM LAW	233
A. <i>Asylum for Survivors of Intimate Partner Violence</i>	234
1. Particular Social Group	234
2. Political Opinion.....	240
B. <i>State Action and the Public-Private Distinction</i>	243
V. BENEFITS OF RECONCEPTUALIZATION.....	245
VI. DRAWBACKS OF RECONCEPTUALIZATION.....	252
CONCLUSION.....	258

INTRODUCTION

The labels of *terrorism* or *terrorist* are ones that are frequently, and often imprecisely, utilized in modern day legal, media, and political arenas. The terms have been used to describe a wide variety of events like the attacks of September 11, 2001, the election of Donald Trump as president,¹ police officers’ treatment of minorities,² public demonstrations,³ liberal activism,⁴ homophobia,⁵ and even

1. Peter Holley, *A Professor Called Trump’s Election an ‘Act of Terrorism.’ Then She Became the Victim of Terror.*, WASH. POST (Dec. 28, 2016), <http://www.washingtonpost.com/news/grade-point/wp/2016/12/27/a-professor-called-trumps-election-an-act-of-terrorism-then-she-became-the-victim-of-terror/> [http://perma.cc/P9AS-HKXM].

2. Greg Howard, *The Police Are America’s Terrorists*, DEADSPIN: THE CONCOURSE (Apr. 8, 2015, 9:25 PM), <http://theconcourse.deadspin.com/the-police-are-americas-terrorists-1696463523> [http://perma.cc/CT9A-YGVY]; see also Michael Eric Dyson, *America’s Blue Wall of Terror: Why Black People Fear the Police, and Why White People Refuse To Believe It*, NEW REPUBLIC (Jan. 19, 2017), <http://newrepublic.com/article/139940/americas-blue-wall-terror> [http://perma.cc/EK8G-JE44].

3. Jim Brunner, *Trump Supporter in State Senate Says Some Protests Are ‘Economic Terrorism,’ Should Be Felonies*, SEATTLE TIMES (Nov. 17, 2016, 10:04 PM), <http://www.seattletimes.com/seattle-news/politics/state-senator-some-protests-should-be-treated-as-felonies/> [http://perma.cc/2477-S6QY] (discussing a bill that would “allow felony prosecution of protesters who purposely break the law to disrupt economic activity, for example by blocking traffic or sitting on railroad tracks”).

4. See, e.g., GrrrGraphics Cartoons (@GrrrGraphics), TWITTER (Aug. 28, 2017, 11:16 AM), <http://twitter.com/grrrgraphics/status/902172983690592257?lang=en> [http://perma.cc/4G67-8688]

the United States' political process.⁶ To further complicate matters, variants of terrorism like ecoterrorism,⁷ cyberterrorism,⁸ and paper terrorism⁹ have also worked their way into the public lexicon.

Professor Isabel Marcus was the first to use the terrorist label to describe intimate partner or domestic violence; she coined the term “terrorism in the home” because she felt it had “the greatest potential for accurately identifying the psychological, sociological, and political situation of women who are the targets of . . . violence.”¹⁰ Others in the academy,¹¹ government,¹² media,¹³ and

(sharing a political cartoon by Ben Garrison that depicts the rhetoric of critics of President Trump, including Madonna, Kathy Griffin, Michael Moore, and Rachel Maddow, lighting the fuse of a bomb labeled “FAR LEFT TERROR”).

5. Alison Meuse, *Beirut Has Become a Relative Refuge for Members of the LGBT Community* (NPR radio broadcast May 23, 2017), <http://www.npr.org/2017/05/23/529634880/beirut-has-become-a-relative-refuge-for-members-of-the-lgbt-community> [<http://perma.cc/GTZ9-HSVR>] (describing a Pride Week slogan and ad campaign, “Homophobia is Terrorism,” in Lebanon).

6. See Sivan Hirsch-Hoefler & Cas Mudde, *Ecoterrorism: Threat or Political Ploy?*, WASH. POST (Dec. 19, 2014), <http://www.washingtonpost.com/news/monkey-cage/wp/2014/12/19/ecoterrorism-threat-or-political-ploy/> [<http://perma.cc/3UPX-S4GK>].

7. See Sivan Hirsch-Hoefler & Cas Mudde, *Ecoterrorism: Threat or Political Ploy?*, WASH. POST (Dec. 19, 2014), <http://www.washingtonpost.com/news/monkey-cage/wp/2014/12/19/ecoterrorism-threat-or-political-ploy/> [<http://perma.cc/3UPX-S4GK>].

8. See Dan Holden, *Is Cyber-Terrorism the New Normal?*, WIRED, <http://www.wired.com/insights/2015/01/is-cyber-terrorism-the-new-normal/> [<http://perma.cc/TFA2-HVHC>] (last visited Feb. 15, 2019).

9. See JEROME P. BJELOPERA, CONG. RESEARCH SERV., R44921, DOMESTIC TERRORISM: AN OVERVIEW 46 (2017), <http://fas.org/sgp/crs/terror/R44921.pdf> [<http://perma.cc/EB57-ZRSF>]. Paper terrorists engage in a broad range of nonviolent actions and utilize the legal system to harass, intimidate, or defraud either a government or private entity or individual. Methodologies “include forging documents (fake money orders and bad personal checks, for example), failing to pay taxes, phony tax filings, . . . presenting sham legal arguments in court[, and] . . . fil[ing] fraudulent property liens against . . . foes.” *Id.* Paper terrorists may also create their own legal systems through which they “hold illegal courts and target officials with fake criminal indictments . . . [or] ‘issue warrants for judges and police officers.’” *Id.* (quoting FBI, *Domestic Terrorism: The Sovereign Citizen Movement* (Apr. 13, 2010), http://archives.fbi.gov/archives/news/stories/2010/april/sovereigncitizens_041310/domestic-terrorism-the-sovereign-citizen-movement [<http://perma.cc/98UK-CJGF>]).

10. Isabel Marcus, *Reframing “Domestic Violence”: Terrorism in the Home*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE 11, 18–19 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994).

11. See, e.g., MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE (2008); Justine A. Dunlap, *Intimate Terrorism and Technology: There’s an App for That*, 7 U. MASS. L. REV. 10 (2012); Thomas L. Hafemeister, *If All You Have Is a Hammer: Society’s Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919 (2011); Michael P. Johnson & Janel M. Leone, *The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey*, 26 J. FAM. ISSUES 322 (2005); Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1387–94 (2005) (using the term “[i]ntimate [t]errorism”).

12. See, e.g., *Domestic Violence: Not Just a Family Matter: Hearing Before the Subcomm. on*

legal community¹⁴ soon followed suit and popularized terms such as *terrorism in the home* or *intimate terrorism* to describe domestic abuse.¹⁵

Use of the terrorist label to describe intimate partner violence is increasing not only due to identified commonalities between domestic abuse and terroristic behaviors but also because of the rhetorical force the word terrorist has in highlighting the gravity of domestic violence. The label “fits” and is effective for advocacy, which makes the temptation to use it great. However, due to the serious negative implications of expanding the framework of terrorism into new subject and legal areas, it is critical to carefully analyze the impact of reconceptualizing intimate partner abuse in such a manner.

This Article undertakes such an analysis, focusing on asylum law. Section I begins by comprehensively cataloguing definitions of terrorism in domestic and international law and identifying the most salient elements of the term. This definitional work continues in Section II, which describes intimate partner violence. Section III then addresses the commonalities between domestic abuse and terroristic behaviors. It focuses on the similar profiles of batterers and terrorists and the comparable tactics they use, highlighting both groups’ need to provoke fear and assert control.

Section IV explores immigration law, including the history of how courts use both particular social group and political opinion grounds to determine

Crime & Criminal Justice of the H. Comm. on the Judiciary, 103d Cong. 46 (1994) (statement of Mark Wynn, Sergeant, Nashville Metropolitan Police Department) (“I am grateful that our national leaders have given this crime, which I like to call domestic terrorism, the attention that it deserves.”); *Domestic Violence: Terrorism in the Home: Hearing Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 101st Cong. 4 (1990); Lynne Marek, *U.S. Joining War on Domestic Violence*, CHI. TRIB. (Mar. 12, 1994), http://articles.chicagotribune.com/1994-03-12/news/9403120068_1_domestic-violence-shalala-domestic-partner [<http://perma.cc/ZKE2-84YE>] (quoting then-Secretary of Health and Human Services Donna Shalala as pledging “to put the federal government back in the fray of fighting . . . ‘terrorism in the home’”).

13. See, e.g., Ralph Blumenthal, *Stop Calling It Domestic Violence. It's Intimate Terrorism.*, COSMOPOLITAN (Apr. 16, 2013), <http://www.cosmopolitan.com/sex-love/advice/a4322/intimate-terrorism/> [<http://perma.cc/TJ58-8FME>]; Julianne Escobedo Shepherd, *‘Intimate Terrorism’: San Bernardino Murderer Was a Serial Domestic Abuser*, JEZEBEL (Apr. 12, 2017, 2:10 PM), <http://jezebel.com/intimate-terrorism-san-bernardino-murderer-was-a-seria-1794261873> [<http://perma.cc/CZ4Z-FL34>].

14. See, e.g., Brief of Amici Curiae, The National Crime Victim Law Institute et al., in Support of State of Oregon at 4–6, *State v. Tena*, 412 P.3d 175 (Or. 2018) (No. SC S064500), 2017 WL 2305708.

15. Even if domestic violence is not officially labeled as terrorism, commonalities exist between the narratives around the two issues. For example, domestic violence advocates have borrowed from the Department of Homeland Security’s “See Something, Say Something” campaign, which encourages the public to report suspicious and potentially terroristic behavior, U.S. DEP’T HOMELAND SECURITY, *If You See Something, Say Something*, <http://www.dhs.gov/see-something-say-something> [<http://perma.cc/78XP-LDZP>] (last visited Feb. 15, 2019), by encouraging bystanders to intervene and report domestic abuse. Angela Frederick Amar, *See Something Say Something: You Have the Power To Do Something About Domestic Violence*, TALKING POINTS MEMO (Oct. 9, 2013, 9:00 AM), <http://talkingpointsmemo.com/cafe/see-something-say-something-you-have-the-power-to-do-something-about-domestic-violence> [<http://perma.cc/2UPU-TZLC>].

eligibility for asylum for survivors of intimate partner abuse. It also details why and how reframing domestic abuse as terrorism could impact the legal cases of survivors seeking asylum in the United States.

Section V discusses the benefits of reconceptualizing intimate partner violence as terrorism for purposes of asylum law. It posits that reframing emphasizes the severity of domestic abuse, which in turn allows for a broader understanding of both the political nature of gender-based violence and the home country's complicity in perpetuating it. Section VI then details the drawbacks of applying the terrorist label, with a focus on the significant criminal and immigration consequences that befall terrorists and anyone who is found to have materially supported or harbored them, including potentially survivors themselves. This Section also presents critiques of using the terrorist label from an intersectional feminist perspective.

Ultimately, this Article calls for selective and limited use of the intimate terrorism framework in the asylum law system. Reconceptualizing domestic violence as terrorism in the home accurately describes the political and societal implications of intimate partner abuse. Thus, the terrorist label has the benefit of potentially expanding access to asylum for survivors, which is particularly important as legal remedies for those who have experienced domestic violence grow increasingly limited in the Trump era.¹⁶ However, the potential for serious collateral consequences cautions against sweeping application of the terrorist designation. In recognition of both the racialized and politicized use of the term, as well as the potential significant immigration consequences for both perpetrators and survivors, the terrorist label should be used with restraint.

I. “DEFINING” TERRORISM

In order to determine whether the label of terrorism is appropriate to describe intimate partner violence, it is first necessary to attempt to define terrorism itself. A precise definition has long eluded both lawmakers and scholars; undertaking the task of defining terrorism is so difficult that it has been compared to the quest for the Holy Grail.¹⁷ Terrorism is not a legal term of art, and as Professor Yonah Alexander has described, there exists a “definitional and moral confusion over what constitutes terrorism.”¹⁸

Attempts at defining the term are often contested and politicized, which has contributed to the challenge of arriving at a single accepted domestic or international definition. Moreover, experts have noted that individuals tend to use the word terrorism broadly and imprecisely—often interchangeably with extremism—effectively “to mean a kind of violence of which he or she does not

16. See *infra* Part IV.A for an analysis of how immigration courts currently determine asylum status for survivors of intimate partner violence.

17. Nicholas J. Perry, *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails*, 30 J. LEGIS. 249, 249 (2004).

18. Yonah Alexander, *Terrorism in the Twenty-First Century: Threats and Responses*, 12 DEPAUL BUS. L.J. 59, 61 (2000).

approve.”¹⁹ This has led to disparate use of the term in the media, across the political spectrum, and in the legal system.²⁰

Race and religion play a significant role in whether someone is designated a terrorist. Professor Tung Yin explained that the inconsistency of application of the label of terrorist often relates to the perpetrator’s race or religious affiliation.²¹ For example, John Allen Muhammad, the “Beltway Sniper,” and Army psychologist Nidal Hassan, who killed thirteen people and wounded thirty others at the Army base in Fort Hood, are both Muslim and were characterized as terrorists by the media and in the legal system.²² In contrast, Jared Lee Loughner, who shot Representative Gabrielle Giffords and killed six others, was described as a mentally ill gunman and Dylann Roof, who murdered nine African American churchgoers in South Carolina, was convicted of hate crimes and murder, not terrorism.²³ As Professor Yin concluded, “Terrorism-like crimes committed by Arab- or Muslim-Americans get treated as terrorism, but similar crimes by non-Arabs/non-Muslims, while punished harshly, are generally not viewed as terrorism.”²⁴

Thus, designation as a terrorist is hardly a neutral act; much often depends on the perspective, biases, and intentions of the individual assigning the label. This is especially true because “[t]he very use of the word not only describes an

19. Ileana M. Porras, *On Terrorism: Reflections on Violence and the Outlaw*, 1994 UTAH L. REV. 119, 124.

20. See *id.* A Transactional Records Access Clearinghouse (TRAC) report provides a striking example of the impact imprecise use of the terms *terrorist* and *terrorism* can have on the legal system. The TRAC report found that courts, federal prosecutors, and the National Security Division of the Department of Justice apply different criteria in classifying, charging, and prosecuting individuals as terrorists. See TRAC, *Who Is a Terrorist? Government Failure To Define Terrorism Undermines Enforcement, Puts Civil Liberties at Risk*, TRAC REP. (Sept. 28, 2009), <http://trac.syr.edu/tracereports/terrorism/215/> [<http://perma.cc/6HUX-2FKP>].

21. Tung Yin, *Were Timothy McVeigh and the Unabomber the Only White Terrorists?: Race, Religion, and the Perception of Terrorism*, 4 ALA. C.R. & C.L. L. REV. 33, 35 (2013) [hereinafter Yin, *The Only White Terrorists?*].

22. Tung Yin, *Is It Terrorism or Mass Murder? That Depends on Our Biases.*, WASH. POST (June 16, 2017), http://www.washingtonpost.com/outlook/is-it-terrorism-or-mass-murder-that-depends-on-our-biases/2017/06/16/5ad57414-5211-11e7-91eb-9611861a988f_story.html [<http://perma.cc/J8Z3-WQNK>] [hereinafter Yin, *Terrorism or Mass Murder?*]. Muhammad had a long history of intimate partner violence. See Charreah Jackson, *Mildred Muhammad: D.C. Sniper's Ex-Wife Shares Her Story*, ESSENCE (Oct. 22, 2009), <http://www.essence.com/2009/10/19/mildred-muhammad-dc-snipers-ex-wife-shar-1> [<http://perma.cc/JTL6-YEKM>]. His ex-wife is now an advocate for survivors of domestic abuse. See Mildred D. Muhammad, *About Me*, http://mildredmuhammad.com/?page_id=717 [<http://perma.cc/V7SG-KLDU>] (last visited Feb. 15, 2019).

23. Yin, *Terrorism or Mass Murder?*, *supra* note 22. Both Loughner and Roof are young white men. Dana Ford, *Who Commits Mass Shootings?*, CNN (July 24, 2015, 1:29 PM), <http://www.cnn.com/2015/06/27/us/mass-shootings/index.html> [<http://perma.cc/BPZ5-PFAL>].

