

“WHAT KIND OF SYSTEM HAVE WE BUILT?”: A QUALITATIVE ANALYSIS
OF THE ASYLUM-SEEKING SYSTEM FOR GENDER-BASED
ASYLUM SEEKERS IN THE UNITED STATES

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Many asylum seekers have experienced trauma that causes them to flee their home country. A large portion of asylum seekers are women and are fleeing gender-based violence or experiencing it while fleeing. Due to this trauma, the researcher and the Human Rights Initiative of North Texas, a non-profit legal and social services organization, developed a research project to examine how trauma-informed, the asylum-seeking system is in the United States, specifically for those who are fleeing gender-based violence. A trauma-informed care approach attempts to address trauma and retraumatization systematically for both traumatized persons and those who work with traumatized people. This research takes a qualitative approach because it would allow for more in-depth and detailed analysis through trauma-informed, governmentality, and necropolises lenses. I interviewed 18 experts who, either as a social or legal service, specialize in working with asylum seekers who have experienced gender-based violence. These interviews, ranging from thirty minutes to an hour and a half, were recorded, transcribed, and coded for themes such as gender, trauma, and social determinants of health. None of the participants found the United States asylum-seeking system to be trauma-informed. The asylum-seeking system in the United States is not set up to meet clients where they are, and it works against their needs in a way that retraumatizes them and makes arguing their cases more complicated.

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CHAPTER 1

INTRODUCTION AND CONTEXT OF RESEARCH

As I waited for my next interviewee to join our Zoom call, I considered how long I should wait before sending a reminder or trying to reschedule the call. I checked the internet connection and the audio quality, as it seemed to get worse with every interview; I didn't know if that was because I was working from my parents' house or because the internet modem was starting to die. I rechecked that I had my questions prepared and scanned the room for any possible distractions from my interview; I didn't want a lizard falling from the ceiling again, a cat walking in front of the camera, or a dog biting at my toes. It had been five minutes, but the participant could just have been running late from another Zoom call or perhaps was having technical difficulties. I sat and I waited, looking over my questions again and making sure I had blankets nearby in case the room got too cold during the interview. It was now ten minutes past when we were supposed to meet. I went to my emails and double-checked the confirmation. Was there a possibility of a time zone miscommunication? I googled the time zone differences to make sure everything was correct. I pulled out my phone to check Twitter to see if the news had changed since I last checked, and I watched a few TikTok videos as time ticked by. It had been fifteen minutes since we were supposed to meet. I didn't want to be pushy because they were giving me their time, but it seemed like they might have genuinely forgotten, or like something had come up.

With COVID-19 still impacting everyone across the globe, the change in asylum seeking over the past three years and the asylum policy changes that have occurred in response to the pandemic, I understood when some of my participants were late or simply forgot. (It was actually recommended by an immigration attorney friend that I delay the recruitment process for

two weeks.) The administration of then-US President Donald Trump was raising immigration fees, and most of the immigration lawyers were working around the clock in order to get as many clients' paperwork submitted before the deadline so their clients would not pay a higher fee. So it was quite possible that a new policy had come up that would be of more immediate importance to my participants than an interview about asylum seeking.

I resolved to write an email as a gentle nudge, including a zoom link to make the access easier for them to hop on, an offer of tech support if needed, and an assurance that I would stay on for another 20 minutes just in case. If they did not hop on after the 20 minute mark had past, I would just send another email to reschedule. I really didn't like waiting or dealing with the possible issues that Zoom presented, but it was oddly comforting to know that everyone I've talked to was also dealing with the realities of COVID-19 and attempting to accomplish work. While disasters and pandemics will always impact everyone within their reach, they do so unequally, and no one knew that reality better than the people I interviewed.

As I struggled with balancing COVID-19 problems and my research, I was also trying to figure out if COVID-19 was truly a temporary situation or a new reality; my participants also seemed to struggle with this question as well. When I asked about challenges with helping asylum seekers, there was always a temporal clarification needed: Was this pre-COVID-19, post-COVID-19, pre-Trump, pre-Attorney General Jeff Sessions? Was this before last week when the rules changed once again without notice, or currently? During the first three years of Trump's presidency there were many stark changes in policy that impacted asylum seeker and refugees. However with the COVID-19 pandemic engulfing the world and overwhelming hospitals, this allowed the Trump administration to implement "the ideas about invoking public health and other emergency powers [that] had been on a 'wish list' of about 50 ideas to curtail immigration

that Mr. [Stephen] Miller crafted within the first six months of the [Trump] administration” (Dickerson and Shear 2020, para 10). I will go more in depth about these policies later, but the timeline below is for comparison on policy changes based upon before and after when the World Health Organization (WHO) declared COVID-19 a pandemic on March 11, 2020 (Cucinotta and Vanelli 2020).

January 2017–March 10, 2020	March 11, 2020–December 30, 2020
<ul style="list-style-type: none"> • July–October 2017 – Pilot Program for Zero Tolerance Policy in El Paso. • May 7, 2018 – Zero Tolerance Policy (Ended June 20, 2018) • June 11, 2019 – Matter of A-B- Reversed (Vacated June 16, 2021) • November 9, 2018 – Ban on Asylum Seekers who did not cross through a port of entry (Struck down by the Supreme Court November 19, 2018). • Late April 2018 – Border Metering Policy (Ended November 3, 2021) • January 24, 2019 – Migrant Protection Protocols (MPP) • July 16, 2019 – Transit-Country Asylum Ban (Asylum Eligibility and Procedural Modifications) • October 7, 2019 – Humanitarian Asylum Review Program (HARP) & Prompt Asylum Case Review (PACR) • November 20, 2019 – Third Country Agreements with El Salvador, Guatemala, and Honduras 	<ul style="list-style-type: none"> • March 13, 2020 – Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak • March 17, 2020 – Postponement of Non-detained Immigration Hearings and Closures of Some Courts (Opening and starting to hear non-detained immigration hearings varies around the country starting June 2020) • March 20, 2020 – Title 42 Implemented at the Border • March 23, 2020- MPP Hearings Postponed • June 15, 2020 – (Proposed) Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review • July 9, 2020 – (Proposed) Security Bars and Processing • August 28, 2020- (Implemented) Asylum Application, Interview, and Employment Authorization for Applicants • December 12, 2020 --(Re-Proposed) Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (Implemented January 11, 2021) • December 23, 2020 – (Reproposed) Security Bars and Processing (Implemented January 22, 2021)

Stephen Miller had sought to use public health measures as early as 2018 in the Trump presidency to seal the border and again in 2019 due to flu at a boarder patrol station and mumps outbreak in detention facilities (Dickerson and Shear 2020). While some of the policies

implemented in 2020 were implemented in an effort to stop COVID-19 from spreading, some policies like Title 42 are in direct opposition of the United Nations High Commissioner For Refugees (UNHCR) suggestions when considering asylum seekers during the pandemic and urge them to continue to process and allow them to apply for asylum (2020). Title 42 in particular has continued to be criticized by human rights advocates, medical and public health professionals for targeting asylum seekers, not scientifically or public health founded, and being inhumane (Human Rights First May 2020; Human Rights First June 2021; PHR 2021; Amnesty International 2021; Colombia Public Health 2021).

The asylum-seeking system in the United States has been under constant attack since President Trump was sworn into office in 2017, and the country inched closer to a reality where no one would qualify for asylum while still keeping a semblance of humanitarian rights on the books. While many of the policies are worthy of more research and thoughtful study, I will focus on the impacts of the reversal of Matter of A-B-, but will touch on other policies throughout this thesis as they came up in the interviews.

What is the Problem?

In 2018, US Attorney General Jeff Sessions overturned a Board of Immigration Appeals (BIA) ruling on a woman's asylum case involving domestic violence known as Matter of A-B-. Through this decision to overturn an asylum case for A-B-, he also overturned a precedent for domestic violence survivors to seek asylum known as Matter of A-R-C-G- (Clinic Legal 2018). The reasoning behind this was to limit asylum in general, but the legal justification was that the state needed to specifically state they are completely unable to help the person and that the state does not condone actions of domestic violence (Clinic Legal 2018). Since then, the back-and-

forth of the courts has made applying for asylum based on gender and domestic violence more complex.

Decisions made by judges in the courtroom have an impact on the ability of women who have experienced gender-based violence to find permanent safety in the United States. Because an asylum seeker's own testimony is oftentimes the crux of her asylum case, it is imperative that a judge understands the varied effects of trauma on persons who may be testifying. Otherwise, there will be a missed opportunity to give stability to traumatized asylum seekers. Additionally, throughout the Trump administration, there have been many policy changes and obstacles that lawyers, advocates and judges must incorporate quickly into their practices; these quick policy changes have inhumane repercussions and lead to confusion on who has the right to asylum.

Basic Asylum-Seeking Process

In the United States, there are two basic routes to obtain asylum in the legal system: affirmative asylum and defensive asylum. The circumstances under which a person arrives in the United States determine which route the asylum seeker shall go through first. If they have not broken any laws and have arrived here through a visa or were in the interior of the United States for another reason, they can apply for affirmative asylum. This essentially means the asylum seeker is first able to present their case in front of an asylum officer. These officers are specially trained to handle these types of cases and to assess the claims of the asylum seeker and grant asylum if deemed they meet the criteria. If the asylum seeker does not seem to meet the criteria, they usually start the defensive asylum application process, where an immigration judge will make the final decision. The defensive asylum process is when the seeker is in active removal proceedings and is trying to stop the process. Additionally, a person who attempts to apply for asylum at a port of entry or has crossed the border without the proper paper work, they will be

submitted to a credible fear review by an asylum officer. If the asylum officer finds the migrant has credible fear about returning home, then the asylum seeker will put through the defensive asylum process as well. In either route, affirmative or defensive, the asylum seeker is not entitled to a lawyer and without representation they must navigate this system and argue their case that they meet the grounds for asylum on their own (American Immigration Council June 2020).

This process has been complicated in recent years with the Trump administration putting into place the Migrant Protection Protocols (MPP) or, as many of the opponents of the policy call it, the Remain in Mexico (Migration Policy Institute 2020; American Immigration Council June 2020). MPP makes asylum seekers to wait in border towns in Mexico for their court date. From a logistical standpoint, this policy has been rife with confusion on when court dates occur and other communication issues. From a social or wellbeing perspective it has been found to be dangerous, leading to rape, kidnapping, murder, and/or torture of vulnerable persons (Hope Border Institute 2020).

The outcome of an asylum seeker is impacted by the location of their court in the United States and the judge (TRAC October 2021; TRAC January 2021). Additionally, the outcome is impacted if the asylum seeker has representation. Almost half of cases presented in FY 2019 did not have representation, and of those less than 10% were granted asylum (TRAC 8 January 2020). This becomes particularly important when in it was found in 2015 that only 14% of women and children had representation in immigration cases, and those without representation were deported 98% of the time (TRAC July 2015). As of December 2020, there were 1,290,766 backlogged immigration cases with an average wait time for a the first hearing date of 1,642 days or 4.5 years (TRAC January 2021). A denial of US asylum based on gender violence results in women and children being returned to their home country where they face more

discrimination, more trauma, more living in fear, and often death. The women seeking asylum from gender-based violence are overwhelmingly from the Northern Triangle in Central America (Guatemala, Honduras and El Salvador).

Client

Human Rights Initiative of North Texas (HRI) is primarily a nonprofit legal organization that offers wraparound services for asylum seekers. My advisor, Dr. Alicia Re Cruz, has worked with the organization in the past on another student's thesis project. Dr. Re Cruz introduced me to Emily Heger, who had recently won a fellowship to work on gender-based asylum, to learn about her project and to see if there was a way I could assist through my research. Heger met with members of the community who had worked in asylum legal organizations in order to gather information and perceptions about gender-based asylum cases. While Heger has been working on creating legal tools, clearing some of the confusion about gender-based asylum in the community, and creating seminars for lawyers doing this type of asylum work, she became aware that the major challenge for gender violence and gender-based asylum cases is that the credibility of asylum seekers is often questioned. Heger gave the example of women stoically presenting their traumatic experiences or not being able to recall details of events on the stand, causing the judge to question if the asylum seeker had actually experienced trauma at all. Further discussions with Dr. Re Cruz and Heger resulted in the creation of this research project.

Research Question

The aim of this project was to examine the gender-based category as a grounds for asylum and to understand how trauma-informed the US asylum system truly is. With this holistic perspective in mind, the following were the questions to investigate for this project.

- How does trauma impact women seeking asylum?

- How is trauma conceptualized and perceived in different cultures—particularly, those coming from the Northern Triangle in Central America through the US judicial system?
- What are lawyers’ understanding of the embodied effects of trauma on their clients?
- What are the assumptions lawyers have in the perception of trauma in the US?

Deliverable

The deliverable will be a report and presentation on the research conducted. This report will focus on common signs of trauma and practical steps judges and attorneys can follow to have a more trauma informed approach. This report is intended to be read by judges specifically so they might have a better understanding of trauma, and could be submitted as part of evidence in the asylum application. A final presentation based on the outcomes of the research will be shared verbally with representatives of the Human Rights Initiative. The report, presentation, and thesis will be made available to HRI.

CHAPTER 2

LITERATURE REVIEW

There has been a lot of research demonstrating women face unique challenges when applying for asylum and seeking safety over the past three decades. Additionally, despite the fact that seeking asylum based on gender is well established in the legal sense internationally, it is not well established in the United States even though we are supposed to be modeling international standards. In this section I will first discuss the major policies and developments around gender-based asylum and women's rights from an international perspective. The United States asylum-seeking system is supposed to be based upon international standards so it's important to understand those standards. Next, I will look at the important asylum and refugee-based policies and cases prior to 2000 in the United States because they establish the framework of the United States asylum seeking system. I will then do a more focused view on 2000-2020 on policies and BIA decisions for gender. The reason I am doing a more in-depth review of the past 20 years is because there is a noticeable difference and change of attitude on migrants after 9/11 and in particularly 2020 when this study was conducted. The use of the COVID-19 pandemic was used to implement more limiting asylum seeking policies that is supposed to result in preventing asylum in the name of public health. Lastly, I will be discussing research on asylum and gender-based asylum with the current issues gender-based asylum seekers have when seeking safety.

Policies Comparison: International Policies

The international policies on asylum, refugees and women's rights are the model and foundational to understanding how any nation should be implemented an asylum seeking system particularly in the United States. The United Nations 1951 Convention on Refugee Status is the foundation for our modern ideas and international policy defining refugee status and the rights

prescribed to refugees. It is this convention that created five distinct categories of refugees as someone fleeing violence with a well-founded fear of persecution for reasons of race, religion, nationality, political party, or particular social group. Particular to the 1951 Convention are the concepts of non-refoulement to a country, fear of returning to home country, non-penalization of refugees for illegal entry, and refugee access to education, work and courts. The 1967 Protocol expands on the 1951 Convention so that the timeframes and geographic locations in the original 1951 document would be eliminated and would allow the UN refugee definition to be expanded.

On the international stage, there have been additional declarations and guidelines to help protect women globally. Notably, the first version of this is The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 (United Nations Human Rights 1979). CEDAW outlines the basics of what are considered forms of discrimination for women and states that the world should try to work toward more equality for women.

Interestingly, CEDAW was signed by the United States but never ratified. The next prominent piece of gender-based protection comes from the United Nations High Commissioner for Refugees (UNHCR), which was the UNHCR Guidelines on the Protection of Refugee Women (1991) which outlines considerations for working with women refugees, such as violence that has occurred during their journey and while living in refugee camps, as well as other aspects of their experience. The Guidelines discuss that the refugee definition does not include gender, but women more frequently experience violence for social reasons and countries are therefore encouraged to view “women so persecuted as a ‘social group’ to ensure their coverage, but it is left to the discretion to the countries to follow this recommendation” (UNHCR 1991, 16). Then, in 1993, there was the Declaration on the Elimination of Violence Against Women by the UN that defined violence against women and steps that needed to be taken to monitor and eliminate

violence. It was not until 2002 that the UNHCR Guidelines on International Protections: Gender-Related Persecution (2002) were written, which outlines interpretation of gender in the context of the refugee definition. Examples UNHCR gives of gender-based claims include “although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals” (2002, 2). It notably states that:

Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition. (UNHCR 2002, 3)

Additionally, the guidelines outline that the size of the group is not an appropriate reason to deny refugee status, as well as that persecution can be perpetrated by state and non-state actors due to acknowledgment that the state authorities will not intervene (UNHCR 2002, 3). It also suggests gender persecution is still possible even when there are laws and policies in place by the state prohibiting it (UNHCR 2002).

Important Gender Asylum Documents Prior to 2000 in the USA

There are a number of important laws, policies and cases that created the foundation of the asylum-seeking system in the United States. The Refugee Act of 1980 is the legislation that created and established two paths for people seeking refuge: the refugee programs for those who gained asylum abroad and are coming to the United States, and for those people who are seeking asylum while present in the United States (American Immigration Council June 2020). One of the first notable changes, *INS v. Cardoza-Fonseca* (1985), allowed asylum seekers to seek status on a “well founded fear” versus a “clear probability of persecution,” which is significant because it allowed for a more complex and grounded version of fear returning to home country. Soon

after, Matter of Acosta 1985 is the first BIA case to define a particular social group such as “innate characteristics (like race and nationality) or characteristics that one should not be required to change (like religion or political opinion)” (National Immigrant Justice Center 2018, 2). These criteria of innate characteristics and characteristics that should not be changed were then applied to a woman from Togo fleeing female genital cutting (FGC) in Matter of Kasinga 1996 where a “particular social group (PSG) membership can be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised woman)” (National Immigrant Justice Center 2018, 2). Matter of Kasinga 1996 is particularly important in terms of gender-based claims in the United States because “it found FGC to be persecution, notwithstanding the fact that it is a widely condoned cultural practice. It recognized that social groups could be defined in reference to gender and it did so in a case involving non-state actors—namely the family and community which sought to impose genital cutting.” (Musalo 2010, 55) This ruling came down nearly a year after a memo for asylum officers on gender-based asylum claims and guidance on how to treat them, known simply as INS Asylum Gender Guidelines 1995. These guidelines were made in light of UNHCR Guidelines on the Protection of Refugee Women (1991), and the international movement towards understanding that women face unique forms of persecution (INS 1995; National Immigrant Justice Center 2018; Musalo 2010).

BIA Decisions from 2000-2020

Within the United States and the particularly the BIA, there was a notable trend of more acceptance of gender-based asylum, which stopped in 2017 when Trump became president. Matter of S-A- 2000 was originally denied due to the credibility of the asylum seeker, a 20/21 year old Moroccan woman fleeing her father’s abuse and conservative Muslim beliefs. The BIA

found that S-A- was credible in both oral and written testimony; unlike the immigration judge, the BIA found that the testimony of her aunt enhanced her credibility, particularly in discussing abuse and the futility of going to the police in her home country, along with the country conditions report. Matter of S-A- discussed reasons why an asylum seeker may not go to the police in their home country and how this is a grounds for asylum as long as country reports and other documentation support it (National Immigrant Justice Center 2018).

Matter of R-A- 2001 was originally ruled in favor of the asylum seeker, a 16-year-old Guatemalan woman escaping her abusive husband after she tried seeking help within country from police and a judge. The immigration judge made her ruling in 1999 based on the arguments from Matter of Acosta, Matter of Kasinga and the INS Asylum Gender Guidelines. However, when INS wanted to appeal the decision, the BIA found grounds to rescind the asylum claim for R-A- to much criticism within the legal immigration community (Musalo 2010). BIA did not find valid R-A-'s claim that she was part of a particular social group of "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination" because:

The respondent's husband has not shown an interest in any member of this group other than the respondent herself. The respondent fails to show how other members of the group may be at risk of harm from him. If group membership were the motivation behind his abuse, one would expect to see some evidence of it manifested in actions toward other members of the same group. (BIA R-A- 2001, 15)

A large part of granting asylum to R-A- was due to the fact that she had attempted to seek help in the country but was not given it, including testimony from an expert on the commonality of abuse and lack of resources for abused women in Guatemala. However, the BIA did not find this adequate enough to rule for the absence of government intervention, nor did it find a situation in which the "government of Guatemala encourages its male citizens to abuse its female

citizens, nor in which the Government has suddenly and unreasonably withdrawn protection from a segment of the population in the expectation that a third party will inflict harm and thereby indirectly achieve a governmental objective” (Matter of R-A-2001, 17). To particularly illustrate the difference of the cases of Matter of R-A- and Matter of Kasinga, the BIA gives this differential on the two cases:

The respondent in this case has not demonstrated that domestic violence is as pervasive in Guatemala as FGM is among the Tchamba-Kunsuntu Tribe, or, more importantly, that domestic violence is a practice encouraged and viewed as societally important in Guatemala. She has not shown that women are expected to undergo abuse from their husbands, or that husbands who do not abuse their wives, or the non abused wives themselves, face social ostracization or other threats to make them conform to a societal expectation of abuse. While the respondent here found no source of official protection in Guatemala, the young woman in Kasinga testified that the police in Togo were looking for her and would return her to her family to undergo FGM. (Matter of R-A- 2001, 19)

This Matter of R-A- went back and forth in the judicial system until 2009 and was granted in favor of R-A- in light of recent cases that had been decided.

