

No. 21-10496

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

A.P.A.,

Petitioner,

v.

U.S. ATTORNEY GENERAL,

Respondent.

**ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF
IMMIGRATION APPEALS**

**BRIEF OF AMICI CURIAE NON-PROFIT ORGANIZATIONS,
LAW SCHOOL CLINICS, AND LAW PROFESSORS
IN SUPPORT OF PETITIONER**

Jamie Crook (CA SBN 245757)
CENTER FOR GENDER & REFUGEE STUDIES
UC Hastings College of the Law
200 McAllister Street
San Francisco, California 94102
P: (415) 565-4877
F: (415) 581-8824

Attorney for Amici Curiae

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, each organizational Amicus Curiae certifies that it does not have a parent corporation and that no publicly held corporation owns 10 percent or more of the stock of the amicus.

The following persons may have an interest in this case:

1. Asian Americans Advancing Justice (Former Counsel for Petitioner before the BIA)
2. Atlanta ICE Field Director for Enforcement and Removal
3. Berman-Vaporis, Rachel P. (Counsel for Respondent)
4. Center for Gender & Refugee Studies (Amicus)
5. Centro Legal de la Raza (Amicus)
6. Cooley LLP (Counsel for Petitioner)
7. Couch, V. Stuart (BIA Panel Judge)
8. Crofts, James (Immigration Judge)
9. Crook, Jamie (Counsel for Amici Curiae Non-Profit Organizations, Law School Clinics, and Law Professors)
10. Ellison, Charles “Shane” Prof. (Amicus)

11. Garland, Merrick, U.S. Attorney General (Respondent)
12. Gupta, Anju Prof. (Amicus)
13. Harris, Lindsay Prof. (Amicus)
14. Hartnett, Kathleen R. (Counsel for Petitioner)
15. Harvard Immigration and Refugee Clinical Program (Amicus)
16. Kelly, Edward F. (BIA Panel Judge)
17. Montante, Philip Jr. (BIA Panel Judge)
18. Open Immigration Legal Services (Amicus)
19. Park, Amy (Former Counsel for Petitioner before the BIA)
20. P.A., A. (Petitioner)
21. Refugee and Immigrant Center for Education and Legal
Services (Amicus)
22. Saldaña, Robby L.R. (Counsel for Petitioner)
23. Southern Poverty Law Center (Amicus)
24. Tahirih Justice Center (Amicus)

Dated: May 26, 2021

/s/ Jamie L. Crook
Jamie L. Crook

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	C-1
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI.....	ix
RULE 29(a)(4)(E) CERTIFICATION.....	ix
STATEMENT OF THE ISSUES.....	1
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT AND CITATIONS OF AUTHORITY.....	4
I. The Agency Could Not Properly Assess Nexus Without First Identifying the Social Group(s) in Which Ms. A.P.A. Claimed Membership	4
A. The Agency Was Required to Identify Ms. A.P.A.’s Social Group Before Addressing Nexus	5
B. Due Process Required that the IJ Develop the Record by Questioning Ms. A.P.A. About Her Claimed Social Group	7
C. “Transgender Women in Mexico” Is a Cognizable Group	10
II. Remand Is Required for the Agency to Correctly Analyze the Reasons for Ms. A.P.A.’s Past Persecution	11
A. Nexus Can Be Shown Even Where the Persecution Takes Place in the Context of a Familial Relationship.....	12
B. The Agency’s Past Persecution Analysis Ignored Direct and Circumstantial Evidence of Nexus.....	20
1. Direct Evidence of Nexus	21
2. Circumstantial Evidence of Nexus	22
3. Perspective of a Child.....	23
C. The Board Should Have Applied the More Lenient “A Reason” Test to Ms. A.P.A.’s Withholding of Removal Claim.....	27

III. Remand Is Necessary for the Agency to Properly Analyze
Future Fear Based on a Protected Ground 29

A. The Record of Past Persecution Confers a Rebuttable
Presumption of a Well-Founded Fear of Future Harm 29

B. The Record Establishes a Well-Founded Future Fear Under
a Pattern or Practice Theory 30

CONCLUSION 33

CERTIFICATE OF COMPLIANCE 34

CERTIFICATE OF SERVICE..... 35

TABLE OF AUTHORITIES

Cases

<i>Matter of A-B-</i> , 27 I. & N. Dec. 316 (A.G. 2018)	6, 14, 15
<i>Matter of A-C-A-A-</i> , 28 I. & N. Dec. 84 (A.G. 2020)	15, 16
<i>Matter of Acosta</i> , 19 I. & N. Dec. 211 (B.I.A. 1985)	9
<i>Al Khouri v. Ashcroft</i> , 362 F.3d 461 (8th Cir. 2004).....	8
<i>Amanfi v. Ashcroft</i> , 328 F.3d 719 (3d Cir. 2003).....	9
<i>Avendano-Hernandez v. Lynch</i> , 800 F.3d 1072 (9th Cir. 2015).	2, 21
<i>Ayala v. U.S. Att’y Gen.</i> , 605 F.3d 941 (11th Cir. 2010)	11
<i>Barajas-Romero v. Lynch</i> , 846 F.3d 351 (9th Cir. 2017).....	28
<i>Bringas-Rodriguez v. Sessions</i> , 850 F.3d 1051 (9th Cir. 2017)	11, 13
<i>Brown v. Shalala</i> , 44 F.3d 931 (11th Cir. 1995).....	8
<i>Cantarero Castro v. Att’y Gen.</i> , 832 F. App’x 126 (3d Cir. 2020).....	22
<i>Cece v. Holder</i> , 733 F.3d 662 (7th Cir. 2013).....	6
<i>Crespin-Valladares v. Holder</i> , 632 F.3d 117 (4th Cir. 2011).....	14

<i>De Pena-Paniagua v. Barr</i> , 957 F.3d 88 (1st Cir. 2020).....	11
<i>Doe v. Att’y Gen.</i> , 956 F.3d 135 (3d Cir. 2020).....	10–11
<i>Espinosa-Cortez v. U.S. Att’y Gen.</i> , 607 F.3d 101 (3d Cir. 2010).....	20
<i>Faruk v. Ashcroft</i> , 378 F.3d 940 (9th Cir. 2004).....	13
<i>Matter of Fefe</i> , 20 I. & N. Dec. 116 (B.I.A. 1989)	7
<i>Gomez-Zuluaga v. Att’y Gen.</i> , 527 F.3d 330 (3d Cir. 2008).....	6
<i>Guzman-Vazquez v. Barr</i> , 959 F.3d 253 (6th Cir. 2020).....	28
<i>Halim v. U.S. Att’y Gen.</i> , 255 F. App’x 485 (11th Cir. 2007)	31
<i>Henriquez-Rivas v. Holder</i> , 707 F.3d 1081 (9th Cir. 2013)	9
<i>Hernandez-Ortiz v. Gonzales</i> , 496 F.3d 1042 (9th Cir. 2007)	23
<i>INS v. Elias-Zacarias</i> , 502 U.S. 478 (1992).....	20
<i>J.D.B. v. North Carolina</i> , 564 U.S. 261 (2011).....	24
<i>Jacinto v. INS</i> , 208 F.3d 725 (9th Cir. 2000).....	7, 26
<i>Matter of J-B-N-</i> , 24 I. & N. Dec. 208 (B.I.A. 2007).	18

<i>Jorge-Tzoc v. Gonzales</i> , 435 F.3d 146 (2d Cir. 2006).....	24
<i>Karouni v. Gonzales</i> , 399 F.3d 1163 (9th Cir. 2005)	22
<i>Matter of Kasinga</i> , 21 I. & N. Dec. 357 (B.I.A. 1996)	14
<i>Lacsina Pangilinan v. Holder</i> , 568 F.3d 708 (9th Cir. 2009).....	9
<i>Lingeswaran v. U.S. Att’y Gen.</i> , 969 F.3d 1278 (11th Cir. 2020)	19
<i>Liu v. Ashcroft</i> , 380 F.3d 307 (7th Cir. 2004).....	24
<i>Lorenzo-Lopez v. Whitaker</i> , 747 F. App’x 587 (9th Cir. 2019)	30
<i>Marroquin-Ochoma v. Holder</i> , 574 F.3d 574 (8th Cir. 2009).....	19
<i>Mendoza-Garcia v. Barr</i> , 918 F.3d 498 (6th Cir. 2019).....	7
<i>Matter of M-E-V-G-</i> , 26 I. & N. Dec. 227, 251 (B.I.A. 2014)	15
<i>Mohamed v. U.S. Att’y Gen.</i> , 705 F. App’x 108 (3d Cir. 2017)	7
<i>Morales-Espania v. Lynch</i> , 651 F. App’x 40 (2d Cir. 2016)	6, 7
<i>Ndayshimiye v. Att’y Gen.</i> , 557 F.3d 124 (3d Cir. 2009).....	19
<i>Matter of N-M-</i> , 25 I. & N. Dec. 526 (B.I.A. 2011)	14

<i>Ordonez-Quino v. Holder</i> , 760 F.3d 80 (1st Cir. 2014).....	24
<i>Orellana v. Att’y Gen.</i> , 806 F. App’x 119 (3d Cir. 2020)	10
<i>Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.</i> , --- F. Supp. 3d ---, No. 20-cv-09253-JD, 2021 WL 75756 (N.D. Cal. Jan. 8, 2021)	29–30
<i>Parussimova v. Mukasey</i> , 555 F.3d 734 (9th Cir. 2009).....	20
<i>Perez-Sanchez v. U.S. Attorney</i> , 935 F.3d 1148 (11th Cir. 2019)	28
<i>Qu v. Holder</i> , 618 F.3d 602 (6th Cir. 2010).....	13–14
<i>Rivera v. U.S. Att’y Gen.</i> , 487 F.3d 815 (11th Cir. 2007)	22
<i>Matter of S-A-</i> , 22 I. & N. Dec. 1328 (B.I.A. 2000)	14
<i>Sanchez Jimenez v. U.S. Att’y Gen.</i> , 492 F.3d 1223 (11th Cir. 2007)	18, 27
<i>Sanchez v. U.S. Attorney General</i> , 392 F.3d 434 (11th Cir. 2004)	17
<i>Sarhan v. Holder</i> , 658 F.3d 649 (7th Cir. 2011).....	16–17, 23
<i>Seck v. U.S. Att’y Gen.</i> , 663 F.3d 1356 (11th Cir. 2011)	10
<i>Silvestre-Mendoza v. Sessions</i> , 729 F. App’x 597 (9th Cir. 2018)	11
<i>Matter of S-R-P-O-</i> , AXXX XXX 056 (BIA Dec. 20, 2018)	11

