

Guatemalan Women's Asylum in the United States

How Legacies of Inequity Shape Gender-Based Asylum

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In providing expert testimony, I come face-to-face with multiple specters of violence at play in the depictions of asylum seekers, which over the past decade have taken multiple shapes of alterity. For example, the 2019–20 social media hashtag #migrantcaravan¹ portrayed the otherness of marauding needy hoards, criminal/terrorists disguised in our midst,² metallic blanket-covered victim-prisoners, and shantytown dwellers clamoring at the southern border. Asylum seekers, like other migrants, have been purposefully constructed as an “other” too foreign to merit empathy. Naomi Paik suggests that specters of otherness are “essential impulses” in the way migrants are incorporated into the U.S. imaginary. Discourses of otherness are, for Paik, foundational to the nature of the “U.S. settler state.” In settler colonial logic, the state “controls who is allowed into the country, and who is allowed to stay and fully participate in it.”³

I would like to imagine that the work of expert witnessing in asylum courts works to counter discourses of exclusion, but I suspect instead that the work of expert witnessing makes some migrants viable for inclusion by highlighting particular ways that they can be othered as victims. Expert witnessing supports a category of exceptionality wherein individuals are particularly affected because of their identity by country conditions construed in U.S. asylum practice as harms worthy of protection. In this context, even as some migrants are redeemed as worthy of protection, the work of expert witnessing is ethically fraught and cannot be construed as external to the workings of the U.S. immigration system. Siobhán McGurik and Adrienne Pine have pointed to the ways that expert testimony benefits as few as 2 percent of applicants.⁴ Beyond

the pitfalls of working within the so-called asylum industry, there are ethical pitfalls in making sense of embodied violence in courts engaged in intercultural dialogue.⁵ Experts' evaluation of different registers of violence as explanatory of asylum worthiness reinforces the idea that some migrants are more deserving of inclusion than others. Charting the meaning of violence, expert witnesses are cultural translators in legal venues and explain how culture patterns shape individual life courses.

As an anthropologist, expert witnessing engages in the work of cultural translation that is already central to my discipline. Yet working within the constraints of legal processes is not the same as other forms of scholarly engagement. Whitney Duncan and Beatriz Reyes-Foster note that legal rhetorics seek singular simplified truths that can be adjudicated.⁶ Yet simplified truths run counter to the "thick description" that both experts and anthropologists engage in when describing the cultural setting and its meaning from multiple local perspectives to give a complex sense of a lived experience.⁷ This chapter presents a thick description of my work as an expert witness, tracing the mundane tasks of the work but also the cultural production of meanings spanning the legal, the scholarly, and the personal realms that the work touches. As a thick description of expert witnessing, the chapter touches on the setting and politics of the work, the ethical struggles, the application of country knowledge, and the ways that the practice of expert witnessing can shape the knowledge of experts about the asylum system and their work in the country or countries for which they provide conditions reports.

THE SETTING: COURTROOMS AND DISCIPLINARY ETHICS

My work with refugees began in Guatemalan refugee camps in the 1990s. In 1994–95 I worked in camps sponsored by the United Nations High Commissioner for Refugees (UNHCR) in the Mexican states of Campeche and Quintana Roo. In the camps Maya women spoke with me not only about the genocide orchestrated by the Guatemalan armed forces in the early 1980s but also about how they had built new vibrant communities in preparation for their return to highland villages after ten years in exile, only to be forced to flee to the U.S. border to save their lives. I came to work as an expert witness in large part because of my research on the relationship between sexual violence and the Guatemalan state. My work has also centered on how cultural notions of authority embody and amplify gender inequalities. Attorneys began to contact me in 2007 because of my publications on femicide (the socially supported killing of a woman or girl because of her gender) and other forms of gender-based violence.

