

# Practicing Expert Witnessing

## *Tips from an Expert*

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Expert witnesses work with a variety of legal professionals, including experienced immigration and asylum attorneys, pro bono non-immigration attorneys, nonprofit immigration agencies, and faculty and students in law school clinics. Experts and legal service providers can negotiate differing concerns and perspectives through clear communication and mutually determined expectations. This chapter discusses best practices for developing collaborative and productive relationships between country conditions experts and legal service providers from the initial contact to the final hearing testimony.

### DETERMINING CASES

As an expert witness, your initial contact with a legal service provider usually occurs via email. In that email, the legal service provider should clearly identify their firm, organization, or law school, include a general outline of the case, and indicate the filing date for the affidavit and the day and time of the hearing. If the case is an affirmative case before a USCIS asylum officer, in which event testimony is not necessary, the legal service provider should give the date of that interview and the filing date for the affidavit. Based on this information, if you have an interest in possibly assisting with the case, the next step is to respond with a copy of your CV and schedule a phone conversation with the legal service provider.

This first conversation is an opportunity to learn more about the case, determine when a draft of the affidavit is expected, and confirm if your work will be on a pro bono basis or what level of compensation is available. It is important to clarify whether you will be available for hearing testimony by telephone, by

video conference, or in person; because of academic schedules and institutional responsibilities, most scholars are only available for testimony by telephone or by video conferencing from their homes or offices and do not travel to hearings. While telephonic and video conference testimony is usually approved, it is at the discretion of the immigration judge, and the legal service provider will file a motion to request telephonic or video conference testimony. Some immigration judges require a statement by the expert witness to accompany the motion, explaining the circumstances that make it not possible to travel for in-person testimony. It is important to be clear and firm if you are not available for testimony at the time of the hearing, even if the legal service provider suggests that it is highly unlikely that you will be called to testify. To indicate to the court that you are available to testify at a time that you and the legal service provider know is not possible constitutes perjury. Occasionally, legal service providers will contact an expert before a hearing or interview date has been scheduled or when the hearing or interview has been scheduled several months in the future. In these instances, it is appropriate for you to encourage the legal service provider to secure an expert for the case and establish a timeline for the completion of the draft affidavit that is closer to the scheduled hearing or interview date. It is not recommended to draft an affidavit more than three months in advance, because it could require substantial revisions due to changes in country conditions, circumstances of the applicant, or case law.

Before committing to a case, it is recommended that you review the applicant's draft declaration to determine whether the applicant's experiences reflect country conditions as you understand them and to confirm that the research-based opinion required for the case falls within your scope of expertise. Legal service providers generally agree to share a draft of the applicant's declaration but may require that you sign a confidentiality agreement before doing so. All communications and information shared with you by the legal service provider must be kept confidential.

After talking with the legal service provider, reviewing the case, and considering the amount of time anticipated for research and other scheduled activities, you then email the legal service provider to formally decline or commit to the case. Some legal service providers will require that you sign an engagement letter. Regardless of how the agreement is formalized, you should clarify the scope of work. In many cases, this means specifying that you agree to provide one affidavit and preparation and hearing testimony on a specific day. If the hearing is postponed, which commonly occurs, supplemental work such as the completion of addendums to update an affidavit, additional hearing preparation, or availability at future hearings may necessitate further discussion with the legal service provider and a separate contract or agreement. Further guidance on provisions to consider in agreements with legal service providers is found in the appendixes in this volume.

## WORKING WITH DIFFERENT LEGAL SERVICE PROVIDERS

As an expert witness, you will most often work with immigration and asylum attorneys. Before speaking with them, it is helpful to get some background information on the attorneys and their firms by conducting a search on Google, Westlaw, or LexusNexus. In your conversation, it is also appropriate to ask the attorneys about their experiences in hearings, how often they have taken cases to immigration court, and if they have worked with expert witnesses in the past.

Non-immigration attorneys, often junior associates in large corporate firms who work in teams of two to three persons, regularly represent asylum applicants on a pro bono basis. Cases are usually referred to large firms by nonprofit immigration agencies that assign a staff person, normally an immigration attorney, to work with the attorneys on a specific case. In your conversation with the attorneys, it is helpful to inquire who referred the case to them and the name of the individual assigned to the case. Some firms have a coordinator for pro bono cases, and it is appropriate to inquire about that person's name and contact information. This information is important as there is often turnover in those assigned to a particular case, and you may work with different attorneys over time on a case. Often, these attorneys have never worked on an asylum case, so it is especially important to inquire about their experience so that you can provide extra guidance and support if necessary. Some non-immigration attorneys, however, have worked on numerous asylum cases because of their commitment to this form of service in their firms. Non-immigration attorneys, as legal professionals, can provide excellent representation for applicants and have access to financial resources to schedule psychological and medical exams, pay for interviews and documents in the applicant's home country, and finance appeals or respond to government appeals of immigration judges' decisions.