<i>Matter of Toboso-Alfonso</i> , 20 I. & N. Dec. 819 (BIA 1990)	11
<i>Velasquez-Banegas v. Lynch</i> , 846 F.3d 258 (7th Cir. 2017).....	31, 32
<i>Matter of W-G-R-</i> , 26 I. & N. Dec. 208 (B.I.A. 2014);	6
<i>Yang v. McElroy</i> , 277 F.3d 158 (2d Cir. 2002).....	7
Statutes	
8 U.S.C. § 1101(a)(42)(A)	4
8 U.S.C. § 1158(b)(1)(A).....	4
8 U.S.C. § 1158(b)(1)(B)(i)	19, 28
8 U.S.C. § 1231(b)(3)(A).....	4
8 U.S.C. § 1231(b)(3)(C).....	28
Regulations	
8 C.F.R. § 1208.13(b)(1).....	29
8 C.F.R. § 1208.13(b)(2)(iii).....	30
8 C.F.R. § 1208.16(b)(1)(i).....	29
8 C.F.R. § 1208.16(b)(2)(i).....	30
Other Authorities	
AOBTC, <i>Guidelines for Children’s Asylum Claims</i> (March 2009), https://www.refworld.org/docid/4f3e30152.html	25

David L. Neal, EOIR,
Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children (May 2007), <http://myattorneyusa.com/storage/upload/files/matters/guidelines-for-immigration-court.pdf>25

Nielan Barnes,
Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States, 2 *Sexuality, Gender & Pol’y* 5 (2019).....13

UNHCR,
Guidelines on International Protection: Child Asylum Claims (Dec. 22, 2009), <http://www.unhcr.org/50ae46309.html>.....25

USCIS,
RAIO Combined Training Program: Nexus and the Protected Grounds (Dec. 20, 2019), <https://www.uscis.gov/sites/default/files/>23

INTEREST OF AMICI

Amici Curiae (Amici), listed in Tab A of the Addendum, are non-profit organizations and law school clinics that represent, advocate for, and support asylum seekers across the country. Amici have a strong interest in ensuring that federal laws are interpreted to afford asylum protection as Congress intended. Amici presented their individual Statements of Interest in the accompanying Motion for Leave to File Brief as Amici Curiae by Non-Profit Organizations and Law School Clinics.

RULE 29(a)(4)(E) CERTIFICATION

No person or entity other than counsel for Amici authored or contributed funds intended for the preparation or submission of this brief.

/s/ Jamie L. Crook
Jamie L. Crook

STATEMENT OF THE ISSUES

1. Did the Agency err in adjudicating nexus without identifying the particular social group in which Ms. A.P.A. claimed membership?
2. Did the Agency err in finding Ms. A.P.A. failed to show nexus, because the fact that abuse occurred in the context of a familial relationship does not foreclose nexus and proper application of controlling legal standards to the record compels a finding of nexus?
3. Did the Agency err in failing to apply the “a reason” test to Ms. A.P.A.’s withholding of removal claim?
4. Did the Agency fail to give reasoned consideration to the record in finding that Ms. A.P.A. did not prove future fear in Mexico based on her transgender female identity?

SUMMARY OF THE ARGUMENT

This case presents the Court with the chance to confirm that our country’s asylum laws protect people like Ms. A.P.A. from the harm that almost certainly awaits her in Mexico if the U.S. government is allowed to remove her. The record documents that transgender women in Mexico risk assault, rape, torture, murder, and mutilation with

sobering frequency, because of their gender identity. As State Department reports and other U.S. government agencies have recognized, and as other courts of appeal have held, transgender women in Mexico are subject to “particularized dangers,” and the “unique . . . vulnerabilities of transgender individuals must be considered in evaluating a transgender applicant’s asylum, withholding of removal, or CAT claim.” *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1082 (9th Cir. 2015).

This case also presents the Court with a critical opportunity to reaffirm the controlling standards for determining nexus for purposes of asylum and withholding of removal eligibility in a decision that remedies the Agency’s many errors.

First, with respect to past persecution (comprising repeated rape by her uncle when Ms. A.P.A. was a young child), the Agency failed to identify which social group it was considering before finding an absence of nexus. Social group membership and nexus are distinct but interrelated inquiries. It is impossible to make a legally tenable finding regarding nexus without identifying the social group.

Second, the Agency erred in refusing to find a causal link between the past harm and a protected ground on the basis that the shocking child abuse occurred in the context of a “private” (here, presumably, familial) relationship. There is no *per se* bar or presumption against finding nexus when persecution occurs within a personal relationship such as the familial one between Ms. A.P.A. and her uncle. The Agency also failed to apply the required mixed-motives analysis, ignored direct and circumstantial evidence of nexus, and imposed an impossible burden on Ms. A.P.A., that legal authorities do not require, to show that as a child she understood that the reason for her uncle’s abuse was her social group membership.

Third, the Agency should have applied the more lenient “a reason” test to determine Ms. A.P.A.’s eligibility for withholding of removal, and not the “one central reason” test that applies to asylum eligibility.

Fourth, substantial evidence does not support the Agency’s determination that Ms. A.P.A. lacks an objectively reasonable fear of future persecution. She was entitled to a rebuttable presumption of and independently demonstrated a future fear of persecution directed at her individually because of her transgender identity. The record

furthermore establishes a pattern or practice of persecution of similarly situated transgender women in Mexico, providing an alternative basis to find a well-founded future fear.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The Agency Could Not Properly Assess Nexus Without First Identifying the Social Group(s) in Which Ms. A.P.A. Claimed Membership

Eligibility for asylum requires that the applicant be “unable or unwilling to return to” her home country “because of persecution or a well-founded fear of persecution on account of” any of five enumerated grounds, including membership in a “particular social group.” 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(A). Eligibility for withholding of removal is shown where the applicant’s “life or freedom would be threatened in [their home] country because of” the same protected grounds. *Id.* § 1231(b)(3)(A).

In order for an adjudicator to evaluate whether the requisite causal connection (nexus) exists, it is imperative first to identify the protected ground(s) in which the applicant claims membership. Here, Ms. A.P.A. sought protection based on membership in a particular social group, but the Agency made no inquiry into nor findings as to what the

group was. Even setting aside the errors discussed below in Part II, this analytical shortcut renders the Agency's decision unreasoned and requires reversal on this basis alone.

A. The Agency Was Required to Identify Ms. A.P.A.'s Social Group Before Addressing Nexus

In addressing past persecution, the immigration judge (IJ) impermissibly conflated the analysis of whether Ms. A.P.A. established membership in a particular social group with the separate element of nexus, and the Board of Immigration Appeals (BIA or Board) adopted his tortuous analysis. The IJ's treatment of nexus consisted of the circular statement that "sexual abuse by a family member is not a cognizable particular social group because it is a private criminal act of child abuse by the uncle. So there has been no showing of past persecution based on a protected ground." AR 85. He made no finding as to which particular social group formed the basis for her fear of future persecution. The Board "assum[ed]" that Ms. A.P.A. "established a cognizable social group" but agreed she had not shown nexus. AR 5.

Nexus and particular social group cognizability are independent elements of an asylum claim with separate requirements that an adjudicator must consider separately. *Matter of W-G-R-*, 26 I. & N. Dec.

208, 218 (B.I.A. 2014); *see also* *Matter of A-B-*, 27 I. & N. Dec. 316, 338–40 (A.G. 2018) (“The respondent must present facts that undergird *each* of these elements, and . . . the Board has the duty to determine whether those facts satisfy all of the legal requirements for asylum.”); *see also* *Cece v. Holder*, 733 F.3d 662, 673 (7th Cir. 2013) (emphasizing that particular social group membership and nexus are distinct inquiries); *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330, 345 n.10 (3d Cir. 2008) (similar).

Thus, as the Second Circuit explained in *Morales-Espania v. Lynch*, 651 F. App’x 40 (2d Cir. 2016), “to determine whether an applicant was harmed on account of [her] membership in a particular social group, the Agency must first correctly identify the group to which the applicant belongs.” *Id.* at 44 (citing *W-G-R-*, 26 I. & N. Dec. at 223–24). The IJ failed to do so here, and that failure was not rendered harmless by the Board’s assumption that Ms. A.P.A. could prove a cognizable group before affirming the no-nexus finding. Because it did not identify the particular social group to which it purportedly assumed that Ms. A.P.A. belonged, the Board could not correctly determine whether the harm she feared was on account of membership in that

group—which is what the nexus inquiry requires. The Board’s finding that Ms. A.P.A. did not establish nexus between harm and social group membership was thus “infected by the agency’s failure to consider [her] actual group.” *Morales-Espania*, 651 F. App’x at 44.

B. Due Process Required that the IJ Develop the Record by Questioning Ms. A.P.A. About Her Claimed Social Group

Particularly because Ms. A.P.A. was proceeding *pro se*, due process required that the IJ help develop the record by eliciting information about the group(s) in which she claimed membership as the basis for the harm she suffered in the past and fears in the future.

Mohamed v. U.S. Att’y Gen., 705 F. App’x 108, 114 (3d Cir. 2017)

(holding that a “full examination of an applicant [is] an essential aspect of the asylum adjudication process for reasons related to fairness to the parties and to the integrity of the asylum process itself” (quoting *Matter of Fefe*, 20 I. & N. Dec. 116, 118 (B.I.A. 1989))); *Yang v. McElroy*, 277 F.3d 158, 162 & n.3 (2d Cir. 2002) (affirming an IJ’s duty to develop the record especially where noncitizen is unrepresented by counsel (citing *Jacinto v. INS*, 208 F.3d 725, 732–33 (9th Cir. 2000))); *Mendoza-Garcia v. Barr*, 918 F.3d 498, 504–05 (6th Cir. 2019) (holding that “to provide a fundamentally fair proceeding, immigration judges are bound by the

recognized duty to help pro se parties develop the record”); *Al Khouri v. Ashcroft*, 362 F.3d 461, 464–65 (8th Cir. 2004) (same). This Court has recognized the same obligation of administrative law judges more generally, when adjudicating claims by *pro se* applicants, to “scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts.” *Brown v. Shalala*, 44 F.3d 931, 934–35 (11th Cir. 1995) (per curiam) (internal quotation marks omitted).

The IJ abdicated his duty to probe for relevant facts. When Ms. A.P.A. informed him at the beginning of her merits hearing that she forgot to check the particular social group box on her asylum application, the IJ simply said “that is fine,” AR 138, without asking her in which group(s) she claimed membership. Although Ms. A.P.A. identified herself as a transgender woman and expressed a fear of return to Mexico based on evidence of widespread violence against transgender people there and the homophobic viewpoint of the person who persecuted her in the past (*see infra* Part II.B.), the IJ never sought to confirm in which specific particular social group(s) she claimed membership. Nor did he ask questions to determine whether the protected ground(s) for her past fear of persecution differed at all from

the ground(s) for her future fear of persecution. For example, she might have claimed past persecution on account of her transgender identity as well as her status as a child, a family member of her uncle, or imputed sexual orientation.¹

The IJ's asking whether there was "anything else" she wanted to tell him about her application, AR 167, was no remedy for having failed to ask probing questions to ensure a fully developed record. *See, e.g., Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709–10 (9th Cir. 2009) ("An IJ cannot correct his failure to probe more deeply by simply asking the [noncitizen] whether he has anything to add in support of his claim." (internal quotation marks omitted)). Without identifying the particular social group(s) that form the basis for Ms. A.P.A.'s past and future fear, the IJ's nexus determination was meaningless.