Work with asylum seekers today looks rather different from that in the 1990s, and it relies on the knowledge about violence that I gained with asylum seekers

almost twenty years ago. The practice of expert work in an in-person hearing looks like this:

I am waiting to testify about what brings Guatemalans to the United States in the rubbery chain-linked chair of the courtroom waiting room. By the time we sit, all of us, experts, children, and attorneys, have been searched, identified, and run through metal detectors under the surveillance of uniformed guards. I sit beside a physician who has also come to testify, and the courtroom is abustle with families. She is ready to explain the wounds registered on the body of the asylum seeker, and I am prepared to contextualize their meaning for an audience that lacked cultural fluency of Guatemala. I know Guatemala well as a scholar but also from my own lived experience as the country of my birth. My testimony relies on the former qualification alone, as the latter is too easily portrayed as a bias deficit.

Across from me three teenage girls, also Guatemalan as their accent betrays, sit huddled around the empty seat their father held before he left to learn about his hearing's conclusion. They cannot contain their nervous bodies as they wait for his return from one of the many doors that leads into courtrooms. More than an hour passes while a mother struggles to control a toddler with a toy car intent on using the walkway as his highway. As he evades his mother, the imagined highway is occasionally traversed by an official who calls out names like "Ordoñez," "García," or "Lopez" and gathers them into a line of followers who disappear with her into yet another nondescript door.

Lawyers come in and out, sometimes with news that shocks joy into teenage bodies but also sometimes with news that makes other bodies limp or stiff. "What will happen now?" is barely audible from the lips of a young man whose color vanished as his lawyer spoke in hushed tones. As she explains, he utters, "I don't know if I have the money to pay," catching himself as he tries to refocus on her words. Families seek comfort staring with visible fear into the eyes of strangers or, contrarily, by lowering their gaze in an attempt to become invisible, trying not to be seen.

And the rhythm continues. Attorneys come and go, as do the lined-up bodies that are called into rooms that open into the long hallway where the water fountain stands alone.⁸

Having worked as a country conditions expert in over 110 cases in eleven U.S. Circuits, as well as criminal courts, and supporting ACLU challenges to recent changes in immigration practice, I know that before coming into a courtroom, some asylum seekers have been shackled in ankle bracelets issued by bond companies.⁹ For this "alternative to detention" (ATD), they must pay \$300 to \$450 monthly, sometimes for years. In my last case, a young woman had paid \$9,000 over the years that she waited for her hearing, spending two hours each day charging the bracelet so that her movements might be surveilled electronically. In addition to this cost for the ankle monitor, she had to pay attorney's fees.

Most of the testimony I provide shows how individuals are targeted for abuse and persecuted because of their membership in a particular social group (PSG).

The work of anthropologists easily fits the role that experts play, explaining (1) how individuals fit into locally understood PSGs, (2) the cultural contexts in which harms leading to persecution take place, and (3) the ways that states or societies discriminate by action and omission. Working with the multiple demands of expert witnessing is a complicated juggling act of managing the constraints of how legal arguments define social groups, supporting the rights of asylum applicants, and complying with the ethical practice of anthropology by framing individual experiences as part of a social pattern.

The PSG is one of five protected grounds and can be roughly defined as a group that shares a common characteristic that is immutable or is so fundamental to their individual identities that members cannot—or should not be expected to—change it. PSGs are defined in case law and are often substantiated by the cultural context that experts most often provide. PSGs do change over time as decisions on cases recast them, challenge their visibility, and define new PSGs. PSGs challenge anthropologists because the legal requirement to document a specific social identity in country conditions declarations may fix people in static social groups that too often rely on problematic cultural essentialist generalizations. To some extent, the language of PSGs relies on the idea that cultures can have fixed characteristics—in contrast to anthropologists' understanding of culture as dynamic and heterogeneous. Ensuring that expert testimony is consistent with anthropology's understanding of culture is part of following the principles of ethical conduct.¹⁰ For me, this is a challenge in every case.

