



CENTER FOR
Gender & Refugee
STUDIES

Representing Women from Central America: Leveraging International Law to Strengthen Asylum Claims

March 2017

Discussion Points



- Introduction of UNHCR, CGRS, and Tahirih;
- Discussion of UNHCR and international law guidance on women's asylum claims;
- Current issues and strategies for representing women from Central America in U.S. asylum proceedings;
- Hypothetical case example.



UNHCR in the United States

UNHCR: Protection of Women



UNHCR's work on protection of women in the U.S.:

- Identifying root causes of migration through **research** and **public reports**
- Protecting access to territory and asylum through **advocacy & confidential reporting**
- Identifying protection challenges in accessing territory/asylum through **monitoring**
- Offering interpretive guidance on the refugee definition from a gender perspective through **strategic litigation**

Women on the Run



- **Purpose:** To learn directly from women why they left their homes and to assess the severity of the international protection situation;
- **Scope:** Based on 160 interviews with women from NTCA countries and Mexico who were either recognized as refugees or who had been found to have a credible or reasonable fear of persecution;
- **Findings:**
 - “64% percent” of the women interviewed described being the targets of direct threats and attacks by members of criminal armed groups;
 - For many of the women interviewed, the increasing violence from criminal armed groups occurred alongside repeated **physical and sexual violence at home**;
 - Of the 60% of women interviewed who reported incidents to police, all stated that they received **inadequate protection or no protection at all**.

International Refugee Law in the U.S. Context

U.S. Legal Framework

International Treaties

- U.S. acceded to the [1967 Protocol](#) in 1968
 - The Protocol incorporates the substantive provisions of the 1951 Convention

Domestic Legislation

- [Refugee Act of 1980](#): Enacted by Congress to bring the U.S. into conformance with the 1967 Protocol

How to Use UNHCR Interpretive Guidance

Courts look to UNHCR guidance and reports for:

- **Interpretation** of the refugee definition
- Guidance on interpreting specific **legal questions**
- Evidence of **country conditions** in the asylum seekers country of origin

UNHCR Guidance Includes:

- UNHCR Handbook
- UNHCR Guidelines on International Protection
- UNHCR Eligibility Guidelines
- UNHCR reports

UNHCR Guidance on Women's Asylum Claims

Guidelines on International Protection No. 1: Gender Related Persecution

- Gender-related forms of persecution (FGM, domestic violence, sexual violence);
- Gender-sensitive approach to interpreting the Convention grounds;
 - Interpreting PSG to encompass gender/sex;
 - Interpreting political opinion to encompass views on gender roles.

UNHCR Guidelines on Protection of Refugee Women

Adjudicators should be aware of the status and experiences of women in the country from which a refugee claimant has fled, including:

- The position of women before the law;
- The political rights of women;
- The social and economic rights of women, including the right to marry the person of her choice, the right to an education, a career, and a job or remunerated activities, the status of a widow or divorcee, and freedom of dress;
- The incidence of reported violence against women, the forms it takes, protection available to women and the sanctions or penalties on those who perpetrate the violence;
- The consequences that may befall a woman on her return in light of the circumstances described in her claim.

UNHCR Eligibility Guidelines

Eligibility Guidelines for Honduras & El Salvador

- “In the territories where the gangs operate, **sexual and gender based violence** against women and girls is reportedly widespread, as is the forcible recruitment of girls to carry out tasks for the gangs.”
- “Women and girls may be **seen by individual gang members as their partner** even when a woman or girl has never consented to being in a couple. Women and girls in this situation are reported to be subjected to persistent violence, while being unable to seek protection due to the authority exercised by their “partner” in the area controlled by the gang.”
- “**Domestic violence** against women and girls in Honduras is reported to be widespread, as is impunity for the perpetrators.”
- “**Domestic violence** is reportedly considered the leading form of violence against women and girls in El Salvador, followed closely by violence perpetrated by gang members.”

UNHCR Eligibility Guidelines

Identified Risk Profile for El Salvador and Honduras

“Depending on the particular circumstances of the case, UNHCR considers that women and girls, in particular but not limited to women and girls from areas where gangs operate or those from social milieus where sexual and gender-based violence against women and girls is practised, may be in need of international refugee protection on the basis of their membership of a particular social group, and/or their (imputed) political opinion, or on the basis of other Convention grounds.”

Additional guidance and reports:

- Women on the Run;
- Guidelines on International Protection No. 1: Gender-Related Persecution
- Eligibility Guidelines for El Salvador and Honduras
- Guidelines on the Protection of Refugee Women;
- UNHCR's amicus briefs in:
 - *Matter of A-R-C-G et al*;
 - *Matter of Alvarado Peña*.