The BIA's analysis did not remedy these errors in assuming that Ms. A.P.A. established a cognizable particular social group. *See* AR 5.

¹ *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013) (en banc) (recognizing group defined as children); *Amanfi v. Ashcroft*, 328 F.3d 719, 727–30 (3d Cir. 2003) (recognizing imputed sexual orientation); *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985) (recognizing that "kinship ties" may be defining characteristic of a cognizable group).

Its decision is devoid of any indication as to which social group(s) it assumed to be cognizable before adopting the IJ's contorted and unreasoned nexus analysis. This failure precludes meaningful appellate review. While the BIA need not issue an exegesis on every issue, it "must consider the issues raised and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Seck v. U.S. Att'y Gen.*, 663 F.3d 1356, 1364 (11th Cir. 2011) (internal quotation marks omitted).

C. "Transgender Women in Mexico" Is a Cognizable Group

Had the IJ had made the required social group finding, he should have found, and the Board should have affirmed, that Ms. A.P.A. established, at a minimum, membership in a group defined by her transgender female identity. *See, e.g.*, AR 139, 162, 173, 323–24, 326, 332–33.

Such a group is plainly cognizable, as several courts and the BIA have held. *See, e.g., Orellana v. Att'y Gen.*, 806 F. App'x 119 (3d Cir. 2020) (recognizing petitioner's membership in a cognizable social group defined as "the lesbian, gay, bisexual, transgender and intersex . . . community in El Salvador"); *Doe v. Att'y Gen.*, 956 F.3d 135, 142 (3d

Cir. 2020) (recognizing petitioner’s membership in a similarly defined group in Ghana); *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017) (en banc) (“[S]exual orientation or sexual identity can be the basis for establishing a particular social group.”); *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822 (BIA 1990) (similar). Although Amici are not aware of a case in which this Court has addressed the cognizability of a gender identity group, it has definitively accepted a group defined by sexual orientation. *See Ayala v. U.S. Att’y Gen.*, 605 F.3d 941, 949 (11th Cir. 2010). For similar reasons, it should find that gender identity is an immutable characteristic and that a transgender gender identity is both particular and socially distinct in Mexico.²

II. Remand Is Required for the Agency to Correctly Analyze the Reasons for Ms. A.P.A.’s Past Persecution

Amici respectfully urge the Court to reverse the Agency’s nexus analysis and reiterate the controlling legal standards. There is no bar to

² On remand the Board could consider additional social groups that may be connected to Ms. A.P.A.’s past persecution, such as children in Mexico, child family members of her uncle, or children with an imputed gay sexual orientation. *See supra* note 1; *De Pena-Paniagua v. Barr*, 957 F.3d 88, 96–98 (1st Cir. 2020) (remanding for Board to consider cognizability of a group not argued before); *Silvestre-Mendoza v. Sessions*, 729 F. App’x 597, 598 (9th Cir. 2018) (similar); Addendum Tab C (*Matter of S-R-P-O-*, AXXX XXX 056 (BIA Dec. 20, 2018)) at 2–3.

finding nexus simply because the abuse occurs in private by a family member; a proper nexus analysis must consider direct and circumstantial evidence, but here the Agency ignored both; and when a petitioner suffered past persecution as a child, as Ms. A.P.A. did, the nexus inquiry must consider a child's perspective.

A. Nexus Can Be Shown Even Where the Persecution Takes Place in the Context of a Familial Relationship

The IJ denied nexus by finding that the “heinous sexual abuse” Ms. A.P.A. suffered was “a private criminal act.” AR 85. The BIA agreed, holding that “[n]either private acts of violence, general criminal activity, nor purely personal disputes qualify as persecution on account of a protected ground.” AR 5. Presumably, the Agency used the words “private” and “personal” because Ms. A.P.A. testified about appalling abuse she suffered as a tender-aged child at the hands of her uncle and caretaker.

To start, the BIA's suggestion that the act of repeatedly raping a four-year-old child could be characterized as a “purely personal dispute” is nonsensical, unreasoned, and cruel. Moreover, the nexus inquiry does not turn on whether the persecution occurred at home or was perpetrated by a family member. What matters is the perpetrator's

reason. In this case, Mexico’s “traditional patriarchal and heteronormative family structure” makes it all the more likely that a gender-nonconforming child will first suffer abuse from close family members, especially men, because of the child’s actual or imputed gender identity. Addendum Tab D (Nielan Barnes, *Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States*, 2 *Sexuality, Gender & Pol’y* 5, 9 (2019)). In Mexico, “boys who break gender norms are subjected to verbal bullying and accusations of being ‘gay’ or ‘girls,’ ostracism, and physical and sexual abuse, most often in their own homes and by members of their own families.” *Id.*

Consistent with the record in this case, decades of Board and circuit court precedent recognize nexus when persecution occurs in the context of a familial or other personal relationship. *See, e.g., Bringas-Rodriguez*, 850 F.3d at 1073 (finding nexus to particular social group based on sexual orientation where persecution was inflicted by family members); *Faruk v. Ashcroft*, 378 F.3d 940, 943 (9th Cir. 2004) (“[T]here is no exception to the asylum statute for violence from family members.”); *Qu v. Holder*, 618 F.3d 602, 608 (6th Cir. 2010) (finding

nexus connecting kidnapping and forced marriage to applicant's membership in a gender-based social group); *Matter of S-A-*, 22 I. & N. Dec. 1328, 1336 (B.I.A. 2000) (finding nexus to protected ground in case of father's abuse of his daughter); *Matter of Kasinga*, 21 I. & N. Dec. 357, 366–67 (B.I.A. 1996) (finding nexus connecting familial coercion to submit to female genital cutting to social group-based persecution).

Thus, nexus is a highly fact-dependent inquiry, and instead of categorically rejecting nexus when the harm occurs in a personal relationship, the Agency must conduct a case-specific nexus analysis, grounded in the particular record. *See Matter of N-M-*, 25 I. & N. Dec. 526, 532 (B.I.A. 2011) (“A persecutor’s actual motive is a matter of fact to be determined by the Immigration Judge . . .”); *Crespin-Valladares v. Holder*, 632 F.3d 117, 127–28 (4th Cir. 2011) (describing the analysis of persecutors’ motives as a “classic factual question”).

A-B-, which the Board cited in affirming the nexus finding, did not alter the analytical framework for nexus and does not justify the outcome here. In *A-B-*, the Attorney General reiterated that the Agency must carefully analyze such claims based on the evidence presented and under the framework established by the BIA. 27 I. & N. Dec. at 339–40.

A-B- does not and could not authorize the Agency to forego the required record-based analysis or issue *per se* rejections in cases where the abuse happens in the context of a “private” relationship. Blanket rejections of certain types of claims would be improper. *See Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 251 (B.I.A. 2014), and *A-B-* did not change the required nexus analysis, including in cases involving violence in the context of personal relationships. To the contrary, the Attorney General underscored the requirement of a rigorous case-specific analysis while repeatedly reaffirming the statutory “one central reason” test for nexus.³ *A-B-*, 27 I. & N. Dec. at 317, 338–40.

Matter of A-C-A-A-, 28 I. & N. Dec. 84 (A.G. 2020), which the Board also cited at AR 4–5, does not justify the Agency’s nexus holding either. *A-C-A-A-* makes the general observation that past harm based on one’s “individualized private circumstances” may not establish eligibility for protection, but it does not foreclose a finding of nexus when harm occurs on account of a protected ground, even in the context of a “private” relationship. 28 I. & N. Dec. at 85; *see also id.* at 94–96 (disclaiming any intention to establish a *per se* bar to certain types of

³ The “one central reason” analysis is discussed below.

claims, declining to make a holding regarding nexus, and emphasizing the imperative of case-specific analysis).

The Agency further erred in rejecting nexus based on its characterizing the past persecution as “general criminal activity.” AR 5. When abuse is inflicted to punish a child for failing to conform to gender norms or because of hatred or fear of people whose actual or imputed gender identity or sexual orientation marks them as “other,” the harm constitutes persecution on account of the protected ground of membership in a social group defined by that (actual or imputed) nonconforming gender identity. Moreover, the fact that a particular act might constitute a crime does not mean it cannot also qualify as persecution, and it certainly does not preclude a finding of nexus. Most acts severe enough to constitute persecution, such as rape, also carry criminal penalties. The designation of an act as criminal, if anything, only underscores its severity and supports a finding that it rises to the level of persecution. It does not foreclose the existence of a protected basis for the conduct. *See, e.g., Sarhan v. Holder*, 658 F.3d 649, 656–57 (7th Cir. 2011) (finding nexus between gender-based particular social

group and feared honor killing, notwithstanding that honor killings had been criminalized).

This Court's decision in *Sanchez v. U.S. Attorney General*, 392 F.3d 434 (11th Cir. 2004), which the Board cited as support for its nexus analysis, *see* AR 5, does not support the rejection of nexus here. That case turned on the Court's conclusion that the petitioner was persecuted because she refused to cooperate with a guerilla group, and not because of her political opinion. *Id.* at 438. *Sanchez* did not address the type of familial-relationship abuse at issue here, let alone proclaim a bar against finding nexus simply because the persecutory conduct may also be criminal in nature.

The Court should therefore emphasize that it is legal error to treat cases arising out of abuse in a familial or other "private" relationship, or cases involving harms that have been assigned criminal penalties, as precluding nexus to a protected ground.

The Court should also instruct the Board on remand to apply the required "mixed motives" analysis. The Board correctly acknowledged that an applicant can establish nexus if a protected ground is a "central

reason for the harm she suffered,” AR 4,⁴ but it nonetheless impliedly required that a protected ground (other than the relationship) be the *only* reason for the persecution. Even if the status of having a “private” relationship with one’s abuser were considered to be unprotected (as shown above it is not), unprotected and protected motives can exist alongside each other without negating nexus.