The balance for me lies in arguing, albeit in the normative presentation style of the court and translating anthropological knowledge into legal-speak, what I know to be true from my own research and the research of other scholars. I argue orally and in written testimony beyond the essential categorization that legal rhetorics and categories elicit. I argue that in Guatemala—as elsewhere—gender-based violence does not just threaten individual lives, but is best understood as a harm that requires systemic supports and can be traced to particular historical and social processes that become visible in individual lives.

This is work that has outcomes for individual lives that are transformative, and it is perhaps one of the most fulfilling aspects of my work. But it also produces outcomes with which I am much less comfortable. In anthropology-speak, we would say that the work of expert witnessing is culturally productive, and cultural production always has impacts beyond our control. Specifically, the narratives we write shape worldviews that have the potential to mischaracterize a society by entrenching problematic conceptions of womanhood or by inadvertently furthering ideas of failed or retrograde states where the agency of civil society is stunted. In addition, our narratives risk making women in intimacy into victims of violence, as well as in effect reinforcing the state's role as arbiter in intimate relationships in the United States. While expert testimony details the harms suffered by particular groups in

Guatemalan society, its focus on harms has the unintended consequence of becoming representative for the entirety of the country's cultural dynamics.

NEW KNOWLEDGE: RECASTING ASYLUM PROCESSES OF WOMEN FLEEING GENDER-BASED VIOLENCE

My contribution centers on the cultural acceptance of gendered inequities as a central thread in the continuum of violence reflected in what in global terms would be called a “refugee crisis”—a crisis that in 2018 alone brought 33,000 Guatemalans to seek asylum in the United States. This is evident in the declarations made by asylum seekers, but importantly, it is evident in the interventions the Trump administration made to curtail asylum in the United States that have been continued in the Biden administration. I draw from two vantage points: first, my understanding of the realities of violence that asylum seekers flee; and second, my participant observation in the asylum system as an expert witness.

I have learned much from the work of expert witnessing about how gender inequities are reproduced and challenged in practice. Gender inequity, or the unequal treatment or perceptions of individuals based on their gender role, shapes the asylum process from beginning to end. My first lesson was learning that, beginning with the experience of the asylum applicant in Guatemala—including the experiences they are expected to endure and the ways that gender-based violence is addressed—and continuing in the ways that U.S. law and its interpretation affect women unequally, gender inequity characterizes the experience of the asylum process. This is particularly easy to see in my practice as I focus on women who flee violence in their intimate partnerships or marriages and seek asylum on the basis of these gender-based harms and persecutions. Gendered inequities, both in Guatemala and in the United States, are central to all the cases in which I have provided testimony since I began doing this work in 2010.

What follows in this three-part section is a discussion of the new perspective I have gained by understanding the continuum of gendered inequity in gender-based violence asylum processes for cisgendered, heterosexual women fleeing so-called domestic violence, first through the lens of experiences in Guatemala and second through the lens of experiences in the U.S. asylum system. In this section, I discuss three key, interrelated conditions that shape both national contexts and further gendered inequities for cisgendered women applicants fleeing violence in intimate relationships. First, gender-based violence, once it happens, is mitigated by processes wherein deeply entrenched gender inequities and discrimination persist. Second, the narratives of affidavits for asylum applicants amplify gendered inequities as they rest on primarily interpersonal conceptions of gender-based violence that extend cultural and legal assumptions about the nature of gender and violence in both the Guatemalan and U.S. contexts to asylum applicants’

stories. And third, gender-based violence claims have been under challenge since 2016. Attorneys General Sessions, Whitaker, and Barr all issued revised decisions on case law during their tenure in office. The particular cases that were reviewed overturned precedent that had been established in asylum practice. Sessions, Whitaker, and Barr also revised United States Citizen and Immigration Services (USCIS) policy on the practice of credible fear interviews. Together the changes in USCIS policy and the revised decisions have further amplified gendered inequity in the asylum application process.¹¹ The Biden administration's lack of progress on reviewing PSG regulations leaves untouched many gender inequities inherent in the treatment of domestic violence.¹² These three conditions entrench cisgendered, heterosexual women in a continuum of gender inequity obstacles that the Guatemalan women I have worked with must traverse to make an asylum claim, regardless of whether it is ultimately successful.