<http://www.unhcr.org/en-us/womens-claims.html>

Representing Women from Central America

The Center for Gender & Refugee Studies protects the fundamental human rights of refugee women, children, LGBTQ individuals, and others who flee persecution in their home countries. We provide legal expertise, training, research and publications; engage in appellate litigation and policy advocacy on asylum issues; and conduct human rights fact-finding on root causes of persecution and refugee flight. Much of our work centers on Central American women and children's claims, including those involving gang violence.

We maintain:

- An extensive library of litigation support materials, including model materials, sample briefs, and global expert declarations
- A database of asylum records and decisions



- ✓ **Nearly 20,000** immigrant women and children served since 1997
- ✓ Award-winning pro bono program, with a longstanding **99%** litigation success rate and **65-70%** of cases co-counseled
- ✓ **A cutting edge leader** on public policy advocacy on issues affecting immigrant women and girls
- ✓ **Four offices:** Greater Washington DC, Baltimore MD, Houston TX, and recently opened San Francisco Bay Area CA
- ✓ **Holistic Services** Tahirih offers clients case management support for shelter, medical and other legal and non-legal needs.

Case Example

Hypothetical: Clara



- Clara, an 16-year-old Mam girl, was born and raised in a small town outside of Antigua, Guatemala. She attended school until the 6th grade and then began to help out in the fields. Her brothers received a full high school education.
- At age 13, a 19-year-old ladino gang member in their town, Mauricio, raped Clara while she was working. Mauricio said that now she was now “his.” Clara felt that she had no choice but to then begin dating Mauricio. Her father had already told her that she had better find a man to take care of her because they would not feed and clothe her forever.
- Clara moved in with Mauricio and his family. While in Guatemala, Mauricio was controlling. He would get angry and demean her, calling her “stupid” or “useless,” and occasionally he would hit her, call her dirty and “indio,” and force sex on her. Clara would try to stand up to him because she didn’t believe he should treat her that way. Mauricio decided to go to the U.S. after about a year. While in the U.S. other members of Mauricio’s gang kept watch over Clara. They followed her and reported to Mauricio everything she did. He would regularly call her and warn her that she still “belonged” to him. Eventually, Mauricio was deported and came looking for Clara, so she fled at age 15.

Asylum: Quick Overview

- **Past persecution OR well-founded fear of persecution**
- **Nexus** (“on account of”) **Protected Ground**
 - Race, Religion, Nationality, Membership in a particular social group (PSG), or Political opinion
- Committed **by government** OR someone the **government is unwilling or unable** to control
- **Internal relocation** in-country not reasonable
- No **bars** to eligibility



- **Persecution** – demonstrate harms grave enough to meet the definition
- **Protected Ground** – establish the ground, then establish that ground applies to applicant or was imputed to her
- **Nexus** – statements by the abuser such as “you are my woman” or “I can do whatever I want to you” as well as country conditions
- **Government unable or unwilling** – show prevalence of violence and levels of impunity; applicant need not have sought protection if it would have been futile
- **Relocation:** Inability of applicant to safely relocate within her country because the persecutor can track her down or relocation would not be reasonable due to factors such as age, gender, health issues, civil strife, or because other harm would result.

- **Political opinion** (e.g. feminism)
 - *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993) (“we have little doubt that feminism qualifies as a political opinion”); *cf. Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996)
- **Religion** (e.g. resisting assigned gender roles)
 - *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000)
- **Race/Ethnicity** (e.g. indigenous)
 - *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000)

Case example: How would each of these grounds be formulated in Clara's case?



(1) Immutable or fundamental characteristic

- *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)

(2) Socially distinct*

- Perceived as a group by **society** (persecutor's view not determinative)
- *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006)

(3) Particularity*

- Terms commonly understood/accepted in society; discrete and definable boundaries
- *Matter of W-G-R-*; *Matter of M-E-V-G-*; *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008)

Case example: How would PSG be formulated in Clara's case?