The Board itself has long held that a central reason for persecution can be one among multiple mixed motives, so long as the reason is not “incidental, tangential, superficial, or subordinate to another reason for harm.” *Matter of J-B-N-*, 24 I. & N. Dec. 208, 213 (B.I.A. 2007). Consistent with *J-B-N-* and other Board precedent, this Court has observed that a protected ground “need not be the *only* motivation for the persecution. Rather, it is by now well-established . . . that an applicant can establish eligibility for asylum as long as [she] can show that the persecution is, *at least in part*, motivated by a protected ground.” *Sanchez Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223, 1232 (11th Cir. 2007) (emphasis in original) (internal quotations

⁴ As set forth below in Part II.C., Amici urge the Court to accept the more lenient “a reason” mixed-motives test for withholding of removal.

omitted); *see also, e.g., Lingeswaran v. U.S. Att’y Gen.*, 969 F.3d 1278, 1294–95 (11th Cir. 2020) (Wilson, J., concurring) (“The statute plainly contemplates the possibility that a persecutor may have ‘multiple central reasons’ for persecuting an applicant” and “requires only that a protected reason be ‘one’ of the multiple central reasons.” (quoting 8 U.S.C. § 1158(b)(1)(B)(i))).

A mixed-motives inquiry does not require that an applicant establish that a protected ground is a *stronger* motivation for the harm than any co-existing, non-protected grounds. *See Ndayshimiye v. Att’y Gen.*, 557 F.3d 124, 129 (3d Cir. 2009) (“[A]n asylum applicant [is not required to] show that a protected ground for persecution was not ‘subordinate’ to any unprotected motivation.”); *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 577 (8th Cir. 2009) (“[T]he persecution need not be . . . predominantly, on account of the [protected ground.]”). It suffices that one protected ground is among the central reasons.

For all of these reasons, the Agency’s rejection of nexus in this case on the ground that the harm occurred in the context of a “private” relationship cannot be sustained.

B. The Agency's Past Persecution Analysis Ignored Direct and Circumstantial Evidence of Nexus

Nexus may be shown with direct or circumstantial evidence of the persecutor's motive. *INS v. Elias-Zacarias*, 502 U.S. 478, 816-17 (1992).

Asylum seekers are not required to establish the exact motivation of their persecutors, given that "persecutors are hardly likely to submit declarations explaining exactly what motivated them to act."

Parussimova v. Mukasey, 555 F.3d 734, 742 (9th Cir. 2009) (internal quotation omitted); see also *Elias-Zacarias*, 502 U.S. at 483; *Espinosa-Cortez v. U.S. Att'y Gen.*, 607 F.3d 101, 108–09 (3d Cir. 2010).

As an initial matter, not only did the Agency ignore Ms. A.P.A.'s evidence of nexus as discussed below, but its finding that the past persecution was general criminal activity or a "personal dispute" has no support in the record. Ms. A.P.A. did not offer these reasons; nor did the Government provide any such evidence. And the IJ did not identify any record basis for his findings, demonstrating the lack of substantial evidence for the Agency's nexus analysis.

Substantial evidence does not support the Agency's conclusion that her past persecution and fear of future persecution are unconnected to her gender identity or membership in any other

protected groups. The Agency here failed to address the record at all and ignored direct and circumstantial evidence of nexus. It moreover failed to consider the evidence of past persecution from the perspective of a child.

1. Direct Evidence of Nexus

Although direct evidence of a persecutor's motives is not required, Ms. A.P.A. provided it. Regarding her actual or imputed gender identity, she testified that she has “always been a feminine person. . . the way I walk, the way I talk,” AR 175–76, and that “[i]t's my true gender identity that I was born as female,” AR 173.

She also testified that her uncle harbors discriminatory and hostile views of those he perceives as gay. Her uncle “rejects gay people, he torture[s] them and kill[s] them.” AR 323. He was and remains a serious threat to her safety: she testified that her uncle “pays to kill his enemies and gay people. I know he will harm me. He is very dangerous and homophobic.” AR 324.⁵

⁵ The more general term homophobic is commonly used to include those who demonstrate hatred or fear of people with a transgender identity. *See Avendano-Hernandez*, 800 F.3d at 1081.

The nature of her uncle’s abuse itself reflects that a central reason for it arose out of Ms. A.P.A’s actual or imputed gender identity. Anal rape is “essentially *res ipsa loquitur* evidence, . . . or an obvious sign” that her uncle abused her because of her actual or perceived gender nonconformity. *Karouni v. Gonzales*, 399 F.3d 1163, 1174 (9th Cir. 2005). “[T]he nature and context of the harm itself—the chosen method of harm, the locus of the harm, societal stereotypes or stigmas associated with the harm—often provide a window into a persecutor’s motives. . . . That is especially true in cases involving sexual or sex-based violence.” *Cantarero Castro v. Att’y Gen.*, 832 F. App’x 126, 132 (3d Cir. 2020).

2. Circumstantial Evidence of Nexus

Ms. A.P.A. placed the direct evidence of her uncle’s *mens rea* in context with country conditions evidence documenting animus against gender nonconforming people that is widespread and connected to extreme violence. AR 204–264.

Country conditions evidence can be probative of nexus by helping to show the relationship between the protected ground and the harm. *Rivera v. U.S. Att’y Gen.*, 487 F.3d 815, 821 (11th Cir. 2007); *see also*

Sarhan, 658 F.3d at 662 (considering background country conditions in addressing nexus of family-member honor killings to protected gender-based group). U.S. Citizenship and Immigration Services’ own training materials instruct that to determine whether nexus has been established, asylum officers should consider “[b]oth direct and circumstantial evidence,” that “[c]ircumstantial evidence may be sufficient to satisfy the nexus requirement,” and that “[c]ountry of origin information may provide circumstantial evidence of motive.”⁶

3. Perspective of a Child

The assessment of the reasons for Ms. A.P.A.’s past persecution must acknowledge it occurred while she was a child. American law reflects a settled, commonsense understanding that children differ from, and should not be treated or viewed as, adults. *See, e.g., J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (describing the long history of legal distinction between juveniles and adults). That principle applies in asylum cases. Although the refugee definition remains the same, a

⁶ USCIS, *RAIO Combined Training Program: Nexus and the Protected Grounds* 17, 19 (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/Nexus_minus_PSG_RAIO_Lesson_Plan.pdf.

child-sensitive approach must inform the substantive analysis of children’s claims.

Thus, courts consider persecution from the perspective of a child and grant a liberal benefit of the doubt when assessing claims based on persecution during childhood. *See, e.g., Ordonez-Quino v. Holder*, 760 F.3d 80, 90 (1st Cir. 2014) (rejecting requirement that applicant articulate the “exact motivation” of her persecutors “especially when she was victimized as a young child”); *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007) (citing Agency guidelines in reversing denial where IJ failed to consider child applicants’ ages at time of persecution or look at the events from child’s perspective); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (holding that IJ erred in failing to view evidence of past persecution from a child’s perspective); *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004) (“[A]ge can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or

whether she holds a well-founded fear of future persecution.”). U.S. government and international agencies follow similar guidance.⁷

Traumatic sexual abuse during childhood is often linked to suppressed memories and difficulty understanding and testifying about the past abuse. “[A] child who has been subjected to significant abuse or trauma might have difficulty remembering full details of their abuse as well as troubles with sequencing or recall [T]his is in fact a natural and predictable result of the impact of trauma on memory.” Addendum Tab B (Decl. of Lynn Dolce) ¶ 8. This was true for Ms. A.P.A., who explained in her asylum application that it was difficult even to “explain how hard it is for me remembering every detail this monster caused me during my childhood years” and that she “still suffer[s] a lot.” AR 324.

It would place an unfair and undue burden on someone who suffered traumatic sexual abuse as a child to provide any more evidence

⁷ See AOBTC, *Guidelines for Children’s Asylum Claims* (March 2009), <https://www.refworld.org/docid/4f3e30152.html>; David L. Neal, EOIR, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children* (May 2007), <http://myattorneyusa.com/storage/upload/files/matters/guidelines-for-immigration-court.pdf>; UNHCR, *Guidelines on International Protection: Child Asylum Claims* (Dec. 22, 2009), <http://www.unhcr.org/50ae46309.html>.

of their persecutors' motivation than the current record contains. Ms. A.P.A. certainly could not have been expected to understand the reason for the abuse as a child. Indeed, she did not come to self-identify as a transgender woman until adulthood. AR 173. That does not mean that the reasons for her uncle's abuse did not include his perception of her gender nonconformity at the time. The proper nexus analysis in this case thus does not turn on whether Ms. A.P.A. could answer government counsel's question why her uncle abused her. AR 175. She provided direct and circumstantial evidence sufficient to show his reasons included a protected ground, and the law does not require her to show that she understood his precise motivation for harming her at the vulnerable age of four.

* * * *

Any gaps the Court might find in the record with respect to nexus must be considered in light of the IJ's failure to probe for relevant testimony. *See generally Jacinto*, 208 F.3d at 733–34. The IJ did not ask a single question relating to her uncle's motivations during his minimal questioning about him. AR 157–60. The IJ's failure to develop the

record of nexus was prejudicial because it was dispositive to the Agency's rejection of her claims.

C. The Board Should Have Applied the More Lenient “A Reason” Test to Ms. A.P.A.’s Withholding of Removal Claim

Any of the errors identified above in relation to the Agency's analysis of nexus for purposes of Ms. A.P.A.'s asylum claim similarly require remand of her withholding of removal claim. *See, e.g., Sanchez Jimenez*, 492 F.3d at 1237, 1239 (remanding withholding of removal claim based on error in analysis of nexus for asylum eligibility).

However, even if the Court does not find that the Agency erred in finding no nexus for purposes of asylum eligibility, it should still remand her withholding of removal claim because the Agency applied the wrong nexus standard to this alternative form of relief.

Withholding of removal and asylum are distinct forms of protection, with different statutory grounding. When Congress amended the asylum statute to require that an applicant's protected ground be “at least one central reason” for her persecution, it did not amend the withholding of removal statute, which merely requires that a protected ground be “a reason” for the threat to her life or freedom. *Compare* 8

U.S.C. § 1158(b)(1)(B)(i), *with id.* § 1231(b)(3)(C). This Court should apply the persuasive reasoning of the Sixth and Ninth Circuits to hold that the withholding of removal statute requires an applicant to show that her protected status constitutes “a reason” rather than “at least one central reason” for persecution. *See Guzman-Vazquez v. Barr*, 959 F.3d 253, 270–74 (6th Cir. 2020); *Barajas-Romero v. Lynch*, 846 F.3d 351, 357–60 (9th Cir. 2017).⁸

If the Court finds that Ms. A.P.A.’s membership in her particular social groups did not constitute “one central reason” for her persecution, remand would be required for the Board to consider whether it was “a reason” for her persecution, which the record clearly indicates it was. *See Guzman-Vazquez*, 959 F.3d at 273–74 (noting that the “a reason” standard is a “comparatively weaker mixed–motive test” and remanding for reconsideration under correct standard).

⁸ This Court applied the “one central reason” test to both asylum and withholding of removal claims in *Perez-Sanchez v. U.S. Attorney General*, but it only considered the text of 8 U.S.C. § 1158(b)(1)(B)(i), without addressing § 1231(b)(3)(C). 935 F.3d 1148, 1158 (11th Cir. 2019).