*Gender-Based Violence and Inequities in the Lives
of Women in Guatemala*

Multiple forms of violence shape the everyday lives of Guatemalans. Histories of gender and ethnic violence are enmeshed in what we now too simplistically understand as “gang violence” or “domestic violence” driving migration. These forms of violence are not incidental, spontaneously criminal, or fully private acts. Gang violence and domestic violence, I argue, are rather a predictable cultural production of a rapidly vacating state plagued by corruption, legacies of genocidal racism that have disrupted the social fabric, long histories of colonialist intervention, and a society that has become accustomed to the leveraging of gendered power imbalances as a core element of the effective wielding of authority.

As the experience of violence is mapped onto an individual life, it reads like what I am calling Diana's narrative, a patterned composite story drawn from common experiences that are repeated time and time again in the lives of Guatemalan women seeking asylum.¹³

Arriving in the United States in 2018, Diana and her twelve-year-old daughter, Christa, were separated. For three months, she struggled to stay alive, wrought with worry about her child. She eventually was told where Christa had been taken, but she was not with her and did not know when she might see her again. She could not find comfort in the *hielera* (cold detention cell) where she was warehoused with many others; her heart ached for home and her children. She could only bring Christa with her and had left two younger children with her sister. Diana had never been imprisoned before, but she had been locked up, sometimes for days, in the little shed that was at the back of the house that she shared with her husband and his family. The desperately lonely nights in detention, without knowing what could happen, were eerily familiar, and Diana stopped talking . . . eating. Worry was all-consuming. “Me descompose” (I am breaking), she told the volunteer translator working with the immigrant advocacy group that offered to help.

Diana fled for her life and for Christa's. At twenty-seven years of age, she had been beaten, forced to have sex, and repeatedly told by her husband, Carlos, that without him she was nothing, "menos que nada, basura [less than nothing, trash]," and that he would take her out like the trash in the black bags that he used for work. Carlos's work, Diana knew, was violent—other people said so—but she could bear it, *aguante*. And *aguantar*, or endure, she had for nearly ten years.

When Carlos began to pay too much attention to Christa as she began to show signs of being a señorita, Diana decided to take her children to her sister's home and fled. Carlos came and forcefully took them back home, locking Diana in the shed for three days, "para que aprenda." He told her that if she tried to leave again, she would end up in the black bag. Diana believed him, and when she got her next chance, she fled to the United States with Christa, using money she borrowed from a friend.

Where gendered inequities as authority shapes this narrative is clear. Many societal factors contribute to the prevalence of gendered violence against women in Guatemala. First, sexual violence against women approached the level of normalization during the Guatemalan civil war and is a practice that has continued in the post-conflict period and has become seen as normative.¹⁴ Second, poverty, economic dislocation, and urban migration have disrupted historical notions of family and community ties that could function to stop violence against women.¹⁵ Third, the interests of Guatemalan women, especially Maya women, are not represented in the government, and there is thus a lack of political will to combat violence against women.¹⁶ In other words, the experience of violence is normalized in Guatemala because the political, social, and economic tools that might be available to combat violence in the lives of women are missing.