Matter of C-A- 2006 was the next major contributor to gender-based asylum in the United States because it established the idea that a social group must be visibly distinct (Musalo 2010). Additionally, the BIA stated that they could not give asylum to the asylum seeker (in this case, a former informant for a cartel in Colombia) because of “the voluntary nature of the decision to serve as a government informant, the lack of social visibility of the members of the purported social group, and the indications in the record that the Cali cartel retaliates against anyone perceived to have interfered with its operations” (Matter of C-A- 2006, 11).

Matter of L-R- 2009 did not establish any new terms to look at asylum in terms of domestic violence even though L-R- was fleeing from domestic violence, but this decision let lawyers build their case based on this decision. However, it did not provide further guidance on how to specifically qualify domestic violence in terms of asylum like previous gender-based

cases. This results in decisions simply being up to the discretion of the judge or asylum officer to decide if the case is worthy of asylum (or, in my personal view, if the domestic violence is horrific enough for the judge) (Marsden 2017).

Matter of A-R-C-G- 2014 was important because it affirmed the “married women in Guatemala who are unable to leave their relationship,” but decided that it would rule on a case by case basis. Matter of A-B- later made and ruled in favor of the asylum seeker based on Matter of A-R-C-G-’s similarities (National Immigrant Justice 2018).

It was then-Attorney General Sessions who certified the case and changed the ruling on Matter of A-B- 2018 that allowed for gender-based persecution for specifically “married women in Guatemala who are unable to leave their relationship” and who, more concerningly, made it known that he did not believe domestic violence to be a reason for asylum because governmental actors are not involved in the direct persecution. He also put doubt on Matter of A-R-C-G- but did not reverse the decision (National Immigrant Justice 2018). This situation was made worse because of the confusing language that made it seem asylum seekers could not apply for gender-based asylum, even though there was simply a higher burden of proof. Additionally, a year later, Attorney General William Barr reversed the decision for Matter of L-E-A- 2019 so that family members were not considered a category in a particular social group, particularly if those family members in the case were being targeted due to other family opposition to gangs (National Immigration Justice Center 2018). This is particularly important because it not only puts gang-based violence into question, but also opens up the door for any family related matter that is not directly targeted by the government to be put into question. Thankfully, in 2021 Attorney General Merrick Garland reversed the decisions of Matter of A-B- and Matter of L-E-A- to their pre-Trump-administration decisions (Human Rights First 2021).

US Asylum Policy Changes 2017-2020

In addition to the legal cases and documents limiting grounds for asylum, many policies implemented had aims to limit who and how a person could apply for asylum, particularly on the southern border. The Zero Tolerance Policy 2018, also known as the Family Separation Policy, was a program to separate parents from their children after they crossed the border. It was originally piloted in El Paso from July to October of 2017 and then everywhere else in 2018. While the program itself was short-lived, it came under criticism due to the images of children in cages taking care of younger children, reports of parents being deported without their children, and the general cruelty and chaos the program caused. While the program ended just over a month later, the largest and long-lasting issue impact of this program was that there was no tracking system developed for children and parents, which is still causing issues reuniting parents as of this writing. It's notable in its cruelty, but was one of the last policies on asylum to be rescinded for the rest of the Trump presidency (Seville and Rappleye 2018; Southern Poverty Law Center 2020).

Border metering, a practice whereby Customs and Border Patrol would only accept a limited number of asylum seekers a day, started to take place in late April 2018. Border metering made asylum seekers wait months along these check points while only a certain number from the lists of asylum seekers could cross and apply for asylum each day. This was compounded by the next major border policy change was the Migrant Protection Protocols (MPP) in 2019, which was created to make asylum seekers wait in border towns across Mexico until they could attend their hearing in the United States. This program was largely criticized for jeopardizing asylum seekers' lives, incurring high rates of kidnapping at border checkpoints, and in general disrespecting international laws for asylum seeking. So between Border Metering and MPP,

asylum seekers would wait for months to apply for asylum and then once applied would be returned to Mexico to wait for their court hearing where it was difficult to find representation, find safety and communicate with the courts in the United States. This was compounded by the Transit Country Asylum Ban (2019), whereby asylum seekers must provide proof that they had applied and were denied asylum in any country they traveled through. In October of 2019, the Prompt Asylum Case Review (PACR) and Humanitarian Asylum Review Program (HARP) were implemented with a goal of reviewing asylum cases within 10 days. Additionally the Asylum Cooperative Agreement was made in 2019 for Guatemala, El Salvador and Honduras, which would allow the United States to deport asylum seekers from these countries and force them to seek asylum in one of the other countries in the region even though many of the asylum seekers coming through the southern border are from these locations. It is still unclear how it's decided along the border how asylum seekers are selected to go through which program, but it results in very few in being able to apply with representation and due diligence of the process (Migrant Policy 2020; American Immigration Council 29 January 2020).

Department of Homeland Security Changes in Policy

During the COVID-19 pandemic, the Trump administration proposed three changes in policy for asylum in Summer of 2020 that were subject to public comment and review for thirty days before the changes were officially made or repropoed with comments in mind. One of the policies is the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (2020) which would essentially make it impossible for someone to apply for asylum due to gender-based reasons, such as women fleeing gender-based violence and LGBTQIA people fleeing persecution, as well as individuals fleeing gang-related violence. It also raised the bar and burden of proof at the initial interview and required applicants to show

that the government would not intervene (National Immigrant Justice 2020). The other policies known as the Asylum Application, Interview, and Employment Authorization for Applicants (2020) primarily impacted the asylum seekers' ability to get employment authorization and would have them wait a year instead of 150 days to file for this authorization, impacting their ability to support themselves as they wait for the courts (National Immigrant Justice Center September 2020). The last policy known as Security Bars and Processing would "ban, block, and deport people seeking asylum in the United States by mislabeling them as threats to national security on public health grounds" (Human Rights First August 2020). While this policy was inspired by the COVID-19 pandemic, when implemented it will have long-lasting impacts after COVID-19 is over.

COVID-Related Policies

In addition to the policies that were put in place prior to the pandemic, there were additional proclamations and policies as a result of the pandemic in the name of public health. These measures were used to try to prevent the spread of COVID-19, however some of them seemed more about limiting asylum seeking than about public health, nor did they seem scientifically founded. These included an Asylum Seeker Ban, also known as Title 42, which was began on March 20, 2020 by the Department of Homeland Security and continued by the Centers for Disease Control and Prevention (CDC) on May 19, 2020 (National Immigration Forum 2020). This is in direct opposition of the UNHCR (2020) policy suggestions about trying to prevent the spread of COVID-19 but also upholding the rights of asylum seekers to find safety. Additionally, this policy has been widely criticized by multiple organizations for its lack of public health foundation in particular because other types of travelers than asylum seekers are allowed across the border without use of known COVID-19 prevention methods (testing,

quarantine etc.) in place (PHR 2021). Additionally, MPP hearings were postponed indefinitely by the Department of Justice (DOJ) starting July 17, 2020, and immigration hearings were in large part postponed indefinitely throughout the country in response to COVID, but only for non-detained migrants (National Immigration Forum 2020).

Conclusion of Current Asylum Policies

If the United States is supposed to be modeling the asylum seeking process off of United Nations standards it is doing it poorly, particularly when it comes to gender-based asylum. Previously to 2017 and the Trump administration, it had been a slow movement towards better resemblances of international standards of safety for gender-based asylum seekers. Policies changed rapidly during the Trump administration. The chaos, confusion, and cruelty of the policies that were implanted from 2017-2019 demonstrated a systematic chipping away asylum, but was further exacerbated by COVID-19 pandemic. As of this writing, there are efforts to reverse, change or repeal some of the policies discussed in this section.

Relevant Research on Gender-Based Asylum Seekers

In addition to the policies that gender-based asylum seekers must endure, they often have harder times arguing their cases and have mental health issues because of the trauma they have experienced (Kronick 2018; World Health Organization 2021; Blackmore et al. 2020). Additionally, they often must be retraumatized while giving their testimony to access resources and claim asylum. The asylum seeking system is not currently flexible enough to meet the needs of gender-based asylum seekers and to fully understand the scope and breath of their trauma.

Previous research done on narratives performed by women in the court room has shown that the American legal system is not sensitive to the asylum seeker. McKinley's (1997) research on narratives of gender-based asylum in the early 1990's showcase both how far gender-based

asylum in the United States has come and how much has not changed, particularly in the form of personal histories. McKinley highlights the issues that a woman fleeing gender-based violence faces in applying for asylum, such as: “how much of her experiences to disclose, whom to trust, and in what ways can she best advance her interests” (72). For McKinley, women’s stories are almost always told in the context of gender roles as defined by their culture, but they are not always emotional when telling their story. As Sorgoni describes what is occurring in Italian asylum courts regarding oral testimony, “Credible applicants are not necessarily the ones who tell the ‘truth.’ Rather, applicants must be able to give answers that fit local common-sense knowledge and do so according to the appropriate (local) legal forms, codes of discourse and body performances” (Sorgoni 2019, 167-8). The questioning and credibility of asylum seekers are constantly in question, particularly for gender-based asylum seekers.

Nayak (2015) discusses how gender-based crimes are performed: “any type of violence that targets some because of *gendered expectation* such as forcing boys to join gangs or punishing women for their choices), in *gendered ways* (such as violence that includes sexual assault) or *due to non-conforming gender identities and sexual orientation*” (14). Nayak argues that there are three types of gender-based violence that deem women worthy of protection in the United States asylum system. These are autonomous (domestic violence & female genital cutting cases), innocence (trafficking and coercive reproductive procedures) and non-deviance (sexual orientation and non-gender conforming). These frameworks heavily influence how asylum cases need to be presented to be deemed credible and to fit a particular narrative for the United States asylum-seeking system. The narrative formats presented by Nayak are useful to consider, however difficult in the case of domestic violence cases because there is no standard to review

gender based cases and it is more dependent upon the judge who reviews their case (Bookey 2013).

While Nayak (2015) discusses using categories of narratives for gender-based asylum in the United States, it is also important to consider how narrow and America-centered the arguments are. In similar vein on analyzing quantitative measure in human rights issues, Merry (2011) discusses the importance of ethnography of indicators in a global world because they have become a hallmark in nonprofit and governmental agencies as a gauge of success. These numbers are a double-edged sword; although they can help define qualitative measures and indicators for goals, they will fail to capture nuances. For example, Merry discusses the nuances of defining what is an indicator of early marriage: should it be the age of betrothal, age of first intercourse sex, age of ceremony, or age of living together? These numbers are different across the world and therefore have different nuanced meanings attached to them. The definition and narratives that are presented within asylum cases do not always capture the nuance and meanings because they need to argue a particular point, and because of this narrowing down of events to the bare bones of definitions and numbers, the asylum narrative loses its nuance. Fassin and Rechtman discussed in their book *Empire of Trauma* that because of the politicized nature of asylum seekers in France, they needed to prove their trauma from experts, which in turn does not enhance the asylum seekers own words because they are no longer the experts of their own trauma (Kraus 2010). Kober (2017) wrote their thesis analyzing specifically the written testimony with the Pro Se Asylum clinic in the United States for women asylum seekers and the importance of having a large body of evidence in addition to their testimony.

The indicators of mental health issues may be difficult to define cross culturally and, particularly with trauma, it can be useful to see prevalence. A survey among asylum seekers

from the Northern Triangle found high prevalence of mental health issues with 32% meeting the criteria to be diagnosed with PTSD, 24% for major depression, and 17% for both (Keller et al., 2017). Keller et al. surveyed asylum seekers from the Northern Triangle for trauma events and mental health disorders and found 70% would meet the criteria for asylum in the United States. However, the major caveat for Keller et al. is that while the descriptions of the trauma experienced meet the criteria for asylum in the United States, and asylum seekers express fear of returning to their home country, the perpetrators of the violence were non-governmental, and traumatic events were not reported to authorities in their home country because of fear of retaliation.

Schock, Rosner and Knaevesrud (2015) found that asylum seekers in Germany were retraumatized during their asylum interview. Schock, Rosner and Knaevesrud note that the interview itself may not be traumatizing, but due to the discussions of the events the asylum seeker experienced, the interview is difficult and can be made more difficult if the asylum seeker has not had support or practice discussing those events prior to the interview. In particular, this study suggests that decision makers need to be trained in understanding the impacts of PTSD while hearing cases. Without such training, “the experience that one’s account is not believed and that one’s suffering is invalidated may result in feelings of powerlessness, humiliation, helplessness, and fear” (7).

While the international standards for gender-based asylum suggest a much more progressive and inclusive framework to work with gender-based asylum seekers, the United States’ current legal framework for gender-based asylum is much more limited in terms and narrow definition. Research conducted on asylum seeking cases and their testimonies reflect the issues of narrow margins for asylum seeking and the basic acceptable frameworks for winning

cases. It's important to understand these current frameworks because within my research I am going to expand upon their arguments to look not only within the courtroom, but the system in general.

CHAPTER 3

THEORY

In this chapter I outline trauma theories and models and in particular the trauma-informed care model along with some current research and studies of this model with women asylum seekers and lawyers. Then I discuss neoliberalism and governmentality. Lastly I discuss necropolitics and some research that has applied this theory to asylum seekers in the United States.

Trauma-Informed Care

It is well recognized that trauma and violence are not random and there are many social-ecological factors that can impact how individuals and communities are able to handle traumatic events. Viewing trauma through a social-ecological model, trauma impacts can vary on an individual level due to race, gender, and sexual orientation, but is also impacted on a community level and location level as well. By taking a multidisciplinary approach and aiming at a variety of social-ecological factors, there are ways to prevent trauma before it happens through primary prevention, and reducing the effects of trauma through tertiary methods for people where trauma has already occurred, as well as through secondary prevention where the trauma has just occurred or is ongoing. For this research, it is assumed that trauma has already occurred and that any method of programming to help asylum seekers will be done at the secondary and tertiary level (Magruder, McLaughlin, and Borbon 2017).

The Substance Abuse and Mental Health Services Administration (SAMHSA) guide for a “trauma-informed approach” is the standard used in the United States by the CDC. They define trauma as “an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and has lasting adverse effects on the

individual's function and mental, physical, social, emotional or spiritual well-being" (SAMHSA 2014, 7). In order to place a trauma-informed approach principal in practices, there are four assumptions, known as the four R's, that "a program, organization or system that is trauma informed *realizes* the widespread impact of trauma and understands potential paths for recovery; *recognizes* the signs and symptoms of the trauma in clients, families, staff, and others involved with the system, and *responds* by fully integrating knowledge about trauma into policies procedures, and practices and seeks to actively *resist* re-traumatization" (SAMHSA 2014, 9; emphasis my own). Once the four R's are given, then the six primary principles of trauma informed care can take place:

- Safety—a sense of physical and psychological safety for everyone involved
- Trustworthiness and transparency—an effort to create transparency and build trust for everyone involved
- Peer support—support to prompt collaboration, build trust, with aims toward recovery and healing
- Collaboration and mutuality—understanding that everyone has a role to play in healing and that collaboration can help level power differences
- Empowerment, voice, and choice—build on on strengths and experiences and understand that choice and development of self advocacy skills are important
- Cultural, historical, and gender issues—does not engage in stereotypes or bias and recognizes differences and historical trauma (SAMHSA 2014, 11).

When applying a trauma-informed approach to the asylum system in the United States, there are multiple areas that the trauma-informed approach could apply to such as: changing policies, creating programs for asylum seekers, changing how nonprofits offer services, creating manageable caseloads for judges, or facilitating better communication between legal counsel. While the SAMHSA trauma-informed approach is not a standard the United States asylum-seeking system needs to adhere to legally, I would argue that the United States asylum-seeking

system should strive to be more trauma-informed because it involves vulnerable populations. Additionally, while the SAMHSA trauma-informed approach is not perfect and not nuanced enough to capture the full breadth of ways organizations can become more trauma-informed, it is a useful model to think about ways to improve the current system and is the standard in the United States.

Maher and Sergave (2018) conducted research on migrant women's experiences of vulnerabilities in Australia. They found that migration status that is considered temporary, like asylum seeking, directly impacts the ability to find help when in vulnerable situations of family violence or domestic violence. There is confusion and lack of access to resources for services. Additionally, "women often had a pre-existing fear of services or authorities based on their pre-immigration and arrival experiences" (Maher and Sergave 2018, 511). Elliot et al. (2005) established ten principles for helping women who have experienced trauma as: recognize the impact of violence; hold recovery as the primary goal; empower through services; maximize choice when possible; address the power imbalance when possible; create an atmosphere of safety, respect, and acceptance; emphasize strength, adaptation, and resilience; minimize re-traumatization; be culturally competent and contextualize experiences in the individual lives; and involve clients in designing and evaluating the process. These principles discussed expanding and illustrating active steps of the trauma-informed care model for providers to take with their clients.

James (2020) notes that lawyers are often exposed to vicarious or secondary trauma throughout their legal practices as they work to advocate and help their clients. With the constant need to show empathy, compassion fatigue and burnout can set in. A trauma-informed approach within the office such as organizational support, trauma-informed supervision, and self-care can

increase the mental well-being of lawyers (James 2020). For a trauma-informed approach to truly be implemented in the asylum-seeking system in the United States, there need to be policy changes directed toward all parties involved in the process, such as judges, lawyers, legal representatives, social workers, and psychosocial advocates. If the professionals in the system are burnt out, then more mistakes are made and it makes it more difficult for asylum seekers to work through the system.

Governmentality

The driving policies of the United States for asylum seekers have created their own humanitarian crises and allowed the continual suffering from those who are seeking safety. A policy is often presented as “apolitical because it appeals to seemingly neutral scientific reasoning or incontestable assertions about human nature” (Wedel et al. 2005, 37). One of the main ideas driving policies of the United States is governmentality.

Governmentality plays a major role in the asylum-seeking system in the United States in the name of security and protection. In this context governmentality is defined as the state using technological and political means to increase surveillance and scrutiny of a group of people. The idea of the mistrusted or bogus refugee created by the state to sift out the true asylum seeker creates a “paradox” such that “asylum is disqualified both quantitatively and qualitatively, states develop increasingly sophisticated instruments to scrutinize the ‘truth’ of the applicants who, in the great majority of cases, will be rejected and end up added to the pool of illegal aliens after they have exhausted every possible appeal” (Fassin 2011, 221). Heightened security to weed out possible terrorists has led to a more difficult process to claim asylum through necessitating third party proof via health professionals or documentations of persecution, with

fewer people being granted asylum overall (Fassin 2011). Therefore, the state scrutinizes asylum seekers in the name of security from a place of power.

Necropolitics

Necropolitics is the idea that policies and circumstances push those who live on the margins and are considered undesirable “in the interest of maximum destruction of persons and the creation of death-worlds, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead” (Mbembe and Meintjes 2003, 40). This is often because of managing neoliberal policies, and in the context of asylum seeking, is creating unlivable conditions while seeking asylum, as well as depopulation of home countries, that forces people to move from dangerous situations and physical places where the migrants live in inhumane conditions and die (Estévez 2018).

CHAPTER 4

METHODS

The primary method of research was through semi-structured interviews with lawyers, legal representatives, experts on trauma, and the asylum seekers. Eleven lawyers and legal representatives were interviewed and asked to discuss issues they face when presenting gender-based asylum cases in the United States. There were seven experts on trauma interviewed that included social workers, psychologists, therapists, housing coordinators, case workers and trauma informed care trainers. These eighteen interviews specifically were vetted about working with gender-based asylum seekers. They discussed their experiences working with community members and asylum seekers to help them during the asylum-seeking process. Samples were recruited using a snowball method and posting on social media. The interviews were then recorded on Zoom and analyzed using MaxQDA for common themes and location.