24. Yin, *The Only White Terrorists?*, *supra* note 21, at 35. In highlighting the conflation of Arabs, Muslims, and terrorists, Professor Adrien Katherine Wing posited that “[i]t’s like one word: Arabterrorist.” Adrien Katherine Wing, *Global Critical Race Feminism: A Perspective on Gender, War and Peace in the Age of the War on Terror*, 15 MICH. ST. J. INT’L L. 1, 7 (2007).

event but also assigns a moral judgment to the act and the actor, a moral judgment, which is nearly universally negative.”²⁵

Turning to the U.S. legal system, a range of definitions of terrorism exists in statutes, regulations, executive orders, and even state codes.²⁶ The first such definition promulgated in the U.S. Code was added by the Foreign Intelligence Surveillance Act of 1978 (FISA).²⁷ It defines “international terrorism” as

activities that—

- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . ; [and]
- (2) appear to be intended—
 - (A) to intimidate or coerce a civilian population;
 - (B) to influence the policy of a government by intimidation or coercion; or
 - (C) to affect the conduct of a government by assassination or kidnapping²⁸

FISA’s description of terrorism, with its focus on underlying criminal law and acts of intimidation, served as a model for several subsequent definitions.²⁹

The federal criminal code (Title 18 of the U.S. Code) is unsurprisingly the source of many definitions of terrorism. Section 2331 of the Code, as amended by the USA PATRIOT Act,³⁰ includes definitions for both international and domestic terrorism that are nearly identical to the international terrorism

25. Perry, *supra* note 17, at 252.

26. Analysis of definitions of terrorism in countries other than the United States is beyond the scope of this Article. For discussion of non-U.S. definitions, see Keiran Hardy & George Williams, *What Is “Terrorism”? Assessing Domestic Legal Definitions*, 16 UCLA J. INT’L L. & FOREIGN AFF. 77, 81 (2011), which reviews laws in the United Kingdom, Canada, Australia, South Africa, New Zealand, and India and concludes that “legislatures across the world have created a plethora of diverse definitions of terrorism.” *Id.* See generally Antonio Cassese, *The Multifaceted Criminal Notion of Terrorism in International Law*, 4 J. INT’L CRIM. JUST. 933 (2006) (arguing that customary international law has established a definition of international terrorism during times of peace, but that this definition is inapplicable during times of armed conflict); Marcello Di Filippo, *Terrorist Crimes and International Co-Operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes*, 19 EUR. J. INT’L L. 533 (2008) (proposing a definition of terrorism in the absence of agreement under positive international law); Ben Saul, *Definition of “Terrorism” in the UN Security Council: 1985–2004*, 4 CHINESE J. INT’L L. 141 (2005) (analyzing efforts of the U.N. Security Council to confront terrorism despite its inability to define the term); Elisabeth Symeonidou-Kastanidou, *Defining Terrorism*, 12 EUR. J. CRIME CRIM. L. & CRIM. JUST. 14 (2004) (exploring challenges faced by EU member states in defining terrorism); Reuven Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation*, 29 B.C. INT’L & COMP. L. REV. 23 (2006) (undertaking a detailed study of international instruments containing definitions of terrorism).

27. See Foreign Intelligence Surveillance Act of 1978 § 101(c), 50 U.S.C. § 1801(c) (2018).

28. 50 U.S.C. § 1801(c) (2018).

29. Perry, *supra* note 17, at 256.

30. USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 802, 115 Stat. 272, 376 (codified as amended at 18 U.S.C. § 2331).

definition found in FISA.³¹ Interestingly, “neither of the definitions in § 2331 provides a basis for prosecuting acts of terrorism under federal law. Instead, these definitions were enacted for the limited purpose of seeking court orders and search warrants against individuals suspected of engaging in terrorist activity.”³² Yet despite this substantive limitation, the Section 2331 definitions are referenced in numerous other statutes, including those governing biological agents and toxins,³³ civil liability for acts of international terrorism,³⁴ and the grant of immunity for airline employees who report potential terrorist behavior.³⁵ Regulations also reference the Section 2331 definition, including those that provide grants for assistance to victims of crime.³⁶ According to experts, “Through such wide application in a variety of contexts, the definitions in § 2331 are among the most significant . . . in federal law.”³⁷

Section 2331, however, is not the only area of the federal criminal code that addresses terrorism. Section 2339 criminalizes harboring or concealing terrorists,³⁸ Section 2339A proscribes providing material support to terrorists,³⁹ and the firearms chapter of the Code contains a definition as well.⁴⁰

Beyond the federal criminal code, a vast array of government agencies define terrorism in a variety of legal areas. Significantly, as Section VI of this Article discusses, the Immigration and Nationality Act (INA) defines both “terrorist activity”⁴¹ and “engage in terrorist activity.”⁴² The Military Commissions Act defines terrorism for the purpose of prosecuting unlawful enemy combatants in U.S. military commissions.⁴³ The State Department’s definition is used as the standard for its annual reports on terrorism and to designate terrorist organizations.⁴⁴ There are definitions in the Terrorism Risk Insurance Act⁴⁵ and the Aviation and Transportation Security Act.⁴⁶ The Department of Housing and Urban Development;⁴⁷ the Bureau of Alcohol,

31. Compare 18 U.S.C. § 2331(1), (5) (2018), with 50 U.S.C. § 1801(c).

32. Hardy & Williams, *supra* note 26, at 156.

33. 7 U.S.C. § 8401(e)(3)(B)(ii)(II) (2018); 42 U.S.C. § 262a(e)(3)(B)(ii)(II) (2018).

34. 18 U.S.C. § 2333(a) (referring to 18 U.S.C. § 2331(1)).

35. 49 U.S.C. § 44941(a) (2018) (referring to 18 U.S.C. § 3077, which refers to 18 U.S.C. § 2331).

36. Victims of Crime Act (VOCA) Victim Assistance Grant Program, 67 Fed. Reg. 56,444, 56,448 (proposed Sept. 3, 2002) (revising Guidelines for Victims of Crime Act Victim Assistance Grant Program, § I(N) and § I(O)).

37. Perry, *supra* note 17, at 257.

38. 18 U.S.C. § 2339.

39. *Id.* § 2339A.

40. *Id.* § 921(a)(22).

41. Immigration and Nationality Act of 1990 § 601(a), 8 U.S.C. § 1182(a)(3)(B)(iii) (2018).

42. *Id.* § 1182(a)(3)(B)(iv).

43. Military Commissions Act of 2006 § 3, 10 U.S.C. § 950t(24) (2018).

44. See 22 U.S.C. § 2656f(d)(2) (2018).

45. Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 102(1), 116 Stat. 2322, 2323–24.

46. Aviation and Transportation Security Act § 129, 49 U.S.C. § 44703(g)(3) (2018).

47. See 24 C.F.R. § 573.2 (2018).

Tobacco, Firearms, and Explosives;⁴⁸ the Department of the Treasury;⁴⁹ and the FBI⁵⁰ each have their own definitions. There are definitions relating to foreign electronic surveillance.⁵¹ Terrorism has also been defined in executive orders⁵² and by states in their criminal codes.⁵³ Ultimately, the sheer magnitude of usage led the U.S. House of Representatives Permanent Select Committee on Intelligence's Subcommittee on Terrorism to conclude that "practically every agency in the United States government with a counterterrorism mission uses a different definition of terrorism."⁵⁴

International attempts to arrive at a definition of terrorism have not fared better than those in the United States. The United Nations began debating the definitional issue in 1972 after the deadly attack on Israeli athletes at the Munich Olympic Games.⁵⁵ The United Nations' Ad Hoc Committee on International Terrorism attempted to define the term, but it ceased its efforts when it was unable to achieve consensus after six years.⁵⁶ Decades later, the attacks of September 11, 2001, galvanized the international community to combat acts of terror. U.N. Security Council Resolution 1373, passed mere days after the attacks, charged member states to enact terrorism offenses in their domestic criminal codes.⁵⁷ The Resolution did not, however, provide a definition of terrorism for nations to utilize in their work.⁵⁸

The international situation currently mirrors the situation in the United States: many related but different definitions located in various international instruments, such as the International Convention for the Suppression of the Financing of Terrorism⁵⁹ and U.N. Security Council Resolution 1566.⁶⁰ A

48. See 27 C.F.R. § 478.11 (2018).

49. See 31 C.F.R. § 594.311 (2018).

50. 28 C.F.R. § 0.85(l) (2018).

51. 50 U.S.C. § 1801 (2018).

52. See, e.g., Exec. Order No. 13,224, 3 C.F.R. § 786 (2001). President George W. Bush issued Executive Order 13,224 on September 23, 2001, in response to the terrorist attacks of September 11, 2001. *Id.* at 786–87. It authorizes the Department of the Treasury to block the assets of foreign individuals and entities that commit or pose a significant risk of committing acts of terrorism as well as those that provide support, services, or assistance to or otherwise associate with terrorists and terrorist organizations. *Id.* § 1(b).

53. See, e.g., 720 ILL. COMP. STAT. ANN. 5 / 29D-14.9 (West 2019); N.Y. PENAL LAW § 490.25(1) (McKinney 2019).

54. Michael Saba, *Is 'Terrorism' Being Defined by the 'Terrorists?'*, ARAB NEWS (June 19, 2004, 3:00 AM), <http://www.arabnews.com/node/251298> [<http://perma.cc/MSM8-FV6Q>].

55. Alex Schmid, *Terrorism—The Definitional Problem*, 36 CASE W. RES. J. INT'L L. 375, 385 (2004).

56. See Gilbert Guillaume, *Terrorism and International Law*, 53 INT'L & COMP. L.Q. 537, 539 (2004). The political issues that led to the inability of the Ad Hoc Committee to arrive at an international definition are perhaps best summed up by the familiar adage, "one person's terrorist is another person's freedom fighter." See *id.*

57. S.C. Res. 1373, ¶ 2 (Sept. 28, 2001).

58. See *id.*

59. G.A. Res. 54/109, art. 2(1)(b) (Feb. 25, 2000).

60. S.C. Res. 1566, ¶ 3 (Oct. 8, 2004). The definitions in the Financing Convention and Security Council Resolution 1566 are considered "the most authoritative international definitions of terrorism

significant number of regional conventions also address the issue of terrorism, both directly and indirectly.⁶¹

What first emerges from a study of both domestic and international law is that a singular definition of terrorism is elusive. But a review of attempts to define the term also reveals some agreement regarding the elements and nature of terrorism. First, terrorism is distinct from generalized crime. “Legally and morally, . . . intent . . . distinguish[es] terrorism from mass murder.”⁶² Therefore, for a violent act to constitute terrorism as opposed to simply a crime, a violent tactic (such as a bombing or a shooting) must be committed with an identifiable terroristic motive.⁶³

A landmark study⁶⁴ by scholar Alex Schmid helps elucidate this requisite motive or intent.⁶⁵ Schmid catalogued 109 different definitions of terrorism and identified 22 elements that appeared in more than 1 definition.⁶⁶ He found that only three of these elements—violence/force, political, and fear/terror—appeared in at least half of the proposed definitions.⁶⁷ The other most frequently appearing elements are threat; psychological effects; victim-target differentiation; purposive, planned, systematic, organized action; and method of combat/strategy.⁶⁸ Schmid’s work thus demonstrated that, though terrorists frequently have political aims, they have equally significant objectives to instill fear or evoke similarly threatening or psychological effects.

Ultimately, given the complicated political issues at stake, a precise legal definition of terrorism may remain elusive for the foreseeable future. Schmid’s definitional analysis therefore remains the closest to consensus that exists in the field, with three key elements both characterizing terrorist activity and differentiating it from other crime: (1) perpetration of violent acts (2) with the purpose of instilling fear and (3) with political motivations.⁶⁹ Thus, these elements compose the definition of terrorism utilized in this Article.

available because they have received express support from several influential international bodies in recent years.” Hardy & Williams, *supra* note 26, at 93–94. “The Canadian Supreme Court and the England and Wales Court of Appeal have also expressed support for the Financing Convention and Resolution 1566 definitions.” *Id.* at 94.

61. See Alexander, *supra* note 18, at 92–94.

62. Yin, *Terrorism or Mass Murder?*, *supra* note 22.

63. Put another way, “unlike ordinary criminals—who are often driven by self-centered motives such as profit and tend to opportunistically seek easy prey—domestic terrorists are driven by a cause or ideology.” BJELOPERA, *supra* note 9, at 6. However, the Congressional Research Service notes that even though ideology can be a differentiating hallmark of terrorist actors, it alone cannot distinguish a terrorist from a criminal, as “ideologically motivated actors can also collaborate with profit-driven individuals to commit crimes.” *Id.*

64. See CHRISTOPHER C. HARMON, *TERRORISM TODAY* 32 (2008) (calling Schmid’s work the “best-known work on this problem of definitions”).

65. See ALEX P. SCHMID, *POLITICAL TERRORISM: A RESEARCH GUIDE TO CONCEPTS, THEORIES, DATA BASES AND LITERATURE* 119–52 (1983).

66. *Id.* at 76–77.

67. *Id.*

68. *Id.* Other relevant elements include intimidation (14), unpredictability (18), repetitiveness (20), and criminal nature of the acts (21). *Id.*

69. See Jessie Blackbourn et al., *Academic Consensus and Legislative Definitions of Terrorism:*

II. DEFINING INTIMATE PARTNER VIOLENCE

Like terrorism, the definition of intimate partner violence has evolved over time and lacks a single, simple, or universally accepted definition. The U.S. Department of Justice has defined domestic violence as

a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.⁷⁰

This federal definition includes several key components of the phenomenon that experts recognize as domestic abuse—a pattern of deliberate behavior, the presence of a dynamic of power and control, and tactics that encompass physical or sexual violence as well as many forms of emotional or psychological abuse.⁷¹ The inclusion of nonphysical violence is critical, for as Professor Evan Stark argued in his seminal book, *Coercive Control*, patterns of manipulative behavior that restrict a woman's⁷² liberty or freedom can ultimately be more damaging than violations of bodily integrity.⁷³

Although domestic violence was at one time presumed to be a crime of passion brought on by uncontrolled anger or substance abuse, it is now

Applying Schmid and Jongman, 34 STATUTE L. REV. 239, 260–61 (2012) (“Terrorism is some form of purposive and planned violence that has a political, religious, or ideological motivation. It is intended to coerce or intimidate and is targeted at civilians or government.”).

70. *Domestic Violence*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (Nov. 2011), http://ojp.gov/newsroom/factsheets/ojpbs_domesticviolence.html [<http://perma.cc/2WDA-L48R>]. In April 2018 this definition of domestic violence was removed from the Department of Justice's website. It was replaced with a more limited statutory definition that recognizes as domestic violence only harms that constitute a felony or misdemeanor crime. See Natalie Nanasi, *The Trump Administration Quietly Changed the Definition of Domestic Violence and We Have No Idea What For*, SLATE (Jan. 21, 2019, 1:00 PM), <http://slate.com/news-and-politics/2019/01/trump-domestic-violence-definition-change.html> [<http://perma.cc/9SDB-V26P>].

71. See *Immigrant Power and Control Wheel*, NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDsv-ICE_updated2009.pdf [<http://perma.cc/BA7V-4LGB>] (last visited Feb. 15, 2019). The Power and Control Wheel is a tool that organizes and describes the most common tactics used by abusers to exert dominance in a relationship. See *id.* It references physical and sexual violence as well as emotional abuse, isolation, use of children and male privilege, economic abuse, threats, intimidation, and blaming. See *id.*

72. Although both men and women experience intimate partner abuse, this Article uses female pronouns to refer to survivors because the groups are not equally impacted: one in four women has been the victim of severe physical violence by a partner as opposed to one in seven men. CDC, NATIONAL DATA ON INTIMATE PARTNER VIOLENCE, SEXUAL VIOLENCE, AND STALKING (2014), <http://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf> [<http://perma.cc/7GUS-FPVF>]. Another study reports that between 1994 and 2010, four in five victims of domestic violence were female. *Statistics*, NAT'L DOMESTIC VIOLENCE HOTLINE, <http://www.thehotline.org/resources/statistics/> [<http://perma.cc/YD3L-G9H7>] (last visited Feb. 15, 2019).

73. EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 13–14 (2007).

understood to be purposeful behavior utilized by an abusive partner to achieve a desired result.⁷⁴ As Professor Donna Coker explained,

much of current literature on battering notes that the violence, contrary to earlier psychoanalytic explanations, is *instrumental* rather than *expressive*. In other words, the violence is not only an expression of rage, but serves a *purpose*. In general, that purpose is to *control* his wife or lover, to gain compliance with his demands. . . . It is part of a *system* of control and is frequently accompanied by threatening behavior, destruction of property, sexual, verbal, and economic abuse.⁷⁵

It is widely recognized that the intended purpose of intimate partner violence is for an abuser to maintain power and control over his partner.⁷⁶ Feminist scholars have also identified a related motive, which is to preserve authority and superiority.⁷⁷ They have argued that abusers “see themselves as rightfully in control of their wives or partners and feel aggrieved and victimized when these women try to assert some independence.”⁷⁸

In a landmark book, Professor Michael Johnson used the concept of coercive control to distinguish between three different forms of violence that might occur within a relationship. *Intimate terrorism* describes what had previously been subsumed under the general category of domestic violence—a cycle of abuse through which mental, emotional, physical, and sexual abuse, as well as economic and social isolation, were used to exercise control over another person.⁷⁹ This cyclical and controlling behavior does not exist in the two other categories—*violent resistance* (self-defense) and *situational couple violence* (isolated incident(s) of abuse).⁸⁰ As Johnson explained,

A slap from an intimate terrorist who has taken complete control of his partner’s life is not the same as a slap from a generally noncontrolling partner in the heat of an argument, and of course neither of these is the same as the desperate use of violence by a woman who is being physically and emotionally terrorized by someone she loves.⁸¹

74. See, e.g., *Domestic Violence Myths and Misconceptions*, ARIZ. COALITION TO END SEXUAL & DOMESTIC VIOLENCE, <http://www.acesdv.org/domestic-violence-graphics/domestic-violence-myths-and-misconceptions/> [<http://perma.cc/676E-F8GY>] (dispelling the myth that “[d]omestic violence is an impulse control or anger management problem”); *Drugs, Alcohol and Abuse*, NAT’L DOMESTIC VIOLENCE HOTLINE (Mar. 11, 2015), <http://www.thehotline.org/2015/03/11/drugs-alcohol-and-abuse/> [<http://perma.cc/62AD-78BS>] (explaining that while drugs and alcohol can exacerbate abuse, they are not its root cause).

75. Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN’S STUD. 71, 85 (1992) (footnotes omitted).

76. See, e.g., Johnson & Leone, *supra* note 11, at 322 (describing domestic violence as “violence that is embedded in a general pattern of controlling behaviors, indicating that the perpetrator is attempting to exert general control over his partner”).

77. See, e.g., Martha Chamallas, *Hostile Domestic Environments: Commentary on Jane Maslow Cohen’s Regimes of Private Tyranny*, 57 U. PITT L. REV. 809, 811–12 (1996).

78. E.g., *id.*

79. See JOHNSON, *supra* note 11, at 25–47.

80. *Id.* at 72.