Substantial empirical evidence demonstrates that women in Guatemala are socioculturally normalized to violence and are expected to "put up" with or "endure" it, as, for example, Cecilia Menjívar has noted.¹⁷ The normalization of violence into gender role expectations is, importantly, not a narrative about the essentialist *machista* nature of Guatemalan men. It is an iterative cultural construction. It has taken place through a long history of state-sponsored practices of violence against women; unequal societal access to education, political representation, and economic opportunities; and the country's legal legacy that defined women and children for centuries as the property of men. While this is no longer sanctioned in law, many customary practices such as forced sex to initiate new intimate partnerships, discussed by Menjívar as *robadas* (stolen), continue to persist.¹⁸

During the genocide, the Guatemalan military legitimated itself through established notions of paternal love, guidance, and discipline. The acceptance of violence on women's bodies during the civil war has had lasting gendered consequences, including the above-discussed complacency surrounding femicide.¹⁹ Violence in Guatemala has gendered women into cultural scripts that represent them as victims or objects of torture—a role that actively disciplines women out of political agency.²⁰ This is the very reason the country has developed a distinct set

of laws, courts, and forms of policing that mitigate women's vulnerability and can work to address the needs of these identifiable groups of citizens. Among these are police stations staffed by women officers with special training.²¹ However, the specialized judicial institutions and prevention system that the 2012 Law against Femicide compelled rapidly became ineffective and overburdened; courts are not able to provide a timely response and are inaccessible in much of the country. At year's end in 2019, only thirteen of the twenty-two specialized courts originally mandated were still functioning,²² and even in departments where they were present, they were, like "regular" courts, often inaccessible for many Guatemalans because of long delays in processing, distance from rural communities, and, especially for Indigenous peoples and women, lack of access to the cultural capital required to be successful in a court proceeding.

In addition, the state routinely fails to fund key institutions charged with the monitoring and investigation of this type of gender-based violence. Guatemalan budgets have for several years cut funding of significance to victims of gender-based violence and disabled the effective application of the Law against Femicide, which admittedly was costly to implement. Further, state officials regularly acknowledge the pervasiveness of violence against women.²³ Crimes against women are directly related to the high levels of gender inequity and gender-based violence, and this particularly affects women with limited formal education.

What state action and inaction make clear is that culturally, Guatemalan women are frequently seen as lesser and not deserving of the opportunities to which men are entitled. This can be seen in a number of ways: women have lower profitable employment levels and less political representation. For example, 78.4 percent of women are employed in the country's low productivity sectors,²⁴ with many of those (73.4 percent) working in informal industries.²⁵ More than 51 percent of women report not having access to their own income, even if this is income they have earned.²⁶ In terms of political representation, women make up less than 16 percent of the cabinet posts in public ministries and 3 percent of all elected mayors.²⁷ In addition, they have less access to state services. A clear example is that Guatemalan women have the third highest rate of unmet need in family planning (including access to contraception) in Latin America and the Caribbean.²⁸

Fleeing to a Safe Country

Vulnerable migrant women are impacted too by broader changes in U.S. approaches to migrants. Importantly, in the current demarcation of "Americanness," gender plays a particular role in the management of Black and Brown bodies, and the asylum context is no different. The pressure to control migration to the United States is increasing the levels of militarization and criminalization of migrants within Guatemala's borders. The increased exportation of asylum seekers from the United States is not just a matter of exporting bodies; it is a form

of U.S. population management that follows historical trajectories of colonial intervention in Central America. Thurka Sangaramoorthy has argued that the criminalization of migrants is part of a continuum of U.S. carceral structures. Sangaramoorthy suggests that “the management of immigrants today must be seen in the broader pattern of the growth and intensity of the American penal system that began with slavery, and continued through the convict leasing system and chain gangs.”²⁹ In public rhetoric, the threat implied in the “migration crisis” is linked with the growing power of organized crime, and migrants are now seen as threats to the country’s national security.