I would be remiss if I did not acknowledge the context in which this research took place. This was a year unlike any other in recent history, and changes had to be made to accommodate the safety of the community and myself. For example, I originally was going to volunteer on-site with the Human Rights Initiative and to observe asylum hearing cases in person. Both activities became untenable as COVID-19 continued to spread throughout the country. Additionally, courtrooms closed to minimize face-to-face gatherings in close quarters. The only form of immigration court started to take place over video call and only for those in detention. These policies varied through the country and were different in every region. Therefore, most of my contact with the Human Rights Initiative remained online, while I volunteered with their fundraising and marketing department and discussed my project over email.

Additionally, the Trump administration used the summer of 2020, while the country was

being devastated by the virus, to dismantle the asylum system even further. There were three major pieces of policy change that occurred during the pandemic that were not an immediate mitigation response to COVID-19, but would have more long-lasting changes. These included stopping the asylum seeking process indefinitely in response to COVID-19, changing the definition of “asylum” and “refugee,” and using public health to stop asylum cases in the future. These changes will be discussed more in depth in my research and analysis; however these policies have been something that the Trump administration had been wanting to change since the administration began. The opportunity to actually implement these changes came while COVID rates started to climb over the summer and cases spread across the nation. I met with people overwhelmed by the pandemic, the needs of their friends and family, and the asylum seekers they wanted to help. While COVID-19 is not the center of this research, it no doubt exposes and widens the preexisting cracks of the asylum-seeking system in the United States, particularly for those who have experienced gender-based violence.

CHAPTER 5

RESULTS

The central question guiding this research is whether the asylum-seeking system for gender-based asylum seekers is trauma-informed. As mentioned earlier, while trauma-informed approach is not a standard that they have to be held to, it is the standard on how to create a system for a vulnerable population in the United States and a useful framework to find areas that could be improved. Through analysis of interviews with legal participants including lawyers and legal representatives, as well as expert participants including psychologists, social workers, and social services providers, I have found major themes that impact gender-based asylum seekers within the courtroom. I discuss those themes through a sociological approach as an asylum seeker would through the stages they go through. First, I focus on the individual and relational level, preparing for court, then moving on to influences of gender, then what happens during the courtroom and legal proceedings and then lastly the overall impact of policy. The way I have structured this chapter is to guide the reader through this process similar to that of someone who is applying for asylum and what themes would come up for them as they go through this process.

The first section, “Asylum-Seeking Purgatory,” explores the process of applying for asylum, how memory impacts the application, the culture issues and misconceptions that occur in applying for, as well as in receiving, social services. In addition, it explores attempts to access legal and social services, reflections on their journey to the United States and on their wait in the United States for their application, the impact that trauma has on professionals within the network that assist asylum seekers, and mental health for people in the system in general. This is in alignment with the trauma-informed care approach (SAMHSA 2014) to explore how trauma impacts and possibly creates barriers within the system, as well as the individuals that work

within the asylum-seeking network.

The next section, “Gender,” looks specifically at the issues that gender-based asylum seekers have with applying for asylum and the ethnocentrism within the United States that affects those applying for asylum.

The third section, “Courtroom and Legal Proceedings,” examines how specifically defensive asylum in the courtroom setting is not designed to be trauma-informed, from the issues of trust, representation, application issues, lawyers and judges, location impacts on hearings, and language access.

The last section, “Policy,” looks at how the asylum-seeking policies in the United States has further impacted the asylum-seeking system in the United States to prevent a trauma-informed environment from the perspectives of the participants in this research project.

A pivotal point to understand in the following findings is how trauma seeps into all parts of the asylum-seeking process and creates barriers to achieving safety. At the same time, the complexity of the process can leave asylum seekers paralyzed in choice and diminished in self-efficacy, unable to complete the legal asylum seeking process after enduring the physical and emotional trip to arrive to the United States.

For the purpose of the interviews, I let my participants use their own definition regarding “trauma” and “trauma-informed” because I wanted to understand what their views of the practices were and how their view hold up to the standard. For most lawyers and legal representatives, trauma-informed people tended to look at how their clients were treated with sensitivity either in the courtroom or from various federal agencies. For most experts and advocates, trauma-informed care tended to include the perspective of the legal participants interviewed, but expanded to include other aspects of life for their clients, as well as their own

employment situation and coworkers. My understanding of trauma-informed care more closely represents the views of the experts and advocates as discussed in their interviews. I define trauma-informed care with the approach detailed in the SAMHSA guide for a trauma-informed approach as the initial perception that trauma impacts people and the steps that are then taken to make the person more comfortable to express themselves.

Asylum Seeking Purgatory

Trauma detaches us from our present reality and it takes us on a journey that no one else knows that we're on. And so if we don't know that somebody, well, I feel like as practitioners, as social workers, people on the frontline, we should know that they've experienced trauma. We should understand what, our implicit biases of things that we think are successful or what's normal. We have to lay all of that down and just look at people as people, um, and, and strip our ideas of our Western mindset. (Expert 01)

No participants I talked to thought the asylum-seeking system was trauma-informed in the United States. Lawyers and legal representatives were able to discuss that some individuals in the judicial system were trauma-informed specifically, often discussing judges, but they did not consider the system as a whole was trauma-informed.

I think individual judges, some individual judges are, uh, sensitive to that. And I think you've seen that lately. . . . And if you've seen those newly appointed judges have been judges from the military and things like that who have a whole different background. And again, those judges, I don't know, but I don't think they're trauma-informed. And a lot of the judges are burned-out and they're burned-out because they see this trauma day in and day out, day in and day out. And they are not supposed to react. They are supposed to say no, no, no, no, no. And after a while that gets to everyone and they say, I can't take it anymore. (Legal 04)

I think you will get one judge every once in a while who is, but otherwise, no, it isn't even trauma-informed to the point where—I don't know if you've been to the courtrooms before ever, you know—a one-year-old is in the courtroom representing themselves because they're not entitled to a lawyer and things like that. So even, just even, even trying to be child-friendly—forget trauma-informed. They're not even child-friendly. We just had one, I was cracking up. So every kid in the shelter has to get a “know your rights,” presentation. So we have an infant . . . he'll be a year old in November. So his “know your rights” paperwork has a little tiny handprint that shows that he was present for the “know your rights” opportunity, “know your rights” meeting. (Expert 04)

As discussed above, the system of asylum seeking is not set up to be trauma-informed for the asylum seeker or the professional staff involved. Even with the one year old “signing” a document saying they understood and were present for a “know your rights” presentation as Expert 04 discussed, it demonstrates that the bureaucratic system is not flexible enough to meet people where they are at. There are many points where improvements could be made from individual to systematic levels, such as in the case with the child from Expert 04 or preventing burnout from judges who hear these traumatic stories every day. Often when discussing individuals being trauma-informed, participants cited instances of individual judges, asylum officers, or government attorneys trying not to retraumatize the asylum seeker—one of the principles important to the trauma-informed care theory.

We don’t need to go over this or XYZ testimony just to limit the—lets just talk about this and beforehand, before the hearing starts so that we do that a lot. I save time for them and, um, and they don’t have to retraumatize the clients and they don’t want to hear it anyway because they show, they take really, they want to have everything on paper as well. So you have to spend a lot of time doing it on paper. So don’t, you don’t have to go back there and, and disclose everything back again. I don’t know how other courts, but at least that’s the way it’s here. (Legal 01)

The emphasis on the written testimony in preparation for the asylum procedures details the entire story and can be used as a way for asylum seekers to reduce the number of times they have to relive and retell their most traumatic moments in person. The legal participants I interviewed often identified judges to be trauma-informed. These judges often had career backgrounds in immigration or family courts prior to becoming a judge, or were women. While this was not always the case, and in some locations, the government attorneys were more sensitive than the judges, it was often the judge that would step in to prevent further retraumatization occurring while the asylum seeker was testifying.

For the experts I interviewed, trauma-informed care was a holistic approach for the

organization they worked for, and they implemented trauma-informed practices in every aspect of their strategy from giving services to their clients to talking with co-workers. However, it was with the caveat that it's more of a process that is constantly evolving, while for legal participants, trauma-informed practices were often only strategies to make their clients more comfortable as they told their stories. Nevertheless, the legal participants did not often articulate issues with bureaucracy and legal proceedings as challenges to creating a more trauma-informed environment for their client, but as issues that are only job-specific to working within the legal system. Participants pointed out aspects of the United States asylum system that makes it difficult to represent their client from a legal perspective, that are in contradiction to a trauma-informed approach. Some of these aspects include the confusing process of applying for the asylum seekers, lack of collaboration, choice, and autonomy not only for asylum seekers but also for judges, government lawyers, and asylum legal representatives. The process of asylum seeking, particularly for defensive asylum, is often antithetical to our current understanding of how trauma impacts people, but it is currently the only way the judicial system is able to build the credibility of the asylum seeker in order to prove they have reached the level of persecution. Some participants talked about the issue of developing a narrative and creating a record for the court for the asylum seekers case.

. . . in front of the court, like I said, that the, the majority of the stories through direct testimony, so it's me asking, you know, like, where were you born? How many kids do you have, are you married? What's your husband's name? How long were you married? Like the questions to, to survive, not being objected by the office, by the opposing party. They have to be nonleading, they have to be nonspeculative—that can be hearsay. There's all these rules that kind of guide the structure of the question. And so the information is dry most of the time, you know, it's like, are you afraid of returning to your country? Yes. Why? Because of the gangs. What gangs, you know, it's just like, you have to, you have to build the record like that. And so you don't get to sit there and cry and, and, and say, you know, all of these things happened to me or, and sometimes another important part is, oftentimes the judges will limit the testimony, they'll say, I don't want to hear about that. Just tell me about the gang, or, I don't want to hear about

your childhood, or, that's not relevant to this, you know, and it limits some information sometimes. And, um, they limit it because they only want to hear what they deem relevant to the actual basis of the asylum eligibility. But sometimes, oftentimes, the way we tell stories or the way our memory works, it's you need to tell a long, big story or a lot of emotional content to bring in aspects of their eligibility. And that's more easily done in a, um, in a conversational interview setting. Also, in the court setting, the oppos-, the DHS [Department of Homeland Security] attorney cross, uh, cross-examination. Every witness and so if you say I was born on a Tuesday, but your birth certificate, says Wednesday, they're going to cross you and it's, and they're going to do it like, like a criminal court. They're going to be tough. They're going to try to pin you down for lying or pin you down for making up information. And it, it, it limits expression when you feel like you're being attacked, you know, like you, you just don't want to say anything that you're not sure about or that. You can't, you know, you can't, um, defend. And so I think that's in that way too. It just limits why information gets out and, and, and how the story is understood by the judge. (Legal 05)

As described, the courtroom does not allow for a natural flow of storytelling and testimony. It is a question and response that builds the record and creates the narrative that the asylum seeker is reliable and telling the truth. This governmentality approach of vetting and examining excessively for the truth or a possible threat makes sense from a federal standpoint since few participants are granted asylum which is trivially described as a "golden ticket" and a pathway to citizenship by people who oppose asylum, as described by the participants. However, lives are not told through surveys, but through stories; this is particularly true for gender-based violence asylum claims. Credibility as developed within the courtroom and the asylum application is not natural to how humans tell personal stories. Additionally, it takes away the ability for asylum seekers to voice their story from their perspective which are aspects of the cultural and gender dimensions of their asylum claim, two components of trauma-informed care (SAMHSA 2014).

Solid details and grand events of persecution are the hallmarks of strong and winnable asylum cases, but these are difficult to navigate for gender-based asylum cases. Participants point

out difficulties in presenting fear that is constant in the home country, and is often not considered a form of persecution in the United States because it wasn't performed by the state:

I think, figuring out the balance of how much detail does she need to share, how much detail can she really remember? I mean, in many instances, this is years. I mean, they're not going to be able to say, yeah, this is the day I was persecuted. No, it was every day. Um, and figuring out how do you get that balance to really understand the impact? Um, and the severity of the situation, not just in the physical harm, but how, like the fear of being harmed. And I think it's really hard for the clients sometimes to really articulate it because it was for so many, it's just so normalized over the course of years of adapting their lives to just saying this is my reality. (Legal 3)

It makes my heart break where the two children actually watch their mother and father be killed by gang members and were shot at themselves before fleeing to the United States, and they're here now with their grandmother. Um, so the gang violence we see is a lot of threats against their family. And because they've taken those threats to a different level, some of us, some of the family members have been, um threatened and other, like maybe their uncle was killed or their grandmother was killed, not necessarily their parents, but they saw that. So they have that grand fear in them that it's going to happen to them and stuff. And that's perfectly, um, it's still traumatic. Just because it didn't exactly happen to you. And just because, because it didn't actually happen, but it could happen. There's a lot of people who are like, well, that's not. And it's like, no, that just cause it wasn't, isn't traumatic to you to hear it doesn't mean it's not traumatic that it happens. So, um, a lot of the gang violence we see is more threats that they're very fearful of the threat of violence. Not necessarily that they actually were themselves harmed in any way during, uh, with gang violence, it's more the threat of the gang violence. And a lot of kids will, uh, will flee their family, will flee saying, I, we just couldn't take it. We couldn't take the worry. We couldn't take the stress or whatever of that, of the gangs were getting so bad in our country kind of thing. (Expert 04)

The experts discussed how their client's fear was of constant and persistent experiences, and this is important to understand in their role of helping asylum seekers in their day-to-day realities in the United States. The asylum seekers leave their home country because of this constant and persistent fear, but it's difficult to present this everyday reality in the United States asylum-seeking system. The legal participants often discussed the difficulty of finding the best way to present everyday fear and the need for lots of details of persecution in the asylum application. The courts' disregard for the everyday realities and communities of asylum seekers' home countries does not consider the cultural, historical, and gender principles of trauma-

informed care when making decisions about asylum seekers' claims. It is a revolutionary act for an asylum seeker to oppose their home communities' beliefs and norms, where women's bodily autonomy is disregarded, and domestic violence is expected. It is difficult to describe the norms and violence of day-to-day life within a community to a court system. However, when the court system discounts and puts an American perspective on the situation without context of the historical, cultural and gender norms of the community, asylum seekers lose out on the possibility of safety.

Process of Applying

There are some elements in the process that cannot be avoided or made easier for the asylum seeker. For instance, sometimes asylum seekers delay contacting legal help because there are a lot of painful memories and it's easier to avoid than confront them. These often can negatively impact the case.

So if mom doesn't want to talk about it or deal with it, that tells the child, my mom doesn't want to talk about it or deal with it. So I'm not going to talk about it or deal with it. Um, so I think it can negatively impact their home life, um, in that way, because of how they're choosing to parent. Sometimes, especially if the mom feels, like they have contributed to it in some way by, you know, coming first or leaving their children unprotected or with someone they thought that they could trust to protect and things like that. So I think that that's where that, where the, where it can be negative for them. Um, we do see overall until they have a court date, a lot of just putting things off because it's not imminent to them. They're like, yeah. Okay. Whatever, you know, we'll deal with that later and stuff. So that that's um, and that's cultural too, from what I've been told, that's very cultural as well to just wait until something is in your face before you do anything, you know? And it's like, but. And then they call us and they're like, Oh my gosh, my court dates in a week. And we're like, yeah, we've only been telling you for a year to please go do this. And they then do it. And then now we're at this imminent point where we are in an emergency situation, and then they have no ability to go to a pro bono lawyer. We have to find them a private lawyer, which then costs money, which then impacts negatively in their household again. So it can be kind of cyclical in that situation. (Expert 04)

Delaying seeking legal help for the asylum application process makes the process itself much harder. There is a specific time window of how long a client can wait to file their asylum

claim, and to file a claim a written testimony is also required. It's important for a lawyer to have many sessions with the asylum seeker to get the full account of the story. The lawyers and legal representatives discussed having multiple sessions in order to gather the full story and allow the asylum seeker to process the trauma as well. Some lawyers would take it upon themselves to implement trauma-informed techniques to either help through breathing exercises, or limit how long the meetings were and ensure that the asylum seeker had some sort of psychological support. However, there are parts of the process that seem unnecessary. creating barriers particularly for asylum seekers and making the process that much harder, especially when applying without a lawyer, such as language barriers and the amount of detail required for a successful application.

The asylum application is pretty long and it's only in English, shockingly, like, really, come on America. Um, so there's a lot of, um, and it asks a lot of questions. It wants specific dates and specific details. So if you have a lawyer that lawyer is presenting, you know, is putting this entire story into a, an application and they need details. And the good news is most good lawyers, especially our pro bono lawyers, they, they come at it from a trauma-informed perspective, so they understand that, um, dates don't always match up and you may only get part of the story this time and then six months down the road, as you keep interviewing, you'll get another piece of the story and it eventually it'll paint the whole picture, but sometimes it takes months and months to do so. So that's why we're so worried when they wait and wait and wait and wait till the last minute on any kind of case prep and stuff so they're there. So just trying to, so, so in the first meeting, the lawyers. Basically saying, tell me your story and probably really cursory, not, not a ton of information. (Expert 04)

Expert 04 discusses why it's so crucial to have a lawyer present to help interpret the document because it's mostly in English. Not allowing applicants to submit documents in different languages is not trauma-informed and does not allow for agency for the asylum seeker to submit the documents. The language of the files adds another barrier to obtaining safety for these asylum seekers. Additionally, the governmentality and level of detail needed to make a successful application is another way to hinder asylum seekers. Lawyers and legal

representatives are experienced in this governmentality mind set, that asylum applications' need verification and specification, that having some sort of representation is an asset when going through this process.

Trauma Symptoms Impact: Memory and Hypervigilance

Trauma impacts everyone differently and, for my participants, issues of memory and hypervigilance were notable while trying to provide services to asylum seekers. Specifically, memory can be an issue when applying for asylum since the application is reliant on remembering the events in a sequential order. It was a theme that was brought up many times, particularly in its importance in testimony given by asylum seekers. Not only does trauma impact memory, but also cultural concepts of time have been noted as issues by participants when trying to create testimony because events must be in sequential order. It's not just that the asylum applicants are waiting months as a tactic to protect themselves from harmful memories and trying to figure out how to survive in a new country—it's that trauma itself distorts memories of the event. While this distortion might not happen to all asylum seekers, it was common enough that many participants discussed this in interviews. Distorted memories can be particularly difficult when the current system of asylum in the United States is dependent upon reproducing the same story of violence, injustices, and discrimination in a logical sequential order every time asked about the events leading up to fleeing the country. However, the decision makers want time based details such as dates and sequences of events that are not completely relevant to the trauma that occurred for the asylum seeker.

So I think, um, it's the concern for the client and having them at a point where they can, um, tell their story and enough detail preparing them for cross-examination, especially when you have like years of incidents and, um, the government counsel's trying to kind of catch them in a loop in their memory. (Legal 03)

And so, um, yeah, [Government Attorneys] will, they don't fight dirty, but they do fight. Um, uh, so they won't seek to confuse a respondents, a alien, but they will, um, uh, draw out, you know, they'll tell them nitpick. And sometimes that nitpicking is indeed, um, uh, ignorant of the great challenge that faced by applicants for asylum. The challenge of telling their story in a coherent way. One of the things that I guess the biggest cultural, uh, rift um, challenge faced by judges and trial attorneys alike, uh, ICE [U.S. Immigration and Customs Enforcement] attorneys alike is that, uh, you know, Americans are very aware of time and sequence that's not true. It's probably not true among Americans who live in the country. Uh, but it is, um, really not true, uh, for, um, poor folk, um, and coming from other countries. (Legal 06)

So trauma memory is usually sensory and I can get a lot more if I start, if I ask the person, what did you smell? What did you hear? What, what was happening with your body? And they often know those things. If not all five senses, they know some of them in great detail. And if I ask, um, what were your emotions that usually can tell you that very clearly as well. So if someone who's, who knows how to ask the questions that are more likely to be recorded, we'll get a more complete picture of what happened. Um, and so that's what, one of the things that I do with the, with the interviews of the client in the, in the first place is to ask those sensory questions. (Expert 06)

Um, you know, we have clients that have been abused from childhood up until now. And so remembering their children's birth date is not as obvious to them as it would be to healthy American adult, right...no judgment from me, perhaps in other areas that, that would be a red flag, you know, not remembering your kid's birthday, but some of our moms, um, their children are as a result of rape uh, some of their families are not planned. (Expert 02)

For the experts and legal participants I interviewed, trauma was consistent when trying to give social services or work on their court case. It is important to highlight that many actions that a normal healthy adult is capable of doing when telling a story, such as telling a story in order, going beyond specific aspects of the story, or remembering important dates, was a challenge. Additionally, trauma not only impacts memory, but other aspects of the asylum seekers lives. These other areas, while not being displayed during a courtroom setting, nevertheless impact the lives of asylum seekers in significant ways. Instances of hypervigilance were the most noticeable for the expert participants because they often saw asylum seekers outside an office setting.