When engaging directly with nonprofit immigration agencies, experts are normally working with an immigration attorney on staff but may also work with an "accredited representative." Accredited representatives are nonattorneys who may only provide immigration legal services through nonprofit, tax-exempt entities.<sup>1</sup> Regardless of the type of legal service provider, experts are encouraged to inquire about the name and contact information of the individual's supervisor. It may be helpful for you to search for information on the nonprofit, including members of the board of directors. As with other legal service providers, it is appropriate to inquire about the level of experience with asylum cases and with expert witnesses.

Working with students in law school immigration clinics may be gratifying as it is an extension of our teaching mission as scholars. You will normally be contacted by a pair of law students assigned to a particular case. It is essential that you are given the name and contact information for the faculty member who is supervising the students and that the supervisor is copied on all correspondence with the students and is present for all telephonic communications. Frequently,

law students will contact an expert when the hearing has not been scheduled or is scheduled far into the future. As in other situations, it is appropriate to decline to work on a case until the hearing is imminent. It is helpful to set firm deadlines for the receipt of materials from the students and to request that the students communicate with you in the same email stream rather than send emails independently. Because students are enrolled in law clinics for one to two semesters, you will likely work with several pairs of students on the same case. Therefore, it is especially important that the supervisor and the students clearly communicate deadlines, hearing delays, and shifts in the composition of the students representing the applicant. It is also important to inquire who will prepare you for a hearing if it is scheduled outside of the semester system, for example, in the summer months. In your initial conversation with the students and their supervisor, ascertain if the students have met with the applicant and the status of the applicant's declaration. Finally, as cases with law school clinics may be postponed multiple times, it is possible that your schedule may change, and you may not be able to continue on the case.

#### THE EXPERT WITNESS AFFIDAVIT

There are no legal rules that pertain to the structure or content of expert witness affidavits or testimony in immigration courts, beyond the Immigration Court Practice Manual's requirement that the expert witness swear that the information in the affidavit is true under penalties of perjury and that the expert witness's curriculum vitae (CV) or resume is submitted in a timely manner to the court before the hearing testimony.<sup>2</sup> However, Federal Rules of Evidence, while not binding, guide immigration court practice.<sup>3</sup> Article VII, "Opinions and Expert Testimony," of the Federal Rules of Evidence defines what constitutes expertise and allowable evidence that forms the basis of an expert witness's opinion.<sup>4</sup>

There is, in fact, no requirement that an expert witness submit an affidavit prior to testimony, though best practices indicate that an expert witness's affidavit is a critical element in successful cases. The affidavit is usually accepted into evidence in immigration hearings, and therefore the immigration judge must consider research and analysis included in this document. The affidavit is an educational tool and framing device that is helpful to the applicant's attorney and may guide questioning and testimony during the immigration hearing. While there are no rules concerning the citation of evidence that forms the basis of the expert's opinion in the affidavit, a well-documented affidavit may strengthen the persuasiveness and legibility of the expert's opinion, support the expert's credibility, and, in some instances, eliminate the need for the expert to supplement the affidavit with hearing testimony. Finally, a well-documented affidavit contains relevant evidence that may have an impact on the case beyond the immigration hearing if there is an appeal of the immigration judge's decision.

Drafting an affidavit is a collaborative process between the expert witness and the attorney. It is critical that the attorney communicate the proposed grounds of relief for the applicant so that the expert can determine what further research is necessary. There are several online resources for expert witnesses to help them craft an affidavit and prepare hearing testimony. A list of resources is provided at the end of this chapter, including general guides for experts, practice advisories for specific types of cases, and suggestions for sources useful for research on specific country conditions.

Expert witnesses usually rely on the applicant's declaration and any other supporting documentation shared by the attorney and do not speak directly with the applicant.<sup>5</sup> Supporting documents include the I-589 Application for Asylum and Withholding of Removal; legal documents such as police reports, court judgments, or divorce decrees; and the applicant's psychological and medical evaluations if relevant. Attorneys determine which documentation, beyond the applicant's declaration, to share with the expert witness, but they should consult with the expert witness before sending supplemental information. It is not always appropriate, for example, for the attorney to share audio/visual evidence as it may be compromising and prejudice your objectivity. It is important to remember that any and all evidence reviewed by the expert witness may be requested and reviewed by the immigration judge and the Department of Homeland Security (DHS) attorney, even if the attorney chose not to include this evidence as part of the asylum submission.