Guatemalan women I work with have been affected by the magical realist move of the declaration by the United States, against all evidence, of Guatemala as a “safe” country through a bilateral international agreement to reorder the management of asylum seekers. In January 2020, Alejandro Giammattei, former head of the country’s prison system and known to have close ties to criminal organizations, took office.³⁰ Before becoming president, Giammattei was arrested after the Comisión Internacional contra la Impunidad en Guatemala (CICIG; International Commission against Impunity in Guatemala) found that during his term as head of prisons he had participated in a social cleansing program, and he served time for abuse of power, murder, and extrajudicial execution.³¹ Giammattei’s government has not departed from the documented corrupt practices of the previous president, Jimmy Morales, whose administration also espoused anticorruption rhetoric.³² In addition, there is a worrisome militarization trend in a country that is thirty years shy of the genocide. In his approach to resolving issues of corruption and the presence of gangs,³³ Giammattei’s policies have repurposed the army and police—known to also suffer from corruption—for population control.³⁴ One year after taking office, Giammattei’s government was enmeshed in a political crisis when it was implicated in the use of force against its own citizens.³⁵ The crisis originated in the passing of a budget in mid-November 2020 with deep cuts to the country’s judicial and health systems. The budget was repealed, but a continuing crisis in this “safe country” is inevitable given the cascading disasters—COVID-19, two major hurricanes, and volcanic activity—that have shaken the country’s finances and ability to govern. In fact, the Guatemalan government has officially requested Temporary Protected Status (TPS) for its citizens as a result of the most recent disasters.³⁶

Gender Inequities in the U.S. Asylum Process

Once in the United States, Diana was lucky enough to be connected with an immigration rights organization that helped her gain pro bono representation from a large firm. The attorneys she worked with did not speak Spanish, but there was a Spanish-speaking case coordinator and a Spanish-speaking legal intern who she regularly communicated with.

I spoke to Diana after I was retained by the firm to write a country conditions report. While I know that not all experts speak to asylum applicants directly, I do, primarily because it is regular disciplinary practice for me.

As an anthropologist, I regularly interview people to better understand their life circumstances. The interviews I conduct are structured to further understand the details outlined in draft declarations; they are conducted in Spanish, and they are translated for attorneys. I asked Diana how she began her relationship with Carlos, how she sustained herself through Carlos's abuse, what she had tried to do to get help in Guatemala, who she was supported by in Guatemala, what her family thought about her relationship, what she herself thought about her relationship, about her religion, and about her community, as well as any other clarifying questions that arise in unstructured interviews. I always learn new things that were not outlined in a draft asylum applicant declaration, in large part because as a country expert I tend to ask questions differently and in idiomatic ways that might be more familiar to applicants.

Diana was taken aback by some of my questions, and it was hard for her to talk about her experiences, particularly because she felt she might be judged for not staying with her husband as she knew some members of her family criticized her for leaving him. As we talked, she explained that while she began her relationship with Carlos when she was barely fifteen years old, had been aggressively pursued by him, and was really unsure about the first time they had sex, Carlos provided an escape from her family. He was older and an alternative to the difficult life she had in her paternal grandmother's house, where she regularly had been expected to do much manual labor since she moved there after both parents migrated to the United States when she was ten.

After my interview with Diana, I explained to her attorneys how I interpreted the details of her life in terms of broader country conditions. Her attorneys were kind and open but admitted to knowing little about gender-based violence and even less about Guatemala. They were, after all, legal experts and not scholars of gender or Latin America. One noted that he had not stopped to think about how social "domestic violence" was before. Another asked whether it was okay in Guatemala for fifteen-year-old children to marry: "Is that just the way it is there?" After touching on the ways that child marriage is viewed in different contexts and a systemic understanding of gendered violence, we discussed why women do not report the violence in their relationships to authorities. Diana, I explained, did not live in a department where the special judicial courts had been set up and her town was an hour away from the closest administrative center. Her attorneys were eager to learn about gender in Guatemala, but it was clear that, like the students in my college classes, their frame of reference for understanding gender and the cultural differences between Guatemala and the United States were drawn from the media and their own interpersonal repertoires. I talked with Diana's attorneys several times as they tried to understand Diana's intimate relationship, her reactions, and the role of the state in the Guatemalan cultural context. In our interactions, the specter of

how law, intimacy, and gender are understood in the United States. featured large as a referent for how Diana needed to be framed as different. The occasions when mutually nourishing partnerships of learning are created between the country expert witnesses and the attorneys whose expertise is the law have always yielded the most effective outcomes in the uncertain work of asylum determination.