The thing that got me the most was after it was all done, when we were leaving, when she came to the door, I swear to God the door wasn't completely shut before we heard her locking it. The deadbolt, like her hypervigilance was so significant. Um, that, I mean, I

don't even, like I said, I don't think the door was fully shut before she was sliding that lock that's how afraid she was and stuff. (Expert 04)

A housemate, well, a couple of moments with a housemate soon after she arrived. Um, so there was, one moment where, you know, I was kind of, you know, moving around downstairs. And she had gone to bed already. Um, and, uh, she kind of, you know, like she came out of the room and stood at the top of the stairs and just called my name and I said, yeah. And she said, Oh, okay. Um, I just wanted to make sure that was you and then she went back to bed. Um, so just, you know, some, some hypervigilance, she also received a letter in the mail one time and we were just kind of, you know, at the, the table chatting. Um, and then I went into the kitchen to wash some dishes and I came back and she had like bitten into the, the envelope of the letter and was chewing it. And, and I kind of said, oh, you're chewing paper? And she said, well, um, I want to throw this piece of mail away so I'm just, you know, like taking out the address. So it was like to be able to protect yourself, protect your identity. She was chewing up her name and her address on the envelope. Um, yeah, you know there are just moments where people will be doing, uh, a regular task and then they need to talk about a situation that happened back in their home country. And so they'll, they'll talk about, you know, seeing a family member shot and then they'll just continue with their knitting or their cooking or whatever. (Expert 05)

While these were the stories that my participants had seen for themselves, it shows that the trauma can pervade all aspects of the asylum seeker's life. These moments were noticeably different from the day to day that an outsider can observe, but it doesn't indicate how many of these moments or habits that asylum seekers may be undertaking to make themselves feel safe. These moments of memory or acting in response to trauma are occurring in the middle of the asylum seeker application process or while they are waiting for the court date. It's important that asylum seekers have access to resources for support and the security of their own safety to use these resources. The other aspect of trauma that is often not discussed is the journey and the fact that asylum seekers have overcome a huge hurdle simply in making it to the United States. This journey can be traumatic but going through the American asylum-seeking system can be just as overwhelming.

I really think we underplay the trauma as a whole of the journey. I mean, I think, just think about your own, like, if you were making a road trip to, you know, Tennessee, you got to figure, you know, there's gas, there's hotels, none of that's necessarily traumatic, but it is stressful and then if you see a horrific car accident, you know, you see all these

different things. So I just think even, even like, I can equate that to my to your own life, you know, that making a 1500 mile trip is not easy on the best of circumstances and then to have other things added to that, like strangers you don't know and stuff. So I just don't think we do, we honor enough what happens on their trip. Um, and that's not included just, just because it is a very stressful trip as a whole and stuff. (Expert 04)

I can't, I can't go. I can't, I can't go to the court. I said, give me a break. You made it all the way from El Salvador on foot through horrors. And you're telling me now that you can't take a bus to the courthouse, you know, it's and, and so when I tell it to them that way they start laughing, but it's so true. And it's a thing of that. They, they, they think. It's a whole different world. I think maybe because of language, they had the language there, whereas here they have that language barrier and it's a whole different culture here. They see this sophistication here that they didn't see there. I'm not sure what it is, but all of a sudden here they feel maimed and, and, and they're, they just could get ahead. And I also feel that there, they had a purpose in going and going and going, and then all of a sudden when they get here, they get to the other side, they feel like, okay, now I made it, you know, And they think, okay, now I made it. So now that's it. I don't have to do anything more. I said, no, no, you still have a lot to do because making it to the other side of this, I mean, you've made it, you still have to fight for your asylum. You still have to fight for all this. (Legal 04)

For a typical person without trauma going to court and attempting to locate resources that they need is difficult and daunting. However, as Legal 04 and Expert 04 discuss that it's not only the trauma symptoms from the event that caused the asylum seeker to flee, but also the journey itself is emotionally and mentally exhausting on an already traumatized body. So, executing steps that would ultimately benefit the asylum seeker can be challenging due to navigating and wading through the trauma symptoms that the asylum seeker has from completing their ultimate goal of arriving in the United States. So when those safeguards are not in place it makes applying and achieving asylum all the more difficult.

So on top of that, she was very traumatized too. And it's just like, If you don't have the resources or the safeguards or the rehabilitation to tell your story, it, it really, you will have a very difficult time getting asylum. And even if you have experts, evidence, um, even, even, even if you have other witnesses most of the time or every time the judge wants to hear the story from you.....I mean the applicant, because they want to test your credibility and credibility is an aspect of the claim. And so, um, the more trauma, the more I should say untreated or un- rehabilitated trauma, it is, it can be a impossible, and it can ruin a pretty solid case or it can, it can make it, it can make their record a mess. (Legal 05)

The side effects of trauma impact the emotional well-being of the asylum seeker and can impact their credibility in asylum if the symptoms are not addressed. This added weight for both social services and legal providers is critical for them because they have seen when trauma symptoms are not addressed. As for the asylum seekers, the added process the United States has for applying and granting asylum is unexpectedly complicated and exhausting and it only becomes more frustrating when adding the cultural issues and miscommunications to the process.

Cultural Issues and Miscommunications

If the resources are available, the asylum seekers are able to process at least some of the trauma, but it still can be an issue in communicating and processing trauma cross-culturally.

Some of the idioms, or ways asylum seekers discuss their trauma can be difficult to understand or to recognize for an American audience if they don't have prior training.

. . . expressions of distress, uh, can shift to different communities. So I had someone from Iraq who described, like, the feeling like her soul was leaving her body. Um, so there also might be different understandings or expressions of trauma or distress. Um, and so that might present differently for different people too. Um, but also in the same way, um, I feel is also a really big source of strength for many of these communities, um, and a source of healing or empowerment or survival, um, ongoing. So I'm always really impressed by that. Um, but yeah, language, especially if there's not, uh, a word for counseling or stuff, it's really important for me to be mindful how to use more accessible language or explain certain things. (Expert 03)

The problem is, is they should be taking the client's subjective belief and that should be, um, that is what matters is the client's subjective belief. But the reality is that when somebody hears, oh, you've got a stomach ache. That sounds like bullshit. That's not like they're saying that, but I think that culturally, um, just how people express things too like if you ask somebody, you can ask two people about this who experienced the same type of trauma, you know, how did this, you know, how did you feel after this? Somebody would just, one person might say, I felt bad. Another person would say, you know, uh, I felt so shameful and like, I was a horrible person and I went down an anxiety spiral and I have depression and all this stuff, they might be having the same experience, but they have different words or communication styles. Right. And so we value people who can use lots of vocabulary and that's both classist and racist and cultural, you know, issue. Um, but that's, I mean, that's why being re—being represented by an attorney is so

important because then they can help you express those things in some way or argue on your behalf. (Legal 11)

Physical symptoms and manifestations of trauma are common cross-culturally but can be difficult for a Western audience to understand without the context of the lived experience of the asylum seeker, and they could be dismissed as nontraumatic response. However, it's not only physical or psychological expression of trauma that changes, but also the concept of what constitutes violence, and what is within the norms of the culture or even finding the words to describe their situation.

In the shelter they evaluate any kind of corporal punishment as physical abuse. So we have to really look at that and look at the actual cases. Is it really physical abuse by, by the country standards or is it considered, you know, um, there's, there's, uh, my, my daughter's marrying a man from Belize and . . . he said, well, if your mom hits you with the shoe, that's not abuse that's discipline. And I was like, well, that, so when you look at some of these things, that's exactly what it is. They never, they aren't considering it abuse. They consider it discipline. But the way they're asked in the shelter is, has anyone ever hurt you or hit you? You know? And of course they, yeah, I've been spanked by my grandma. I've been hit with a shoe by my mom, you know, when I didn't do this. And so, so the physical abuse ones, we really have to start digging deeper and make sure that it was physical abuse, not discipline. Um, because we, we put an American standard on what is, and isn't abuse that doesn't necessarily translate culturally, I mean stuff. So we, we focus more on the sexual, usually the sexual and labor abuse situations. (Expert 04)

He doesn't handle English to say I'm bisexual or I'm fluid, like, and just kind of calling into question his sexuality, because now he's married to a woman. Like, and the way he's talking about it is you have to understand his culture and it's like, there is no in-between and like not having that understanding of. In his culture, like, you wouldn't talk about being bisexual. You wouldn't talk about fluidity in your sexuality. You would have two words and that's where you fit. And maybe you move from one word to the other. That doesn't mean that there's like a third identity for you to, like, there's two boxes. There's not suddenly gonna appear a third box or a fourth box or however many boxes, like, and not understanding that, like, in that culture, like, that would, that's what would happen? Like you wouldn't, like, he didn't in that particular case. Like he didn't, he had never heard the word bi-, the word bisexuality before. Like, he was just, like, what? I know I was gay and now I'm with a woman. So I guess I'm straight now. (Legal 10)

Well, the indigenous community doesn't go into detail very well kind of part of what I just explained there they're a little more philosophic or cultural in their answers. And so you're not likely to get descriptive saying going on. Um, certainly a pretty big difference

between African clients and central American ones um, the African clients have a lot more shame. (Legal 09)

Standards of child disciplining, sexuality, marriage, or even what is shameful: these are difficult conversations within American culture. There is an additional cultural layer added on for my participants and their clients as they try to work together to help achieve the best outcome. These difficult topics and conversations change depending upon the cultural background of the asylum applicant and add yet another layer to applying for asylum in the United States. And many of my participants wondered if it really is impossible to recover from trauma until true safety is achieved.

Finding Safety and Access to Resources

For many of my participants the goal of safety and access to resources is a very nebulous concept that they attempt to connect to asylum seekers. Asylum seekers by definition are in a liminal space of safety until a decision is made on their case and some participants describe the difficulty for asylum seekers to get immediate stabilization due to their current liminality. Many participants state that true safety for their clients only comes from a sense of comfort and stability in the form of a valid asylum claim:

Even before I started doing, focusing on the legal case, I would find that the clients who came to me that was their focus. They were more focused on how am I going to get safe here? How am I going to become, how am I going to get to a place where I know I won't be sent back? How am I going to get to a place where I'm allowed to work and feed my children? So their focus was almost always that very practical day to day safety. And that was when I realized that I wanted to shift my focus to address those pieces mostly for them as well. Um, the counseling piece is important and helpful too, and I certainly would encourage others to do that work for sure. Um, but I think the, um, the very practical ways that trauma affects, um, asylum seekers and other humanitarian migrants. It really comes back to the system. And what kind of system have we built? Have we built a place where, uh, a trauma survivor can be safe or have we not? And we have not. (Expert 06)

And a lot of times when you ask asylum seekers, what the greatest challenge is, it is related to their asylum case. Right? So. Like, if you ask a service provider, what, what do

asylum seekers need? They'll say they need housing, they need food, they need medical care. If you ask an asylum seeking individual, what they need most of the time, they will say I need asylum. Right? Because so many of the barriers that they face, um, are really systemically constructed and they hinge so greatly upon their asylum case moving forward. Um, so, you know, in terms of the whole work permit question here, um, I think, you know, it has, it has tended to be sort of the, the first, um, milestone, right? Um, Towards legitimacy or towards a sense of place and belonging, um, for individuals. And, um, so I think, you know, at the house, the desire is to, um, both provide stability, um, so that individuals are able to actually start to heal from the trauma of forced displacement and, um, work towards recovery, um, and healing. (Expert 05)

For asylum seekers, their focus is on feeling safe and perhaps providing safety for their family members. So when my participants are working with them, it can be difficult because all their energy is focused on the end goal, and not the steps needed to get there or even steps that could benefit them, such as going to counselling. However, the asylum seeker is often correct that a lot of the issues they face such as financial issues, medical issues, and a safe future would be resolved with a granted asylum claim. It's the lottery ticket that would make all of their problems go away. However, my participants, particularly the experts, had issues with finding accessible resources for their clients.

Access is defined both in terms of services and in a sense of stabilization. This is not available to many who first arrive here due to current policies in place, but many of the participants talked about the importance of having these services available to asylum seekers and challenges that occur. Some of the challenges included finding housing, financial needs of daily living, and medical care.

. . . why we continue to do things the way we do? You know, I hear stories about on the Southern border in the last two years, you know, people being told to turn up at four in the morning for their court date, under a tent in some, you know, whatever, where they're having to walk through an area where there's kidnappings and rapes every day. And it's like, you've gotta be kidding me. Like, a little bit of compassion here, please. You know, people should be granted a modicum of safety—both physical and psychological—before they're asked to, uh, before, if we want, if we actually want the real story, we actually want the genuine story. Um, and we need to provide people the right to have a little bit of room to breathe first. (Expert 07)

I mean, extremely traumatized, not only are they traumatized from the persecution that they suffered in their country. They've been retraumatized coming to this country. They've been retraumatized trying to live in the United States, trying to survive in a country that's not, there is an economy that's, you know, difficult to survive in for anybody. And so they just, they need a lot of psychiatric help or counseling or both, or, uh, they need, they need therapy. They need to rebuild their emotional skills. They need to rebuild their memory. And they just don't have the resources to do it. And there's just not enough of low bono or pro bono services to adhere to everybody who would need, who could benefit from that. (Legal 05)

There's the, the physical impacts of, of trauma. Um, so, uh, we have, um, individuals at the House who have, you know, a part of their, their sort of journey from survival to recovery. Um, and, um, even just a, a part of their stabilizing has been being able to receive the medical care they need to address, um, physical impacts of, of trauma or torture. Um, and that, you know, that can take a lot of time and it can take, uh, a long time, um, for those things to be addressed. (Expert 05)

The access and, specifically, space to recover from trauma for asylum seekers, was discussed extensively by the professionals I interviewed. For many, the lack of access to medical and psychological resources for asylum seekers made the asylum process more difficult. This lack of access has to do with both the financial and legal status for asylum seekers, and it then becomes a cycle feeding into itself. An asylum seeker cannot work for money to pay for food, shelter, or medical expenses because they don't have legal status; many programs or low cost interventions require some sort of status before they are able to offer services since they are able to run off of grants from the government that have requirements on who the programs can serve. However, there is the other end of access where the resources are simply not present or take a long time to establish due to rules and regulations in place.

We asked [the ICE officer at a detention center] about, so if you have a 50% Hispanics here, does that mean 50% of your staff speak Spanish? And they're like, no. Language is not, we don't hire based on language we hire based on who can work and we just use the language line. So it was like they don't even honor language and culture in that situation either, um, and stuff. So the whole thing, like I said, it just really, it felt like we were trapped and we were in prison. (Expert 04)

We have a resident who, her asylum claim, her asylum claim is stalled. Right? So it, um, uh, she was given like an aggressively early, um, interview date. Uh, and her lawyers

thankfully, uh, said, no, this is, this is way too soon. We don't have time to prepare well for the interview. And so um, we would like to reschedule and of course that, like, that stops the, um, EAD [Employment Authorization Document] clock. So there's no guarantee of when she would be able to receive a work permit. Um, and that clock won't start again until she has her asylum interview, which she won't be told when her asylum interview is rescheduled until three weeks beforehand. Um, and that's been, she's been here I think for over a year and a half. Um, and that happened before she arrived at the House. And so it's been almost two years that she's been in this limbo, um, of having filed for asylum, but having no indication of when that process will move forward. And so for her. Um, one of the ways that that trauma kind of comes into that, uh, circumstance is when things flare up in her home country, which happens periodically and things get bad when violence erupts, um, she, uh, she, um, She's starts to, you know, get very distressed, emotionally distressed. Um, she, uh, you know, communicates with family members back home, uh, and, um, usually there is some impact on them. So that is also adding to trauma and her. Her sort of her response, which is her way to be able to, um, uh, I guess be able to do something right, is that she wants to set up a meeting with her lawyer as soon as possible, um, so that she can ask about her case and you know, most of the time the lawyers responses nothing has happened. Like, we, I'm sorry. We don't know. Like, we just, we don't have any, um, indication of how things are moving forward, but that's, that's how she responds, um, is she wants to know like, why, why isn't anything happening with my case. Um, so that's one sort of interfacing of, of the legal system and trauma. (Expert 05)

Issues in access to language and work permits, further exacerbates the trauma the asylum seeker has while applying for asylum in the United State. It also creates a space of necropolises as situation becomes dire for the asylum seeker due to current policies. In some particularly horrible housing situations, these inaccessible resources can cause more trauma once here in the United States while waiting for the asylum process to play out.

We had a lady living in our community here with an infant. She came to us pregnant and you know, it was sleeping in somebody's car in Minnesota in the winter. It's like, and, and why? I mean, she hadn't, she just was waiting for her clocks around out so she could get her work permit and she wasn't even allowed. And by the time she gave birth, she had tuberculosis. And full blown tuberculosis and had to be separated from her infant. As soon as their infant was born for the infant's sake, you know, I mean, just ongoing. So it's like she wasn't, she didn't know how to access any kind of medical care. So she was sick, very sick. She didn't have any housing, um, because she couldn't work and she didn't have any certainty for herself, for her son. And, um, at least if she were resettled refugee, she would have recourse to public funds. (Expert 07)

. . . a lot of young girls being abused because, um, they don't have anywhere to go and they're waiting for court. So they live with a stranger. They, like, rent a room from a

stranger's house and they end up getting abused and they're scared to call the police. Um, one of my clients, she was running away 'cause she was being, like, very, like, sexually abused by a lot of men in her hometown in Guatemala. And she didn't want her daughter to have to go through the same thing. So she came here. She didn't have any, she didn't know anybody, a man in her caravan say, oh, I have a buddy who like rents out rooms to people like you could reach out to him, that person took them in, but, like, immediately, like, as he wanted as a reward or like as payment for letting them stay in his house, like he wanted sexual favor. Um, and yeah, his brother-in-law, like, raped her daughter so the thing, the harm that she was trying to protect her daughter from, like, happened anyway, anyway, um, so it's a lot of that. (Legal 10)

Here in the US, um, one of my colleagues who runs the housing project that I was speaking of, she, um, found out that there was an asylum seeker who was ready to be released from detention and through a different group was told this person's ready to be released [but] the judge won't release them until they have housing. And so they'd been in detention for almost two years and having survived torture in their home country and then were shackled and were in an orange jumpsuit and the whole nine yards in our jails. Sitting there for two years and there was no reason why the person couldn't be right other than they had nowhere to go. They had nowhere to go because they didn't know anyone. 'Cause, yeah, you never been in the US before, outside of detention. So anyway, we heard about this person and, and our, my colleague was able to go and represent first time she met him was in the courtroom at the hearing when she stood up as a stranger, essentially to this man that said we're willing to house him. And, um, And he was released, um, at that after a bit of paperwork, but he was released in response to that. And, um, it was a pretty amazing he's like, why would you do that for me? You know, I'm a stranger, you don't know me, whatever. Um, and, and she said, no, you're one of us. You're one of our neighbors and we are here for you. (Expert 07)

The situations described above with housing particularly highlight necropolitics at work driving asylum seekers close to horrific traumatic experiences or death. While housing was a situation that was highlighted as a particularly difficult point for asylum seekers, Expert 05 discusses a common problem of miscommunication and the governmentality of American bureaucracy that led to more emotional distress and confusion.