81. *Id.*

Under this framework, it is not the nature of a single incident that determines the severity or category of relationship violence. The abuse, and the abuser himself, are properly understood only when viewed in “the control context in which they are embedded.”⁸²

Lastly, the notion that intimate partner violence is, at its core, about coercive control forms the basis of the theory of *separation violence* or *separation assault*.⁸³ Those terms describe situations wherein a challenge to an abuser’s control, such as an attempt to separate or leave the relationship, leads the abuser to retaliate against a survivor with escalating violence.⁸⁴ Separation violence was best described by Professor Martha Mahoney as “the attack on the woman’s body and volition in which her partner seeks to prevent her from leaving, retaliate for the separation, or force her to return. . . . It is an attempt to gain, retain, or regain power in a relationship, or to punish the woman for ending the relationship.”⁸⁵ The risk of violence and death thus increases when a woman leaves or seeks to leave her abuser.⁸⁶ Violence, or the threat of violence, becomes “an efficient way to put down challenges to authority”⁸⁷ and to make “a statement to women about the kind of relationship they believe they are entitled to. In this sense, battering is a way of organizing a relationship so that men continue to feel superior to women.”⁸⁸

III. REFRAMING INTIMATE PARTNER VIOLENCE AS TERRORISM

As noted in the Introduction, Professor Isabel Marcus was the first to reframe intimate partner violence as domestic terrorism. Her rationale for the reconceptualization was based on a recognition that domestic abuse is more than just a series of isolated incidents of violence committed by one partner against another in the privacy of their home or relationship. Instead, she argued that “the use of coercive means, including violence and abuse, for securing or maintaining . . . power” in a relationship has political and societal implications.⁸⁹ The label of terrorism, Marcus claimed, therefore better expressed both the

82. *Id.* at 2.

83. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–66 (1991).

84. *Id.*

85. *Id.*

86. Tom Lininger, *Prosecuting Batterers After Crawford*, 91 VA. L. REV. 747, 769 (2005) (“[D]ata show that the time when a victim decides to break free [from] a violent relationship is the most dangerous time; it is the time when the majority of domestic violence homicides occur.”). Experts have found “that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays.” Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, COLO. LAW., Oct. 1999, at 19, 19. And even if a victim is not murdered, at least half of women who leave their abusers are followed and harassed or further attacked by them. Mahoney, *supra* note 83, at 64.

87. Chamallas, *supra* note 77, at 813.

88. SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* 224 (1982).

89. Marcus, *supra* note 10, at 22 (citation omitted).

gravity of and society's collective responsibility for allowing intimate partner abuse to occur.⁹⁰

Although seemingly radical, Marcus was neither the first nor the only scholar to attempt to reframe domestic violence in order to more appropriately convey its severity and societal implications. Scholars have reconceptualized intimate partner abuse as involuntary servitude,⁹¹ torture,⁹² discrimination,⁹³ criminal coercion,⁹⁴ and patriarchal or intimate terrorism⁹⁵ (concepts similar to Marcus's). Scholars have posited that domestic violence constitutes a violation of various rights, including international human rights⁹⁶ and civil rights,⁹⁷ as well as international law.⁹⁸ Others have analogized it to broader social ills such as tyranny⁹⁹ and war.¹⁰⁰

An evolving understanding of domestic violence is also not a recent phenomenon. A significant change in the conception of domestic abuse occurred in the 1970s when, soon after the problem of intimate partner violence gained widespread recognition and attention, the battered women's movement sought

90. *Id.* at 31.

91. See generally Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207, 209 (1992) (examining the "theoretical, doctrinal and factual connections between involuntary servitude and intimate violence").

92. See generally Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 296 (1994) (examining domestic violence "in light of the evolving international legal understanding of torture").

93. See generally Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER SOC. POL'Y & L. 251 (2003) (situating violence against women in the legal category of discrimination).

94. See generally Joan Erskine, Note, *If It Quacks Like a Duck: Recharacterizing Domestic Violence as Criminal Coercion*, 65 BROOK. L. REV. 1207 (1999) (arguing that intimate partner violence should be characterized as criminal coercion or a pattern of intimidation aimed at controlling the victim's actions).

95. See JOHNSON, *supra* note 11, at 25–47 (differentiating between intimate terrorism and situational couple violence); Johnson & Leone, *supra* note 11, at 332–44 (same).

96. See generally Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISP. J. BEHAV. SCI. 107 (1999) (examining the issue of domestic violence from a human rights perspective); Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119 (1995) (exploring a conceptualization of domestic violence as a human rights violation).

97. See generally Julie Goldscheid, *Gender-Motivated Violence: Developing a Meaningful Paradigm for Civil Rights Enforcement*, 22 HARV. WOMEN'S L.J. 123 (1999) (proposing a mechanism to assess motivation that can guide courts in determining when violent acts are sufficiently gender biased to warrant federal civil rights intervention).

98. See generally Catharine A. MacKinnon, *Rape, Genocide, and Women's Human Rights*, 17 HARV. WOMEN'S L.J. 5 (1994) (arguing that private violence against women constitutes a violation of international law).

99. See generally Jane Maslow Cohen, *Regimes of Private Tyranny: What Do They Mean to Morality and for the Criminal Law?*, 57 U. PITT. L. REV. 757 (1996) (utilizing the term "private tyranny" to describe domestic abuse).

100. See generally Catharine A. MacKinnon, *Women's September 11th: Rethinking the International Law of Conflict*, 47 HARV. INT'L L.J. 1 (2006) [hereinafter MacKinnon, *Women's September 11th*] (advocating for consideration of violence against women as a war against women).

to depict the issue as a public, rather than a private, problem.¹⁰¹ This conceptual shift, which suggested that society had a responsibility to remedy domestic abuse, led to the expansion of protections for survivors, including shelters and social services. New legal remedies, such as protective orders and criminal sanctions¹⁰² (including controversial mandatory arrest and no-drop prosecution policies¹⁰³), also emerged.

Ultimately, it is clear that domestic violence has long been ripe for reexamination and reframing. As Professor Martha Chamallas explained,

I sometimes refer to domestic violence as a “feminist harm” in the sense that, as a phenomenon, domestic violence has not attained fixed boundaries. Like sexual harassment, domestic violence is constantly in the process of being conceptualized and reconceptualized by feminist practitioners and theorists. The challenge for many feminists is to provide thick descriptions of women’s suffering and in the process to expose the inadequacy of the conventional legal categories.¹⁰⁴

Reconceptualizing intimate partner violence as terrorism is supported by the commonalities between the two issues. Abuse in the home appears to be a “psychological training ground”¹⁰⁵ for and regular precursor to mass attacks.¹⁰⁶ A study conducted by the advocacy group Everytown for Gun Safety revealed that of the mass shootings committed in the United States from 2009 to 2016, more than half were related to domestic or family violence, meaning that the perpetrator shot a current or former intimate partner or family member.¹⁰⁷

101. See Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 974 (1991) (“Over the last twenty years, however, as the battered women’s movement in this country has made issues of battering visible, battering is no longer perceived as a purely ‘private’ problem and has taken on dimensions of a ‘public’ issue.”).

102. See Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 9 (2004); Natalie Nanasi, *The U Visa’s Failed Promise for Survivors of Domestic Violence*, 29 YALE J.L. & FEMINISM 273, 290–92 (2018) (describing and critiquing mandatory legal interventions in cases involving immigrant survivors of intimate partner violence); Donna M. Welch, *Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?*, 43 DEPAUL L. REV. 1133, 1160 (1994); Nichole Miras Mordini, Note, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295, 320 (2004).

103. Mandatory arrest policies compel officers who respond to a domestic violence call to effectuate an arrest once probable cause has been established. David Hirschel et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 256 (2007). Pursuant to mandatory, or no-drop, prosecution policies, prosecutors are not permitted to dismiss criminal charges in a domestic violence case, even if the victim does not want to cooperate with the prosecution or see it proceed. Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 858 (1994). Scholars have criticized these policies both as being disempowering and potentially dangerous for survivors. See, e.g., Goodmark, *supra* note 102, at 9.

104. Chamallas, *supra* note 77, at 811.

105. Amanda Taub, *Control and Fear: What Mass Killings and Domestic Violence Have in Common*, N.Y. TIMES (June 15, 2016), <http://nyti.ms/1rplMP0> [<http://perma.cc/2ULN-FRLD>].

106. As discussed in Section II *supra*, a mass shooting is not necessarily always an act of terrorism, but it is a close analogue for purposes of the discussion here.

107. EVERYTOWN FOR GUN SAFETY, MASS SHOOTINGS IN THE UNITED STATES: 2009–2016, at

Anecdotal evidence from recent attacks confirms these findings and demonstrates a striking correlation between public and private violence, indicating that domestic violence is a significant predictor of mass violence. Omar Mateen, who killed forty-nine people and wounded fifty-three others in a shooting at an Orlando gay nightclub, “had an extensive history of domestic abuse.”¹⁰⁸ Cedric Ford went on a shooting rampage at a manufacturing plant in Kansas ninety minutes after a court issued a family violence protective order against him.¹⁰⁹ Robert Lewis Dear, who killed three people and wounded nine at a Colorado Springs Planned Parenthood clinic in 2015, had previously been arrested for sexual violence and rape.¹¹⁰ “At least two of his three ex-wives ha[d] accused him of physical abuse.”¹¹¹ Man Haron Monis, who held café patrons hostage in Sydney, Australia, in 2014, eventually killing two and wounding four, “had terrorized his ex-wife.”¹¹² James Hodgkinson, who attacked a congressional baseball practice in June 2017, had previously been arrested for domestic battery and discharge of a firearm.¹¹³ Mohamed Bouhlel, who drove a truck through a Bastille Day celebration in 2016, was known to French authorities for abusing his wife.¹¹⁴ Tamerlan Tsarnaev, one of the Boston Marathon bombers, had previously been arrested on a domestic violence charge.¹¹⁵ The ex-wife of Khalid Masood, who drove his car into a crowd of pedestrians near Westminster Palace in London,¹¹⁶ “had fled her ex-husband in terror after just three months of marriage.”¹¹⁷

3-5 (2017), <http://everytownresearch.org/wp-content/uploads/2018/11/MassShootings-Research-Report-121018A-2.pdf> [<http://perma.cc/NPG9-KNZ8>].

108. Rebecca Traister, *What Mass Killers Really Have in Common*, CUT (July 15, 2016), <http://www.thecut.com/2016/07/mass-killers-terrorism-domestic-violence.html> [<http://perma.cc/HVT6-JEVN>].

109. Greg Botelho et al., *Kansas Shooting: Sheriff Believes Protection Order Sparked Carnage*, CNN (Feb. 27, 2016, 9:02 PM), <http://www.cnn.com/2016/02/26/us/kansas-shooting/index.html> [<http://perma.cc/E8T2-BNZV>].

110. William Wan, *Before Colorado Shooting, a Trail of Allegations of Violence Against Women*, WASH. POST (Dec. 1, 2015), http://www.washingtonpost.com/national/before-colorado-shooting-a-long-history-of-violence-against-women/2015/12/01/7f494c86-987b-11e5-8917-653b65c809eb_story.html [<http://perma.cc/5WTX-FTKL>].

111. *Id.*

112. Taub, *supra* note 105.

113. Jane Mayer, *The Link Between Domestic Violence and Mass Shootings*, NEW YORKER (June 16, 2017), <http://www.newyorker.com/news/news-desk/the-link-between-domestic-violence-and-mass-shootings-james-hodgkinson-steve-scalise> [<http://perma.cc/ZT3L-VPCD>].

114. Rafia Zakaria, *Toxic Masculinity*, DAWN (June 14, 2017), <http://www.dawn.com/news/print/1339370> [<http://perma.cc/FS3R-3KDS>].

115. Matthew Mosk & Michele McPhee, *Accused Boston Bomber Faced 2009 Arrest on Domestic Violence Charge*, ABC NEWS (Apr. 22, 2013), <http://abcnews.go.com/Blotter/accused-boston-bomber-faced-2009-arrest-domestic-violence/story?id=19017079> [<http://perma.cc/S35V-EQLV>].

116. Haroon Siddique, *Westminster Attacker Lawfully Killed by Minister's Bodyguard, Jury Finds*, GUARDIAN (London) (Oct. 12, 2018, 12:10 PM), <http://www.theguardian.com/uk-news/2018/oct/12/westminster-bridge-attack-khalid-masood-lawfully-killed-inquest-concludes> [<http://perma.cc/P464-THEX>].

117. Hadley Freeman, Opinion, *What Do Many Lone Attackers Have in Common? Domestic*

Beyond this long list of examples, scholars have highlighted parallels between the tactics utilized by terrorists and batterers. Marcus noted three commonalities: “unannounced and seemingly random but actually calculated attacks of violence; psychological as well as physical warfare aimed at silencing protests and minimizing retaliatory responses . . . ; and the creation of an atmosphere of intimidation in which there is no safe place of escape.”¹¹⁸ Alex Schmid’s elements of terrorism—perpetration of violent acts with the purpose of instilling fear and with political motivations—also overlap significantly with domestic abuse.¹¹⁹ Both terrorists and abusers utilize violence, force, fear, terror, and threats to intimidate¹²⁰ and control victims.¹²¹ The purposeful nature of domestic abuse as well as its unpredictable but repetitive nature also mimic terroristic behavior. Lastly, as this Section discusses in further detail below, both groups have political aims for their violence.¹²²

In addition to their methods, the profiles of terrorists and batterers are also comparable. Eighty percent of terrorists are male¹²³ as are the majority of domestic abusers.¹²⁴ People from all backgrounds commit terrorist attacks (as well as domestic abuse),¹²⁵ so a “single terrorist personality” does not exist, but “certain psychological types of people may be attracted to terrorism.”¹²⁶ A study by the Federal Research Division of the Library of Congress identified several personality traits of potential terrorists, including frustration-aggression, negative identity,¹²⁷ and narcissistic rage.¹²⁸ Researchers studying the psychology

Violence, GUARDIAN (London) (Mar. 28, 2017, 10:30 AM), <http://www.theguardian.com/commentisfree/2017/mar/28/lone-attackers-domestic-violence-khalid-masood-westminster-attacks-terrorism> [<http://perma.cc/YM6S-VVPG>].

118. Marcus, *supra* note 10, at 31.

119. See SCHMID, *supra* note 65, at 76.

120. See REX A. HUDSON, THE LIBRARY OF CONGRESS, THE SOCIOLOGY AND PSYCHOLOGY OF TERRORISM: WHO BECOMES A TERRORIST AND WHY? 20 (Marilyn Majeska ed., 1999), http://www.loc.gov/rr/frd/pdf-files/Soc_Psych_of_Terrorism.pdf [<http://perma.cc/5RYR-G3U7>] (noting that “terrorism is an attempt to acquire or maintain power or control by intimidation”).

121. SCHMID, *supra* note 65, at 119–23.

122. See *infra* notes 134–39 and accompanying text for an analysis of the overlap of political aims among domestic abusers and terrorist actors.

123. HUDSON, *supra* note 120, at 52 (analyzing data from 1976 to 1986); Michael Kimmel, *Almost All Violent Extremists Share One Thing: Their Gender*, GUARDIAN (London) (Apr. 8, 2018, 6:00 AM), <http://www.theguardian.com/world/2018/apr/08/violent-extremists-share-one-thing-gender-michael-kimmel> [<http://perma.cc/4M58-C4M9>].

124. See Debra Houry et al., *Differences in Female and Male Victims and Perpetrators of Partner Violence With Respect to WEB Scores*, 23 J. INTERPERSONAL VIOLENCE 1041, 1042–43 (2008) (noting that “it is well acknowledged that the majority of victims of injury-related violence are heterosexual women” and that intimate terrorism “is primarily perpetrated by men against women”).

125. See L. Kevin Hamberger & James E. Hastings, *Personality Correlates of Men Who Abuse Their Partners: A Cross-Validation Study*, 1 J. FAM. VIOLENCE 323, 338 (1986) (“No single ‘abuser personality’ was found.”); see also Catherine A. Simmons et al., *Personality Profiles of Women and Men Arrested for Domestic Violence: An Analysis of Similarities and Differences*, 41 J. OFFENDER REHABILITATION, no. 4, 2005, at 63, 66 (“[N]o one ‘abuse profile’ exists.”).

126. HUDSON, *supra* note 120, at 60.

127. Negative identity is “marked by indifference or antipathy to something that much of society views as fundamental.” Nancy Leong, *Negative Identity*, 88 S. CAL. L. REV. 1357, 1358–59

of domestic abusers have identified similar characteristics that are prevalent among that group, including “antisocial, aggressive-sadistic, passive-aggressive (negativistic),”¹²⁹ and “narcissistic/antisocial personality disorder.”¹³⁰

Attorney and author Rafia Zakaria noted that the “same mechanics of justification that are at the root of intimate terrorism, the idea that the abuse is ‘for the good of the woman’ to correct her or to teach her a lesson, lie at the heart of the justification of terrorist acts.”¹³¹ Terrorist actors use a similar framework to justify the killing of innocent people as “a correction for society, for the larger good.”¹³² Zakaria, like Marcus, also listed pathologies that are present in both terrorists and batterers: “The psychological need for control, the attraction toward simple solutions to what are complex social problems, . . . hyper aggression and attraction to portraying outward ‘strength.’”¹³³

Ultimately, both terrorism and intimate partner abuse are, at their most basic levels, attempts to use violence or the threat of violence to provoke fear and assert control.¹³⁴ A terrorist seeks to assert power and control through acts of public violence against strangers whereas a domestic abuser expresses the same terroristic tendencies in his home against his intimate partner. And, perhaps contrary to public perception, an abuser’s actions in the home also have significant political implications.