Heather R. Hlavka and Sameena Mulla remind us that legal investigative and adjudicative processes are always steeped in culture and norms,³⁷ or what Robert Cover terms *nomos*.³⁸ Despite the requirement of asylum law that PSGs be understood in the cultural context in which they arise, I could see in my interactions that interpretation for the attorneys I worked with (in Diana's case and others) and ultimately also for judges, rests on a U.S.-based *nomos* that is tied to the political realities of migrants, attitudes toward gendered inequities, and "domestic violence" as one form of gender-based violence.

Thinking that gender inequities' interplay with authority ends in Guatemala would be to seriously misunderstand the ideological complex within which women seek asylum. Gendered inequities exist in the United States context too, and they shape not only the executive branch's legal changes, but the daily practices of interpretation of asylum applicants' stories. I see gender inequities entrenched both in the reliance on victimhood that permeates the way that women are formed into asylum seekers and in the challenges lodged by past and current administrations to the right to seek asylum. Gender undoubtedly shapes worldviews, perceptions, and practices in the United States as much as it does in Guatemala.

Domestic violence survivors, like Diana, had been recognized as eligible for asylum through their condition of victimhood before 2018. Accepting Diana's victimhood rests on the understanding that she was targeted because she was part of a recognizable social group based on her gender (a PSG in legal-speak). Such victimhood is essential to offering women like Diana relief (another nugget of legal-speak). Mulla has noted in "The Violence of Care" that criterial legal practices have a history of understanding women who survive gender-based violence through the lens of victimhood.³⁹ This leaves no room for women's nuanced resilience and resistance. Victimhood as a required identity in asylum, as much as it is capable of providing relief, needs to be thought of as a bureaucratized practice of gendered inequities. Further, gendered inequities are central to the practice of asylum itself, where gender-based violence PSGs have been under constant challenge since 2017. This is most notable in *Matter of A-B-*, in which Attorney General Jeff Sessions overruled a decision by the Board of Immigration Appeals in the *Matter of A-R-C-G-*. What Sessions's decision made clear is that gender-based violence in U.S. society is too easily defined as an interpersonal act (a relationship between private actors) rather than indicative of systemic gendered inequities supported by action and omission by states and our society.⁴⁰

The underlying cultural belief on which such legal changes in the United States rely is the old idea that domestic violence is a private matter. Feminist scholars

have written against this misunderstanding of gender-based violence for decades. Nicola Gavey's work, to give but one example, notes that violence against women is conjured in intimacy by its cultural conditions of possibility.⁴¹ Violence and the ways that it is woven into the cultural fabric of the everyday lives of persons is a particular strength in the narratives that anthropologists offer in ethnographies but also in the work of asylum.

CONCLUDING THOUGHTS

As a thick description of expert witnessing, this chapter discusses the ways in which the practice of expert witnessing can shape the knowledge of the expert about the asylum system itself and their own work in the country or countries for which they provide conditions reports. There are three key lessons I want to highlight from engaging in this work. First, I have learned that gender inequities do not end at the border for Central American asylum seekers. After applying for asylum, applicants are enmeshed in a system shaped by new layers of gendered inequities that are embedded in the narration and adjudication of their cases in the United States.

Second, this work has shown me the persistence of rhetorics of otherness in the construction of "Americanness." In courtrooms today, familiar practices of colonial domination and gender and racial violence are refashioned to function now (or perhaps as they always have) transnationally. Cisgendered asylum applicants making gendered-based violence claims are doubly affected by the violence that compelled them to flee and the gendered inequalities that persist in the practice of asylum. Yet the transnational nature of gendered and racial inequities does not just affect asylum seekers. Expert witnesses who, like me, can be easily othered because of their ethnicity or country of birth need to also be particularly wary of their entanglement in the replay of colonial othering in asylum courts. I have learned this the hard way as my own Guatemalan origin is often weighed and weaponized against my academic expertise. In one particularly egregious example of giving oral testimony on a case in Texas, I listened incredulously as a government attorney unsuccessfully tried to convince the court that I should not be allowed to testify because I myself am Guatemalan.