The lawyers were following what was understood as the proper protocol and the proper timeline. And so they were working with her to submit, um, the work application and she received a notification that she should go do biometrics in relation to her, her work permit application. And, uh, I was driving her to the biometrics place, um, for her appointment there. And she got a call from her lawyer saying that her work permit had been denied. Um, so there was, you know, like these mixed messages, you know, on one side, she's getting a summons to do biometrics and then before that's even in place, her work permit is denied. And so, um, you know, I was present for that conversation. And she just kind

of immediately said, you know, I need to hang up and, uh, you know, ended the phone call with her lawyer and said, you know, I just, when I, when I get stressed, I can't talk with people. Um, and, um, so she went to the biometrics appointment because it had been, you know, ordered by DHS. Um, but she was, she was crying as she got out of the car. Um, she, that same housemate also, you know, had an initial court date and, uh, she met her lawyers at the court and they were about to go in and realize that her name wasn't on the docket. And so they, you know, approach the information desk and we're told that her date had been moved out, um, several months. And, uh, you know, the lawyer said, well, we haven't, we haven't received any notification. And the person said, Oh, well, we're sending it out to today. And so it's just like, there's, there's these bureaucratic hitches, whether you know, intentional or not, that just, um, are retraumatizing because, uh, the individual has to sort of like relive what happened to them in preparation for those, those court dates. (Expert 05)

The constant communication breakdown and cracks created in the policy lead to exasperating mental health and experiences for both the asylum seeker and my participants. I will go more into this in the policy section, but the side effects of these policies, particularly the inability to work, can add to the existing stress and anxiety that exists when trying to deal with trauma. The inability to work also prolongs the unstable period an asylum seeker is in as they wait for their case to be heard. These situations do not happen on accident, but because there are no policies or federal programs in place to aid asylum seekers as they wait for their case.

Impact on Professionals

Within a trauma-informed framework, it is important to look at how trauma and policies are impacting people helping the vulnerable population. The trauma that the asylum-seeking system has caused is not only impacting the asylum seekers but the professionals that work with them.

Uh, another way that I see trauma come up in my work is through, um, through the unhealthy attachments, right? Clients that either, um, avoid a relationship with me or, um, attach and bond too much to us. Um, that is also something that, that we have to be aware of as providers and, um, you know, I've, I've had trainings, um, about, you know, child abuse, where for some providers, it is a red flag when a child hugs strangers easily or shows affection too easily. Right. Um, when, when children and adults are not taught appropriate boundaries, um, that can be because of trauma experienced either early on or later in life. Um, so I see that happen too. Sometimes I have to be the one to set those

boundaries with our families and remind them that I'm not your friend. I am not your auntie, cousin, sister, friend. I get all of the above. Right. I say, no, I'm your case manager. Um, and I'm very gentle about it, but I think, you know, it's nice that our families think so highly of us, but for some of our clients, their attorney and their case manager are the first people in their life where they have not been taken advantage of. (Expert 02)

I mean, there's so many cases that have impacted me just because I think that some of the trauma that clients have gone through, or just really, to me, like really unimaginable, because they are just bringing out the worst in people. Like, how can, you know, a dad, rape his child, his female child, and then you know, that same person, other male family members, cousins, uncles, brothers, also sexually violate them. I mean, it was just some of the, some of the worst stories you've heard about humankind. Um, And that really does impact me on like an emotional level for sure. (Legal 2)

We got invited to go tour a detention center and I will tell you, as an American citizen, it was probably the most traumatic thing I've ever done in my entire life. To get to know that you, you are, you can't leave without permission. You can't do, you know, different things. We, I mean, it was, it was rough for my whole team. They, they, it took them. I think it took us a week to kind of process it all and come down from it and stuff. And all of us are American citizens. So it's not like we were going to be stuck there, but it felt like we were stuck there, you know, and stuff like that. (Expert 04)

All of participants discussed being impacted somehow while doing their work and this was particularly noticeable during 2020 because the COVID-19 pandemic made everyone's situation harder. Additionally, while I did not talk to any judges during my interviews, I had one participant talk about a conversation they had with an immigration judge on the asylum case load and how to better present information for the judge.

And so I asked her questions about how to deal with, um, how to interact with judges who are not like her and who are not as immigration friendly. I would say my primary takeaway from my conversation with her was the number of cases that each of them has. I've forgotten. I wrote it down. It was astounding, but they just have, I want to say it was in the thousands of cases that they each are responsible for anything at any given time. She has a huge caseload, and I'm writing, you know, I'm tempted to write a 20 page document and they can't read all of that. So one of the, one of my big takeaways was to always create a summary with bullet points at the very top of my complete report. So she can see it quickly. Use academic citations, even in the summary with the bullet pointed summary, so, um, that it's pretty clear and clean to a hostile judge. (Expert 06)

With the trauma-informed care model, it's important not only to look at how the system

impacts asylum seekers, but also at how it impacts everyone that is involved in the asylum-seeking machine. It's clear that the system is creating stress for judges by virtue of caseload alone, in addition to the caseload of the people responsible for helping asylum seekers through the process. There is no easy solution to any of this, but in order to make a more trauma-informed system for asylum seekers, every single aspect must be taken into consideration. If these issues are not addressed, then it will drive people out of the profession.

Mental Health

The central issue that I found within interview responses was that asylum seekers sometimes did not understand why treatment for mental health could be helpful and needed. This can be difficult to present, particularly because mental health is stigmatized not only in American culture but in some of the asylum seekers' cultures. For the majority of the lawyers, they found that working with a mental health professional was beneficial and was one of the best ways to make the asylum seekers' situation understandable for the judicial system. However there were some cultural barriers discussed particularly when it came to children and receiving mental health services.

Children, okay, uh, we, we struggle there because mental health as a whole is a very stigmatized program in Central America. So a lot of the times when we get information about trauma, they don't want to talk about it again. They don't want to, um, and unfortunately in order to get a decent asylum case, they have to be retraumatized too. In order to get their case heard, and those documents provide, you know, provided for them. And so that can be, um, we have a lot of, we see a lot of parents who delay attorney seeking out because they don't want their children to be retraumatized, even though it does have a, it has a benefit to it, but they, they they're looking at the immediate, I can't do this to my kid right now. And some of that is their own guilt because obviously they didn't travel here with their child. They left their child in the care of someone else. They left their child, you know, in the care of someone that they thought they could trust and turns out they were wrong. So there's also the familial issues that go along with that and things like that. (Expert 04)

However, when it came to what improvements could be made to make the system more

trauma-informed, there was a lot of diversity in the responses. Most interviewees felt that a trauma-informed approach needed to be implemented at all levels. Case load for both social workers and lawyers were discussed as being an issue.

Um, so even just like normalizing it or like prioritizing that, uh, for their staff, um, What else? Um, yeah, and just being in trauma-informed also has to do with incorporating the input of all levels. Right. And so many times we'll see that based on funding or just based on administrative leadership, they'll make decisions without consulting with the other levels. Um, in which case, then it's top-down, like, directives, um, which doesn't really take necessarily the nuance of how these people are working. Um, or even the fact that, um, many times our clients, uh, case, the client case loads are so high that. A case manager, who's, like, so passionate and they want to do their best, but if they have a hundred clients, um, it's not reasonable to expect that each client is getting the highest level of care. Um, but that also has to do with like funding and stuff like that. And like, how can we manage, uh, during these things? Um, but yeah, certainly it would be more trauma-informed for there to be smaller case loads per. (Expert 03)

The importance of having a manageable work load is an important aspect of having a trauma-informed approach. Additionally, interviewees also mentioned some more tangible changes, like having spaces for children while discussing the reasons for asylum seeking, as well as issues in deeming credibility for asylum seekers.

Some of our colleagues also have gone into the court system here locally and, um, talked to some of the people who facilitate the immigration cases in particular and said that a lot of the children have to accompany their parents because they have no childcare and that's a really scary experience for the children who obviously all sort of traumatized. And so we're able to work with some local groups to kind of provide a play area, a safe play area within the courts and things like that to help soften slightly, soften the experience for the children. (Expert 07)

. . . they have to bring, if the child is included in the case, they are required to bring that child and they are not allowed to bring somebody to watch that child. I don't think they might actually be able to, but the point is is that their choice is twofold. They can either choose to have their child sit next to them while they testify to the horrible things that have happened to them and their family. So having a child present for that is completely abominable and . . . highly inadvisable, even if it's a baby, there's no reason that a person should be testifying with their child present. Um, the other option is for the child to sit in the waiting room with an officer, which is atrocious to have a child sitting with an officer who they don't know or trust. (Legal 11)

The systems currently in place are often set up for people to fail because they are not

cognizant of basic principles of trauma-informed care. They do not take into account the human element of memory and children, not to mention how traumatic experience or reliving traumatic experiences impact these aspects. However, there was a general acknowledgement that this process of applying for asylum is difficult just because of the uncertainty on top of the trauma already experienced due to the lack of stability throughout the entire process.

Um, because especially with the pending asylum case, which I do, most of my cases are asylum. Um, You can't, it's like being in purgatory, you can't travel. I mean, you can travel within the United States, but you can't travel outside of the United States. You have to renew your work permits. If you get a work permit, you have to renew it every year and a half. It's just like, it's a, it's a lot of, um, pending unresolved, emotional and legal issues that can go on for five, six years. And ultimately, you don't know if you're, you know, you don't know if you're working towards or, in their minds they're like, okay. My hearing's in 2024, but am I going to win in 2024? It's not clear. Always, you know, it's not always, um, uh, obvious or for me, or for them, whether it's going to be a strong case. And so they just, they sit in that emotional instability and I, I really. I, I'm glad I'm not in that position, you know. (Legal 05)

I think the black cloud hanging over their heads saying that any day it could all get swept away. They're still not safe. It all could be undone. Um, I think it's definitely an ongoing trauma, um, issue in their lives. Just the uncertainty, the inability to plan the inability to work toward a goal. Um, our housing project here, we work with all of our residents to try to help them. You know, dream forward towards some day, you know, if you, if you get a positive asylum, um, response, what would you like to do, like, a job or a study or something? And, and, and it's useful to work toward those things, even when there's uncertainty, but they know, you know, every time my court date comes up or a court date gets delayed and delayed again and then rescheduled again, and then nobody notifies them that it got rescheduled again, you know, and they're just living and it's just perpetual, um, sense of uncertainty. It makes it really hard to focus or learn or apply yourself to any kind of goal or work issue. Whereas I think with someone in a resettled, who has come through the resettlement route, or who already has received a refugee status in some form, um, in the US context, at least they have pretty good certainty that they're going to be able to stay at least, and that they have the right to work and that they have the right. (Expert 07)

This perpetual state of purgatory and being stuck “betwixt and between” safety is the most difficult part of asylum and the least trauma-informed. The trauma-informed care model assumes that the person being served has already found some sense of stability, and also that the system they exist in understands their trauma. Neither of these applies in this case because safety

is a relative term: the first few months here in the United States are subject to necropolicies that allow the system to exacerbate the trauma already inflicted upon asylum seekers and also creates new opportunities to create new trauma experiences. While in this state, many asylum seekers are in various levels of safety and security that are highly dependent on whether they have access to money to live on, a lawyer, or social professionals that can help them through the process. Trauma that the asylum seekers possess becomes more exaggerated when gender and gender-based violence is not taken into account when looking at the asylum-seeking system. At best, it can be considered a unique case of violence for an individual; at the worst, it's considered common and expected.

Gender

When I asked participants about how the gender of the asylum seekers might impact the way trauma was presented, many participants were split on whether gender had an impact on trauma presentation. Many felt that the cultural background of their clients was the main driver of differences of how trauma impacted them; it was their belief that the impact of trauma was based upon a mixture of cultural differences and trauma experienced, and not solely based on gender.

I don't think that there's a gender difference. I think that girls are more likely to disclose the full truth, especially about sexual abuse. Okay. Um, whether it's sex trafficking, I think that the same things are happening to boys, but they're not going to disclose it because obviously homosexuality is a huge no in our, in, in the, in the Hispanic culture and especially in the Latin American culture. So, um, I think that they, I think that they have those same experiences, but they're not sharing them. In the same way, um, I think that the, but the girls seem more able to share. Um, and I think that there there's an expectation that boys don't have as many traumas in their lives because they weren't sexually assaulted or sexually abused, even if, um, I just, I think that they just don't, they don't acknowledge. I think the mental health, trauma side of that in boys, the way they do. (Expert 04)

Gender is so internalized in our society of, like, what men should be like and what women should be like. And so of course that probably affects tangentially that, their, you

know, trauma responses, but I have men who cry. I have women who are stoic, you know, I. I don't know if I can speak to anything specific. (Legal 11)

Women to women, I don't notice so much as a cultural difference as a personal difference, depending on the type of person they are. You know, some, some women react differently from others, like, uh, Some women are very stoic and some women are, are, are just hysterical, crying all the time. Um, but I don't think that has to do with culture. I think that has to do with a personal preference, the familial background, the way they've grown up the way they are. (Legal 04)

I think some of the barriers, um, that, uh, women just tend to face systemically in general, um, become amplified for women who are seeking asylum, um, with my housemate, who, you know, had her child here, uh, even though the child is a United States citizen, uh, she has not been able to access um, childcare assistance, um, even after receiving her social security number and work permit. (Expert 05)

These responses indicate that it is not so much that gender and culture are separate from each other, but is more about how culture has encoded ideas about gender and expectations.

These encoded ideas of gender roles push and pull each other daily, yet fluctuate between individuals depending on their background and upbringing. So, when my participants meet their clients, there tends to be more tangible differences based upon culture instead of gender. It's more understood that women and men are supposed to be fulfilling particular gender roles, but when trauma separation occurs, there is a disconnect, and individuals have both trauma and culturally produced reactions that are not necessarily divided by gender.

However, while asylum seekers' presentation of trauma was not impacted by gender, participants did discuss how gender influenced what type of violence was perpetrated upon the women. The specific type of violence that women received impacted their cases typically because policy in the United States does not easily accept and recognize gender and domestic violence; this lack of recognition is mostly a result of the home country's actions or unwillingness to intervene.

I think if I compare that, like in this particular situation, if you met the man and thinking about the women in our housing, the man could hide his sexual orientation while in

transit. He doesn't, he could do things to blend in and women can never hide being, like, for not, not never, but it is a lot harder to hide your femaleness. And, um, in transit. And so, um, and it's a known terror, it's a known tool of terror, right? Like rape is a known, um, act of war. And it is used for, is used as an act of power to keep, you know, to, to gain power over people. And so I think it's something that can't be hidden. And I also think, um, uh, yeah, it's just, it's just an extra layer of vulnerability that can't be taken away. Um, but I, you know, thankfully in our court system or in the jails or whatever, they're, they're also likely to encounter female guards or female figures of authority, not just male, but if they are being asked to recount their story, if they're being interviewed by a man, um, and then you're having to disclose sexual violence. I think that that's unfair. I think it should never be, um, required of somebody to tell their story, um, to someone who represents those, who've harmed them. (Expert 07)

This becomes more important because, with regard to gender-based violence, the dynamic is typically that of a man perpetrating upon a woman. Because of the highly personal nature of gender-based violence on women (domestic violence, rape, and even FGM) there can be issues and hesitancy with disclosing the action for multiple reasons, such as the woman does not know whom they are talking to and does not want to disclose to a stranger, the interview is in another language and they don't understand, or they are still deeply traumatized by their experience and have difficulty talking about it. This demonstrates the lack of trauma-informed care through not considering how gender roles and the nature of the trauma can impact the person. With the increasing need to prove a story and deem clients credible, there is not room for trauma-informed care. The system is then led to a governmentality where the asylum seekers are surveilled at every stage of their asylum-seeking system process without room to acknowledge how trauma impacts the individual. This is important because at the beginning of the asylum process, if the asylum seeker does not disclose the reason why they are coming to the United States, then it can undermine their credibility and their ability to receive asylum.

Credibility is a really big thing in asylum, and I think it can be problematic, especially for the specific folk you're looking at with gender-based violence and trauma. Um, We come into tough spots based on what they've disclosed at the border, what they've disclosed in a credible fear interview, which is that, are you familiar with the credible fear? Okay. So what they've disclosed in that interview and then what they're disclosing to us now, um, I

think that the courts aren't cognizant of the effects of trauma on memory. I think that there too, I don't think that this is particularly new. Um, but I think that they're really, I think that they have expectations on memory that are unfair things, you know, like just for a normal person, who's not going through a particularly traumatic experience. (Legal 8)

As with most asylum cases, it's the story and the individual that is the heart of the claim, but the story must be supported by evidence and consistency. Truth may always be consistent, but when trauma occurs, there are frequently issues with memory, and the many credible fear interviews that take place soon after crossing or while in detention can possibly be triggering. Expert 06 describes some examples of how a trigger can come about exacerbate an asylum seeker's trauma.

In terms of the gap in understanding between the American perspective and that of the gender-based trauma endured, domestic violence was commonly talked about in reference to how, for example, if there's, um, if there's a particular kind of chair that they're being that is being used in that chair reminds them of something, they sat on in the torture chamber. In an African government torture chamber, which there are, um, then I can make that connection and say, um, this person should be released from detention because these . . . their surroundings are inflicting an exit and an exacerbation of their PTSD symptoms through these triggers. (Expert 06)

These interview environments may not be viewed as a safe environment for those who have been traumatized and are seeking asylum. It's a system that is not designed for traumatized individuals to survive, but to gaslight them about their experiences by using the body's natural trauma responses to make it that much harder to find safety. This becomes even more complicated when the American asylum system has its own ethnocentric tendencies about what is worthy of safety.

Ethnocentrism in American Justice and Decisions

For many participants there seemed to be a gap in knowledge and understanding on how gang violence, domestic violence and other forms of gender-based violence take place in the home country of the asylum seeker. Part of this is due to the policy in place in the United States,

but there is an additional element of not understanding the extent or type of gender-based violence and how unreasonable questions or cross-examination are within the context of this type of violence.

There's often sexual trauma, right? That's happened for women and having to relive that in front of a male judge, you know, or male interviewers, you know, repetitively with, against cultural differences too. I mean, it's just, it's horrific. And, um, uh, sometimes, like, again, back in my work with people who really don't have any kind of professional training in any of this, uh, are often like, they, they want to come and they're sympathetic to the immigrant story or whatever, they want to come meet asylum seekers and ask them about their story. I just want to hear their story. And I'm like, you're the 29th person who's wanted to hear their story and most of them have been under duress and really difficult conditions. And, uh, you know, it is unkind unwise. (Expert 07)

. . . having lived in Central America, myself, I saw then that there was nothing to be done for domestic violence. And that was decades ago before the gangs took over. But domestic violence really the most you could do, and when I was a clinician there, I, I remember wanting to report child abuse and I didn't know where to report. So I talked to medical community and they said, well, the only place you can report this to the police. And the only thing that will happen is the parents might go to prison and then the children will go to the grandparents. And I knew that the grandparents had abused the mother who was now abusing the child so that wasn't going to help the child and it wasn't going to help the mother to just be in prison. And so that was child abuse case, but with domestic violence, I was also aware of just neighbors where domestic violence was happening. And sometimes I could even hear it, but, um, because you know, our houses were made of concrete and sound traveled. Um, But there wasn't a safe place for the women to go and, and it was almost always women. And so now that I've been doing this work and I'm, I'm on the other end of that meeting clients who come from the country, where I lived and, and suffered domestic violence, where they le- they manage to get away from the partner and move to a different part of the same country and were followed because it's a small country. All of the Central American countries are pretty tiny and it's not easy and often not possible to get away. And sometimes I've even heard women say, 'I went back to family members who live so remotely that you can only get to their home by donkey and he still found me. And so I, you know, there's no place for them to be safe in the home country.' And then when Jeff Sessions said, oh, we're not going to accept domestic violence cases anymore. You know? So it just, um, yeah, it's very impactful, um, in, in emotionally negative ways, but to the, but that then inspires me to keep trying to do what we can. (Expert 06)

It was about, uh, domestic violence and the this guy, uh, the opposing attorney was trying to make a difference, um, in Honduras, everybody, it's very common to have domestic partnerships, but with domestic partnerships, they last forever, like this one mother with the four boys, the three boys and her, they killed her husband. They were never legally married, but they were together for, you know, 20, 30 years, who knows, they had their

children, everything. And, but they were never legally married because it's, I don't know if it's a cultural thing or if it's, it's, it's a thing because they're poor and they don't do it, or I'm not sure, but they, they just don't. They don't have a, a certificate of marriage. Okay. So this one girl, um, had a domestic partnership. She was claiming domestic abuse. Uh, she had two children with this man and, um, she was claiming domestic abuse and the, this guy, the opposing attorney kept saying, but he's not your husband. And she keeps saying, but he is, as she said, but no you say here that he's not, you, you, you are not married. You say that you are not legally married. I still, the interpreter tried to explain to her in English and she almost had her head bit off because she's saying, you know, she was trying to explain. There's a cultural difference in language, which I can't explain to you because there is no word for this in English. (Legal 04)

The multiple understandings of how marriage is understood culturally, the inaccessible resources and structures for women to seek help, as well as the repetitive reliving of their traumatizing experiences, are not conducive to creating a safe environment for survivors to heal from their experiences. While some forms of this retraumatization are not completely avoidable within the current set of the asylum-seeking systems, like retelling the events over and over, other aspects, such as having a degree of cultural competence, can be sorely lacking in those judges and lawyers who are supposed to be some of the most educated people in our society. Even if there is a basic understanding of how these violent crimes come to occur in the home country of the asylum seekers, the rigidity of the asylum system requires violence be presented in particular boxes. Many participants articulated the difficulty of presenting the clients' fear of returning because there was so much fear of the spouse or partner; they described how it is difficult to delineate both the credible fear of the partner and the underlying inability of the government or people in their home country network to actually help their client.