Whereas the political aims of a “traditional” terrorist are often clear—for example, to protest or seek to change the actions of a government—the political objectives of a man who abuses his wife are less obvious. This is perhaps unsurprising, as domestic violence is often “minimized, or denied, or viewed as individual and aberrant rather than a culturally justified and endorsed systemic practice designed to silence and to coerce a clearly identifiable population.”¹³⁵ Only upon deeper examination is the cultural and sociopolitical nature of intimate partner violence realized, but once that lens is used, it becomes apparent that at the root of intimate partner violence is an effort to maintain patriarchy within a personal relationship. Thus, violence in the home is a reflection of societal views of male dominance. Put another way, one purpose of domestic abuse is to maintain the status quo—to prevent the perpetuation of feminist or progressive ideas into the home and, by extension, to society writ large.

(2015).

128. HUDSON, *supra* note 120, at 20–21.

129. Simmons et al., *supra* note 125, at 66–67.

130. Hamberger & Hastings, *supra* note 125, at 338.

131. Zakaria, *supra* note 114.

132. *Id.*

133. *Id.*

134. See Rachel Pain, *Everyday Terrorism: Connecting Domestic Violence and Global Terrorism*, 38 PROGRESS HUM. GEOGRAPHY 531, 536 (2014) (“[E]veryday terrorism is political, contested and understood by its capacity to instil [sic] fear through coercive control.”); Taub, *supra* note 105 (quoting Deborah Epstein, “who runs Georgetown University Law Center’s domestic violence clinic,” as saying that “[i]ntimate terrorism stems from that desire to control”).

135. Marcus, *supra* note 10, at 17.

What constitutes a political aim within an intimate relationship may not fit the traditionally understood definition of “political,” but the definition of political is neither unanimous nor static, even in the field of terrorism. For example, Professor Wayne McCormack has noted that although “the classic definitions of terrorism have sought to distinguish it from ordinary criminal behavior by looking at political objectives, . . . very few of the Islamic groups have genuine ‘political’ objectives in the sense of controlling and governing definable territory.”¹³⁶

Moreover, political success is difficult to achieve using traditional terrorist activity. Thus, if achievement of political objectives is used as a measure, as Schmid did in his definitional analysis,¹³⁷ one can argue that domestic violence is more akin to terrorism than what currently merits that label. As Professor Rachel Pain noted, global terrorism “does not always live up to its intent of instilling fear, and its achievement of political influence is very mixed. Everyday terrorism [(domestic violence)] creates more fear and trauma because it is more frequent and prolonged, and takes place within the intimate sphere.”¹³⁸ Therefore, “[t]he loss of freedoms, self-sufficiency, safety and emotional tranquility are the same outcomes that global terrorists aim for, though evidence suggests that abusive partners achieve them more effectively.”¹³⁹

Ultimately, the significant overlap between the actions, tactics, psychological profiles, and political objectives of domestic abusers and terrorist actors supports a definitional reconceptualization of intimate partner abuse as terrorism in the home. The impact of such a reframing on domestic violence-based asylum law is the subject of the remainder of this Article.

IV. IMPLICATIONS FOR ASYLUM LAW

Establishing eligibility for asylum protection, particularly when the persecution faced is intimate partner violence, is a legally complex and challenging task. An analysis must begin with the refugee definition, which determines eligibility for asylum in the United States. Section 1101(a)(42)(A) of the Immigration and Nationality Act (INA) defines a “refugee” as

any person who is outside any country of such person’s nationality . . . who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹⁴⁰

136. WAYNE MCCORMACK, UNDERSTANDING THE LAW OF TERRORISM 63 (1st ed. 2007).

137. See *supra* notes 64–69.

138. Pain, *supra* note 134, at 540.

139. Lucy Berrington, *Domestic Violence Is Terrorism with More Victims*, WOMEN’S ENEWS (July 17, 2012), <http://womensenews.org/2012/07/domestic-violence-terrorism-more-victims/> [http://perma.cc/AK6V-TRCS].

140. 8 U.S.C. § 1101(a)(42)(A) (2018).

A full analysis of the refugee definition is outside the scope of this Article, but critical here are two concepts: (1) a state's role in persecuting the refugee, or "state action,"¹⁴¹ and (2) "nexus." Nexus requires persecution to be "on account of" one of the five grounds listed in the definition: "race, religion, nationality, membership in a particular social group, or political opinion."¹⁴² All published asylum cases granting relief to survivors of intimate partner violence have utilized the *particular social group* ground because gender is not one of the enumerated categories of protection.¹⁴³ Thus, an in-depth exploration of asylum law must begin with an examination of that phrase and its use in domestic abuse cases.

A. *Asylum for Survivors of Intimate Partner Violence*

1. Particular Social Group

Like the refugee definition itself, the law of particular social group is nuanced and complex. As even the immigration courts have identified, "[o]f the five statutory grounds for asylum, the meaning of membership in a particular social group is perhaps the least well defined and the most robustly debated."¹⁴⁴ Courts have struggled with defining and interpreting the phrase, not only due to the ambiguity inherent in the term itself but also due to the lack of legislative history surrounding its inclusion in the refugee definition.¹⁴⁵ The question of whether survivors of domestic violence constitute a particular social group was the subject of litigation for years until 2014, when the Board of Immigration Appeals (BIA or Board) recognized that survivors can compose a legally viable group.¹⁴⁶ However, then-Attorney General Jeff Sessions recently overturned that seminal case,¹⁴⁷ returning great uncertainty to the area.

Under existing law, a particular social group must possess four elements: immutability, social distinction, particularity, and noncircularity. The seminal

141. See *infra* Section IV.B for a discussion of state action as it relates to the definition of asylum.

142. 8 U.S.C. § 1101(a)(42)(A).

143. See, e.g., *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 389 (B.I.A. 2014), *overruled by* *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018).

144. Department of Homeland Security's Position on Respondent's Eligibility for Relief at 6, *Matter of R-A-*, 22 I. & N. Dec. 906 (B.I.A. 1999) (No. A 73 753 922) [hereinafter *DHS Brief in Matter of R-A-*].

145. See *Fatin v. INS*, 12 F.3d 1233, 1238–39 (3d Cir. 1993) ("Both courts and commentators have struggled to define 'particular social group.' Read in its broadest literal sense, the phrase is almost completely open-ended. Virtually any set including more than one person could be described as a 'particular social group.' Thus, the statutory language standing alone is not very instructive. Nor is there any clear evidence of legislative intent." (footnotes omitted)); see also *Lwin v. INS*, 144 F.3d 505, 510–11 (7th Cir. 1998) ("The legislative history behind the term . . . is uninformative, and judicial and agency interpretations are vague and sometimes divergent. As a result, courts have applied the term reluctantly and inconsistently.").

146. See *Matter of A-R-C-G-*, 26 I. & N. Dec. at 388–89.

147. See *Matter of A-B-*, 27 I. & N. Dec. at 319.

1985 case of *Matter of Acosta*¹⁴⁸ created the *immutability* requirement.¹⁴⁹ In that case, the BIA defined a particular social group as comprising individuals who share “a common, immutable characteristic” that either cannot be changed or is “so fundamental to [the individuals’] identit[ies] or conscience[s]” that they should not be required to change it.¹⁵⁰ This “shared characteristic might be an innate one such as sex, color, or kinship ties or, in some circumstances, it might be a shared past experience such as former military leadership or land ownership.”¹⁵¹

Twenty years later, the Board added two additional requirements. The first being that the group possess “social distinction”—“evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”¹⁵² A group must also be sufficiently “particular,” which the Board defined as “whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.”¹⁵³ Lastly, a viable particular social group cannot be circular, meaning it cannot be defined by the harm that the applicant claims as persecution.¹⁵⁴

Intimate partner violence asylum jurisprudence demonstrates the challenge of applying these particular social group criteria. The first major case in the area was *Matter of R-A*.¹⁵⁵ Rodi Alvarado endured years of horrific abuse at the hands of her husband, whom she married when she was just sixteen years old.¹⁵⁶ She fled to the United States and was granted asylum by an immigration judge (IJ), but that was only the start of what would ultimately be a fourteen-year legal battle.¹⁵⁷

After the Government appealed the grant of asylum, the BIA reversed, finding that Ms. Alvarado failed to demonstrate that her husband harmed her on

148. 19 I. & N. Dec. 211 (B.I.A. 1985), *overruled in part on other grounds by* *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987).

149. *See Matter of Acosta*, 19 I. & N. Dec. at 212.

150. *Id.* at 233.

151. *Id.*

152. *Matter of W-G-R*-, 26 I. & N. Dec. 208, 217 (B.I.A. 2014); *see also* *Matter of M-E-V-G*-, 26 I. & N. Dec. 227, 228 (B.I.A. 2014).

153. *Matter of S-E-G*-, 24 I. & N. Dec. 579, 584 (B.I.A. 2008); *see also* *Matter of A-M-E & J-G-U*-, 24 I. & N. Dec. 69, 73–74 (B.I.A. 2007).

154. *See, e.g.*, *Kante v. Holder*, 634 F.3d 321, 326–27 (6th Cir. 2011) (finding that the particular social group of “women subjected to rape as a method of government control” was impermissibly circular); *Gomez v. INS*, 947 F.2d 660, 663–64 (2d Cir. 1991) (rejecting the particular social group of “women who have been previously battered and raped by Salvadoran guerrillas”).

155. 22 I. & N. Dec. 906 (B.I.A. 1999), *vacated*, 22 I. & N. Dec. 906 (A.G. 2001), *remanded*, 23 I. & N. Dec. 694 (A.G. 2005), *stay lifted*, 24 I. & N. Dec. 629 (A.G. 2008).

156. *Matter of R-A*-, 22 I. & N. Dec. at 908.

157. *See* *Matter of R-A*-, CTR. FOR GENDER & REFUGEE STUD., <http://cgrs.uchastings.edu/our-work/matter-r-a-> [<http://perma.cc/P2U2-A3B7>] (last visited Feb. 15, 2019) [hereinafter *History of R-A*]. The IJ granted Ms. Alvarado’s claim based on her membership in the particular social group of “Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination.” *Matter of R-A*-, 22 I. & N. Dec. at 911.

account of her membership in a particular social group.¹⁵⁸ The Department of Justice, recognizing the novelty of the legal issues involved, released a proposed rule intended to provide guidance on gender-based asylum claims.¹⁵⁹ After two attorneys general intervened in the still-pending case, the Department of Homeland Security (DHS),¹⁶⁰ the agency tasked with advancing the interests of the U.S. government in immigration proceedings, filed a brief in which it supported a grant of asylum for Ms. Alvarado based on her membership in the particular social group of “married women in Guatemala who are unable to leave the relationship.”¹⁶¹ Four years and two more attorneys general later, an IJ in San Francisco granted Rodi Alvarado asylum.¹⁶²

Because the grant of asylum in *Matter of R-A-* was at the trial court level, a precedential decision did not issue at the resolution of the case, and the issue of whether survivors of domestic violence were eligible for asylum in the United States remained unresolved. Therefore, a new asylum case involving a survivor of intimate partner violence, *Matter of L-R-*,¹⁶³ soon made its way through the courts.¹⁶⁴ The IJ denied Ms. L-R-’s claim.¹⁶⁵ Although DHS initially defended the IJ’s ruling at the BIA, DHS eventually reversed its position.¹⁶⁶ In a supplemental brief, DHS articulated two particular social groups that it considered viable for women seeking asylum based on domestic violence: “women in domestic relationships who are unable to leave” and “women who are viewed as property by virtue of their positions within a domestic relationship.”¹⁶⁷ After review of the DHS brief, the BIA remanded *Matter of L-R-* to the IJ, DHS stipulated to eligibility, and the IJ granted asylum.¹⁶⁸

158. *Matter of R-A-*, 22 I. & N. Dec. at 923 (“In the end, we find that the respondent has failed to show a sufficient nexus between her husband’s abuse of her and the particular social group the immigration judge announced, or any of the other proffered groups.”).

159. Asylum and Withholding Definitions, 65 Fed. Reg. 76,588 (proposed Dec. 7, 2000) (to be codified at 8 C.F.R. § 208.13). Nearly twenty years later, this proposed regulation has yet to be finalized or enacted. *Compare id.*, with 8 C.F.R. § 208.13 (2018) (current regulation).

160. *History of Matter of R-A-*, *supra* note 157 (noting that in 2001 “Attorney General (AG) Janet Reno vacat[ed] *Matter of R-A-*, with order of remand to the BIA to decide the case when the DOJ regulations are finalized,” and that in 2004 “[a]fter AG John Ashcroft certif[ied] *Matter of R-A-* to himself again, the . . . (DHS) file[d] a brief urging asylum for Rody Alvarado”).

161. DHS Brief in *Matter of R-A-*, *supra* note 144, at 15.

162. *See Matter of Alvarado Pena* (case number redacted) (Executive Office for Immigration Review Dec. 10, 2009) (on file with author); *see also History of Matter of R-A-*, *supra* note 157. The IJ’s decision was brief, reading simply, “Inasmuch as there is no binding authority on the legal issues raised in this case, I conclude that I can conscientiously accept what is essentially the agreement of the parties [to grant asylum].” *Matter of Alvarado Pena* (case number redacted).

163. (case number redacted) (B.I.A. Apr. 13, 2009).

164. *See Matter of L-R-*, CTR. FOR GENDER & REFUGEE STUD., <http://cgrs.uchastings.edu/our-work/matter-l-r> [<http://perma.cc/V9C4-2F43>] (last visited Feb. 15, 2019) [hereinafter *History of Matter of L-R-*].

165. *Id.*

166. *Id.*

167. Department of Homeland Security’s Supplemental at 14, *Matter of L-R-*, (case number redacted) (B.I.A. Apr. 13, 2009) [hereinafter DHS Brief in *Matter of L-R-*], http://cgrs.uchastings.edu/sites/default/files/Matter_of_LR_DHS_Brief_4_13_2009.pdf [<http://perma.cc/EYR5-3UAY>]. DHS

After decades of uncertainty and ambiguity both during the pendencies of and after the resolutions of *Matter of R-A-* and *Matter of L-R-*, in 2014 the BIA issued a published decision that addressed the eligibility of survivors of domestic violence for asylum.¹⁶⁹ *Matter of A-R-C-G-*¹⁷⁰ involved a survivor who married her abuser when she was just seventeen years old.¹⁷¹ She suffered “repugnant abuse,” “includ[ing] weekly beatings” and sexual violence.¹⁷² The Board found (and DHS conceded) that the abuse Ms. A-R-C-G- suffered was on account of her membership in the particular social group of “married women in Guatemala who are unable to leave their relationship.”¹⁷³

The certainty provided by *Matter of A-R-C-G-* was, however, short-lived. In June of 2018, then-Attorney General Jeff Sessions certified to himself and subsequently issued a decision in *Matter of A-B-*¹⁷⁴ that explicitly overruled *Matter of A-R-C-G-*.¹⁷⁵ In his opinion, Sessions made the sweeping assertion that claims “pertaining to domestic violence . . . perpetrated by non-governmental actors will not qualify for asylum.”¹⁷⁶ He described intimate partner abuse as “private violence”¹⁷⁷ and held that survivors can therefore not compose a particular social group because each is “a victim of a particular abuser in highly individualized circumstances.”¹⁷⁸

Although *Matter of A-B-* casts doubt on the viability of asylum claims involving domestic violence,¹⁷⁹ the opinion does not stand for the proposition

noted that the particular social groups were crafted with consideration of the society in which the applicant lived, specifically that women in Mexico “occupy a subordinate position.” *Id.*

168. *History of Matter of L-R-*, *supra* note 164. Much like the final order in *Matter of R-A-*, this decision is extremely brief and holds no precedential value. *See id.* “The order simply states that asylum is granted, with a notation that the grant was a result of ‘stipulation of the parties.’” *Id.*

169. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 389 (B.I.A. 2014), *overruled by Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018).

170. 26 I. & N. Dec. 388 (B.I.A. 2014), *overruled by Matter of A-B-*, 27 I. & N. Dec. 316.

171. *Matter of A-R-C-G-*, 26 I. & N. Dec. at 389.

172. *Id.*

173. *Id.* at 388–90.

174. 27 I. & N. Dec. 316 (A.G. 2018). Immigration courts are administrative agencies of the executive branch—specifically, the Department of Justice. Alberto R. Gonzales & Patrick Glen, *Advancing Executive Branch Immigration Policy Through the Attorney General’s Review Authority*, 101 IOWA L. REV. 841, 849 (2016). As such, the attorney general has the authority to refer to himself, review, and issue a decision in any case pending before the BIA. *See id.* at 848–57.

175. *Matter of A-B-*, 27 I. & N. Dec. at 319.

176. *Id.* at 320.

177. *Id.* at 319.

178. *See id.* at 336. Sessions’s focus on the specific relationship dynamics of survivors and their abusers echoes the rationale often articulated by the BIA in its rejection of social group claims for victims of domestic violence. For example, in *Matter of R-A-*, the Board called the particular social group articulated by Ms. Alvarado “a legally crafted description of some attributes of her tragic personal circumstances.” *Matter of R-A-*, 22 I. & N. Dec. 906, 919 (B.I.A. 1999), *vacated*, 22 I. & N. Dec. 906 (A.G. 2001), *remanded*, 23 I. & N. Dec. 694 (A.G. 2005), *stay lifted*, 24 I. & N. Dec. 629 (A.G. 2008).