III. Remand Is Necessary for the Agency to Properly Analyze Future Fear Based on a Protected Ground

The Agency did not properly assess the protected reasons for Ms. A.P.A.'s fear of future harm in Mexico. Her evidence of past persecution based on her social group membership should have conferred a rebuttable presumption of, and the record independently establishes, future fear of harm directed at her individually. And substantial evidence does not support the Agency's rejection of the alternative "pattern or practice" theory of future fear.

A. The Record of Past Persecution Confers a Rebuttable Presumption of a Well-Founded Fear of Future Harm

Because Ms. A.P.A. showed nexus between past harm and her transgender identity under the controlling standards and there was no finding that the government of Mexico is able and willing to protect transgender women, the Agency should have applied a rebuttable presumption of a well-founded fear of future persecution directed at her individually. 8 C.F.R. §§ 1208.13(b)(1) (2020) and 1208.16(b)(1)(i) (2020).⁹ The government presented nothing to rebut this presumption.

⁹ This brief cites the pre-January 11, 2021 versions of these regulations, in light of the preliminary injunction in *Pangea Legal Servs. v. U.S.*

The record also independently establishes a well-founded fear of future, specifically targeted harm based on Ms. A.P.A.’s transgender identity. *See* AR 323 (explaining her uncle’s “involv[ment] with drugs and guns” and that he “rejects gay people, he torture[s] and kill[s] them); AR 324 (her uncle “pays to kill his enemies and gay people. I know he will harm me. He is very dangerous and homophobic.”); AR 333 (describing anti-transgender animus in Mexico and fear of torture or death by her uncle because of his similar views); AR 157–161 (testifying about her uncle’s connection with guns and the government).

B. The Record Establishes a Well-Founded Future Fear Under a Pattern or Practice Theory

Protection based on a pattern-or-practice theory under 8 C.F.R §§ 1208.13(b)(2)(iii) or 1208.16(b)(2)(i) does not require evidence that an applicant would likely be singled out individually for harm. *See Lorenzo-Lopez v. Whitaker*, 747 F. App’x 587, 588 (9th Cir. 2019) (holding that even in the absence of past persecution, evidence of “serious conditions threatening transgender persons in Mexico” independently established a well-founded fear).

Dep’t of Homeland Sec., --- F. Supp. 3d ---, No. 20-cv-09253-JD, 2021 WL 75756 (N.D. Cal. Jan. 8, 2021).

As set forth in pages 41–51 of Ms. A.P.A.’s Opening Brief and in the Amicus Brief of Lambda Legal Defense and Education Fund et al., transgender women unquestionably face a pattern or practice of persecution in Mexico. This Court has held that a similar record could support a finding of well-founded fear under a pattern or practice theory of persecution. *See Halim v. U.S. Att’y Gen.*, 255 F. App’x 485, 488 (11th Cir. 2007) (noting that the petitioner presented “numerous articles that detail violence and harassment against” people of the petitioner’s ethnicity and religion). “[T]o be a member of a group that faces a high probability of persecution in a foreign country,” which the record shows here is the case for transgender women in Mexico, “is enough to establish that [she is] at risk of persecution if deported to that country.” *Velasquez-Banegas v. Lynch*, 846 F.3d 258, 261 (7th Cir. 2017).

In *Velasquez-Banegas*, the petitioner sought to avoid removal to Honduras, a country he had left over a decade ago and where he feared persecution based on his HIV-positive status. The court recognized that he was “hardly in a position, living in the United States, to assess the particular risk to *him* if he [was] deported, as compared to the average HIV sufferer in Honduras” and faulted the IJ for requiring evidence he

would be individually targeted if returned to his home country of Honduras. *Id.* at 261. Instead, he could establish a fear of future persecution by showing a pattern or practice of persecution of HIV-positive people, which he did with country conditions evidence. *Id.* at 262–64.

Similarly here, Ms. A.P.A. has not been in Mexico since she was ten, long before she realized her transgender identity. She nonetheless provided conclusive country conditions evidence that she would face substantial risk of future harm in Mexico because of her transgender identity. The Agency failed to give reasoned consideration to Ms. A.P.A.’s evidence of pervasive, extreme violence against transgender women in Mexico, appearing at AR 154–155, 162–163, 180–182, and 204–264.

On remand, the Court should instruct the Agency to address whether Ms. A.P.A. has shown a well-founded fear of persecution based on the documented pattern or practice of persecution of transgender women in Mexico, through reasoned consideration of the record.

CONCLUSION

Amici respectfully support the granting of this petition for review and urge the Court to address the controlling legal standards for adjudicating nexus.

Dated: May 26, 2021

Respectfully submitted,

/s/ Jamie L. Crook

Jamie L. Crook
Center for Gender & Refugee Studies
UC Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102

Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rules 29(a)(5) and 32(a)(7) of the Federal Rules of Appellate Procedure because, excluding the parts of the document exempted by Rule 32(f), this document contains 6,491 words. This word count was calculated by Microsoft Word 2016, the word processing system used to prepare this brief. This document complies with the typeface requirements of Rule 32(a)(5) because it has been prepared in Century Schoolbook, a proportionally spaced, 14-point font.

Dated: May 26, 2021

Jamie L. Crook
Jamie L. Crook

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I electronically filed the foregoing **BRIEF OF AMICI CURIAE NON-PROFIT ORGANIZATIONS, LAW SCHOOL CLINICS, AND LAW PROFESSORS IN SUPPORT OF PETITIONER** with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will automatically send an email notification of such filing to the attorneys of record who are registered CM/ECF users.

Dated: May 26, 2021

/s/ Jamie L. Crook
Jamie L. Crook

Attorney for Amici Curiae

ADDENDUM

Tab A	List of Amici Curiae	Add. 2
Tab B	Declaration of Lynn Dolce, L.M.F..T., Expert on Child Abuse and Trauma	Add. 4
Tab C	<i>In re S-R-P-O-</i> , AXXX XXX 056 (B.I.A. Dec. 20, 2018)	Add. 21
Tab D	Nielan Barnes, <i>Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States</i> , 2 SEXUALITY, GENDER & POL'Y 5 (2019)	Add. 25

Tab A

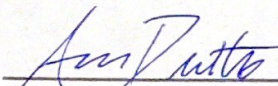
List of Amici

1. Center for Gender & Refugee Studies at University of California
Hastings College of the Law, San Francisco, CA
2. Centro Legal de la Raza, Oakland, CA
3. Ellison, Charles “Shane” Prof.
4. Gupta, Anju Prof.
5. Harris, Lindsay Prof.
6. Harvard Immigration & Refugee Clinical Program, Cambridge, MA
7. Open Immigration Legal Services, Oakland, CA
8. Refugee and Immigrant Center for Education and Legal Services
 (“RAICES”), San Antonio, TX
9. Southern Poverty Law Center, Montgomery, AL
10. Tahirih Justice Center, Falls Church, VA

Tab B

Statement of Anne Dutton Regarding Attached Expert Declaration

I, Anne Dutton, am a Staff Attorney at the Center for Gender & Refugee Studies (CGRS) based at the University of California Hastings College of the Law. On May 3, 2021, CGRS received a copy of the attached declaration written by Lynn Dolce, LMFT, an expert on child abuse, directly from Ms. Dolce via mail. Ms. Dolce has authorized CGRS to publicly release and disseminate copies of the attached declaration. CGRS provides true copies of the original document on file with our office in support of individual asylum claims. I certify that the attached is a true copy of the original document on file with our office.



Anne Dutton

5/5/21

Date

DECLARATION OF LYNN DOLCE, L.M.F.T., EXPERT ON CHILD ABUSE AND TRAUMA

I, Lynn Dolce, declare under penalty of perjury the following:

Introduction

1. I am a Licensed Marriage and Family Therapist in California. I have more than thirty years of experience working with children who have been abused. I currently serve as the Chief Executive Officer for Edgewood Center for Children and Families, which has locations throughout the Bay Area. At Edgewood, I oversee the full array of services we provide to children who have experienced trauma and abuse, including acute inpatient and crisis stabilization services, community-based services, and prevention and early intervention programming.
2. At the request of the Center for Gender & Refugee Studies, I am providing my expert opinion regarding the dynamics and causes of child abuse. Over my career, I have developed particular expertise on the impacts of child abuse and trauma on family relationships, including the intergenerational transmission of trauma. Throughout my career, I have worked primarily with children and families of color, particularly children from Latino and/or Black families who tend to be overrepresented in our child welfare and juvenile justice systems. I also have significant experience working with children and families that have immigrated to the United States. In this declaration, I discuss general dynamics of child abuse that I have observed across families of different racial and immigration backgrounds.

Qualifications and Background

3. I received my Masters in Clinical Psychology from Antioch University in 1987, with a focus on feminist therapy, and have been licensed by the California Board of Behavioral Sciences as a Marriage and Family Therapist since 1995. Since 2005, I have led a family therapy seminar through the University of California San Francisco (UCSF) Department of Psychiatry for a multidisciplinary group of trainees, including UCSF psychiatry and psychology fellows. From 2006 to 2016 I was also an associate clinical professor at UCSF School of Nursing, where I taught master's level and post-master's level courses on psychotherapeutic techniques with children and adolescents.
4. From 2013 to 2016, I was the director of Foster Care Mental Health for the San Francisco County Department of Public Health. As director, I led program development and evaluation of all mental and behavioral health services provided to all San Francisco County children and youth, and their families within the foster care system. The vast majority of the children in the foster care system in San Francisco County are placed in foster care due to abuse or neglect from their caregivers. Our services and those we

contracted out were particularly designed to be responsive to experiences of trauma, neglect and abuse.