While drafting the expert affidavit, questions may arise about the case. It is important to contact the attorney to ask for clarification of any information in the applicant's declaration or supporting documentation that is unclear so that the attorney can convey questions to the applicant. Using research on country conditions and information about the applicant, the expert's affidavit will contextualize the applicant's experiences, providing crucial information that will assist the immigration judge to evaluate the causes and levels of persecution or torture that the applicant has suffered and/or fears experiencing in the future.

A country conditions affidavit may take many forms but commonly has numbered paragraphs and is divided into four main sections. This is a dated, signed, and sworn document. The first section is the expert witness's narrative CV, which describes the expert's background and other information that supports and documents country-specific and topical expertise. The next section focuses on the applicant; using the applicant's declaration and any other supporting documentation provided by the attorney, the expert provides a synopsis of the applicant's experiences that form the basis of the claim. The bulk of the affidavit is the expert witness's research organized according to discrete topics. For example, an affidavit focused on domestic violence might include subsections on cultural norms that define women's status, legislation and governmental actions that focus on women, the efficacy of the judiciary and security officials in protecting women

from violence, and the possibility or constraints for the applicant to relocate in their home country to avoid persecution or torture. In the final section, the expert witness's professional opinion on the applicant's claims is confirmed, referring to the country conditions research and analysis of the experiences of the applicant. After this concluding section, the expert witness provides a statement that, under penalty of perjury, affirms that the foregoing information and analysis, to the best of the expert witness's knowledge and capacity, is true and correct, before the signature line with the name and title of the expert and the date. Further guidance and a template for structuring the expert's report (called either an affidavit or a declaration) are found in the appendixes in this volume.

Expert witnesses provide a draft of the affidavit to the attorney by the date agreed upon. Attorneys may offer suggestions to revise and/or delete language or request further research on an aspect of the case that has gained relevance. Suggestions by attorneys can be very helpful to clarify language, reduce redundancy, and identify the need for further documentation to support arguments. The revision process may, however, produce tensions over authorship of the affidavit; it is important to remember that expert witnesses are the sole authors of their affidavits. While expert witnesses should consider suggestions by attorneys, they are not required to revise their affidavits. Sometimes, for example, an element of the case may have arisen in the course of preparing for the hearing that was not apparent when the expert agreed to work on the case and is outside the scholar's scope of expertise. In this instance, it is important for experts to respect the scope of their expertise and to determine whether further research is appropriate, considering their own research priorities and time constraints. Attorneys may also attempt to reformat an affidavit, for example, by changing margins and fonts and renumbering paragraphs. Expert witnesses are not required to accept these changes; if they agree to new formatting, it is reasonable to expect that any errors caused by reformatting will be corrected by the attorney. Expert witnesses must maintain their authority over their affidavits as they are solely responsible for the substance and appearance of these documents.

The expert witness and the attorney determine when the affidavit is in its final form. To finalize the affidavit, the expert witness will print, sign, and scan the document to the attorney. Sometimes attorneys request that the original, signed signature page be sent to their office and, more rarely, that the document be notarized.<sup>6</sup> Along with the scan of the signed document, it is helpful to include an updated CV, as both will be filed with the court. Most immigration judges will not allow the testimony of an expert witness without a current CV or resume of relevant experience. This is also an opportunity to provide the telephone number the court should use on the day of the hearing or confirm information for video conferencing, to ensure that the attorney has a cell number in order to update the expert witness during the hearing, and to confirm the date, time, and length of the hearing.

When hearings are postponed six months or longer after the filing of the affidavit, it may be necessary to provide an addendum, commonly referred to as a supplemental affidavit, to update country conditions. It is imperative that the attorney contact the expert at least one month before the new filing date to inquire if the expert is able to provide a supplemental affidavit. It is not necessary to include information that was addressed in the original affidavit. The supplemental affidavit provides the opportunity for the expert to confirm their continuing expertise on the relevant topics by indicating any new achievements in their narrative CV and to include analysis of recent reports on developments in the country that may have an impact on the applicant's status. In the concluding section, the expert indicates whether, in light of the new information, they affirm their original professional opinion on the status of the applicant. Supplemental affidavits are usually substantially shorter than original affidavits but are also sworn and signed documents. If applicable, the expert should submit an updated CV with the supplemental affidavit.