It was a potential honor killing case. Um, and so for that one, that was a particularly hard case and I still have that case. Um, but it's particularly hard because her intense fears of her ex-partner. And I think for her, that's the very tangible fear because he has harmed her in the past in really extreme and awful ways. Um, and so when I kind of looked at that case, I said, we actually, in terms of winning an asylum case, we might want to redirect that fear, um, towards your family and what they might do to you if they found out about all the things or have they found out about all the things that have happened to you, um, based on, honor, right. (Legal 8)

When it, when it's a non-governmental actor, then you have to show that the government cannot or will not protect you. And so, um, on the one hand, and, and commonly that's the, that's the reason that, you know, most of the DV [domestic violence] cases are women. Um, but the victim won't report it is because they know they would be turned away. I mean, I had a client, it was a minor, um, who was that basically forced into a marriage and it was abusive. And they went to see a judge and the judge knew that he had beaten her to the point of forcing a miscarriage. He basically told them to go home and figure it out. Like they were meeting with, like, she got to the point, she made the police report. She got in front of a judge and basically said, it's not my problem. It's a family issue, like to her face. (Legal 3)

Basically saying that domestic violence claims and gender-based violence claims are kind of being viewed as not like valid almost. Um, it's like, you can only get asylum if, you know, it's a state actor or a state like, or someone, a private actor that the state is like unwilling to control. Um, and if you like a lot of the gender violence pieces, it is private actors and the government's kind of shutting those cases down saying, well, it was private actor. Like there's no state involvement here. This is a domestic dispute. Um, this person didn't report to the police, uh, completely ignoring the fact that like, if you look at the police system in those countries, or just even the culture of like, You, there's certain things, like, you don't take outside of the home. Like there, there are cultural reasons why that person might not have gone to the police or even here, like, there are reasons why domestic violence victims don't go to the police and just kind of ignoring any reasonable reasons why they wouldn't have gone. Like if they're using that against them and you're saying, well, you didn't give the government the opportunity to protect you, so you can't say. But they aren't willing to protect you. So your claim is denied because this way, you know, an asylum isn't to protect you from your husband, like that's why the police is there for, that's why your government's there. This is not our issue. (Legal 10)

While some asylum seekers may have gone against cultural norms and reported domestic violence or other gender crimes to the police in their home country, this is not the norm. There is not an understanding of how culture not only impacts how violence is committed and recorded in the home country, but also how it can prevent the ability to seek safety once in the United States. As one participant put it, there may be a lack of exoticization in this Western system for domestic violence or other forms of gender-based violence because it occurs in our own backyard, while other forms of violence, such as genital mutilation, are more easily understood because they are not common practice in the United States.

. . . something that I've found very interesting. Um, particularly in our jurisdiction that

the department of homeland security has routinely stipulated to grants of asylum when it involves female genital mutilation, but oppose and we'll aggressively, um, challenge, domestic-violence-based claims. Um, and I find it very interesting that they take that position and sort of seeing physical violence or physical harm to genitalia that can't be reversed. As something that's so egregious that they would stipulate to a grant of asylum for that. Yeah. Someone who has suffered decades of physical and emotional and psychological harm. That's not that, you know, might be coped with through therapy. But somehow that doesn't seem permanent or as harmful, and that they'll even adamantly oppose their question that it happened or why it happened. Um, and just like, where is the disconnect? (Legal 3)

There may be a degree of exoticization that makes certain forms of gender-based violence more accessible to asylum than others. It is also possible that it's a combination of expectations of gender and policies in place that allow this seeming exoticization to occur. It is not sensitive to the women's experiences and only values what is easily proven. FGM and other forms of harm are often easily seen through a medical exam; however, threats and psychological abuse are harder to "prove" in the eyes of society and the law. Part of this difficulty is because the research in this area is not as well known and often not seen as physical harm. Once again, the court is there to decide if survivors have been traumatized enough according to the standards of the United States law, even though the United Nations puts this type of gender violence within the realm of asylum. This may be due to ethnocentrism encoded in our policies or in the minds of people making the final decision, or it possibly could be a little bit of both. One participant speculated that these differences may not only be based upon cultural misunderstanding, but also bias from judges as well.

They'd never think the judge understands their, where they're coming from and the, right there, these judges hear hundreds, thousands of immigration cases, and they know a lot about the way these, you know, the, the country contexts. So these places, but they don't really understand it in the way that the person who's lived it, you know, I don't, I, I can't even say it. So when they say like the biggest, like for example, and very common situation is, um, the judge will say, well, did she go to the police? And, and then the woman will say no, because the police don't do anything. And they're like, well, why didn't you even try going to the police? And they're like, because I was afraid that even the knowledge, you know, like there's this culture of going to the police, not going to

police. And even though I know the judges hear this a thousand times, they still hold on to the point of view, the point of view of an American, um, you know, a middle-class educated American person who calls the police when there's a crime, you know. I think it's this, there's a, definitely a lack of communication or lack of understanding between those cultures and, and it makes it, the judge just perceives them as being like not strong or not um, credible. Why didn't you go to the police if you were raped, you know, or why didn't you go to the police after you were extorted? And they're like, you just, in my country, you just don't do this, you know? And so I think that they're not being heard in that way. They're not really, people aren't really understanding the dynamics of police, gang abuser circle. You know, I just don't, I don't think the judges are, or maybe they do understand, but they're just not, they're not applying it in that way, you know, but. So that's frustrating. (Legal 05)

Given potential for bias, there are more specific issues with understanding how gender-based violence manifests differently. These differences can be difficult for Western audiences to understand because of cultural reasons and concepts of violence both in and out of the courtroom. This was point of discussion for participants.

It's very hard for me to say, I can't say what the judge was thinking, but I can say that for a client, trying to explain their case, for example, um, someone who's seeking asylum because they're gay and persecuted in their home country. And trying to explain how that plays out in their home country. It's much more fraught with the anxiety of disclosure. From a culture where that's persecuted, right. And the same thing with women, who've experienced sexual violence. If, if it's a culture where people do not talk about sex, I mean, not just don't talk about, right, but don't talk about sex then to imagine a female disclosing, rape to a male judge. In an open courtroom with other people sitting around listening culture is going to have a profound effect on her testimony. (Expert 06)

The facts are that, you know, some guy got them drunk, raped them, and then they were just like forced to be with them. Cause we got pregnant by the family, but it was not like a relationship by choice and they ended up in these relationships. So it's kind of murky in that way. So I think that that's part of it too, is, kind of explaining different concepts around consent and you know, what you have a choice to do and not do with your body. And I think some of that is just, it is hard to explain because that's not what is understood in their, their culture, especially very patriarchal cultures where women are subordinate to men. (Legal 02)

There was some discussion about how gender of the lawyer or judge impacted how the asylum seeker discussed their gender-based violence, particularly when it came to a male asking questions to a female. This was mentioned by some of the women I interviewed in my research,

but none of the men brought this issue or saw it as a challenge for themselves. It was particularly highlighted around sensitive subjects such as sex or perhaps really difficult situations.

I have one case that is particularly traumatic and it's an FGM case. Um, and I had a male attorney in my office. Just say that it just sounds too unbelievable that both of her children died from FGM. Um, but for me it was. It's completely believable. I mean, both, they were like one, & three, and they're getting cut in the woods with razor blade. Um, you know what I mean? Like, it's just, I understand that maybe it's a statistics aren't always there. The statistics say 80% survive FGM, but it's like, it can happen, right. And so we have to, you know, um, so I think that is one thing I really do tend to believe what my clients are telling me. (Legal 8)

Um, you know, we only have one male attorney. He's such a lucky guy. Most of our attorneys are women. So that's a nonissue. But I want my clients to feel that, um, they can get services in their language as, as excellent as services they can in their language, and that they feel comfortable sharing with another woman or, you know, maybe they don't mind talking to a man about it, but some of these issues, you know, when a client's telling you that, um, she was a teen mom because she didn't realize what consent was in her country. Right. Talking about that with a man you don't know, or a man who's representing you and doesn't, it may look different. Right. So my goal is to just make sure that if the clients do want to talk about things that are helpful to their healing, that I'm available and that I am my best self to help them navigate that. (Expert 02)

It is clear there are gender impacts in the case of the asylum seeker, whether they be how gender expectations are presented cross-culturally, or how the policies are rigidly set towards a particular type of gender-based violence relief. The analysis of the data presented in this chapter indicates that there is a misunderstanding and miscommunication in the courtroom when asylum seekers present their story. This misunderstanding only exacerbates the trauma the asylum seeker has from their experiences, because the United States courtroom does not allow for the full spectrum of types of violence endured to be considered valid. Asylum seeking in the United States is focused on examining only a single negative event, however gender-based violence is often a collection of multiple harmful events that lead them to flee. It's the consistency, and not a single bad event, that are the real drivers of continuing fear for gender-based asylum seekers. Protection from all forms of gender-based violence is being curtailed because it's easy to target

and gaslight women's experiences from a societal and political perspective.

Courtroom and Legal Proceedings

There are a range of issues when determining if the asylum-seeking system is trauma-informed. One of the first points to examine is the human element, meaning if everyone involved in the system—from asylum officers, judges, clerks, lawyers and legal representatives—is given the space to do their job effectively and if there is an understanding of how trauma impacts individuals. Participants felt that sensitivity for trauma and understanding the trauma asylum seekers go through varied from person to person.

I wouldn't say all the time. I've certainly had some officers that, you know, I know, or, like, nice people normally, but, you know, I think it could get tiresome to interviewing day in and day out and hearing a lot of these, um, stories, it's hard to always maintain the trauma-informed aspect. I was saying that I would think that the asylum office thinks that they are trauma-informed. I don't think that it always comes out in the interview process. Um, and then, I mean, another part of this is, to be really frank, I don't think that most asylum attorneys necessarily have the training in trauma-informed practices. I know, like, in the beginning of my practice, I did not receive training on this. (Legal 2)

I would certainly want the want judges and attorneys to understand how trauma recall, how trauma encoding happens and how that affects trauma recall. And so I think that's the number one thing, because that's the number one piece they get wrong. Um, and the other is that hostile questioning from a person in officer and it's often hostile. If it's not overtly hostile, it will feel hostile to a survivor of someone who has been tortured in their home country by a person in uniform. So I would want them to recognize how their presence and demeanor will change the, the ability of the person to testify accurately. (Expert 06)

None of my participants thought the asylum-seeking system in the United States was trauma-informed, and part of that reason was that basic principles of trauma-informed care are not in place. Many of the participants talked about how overworked they feel and how the workload impacted them. Additionally, there are various degrees of how trauma-informed the asylum officers and judges will be in understanding how trauma impacts asylum seekers. The problem is not only the differences in understanding of trauma for lawyers and federal

employees, but also the fact their understandings are not applied the same way across differing contexts.

Building Trust

Many participants discussed the challenge of building trust between clients and themselves. While many of them felt they could do so successfully, it took time and awareness of how trauma can impact a person. Building trust is an important element in creating a good case for their client, because they can build rapport and start working with the asylum seeker in creating a case.

I work primarily with, like, the Hispanic community. So there's some things about like, you know, They view as like normal, like, um, some, like, a certain level of domestic violence or a certain level of gender violence, or like the culture of, you know, we keep things like, there's certain things you don't talk about, um, in front of people who aren't family, it's hard to get them to open. Um, and that's a challenge I face because they, like, it's kind of building that trust (Legal 10)

Well, in a number of these cases, my first challenge is, it's clear to me after about 20 or 30 seconds that they can barely talk about the issue. Um, most of my clients are pretty calm, but there are some you just realize they're just wound up so tight. Um, they they're just welling up it just even just starting to touch on it. Um, I get that sometimes out of Uganda too. Um, cause it's such a danger there. Um, So that's one challenge is I've got to figure out, okay, I'm going to have to, you know, I'm going to have to get this out in front of a judge. I'm going to have to get this fully out. Luckily I don't have to do it tomorrow if we know we're going to be able to heal. I have sent some people to the psychologist, um, um, who, who in essence kind of create the statement for me. You know, so we use it that way. Um, so that's one is the emotional side. (Legal 09)

I always tell my client, you know, I can't tell you what to say, and I'm not going to tell you what to say. I want you to say what happened. I want it to be natural because your credibility is determined on that. Um, and because if I'm presenting the case, it's because I think that there's merit, um, because of my ethics rules, I'm not going to take a case, um, that I think doesn't qualify or if there's a credibility issue. Um, so I would say. Um, I, I never want my clients to memorize answers or anything like that. Um, I do want to practice with them like questions beforehand that I'm going to ask so I can prepare, you know, this is gonna be a hard question. I'm going to ask you about, you know, some really intimate details and I don't want you to shy away from the answer. Um, And then I'm going to tell you why, like, why I need you to give all of these details to the judge. Um, and I know that it's going to be difficult, but the more details you're able to provide, the more credible you are, um, to an extent, and usually it's helpful for a client to

understand why I'm asking these hard questions and how providing honest answers will, will ultimately benefit them. (Legal 07)

When my participants can build trust with the client, it is either because they understand the cultural background, have spent enough time with them, or are able to help them find professional help. All these are important to building trust and rapport with someone, particularly after they have been traumatized. However, this becomes more complicated because fear of authority also impacts their case and can have negative consequences on their case particularly with the credible fear interview.

When they arrived for a credible fear interview, they are not told here, this is your credible fear interview and this is what its significance is and why we need you to they're just, ask these questions. Right? Sometimes they have no idea. I've had clients say that they did their credible fear interview over a phone, that while they were in detention, they didn't know it was a credible fear interview. They just said, hey, you've got a phone call. And somebody asked them questions and they didn't know who it was. And so they failed because they hardly said anything. So clearly if I'm a female who's been raped, and somebody calls me on the phone and asked me to tell them what happened. I'm going to be very hesitant to say anything to that voice on the phone, or if I'm, um, a transgender female who was persecuted for my transition, or if I'm a male who's, who's gay. Those are not things I'm going to talk about and to have voice on the phone. Right. So. All of that, um, plays into people, not passing a credible fear interview. Just the lack of trust that they already have because of being persecuted by government officials or police officers who were not stopped by the government in their home countries. Then they're questioned by someone in a uniform. So that plays out that triggering effect. If somebody in authority sent me into a torture chamber or somebody in authority beaten me and threatened the lives of my mother and my children, then am I going to just immediately open up and tell all my darkest secrets to somebody in a uniform, just because they ask? Probably not. So all of those, um, normal responses to having been traumatized or tortured, uh, come into play at the credible fear interview. And especially if I should, I say if, because they are not prepared for the credible fear interview and don't understand its significance then they don't, um, uh, they are not going to disclose enough in most cases. (Expert 06)

I think the indigenous people are treated the worst in the system also because the manner of communication is very different. Um, and, like, also, I mean, you're talking about people who are afraid of and distrust authority, and then they're expected to trust, you know, in a, a judge or, you know, when they're, they also, you know, have different, I mean, people have different cultural mannerisms too. Like maybe they believe in like not making eye contact or, you know, also I'm one of the, my biggest frustrations is, like, relay interpretation. (Legal 11)

The issues with authority and mistrust can become a problem as asylum seekers need to repeat their stories many times with the same detail every time. Particularly with the credible fear interview, if the asylum seeker didn't know what was happening, or know if they were having that interview, or understand why someone was asking those questions, it can make creating their case that much more difficult.

Benefits of Having Legal Representation

One of the basic benefits of having legal representation is just having someone there to explain what is expected of the asylum seeker. Legal process can be daunting and for many asylum seekers this is the first time they are interacting with the American legal system.

Participants discuss some of the differences they see when clients have representation and understanding of the process of their legal case because they have a lawyer.

So missing court is just a really difficult thing to overcome. And I would say it's really hard explaining or understanding, like, why do I need to be there for this? Especially coming from different cultures where, like, this isn't, it doesn't seem important. And I would say when you're in there, the judges just giving you filing deadlines, it doesn't feel important, so I understand. Um, but it is important. And then again, getting transportation to and from the court is, can be really nerve wracking. Um, other factors I think would just be, um, I wish we had, I wish that I had a social worker for every single client.
(Legal 07)

They're clear on what the process is, if they have an attorney. Right. So our clients are lucky, but our clients are the minority. The majority of the folks that maybe, um, are fleeing and have valid asylum claims and don't have attorneys, where are they going to know what to do? Where to go, what their rights are? Right. Um, I think, um, the system could be more transparent, right? Shrouding things in secrecy does not help anyone. I think the system could hire more folks that speak more languages. Um, I mean, again, it just, there's so many things to, to comment on in terms of what really is trauma-informed, it's, it's all of those things. It's information, it's information in your language. Um, yeah. It's, I mean, I'm not going to do this answer justice, right? (Expert 02)

The process is clear to a legal representative, and explained to the client so that they do not miss any court dates or other expectations. Additionally, the legal representatives bring in

experts and other people to support the asylum seeker's testimony so that not all the burden of credibility sits on the shoulders of the asylum seeker.

If you're forced to sit and listen to an expert, talk about, um, a country or talk about a situation you're more likely to interpret it into your own opinion and your own thought process. So, um, like, I had a police case where a police officer was being targeted and we had an expert explain, like, the police structure, explain the gang backgrounds and, and really just kind of drive home from an academic point of view, not just anecdotally, but you know, from a person who is spending their career, studying this as a phenomenon that this is true, you know, and I think that really helped a lot to kind of push it and push it, that this is really happening, you know? Um, So that's how you, that's the best way I could see to overcome that kind of wall that the judges put up is just to put it, put it in their own language, their professional academics, because it's cold, you know, um, not cold, but, uh, formal language. (Legal 05)

While having an expert explain the context the asylum seekers situation is a furthering the governmentality the asylum-seeking process has, in its need to verify details from experts, it is useful in creating a successful case. The additional access to experts is another way having representation is not only helpful but essential for asylum cases.

Application

The asylum application is a very detailed form that must be filled out to start the process. Participants discussed issues of language, and timing came up often, particularly with the application and how specific it needs to be, as well as the time gaps between when it needs to be filed and when the actual hearing will take place.

So I think that's also another issue is representation. And this is really tricky, especially if you're, like, applying it, like, a particular social group ground. I mean, there's some absurd, um, stuff that's come out to that, like in the cases from the attorney general that, like, the applicant needs to know how to define their particular social group in the English language. And that's just, I mean, it's hard for them attorneys to even figure out what that is much less somebody, you know, and coming from a different culture, different language that doesn't even know the word particular social group and how that's interpreted in the United States. (Legal 2)

And so you can get a client and you can have an individual hearing within nine months, 12 months, which is a lot of work because you're basically totally focusing on that client for the next, you know, year or, um, it, you could get a hearing date in 2024, and you're

just thinking, I don't even know what the future is going to be like for how do you plan, how do you, how do you develop a case now? Or how do you file something now that's going to withstand four years policy changes or God knows what else, you know, I mean, it's. . . . And how do you, how do you manage the client's expectations that in four years we're going to be fresh in our minds, fresh in the story, fresh in our arguments to present a case that's strong enough to win. And that's really hard because the law has changed, like, for, you know, using my example of 2017 till now the law has changed significantly. So, I don't, I can't say. That their case is going to be in the same position as it was to today in 2024. And that's what we're seeing a lot of is because of the pandemic. And also because of the caseload, because so many more people are in immigration proceedings. Um, the, the hearings are being pushed back in perspective and pushed back and pushed back to a point where it's almost like a joke, like a 2024 hearing, like, okay, you know, I'm not gonna do any work on that now because I don't even know, you know, what my life's going to be like in 2024. So that's, that's difficult because you sit here at the client and you try to, you know, tell them what they're, what your role is and their experience. And you don't really know because things could be significantly different, but at the end of the experience, you know, so that's, that's probably a main, one of my biggest challenges. (Legal 05)

This combination of governmentality of the application process and necropolitics that force long waits for cases to be heard in court is particularly cruel. The expectation for asylum seekers to be able to articulate complex legal understandings is a high bar to clear without a lawyer or legal representative to assist. Additionally, the long wait in between when the case is filed and when it's actually tried is difficult, because the lawyers don't know how to manage the client's expectations for timeliness; the lengthy wait can leave the client in limbo for many years. The delays can make the credibility of the case worse for the client because their memories move further and further away from the event that caused them to leave.