179. In addition to impacting domestic violence-based asylum claims, *Matter of A-B-* also poses challenges for other claims utilizing the particular social group ground and involving persecution by nonstate actors, including, for example, those based on gang-based persecution. *See Matter of A-B-*, 27

that the “unable to leave” particular social group identified in *Matter of A-R-C-G* can never be viable.¹⁸⁰ The opinion is rife with dicta, and ultimately Sessions’s stated reasoning for overruling *Matter of A-R-C-G* rests on his belief that the BIA did not sufficiently analyze the particular social group in that case; instead, Sessions held, the Board improperly relied on the concessions made by DHS with respect to the particular social group formulation.¹⁸¹

Nevertheless, *Matter of A-B* undoubtedly makes obtaining asylum for survivors of intimate partner abuse significantly more challenging. While such claims were previously disfavored—either because of floodgate concerns¹⁸² or because gender and gender-based harms were not originally contemplated by the drafters of the Refugee Convention¹⁸³ or the INA¹⁸⁴—courts that were previously disinclined to use the particular social group ground to grant asylum to survivors of domestic violence¹⁸⁵ now have a stronger basis to deny such claims.

The difficulties experienced by survivors of intimate partner violence who seek asylum in the United States stem not only from the challenges in the law

I. & N. Dec. at 320 (“Generally, claims by aliens pertaining to . . . gang violence perpetrated by non-governmental actors will not qualify for asylum.”).

180. In fact, in a recent decision, the United States District Court for the District of Columbia invalidated policies issued by former Attorney General Sessions that instructed asylum officers to generally deny domestic violence claims. *Grace v. Whitaker*, No. 18-CV-01853 (EGS), 2018 WL 6628081, at *36 (D.D.C. Dec. 19, 2018). The court explained that “there is no legal basis for an effective categorical ban” on such claims and granted a request for a permanent injunction against the policies. *Id.* at 20.

181. *Matter of A-B*, 27 I. & N. Dec. at 333.

182. Professor Karen Musalo explained the “floodgate” argument as a means for opponents to advocate for the denial of legitimate asylum claims by either expressly or subtly alluding to fears that the United States would be overwhelmed with female asylum seekers if it recognized gender-based claims such as domestic violence and female genital mutilation/cutting (FGM/C). See Karen Musalo, *Protecting Victims of Gendered Persecution: Fear of Floodgates or Call to (Principled) Action?*, 14 VA. J. SOC. POL’Y & L. 119, 132–33 (2007). However, these concerns have proven baseless as, for example, after *Matter of Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996), recognized a right to asylum based on being a victim of FGM/C, *Matter of Kasinga*, 21 I. & N. Dec. at 358, “dire predictions of a flood of women seeking asylum [based on FGM] never materialized,” Musalo, *supra*, at 133; see also *Cece v. Holder*, 733 F.3d 662, 675 (7th Cir. 2013) (“It would be antithetical to asylum law to deny refuge to a group of persecuted individuals who have valid claims merely because too many have valid claims.”); *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) (recognizing “the principle that the size and breadth of a group alone does not preclude a group from qualifying as such a social group”).

183. See Convention Relating to the Status of Refugees art. 1, July 28, 1951, 19 U.S.T. 6223, 189 U.N.T.S. 137 (including only those with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” within its definition of “refugee”). The 1951 Refugee Convention is an international treaty that established the refugee definition and provides the basis for U.S. asylum law. See *id.*; 8 U.S.C. § 1101(a)(42)(A) (2018).

184. 8 U.S.C. § 1101(a)(42)(A) (providing “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” as the bases for asylum).

185. Data on grant rates based on type of claim are unavailable, but anecdotal evidence, including the author’s conversations with numerous immigration practitioners, suggests that domestic violence based asylum claims are difficult to win, even during the brief time that *Matter of A-R-C-G* was controlling precedent.

but also the immigration adjudication system itself. A significant percentage of asylum seekers appearing in immigration court are unrepresented,¹⁸⁶ and it is unsurprising that asylum seekers who are represented by counsel are more likely to win their cases.¹⁸⁷ A pro se litigant faces significant obstacles in establishing and proving membership in a viable particular social group. A survivor who does not speak English, has suffered significant trauma, and is unfamiliar with the U.S. legal system would be unable to formulate a particular social group that is sufficiently immutable, socially distinct, and particular, especially post-*Matter of A-B*.¹⁸⁸ Additionally, the petitioner bears the burden of proof in an asylum case,¹⁸⁹ which is heard in an adversarial system where evidentiary burdens are high. Demonstrating social distinction and particularity requires significant documentary evidence and expert testimony regarding the culture and society in the applicant's home country,¹⁹⁰ which are difficult and expensive to obtain.¹⁹¹

Finally, as I have argued in a previous article, there are numerous problematic aspects of the *unable to leave* and *viewed as property* particular social groups that were frequently utilized prior to *Matter of A-B*, which counsel against their broad use.¹⁹² The groups' focus on survivors' inability to leave an

186. See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 16–17, 32 (2015). Eagly and Shafer's study found that only thirty-seven percent of asylum seekers were represented by counsel in cases decided during the six-year period from 2007 to 2012. *Id.* at 16–17. The study also revealed that only fourteen percent of detained immigrants secured representation. *Id.* at 32.

187. *Id.* at 12; see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-940, U.S. ASYLUM SYSTEM: SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES 30 (2008), <http://www.gao.gov/new.items/d08940.pdf> [<http://perma.cc/DZ3E-4LW9>] (“Representation generally doubled the likelihood of affirmative and defensive cases being granted asylum”); Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340 (2007) (“Represented asylum seekers were granted asylum at a rate of 45.6%, almost three times as high as the 16.3% grant rate for those without legal counsel.”); Andrew I. Schoenholtz & Jonathan Jacobs, *The State of Asylum Representation: Ideas for Change*, 16 GEO. IMMIGR. L.J. 739, 739–40 (2002) (“[R]epresented asylum cases are four to six times more likely to succeed than pro se ones.” (emphasis omitted)).

188. An additional hurdle was instituted in January 2018. In *Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189 (B.I.A. 2018), the BIA held that an applicant seeking asylum based on membership in a particular social group must clearly indicate, on the record before the IJ, the exact delineation of any proposed particular social group. See *W-Y-C- & H-O-B-*, 27 I. & N. Dec. at 191. Failure to articulate a viable social group in an initial hearing could result in the summary denial of a claim. See *id.* at 193.

189. 8 U.S.C. § 1158(b)(1)(B).

190. See Joline Doedens, Comment, *The Politics of Domestic Violence-Based Asylum Claims*, 22 DUKE J. GENDER L. & POL'Y 111, 125 (2014) (stating that an asylum claim based on domestic violence is “a very fact-intensive process that involve[s] the recruitment of experts to testify on the perception of domestic violence in the applicant's country of origin, and extensive preparation of the applicant herself (or himself), to ensure that she effectively portray[s] her perception of herself as a member of the relevant social group, and that her abuser identified her as a group member as well”).

191. A cartoon often shared by advocates aptly illustrates the challenges in obtaining evidence for an asylum claim. In the drawing the “applicant appearing before an asylum officer asks, ‘What kind of evidence would be enough?’ The asylum officer responds, ‘A note from your dictator.’” Stacy Caplow, *Putting the “I” in Wr*ng: Drafting an A/Effective Personal Statement To Tell A Winning Refugee Story*, 14 LEGAL WRITING 249, 253–54 (2008).

192. See Natalie Nanasi, *Domestic Violence Asylum and the Perpetuation of the Victimization*

abusive relationship furthers an essentializing narrative of victimization and helplessness that does not reflect the lives of many survivors, many of whom actively fought against the abuse they endured.¹⁹³ Forcing survivors to deny their agency in order to receive protection also poses serious challenges to client-centered and ethical advocacy.¹⁹⁴

2. Political Opinion

Given the limitations of particular social group as a basis for asylum for survivors of domestic violence, political opinion is a potential alternative avenue for relief.¹⁹⁵ Although a political opinion is typically exhibited by “verbal or openly expressive behavior . . . in furtherance of a particular cause,” for the purposes of asylum law, courts consider less public or overt acts to be political as well, so long as the behavior is “motivated by an ideal or conviction.”¹⁹⁶ Thus, political opinions can be expressed through actions as well as words.¹⁹⁷ The doctrine of political opinion is sufficiently expansive that an applicant for asylum need not even personally hold a particular political opinion—she can receive asylum if she is threatened or harmed based on an opinion that is imputed onto her by the persecutor.¹⁹⁸

Asylum seekers have advanced political opinion claims in gender-based asylum cases with mixed results. For example, in *Fatin v. INS*,¹⁹⁹ the Third Circuit Court of Appeals stated that it had “little doubt that feminism qualifies as a political opinion within the meaning of the relevant statutes,” but it ultimately denied the claim of the Iranian woman who held it.²⁰⁰ In *Lazo-*

Narrative, 78 OHIO ST. L.J. 733, 754–65 (2017) [hereinafter Nanasi, *Domestic Violence Asylum*].

193. *See id.* at 754–58.

194. *Id.* at 758–60.

195. A claim based on religion may also be appropriate in certain cases, including, for example, if the survivor’s participation in religious activities precipitates violence. Although distinguishable as a case of child abuse and not intimate partner abuse, *Matter of S-A-*, 22 I. & N. Dec. 1328 (B.I.A. 2000), creates precedent for a religion-based domestic abuse claim. In that case, the BIA granted asylum to a young woman whose father beat her to punish her for what he perceived as her liberal religious beliefs, which differed from what the court described as his “fundamentalist Muslim beliefs” concerning the proper role of women in Moroccan society. *Matter of S-A-*, 22 I. & N. Dec. at 1330–31, 1337.

196. *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005).

197. *See Chang v. INS*, 119 F.3d 1055, 1063 (3d Cir. 1997) (“Simply because [the applicant] did not call himself a dissident or couch his resistance in terms of a particular ideology renders his opposition no less political.”).

198. *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985), *superseded by statute*, Real ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, *as recognized in Parussimova v. Mukasey*, 533 F.3d 1128, 1133 (9th Cir. 2008), *opinion amended and superseded on denial of reh’g*, 555 F.3d 734 (9th Cir. 2009).

199. 12 F.3d 1233 (3d Cir. 1993).

200. *Fatin*, 12 F.3d at 1242, 1244. Ms. Fatin described her feminist political opinion as her “deep-rooted beliefs in freedom of choice, freedom of expression [and] equality of opportunity for both sexes.” *Id.* at 1237 (alteration in original). The court denied her claim because it found that the record did not establish that she would suffer persecution on account of these political beliefs. *Id.* at 1242–43.

Majano v. INS,²⁰¹ the applicant, whose husband had recently fled their native El Salvador, was targeted by a sergeant in the Salvadoran armed forces.²⁰² The military officer raped her at gunpoint and subjected her to brutal physical and sexual violence for months thereafter.²⁰³ The Ninth Circuit found Ms. Lazo-Majano's rejection of the sergeant's view that he "has a right to dominate [a woman] and . . . force her to accept this opinion without rebellion" constituted a viable political opinion.²⁰⁴

Given the law and existing legal precedent, survivors of intimate partner violence are theoretically eligible for protection based on their political opinions. A political opinion in a domestic violence-based asylum case might be framed, for example, as defiance of male dominance or challenge of traditional gender roles that support a man's unrestrained abuse against his intimate partner. However, although viable in theory, no court has granted such a claim in a published decision.

In *Matter of R-A-*, the BIA rejected Ms. Alvarado's claim that she was persecuted on account of her imputed political opinion that women should not be dominated by men.²⁰⁵ The Board focused on the fact that Ms. Alvarado did not "recount her husband saying anything relating to what he thought her political views to be, or that the violence toward her was attributable to her actual or imputed beliefs."²⁰⁶ The BIA ascribed the abuser's "unchecked violence" to "the inherent meanness of his personality"²⁰⁷ as opposed to his reaction "to any objections made by the respondent to her husband's domination over her."²⁰⁸

The BIA used similar reasoning in its rejection of the political opinion claims in both *Matter of L-R-* and *Matter of A-R-C-G-*. In *Matter of L-R-*, the BIA found that "[t]here is no record evidence that the female respondent was politically active or made feminist/anti-male domination political statements."²⁰⁹

201. 813 F.2d 1432 (9th Cir. 1987), *overruled by* Fisher v. INS, 79 F.3d 955 (9th Cir. 1996).

202. *Lazo-Majano*, 813 F.2d at 1433.

203. *Id.*

204. *Id.* at 1435.

205. *Matter of R-A-*, 22 I. & N. Dec. 906, 911 (B.I.A. 1999), *vacated*, 22 I. & N. Dec. 906 (A.G. 2001), *remanded*, 23 I. & N. Dec. 694 (A.G. 2005), *stay lifted*, 24 I. & N. Dec. 629 (A.G. 2008).

206. *Id.* at 915.

207. *Id.* at 926. Courts' preoccupation with abusers' individual personality traits reveals a gender bias in asylum jurisprudence. As Professor Anjum Gupta noted, in cases of intimate partner violence, judges routinely find "that the abuse occurred because the abuser was a 'despicable person,' because of his 'inherent meanness,' because of his alcohol abuse, because of his jealousy, or because of other 'personal' or 'criminal' reasons." Anjum Gupta, *Dead Silent: Heuristics, Silent Motives, and Asylum*, 48 COLUM. HUM. RTS. L. REV. 1, 3 (2016). Conversely, in "traditional" asylum claims, such as those "in which the applicant is fleeing a repressive dictatorship, immigration judges . . . do not stop to ask whether the dictator is a 'despicable person'" or to otherwise inquire about the personal characteristics or failings that led to his violence. *Id.*

208. *Matter of R-A-*, 22 I. & N. Dec. at 915. The BIA also stated that "this is not a case where there is meaningful evidence that this respondent held or evinced a political opinion, unless one assumes that the common human desire not to be harmed or abused is in itself a 'political opinion.'" *Id.*

209. DHS Brief in *Matter of L-R-*, *supra* note 167, at 22.

In *Matter of A-R-C-G-*, the IJ held that the “abuse was the result of ‘criminal acts, . . .’ which were perpetrated ‘arbitrarily’ and ‘without reason.’”²¹⁰ And in *Matter of A-B-*, then-Attorney General Jeff Sessions opined that Ms. A-R-C-G- was a woman facing “horrible . . . personal circumstances”²¹¹ who was “attacked . . . because of [her] preexisting personal relationship” with her abuser.²¹²

By focusing on the individual characteristics of abusers, courts and then-Attorney General Jeff Sessions have ignored the structural conditions and cultural views that contribute to a man’s belief that he can abuse his wife with impunity. They perpetuate the mistaken belief that domestic violence is about one partner’s animus toward another as opposed to an epidemic that both results from and perpetuates male privilege as well as female subordination. In denying political opinion claims in favor of a particular social group analysis, courts oversimplify intimate partner abuse and discount the fact that such violence is “systemic and structural, a mechanism of patriarchal control of women that is built upon male superiority and female inferiority, sex-stereotyped roles and expectations, and the economic, social and political predominance of men and dependency of women.”²¹³

A dissenting judge in *Matter of R-A-* recognized the political nature of domestic abuse and acknowledged that “domestic violence exist[s] as a means by which men may systematically destroy the power of women, a form of violence rooted in the economic, social, and cultural subordination of women. [Its] fundamental purpose . . . is to punish, humiliate, and exercise power over the victim on account of her gender”²¹⁴ Ultimately, however, asylum law continues to favor claims “where the political opinion is stated in the classic form of joining a political group and engaging in public activities of a political nature.”²¹⁵ The claims of women fleeing domestic violence suffer “from the perceived flaw of being personal rather than political in nature, and the persecution occurs at the hands of an intimate partner who may not know or care that he is responding to a political statement.”²¹⁶

210. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 390 (B.I.A. 2014), *overruled by* *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018), *abrogated by* *Grace v. Whitaker*, No. 18-CV-01853 (EGS), 2018 WL 6628081 (D.D.C. Dec. 19, 2018).

211. *Matter of A-B-*, 27 I. & N. Dec. at 336.

212. *Id.* at 339.

213. Copelon, *supra* note 92, at 305.

214. *See* *Matter of R-A-*, 22 I. & N. Dec. 906, 939 (B.I.A. 1999) (Guendelsberger, Board Member, dissenting) (citation omitted), *vacated*, 22 I. & N. Dec. 906 (A.G. 2001), *remanded*, 23 I. & N. Dec. 694 (A.G. 2005), *stay lifted*, 24 I. & N. Dec. 629 (A.G. 2008). The dissent also noted that institutional biases that prevent women from seeking protection “appear to stem from a pervasive belief, common in patriarchal societies, that a man should be able to control a wife or female companion by any means he sees fit: including rape, torture, and beatings.” *Id.* at 930 (quoting the IJ’s findings).

215. Marisa Silenzi Cianciarulo, *Batterers as Agents of the State: Challenging the Public/Private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 117, 120 (2012).

216. *Id.*

The narrow conception of political opinion embraced by courts in cases of intimate partner violence is not supported by asylum law, yet survivors of domestic abuse remain unable to obtain relief on that ground. A discussion of whether the reframing of intimate partner abuse as terrorism alters that analysis follows in Section V, after a brief review of one additional related aspect of the asylum definition.

B. *State Action and the Public-Private Distinction*

A final element of the asylum definition relevant to the analysis of claims based on intimate partner violence is state action. An applicant for asylum must prove that she was “unable or unwilling to avail . . . herself of the protection of” her home country.²¹⁷ In other words, an individual seeking asylum must show that the government of her home country was either the persecutor or unable or unwilling to protect her from a private persecutory actor.²¹⁸

The state action requirement is pertinent to the analysis of asylum based on intimate partner violence because a significant component of the harm of domestic abuse emanates from the failure of states to provide appropriate resources to remedy and/or punish violence perpetrated by private actors. Moreover, states not only fail to protect and provide redress to individual victims but also neglect to address the beliefs and conventions (both in the legal system and outside of it) that allow violence against women to continue.