#### UNIVERSAL AFFIDAVITS

The above information pertains to affidavits that are individualized for specific applicants. Expert witnesses may also author general affidavits, commonly referred to as universal affidavits. Universal affidavits are also dated, signed, and sworn documents and must be accompanied by the expert witness's CV or resume. Universal affidavits are country and topic specific, for example, "The Status of Women in Honduras." Expert witnesses may organize these documents in a manner similar to that of individualized affidavits: a narrative CV, thematically organized research, and a concluding section giving their professional opinion. Expert witnesses may craft universal affidavits using research they compiled and organized for individualized affidavits. Universal affidavits may be used in several hearings and may be especially helpful for applicants representing themselves in immigration hearings without a professional legal service provider (*pro se*). There are organizations that work with nonrepresented applicants that can provide the applicants with universal affidavits. Universal affidavits may also be used by legal service providers representing individual applicants in instances in which the expert witness does not have capacity for that case and it is not possible to find an alternative expert witness. Expert witnesses do not generally provide hearing testimony on the basis of universal affidavits.

#### TESTIMONY

Attorneys will schedule a telephone conversation to prepare for the hearing. Before that conversation, attorneys may provide sample questions that may arise during the expert witness's testimony. Typically, questions cover four aspects of testimony: *voir dire*, general country conditions, the applicant's experiences, and possible cross-examination. In reviewing the questions with the attorney, expert

witnesses have an opportunity to clarify, add, and delete questions. It is important to remember that these sample questions are a guide for hearing testimony; specific questions during the hearing may differ, and an expert witness needs to be prepared for all kinds of questions. This conversation with the applicant's attorney is also an opportunity to confirm which immigration judge will hear the case. The attorney may share information on past experiences in hearings with this immigration judge, and you may search for information on the judge's background and record on Google and Trac Immigration Judge Reports.<sup>7</sup>

Voir dire is the opening testimony by the expert in which the immigration judge evaluates the expert's qualifications and confirms or denies expertise. Because the judge and the DHS attorney have already received the expert witness's CV and affidavit, sometimes the government will concede or stipulate to the expert witness's qualifications, and this part of the testimony is not necessary.

Questions in voir dire solicit information about educational background, current employment, focus of teaching and research, scholarly recognition, and any other relevant experiences that qualify the scholar as a country conditions expert. Questions about general country conditions and the applicant's experiences reflect research and analysis in the expert witness's affidavit. In the course of preparing for the hearing, the attorney and the expert witness will also discuss possible points of contestation by the DHS attorney or the immigration judge. Increasingly, DHS attorneys challenge expert witnesses on the basis of their statements on social media or opinions published in the media. While you have a right to your personal opinion on all matters, it is prudent to be aware of what information is publicly available about you and to inform the applicant's attorney before the hearing if there is any information that might be perceived to compromise your objectivity as an expert.

During hearing preparation, it is prudent to again verify contact information for the hearing (telephone number or video conferencing information) and to confirm that the attorney has your cell number in order to communicate updates, if possible, during the hearing and to notify you at the end of the hearing. Legal providers may have no means to contact you during the hearing because cell phones and computers are often not allowed into DHS, state, county, or private custodial facilities. This is also the time to confirm expectations of your hearing availability. Usually, you should expect to be available during the entire hearing, but if there are time constraints it may be possible to arrange a specific time frame for expert testimony. While the immigration judge controls the order of testimony during the hearing, the attorney can indicate whether you may expect to testify at the beginning of the hearing or after the applicant's examination.

Immigration hearings are increasingly postponed with little notice, including on the day of the scheduled hearing. Hearing dockets are overscheduled, and judges will prioritize certain cases. In addition, earlier hearings may exceed the expected time and eclipse hearings scheduled later that day. Expert witnesses need to be flexible; hearings may start later in the day than anticipated and may be



rescheduled up to two or three years in the future. An expert witness's prior commitments take precedence in rescheduling hearings, so information on teaching and meeting schedules, conferences and travel, and any other time constraints should be communicated to the attorney.

## HEARING

In preparation for the hearing, it is helpful to have available your CV, the affidavit, and the questions you prepared with the applicant's attorney. It is also good practice to review the applicant's declaration and any other supporting documents provided to you by the applicant's attorney. You should be alone and disconnect or mute all electronic devices. At the beginning of the hearing, the applicant's attorney will consult with the DHS attorney and the immigration judge to see if they will stipulate to your qualification as an expert witness and to the inclusion of your affidavit as evidence in the court record. If both are stipulated, the applicant's attorney, if able to communicate with you during the hearing, will inform you that your testimony is not necessary at the hearing, and you are free to go.