Government Lawyer and Judge

For many of the lawyers and legal representatives I talked to, there seemed to be tension between how the government lawyer and judge treated their client. The client's treatment seemed to depend on which of those two parties was responsible for causing retraumatization to their client. For the ICE or Government attorneys, most of my participants would be angry at the line of questioning or how they asked questions.

They don't really stop the ICE attorney from being, um, too harsh. Or they'll ask, they'll just ask the client, like, why didn't you go to the police? And then they'll make a clear face of like, they, like, they don't like this. . . . Like, why didn't you do something? And those are just not questions you ask somebody who is, has gone through something really traumatic. Like you don't try to find ways to blame them for what happened or for not taking action, like, and I find that sometimes those judges, that's what they do, though. It's almost the way they ask is almost like asking a rape victim like, well, what were you wearing? How much did you drink? Like, it's that tone of voice of, well, why didn't you do something? Why didn't you tell anybody? Um, and I understand that those are questions you have to ask, but there are ways of asking them that don't like, retraumatize the client, or make them feel even worse than they already do. There are ways to like, say like, okay, did you go to the police? Why didn't you? Did you feel safe going to the police? Like there are ways to ask those questions and get the answer that you want without having to be like an ass about it. (Legal 10)

And like, just even like cultural things, like, Oh, you're from Iraq, like, why didn't, why was your first marriage interview in Turkey? And it's like, there's no US consulate in Iraq. I did have one guy who, um, from, uh, Uganda, Uganda, um, fleeing his boyfriend [who] was killed. He's got a wife and kid. He was forced to marry. Um, so the prosecutor was asking him questions on cross and ask questions like, um, Do you think you're a bisexual or you think you're homosexual? Or can you explain this? You know, and the judges get a little bit nervous about this. And he, he said, uh, cause you've got a wife. I mean, what's going on there? Kind of like that, you know, just getting a little sensitive here. And um, so we answered that question. This is, so if you want asylum, do you plan to petition for your wife can bring her here and your child, your daughter. Well, yes. Well, I thought you were gay. Judge said stop. We're not going there to just does not relevant whatsoever in prosecutes as well. I think this goes to the credibility orientation judges. I don't think you understand this is has nothing to do with it and just cut it off. Sorry. I looked at judge going like, you know, I mean, one could make an argument. That's a reasonable question, but one could also make an argument that that's not a relevant question because whether or not someone might petition for their wife and kid, whether they're going to refuse to do that just because they're gay. (Legal 09)

My beef is more with the judges than with the trial attorneys. We are, um, we Dallas, we were blessed, uh, and this is the testament to the power of one person. Uh, the impact of one piece. I'm can have the chief prosecutor, um, here in Dallas is a decent man. Um, and, uh, and has run his office for 20 years in a way I guess, most important to you is chosen, uh, he's hired, uh, from people who are conscientious and, um, and many of them downright kind. So I don't have, uh, here in Dallas, we're blessed. I don't have a beef with most of the prosecutors. Um, they do know how to pull punches and they do know how to, um, uh, ask questions with, uh, you know, some, um, uh, kindness, um, and, um, and patience. Um, but that's it, I mean, their role as prosecutors is to, um, uh, is to, to, uh, convince the judge that this alien so-called, uh, should be sent home. (Legal 06)

As Legal 06 notes that some government attorneys can do the job without being overly

retraumatizing. However, the experiences of Legal 09 and 10 discuss how they use their power and courtroom situation to make a more hostile environment for the asylum seeker. Conversely, some participants had more issues with the judges they worked with in asylum seeking than the government's lawyers. Issues with hostile judges were often concerning because they controlled the outcome of the trial.

Hers was based on DV. And the judge, I believe, was prejudicial. I mean, she's a former ICE attorney and she was horrible to my client. My client is a strong woman and she. . . . There were dates that were discrepancies. So they found her not credible, meaning they didn't believe her, but she was consistent about important things. But, you know, with trauma memory is an issue. And so sometimes she'd be like, I think it was a year, maybe it was five years. I don't know. And those kinds of things. I mean, I, I did interrupt the judge several times. I mean, at certain points she was sobbing. Um, so. The way, the form of questioning is very not trauma-informed. And I know that it's supposed to be adversarial, but there are no, I mean, I, something I'm considering is working more on, um, asking for accommodations and trying to make accommodations be a more acceptable thing. Because when you're talking about survivors of trauma, expecting them to remember dates and chronologies is like, it's antithetical to the reason that they're here, right? They have problems with those things because of the trauma. And so then they're being not only are they being retraumatized, but they're being faulted for their trauma, which is the very thing that should be proving their case. Can you tell that I'm angry? (Legal 11)

It's often about the judge. So for example, in a recent case, the attorney said this particular judge has never granted asylum to anyone from this client's home country ever. And a lot of people from that home country have gone up in front of this judge and have never been granted asylum. We thought we'd give it our best. There's no way to change judges. They, they're stuck with whatever judge they're assigned, right? So, um, in that case, the client did not get asylum. It was not a shock because it would have been a shock had he been granted it with that track record. (Expert 06)

And like, even in little cases, like I just went to a hearing and it's uh, like an 18-year-old girl. She had one instance, her mom, um, verbally abused her, one instance, physically abused her. And she had to sit there and retell absolutely everything that happened and like all the abuse and then have a judge tell her, yeah, that's unfortunate, but that's not like that's not that bad and like being told that your trauma is not traumatic enough, like that really messes them up. And she's 18. She started crying and the judge just kept going forward. He didn't take a break. He didn't like, say, ma'am do you need a moment, or, let's take a break. Like, he just kept going. It was up to like . . . it was up to the interpreter who was trying to, like, listen to the judge, interpret like what he was saying to her, like, have to do that, but also, like, take the tissues that were behind his desk and like give

them to her while still like having to translate every awful thing the judge was, and the judge didn't care, but he just kept going. (Legal 10)

While the person that retraumatized the client or discounted their claim changed case to case, the way they traumatized and discounted the client remained fairly consistent. The judge or attorney would question the trauma and become nitpicky about the details, even though it is known that trauma can impact the survivor's memory, particularly when it comes to the traumatic event itself. Additionally, there were real worries among my participants about the number of new judges coming to the bench; the new judges mostly came from a military background and did not have a lot of experience with immigration cases or migrants. In one case, the newly appointed judge used to work at an anti-immigration think tank. Many lawyers and legal representatives were apprehensive about how this would impact their clients, both currently and long term.

Geographic Location Matters

In addition to judges' discretion and decisions impacting the case, the location of the actual courtroom can change asylum cases. The other jarring fact about asylum seeking through the defensive route is that the location of the court trying the case can in some ways change what type of asylum you can receive. Depending on the circuit the courtroom is in, there can be different valid arguments for cases and my participants discuss some of the ways it has impacted their cases.

The [US Court of Appeals for the] Fourth Circuit has a case that has actually helped us in a lot of cases, um, and is basically saying that the particular social group can include the fact that you're threatened or persecuted because of a member of your family. That's called a family-based particular social group. And the Fourth Circuit ruled that that's an immutable characteristic. Uh, you can't, um, change or escape from being the brother or the mother or the father. And so, you know, a case might be a young male who's, uh, recruited for the gangs. He's a teenager. Um, or girls asked to be a gang wife type, you know, uh, they refuse. And so they go to the mother. And say, you know, if you have, if they continue to refuse, we're going to kill you. Um, they both end up fleeing the

country, um, under a number of BIA rulings. The kid doesn't have a huge, uh, protection cause he just the victim of a gang threat. But the mother actually is a family member. And so she belongs to a particular social group that is being threatened. And you can actually win a case for the mother's protection, but not the kid. But of course, if it's her kid and some minor kids that'll fall under it in that way, but it just a little twist and turns, um, that give us some hope. (Legal 09)

Overwhelming case law, unfortunately, in the Fifth Circuit that, um, fleeing a gang, once again, you know, people look at our five grounds, closest one would be particular social group, and then it always fails in the Fifth Circuit. 'Cause you're, you're lacking immutability. Um, you're lacking particularity and you're lacking social distinction. So I have not presented many gang-related cases, unless there's some reason why, um, I can justify that my case does fit under the law. Um, I would say so I think my knowledge there is a little bit more restricted. So for simply because in our circuit, at least you really can't, those claims would be considered frivolous, um, gender-related violence. (Legal 07)

And so they're trying to kind of just get a general idea because in Texas, it's actually a bar removing crime to submit an application for asylum that you know, or feel is weak in any way. Weird, you know, but that's, that's the fifth district, which is Texas, Louisiana, Oklahoma, I think Arkansas, they that's their law there. So, so the pro bono lawyers know if you, if you're trying to get this case, you have to, it has to be a good case. That has to be a case that can be won and stuff. (Expert 04)

The fact that legal arguments can change depending upon the location of the trials is absurd. Immigration is a federal jurisdiction, and it is simply wrong that the chance for winning asylum changes depending on the region. An asylum seeker's story does not change because they live in Texas versus if they live in Washington, but what they can present in their story does change. This inconsistency is ridiculous and not trauma-informed.

Language Access

Along with issues of consistency and location of courtrooms, language was discussed multiple times throughout the interviews and how they impact asylum cases. For asylum seekers and particularly gender-based asylum seekers, their credibility relies on their story and own words. This can be challenging, especially when their first language is an indigenous one.

. . . indigenous languages, children are being asked all of these questions in Spanish that they don't completely understand, but they don't feel like they have the right or they

don't understand their right to have that done in their, in their birth language, which could be Q'ichee could be Q'chel, it could be Azteca. It could be any one. Guatemala has 26 of them so it could be a lot of different ones. And so there's always this question of how many things have they agreed to that they didn't understand. Um, and so that's a worry. We have an, um, we're seeing a lot of, a lot more language rights people coming forward saying, Hey, you, you know, you need to be providing this stuff. Um, because literally if they can answer one question in Spanish, they'll, they'll do the whole intake in Spanish. Like they, like, they understood, like they automatically cause they understood one thing. They, they know only, you know, they know enough Spanish, that's not true or right. And stuff. So I think that there's some trauma involved in that as well. In this lack of language access. (Expert 04)

Yes. I think when it's not a language you're fluent in and when it's not a culture that you're familiar with, even if you do your research, things will always get lost in translation. Even if it's cultural translation. Right? Maybe not language, but you know, I, I'm descended from a Mexican parents. And so even, you know, I'm aware of that difference because I have to be just because I speak Spanish doesn't mean that, um, the concept of family or even the concept of abuse is going to be the same in Honduras, Guatemala, El Salvador, right there, different countries. So it's the shared language, but cultural meanings and meanings of things in a client's life is gonna look different than it does to meet even in the same language. Um, so yes. Do things get lost in translation? Of course. Can we try and ameliorate that impact? Sure. And how do we do that? Asking questions, you know, asking open-ended questions, coming from a not knowing place, you know, like. (Expert 02)

Asylum seekers' access to the correct language is essential if they are going to be able to make any movement towards an asylum claim. Access to an interpreter was difficult at times due the rarity of the language or the different dialects, but without a good and knowledgeable translator, there can be significant problems. Translation issues within the courtroom can be a real issue for asylum seekers and can have a major impact on the results of their case.

. . . especially for women who, like, we have to say, like you have, it's, kind of, impacts them because you don't have to get them to understand, like you were a victim and it's not your fault. What happened to you and undoing all of that there's no time like we don't have enough time in the world to undo all of that mentality. So if they go to court, you have a judge that like, doesn't understand that, um, a prosecutor that's not going to care, like, the way they tell their story will, like, affect how the judge sees it. And then it's also keeping in mind the additional layer of the judges, hearing everything the client is saying usually through an interpreter and especially in pieces of like Latin America, like Spanish is very different depending on what country you go to. And so, yeah, you might have an interpreter who speaks Spanish, but they are from Mexico and you are from Peru. Like, they're like, things get lost in translation, not so much so that you're

like, it's an incompetent translation, but like, it's also, like, just having to, like, you're already not hearing the person's story the way they're really telling it and then there is like, how they view their trauma versus how we would view it is, like, different. And so, yeah, it's just understanding, like, that really affects like how the court or the judge will, like, perceive, like, they're telling of, like, what happened to them. (Legal 10)

Um, things get lost in translation and that's one of the things we try to do, um, in these documents is to prepare the judge for what to expect in the courtroom. I always have a section on that, what to expect in the client's testimony, this client, um, may become tearful or distraught and not be able to continue speaking or this, and I gauge this by my own interactions with the client, you know, I'll describe the behavioral observations, not just what the client says, but what I've noticed in how they portray the story. Um, some clients who don't get tearful and seem to be kind of stoic. And a judge might interpret that as well nothing really happened to you, but I can explain that that's also a normal trauma presentation. And particularly if there's a cultural element that says. Let's just not, let's, let's just think about the good things, um, that, that is the cultural value in some places and in many cultures and extended families, the value that we're going to be strong. We're not going to think about these bad things that happen. We're just going to think about the future. (Expert 06)

Translation and language mishaps are expected to occur sometimes due to human nature. So it's important to correct when they do occur because a different word can create a different story or, worse, make an asylum seeker not credible. However, there were instances when mistranslation and cultural knowledge were used against the asylum seeker as witnessed by my participants.

Remember, um, the judge. And I guess he understood a little bit of Spanish, kept wanting to go back on this one word, which the interpreter had misinterpreted and he kept going back to that word because it helped him pit against the asylum seeker. But yet she had also misinterpreted another word, which was to help the boy. And he, he just glossed right over that. So yeah, it's, there's a lot lost. So when you know both languages, you're kind of like, yes. You know, but if you don't know languages, like I know like if it were Vietnamese or any other language, I would be completely lost and it completely at the mercy. And so an interpreter makes all the difference. (Legal 04)

I can think of, this is not, you say a cultural, I'm thinking of a linguistic gap here. Um, they, uh, a client of mine, a Chinese client of mine, uh, was found to be not credible. And she described, um, two, uh, forced abortion, she endured, a great extent she was found not credible because, um, she had filed a narrative attachment to her asylum application speaking as a female doctor, that the person who performed the, uh, abortion was it was a female. And in the testimony, the, uh, the court interpreter, uh, rendered this as she spoke of a male doctor. And it came to light during the course of, uh, later on during direct

examination, very badly that I did not know, um, and . . . in Mandarin Chinese, uh, there is no distinction, uh, in pronouns. So the interpreter assumed that it was a male. And he actually asked the judge for permission to correct himself. And the judge denied his permission to speak as interpreter saying that you would not allow interpreter to interpret to testify in his courtroom. So we, we continued with the hearing based on the false premise that my client had changed her testimony. (Legal 06)

It is not only translational issues, but also cultural issues, that can impact asylum seekers' testimony. This leaves many translators not only having to recount the story of the asylum seeker but being a cultural interpreter for the asylum seeker, as well for the judge. These can be problematic, as illustrated above. One participant did suggest a way to overcome this barrier.

I think we need cultural interpreters as well as language interpreters in, in, um, court and court systems. However, that's also very dangerous because that would happen like in Europe that happened a lot that they had actual, I mean, they were supposed to be language interpreters and they ended up becoming cultural advisors. The courts cause the, the, like, the Italians would be like, I don't know what the heck they're saying, what do they mean? And they'd asked the translator, what, what is this person trying to do to me? Or what are the, you know, what kind of story are they telling me? And the translator would end up giving cultural information to kind of coach the courts on it, which could be helpful, but then if that person hasn't been vetted, um, sometimes they would actually sink the case. Like if there was religious differences or whatever, there would be huge. It happen all the time. If the translator was biased against your reason for seeking asylum, you were out because they would also mistranslate sometimes intentionally and other times they would give cultural contexts that would put the person in a bad light. Like, we worked with people who had converted to Christianity and they were seeking asylum because of religious persecution from Iran. And they'd have an Iranian translator who would be like, no, this, you know, this person's telling you lies, don't believe them. And, and that happened a lot. So, so that's problematic too. But what if there were two voices, there was a translator and a cultural interpreter in the room who didn't know each other. At least you'd have two choice, two chances. (Expert 07)

While Expert 07's experiences were more based on what they witnessed in courtrooms in Europe, it is an interesting solution to perhaps add nuance to cultural understanding and words of the testimony. However, something that was brought up by multiple interviewees was that language varies from the asylum office to the courtroom because the style is different. The difference in style of communicating impacted on how clients' stories are perceived.

I think, um, an affirmative case, uh, the difference is the asylum officer you speak to is

not an immigration judge or they're, they're not a lawyer. They're, they're just like, they're trained and they're professional, but they're just government employees. And, um, so in that sense, it's a little, it's a lot less adversarial. . . . So. Um, it's a common, it's supposed to be a conversation, you know, you're supposed to be just kind of going back and forth, expressing and telling your story. It's become a little bit more adversarial since Trump, of course, but it's still not, you're not sitting in front of a judge wearing a robe and, you know, in a, in a formal setting, it's like an office. It's just you in the, in the office and in that sense, I think that there's more room for explanation. Um, there's more room for feeling comfortable in telling, you know, the, every detail of the story, every element of the story, because in the, in the court setting the questions that the narrative is expressed through direct testimony and direct testimony, can't be leading questions, can't be, um, you know, all of the legal objections of, of a courtroom setting, they have to fit that format. And so it's a lot of yes or no questions, and it's a lot of really rigid and cold questions where as the affirmative process, you get to just kind of explain like this, like in a conversational manner. And so I think for a lot of the clients, especially a lot of people, especially when you have an emotional component of your claim, which everyone probably does. Um, It's a lot more beneficial to express that in a conversational manner than in a rigid legalistic courtroom setting, you know? But, um, and I, and in my personal experience, I mean, it's easier to get a grant and at the affirmative process, just because I don't know how I keep saying this, but you just have a better opportunity to really fully explain the position of that person, you know, rather than the kind of, um, kind of like prosecutorial. I mean, it is prosecutorial kind of good cop, bad cop setting of the court, you know, so it's just a little bit more friendly than it, than it is in the court. And that, that little bit is significant to make it, I think, a more favorable process for the immigrant. (Legal 05)

The judges really need to get out the testimony. They need to hear what happened. Um, so I don't think that, um, anyone is trying to make it just excruciating. Um, I do hate cross-examination no matter what, I'm just going to hate it, but it can feel, I know that's the goal of cross-examination for the DHS attorney is not to make you feel comfortable. It's to make you feel really uncomfortable. Um, to try to catch you at an inconsistency or in an omission. Um, so that part there's just no getting around it. That's um, if I could just put up a wall and protect my client from cross-examination, I would, um, because it's gonna, it's gonna stink. Um, and I always, one minute dance, you know, like this is the DHS attorney, this is their job because they want you to feel unsettled. Um, and it's just something that I can't get around. (Legal 07)

The style of discussion in the courtroom is different from that of an asylum seeker because in the courtroom you have at least one person questioning every aspect of the story. There are very few places where it is acceptable to tell a difficult and traumatic story and immediately afterwards be questioned about it. There is no other area where people are trying to obtain relief or help for their situation and are then questioned about every aspect of their journey

just to ensure that the details match up. This practice is not trauma-informed in any way; it is uncomfortable at best, and adversarial at worst. The worst part of this is that if there is an asylum denial, there are no other forms of relief available to the client, so there is a lot of pressure for clients to present their story “correctly”; their choice will impact them for the rest of their lives.

Policy

Asylum policies have changed drastically in the past twenty years in the aftermath of the September 11 attacks, but also acutely in the past four years during the Trump presidency. It has been a struggle for many of my participants to keep up with the changes because of how rapidly they occurred, but also because of the depth of cruelty these changes inflicted on their clients.