5. From 1998 to 2013, I worked in Child and Adolescent Services at the UCSF Department of Psychiatry, located at San Francisco General Hospital, first as clinical services coordinator and then as associate director. As clinical services coordinator, I was involved in the initial creation of the Child and Adolescent Services unit, in response to the lack of general outpatient care for children's mental health needs. In this role, I developed and implemented our clinical offerings for children from age birth to eighteen and provided clinical supervision to a multidisciplinary group of masters' level and postdoctoral clinicians and psychiatry residents. As associate director, I oversaw all aspects of our service delivery and program development and facilitated weekly multidisciplinary clinical case conferences. Virtually all of the children and adolescents I worked with had experienced some form of trauma, including traumatic loss of a parent or caregiver and a significant number had histories of abuse. Many of the children and youth suffered from complex trauma, which is defined as exposure to multiple traumatic events, frequently within a caregiving system that is supposed to be the child's source of safety and stability.¹ From 2008 to 2013 I was also the Clinical Director of the Family Acceptance Project at the UCSF Center on Excellence for Women's Health, the first evidence-based and family centered intervention for families of LGBTQ and gender variant youth.
6. Throughout my tenure at Child and Adolescent Services, I also maintained my own caseload of clients. The majority of my clients and those whose care I supervised came from immigrant families, predominantly Central American and Mexican families. Many were fleeing abusive situations, including domestic violence, government violence, coercive physical and sexual violence from local gangs, and economic instability. Many youth who I served reported family histories of domestic violence, or witnessing community violence.
7. While working at Child and Adolescent Services, I provided regular trainings to Child and Adolescent Services staff as well as external partners. This included a weekly child play therapy seminar for master's level and postdoctoral psychology trainees and the development of a Multicultural Clinical Training Program, which was accredited by the American Psychological Association. During this time, I also developed a curriculum for the San Francisco Unified School District on trauma-informed classrooms to ensure symptoms of trauma in children were understood and responded to appropriately. The

¹ See *Complex Trauma*, National Child Traumatic Stress Network (last visited April 9, 2021), available at <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma>. Children who have experienced complex trauma, such as family or community violence can develop a range of emotional, behavioral, cognitive, and relationships difficulties that can adversely affect their functioning, for example, difficulties in school. See, e.g., Michelle V. Porche, *Childhood Trauma and Psychiatric Disorders as Correlates of School Dropout in a National Sample of Young Adults*, 82 CHILD DEVELOPMENT 982 (2011).

curriculum was adapted for use in the San Francisco County Department of Public Health to train over 9,000 employees on how to become a trauma-informed system of care and is now nationally recognized by the Substance Abuse and Mental Health Services Administration.²

8. Prior to joining Child and Adolescent Services, I worked as a therapist in private practice for more than a decade, providing family and individual psychotherapy. My clinical focus was on intergenerational transmission of trauma, helping my adult clients explore how their histories with their families of origin were impacting their current family relationships. I also worked as a case management supervisor for the Family Mosaic Project, part of the San Francisco Department of Public Health, to develop and provide comprehensive services for children at imminent risk of out-of-home placement. I began my career working as a therapist in California Pacific Medical Center Children’s Hospital, where I facilitated group and family therapy at a residential behavioral program for adolescents with severe emotional disturbances, a significant number of whom had a history of abuse. I was also a founding member and board member of the Dimensions Health Clinic, a comprehensive health clinic for LGBTQ and gender variant youth in San Francisco County.

Dynamics of Child Abuse

Causes of child abuse

9. When considering the motivations for child abuse, understanding the context of the family is critically important. Maltreatment of children occurs in families from all walks of life, all incomes, religions and ethnicities. Child abuse is the result of various factors working together that negatively impact a family. The key risk factor for child abuse is stress on the parent or parental caregiving system, which often includes extended or chosen family.³ The relevant stressor could be many things, including poverty, economic stress, systemic racism, job discrimination, overcrowded living environments, marital conflict, or even the demands of caring for the child. Other common stressors that I have observed in my work are when a parent perceives their child as being gay or acting outside of normative gender roles, as well as when a child has an undiagnosed learning disorder or disability that makes reciprocal communication difficult.
10. Regardless of the stressor, abuse occurs when a parent or parenting caregiver is unable to manage their feelings of being stressed or overwhelmed and reacts with violence. For example, in some cases, a parent or parenting caregiver may feel overwhelmed or threatened by a child’s developmentally age-appropriate demands for attention, food,

² Lynn Dolce et al., *Implementing a Trauma-Informed Public Health System in San Francisco, California*, 46 HEALTH EDUCATION & BEHAVIOR 251 (2019).

³ For the sake of simplicity, I refer to a child’s “parent” or “parenting caregiver” throughout this declaration. These terms should be understood as encompassing the variety of people who can occupy caregiving roles for children, for example, grandparents, aunts, uncles, and step-parents, in addition to biological parents. The dynamics that result in child abuse are similar regardless of the precise relationship of the abusive adult to the child.

nurturing, or other basic needs. In taking out their stress, anger and frustrations on the child, parents reassert their control, dominance, or power. Many abusive parents perceive their children as their property, giving them a sense of ownership over the child and the child's body that makes them the target for the parent's violence. In many cases, a parent's abuse of a child is also rooted in intergenerational trauma. For example, a parent's own experience of being abused by *their* parents growing up may result in the mindset that it is appropriate and justifiable to be physically violent to their own children. This intergenerational transmission of trauma and abuse can help explain why parents who abuse their own children will usually not harm other children outside of their family, as the abuse is grounded in the acceptance of interfamilial violence.

11. This sense of parental ownership and control over a child is especially prevalent when a family comes from a community with a history of strict gender roles that subjugate children and women to men, for example, societies where machismo is prevalent. Machismo is defined as a strong sense of masculine pride in the ability to provide for one's family, to be self-reliant and "manly." Machismo can be positively associated with a man's responsibility to provide for, protect and defend his family but can also result in hypermasculinity, feelings of inferiority, or insecurity.⁴ Machismo is a social construction and should be understood as such—as having multiple layers—including the pressure to raise children in a certain way, based on socially constructed gender roles throughout a child's development. Sometimes it creates a sense of inferiority that drives boys to reach an unattainable level of masculinity which in turn, leads to the aggressive behavior boys learn from adult men. Unexamined machismo can be very dangerous for a child. In these contexts, an abusive father is often harming his child as a result of his own history of trauma, perpetuating the same kinds of abuse to which he was subjected as a child. As mentioned, over time, this intergenerational transmission of trauma can serve to normalize child abuse.
12. In many cases, the abusive parent is actually a step-parent who does not have a biological relationship to the child. When abuse is occurring in a blended family, the abuser usually still believes they have the right to control their step-children but does not have the same level of attachment to the children. When the child is not a blood relative, it becomes easier for the abusive step-parent to distance themselves from the child's vulnerability and pain, which can put step-children at particular risk of abuse. Maltreating parents or parenting caregivers are less supportive, affectionate, playful or responsive to children. They are more likely to use harsh physical treatment and verbal aggression. This dynamic can also appear in other adults in the home who are not biologically related to the children, for example, in adoptive parents or a mother's boyfriend.
13. Substance use or abuse is not a cause of child abuse. Rather, substance use is a symptom of the same parental stressors that can lead to child abuse. Substance use is a maladaptive

⁴ Bron B. Ingoldsby, *The Latin American Family: Familism vs. Machismo*, 22 J. COMPARATIVE FAMILY STUDIES 57 (1991).

coping mechanism for managing stress, which can interfere with mental functioning and judgment. Though a parent may be intoxicated when abusing a child, it is not itself the motivation for the abuse.

Child abuse and intimate partner violence

14. Child abuse commonly occurs in situations of intimate partner violence. I would estimate that of the cases of intimate partner violence we were involved in at Child and Adolescent Services, 75 percent also involved child maltreatment. Child maltreatment that co-occurs with intimate partner violence is often the result of the child's efforts to intervene and protect their parent who is being abused, most commonly their mothers. In standing up for their mothers, children challenge the abuser's power and control, which may lead to abuse of the child. A child who witnesses intimate partner violence may also be neglected by parents or parenting caregivers who are focused on their partners and unresponsive to their children due to their own fears.
15. In situations of intimate partner violence, abusers also frequently target children for abuse as a way to inflict further harm on the mother or as a tactic to manipulate her. In so doing, the abuser is taking advantage of the vulnerability caused by the mother's love for her child; threats to harm the child can be an effective way to control the mother. Another dynamic that may occur in contexts of intimate partner violence arises when the abuser views the woman as tainted for some reason, for example, because she is divorced or has been sexually assaulted or raped. The abuser will often perceive her children as being equally tainted due to their association with their mother and subject them to abuse for that reason.
16. In addition to physical violence, children living with intimate partner violence are often subject to the trauma of witnessing abuse of a parent.⁵ Witnessing violence against any loved one can be traumatizing on its own, and it is particularly distressing when a child—who depends on their parents, and particularly their mothers, for safety and care—sees the source of their safety being subjected to serious violence. In that case, the abuse of the parent threatens the child's own continued well-being. Witnessing such a threat is a deeply traumatic experience for a child.

Differential treatment of children

17. When there are multiple children in a family, it is not uncommon for an abusive parent to subject the children to disparate levels of abuse. As described below, there are many factors that might result in disparate maltreatment for a particular child, including the child's gender, role in the family, and other particular characteristics. The differing levels of abuse inflicted on children complicates relationships between the siblings, and

⁵ Trauma is defined, in part, as experiencing or witnessing actual or threatened death, serious injury, or sexual violence. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271 (5th ed. 2013).

frequently results in a kind of survivor guilt for the children who are not targeted, and anger and confusion on the part of the child who is being abused.

18. Children are frequently singled out for particularly severe abuse due to a characteristic of theirs that triggers a negative reaction in the abusive parent. This might include, for example, physical appearance if the child resembles somebody who is viewed negatively by the abusive parent. In other cases, it may be a child's skin color; within some cultures and families, a darker-skinned child may be more susceptible to abuse. A chronic illness or disability also makes a child vulnerable to parental abuse. In addition gender non-conforming behaviors or, as mentioned below, sexual orientation or behavior perceived to be anything other than heteronormative can put a child at risk of abuse.
19. For families who adhere to strict gender roles, a child may be abused for straying from their normative gender role. I frequently see this dynamic in cases where a child is struggling with their sexual identity and/or gender identity. For example, if a boy is perceived as having feminine interests or behaviors, the abusive parent might beat the child to show him "how to be a man."
20. In contexts where girls are valued less than boys, a girl might be abused more severely or in different ways than boys simply because of her gender. For example, as girls age they become significantly more vulnerable to sexual abuse. Generally, children who do not live with both parents—as well as children living in homes with parental conflict, divorce, or domestic violence—have a higher risk of being sexually abused. Although children of all ages are susceptible to sexual abuse, adolescence is a particularly vulnerable time, especially for girls.⁶
21. Many girls who are abused also feel responsible for what has happened, a message that is often reinforced by mothers or parents who assume the girl brought it on herself, or tell her that abuse and pain is part of what it means to be a woman and that she should just accept it. These feelings of guilt and shame frequently also lead girls to blame themselves for harm inflicted on their siblings, thinking that if they had been a "better" victim in some way, the abuser may not have targeted others as well. These beliefs can significantly complicate a girl's ability to process and recover from her experiences of abuse.
22. As mentioned above, children who intervene in situations of intimate partner violence are often abused on that basis, and boys, particularly older boys, are most likely to be the child standing up to the abuser. Similarly, older boys often intervene to protect their younger siblings from harm, causing them to bear the brunt of the abuse. In my experience, boys who take on a kind of "protector" role also feel guilt for abuse inflicted on younger siblings/mother. They often report feelings of helplessness and powerlessness

⁶ See *Violence Against Women*, WORLD HEALTH ORGANIZATION (March 9, 2021), available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

in their inability to protect their mother or siblings from harm. Attempts to protect others in the home may lead to additional abuse, as the perpetrator may feel that his authority in the home is challenged or undermined by the victim.