As a result of the state (in)action requirement, when a survivor of intimate partner violence testifies that she did not seek the assistance of law enforcement prior to fleeing from her home country, she is at risk of losing her case despite the fact that her call to police would have been futile given societal attitudes toward and official policies relating to domestic abuse.²¹⁹ Governments’ refusals

217. 8 U.S.C. § 1101(a)(42)(A) (2018). The *unable or unwilling* standard has been adopted by “the Board of Immigration Appeals, every Federal Circuit Court of Appeals, and the United States Supreme Court.” Brief of Amici Curiae Immigration Law Professors in Support of Plaintiffs’ Motion for Summary Judgment at 1, *Grace v. Sessions*, No. 1:18-cv-01853 (D.C. Cir. filed Aug. 7, 2018) (on file with author). Importantly, those courts have also held that “harms inflicted by private actors can constitute persecution under U.S. asylum laws when the government of the home country is unwilling or unable to protect the applicant.” *Id.* However, in *Matter of A-B-*, Sessions stated that those seeking refuge from harms perpetrated by non-state actors must demonstrate that “government protection from such harm . . . is so lacking that their persecutors’ actions can be attributed to the government.” *Matter of A-B-*, 27 I. & N. Dec. at 317. Sessions provided no citation or rationale for his use of this heightened legal standard. *See id.*

218. *See* 8 U.S.C. § 1101(a)(42)(A). For example, although *Matter of A-R-C-G-* was a seminal case that first recognized asylum protection for a survivor of domestic violence, the BIA did not actually grant Ms. A-R-C-G- lawful status. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 395 (B.I.A. 2014), *overruled by Matter of A-B-*, 27 I. & N. Dec. 316. The court recognized and validated the particular social group to which she belonged but remanded the case to the IJ to determine whether “the Guatemalan Government was unwilling or unable to control the ‘private’ actor.” *Id.*

219. *See, e.g.,* U.S. DEP’T OF STATE, EL SALVADOR 2017 HUMAN RIGHTS REPORT 23 (2017), <http://www.state.gov/documents/organization/277575.pdf> [<http://perma.cc/8RWS-DX6Z>] (noting that in El Salvador, the country from which Ms. A-B- sought asylum, “laws against domestic violence remained poorly enforced, and violence against women, including domestic violence, remained a widespread and serious problem”); *see also* Immigration & Refugee Bd. of Canada, *El Salvador*:

to intervene, provide protection, or take steps to combat intimate partner violence can be explained by what scholars have described as the “public and private . . . distinction.”²²⁰ This term is used to describe a phenomenon wherein, for example, a violation such as rape that occurs in the public sphere of “politics, government and the state” is considered a human rights violation, unlike a rape that occurs in the privacy of one’s home or within one’s family.²²¹

The delineation of public and private is not a neutral act, as the “[m]eanings of ‘private’ and ‘public’ are based on social and cultural assumptions of what is valued and important, . . . assumptions [that] are deeply gender-based.”²²² Feminist scholars have argued that

[n]owhere is the effect . . . of the public/private split more evident than in the case of domestic violence which literally happens “in private.” States dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action.²²³

In intimate partner abuse cases, the BIA has recognized only one particular social group that focuses on the individual relationship between the victim and her abuser, namely, that she was unable to escape his violence.²²⁴ Similarly, the failure to understand opposition to domestic violence as a political opinion reinforces the notion that violence toward an intimate partner is a private act rather than the product of a patriarchal culture that condones violence against women. Stated another way, if domestic violence is understood as a purely private act, with no impact on or connection to society at large, it can be argued that the government has no responsibility to address domestic abuse.²²⁵ Thus, “[p]rivacy reinforces the idea that the personal is separate from the political.”²²⁶

Domestic Violence, Including Legislation, State Protection and Support Services, REFWORLD (Sept. 17, 2015), <http://www.refworld.org/docid/560b8c724.html> [<http://perma.cc/6GSC-8TMT>] (noting that women in El Salvador “frequently reported that they did not go to police to report the violence because of the fear of retribution, as well as the lack of protection from the police”).

220. See HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW* 232 (2000).

221. Hilary Charlesworth, *Feminist Methods in International Law*, 93 AM. J. INT’L L. 379, 382 (1999); see also Jaya Ramji-Nogales, *Questioning Hierarchies of Harm: Women, Forced Migration, and International Criminal Law*, 11 INT’L CRIM. L. REV. 463, 464 (2011) (explaining that private, opportunistic violence against female forced migrants is overlooked by governments and excluded from international criminal law with respect to criminal accountability).

222. Schneider, *supra* note 101, at 978.

223. Thomas & Beasley, *supra* note 96, at 1123.

224. Matter of A-R-C-G-, 26 I. & N. Dec. 388, 388–89 (B.I.A. 2014) (granting relief based on the particular social group of “married women in Guatemala who are unable to leave their relationship”), *overruled by* Matter of A-B-, 27 I. & N. Dec. 316 (A.G. 2018).

225. As Professor Elizabeth Schneider argued, “[I]n the so-called private sphere of domestic and family life, which is purportedly immune from law, there is always the selective application of law. Significantly, this selective application of law invokes ‘privacy’ as a rationale for immunity in order to protect male domination.” Schneider, *supra* note 101, at 977. Ironically, this selective application is in itself a political act.

226. *Id.* at 979.

In sum, this brief review of the law reveals that the road to asylum for survivors of intimate partner abuse is a challenging one. Obtaining relief under the particular social group ground is an increasingly onerous task, particularly for unrepresented applicants, given the nuanced legal requirements and significant evidentiary burdens. Asylum based on political opinion is even more elusive, not only because no legal precedent exists for a survivor of intimate partner violence receiving protection based on this ground but also due to courts' reluctance to recognize the public nature of domestic abuse. As discussed below, reconceptualizing domestic violence as terrorism in the home has potential to alter these analyses, thereby expanding access to asylum for survivors.

V. BENEFITS OF RECONCEPTUALIZATION

Reconceptualizing intimate partner violence as terrorism has several potential benefits for survivors seeking asylum in the United States. Understanding domestic abuse as terrorism underscores the political, societal, cultural, and public dimensions of the problem, leading to a more expansive asylum analysis that accurately accounts for the lives and circumstances of survivors.

First, and importantly, “[f]raming domestic violence as everyday terrorism draws attention to its horror and severity.”²²⁷ As Professor Catharine MacKinnon noted, “[A]cts of violence against women are regarded not as exceptional but inevitable, even banal.”²²⁸ Such beliefs have deep historical roots, as society has long minimized the harms, serious character, and public nature of intimate partner abuse. The U.S. legal system has been validating such beliefs since 1873, when the Supreme Court of North Carolina maintained that in cases of intimate partner violence, “[i]f no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.”²²⁹ Both the general public and law enforcement routinely ignored abuse in the home and even blamed victims for the violence they suffered.²³⁰ A belief in marital privacy and the sanctity of the home led to norms and even prohibitions against interference in the affairs of a married couple, even in cases of suspected abuse.²³¹

227. Pain, *supra* note 134, at 532, 534 (“The analysis here centres on the role of fear.”).

228. MacKinnon, *Women's September 11th*, *supra* note 100, at 6. MacKinnon also observed that “[i]t is hard to avoid the impression that what is called war is what men make against each other, and what they do to women is called everyday life.” *Id.* at 27.

229. *State v. Oliver*, 70 N.C. 60, 61–62 (1874).

230. SCHECHTER, *supra* note 88, at 58 (describing a belief widely held by law enforcement officials that women are at fault for the domestic abuse they suffer because “[t]hey always go back” to their abusive husbands).

231. See, e.g., DEL MARTIN, *BATTERED WIVES* 93–94 (1976) (describing that, in 1975 the Oakland Police Department published a “Training Bulletin on Techniques of Dispute Intervention” that detailed a policy of non-arrest in situations of domestic violence).

Rhetoric, however, plays a role in how the problem of domestic violence is understood. Labeling intimate partner violence as terrorism acknowledges both the serious nature of intimate partner violence and the societal responsibility to address it. Moreover, the terrorism label may allow adjudicators who are reluctant to acknowledge the gravity of intimate partner abuse to recognize it as rising to the level of persecution required under the asylum analysis. Unlike domestic violence, terrorism is not something our culture ignores or minimizes.²³² Instead, our culture views terrorism as a serious offense with grave consequences and devotes significant resources to punish and prevent it.²³³ Moreover, while terrorism is generally recognized as societally destructive, domestic abuse remains a “private” issue.²³⁴ Understood as a terrorist act, however, intimate partner violence takes on equivalent gravity and the public responsibility to combat it becomes clearer.

This change in viewpoint occurs because labels matter. In the area of immigration, for example, courts, administrative agencies, academics, and the media have all considered the appropriate descriptor for those who are not lawfully in the United States.²³⁵ Debates continue over whether to utilize the terms “undocumented” or “illegal” and the semantic significance of each.²³⁶ The United States’ defining of immigrants as “aliens”²³⁷ stands in stark contrast to Canada’s label of “newcomer.”²³⁸ More recently, conservatives have sought to

232. See Alexander, *supra* note 18, at 78–79 (“[T]errorism has proved very successful in attracting publicity, disrupting the activities of government and business, and causing significant death and destruction.”).

233. See, e.g., *id.* at 88–89.

234. Schneider, *supra* note 101, at 974.

235. See, e.g., Flores v. U.S. Citizenship & Immigration Servs., 718 F.3d 548, 551 n.1 (6th Cir. 2013) (“We recognize that using the term ‘alien’ to refer to other human beings is offensive and demeaning. We do not condone the use of the term and urge Congress to eliminate it from the U.S. Code.”); THOMAS ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 452–53 (7th ed. 2012) (discussing the use of the phrases “illegal aliens,” “undocumented aliens,” and “unauthorized migrants”); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425, 1440–42 (1995) (analyzing the meaning of, and critiquing use of, the term “illegal alien”); Roque Planas, “Illegal vs. Undocumented” Debate: Obama and Romney Weigh In at Town Hall Meeting, HUFFINGTON POST (Oct. 17, 2012, 3:24 PM), http://www.huffingtonpost.com/2012/10/17/illegal-vs-undocumented-presidential-debate_n_1974654.html [<http://perma.cc/B2W7-WXYQ>].

236. See, e.g., Cristina Costantini, *Linguists Tell New York Times that “Illegal” Is Neither ‘Neutral’ nor ‘Accurate’*, ABC NEWS (Oct. 1, 2012), http://abcnews.go.com/ABC_Univision/linguists-york-times-illegal-neutral-accurate/story?id=17366512 [<http://perma.cc/8T47-T8EZ>]; Gene Demby, *In Immigration Debate, ‘Undocumented’ vs. ‘Illegal’ Is More than Just Semantics*, NPR (Jan. 30, 2013, 5:30 PM), <http://www.npr.org/blogs/itsallpolitics/2013/01/30/170677880/in-immigration-debate-undocumented-vs-illegal-is-more-than-just-semantics> [<http://perma.cc/N2CA-AGPB>]; *Which Is Acceptable: ‘Undocumented’ vs. ‘Illegal’ Immigrant?* (NPR radio broadcast Jan. 7, 2010), <http://www.npr.org/templates/story/story.php?storyId=122314131> [<http://perma.cc/U76Z-3F84>].

237. 8 U.S.C. § 1101(a)(3) (2018).

238. See *Find Free Newcomer Services Near You*, GOV’T OF CANADA, <http://www.cic.gc.ca/english/newcomers/services/index.asp> [<http://perma.cc/2X6Z-W6NW>] (last visited Feb. 15, 2019); Marisa Peñaloza & John Burnett, *For a Stark Contrast to U.S. Immigration Policy, Try Canada*, NPR (Jan. 26, 2017, 5:05 AM), <http://www.npr.org/sections/parallels/2017/01/26/511625609/for-a-stark->

recast the family-based immigration system as “chain migration.”²³⁹ Similarly, the domestic violence community has long considered whether the appropriate label for an individual who has endured intimate partner abuse is survivor or victim.²⁴⁰ Some advocates reject these formulations altogether, opting instead for the neutrally descriptive “person/woman/man who has experienced violence.”²⁴¹ “Naming and categorizing is not a neutral activity; it is a deeply political one” that is imbued with deeper meaning and significance.²⁴² As such, simply relabeling or classifying intimate partner violence as terrorism in the home operates to transform the once private and personal experience of domestic violence into a social and political issue.²⁴³

Highlighting the political nature of intimate partner violence in turn impacts survivors’ access to asylum in the United States. “Although battering has evolved from a ‘private’ to a more ‘public’ issue, it has not become a serious political issue,”²⁴⁴ which prevents asylum adjudicators from moving from particular social group analysis toward recognition of opposition to abuse as political opinion. As discussed in Section IV and as Professor Anjum Gupta explained, “[I]mmigration judges determining nexus in cases involving private harms may have a difficult time finding that the abuse occurred on account of the victim’s political opinion, despite the fact that many instances of domestic violence do occur when the victim is asserting her rights as a woman.”²⁴⁵

Linking terrorism and domestic abuse makes the political implications of intimate partner violence easier to see. Abusers use violence, fear, and threats to

contrast-to-u-s-immigration-policy-try-canada [http://perma.cc/J9KQ-32UN].

239. David Nakamura, ‘*Language as a Weapon*’: *In Trump Era, Immigration Debate Grows More Heated over What Words To Use*, WASH. POST (Jan. 21, 2018), http://www.washingtonpost.com/politics/language-as-a-weapon-in-trump-era-immigration-debate-grows-more-heated-over-what-words-to-use/2018/01/21/d5d9211a-fd6a-11e7-a46b-a3614530bd87_story.html [http://perma.cc/T4TB-V6YE].

240. See, e.g., Catherine Donovan & Marianne Hester, ‘*I Hate the Word “Victim”*’: *An Exploration of Recognition of Domestic Violence in Same Sex Relationships*, 9 SOC. POL’Y & SOC’Y 279, 282 (2010); Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078 (2006).

241. See *Replicating the UN Multi-Country Study on Men and Violence: Understanding Why Some Men Use Violence Against Women and How We Can Prevent It: Preferred Terminology*, PARTNERS FOR PREVENTION, http://www.partners4prevention.org/sites/default/files/preferred_terminology_final.pdf [http://perma.cc/UA9P-LCXY] (last visited Feb. 15, 2019).

242. Marcus, *supra* note 10, at 25.

243. If reframing domestic abuse as terrorism illuminates the political nature of intimate partner violence, it also helps acknowledge “that the roots of [domestic] violence lie in the structural inequality and subordination of women.” See Copelon, *supra* note 92, at 367. Feminists have long argued “that battering results from an historically created gender hierarchy in which men dominate women.” SCHECHTER, *supra* note 88, at 224. This hierarchy results in men being “privileged physically, financially, and socially” and is what allows them to abuse their wives and partners with impunity. Simmons et al., *supra* note 125, at 65. Ultimately, this ordering “is political in nature because it is part of a social construct meant to keep one group dominant over another . . . [in] societies [that] wish to preserve the patriarchal system of men’s dominance over women.” Cianciarulo, *supra* note 215, at 155.

244. Schneider, *supra* note 101, at 983.

245. Gupta, *supra* note 207, at 45.

overcome opinions contrary to their own, which is precisely what terrorists do.²⁴⁶ As evidenced by Schmid's definitional analysis, few think to question whether or not a violent act that is traditionally considered to be terrorism has political motivations.²⁴⁷ A new label for domestic violence thus emphasizes the political underpinnings and societal implications of the otherwise personal experience of intimate partner violence.²⁴⁸ In other words, it politicizes what was previously seen as a family pathology, achieving the long-held feminist goal of making the personal political.

Experts have lamented that "U.S. courts responsible for adjudicating asylum claims continue to view intimate partner violence primarily as an aberration that occurs due to various psychological and social factors rather than a problem inherently political in nature."²⁴⁹ Such views will not change as long as survivors of domestic abuse are considered members of a particular social group of women who are unable to leave a relationship as opposed to political revolutionaries who fight against systemic hierarchies of gender oppression within the context of their relationships.

Although political opinion presently "tends to be disfavored as a basis for gender-based asylum claims,"²⁵⁰ reframing domestic abuse as terrorism has the potential to change that dynamic. If an abuser is conceived of as a terrorist, he is by definition seeking to overcome his victim's views or assert his own views in contrast to hers, making the political nature of his violence more readily apparent and asylum based on political opinion easier to obtain for survivors. For example, if the adjudicators in *Matter of R-A-*, *Matter of L-R-*, *Matter A-R-C-G-*, and *Matter of A-B-* had utilized the framework of terrorism to understand the abuse that the women in those cases suffered, it is less likely that they would have concluded that the perpetrators' actions were arbitrary or unconnected to broader political motivations.

In addition to highlighting the political nature of domestic abuse, reconceptualizing intimate partner violence as terrorism in the home makes it easier to recognize the state's complicity in that violence. Feminist scholars have long argued that "[w]ife-beating is . . . not an individual, isolated or aberrant act, but a social license, a duty or sign of masculinity, deeply ingrained in culture, widely practiced, denied and completely or largely immune from sanction."²⁵¹ Eventually, albeit often subtly, this culturally accepted belief has become a legally sanctioned one.²⁵² Experts have described the existence of patriarchy as a

246. See *supra* notes 64–69 and accompanying text for a discussion of Schmid's analysis of various definitions of terrorism.

247. See *supra* notes 64–69 and accompanying text for a discussion of Schmid's analysis of various definitions of terrorism.

248. See Berrington, *supra* note 139.

249. E.g., Cianciarulo, *supra* note 215, at 138–39.

250. *Id.* at 140.