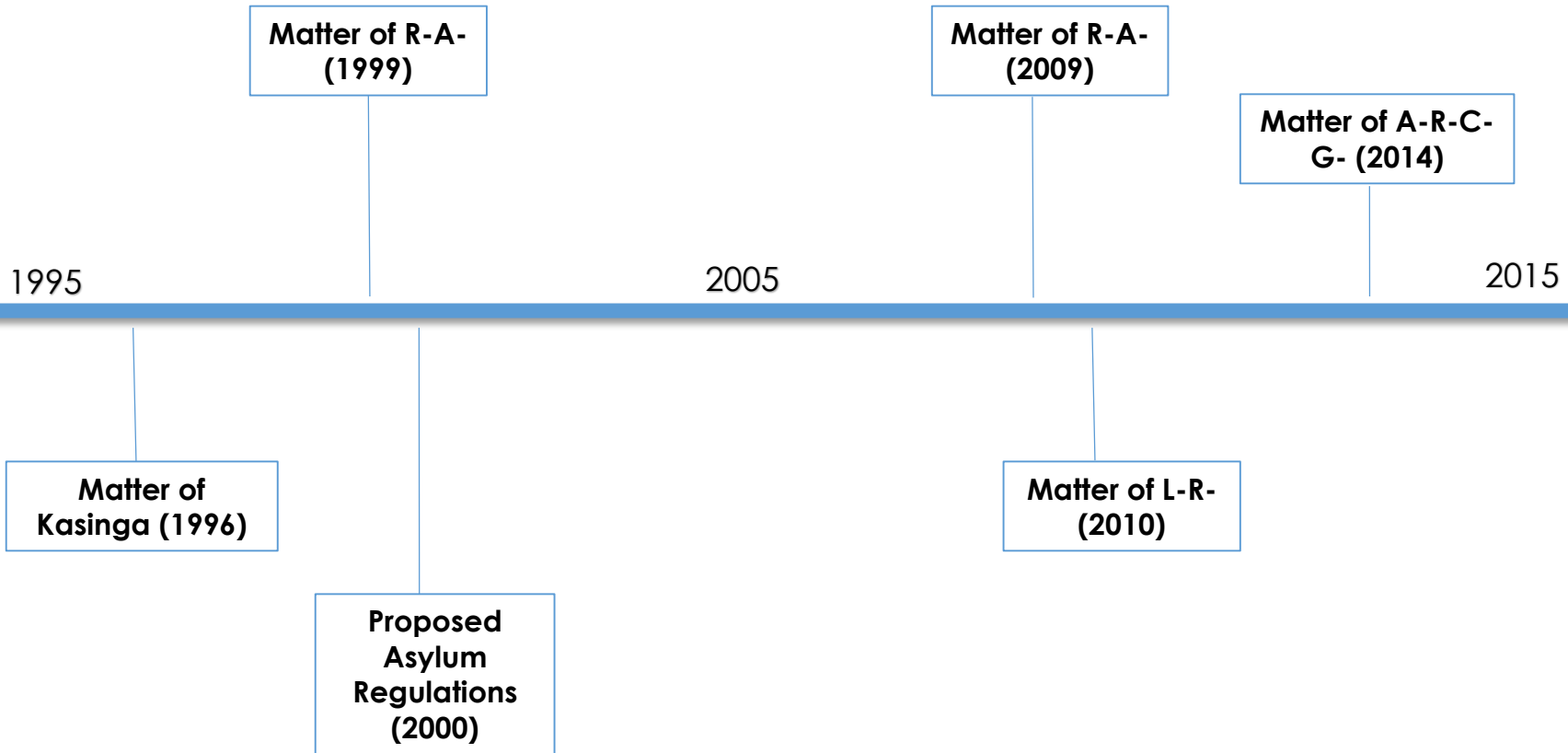


* Note these requirements depart from UNHCR approach and have been called into question by at least some courts

Gender-Based Asylum in U.S. Courts

- **Sex as immutable:** *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)
- **Repressive social mores:** *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993); *Yadegar Sargis v. INS*, 297 F.3d 596 (7th Cir. 2002)
- **Female genital cutting:** *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004); *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005); *Niang v. Gonzales*, 422 F.3d 1187 (10th Cir. 2005); *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007); *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008)
- **Rape and sexual violence:** *Matter of D-V-* (BIA 1993); *Gomez-Zuluaga v. Att'y Gen.*, 527 F.3d 330 (3d Cir. 2008)
- **Bride price customs:** *Ngengwe v. Mukasey*, 543 F.3d 1029 (8th Cir. 2009)
- **Forced marriage:** *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010)
- **Femicide:** *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)
- **“Honor” killing:** *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011)
- **Sex trafficking:** *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013) (en banc)

Contentious history of DV asylum in the U.S.