If your testimony is necessary, the immigration judge will call you from the courtroom at the number you indicated, or the legal service provider will notify you (usually by cell phone) that they are ready for you to call in or to connect through video conferencing. The immigration judge will begin by asking you to raise your right hand and to swear to testify truthfully. The immigration judge will inform you whether the government has stipulated to your credentials; if not, the applicant's attorney will begin with *voir dire*. Once you have completed this process with the applicant's attorney, the DHS attorney and the immigration judge will have an opportunity to ask you questions about your qualifications. The immigration judge will make the final determination on your qualifications as an expert.

Once your qualifications have been confirmed, the applicant's attorney will ask you questions relevant to the applicant's case, guided by your earlier preparation. You may be asked to contextualize any new information that arose during the applicant's testimony if it occurred before your testimony. After your testimony guided by the applicant's attorney, the DHS attorney will cross-examine you. Immigration hearing proceedings are formal, adversarial, evidentiary hearings. While sometimes cross-examination can feel confrontational, the applicant's attorney, and sometimes the immigration judge, will object to overly aggressive questioning and can intervene if you are not allowed to fully answer questions. During cross-examination, the DHS attorney may precede a question with a general statement about some aspect of your research or testimony. If the DHS attorney misinterprets information, it is appropriate to correct this misinterpretation before answering the specific question posed. The applicant's attorney will have another opportunity to examine you (redirect) to clarify any points that were raised during cross-examination. The immigration judge may intervene at any time to ask questions or to object to questioning by either attorney. Your testimony is audio

recorded as part of the official hearing record, and if the applicant is non-English speaking, there will be a translator. The immigration judge will inform you when your testimony is completed, and you are free to go.

After the hearing, you can expect the applicant's attorney to contact you with information about the proceedings and the immigration judge's decision. The judge may issue an oral decision at the completion of the hearing or a written decision at a later date. Attorneys may share a copy of the decision with you.

Expert witnesses are critical to successful asylum cases. As a scholar, you have a profile, deep country-specific knowledge, and research, writing, and teaching skills that allow you to contribute directly to this process that will determine whether an individual receives relief or is deported to the country they fled.

#### U.S. GOVERNMENTAL RESOURCES ON IMMIGRATION AND ASYLUM PRACTICE

The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice under the authority of the attorney general. The EOIR is tasked with interpreting and administering U.S. immigration laws that are enacted by Congress. The EOIR conducts immigration court proceedings, appellate reviews through the Board of Immigration Appeals (BIA), and administrative hearings. Expert witnesses are likely to work on cases in which the applicants are applying for three main forms of humanitarian relief administered by the EOIR: asylum, withholding of removal, and Convention Against Torture (CAT) protection. Applicants generally apply for all three forms of relief simultaneously in Form I-589, administered by the U.S. Citizen and Immigration Services (USCIS), an agency in DHS that enforces U.S. immigration laws.

- “Fact Sheet: Asylum and Withholding of Removal Relief Convention Against Torture Protections,” EOIR, <https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/23/AsylumWithholdingCATProtections.pdf>
- “Immigration Court Practice Manual,” EOIR, <https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual>
- USCIS Humanitarian Relief, <https://www.uscis.gov/humanitarian>
- I-589 Application for Asylum and Withholding of Removal, <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf>

#### NONGOVERNMENTAL ORGANIZATIONS

Because asylum policies change rapidly and require new and evolving strategies to substantiate claims, online resources provide additional practical guidance for expert witnesses. These guides, produced by legal practitioners and scholars in national immigration advocacy nongovernmental organizations (NGOs), are a resource for expert witnesses who wish to remain attuned to current strategies for dealing with changing asylum policies. A number of NGOs issue practice

advisories and offer webinars to prepare expert witnesses and attorneys to respond to restrictions to applicants' access to asylum proceedings and the increase in the evidentiary burden for substantiating asylum claims, especially for cisgender women, children, and LGBTQ+ persons.