It’s been kind of a rollercoaster for the last 20 years in terms of, um, how those cases are, um, viewed and handled and immigration court. . . I think specifically with domestic violence based asylum claims and, um, Matter of R-A-, um, and some other cases that have come out of the attorney general getting to a point where they were potentially going to have some regulations recognizing domestic violence. And now the pendulum has gone the complete other direction. And, um, the attorney general certifying, um, cases to himself to gut any possibility for, uh, domestic violence survivors to . . . domestic violence survivors to. Get asylum, I think has been, um, kind of the way things have continued to, to shift, um, and seemingly kind of inconsistent with what we know about gender-based violence, generally from an academic perspective and understanding the role of the state and just, um, you know, seeing our, and also seeing sort of the juxtaposition of decision in immigration related to domestic violence cases versus the Me Too movement. (Legal 3)

A challenge I face, you know, we walk into court or we go into an interview and we find out like, you know, yesterday, this would have been a perfectly yeah okay. Case and the like yet, but today we released a new policy and now it’s not, um, valid anymore. And it’s, uh, for, like, lack of transparency from the immigration courts and from, uh, the ICE council, like this full lack of transparency. Um, and like, that’s been a problem since before the Trump administration, uh, I know out of like typically in like the adversarial system, there is some level of transparency between like the prosecutor and the defense attorneys, but, um, in immigration, it’s definitely like a field that has, like, the least level of transparency between the two parties. (Legal 10)

The overall lack of transparency and the rapid changes to policy serve to highlight the ways that the asylum-seeking system is not trauma-informed, but also illustrates the necropolitics

of not only targeting asylum seekers but those who work in the system as well. For a system to be truly trauma-informed, the integration of these policy changes would be in the space that is both for the asylum seeker, and for those that must act on such policies, like the lawyers, legal representatives and the judge. This does not even recognize the fact that the changes don't align with standard knowledge and practices for gender-based violence internationally.

Policies about UN Standards Compared to USA

The UN definition and application of refugee is the standard that the United States is supposed to be modeling. However in many instances, the United States does not meet this standard. Many of my participants took issue with the limited way the United States has defined a particular social group as compared to the United Nations standards.

I do think that the particular social group definition in particular does need to align more with international standards and UNHCR guidance, because that is where the, you know, UNHCR um, is where the refugee, like, refugee convention and protocol came from. (Legal 2)

So where do I put gender? Um, traditionally it's been put under particular social group. When you get into particular social group, however, that fifth protected ground, you have a bunch of added requirements you're going to have to show. Um, and this is based on case law, primarily from the board of immigration appeals. So once we're in that particular social group, you need to show that that group is, um, uh, particular, socially distinct. Um, and it's a quality that you cannot help you can't control it. Um, you know, I was, I was born with X, Y, Z, um, gender. So where with women, it's hard to show social distinction. So if you're saying my group is women who are fleeing domestic violence, the judge is going to push back and say, how is that? Is your client, um, and other similarly situated women, how are they socially distinct? How can someone walking on the street in their community recognize them? Um, when you compare that with someone of a particular religion or race or ethnicity, You can see, um, how that is going to be a challenge, the social distinctions, a big challenge. Uh, additionally, you'll, you'll get immutability um, that's something that you can't control. Um, particularities is another problem. So some judges will push back and say, you're asking me to give protection to every single woman in this country. Um, that's not a particular small well-defined group. I can't give asylum to every single woman in Tunisia, even though every single woman in Tunisia may be at risk of the same persecution. (Legal 07)

As my participants point out, it's very difficult to demonstrate the harm or potential harm a woman can face in the home country for gender-based asylum. The amount of documentation to prove and the social stigmatization that clients are required to overcome in the United States is tremendous for gender-based asylum. The governmentality approach further creates barriers for gender-based asylum seekers. While the particular social group requirements were established in Matter of Acosta, the UN standards do not have the high threshold of specificity to pass.

Policies about Gender-Based Asylum

There are a lot of unique challenges when trying to recognize gender-based asylum claims within the United States, and most of these are intended to make it more difficult to make a claim on gender-based asylum. Many of my participants took issue with the high bar their clients must clear for gender-based asylum because the category of being a woman is large.

I used to work abroad internationally and they would use the, the United Nations High Commissioner for Refugees, 'um, definition of particular social group. And so under that definition, just a woman could be a particular social group. In the United States, that's been super challenging to have that recognized, um, and a lot of litigation case law, that's trying to limit protections under the particular social group ground, because in the United States they've been wanting to, but they don't want, you know, they want to prevent the flood gates. So they think that if it's just defined as a woman from a certain country, then it's going to open the flood gates to all women coming in from that country. (Legal 02)

The last change I would make, um, which may be controversial, is when we're looking at particular social group claims. So the fifth area, um, we have immutability, so something that I can't change about myself, social distinction. So if I'm walking on the street, everyone can see that I am this religion. I am this gender. I am, whatever. Um, particularity I would change particularities, that element. It seems that the courts, and they'll say in case law, we want, um, there to be a clearly defined outer limit of your group. Okay that's fine. But if my group is Tunisian women, um, if the pushback is going to be that that group is too big. It's too amorphous. There's too many members. I don't think we can qualify protection based on the size of the group, I would change. Particularity for example, would we deny asylum to all Jewish people fleeing the Nazi regime? Just because there are so many people? No, size should not be a determining factor in a social group, in my opinion. Um, it's not a determining factor for religion. It's not for political opinion. It's not for race or ethnicity. Um, it's just for groups that's not fair. Um, I think that if I am likely to suffer persecution, simply because I am a woman in

my country, um, and it's going to be persecution, it's going to be that high, high bar. (Legal 07)

The changes to social group standards on the international level versus the federal level here in the United States are a reflection of not only keeping up with intentional practices but also undervaluing the unique experiences that women face when fleeing for their lives. There is not an understanding legally of the invisible obstacles and barriers that can prevent a woman from seeking safety in her own country, particularly within the context of domestic abuse. As well as setting the bar high for gender-based asylum, there is also a minefield of logic games that must be tackled in order to successfully win a case for a client.

. . . that's literally what that law does is like, okay. You child, you were recruited and you were threatened because you didn't, if you didn't join that's normal, that's not like you're like that happens, but you mom you're being threatened because your boy said no, and you defended him. Oh, you have an asylum claim because of your relation to your son, you're being, you wouldn't have been targeted if you weren't his mom, like. That's ridiculous to me. And it's also bizarre because like she can, if depending on the age she could put him on his asylum, on her asylum application include him and then he gets asylum anyway. Like that, that doesn't make any sense to me. (Legal 10)

Yes. Um, there was actually a lot of pushback recently, um, in so far as using the US State Department, country conditions, reports for evidence. Um, those reports were purposefully redacted in several situations, including information about the treatment of domestic violence victims. If I remember correctly, um, fact-checking on that one. So there was whenever the Department of Homeland Security would introduce like, look, um, We are com— there. Indonesia, we're combating female genital mutilation. Look at all these prosecutions that took place in the past year. I would say it's lost in translation that those prosecutions may be happening in the capital or in a few cases, but in the rural areas or the areas where it's, it's more of like a family cultural tradition, they're not being prosecuted. It's, it's, um, you're missing all of that. If you just look at the State Department report, um, other things that would be lost in translation. I think the female genital mutilation is a big one, um, because I've, I've had asylum officers and judges say, like, look at this report, look at how many, um, look at this new law that was enacted, um, ruling, genital mutilation, illegal, but that's not how it's practiced in the country. (Legal 07)

While the law in the home country may say one thing, the actual practice of the law in that country could be very different. This is actually noted as reason to allow for asylum in the

UNHCR Guidelines on International Protections: Gender-Related Persecution (2002). The lawful neutral nature of the application of the law and thought process does not leave room for interpretation for the female or cultural experience of asylum seekers leaving them worse off.

Impact of Matter of A-B-

The spark for this research was the change of Matter of A-B-; this case was hanging over most of the interviews because of the high bar the person has to clear in order to meet the asylum standards. The reversal has made it more challenging for lawyers still willing to take gender-based asylum cases to win.

The attorney general took the cases out of the BIA, reversed them, and mandated that those don't work. So now you're in front of the court and a lot of the threats and extortions and, um, rapes by the gang members and the violence there. Um, yeah, it's very hard to convince the judge to let the fact that the police or the army or the government's doing nothing about it to influence. I'm still winning a few of those cases because judges are human and sometimes the cases are just tragic enough that he then finds that the police don't do anything about it. It gives him a grounds to do it. Um, but that's, that's a pretty, it's hard on the Central American cases cause a lot of them are fleeing the fact that they can't live there. (Legal 09)

This is once again in direct opposition to the standards that the UNHCR Guidelines on International Protections: Gender-Related Persecution (2002) set when making guidelines for the understanding of gender-based persecution. The fact that the police and government in their home country will not do anything to help is evidence that leaving and coming to America is equivalent to them fleeing persecution. The narratives that are the lived experiences of asylum seekers are not always acceptable in court because of the laws and regulations put into place. Many of my participants had a difficult time framing gender-based cases with clients in terms the government will understand:

So sometimes it's like talking to your client, trying to get as full of a picture of you as you can. And then kind of talking to them about what is our biggest. How can, how you don't like, I'm not, we don't want to lie. We don't want to change the narrative. We have the facts that we have, but because the government is so focused, especially after A-B-

came out, because that was so focused on private actors and saying, we basically don't protect you if it's a private actor going after you. So, it's this constant, how do I frame this case so that it's the government. We really focus on what is the government unwilling or unable to do when the government isn't the persecutor. (Legal 08)

Despite the challenges described above, some interviewees were hopeful that change was around the corner. This sentiment particularly started to change once it was announced that Joe Biden had won the 2020 election and there was hope for the possibility of positive immigration change.

I think we were close to getting there and, and seeing, um, really recognizing the role the state plays and the role that culture plays in gender-based violence. I think, um, the particular decisions in the immigration context that have shifted away from that just basically was the decision of the attorney general to, um, see it as a private issue, which is, you know, the problem in many of the countries that people are fleeing, domestic violence is because the state sees it as a private issue that they're not going to get involved in and don't see them having a role in protecting, um, individuals who are victims of domestic violence from their perpetrators. (Legal 3)

My participants had hope for change and better outcomes for their clients. It seems that the participants were correct at least in terms of Matter of A-B-, as this was reversed by Attorney General Garland. However, in terms of other asylum seeking policies, the Biden administration is not as progressive as some of my participants probably would have hoped.

Policies on Work Permits

The change in work permit policy for asylum seekers was a recent change during my research. So this policy was on the minds of my participants as we discussed different aspects of the asylum seeking system. Many found the change in wait times to apply for a work permit for asylum seekers awful.

I think that's one of the most horrific traumas that we perpetuate upon asylum seekers in the US is the inability to work for a good period of time when they first come. We give people no legal way to feed or house themselves and tell them not to break the law. I mean, how absurd is that? And so that's trauma in and of itself.. (Expert 07)

Well, I think, you know, um, with seeking asylum, you aren't receiving government support and you aren't legally permitted to work. So, um, we desire to be able to provide, um, safe and stable shelter to someone when they're in that really vulnerable position. I know where it's really just a matter of survival still and, um, want to be able to walk with them until they get to that point where they've received their, their work permit, received a social security number, are able to find employment and kind of work towards, um, getting stable housing. (Expert 05)

The above is an example of not being trauma-informed because of the lack of wraparound services when clients are unable to be employed or cannot find programs for participation. As discussed in earlier sections, these sorts of practices can put asylum seekers—particularly women and children—in harm's way. It limits applying for asylum safely in the United States to those who are already present with legal work authorization. Otherwise, they may have to rely on family or friends to pay for necessities until they can get work authorization or are lucky enough to find a program that will help them until they can get to that point. Neither of these options are ideal and are a bit counterintuitive to the “Protestant work ethic” prevalent in the United States law. However, in this case, the law is still deciding if asylum seekers are even worthy of protection.

Summarizing Findings

As the demonstrated, there are multiple ways that the asylum seeking system retraumatize asylum seekers and especially gender-based asylum seekers. Through the initial applications process trauma seeps into many aspects and can create mental barriers on top of the application and stabilization process that is already difficult once they arrive in the United States. Gender-based asylum seekers face additional challenges due to legal precedent in place, but also due to gender-based bias that exists within society and a lack of cultural understanding from decision makers. The courtrooms and legal proceedings themselves are difficult and not trauma-informed, and in fact retraumatize the asylum seeker during the process. The policies in places

exacerbate the issues asylum seekers face and are not trauma-informed. In the following chapter, I will articulate and discuss more about the issues and how these systems create a system that makes a process more difficult because of the emotional and physical tolls it takes places on individuals.

CHAPTER 6

DISCUSSION

The asylum seeking system in the United States is not set up to meet clients where they are, and it actually works against their needs in a way that retraumatizes them and makes arguing their cases more difficult. Additionally, there is an inability for the asylum seeking system to be trauma-informed in its current form without top to bottom and sideways reform at every level. The trauma-informed care model assumes first that the person implementing the model has control over the policies for their clients. This is not the case for the asylum-seeking system. Trauma-informed care assumes that there is a level of accessibility for the client, and that they have been traumatized and are thus deemed worthy of being treated with compassion. In the eyes of the law, particularly asylum law, this is not the case. This can be particularly challenging when it comes to the courtroom, because it is quite literally a game of chance for how the judge and the opposing attorney will treat the client. This is not a question of whether the person is deemed worthy of asylum or their trauma and situation reach the threshold of persecution required by the asylum system. This is simply about whether the highly educated people in the room can meet the asylum seekers where they are at. This in turn plays into the ideas of credibility and the threshold of persecution.

While there have been calls for immigration reform for a while both from liberal and conservative parties, the question of if the United States should create a trauma-informed asylum seeking system is a different question. I am not sure if an organization or system that determines if the level of trauma is worthy of help could ever be trauma-informed, and I don't see the government giving up this judicial practice. As one participant puts it:

I think if we get to a place where we have immigration reform and we have a system—regardless of whatever party it is—that is efficient, that is fast, that is clear that protects

people while they're in the process, right? Why is it that in the criminal system, we have innocent until proven guilty, right? Our folks are not given that luxury. (Expert 02)

However, it doesn't mean we should not try to make the experience as little retraumatizing as possible for everyone involved. An important idea to note before I go on discussing the findings of my research is that I was constantly reminded that I was talking to those who represented or helped asylum seekers. The majority of asylum seekers do not have legal representation when presenting their case and the majority of them do get rejected. If the lawyers and experts I talked to who are trained and experienced either in the legal system or advocating for asylum seekers have this much trouble with the asylum system, what does this say for an asylum seeker trying to survive in the United States by themselves? During the Trump administration, it was clear they were trying to make the process as difficult as possible and push vulnerable people to the very edge to just apply for asylum through Border Metering, MPP, and the other myriad of necropolises they created. Then once they get the chance to apply, bury them using governmentality methods through the details needed to complete the application, changing thresholds to meet gender-based asylum criteria.

Asylum-seeking women are impacted by their trauma—that is clear from the findings. They are impacted by the initial trauma they experienced in their home country. However, it is exacerbated while waiting for asylum in the United States because basic needs are not met and because of confusion when trying to access asylum. There are many barriers in place while waiting to apply for asylum such as:

- Lack of access to housing, leaving up to nonprofits, family members & strangers to sort out
- Lack of access to legal documents in their own language and legal counsel
- Long wait times before they can earn money, thus decreasing their ability to stabilize themselves and causing significant stress

These issues combined have an effect of creating the necropolises within the United States as people apply for asylum pushing them towards the margins as they wait on a true sense of safety. This is emphasized by the changes created by legal policies and implications such as long waits in between filing and actual hearing, and quick changes that keep occurring that do not necessarily make things better for asylum seekers or staff but often are more of a hindrance. This is not trauma-informed and the increase in governmentality not only makes it more difficult for the asylum seekers, but for the staff as well.

Additionally, the pandemic only exacerbated the issues of access to basic needs and lengthened the time asylum seekers must wait for their case to be heard. The clients of my participants are lucky during the COVID-19 pandemic, because they had knowledgeable and hardworking people trying to assist them. However, for all the other asylum seekers that do not have a social worker, or legal representatives are going to have a harder time and larger barriers than they had before the pandemic started. The policies put in place during 2020 will have long-lasting impact for asylum seekers beyond COVID-19 pandemic.

One of the research questions this project looked at was, how is trauma conceptualized and perceived in different cultures—particularly, those coming from the Northern Triangle in Central America—through the US judicial system? There was no way to concisely say how asylum seekers' culture was conceptualized and presented differently. Participants had mixed thoughts on how culture and gender contributed to their clients' trauma. They all believed culture at the very least impacted their thoughts and trauma, but they were mixed on if gender also impacted as well. Every asylum seekers' trauma is unique to them. However, there were definite situations where bias took place due to cultural differences, such as not understanding arranged marriages or partnerships, not trusting the police, or other factors. The misunderstanding of how

these traumas impacted the asylum seeker and the lack of empathy or understanding from government attorneys or judges were often frustrating to attorneys and could be retraumatizing for the asylum seeker. The more extreme the situation the better the lawyer could communicate the trauma and reasons for asylum. However, if the situation was something of daily occurrence or possibly perceived as normal within the bounds of their community, such as domestic abuse, it was more difficult.

The lawyers and legal representatives I talked to understood that trauma impacted their clients and did their best to accommodate them. They did this in multiple ways, either through applying for accommodations during court, referring them to counselors and community resources, and learning about techniques to calm their clients, to name a few. The majority worked in organizations that had social workers that helped them as well, and this was beneficial to them and their clients. While these resources were not always available, they were extremely useful when used.

This research contributes to anthropology because it examines the asylum system as a whole process and looks at how the legal system and policies impact this involved community. This looks at how the system not only creates a burnout in the professional side of the asylum-seeking system due to overworking and constant changes in policies, and also how it retraumatizes asylum seekers as they go through the process. The asylum-seeking system is designed using necropolitics and governmentality policies so that trauma asylum seekers do have are emphasized and made worse by applying for asylum in the United States. While individuals and some organization within the system try to be trauma-informed and treat asylum seekers with understanding, it's difficult when the system is designed to be difficult.

CHAPTER 7

RECOMMENDATIONS

As of this writing, the policy that spurred this research, Attorney General Sessions' decision on the Matter of A-B-, has been vacated by Attorney General Garland (Human Rights First June 2021). While this is fantastic news, my research and participants have made me realize that gender-based asylum and asylum-seeking in general have a lot more systemic issues to deal with in creating a system that will make a more trauma-informed system for asylum seekers. This research has its limitations because I was not able to speak with any asylum seekers themselves about their experiences going through the asylum-seeking system, or with other members of the asylum-seeking system, such as judges, government attorneys, or asylum officers. Future research could benefit from seeking their perspectives on the asylum-seeking system. While the United States may not want a more trauma informed or even more humane asylum seeking system, but if they do there are a few suggestions. Based on my research, these are my recommendations to change the asylum-seeking system moving forward to make it more trauma-informed and humane:

- Align asylum-seeking definition and application to UN standard across the United States
- Have judges and lawyers go through cultural competency and trauma-informed care trainings yearly
- Have policies that will support asylum seekers as they wait for their case to be heard such as access to housing, and other stabilization needs
- Have policies that every legal defendant has access to a lawyer and not just criminal cases
- Create options that provide a more friendly environment for asylum seekers when testifying their stories, and have child-friendly options

APPENDIX
QUESTIONS

Questions for Lawyers

1. How long have you been practicing immigration law?
2. How has this area changed since you started?
3. Do you work with asylum cases?
4. What type of clients do you typically represent?
5. What are some of the changes in the system that have negatively impacted your clients?
 - a. Are there any positive changes?
6. What are some challenges do you have when working on a case?
7. What are some challenges when working on gender-based violence for asylum?
8. What are some challenges you see your client have while working with them?
9. Have you noticed any difference on how trauma is presented based on the cultural background?
10. Based on your experience, do you think that the effect of violence has the same or different traumatic reaction in men than in women and transgendered people?
11. How do the client's experiences impact their case?
12. How does trauma impact the presentation of your client's case?
13. What do you think is not captured in an asylum case that impacts your clients?
14. How would you address those issues?
15. Would you like to share a short story about a particular gender-based violence case of asylum that has impacted you?
16. Is there anything else you would like to share?

Questions for Experts

1. What are your areas of expertise in?
2. How long have you been working in this area?
3. How does trauma impact the people you work with?
4. Have you ever been an expert witness?
 - a. If so, describe how it went?
 - b. Were there any challenges while being an expert witness?
 - c. Was there something you felt that was "lost in translation" while working as an expert witness?
5. What is something you wish more people understood about your area of research?
6. Would you like to share a short story about a particular gender-based violence case that you have worked on?
7. Is there anything else you would like to share?

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