Facts

- Married Guatemalan woman suffered extreme violence and death threats from her husband
- Attempted to leave him, but he found her and threatened to kill her
- Sought protection of the police who refused to get involved in a “marital relationship”

Holding

- “[M]arried women in Guatemala who are unable to leave their relationship” constitutes a cognizable social group
- Immutability
 - Social distinction
 - Particularity

1. Does A-R-C-G- extend to women fleeing domestic violence in countries other than Guatemala?
2. Does A-R-C-G- extend to women who were not formally married to their abusers?
3. What does it mean for a woman to be “unable to leave” such that her domestic relationship is immutable?
4. Is domestic violence on account of a woman’s gender or just “personal”?
5. If there are laws on the books, can a woman establish her government is unable or unwilling to protect her?

Case example: How do these issues impact the analysis in Clara’s case?



Partners need not be married in order to have a cognizable social group.

Multiple unpublished BIA decisions hold that non-marriage relationships can be the basis of a DV asylum claim:

- **Matter of E-M-** (BIA Feb. 18, 2015) “[T]he absence of a legal marriage is not ipso facto a distinguishing factor that precludes otherwise analogous claims under the particular social group rationale set forth in *Matter of A-R-C-G-*.” BIA remand.
- **Matter of D-M-R-** (BIA June 9, 2015): “[O]ur decision in *Matter of A-R-C-G-*...does not necessarily require that an applicant seeking asylum or withholding...based on domestic violence have been married to his or her abuser.” BIA grant of withholding.

Negative (published)

- *Vega-Ayala v. Lynch*, 833 F.3d 34 (1st Cir. 2016) (distinguishes ARCG finding “Salvadoran women in intimate relationships with partners who view them as property” not immutable or socially distinct)
- *Marikasi v. Lynch*, 840 F.3d 281 (6th Cir. 2016) (distinguishes ARCG finding applicant failed to prove that she could not leave relationship or not relocate)

Positive (unpublished)

- *Alvarado-Garcia v. Lynch*, No. 15-71138 (9th Cir. Nov. 16, 2016) (reversed BIA determination woman was able to leave relationship where even after she attempted to leave he continued to abuse and control her)
- *Alonzo-Rivera v. Att’y Gen.*, No. 15-12382 (11th Cir. May 20, 2016) (reversing finding that Honduran government able and willing to control)

Gender + Nationality + Relationship Status + Other immutable characteristics

- Married women in [country X] who are unable to leave their relationship
- [Nationality] women in **domestic relationships** who are unable to leave
- [Nationality] women who are viewed as property by virtue of their positions within a domestic relationship
- **Other:** ethnicity, partner's status as police officer or gang member, fundamental belief, etc.

Successful cases: Intimate Partner Violence

- An Omaha IJ granted asylum to an indigenous Guatemalan woman who suffered violence at the hands of her father and domestic partners, one of whom raped and kidnapped her. CGRS Case No. 11623.
- A Houston IJ granted asylum to a Salvadoran women who had suffered abuse by her gang member partner. CGRS Case No. 9730.
- A San Antonio IJ granted asylum to a Guatemalan woman whose partner went to prison following her reports of his abuse, but who was released after only two weeks when he intensified threats. CGRS Case No. 13488
- A Portland IJ granted withholding to a 45-year-old Mexican woman who was forced to marry her first husband when she was 13, even though he was no longer alive because of her repeated victimization in subsequent relationships. CGRS Case No. 8226

Femicide

- *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (rejecting BIA's determination that "Guatemalan women" was not a valid PSG and remanding for consideration)

Female Genital Cutting

- *Niang v. Gonzales*, 422 F.3d 1187 (10th Cir. 2005) ("females in the Tukulor Fulani tribe")

Trafficking/Forced Prostitution

- *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013) ("young Albanian women who live alone" constitute a PSG); *Paloka v. Holder*, 762 F.3d 191 (2d Cir. 2014) ("young Albanian women" or "young Albanian women between the ages of 15 and 25")

Sexual Slavery

- *Gomez-Zuluaga v. Att'y Gen.*, 527 F.3d 330 (3d Cir. 2008) ("women who have escaped involuntary servitude after being abducted and confined by the FARC")

Forced Marriage

- *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010) ("women in China who have been subjected to forced marriage and involuntary servitude")

- **Matter of D-V-**, 21 I&N Dec. 77 (BIA 1993) (activist member of pro-Aristide church group was gang-raped by soldiers on account of political opinion and religion)
- **Shoafera v. INS**, 228 F.3d 1070 (9th Cir. 2000) (rape motivated by applicant's Amharic ethnicity)
- **Zubeda v. Ashcroft**, 333 F.3d 463 (3d Cir. 2003) (remanding CAT claim based upon rape of soldiers and consideration of asylum based upon applicant's tribal identity)
- **Uwais v. Atty. Gen.**, 478 F.3d 513 (2d Cir. 2007) (Sri Lankan police officer detained, sexually assaulted, beat and attempted to rape applicant because of Tamil ethnicity and imputed political opinion that she supported the Tamil Tigers)
- **Marynenka v. Holder**, 592 F.3d 594 (4th Cir. 2010) (remanding due to IJ error – rape by 4 police officers for political opinion, membership in Belarusian youth organization opposing the government)