23. An abusive parent's treatment of a child often changes as they age. The emotional and physical risks posed by abusive parents do not end when the child becomes an adult. In many cases, as a child ages, the abuse becomes worse and more lethal. As children become older and are more equipped to protect themselves, their efforts to resist further abuse can trigger more severe harm. Additionally, all family systems have a homeostasis, meaning established patterns of interaction and relationship between members. Even if a child has spent significant time away from their parents, upon return the family will revert to homeostasis, making it highly likely that the same abusive patterns will reoccur, notwithstanding the child's age. For children who have not processed their previous experiences of abuse, return to their family can be extremely re-traumatizing, as they are forced to relive memories of past abuse, while risking additional physical harm.

Reporting child abuse

24. It is very common that a child would not seek help outside their family system when they are being abused. Even when children are being subjected to severe abuse, they are still dependent on their parents to take care of them. If a child attempted to report a parent to the police or other institution, they risk depriving themselves of their primary source of food, shelter, and other basic needs.
25. Additionally, in many cases, children who do report a parent suffer their own consequences for reporting, in the form of being exiled from their families or being severely isolated. A child's self-report may also put them at risk for worsened abuse from the parent they have reported, especially if the authorities do not intervene or see a problem. In my work, most cases of child abuse are brought to light by mandated reports, rather than a child taking affirmative steps on their own to seek help.

Impacts of child abuse

26. Though the physical toll can be severe, the emotional impact of child abuse cannot be overstated. Many times, the children I have worked with have expressed that while the beatings or other physical violence they endured were extremely painful, the lingering harm came from the abuser's comments during the abuse. When children are repeatedly told that they are worthless, that they will not amount to anything, that nobody wants them, it becomes a truly traumatic narrative that can take years of sustained work to overcome. Some children do manage to build strong mental defenses to avoid internalizing the messages they are receiving but those same defenses also make it very difficult for children to feel positive emotions or build healthy relationships.
27. A person's ability to regulate moods, emotions and stress response is a biopsychosocial function rooted their early childhood relationships. There is a clear link between a history

of abuse and negative impacts on the endocrine system, which plays a key role in the regulation of stress.⁷ Accordingly, people who experience prolonged exposure to violence and abuse develop limitations in their capacity to regulate their arousal state.

28. Research shows that child abuse impacts the limbic system of the brain—including the amygdala and hippocampus—which controls the “fight or flight” response. The hippocampus plays a key role in the encoding and retrieval of information and is implicated in the generation of dissociative states, anxiety, and panic disorders.⁸ Hippocampal volume has been found to decrease after exposure to environments of extreme stress, especially in childhood.⁹ This is associated with poorer declarative memory, increased risk of developing symptoms of post-traumatic stress disorder, depression and even physical inflammation. Thus, a child who has been subjected to significant abuse or trauma might have difficulty remembering full details of their abuse, as well as troubles with sequencing or recall of when the abuse happened. A child might also understandably avoid talking about abuse, or have a difficult time talking about what happened to them to an unfamiliar adult (e.g., a government official at the border or a child protective worker). From my work, I have seen that in many cases, members of the same family often have different recollections of the same event. Narratives may get fragmented and confused in the “retelling” of the events and are sometimes dismissed as a result, but this is in fact a natural and predictable result of the impact of trauma on memory.
29. Children who have been abused often have very complex feelings towards their abusive parent. As children, adolescents, and adults, humans instinctively seek loving relationships with our parents, especially with our mothers. If the child’s caregivers are loving and responsive, the child develops a secure attachment to them, which facilitates development of secure attachments with others later in life. However, if a child is fearful of their caregiver, they are in a quandary. The person who is supposed to protect them is the source of their biggest fear, and a source of danger. The child’s impulse and desire is still to connect with the “scary” caregiver, but then, immediately pull away out of fear upon being abused. When a caregiver is sometimes loving and responsive and at other times abusive, this creates a chaotic, internal tug-of-war in the child. The child will seek connection and then quickly pull back, not knowing who or what to trust, but always desiring some connection. These children may develop what is referred to as a

⁷ L. Hertzgaard et al., *Adrenocortical Responses to the Strange Situation in Infants with Disorganized/Disoriented Attachment Relationships*, 66 CHILD DEVELOPMENT 1100 (1995); Gretchen N. Neigh et al., *The Neurobiological Toll of Child Abuse and Neglect*, 10 TRAUMA, VIOLENCE, & ABUSE 389 (2009).

⁸ B. Desgranges et al., *The Neural Substrates of Memory Systems Impairment in Alzheimer’s Disease: A PET Study of Resting Brain Glucose Utilization*, 121 BRAIN 611 (1998); Jeffrey Gray & N. McNaughton, *Comparison Between the Behavioural Effects of Septal and Hippocampal Lesions: A Review*, 7 NEUROSCIENCE AND BIOBEHAVIORAL REVIEWS 119 (1983); M. Marcheselli Mesulam, *A Cortical Network for Directed Attention and Unilateral Neglect*, 10 ANNALS OF NEUROLOGY 309 (1981).

⁹ E. Gould & P. Tanapat, *Stress and Hippocampal Neurogenesis*, 46 BIOLOGICAL PSYCHIATRY 1472 (1999).

disorganized attachment style as a result of this trauma, which can complicate their relationships later in life.

30. In my experience, this instinctive, hard-wiring for attachment and connection means that even children experiencing severe abuse are likely to still seek out positive relationships with their abusive parent(s). However, the experience of being abused leaves children with the very difficult inner struggle of both loving their abusive parent and fearing and hating their abusive parent. Though children understand at some level that the abuse they are experiencing is wrong, they also frequently have feelings of guilt and desires for connection that further complicate their relationship with the abusive parent.
31. These traumatic experiences of abuse are often not integrated into the child's emotional or physical world because they have no way of escaping the abusive adult. In order to process this kind of complex trauma, which results from ongoing chronic harm within interpersonal relationships where there is an imbalance of power, survivors of abuse must be in a safe physical location, away from the abuser(s). Once a safe haven is established, over time, in a trusting relationship with a trauma specialist, the work of healing may begin. There is no one way to process complex trauma. In fact, it is common for children, youth, and adults to come in and out of therapy sporadically, as needed. This is not to be confused as resistance to therapy and the decision to leave therapy for a period should not be read as a signal that they have resolved their past trauma. Rather, this is a common and expected rhythm of the work of integrating memory, sensory, emotional and cognitive material to create understanding and meaning from fragmented and chaotic experiences.
32. If children are not able to receive help and process their experiences, child abuse can result in lifelong social and emotional consequences. Most commonly, this takes the form of mental health conditions and disorganized attachment, as discussed above. These conditions make it very difficult to maintain interpersonal relationships as an adult, including difficulty trusting romantic partners and other peers. No two survivors are the same, although most will have problems understanding themselves and others. Many survivors of abuse feel shame, guilt, paranoia and a sense of worthlessness. Children and adults who have been abused may also experience suicidal thoughts or attempts, intentional self-harm and a dramatic increase in the fight or flight response. Adults who have been abused as children also often struggle with conflict, either attempting to avoid it entirely or seeking to trigger fights to allow them to be in control of the conflict. There are also significant and well-documented physical health risks associated with unresolved trauma, including asthma, strokes, and heart disease.¹⁰

¹⁰ See, e.g., CENTERS FOR DISEASE CONTROL AND PREVENTION, ADVERSE CHILDHOOD EXPERIENCES (ACES): PREVENTING EARLY TRAUMA TO IMPROVE ADULT HEALTH (Nov. 2019), available at <https://www.cdc.gov/vitalsigns/aces/index.html>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 12 day of April, 2021, in San Francisco, California.

L. Dolce, MFT

Lynn Dolce, L.M.F.T.

Lynn Dolce, MFT
LMFT32386
lynnd@edgewood.org

Clinical Experience, Teaching and Management

Seminar Leader

**Child and Adolescent Services (CAS) & Langley Porter Psychiatric Institute (LPPI)
University of California San Francisco/San Francisco General Hospital (UCSF/SFGH)
Department of Psychiatry**

2005-Present

Provide Family Therapy Seminar to Masters' level and Postdoctoral Psychology trainees, Licensed Clinical Social Worker (LCSW) trainees, UCSF Psychiatry Fellows, UCSF School of Nursing Masters Level Nurses and UCSF staff.

CEO, Edgewood Center for Children and Families

2017-Present

Provide leadership and oversight to the oldest child serving non-profit organization in Northern California, including: setting mission and vision, strategy and direction, modeling and setting Edgewood's organizational culture, values, and behavior while building and leading the senior executive team. Lead the senior executive team in securing and allocating capital to organizational priorities. Meet and respond to the needs of employees, clients, local partners, investors, donors and communities. Provide advocacy on behalf of vulnerable children, youth and families at local county, state and federal government institutions.

Seminar Leader

San Francisco Department of Public Health (DPH), Behavioral Health, Children, Youth and Families

2016-2019

Provide weekly intensive family therapy seminar and consultation and guidance to SF DPH staff and non-profit community based clinicians.

Associate Clinical Professor

UCSF School of Nursing

2006-2016

Taught Psychotherapeutic Techniques with Children and Adolescents for Masters' and Post-Masters' level Nurse Clinicians; Guest Lecturer for Family Therapy Seminar and Masters Entry Program in Nursing (MEPIN).

Child and Adolescent Services (CAS)
UCSF/SFGH Department of Psychiatry
2009-2014

Provide weekly semester-long Child Play Therapy Seminar to Masters' level and Postdoctoral Psychology trainees.

Our Children, Our Families (OCOF) Council
Training and Capacity Building Workgroup Member
2016-Present

Provide guidance to SF OCOF to support training staff and capacity building including: analyzing and identifying training and capacity gaps in terms of issues, staffing or populations, proposing common definitions, standards and practices and recommending areas for potential collaboration.

Director, Foster Care Mental Health
San Francisco Department of Public Health, Behavioral Health, Children, Youth & Families System of Care
2013-2016

Provided leadership and oversight for all behavioral health services for all SF County children and youth in Foster Care. Create, coordinate and direct development of programs, planning, execution and evaluation of the work of Foster Care Mental Health and community partnerships. Managed and oversaw all city, county, state and federal compliance and quality standards related to the assessment, triage, and oversight of San Francisco County dependents and at risk of dependency youth and families needing behavioral health services. Maintained liaison with outside agencies, community programs and other SF County Departments, such as, HSA, SFUSD, SF County Court, etc. in order to inform policies. Provided local and statewide advocacy on behalf of children and youth in Foster Care.