251. E.g., Copelon, *supra* note 92, at 335.

252. Thomas & Beasley, *supra* note 96, at 1122 ("[G]ender bias, if unchallenged, becomes so embedded in the social structure that it often assumes the form of a social or cultural norm seemingly beyond the purview of the state's responsibility, rather than a violation of women's human rights for

“parallel state” that the government, “through inaction as well as action” ultimately empowers to allow “men to mediate and often block women’s relationships with the state.”²⁵³ In this manner, the government becomes complicit in reinforcing and perpetuating the subordination and oppression of women, and intimate partner violence becomes the “manifestation of a state belief in male dominance.”²⁵⁴

Within this framework, the abuser-as-terrorist operates not in opposition to the state but in concert with it. He fights not against the government but instead to preserve the patriarchy that the state is interested and complicit in preserving. The target, of course, is his wife or partner who resists oppression and violence against her. Utilizing this scenario, the asylum analysis for survivors of intimate partner abuse gains clarity. The government, aligned with the abuser, is no longer *unable* to protect her but is instead *unwilling* to do so due to its aligned interests with the persecutor, making cases of domestic violence look more like those of traditional political or human rights activists subjugated by oppressive governments or regimes they oppose.

Relatedly, reconceptualizing domestic violence as terrorism in the home also helps bridge the public-private distinction. While “[g]lobal terrorism looms large as a defining horror of our times[,] . . . its domestic counterpart is relatively overlooked. One is seen as an outcome of mass religious zealotry, the other as a matter of private melodrama and personal failings.”²⁵⁵ As discussed above, asylum jurisprudence has also relegated intimate partner violence—and gender-based violence more generally—as a personal or private problem rather than one that has broader societal implications and that the government has a role in addressing.²⁵⁶ Reframing domestic abuse as terrorism counteracts that tendency.

A shift in the understanding of intimate partner violence from something that happens in the privacy of one’s home to something akin to the broader societal issue of terrorism makes it easier to conceptualize the role of domestic violence in systematic subjugation and the need for a public response. As Professor Elizabeth Schneider stated, “By seeing woman-abuse as ‘private,’ we affirm it as a problem that is individual, that only involves a particular . . . relationship, and for which there is no social responsibility to remedy.”²⁵⁷ Conversely, if domestic abuse is reframed as terrorism, it is no longer a private problem involving one specific intimate relationship, but instead it is a public issue for which there is a social responsibility to remedy.

In addition to specific implications for the asylum analysis addressed above, reconceptualizing domestic violence as terrorism in the home presents an opportunity to promote gender equality in asylum jurisprudence more broadly.

which the state is accountable.”).

253. Copelon, *supra* note 92, at 351.

254. Marisa Silenzi Cianciarulo & Claudia David, *Pulling the Trigger: Separation Violence as a Basis for Refugee Protection for Battered Women*, 59 AM. U. L. REV. 337, 369 (2009).

255. Berrington, *supra* note 139.

256. See *supra* Section IV for an analysis of intimate partner violence-based asylum jurisprudence.

257. Schneider, *supra* note 101, at 983.

Reframing domestic abuse as terrorism makes gender differences less significant to the determination of whether one merits asylum, as women fleeing terrorism are no different than men fleeing terrorism. This increasingly gender-neutral approach can ultimately create greater fairness in the adjudication process.

For example, in a previous article I argued that the *Matter of A-R-C-G*-particular social group perpetuates the victim-blaming phenomenon, which shifts blame for domestic violence from the abuser to the victim for not taking steps to avoid his violence.²⁵⁸ The *unable to leave* formulation leads one to ask, “Why not?”—a more succinct version of “Why didn’t she just leave?”²⁵⁹ Reframed as terrorism, however, such questions take on a different connotation. Unlike survivors of intimate partner abuse, victims of terrorism are not asked why they did not flee or what they did to provoke violence. With terrorism, the onus is placed where it belongs—on the perpetrator. Conceiving of abusers as terrorists can facilitate the necessary shift in questioning from “Why does she stay?” to “Why does he abuse?”

Relatedly, reconceptualizing domestic violence as intimate terrorism can also produce an asylum adjudicatory system that is more empowering for survivors of abuse. I have previously criticized the *unable to leave* formulation as denying agency to battered women by forcing them to advance narratives that portray themselves as helpless, passive, and powerless victims.²⁶⁰ A reliance on essentialized narratives of helplessness can be remedied by reframing intimate partner violence because the focus of the inquiry shifts from the victim’s purported failings to the rationale behind the perpetrator’s actions. When a “traditional” terrorist strikes, we ask why he committed violence. Analogized to domestic abuse, the inquiry becomes what caused him to target her, as opposed to why she allowed herself to be targeted.²⁶¹

Lastly, if survivors of domestic violence are considered victims of terrorism, they may be eligible for greater protections and benefits. Currently, immigrant survivors of domestic abuse are ineligible to receive public benefits or otherwise

258. Nanasi, *Domestic Violence Asylum*, *supra* note 192, at 761–62. *See generally* Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1 (2011) (discussing victim blaming in the context of sexual assault); Jerry von Talge, *Victimization Dynamics: The Psycho-Social and Legal Implications of Family Violence Directed Toward Women and the Impact on Child Witnesses*, 27 W. ST. U. L. REV. 111, 131 (2000) (“A second dimension of the multiple victimization of women is societal blame . . .”).

259. *See generally* OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY (1993) (discussing the cognitive and social reasons why battered women stay with their abusers); WHY DOESN’T SHE JUST LEAVE? (Heather Stark & Emilee Watturs eds., 2008) (explaining recent research and telling real women’s stories to explore why women remain with their abusers); Buel, *supra* note 86 (delineating fifty reasons why abuse victims stay with their abusers).

260. *See generally* Nanasi, *Domestic Violence Asylum*, *supra* note 192 (noting that asylum jurisprudence perpetuates a historical categorization of battered women as helpless, passive, and powerless).

261. This final question also recognizes the significance of separation violence, which as detailed *supra* in Section II, describes the escalation of violence and higher rates of physical assault toward women following attempts to break free from violent relationships or otherwise assert their independence from their abusers.

benefit from the safety net that native-born survivors rely on.²⁶² Such prohibitions, however, are based on the immigrant survivors' status as undocumented victims of the "mere" crime of intimate partner abuse.²⁶³ If they are conceived of as survivors of terrorism, additional resources and support may become available. For example, victims of terrorist attacks are entitled to certain tax benefits and relief, including disability payments and tax forgiveness.²⁶⁴ Congress has also demonstrated significant interest in providing special protections for survivors of terrorism, including the recent passage of the Justice Against Sponsors of Terrorism Act, which amended the Foreign Sovereign Immunities Act to allow civil claims against a foreign state for harms resulting from an act of terrorism.²⁶⁵ Support for the measure was so significant that it passed overwhelmingly in both houses of Congress and was the only instance in President Obama's presidency when Congress overrode his veto.²⁶⁶

Reframing intimate partner violence has the potential to benefit survivors of intimate partner violence seeking protection in the United States. The label of terrorism highlights the severity of domestic abuse and could impact many aspects of the asylum analysis, including acknowledging the political underpinnings of intimate partner abuse, recognizing state complicity in domestic violence, and minimizing the public-private distinction. Conceiving of private violence as a public problem can also bring about both gender equality and empowerment for survivors. However, although benefits exist, reconceptualizing intimate partner abuse as terrorism in the home is not without challenges, for as discussed in detail below, unintended consequences may result from increasing the use of the terrorist label.

262. See TANYA BRODER ET AL., NAT'L IMMIGRATION LAW CTR., OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 1 (2015), <http://www.nilc.org/wp-content/uploads/2015/12/overview-immeligfedprograms-2015-12-09.pdf> [<http://perma.cc/C9AF-XPT6>] (discussing that the "major federal public benefits programs have always left some non-U.S. citizens out of eligibility for assistance," and that after even more restrictive laws were introduced in 1996, "the participation of immigrants in public benefits programs decreased sharply . . . , causing severe hardship for many low-income families who lacked the support available to other low-income families"); Leslye E. Orloff et al., *With No Place To Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 324 (1995) ("[V]irtually all public assistance programs bar undocumented immigrants from receiving benefits and limit the eligibility of legal residents.").

263. See Nermeen Arastu et al., *What Jeff Sessions' Efforts To Deny Asylum to Domestic Violence Victims Look Like on the Ground*, SLATE (July 16, 2018, 1:56 PM), <http://slate.com/news-and-politics/2018/07/what-jeff-sessions-efforts-to-deny-asylum-to-domestic-violence-victims-look-like.html> [<http://perma.cc/84US-Y8JB>] (discussing the decision of the United States to do away with asylum for domestic violence survivors and stating that the decision "rel[ies] on outdated stereotypes, such as the notion that domestic violence is a 'private' or 'purely personal' matter involving 'individualized' circumstances").

264. See generally IRS, PUB. 3920, TAX RELIEF FOR VICTIMS OF TERRORIST ATTACKS (2014), <http://www.irs.gov/pub/irs-pdf/p3920.pdf> [<http://perma.cc/W3WT-K48Y>].

265. Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, sec. 3, 130 Stat. 852, 853 (2016) (codified as amended at 28 U.S.C. § 1605B(c)).

266. See Jennifer Steinhauer et al., *Congress Votes To Override Obama Veto on 9/11 Victims Bill*, N.Y. TIMES (Sept. 28, 2016), <http://nyti.ms/2dkxCaB> [<http://perma.cc/G228-AWSM>].

VI. DRAWBACKS OF RECONCEPTUALIZATION

Prior to discussing potential disadvantages to reconceptualizing intimate partner violence as terrorism in the home, it is important to clarify the manner in which such a reframing might occur. On one end of the spectrum is a full-scale legal approach, which would involve changing multiple definitions of terrorism, terrorist, and terrorist activity in existing law to include domestic violence. On the other end of the spectrum is simply utilizing the new terminology as a narrative or advocacy device. The former would have more official and dire consequences than the latter, but both should be considered when analyzing potential outcomes of using the terrorist label.

As one of the main benefits of reframing domestic violence is to increase access to asylum protection, it is important to be mindful of the significant and severe immigration consequences of the terrorist designation. An individual who is found to have engaged in terrorist activity or is deemed likely to engage in terrorist activity after entry is inadmissible to the United States.²⁶⁷ Individuals suspected of being inadmissible as a result of engaging in terrorist activity can be removed without a hearing.²⁶⁸ Terrorist activity also serves as a ground of deportability for those who are already inside the United States²⁶⁹ and a basis for mandatory detention.²⁷⁰ Lastly, and significantly here, a determination that an individual engaged in terrorist activity bars asylum²⁷¹ and admission as a refugee.²⁷²

The INA's prohibitions on terrorists are a double-edged sword for survivors of intimate partner violence. If domestic abusers are considered to have "engage[d] in terrorist activity,"²⁷³ it would be more difficult for them to enter the United States and easier for them to be removed. Although this may be perceived as a benefit for some survivors who have fled to the United States to seek safety from a violent partner, such draconian measures may not be suitable for all situations. Not all "battered women want to end their relationships, invoke the power of the legal system to keep their batterers away, and ultimately sever all legal ties with their abusers."²⁷⁴ Many simply want the abuse to stop. In such cases, the immigration repercussions for a batterer-turned-terrorist may be against the interests of the survivor.²⁷⁵

267. 8 U.S.C. § 1182(a)(3)(B)(i), (ii) (2018).

268. *Id.* § 1225(c)(1).

269. *Id.* § 1227(a)(4)(B).

270. *Id.* § 1226(c)(1).

271. *Id.* § 1158(b)(2)(A)(v).

272. *Id.* § 1157(c)(3).

273. *Id.* § 1182(a)(3)(B)(iv) (defining the term "engage in terrorist activity").

274. Goodmark, *supra* note 102, at 8.

275. For example, a woman may come to the United States to seek protection from violence but may still rely on the abuser for financial support for their children. This is often the case when the abusive partner is the primary breadwinner in a family, a common occurrence when his exertion of power and control takes the form of economic abuse. See Bill Glaser, *Therapeutic Jurisprudence: An Ethical Paradigm for Therapists in Sex Offender Treatment Programs*, 4 W. CRIMINOLOGY REV. 143, 156-57 (2003). In such cases, his absence can be highly damaging to a woman and her children.

This is particularly true when considering the impact and danger of separation violence. A survivor's departure from her home country, possibly with the children she shares with her abuser, is an unmistakable signal that she will no longer tolerate abuse or the batterer's control; it can therefore be a significant triggering event for separation assault.²⁷⁶ And if the abuser is turned away or deported from the United States under terrorism grounds, he may blame the victim for the actions of the U.S. immigration authorities and seek retribution in the form of further violence against her or her family members. Retaliatory violence may even "be motivated by knowledge of supportive or protective resources [available in the United States] for women, particularly in men who believe such services deprive them of their rightful authority or control in intimate relationships."²⁷⁷ If immigration consequences lead to an escalation of violence, the terrorist designation has the unintended effect of making a survivor less safe.

Additionally, immigration consequences may not only impact abusers. Dual arrest occurs when officers responding to a family violence call cannot easily, immediately, or readily identify the primary aggressor.²⁷⁸ As a result, they arrest both parties, even if a perceived situation of mutual combat was in fact the female victim acting in self-defense, protecting herself from a male aggressor.²⁷⁹ In such cases, victims are labeled perpetrators—and therefore terrorists themselves—and could face the same severe immigration consequences discussed above. Moreover, because the spouses of those determined to have engaged in terrorist activity are also inadmissible to the United States under certain circumstances, a survivor need not even be charged with domestic violence to suffer the detrimental effects of terrorist bans.²⁸⁰

Although caution is merited, the immigration consequences of reframing intimate partner violence as terrorism may be limited by the law itself. The INA definition of "terrorist activities" must involve certain specific actions including hijacking or sabotage of an aircraft, vessel or vehicle; hostage taking; a violent

276. See Hannah R. Shapiro, *Battered Immigrant Women Caught in the Intersection of U.S. Criminal and Immigration Laws: Consequences and Remedies*, 16 TEMP. INT'L & COMP. L.J. 27, 39 (2002) ("Battered women are in the greatest danger when they separate from an abusive partner.").

277. Laura Dugan et al., *Exposure Reduction or Retaliation? The Effects of Domestic Violence Resources on Intimate-Partner Homicide*, 37 L. & SOC'Y REV. 169, 174 (2003).

278. See DAVID HIRSCHTEL ET AL., EXPLAINING THE PREVALENCE, CONTEXT, AND CONSEQUENCES OF DUAL ARREST IN INTIMATE PARTNER CASES 4, 12 (2007), <http://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf> [<http://perma.cc/V8EB-Q88C>] ("[D]ual arrest' . . . arises when both parties involved in an incident are arrested.").

279. Officers arresting victims occurs more frequently in jurisdictions that have implemented mandatory arrest policies, which compel officers who respond to a domestic violence call to effectuate an arrest once probable cause has been established. See, e.g., David Hirschel, *Domestic Violence Cases: What Research Shows About Arrest and Dual Arrest Rates*, NAT'L CRIM. JUST. REFERENCE SERV. (July 25, 2008), <http://www.ncjrs.gov/pdffiles1/nij/222679.pdf> [<http://perma.cc/58FU-BE3X>].

280. See 8 U.S.C. § 1182(a)(3)(B)(i)(IX) (2018) (deeming inadmissible spouses of individuals who are inadmissible for having engaged in terrorist activities). Exceptions exist for spouses who did not or should not have known about the terrorist activity and for persons who engaged in terrorist activity but then renounced the activity. *Id.* § 1182(a)(3)(B)(ii).

attack on an internationally protected person; assassination; or the use of a biological agent, chemical agent, nuclear weapon, explosive, firearm, or other weapon or dangerous device with intent to endanger the safety of one or more individuals or to cause substantial damage to property.²⁸¹ The list is long and expansive, and as the Third Circuit has noted, the “definition of ‘terrorist activity’ sweeps in not only the big guy, but also the little guy who poses no risk to anyone.”²⁸² However, given the extreme nature of the actions listed in the definition, it is likely that only the final provision—use of a firearm or weapon with intent to endanger—would be implicated in most situations of intimate partner violence.

Thus, the definition of “terrorist act” in the INA serves as an important mitigating factor against the potentially negative effects of reconceptualizing domestic violence as terrorism in the home. Adhering to the existing letter of the law would lead to only the most serious and violent offenses being labeled as terrorist acts. This would allow for nuance and gradation; not all incidents of intimate partner abuse would be subsumed under the terrorist label, and relatedly only the most dangerous offenders would be at risk of immigration consequences.

While some of the definitions in the INA may serve as a mitigating force in one aspect, several other definitions in both immigration and federal law potentially counsel against reframing domestic abuse as terrorism. The term “engage in terrorist activity” is broadly defined in the INA, encompassing not only committing a terrorist act but also inciting, preparing, planning, or soliciting individuals or funds (or other things of value) for a terrorist act.²⁸³ The law makes inadmissible anyone who has provided “material support” for either the commission of a terrorist act or to an individual who the actor knows, or reasonably should know, has committed or plans to commit terrorist activity.²⁸⁴ Material support can include seemingly innocuous acts such as providing “a safe house, transportation, communications, funds, transfer of funds or other material financial benefit.”²⁸⁵ Thus, if an abuser is deemed a terrorist, this expansive definition could conceivably encompass the actions of his victim who prepares him a meal, pays rent for an apartment they share, drives him to work, or allows

281. *Id.* § 1182(a)(3)(B)(iii).

282. *McAllister v. Attorney Gen.*, 444 F.3d 178, 191 (3d Cir. 2006) (Barry, J., concurring).

283. *See* 8 U.S.C. § 1182(a)(3)(B)(iv).

284. *Id.* § 1182(a)(3)(B)(iv)(VI).