- **American Immigration Lawyers Association (AILA)** is a national organization of immigration attorneys and law professors. AILA provides updates and support on immigration and asylum law and policy and partners with the American Immigration Council in the Immigration Justice Campaign. This campaign offers free trainings for legal service providers that may be helpful for expert witnesses and promotes pro bono representation of immigrants. <https://www.aila.org>
- **Catholic Legal Immigration Network, Inc. (CLINIC)** focuses on a wide range of immigration issues and supports nonprofits in their immigration advocacy efforts. CLINIC offers practice advisories, fact sheets, and webinars on asylum and refugee law. <https://cliniclegal.org>
- **Center for Gender and Refugee Studies (CGRS)**, housed at the University of California College of the Law, San Francisco, is a nationally prominent organization that focuses on legal representation of vulnerable populations such as women, children, and LGBTQ+ persons fleeing violence and persecution in their home countries. CGRS offers technical assistance and training to expert witnesses and attorneys, including an Expert Witness Database to connect expert witnesses to attorneys. Expert witnesses and attorneys may register individual cases and receive supporting documentation tailored for specific countries and case facts. <https://cgrs.uchastings.edu>
- **Immigration Equality** is the nation's foremost organization that provides direct legal services to LGBTQ+ and HIV-positive immigrants. Immigration Equality offers numerous resources for legal service providers that are also helpful for expert witnesses, including practice advisories and the "Asylum Manual," a collaborative project with the Midwest Immigrant and Human Rights Center (MIHRC) that provides guidance for preparing LGBTQ+ and HIV-positive claims for asylum, withholding of removal, and CAT. <https://immigrationequality.org>
- **National Immigrant Justice Center (NIJC)** is a Heartland Alliance Program that provides direct legal services to applicants for asylum, withholding of removal, and CAT protection and recruits, refers, and supports cases handled by pro bono legal service providers, often non-immigration attorneys. The NIJC offers practice advisories and webinar trainings to legal service providers and expert witnesses. <https://immigrantjustice.org>
- **Tahirih Justice Center** is a national organization dedicated to ending gender-based violence against immigrant women and girls. The Center provides legal services directly to applicants seeking relief due to gender-based violence,

as well as through a pro bono network of attorneys. The Center offers analysis of immigration policies and webinars on specific challenges to gender-based asylum. <https://www.tahirih.org>

#### COUNTRY CONDITIONS AFFIDAVIT GUIDANCE

- “Expert Witness Testimony in Latin America Asylum Cases,” by conference rapporteur Laura Powell and Kimberly Gauderman, was produced for the national conference on expert witnessing sponsored by the Latin American and Iberian Institute at the University of New Mexico in 2017, co-organized by Kimberly Gauderman and Elizabeth Hutchison. The report discusses the asylum process from the perspective of conference participants, including expert witnesses, attorneys, and legal advocates. <https://laili.unm.edu/events/2017/04/2017-04-14-practicing-asylum-final-report.pdf>
- “Expert Witnesses in U.S. Asylum Cases: A Handbook” (2018), by Kelcey Baker, Katherine Freeman, Gigi Warner, and Deborah Weissman, was produced by students in Weissman’s course on forced migration at the University of North Carolina at Chapel Hill School of Law. This handbook describes the roles of expert witnesses, including recommendations for framing affidavits and preparing for hearing testimony. <https://law.unc.edu/wp-content/uploads/2019/10/expertwitnesshandbook.pdf>
- “Special Issue: Cultural Expert Witnessing,” edited by Austin Sarat and Leila Rodriguez, *Studies in Law, Politics, and Society*, vol. 74 (Bingley, UK: Emerald Publishing, 2018), brings together cultural anthropologists engaging with the practical and ethical challenges of expert witnessing, including guidance on how to conceptualize and culturally frame PSGs.
- “Providing Expert Testimony: Promises and Pitfalls of Engaging in Immigration Proceedings” (Webinar, October 24, 2019) was sponsored by the Anthropologist Action Network for Immigrants and Refugees, the Society for Applied Anthropology’s Migration TIG and Immigration Initiative, and the American Anthropological Association. In this panel, an attorney and anthropologists discuss the asylum process and offer advice based on their substantial experience as expert witnesses. <https://www.youtube.com/watch?v=pEWCoGvT5bs>
- “Special Section: Expert Witnessing in Asylum Cases,” *Annals of Anthropological Practice* 46:1 (May 2022), edited by James Phillips and M. Gabriela Torres, is divided into three parts that include discussion by leading scholars on the practice, challenges, and techniques of expert witnessing.
- Maria Baldini-Potermín, *The Immigration and Trial Handbook* (Eagan, MN: Thompson Reuters, 2022), is a comprehensive guide to immigration and asylum legal practice written by an experienced immigration and asylum attorney. This work, revised annually to reflect new laws and best practices, discusses the role and legal framework for expert witness assistance to attorneys.