Demonstrating Failure of State Protection



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- Failure to respond to requests for help
- Evidence of discrimination or adherence to prevailing cultural norms, e.g., when women report to authorities
- Failure to implement protective laws
- Inability/unwillingness to confront gangs, no real authority in gang territory
- Unenforceability of laws
- Low prosecution rates
- Low reporting rates (lack of confidence in system)

Case example: How would this be demonstrated in Clara's case?



Gender/Gang Claims

- No positive, published case law
 - *Granada-Rubio v. Lynch*, 814 F.3d 35 (1st Cir. 2016) (finding “women with children whose husbands live and work in the US and it is known to society as a whole that the husbands live in the US” is not socially distinct – extortion context)
 - *Rivera-Barrientos v. Holder*, 666 F.3d 641 (10th Cir. 2012) (rejecting “women in El Salvador between the ages of 12 and 25 who resisted gang recruitment”)
 - *Mendez Barrera v. Holder*, 602 F.3d 21 (1st Cir. 2010) (rejecting PSG “young women recruited by gang members who resist such recruitment” for lack of SD/P)

Gender/Gang Successes

However, there are unpublished or analogous cases to rely on:

- CGRS Database Cases:
 - “Salvadoran women who are viewed as gang property by virtue of the fact that they were successfully victimized by gang members once before;”
 - “single Salvadoran women who are working professionals;”
 - “Salvadoran women”
 - “working class, single women in Michoacan”
- **Gomez-Zuluaga v. Att’y Gen.**, 527 F.3d 330 (3d Cir. 2008) (women who escaped involuntary servitude after being abducted/confined by FARC)

- Gangs target women & girls to be girlfriends and sometimes sex slaves.
 - Nationality + gender + childhood/youth should satisfy the PSG tests. (e.g., El Salvadoran girls/girl children).
 - Nationality + gender + childhood + lack of parental protection, living in female headed household, or living in a particular neighborhood
 - See *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)
- Gangs target LGBTQ individuals

Immutability of gender, nationality, childhood, sexual orientation/identity

Social distinction and particularity: look to articles, statistics, surveys about higher rates of violence or discrimination against LGBT and females; policies or programs directed at LGBTs/females

Case example: How would Clara's PSG be formulated?



Consider other PSGs:

- Family membership
- Witnesses
- Opposition/refusal to join (but note mixed caselaw)

Consider other grounds:

- Political Opinion
- Religion
- Ethnicity/Race

Case Example

Hypothetical: Maria



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- Maria, a 24-year-old woman, was born and raised in a small town outside of Sonsonate, El Salvador. She never attended school and is illiterate; only Maria's brother received an education.
- At age 14, Maria's neighbor Jose who belonged to the Mara-18 gang, kidnapped Maria, locked her in his sister's home and raped her. When Maria became pregnant, Jose and her father, a devout Catholic, negotiated to have Maria live with Jose as his wife. Maria did not want to live with Jose but she felt she had no other choice.
- From that point on, Jose controlled every aspect of Maria's life. He treated her like a child and forced her to ask his permission to do even the simplest things such as watch television. Jose was also extremely verbally and physically abusive.
- As time went on, Jose started forcing Maria to engage in sexual acts with his "friends" in exchange for money that he used to purchase drugs. At age 23, Maria left Jose and traveled to the U.S.
- Despite Jose's constant abuse, Maria never reported him to the police.

CGRS Resources

CGRS provides free expert consultation to attorneys and organizations representing asylum seekers in California, across the United States, and internationally – including legal technical assistance, country conditions evidence, expert witness affidavits, model pleadings, and review of briefs or other submissions.

To request assistance from CGRS, fill out form at <http://cgrs.uchastings.edu/assistance>.

Practice Advisories

- Domestic violence
- Children's asylum
- Bars in children's cases

Country Conditions Reports

- Cover specific topics in individual countries (e.g. violence against women, children, LGBT, gang violence)

Unpublished case law

- IJ and BIA decisions

Expert Declarations

- Country-specific on violence against women and children
- Topic-specific on domestic violence and incest

Sample Pleadings

- Case documents: declarations, indexes, expert declarations
- Legal briefs
- Examination questions

Request assistance and report outcomes in your cases at

<http://cgrs.uchastings.edu/assistance!>