285. *Id.* Many scholars have criticized the breadth of the material support provisions. *See, e.g.*, Regina Germain, *Rushing to Judgment: The Unintended Consequences of the USA PATRIOT Act for Bona Fide Refugees*, 16 GEO. IMMIGR. L.J. 505, 518–19 (2002); Barbara Hines, *An Overview of U.S. Immigration Law and Policy Since 9/11*, 12 TEX. HISP. J.L. & POL’Y 9, 12 (2006); David Cole, *Opinion, Chewing Gum for Terrorists*, N.Y. TIMES (Jan. 2, 2011), <http://nyti.ms/2A1VcmP> [<http://perma.cc/L3HG-9GJU>]. The impact of the ban on vulnerable populations such as asylees and refugees is also subject to criticism in both academic and advocacy communities. *See, e.g.*, ELEANOR ACER ET AL., *HUMAN RIGHTS FIRST, ABANDONING THE PERSECUTED* (2016); Jennie Pasquarella, *Victims of Terror Stopped at the Gate to Safety: The Impact of the “Material Support to Terrorism” Bar on Refugees*, HUM. RTS. BRIEF, Spring 2006, at 28, 28–32.

him to use her cell phone.²⁸⁶ Under existing law, no duress exemption exists for the material support bar,²⁸⁷ so the only option for relief is to receive a discretionary “situational exemption” from the U.S. Citizenship and Immigration Services.²⁸⁸

Two final potential legal concerns regarding use of the terrorist label for domestic abusers relate to harboring. The USA PATRIOT Act contains a provision that makes it a crime for individuals to harbor or conceal anyone they know or should have known had engaged in, or was about to engage in, federal terrorism offenses.²⁸⁹ As with material support, it is conceivable that a victim could be charged under this provision if domestic abusers were labeled as terrorists. If, for example, the survivor and her abuser cohabitated in an apartment that she leased or owned, or if she did not call the police to report the abuse she suffered, she may meet the statutory definition of harboring.

These concerns are particularly acute given the dynamics of domestic violence and the justice system’s treatment of survivors. Intimate partner violence is often cyclical, encompassing recurring phases of “tension building, an acute battering incident, [followed by] loving contrition.”²⁹⁰ Thus, because every moment in a relationship with an abuser is not always bad or because a survivor may align herself with the abuser in order to make herself or her children safer,²⁹¹ she may assist, support,²⁹² or harbor him, opening herself up to criminal prosecution.²⁹³ Precedent for such action exists, as prosecutors have used tools such as subpoenas, bench warrants, and even prosecutions for perjury to punish victims who refuse to testify against their abusers in criminal court.²⁹⁴

A related concern is “whether violent men whose targets are women, who operate with essential impunity worldwide, will be seen as ‘harbored’ by the

286. For example, Noor Salman, the wife of Orlando nightclub shooter Omar Mateen and a survivor of his domestic abuse, Traister, *supra* note 108, was arrested on federal material support charges, Merrit Kennedy, *Orlando Shooter’s Wife Arrested on Federal Charges*, NPR (Jan. 16, 2017, 2:29 PM), <http://www.npr.org/sections/thetwo-way/2017/01/16/510107483/orlando-shooters-wife-arrested-on-federal-charges> [<http://perma.cc/GBX3-PYPH>].

287. See *Matter of M-H-Z-*, 26 I. & N. Dec. 757, 764 (B.I.A. 2016) (holding that no implied exception exists for the provision of material support to a terrorist organization while under duress, and thus, absent a waiver, one who affords such support is inadmissible and statutorily barred from establishing eligibility for asylum).

288. See *Terrorism-Related Inadmissibility Grounds (TRIG)—Situational Exemptions*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/unassigned/terrorism-related-inadmissibility-grounds-trig-situational-exemptions> [<http://perma.cc/5NKQ-N2JK>] (last visited Feb. 15, 2019).

289. USA PATRIOT Act § 803, 18 U.S.C. § 2339 (2018)).

290. Myrna S. Raeder, *The Double-Edged Sword: Admissibility of Battered Woman Syndrome by and Against Batterers in Cases Implicating Domestic Violence*, 67 U. COLO. L. REV. 789, 795 (1996).

291. A victim might stay with her abuser, decline to involve law enforcement in her life, or even side with her abuser against the police because she is “in a better position to choose [how to protect herself], as she knows best what her partner is capable of and what is likely to occur from the separation.” Mordini, *supra* note 102, at 323.

292. See 18 U.S.C. § 2339A.

293. See *id.* § 2339.

294. See Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M.L. REV. 149, 160 (2009).

states that effectively permit, hence condone and support, their acts.”²⁹⁵ If so, under a reconceptualized view of intimate partner violence, abusers’ home countries could be designated by the United States as state sponsors of terrorism. Such an action, or calls for the U.S. government to take such action, would be diplomatically sensitive. The effects could also be wide-ranging.²⁹⁶ However, such a scenario is unlikely, as currently only four countries have received such a designation.²⁹⁷

In addition to the specific legal concerns articulated above, broader philosophical concerns exist when considering labeling domestic abusers as terrorists. A significant disadvantage of describing intimate partner violence as terrorism is the expansion of a term that is both politically charged and imprecise.²⁹⁸ As detailed in Section I, the terrorist label is a loaded one that is rarely deployed in a racially or religiously neutral manner; increasing utilization of the term in a new and often controversial area may exacerbate concerns about its improper and harmful use. Citing such concerns, some have even called for a discontinuation of the use of the word terrorism entirely. They argue that even when it may be technically or semantically correct to describe an event as a terrorist attack, the term is frequently utilized in an “arbitrary and loaded” manner which leads to harmful political and legal implications.²⁹⁹ Although intimate partner abuse was certainly minimized in the past, labeling domestic abusers as terrorists may swing the pendulum too far in the opposite direction.

Relatedly, scholars have decried the exoticization of domestic abuse, which places a disproportionate focus on forms of violence perpetrated against women in non-Western cultures, such as forced marriage, female genital mutilation/cutting, or bride burning, while diminishing or tacitly accepting “ordinary” domestic abuse in one’s own backyard.³⁰⁰ Conceiving of gender-

295. MacKinnon, *Women’s September 11th*, *supra* note 100, at 18.

296. A country designated as a state sponsor of terrorism faces sanctions in four main categories: (1) restrictions on U.S. foreign assistance, (2) a ban on defense exports and sales, (3) certain controls over exports of dual use items, and (4) miscellaneous financial and other restrictions. *State Sponsors of Terrorism*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/list/c14151.htm> [<http://perma.cc/XU4N-L78T>] (last visited Feb. 15, 2019).

297. *Id.* (listing North Korea, Iran, Sudan, and Syria as state sponsors of terrorism).

298. See *supra* Section I for a discussion of the expansion of the term *terrorism*.

299. Adam Ragusea, *Terrorist Is Now a Biased Term. Journalists Should Stop Using It.*, SLATE (July 12, 2016, 1:21 PM), http://www.slate.com/blogs/lexicon_valley/2016/07/12/it_s_time_for_journalists_to_stop_using_the_word_terrorism.html [<http://perma.cc/B4VH-4A7M>] (analogizing to the media’s decision to no longer use the term “illegal immigrant” because “the term simply became too judgmental, too toxic for neutral copy” (emphasis omitted)). The Reuters News Agency has discontinued use of the terms *terrorist* or *terrorism* to describe an event unless the words are used in a direct quote. See *Handbook of Journalism*, REUTERS, http://handbook.reuters.com/index.php?title=T#terrorism.2C_terrorist [<http://perma.cc/2YUT-QBN2>] (last visited Feb. 15, 2019).

300. See generally Martha Minow, *About Women, About Culture: About Them, About Us*, DAEDALUS, Fall 2000, at 125, 128 (“Perhaps a better explanation for the salience of women in media, political, and scholarly discussions of cultural accommodation and human rights is simply the fascination of the exotic and the erotic, associated with the sexual, the private, the home—and the female. . . . [T]here does indeed seem to be something compelling, arresting, even captivating about stories of women murdered for male or family honor, or about the cutting of female genitals. Such

based violence in this way needlessly highlights cultural differences, encourages hierarchies, and encourages distinctions between us and “the other.”³⁰¹ Reconceptualizing intimate partner violence as terrorism in the home has the potential to perpetuate this line of harmful thinking. The terrorist label makes domestic abuse more exotic or glamorous, which may not be a net positive if only this exoticization makes intimate partner violence a problem deemed worthy of combatting. Moreover, to the extent that the label of terrorism makes the frequent occurrence of intimate partner abuse seem as rare as a large-scale terrorist attack, that too distorts the reality of violence women suffer on a daily basis.³⁰²

A final feminist critique of reframing domestic abuse as terrorism relates to concerns about the perpetuation of *carceral feminism*, a term used to describe “an approach that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women.”³⁰³ Reframing intimate partner violence as the crime of terrorism seeks to emphasize the seriousness of the offense, which, as discussed above, is a positive step. However, the terrorist label also evokes notions of a problem worthy of a strong criminal justice response, which notable feminist scholars have argued is problematic in the area of domestic violence.³⁰⁴

These scholars’ critiques have focused on carceral feminism’s disregard of “the ways in which race, class, gender identity, and immigration status leave certain women more vulnerable to violence” and the related idea “that greater

stories simultaneously horrify and entice.”); Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001) (critiquing the “binary discourse” that frequently structures the parameters of the debate between feminist values and multiculturalism); Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 393, 394 (2002) (describing the “tendency to describe domestic violence as ‘cultural’ when occurring in communities of color, and not through the language of power and control used to describe domestic violence in ‘mainstream’ communities”).

301. See Minow, *supra* note 300, at 128.

302. The National Coalition Against Domestic Violence reports that, on average, nearly twenty people per minute are physically abused by an intimate partner in the United States. *Statistics*, *supra* note 72.

303. Victoria Law, *Against Carceral Feminism*, JACOBIN (Oct. 17, 2014), <http://www.jacobinmag.com/2014/10/against-carceral-feminism> [<http://perma.cc/U6VD-L3XS>]; see also Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS 45, 47 (2010).

304. See generally Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801 (2001) (critiquing the overemphasis of criminal justice interventions in attempts to solve the problem of domestic violence); Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3 (1999) (considering ways in which prosecutors, judges, and the courts can play a constructive role in combating family abuse); Goodmark, *supra* note 102 (examining the legal interventions most frequently employed by advocates for survivors and detailing the problems that result from reliance on these strategies); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550 (1999) (positing that survivors are safest and feel most respected when they willingly partner with state actors to investigate and prosecute domestic violence crimes).

criminalization often places these same women at risk of state violence.”³⁰⁵ A unitary focus on a criminal justice or punishment-based response to intimate partner abuse also marginalizes alternative responses to intimate partner violence and ignores the root causes of abuse, including “social and economic inequities” as well as “factors that exacerbate abuse, such as male entitlement, economic inequality, the lack of safe and affordable housing, and the absence of other resources.”³⁰⁶

As detailed above, serious immigration consequences exist for those who are designated as terrorists, including inadmissibility, removability, and detention. Expansion of the controversial terrorist label may adversely impact both perpetrators and survivors accused not only of engaging in terrorist activity themselves but also of harboring or providing material support to terrorist actors. Moreover, a feminist lens also cautions against terminology that has the potential to exoticize or further criminalize domestic violence. The significant ramifications of reframing intimate partner violence as terrorism in the home thus demands serious consideration prior to such a reconceptualization.

CONCLUSION

The gravity of intimate partner violence has long been diminished by adjudicators tasked with granting asylum to individuals fleeing persecution. The consequences of judges continuing to disregard the “political and cultural context of gender-based power and control” and instead deeming domestic abuse a private problem that exists only within the context of an individual relationship are grave.³⁰⁷ Yet these acts of violence do not occur in isolation or outside of a broader patriarchal social construct; as feminist scholars have argued, they are “mass atrocities, mass human rights violations, widespread and systematic attacks on the basis of sex, crimes against humanity pervasively unaddressed.”³⁰⁸

The World Health Organization reports that nearly one-third of women who have been in a relationship have experienced some form of physical or sexual violence by their intimate partner.³⁰⁹ “Globally, as many as 38% of murders of women are committed by a male intimate partner.”³¹⁰ The incidence of domestic abuse in immigrant communities is so high that experts have labeled it a pandemic.³¹¹ Given these alarming statistics, the United States must do more to prevent abuse and protect survivors. Reframing the narrative around domestic violence can be an important step in that fight.

305. Law, *supra* note 303.

306. *Id.*

307. See Marcus, *supra* note 10, at 34.

308. E.g. MacKinnon, *Women's September 11th*, *supra* note 100, at 22.

309. *Violence Against Women*, WORLD HEALTH ORG. (Nov. 29, 2017), <http://www.who.int/mediacentre/factsheets/fs239/en/> [<http://perma.cc/6YDC-J4Q2>].

310. *Id.*

311. Anita Raj & Jay Silverman, *The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 *VIOLENCE AGAINST WOMEN* 367, 369 (2002).

We must, however, be mindful of the consequences of such action, or we risk creating one problem in the course of attempting to solve another. The drawbacks of reconceptualizing intimate partner violence as terrorism in the home that are addressed in Section VI above caution us to proceed carefully and deliberately and to not utilize the terrorist label for all purposes but instead in a nuanced manner. Just as “not every form of violence that is evil or reprehensible . . . constitutes terrorism,”³¹² not every domestic abuser is a terrorist. In our zeal to serve and assist survivors, we cannot ignore or collapse “important distinctions along various dimensions of the problem—degree of severity, for example, or periodicity of occurrence.”³¹³

Professor Michael Johnson’s work in the field of sociology illuminates both the importance and practical applications of such distinctions. His work teaches that not all intimate partner violence is analogous; abuse that implicates patterns of power and control, and therefore broader political considerations, is distinguishable from both defensive violence and violence that is situationally provoked.³¹⁴ Targeted approaches are therefore required to address the varied forms of violence between intimate partners. For example, services such as counseling or batterer intervention programs might be effective mechanisms to attempt to treat what Johnson calls intimate terrorism or situational couple violence but are inappropriate to address violent resistance.

Building on this differentiating approach to domestic violence, this Article ultimately concludes that the conceptual framework of terrorism in the home is a potentially useful advocacy tool, but it should not be formally or broadly implemented in immigration law. Just as Johnson’s label of intimate terrorist is not appropriate for all batterers, it is also not suitable for all perpetrators in domestic violence-based asylum cases. Although it is tempting to use the terrorist label to more accurately describe the structural root causes of intimate partner violence and to help asylum adjudicators understand both the serious nature of the harms that befall survivors as well as why survivors of intimate partner abuse are appropriately categorized as victims of political persecution, the drawbacks of employing the terrorist label ultimately outweigh the benefits. Therefore, this Article does not recommend that the Immigration and Nationality Act be amended to designate domestic abuse as a terrorist act, nor does it recommend that domestic abusers be designated as terrorists.³¹⁵

312. James M. Lutz, *A Critical View of Critical Terrorism Studies*, PERSPECTIVES ON TERRORISM, Dec. 2010, at 31, 37.

313. Ken Corvo & Pamela Johnson, *Vilification of the “Batterer”: How Blame Shapes Domestic Violence Policy and Interventions*, 8 AGGRESSION & VIOLENT BEHAV. 259, 261 (2003).

314. See *supra* Section II for a discussion of how intimate partner violence is defined.

315. Such a recommendation is in line with other areas of domestic violence law and advocacy, wherein different definitions of intimate partner violence are utilized depending on their context. For instance, statutory definitions in criminal law are used to convict offenders for the crime of domestic violence. See, e.g., OHIO REV. CODE ANN. § 2919.25(D)(1) (West 2019) (defining “domestic violence”); TEX. PENAL CODE ANN. § 22.01(b)(2) (West 2019) (defining “assault” with an enhancement for assault committed against a family or household member or in a dating relationship); VA. CODE ANN. § 18.2-57.2(A), (B) (West 2019) (delineating penalties for the crime of “assault and battery against a family or household member”). But the definition(s) of abuse utilized by advocates

However, given the significant commonalities between intimate partner violence and terrorism, attorneys can, without using the label itself, utilize the concept of terrorism in the home to inform their advocacy, frame their arguments, and advance the asylum claims of survivors of domestic abuse. Reconceptualizing intimate partner violence in such a way can potentially expand access to asylum for survivors, as it acknowledges the structural and political nature of intimate partner abuse, thereby opening the door to claims based not just on membership in particular social groups but instead on political opinion.

Moreover, as the terminology surrounding domestic violence continues to evolve and Marcus's *terrorism in the home* and Johnson's *intimate terrorism* labels gain greater acceptance in the advocacy community, such language may ultimately work its way into the legal system. In that event, and if attorneys determine that the benefits of the terrorist label outweigh potential costs, only "extreme" forms of intimate partner abuse should be branded with the label of terrorism. Importantly, the term extreme here signifies not the severity of the abuse suffered but instead the motivations underlying the violence. Drawing on Schmid's definitional analysis, the terrorist designation is appropriate not for any violent act but only those with political motivations and inflicted in order to instill fear. It is only in such cases that the power, control, and political implications that underlie intimate partner abuse compare to terrorist acts.

Ultimately, in recognition of potential drawbacks, this Article does not advocate for statutory or regulatory change to codify a new framework for analyzing intimate partner violence through the lens of terrorism, nor does it suggest that the terrorist label is appropriate for every incident of domestic abuse. However, in extreme cases where the label is appropriate, a reframed narrative would allow for a broader, deeper, and ultimately more accurate understanding of intimate partner violence, which would be a critical step in affording necessary protections to survivors.

encompass significantly more than what exists in the criminal codes. Nonlegal descriptions of intimate partner abuse include a range of behaviors encompassed under the label of coercive control, such as emotional, financial, and psychological abuse, nearly all of which would not violate domestic violence laws. See STARK, *supra* note 73, at 198–216 (describing tactics of nonphysical abuse that compose a relationship defined by coercive control).