## COUNTRY CONDITIONS RESEARCH

Country conditions expert witness affidavits should focus on specific elements of the applicant's claims rather than provide general information about the applicant's home country. It is important for expert witnesses to remain current on country conditions and prudent to provide references for sources of information included in the affidavit.<sup>8</sup>

*Daily and Weekly Alerts and Newsletters*

- **American Immigration Council (AIC)** provides a weekly analysis of recent events, legislation, and litigation on U.S. immigration and asylum law and practice, including fact sheets on specific issues concerning immigrants and immigration in the United States. <https://www.americanimmigrationcouncil.org>
- **AULA Blog**, produced by the Center for Latin American and Latino Studies at American University, offers weekly analysis of hemispheric affairs, including country-specific issues and U.S. immigration policy, written by scholars and policy experts. This site archives past articles organized by country and includes links to research centers, media, and other Latin American studies blogs. <https://aulablog.net>
- **Early Arrival Newsletter and Documented Weekly** is a nonprofit news site that partners with other media organizations focused on immigration news in New York and nationally and on federal immigration policies. The Documented site includes an easily searchable archive of prior news stories and resources for immigrants. <https://documentedny.com/newsletter>
- **Frontera Dispatch** is a weekly newsletter on national and international news that affects immigrants and asylum seekers on the U.S.-Mexico border, produced by Hope Border Institute. News items contain links to resources with further information on each topic. <https://www.hopeborder.org/frontera-dispatch>
- **Google Alerts**. Through Google Alerts, expert witnesses can set up daily alerts that contain a compilation of news items from the U.S. and internationally that pertain to a specific country, population, or thematic topic. Expert witnesses focused on LGBTQ+ persons in El Salvador, for example, may set up separate alerts for "El Salvador," "El Salvador LGBT," and "El Salvador Sexual Violence," to ensure greater coverage of information that pertains to the status of Salvadoran LGBTQ+ persons. <https://www.google.com/alerts>
- **InSight Crime** is a foundation, housed at American University, dedicated to the investigation of organized crime in Latin America, including gangs, drug cartels, death squads, and corruption and human rights abuses by the police, the military, and politicians. InSight Crime provides a weekly newsletter with top stories and a repository of country-specific analyses and in-depth reports. <https://www.insightcrime.org>

- **Latin American News Dispatch (LAND)** compiles a weekly report, “This Week in Latin America,” with links to news stories on Latin America and the United States. <https://latindispatch.com>
- **Latin American Working Group (LAWG)** produces “Migration News Brief,” a weekly compilation of recent articles and reports related to issues of U.S. immigration and enforcement policy, migration from Central America and Mexico, and country-specific news items in English and Spanish. <https://www.lawg.org>
- **Transactional Records Access Clearing House (TRAC)** is a nonpartisan joint research center housed at Syracuse University focused on federal immigration enforcement, including the records of immigration judges. TRAC offers periodic email announcements and policy statements on immigration enforcement. <https://trac.syr.edu>

### *U.S. Governmental Sources*

Sources created by the U.S. government are heavily weighted by immigration judges and should always be included and analyzed in expert witness affidavits.

- **U.S. Department of State Country Reports on Human Rights Practices.** These country-specific reports are issued by the U.S. State Department annually, usually in March or April. It is essential to include these reports and to contextualize them with other documentation. The reports include information on security forces, the military, governmental structure, and legislation, as well as information on specific demographic sectors such as women, children, LGBTQ+ persons, people with disabilities, and racial minority populations. <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices>
- **U.S. Department of State Travel Advisories.** While not as critical to include in affidavits, these reports offer information on crime levels, governmental ability to respond to criminality, availability of health care, and dangers faced by specific societal groups such as women and LGBTQ+ persons. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html>
- **U.S. Department of State International Religious Freedom Reports.** Issued annually, these country-specific reports describe the status of religious freedom, governmental policies concerning religious beliefs and practices, and demographics and status of religious dominations. <https://www.state.gov/reports/2019-report-on-international-religious-freedom>
- **Congressional Research Service (CRS).** CRS is a component of the Library of Congress that conducts research and analysis for Congress. CRS periodically issues reports on specific countries and topics, such as background and U.S. relations, gangs, and root causes of migration. <https://crsreports.congress.gov>

- **CIA World Factbook.** The Factbook provides an overview of specific countries, including information on history, geography, people and society, government, economy, energy, geography, communications, transportation, military, and transnational issues. <https://www.cia.gov/the-world-factbook>

### *United Nations*

The United Nations initiates and sponsors investigations and on-site official visits to evaluate conditions for specific demographic groups. Reports by Special Rapporteurs and Independent Experts document the status of specific societal groups and the levels of protection that their governments are able or willing to enforce.<sup>9</sup> Mandate holders that may be particularly relevant include the following:

- Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, <https://www.ohchr.org/en/issues/slavery/srslavery/pages/srslaveryindex.aspx>
- Special Rapporteur on the Rights of Indigenous Peoples, <https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>
- Special Rapporteur on the Rights of Persons with Disabilities, <https://www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx>
- Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, <https://www.ohchr.org/en/issues/torture/srtorture/pages/srtortureindex.aspx>
- Special Rapporteur on Trafficking in Persons, Especially Women and Children, <https://www.ohchr.org/en/issues/trafficking/pages/traffickingindex.aspx>
- Special Rapporteur on Violence Against Women, Its Causes and Consequences, <https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx>
- Independent Expert on Sexual Orientation and Gender Identity, <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>
- U.N. Agency for Children, <https://www.un.org/en/global-issues/children>
- UNAIDS. The organization is dedicated to ending AIDS globally and provides country-specific reports and data on the demographics and status of individuals who are HIV positive. <https://www.unaids.org/en>

### *Immigration and Refugee Board of Canada (IRB)*

- The IRB produces country of origin information through “National Documentation Packages” that compile and link to country-specific sources. <https://irb-cisr.gc.ca/en/Pages/index.aspx>

### *Nongovernmental Organizations*

- **Amnesty International** produces regional and country-specific reports on human rights violations in Latin America. <https://www.amnesty.org/en>



- **AVERT** is a UK-based charity focused on global information and education on HIV and AIDS. AVERT produces reports on the status of persons who have contracted HIV/AIDS in Latin America. <https://www.avert.org>
- **Freedom House** annually issues country-specific reports on democracy, political freedom, and human rights. <https://freedomhouse.org>
- **Human Rights First** is a nonprofit, nonpartisan human rights organization that produces reports on regional and country-specific human rights practices and U.S. and international human rights policies. <https://www.humanrightsfirst.org>
- **Human Rights Watch** advocates for the global eradication of human rights abuses and produces country-specific reports on a wide range of topics in Latin America. <https://www.hrw.org/#>
- **Pew Research Center** issues reports and data sets on multiple topics in Latin America. <https://www.pewresearch.org/topics/latin-america>
- **Spartacus Gay Travel Index** monitors and annually ranks countries according to the safety of LGBTQ+ persons. <https://spartacus.gayguide.travel/gaytravelindex.pdf>
- **Temple University Beasley School of Law and Washington Office on Latin America (WOLA)** produce the “Annotated Table of Contents” (ATOC), which is a compilation of country- and topic-specific sources for use in asylum cases. <https://www2.law.temple.edu/csj/atoc>
- **Washington Office on Latin America (WOLA)** is a research and advocacy organization focused on human rights in Latin America. WOLA produces comprehensively researched publications, commentary, videos, and podcasts. <https://www.wola.org>

## NOTES

1. U.S. Department of Justice Recognition and Accreditation (R&A) Program, <https://www.justice.gov/eoir/recognition-and-accreditation-program>.
2. Executive Office for Immigration Review, “Immigration Court Practice Manual,” <https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual>.
3. Catholic Legal Immigration Network, Inc. (CLINIC), “Practice Advisory: Rules of Evidence in Immigration Court Proceedings,” Mar. 13, 2020; Federal Rules of Evidence, <https://www.rulesofevidence.org>.
4. Federal Rules of Evidence, Article VII, <https://www.rulesofevidence.org/article-vii>.
5. The decision to speak to the applicant is discipline-specific. As noted in chapter 2 of this volume, anthropologists, who in their disciplinary practice regularly conduct oral interviews during fieldwork, may find talking with the applicant helpful. Such conversations always take place in the presence of the legal service provider. Information from these conversations may be incorporated into the applicant’s declaration, which, regardless of an expert’s contact with the applicant, is still the main source of information about the applicant’s experiences.
6. The specific order of an immigration judge on the need for notarization should be followed to avoid having the affidavit excluded or given no weight by the immigration judge. In certain instances,



testimony may not be permitted by the expert witness for failure to comply with the Immigration Court Practice Manual or a specific judge's order.

7. TRAC Immigration Judge Reports, <https://trac.syr.edu/immigration/reports/judgereports>.

8. While citation of evidence is recommended for reasons mentioned in this chapter, it is not legally required. Case law supports the admission of expert opinion based solely on the credibility of the expert witness. See *Castillo v. Barr* (9th Cir. 2020).

9. "OHCHR Current Mandates, Including Special Rapporteurs, Independent Experts, and Working Groups," <https://www.ohchr.org/EN/HRBodies/SP/Pages/Currentmandateholders.aspx>.