Third, working as an expert has taught me about the power and constraints of applied scholarship. In making my own scholarship applicable to legal proceedings, I have learned that while the work is complicated, it does not require abandonment of a critical lens on structures of power and inequality. Participating as an expert in the "asylum economy" requires weighing the impact that scholarship can have on individual lives and our own participation in unequal structures.⁴² This is imperfect work, but it is in no way dissimilar to other applications of scientific knowledge, such as medicine, that require decisions to be made and weighed in real-world contexts. It is work that deeply engages our intellect but equally

shakes us to our core. Diana's case was no exception. Despite all the work put in by her attorneys, because of how the law applied to the particularities of her case, she was unable to gain asylum and had to settle for the limbo of relief offered by the withholding of removal.⁴³

NOTES

1. Daniela Jaramillo-Dent and María Amor Pérez-Rodríguez, "#MigrantCaravan: The Border Wall and the Establishment of Otherness on Instagram," *New Media & Society*, Dec. 23, 2019.
2. Elana Zilberg, *Space of Detention: The Making of a Transnational Gang Crisis between Los Angeles and San Salvador* (Durham, NC: Duke University Press, 2011).
3. Naomi A. Paik, *Bans, Walls, Raids, Sanctuary: Understanding U.S. Immigration for the Twenty-First Century* (Oakland: University of California Press, 2020), 8.
4. Siobhán McGuirk and Adrienne Pine, eds., *Asylum for Sale: Profit and Protest in the Migration Industry* (Oakland, CA: PM Press, 2020), 205.
5. Leila Rodríguez, ed., *Culture as Judicial Evidence: Expert Testimony in Latin America* (Cincinnati, OH: University of Cincinnati Press, 2020).
6. Whitney Duncan and Beatriz Reyes-Foster, "Truth and Responsibility in Expert Witnessing," *Annals of Anthropological Practice* (2022), <https://doi.org/10.1111/napa.12184>.
7. Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 3–30.
8. Author's field notes, taken while awaiting expert testimony between 2019 and 2020.
9. Jayashri Srikantiah, "Reconsidering Money Bail in Immigration Detention," *U.C. Davis Law Review* 52:521 (2018): 526.
10. Leila Rodríguez, "From Quantitative Fact to Discursive Practice: Techniques for Asserting the Reliability of Anthropological Knowledge in Expert Testimony," *Annals of Anthropological Practice* (2022); Whitney L. Duncan and Beatriz Reyes-Foster, "Truth and Responsibility in Expert Witnessing," *Annals of Anthropological Practice* (2022); Lynn Stephen, "Using Theory and Ethnography for Asylum Seekers Fleeing Gendered Violence," *Annals of Anthropological Practice* (2022).
11. USCIS Policy Memorandum, issued on July 11, 2018, was successfully challenged by *Grace v. Whitaker*, for which the author cowrote an accompanying expert declaration.
12. Center for Gender and Refugee Studies, "Deadly Inertia: Needless Delay of 'Particular Social Group' Regulations Puts Asylum Seekers at Risk," Feb. 10, 2022.
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43. Withholding of removal is a fraught form of relief. It does not allow those granted this form of relief to leave the United States without executing an order of removal nor gives them a path to citizenship. In chapters 4 and 7 in this volume, withholding of removal is discussed in greater detail. Specifically in Diana's case, this form of relief does not allow her to sponsor her other children to come to the United States. Diana's and her older daughter's safety comes at the cost of permanent family separation.