Core Team Curriculum Designer and Master Trainer
San Francisco Department of Public Health: Trauma Informed Systems Initiative
2012-Present

Created and developed a nationally (SAMSHA) recognized curriculum for a DPH system-wide training and trauma informed change management strategy. Created a state of the art training that recognizes how systems can become fragmented as a result of personal and organizational stress and trauma. The curriculum and training recognizes and teaches that it takes a conscious effort by individuals to help systems thrive.

Associate Director, Child and Adolescent Services
UCSF Department of Psychiatry, San Francisco General Hospital
2007-2013

Provided leadership and professional development to faculty and staff while providing oversight of clinic operations and service delivery. Responsible for overseeing county contracts and budgets as well as privately funded grants. Coordinate monthly Grand Rounds, weekly

staff and faculty meetings, involved in all aspects of service delivery and program development, including the APA accredited CAS Multicultural Clinical Training Program, which included training pre/post-doctoral psychologists, psychiatry fellows, nurse-practitioners, social workers and Marriage and Family Therapists (MFTs). Participating member of UCSF/SFGH Infant, Child and Adolescent Executive Committee. Responsible for training and developing a Training of Trainers (TOT) curriculum for UCSF Healthy Environments and Response to Trauma in Schools (HEARTS) in close partnership with SFUSD administrators, social workers and wellness coordinators. Documentation of all SFUSD trainings available upon request.

**Clinical Services Coordinator, Child and Adolescent Services
UCSF Department of Psychiatry, San Francisco General Hospital
1998-2007**

Responsible for development and implementation clinic services for children aged birth to 18 in need of mental health assessment and treatment. Duties include triage of referrals; assignment of cases to a multidisciplinary group of masters' level and postdoctoral clinicians and psychiatry residents, clinical staff and faculty; clinical supervision for trainees, supervision of administrative and clinical staff; training of staff and faculty in quality assurance; public representation of CAS; and participation in evaluation and outcome studies. Responsible for coordination of care with other service providers including primary care, neurology, adult trauma services, public and private schools, Human Services Agency (HSA) social workers and juvenile probation; and for overall program development including grant writing and creating collaborative relationships with community partners such as child care centers, domestic violence shelters, San Francisco Unified School District (SFUSD) schools and pediatric primary care clinics.

**Clinical Director
Family Acceptance Project (FAP)
UCSF Center on Excellence for Women's Health (COE)
2008-2013**

Collaboratively creating the first and only Evidenced Based Family Centered Intervention for families of lesbian, gay, bisexual, transgender, gender variant and questioning children and youth. Maintain oversight of all clinical and psycho-educational components of this three-year Robert Wood Johnson Foundation (RWJ) funded project in partnership with Dr. Caitlin Ryan, SFSU and the Marion Wright Edleman Institute. FAP was chosen to participate in an RWJ sponsored strategic communications year-long seminar, SPITFIRE.

**Clinical Case Conference Leader
Child and Adolescent Services (CAS)
UCSF/SFGH Department of Psychiatry
2010-2013**

Facilitate weekly multidisciplinary (Ph.d doctoral interns, Post doctoral fellows, Pediatric and Psychiatry residents and fellows, all clinical staff and faculty attend this meeting) clinical case

conference focused on patient care. Clinical formulation, therapist's process and current research are organizing principals of that guide this weekly conference.

Case Management Supervisor

Family Mosaic Project

SF Department of Public Health, Division of Mental Health and Substance Abuse

1994-1997

Responsible for the development and oversight of the coordination, fiscal authorization and delivery of innovative wrap-around Mental Health services for San Francisco County children and youth who are severely troubled and who are at imminent risk of out of home placement. The project is one of eight pilot projects initiated in the U.S. by the Robert Wood Johnson Foundation through its Mental Health Services Program for Youth to create system change at a statewide level in programs and in fiscal strategies for this target population. In addition to planning and implementation of services, duties included coordination of local county agencies and departments including SF Juvenile Probation, SF Department of Human Services, San Francisco Unified School District, SF Department of Public Health and Mental Health, coordination of weekly multi-disciplinary team meetings, monthly psycho-social medical rounds with UCSF San Francisco General Hospital staff; and development of quality assurance plans for city, county and state audits and program reviews.

Private Practice

San Francisco, CA

1991-2009

Specialization in Couples and Individual Psychotherapy.

Facilitated Imago therapy couples workshops for lesbian, gay and straight couples. Certified Imago Couples Therapist and Workshop Presenter.

Supervisor

Family Therapist, Milieu Therapist and Clinical Supervisor

Adolescent Intensive Residential Services, California Pacific Medical Center (CPMC)

Children's Hospital, San Francisco, CA

1990-1994

Co-facilitated group and family therapy and implementation of treatment plans at a sub-acute level 14, coed, residential behavioral, psycho-dynamic program specializing in evaluation and treatment for adolescents with severe emotional disturbances, utilizing a multi-disciplinary team of clinicians. Supervised BA and MA level social work students and staff.

Co-Director/Group Facilitator

Antioch University, Women's Studies Semesters in Europe, Yellow Springs, Ohio

June 1993-December 1993; June 1989-December 1989

Implemented an innovative effort designed to enhance the cross-cultural education of American women by networking with women in Government, Education, Health and Mental Health Services, Arts and Media and Grassroots Political Organizations in Europe (England, Germany,

Netherlands, Yugoslavia and Poland). Designed and facilitated a course in organizational group process: *Building Alliances and Coalitions*. Provided instruction in conflict resolution, communication practices, group process, cultural sensitivity and gender relations for fifty female undergraduate students representing universities across the United States; served as a consultant to Educators and Community Leaders in Europe.

Professional Activities

Dimensions Health Clinic, San Francisco, CA

Founding Member, 1998

Board Member, 1999-2001

Dimensions, one of just three health clinics for lesbian, gay, bisexual, transgender and questioning youth in the country, is a collaborative effort between Special Programs for Youth (SPY), New Leaf, Mission-Castro Health Clinic, Healthy Initiatives for Youth (HIFY), and Lavender Youth Recreation & Information Center (LYRIC), it continues to thrive as the first comprehensive health clinic for LGBTQ and Gender Variant youth in SF County.

Presentations and Trainings

Available upon request

Education

MFT License, 1995

Member, California Association of Marriage and Family Therapists, (CAMFT)

Clinical Member, The Institute for Relationship Therapy, New York, New York

Masters in Clinical Psychology Antioch University, 1989

BA, English, 1987

Concentration in Film

BA, Women's Studies, 1987

Douglass College, The State University of New Jersey, Rutgers, New Brunswick, New Jersey

References

Available upon request

Tab C

Falls Church, Virginia 22041

File: A [REDACTED]-056 – Tucson, AZ

Date: DEC 20 2018

In re: S [REDACTED] R [REDACTED] P [REDACTED] O [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel Wilson, Esquire

ON BEHALF OF DHS: Gilda M. Terrazas
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated August 2, 2017, denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A); 8 C.F.R. §§ 1208.13(b)(1), 1208.16(a), 1208.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. In support of those applications, the respondent credibly testified that on August 18, 2016, she was abducted and blindfolded in Mexico by unknown individuals, and then held for 2 or 3 days in an unknown location where she was repeatedly raped (IJ at 2-3, 9; Tr. at 124, 127-34). The respondent further testified that immediately following this incident, she went to a hospital where she obtained medical treatment for her injuries, and also went to the police, but a report was not filed because the respondent believes that the authorities were not taking her seriously (IJ at 3; Tr. at 139-43).

Based on the foregoing facts, the respondent argues that she suffered past persecution in Mexico, and also has a well-founded fear of future persecution there, on account of her membership in either of two "particular social groups," which she defines as "Mexican women" and "Mexican women who are victims or potential victims of gender-motivated violence." Although the Immigration Judge agreed with the respondent that the harm she experienced in Mexico was severe enough to rise to the level of past "persecution" (IJ at 13), he determined that the respondent was not eligible for asylum or withholding of removal because neither of her claimed "particular social groups" was cognizable (IJ at 11-13). The respondent challenges that determination on appeal (Respondent's Br. at 4-7).

As previously stated, the respondent asserts that she belongs to two particular social groups, comprised of “Mexican women” and “Mexican women who are victims or potential victims of gender-motivated violence.” To establish that these groups are cognizable under the asylum and withholding of removal statutes, the respondent must prove that the groups are: “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Mexican] society....” *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff’d in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

The Immigration Judge found that although “Mexican women” satisfies the foregoing immutability and social distinction requirements, it lacks “particularity” because it defines a “demographic unit” of great diversity rather than a discrete group, and is “exceedingly broad because it would conceivably include a majority of the population of Mexico” (IJ at 12). The Immigration Judge also found that the group “Mexican women who are victims or potential victims of gender-motivated violence” is not cognizable because it is circular (IJ at 12-13).

We agree with the Immigration Judge’s decision as it relates to “Mexican women who are victims or potential victims of gender-motivated violence.” To be cognizable, a particular social group must exist independently of the harm claimed by its members. *Matter of A-B-*, 27 I&N Dec. at 317, 334-35; *Matter of W-G-R-*, 26 I&N Dec. at 215; *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007). The respondent’s alternative group does not satisfy that requirement because it is defined by reference to the persecution (i.e., “gender-motivated violence”) its members claim to suffer (or fear).

Following the Immigration Judge’s decision and during the pendency of this appeal, the Attorney General issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), clarifying the criteria required to establish an asylum claim based on membership in a particular social group. In light of this intervening precedent decision, we will remand the record to allow the Immigration Judge to supplement his decision and reconsider the respondent’s asylum and withholding of removal claims insofar as they are based on her claimed membership in a particular social group comprised of “Mexican women.” In evaluating the “particularity” of the claimed group, the Immigration Judge should consider *Matter of A-B-* as well as pertinent portions of *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093–94 (9th Cir. 2013), and *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010). *Accord Ticas-Guillen v. Whitaker*, --- F. App’x ---, No. 16-72981 (9th Cir. Nov. 30, 2018), *available at* 2018 WL 6266766. On remand, the Immigration Judge should also consider whether the respondent has demonstrated a nexus between her proposed particular social group and the past harm she suffered or future harm she fears and whether the Mexican government was (or will be) unable or unwilling to control her persecutors. See *Matter of A-B-*, 27 I&N Dec. at 320, 343-44; see also *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005) (explaining that asylum and withholding of removal require proof of persecution

by a “government official or persons the government is unable or unwilling to control”). We express no opinion regarding the ultimate outcome of the respondent’s case.¹

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

¹ Our present order contemplates further consideration of the respondent’s applications for asylum and withholding of removal. To avoid piecemeal review, we reserve judgment at this time with respect to the respondent’s eligibility for protection under the Convention Against Torture.

Tab D

Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States

Nielan Barnes

Department of Sociology, California State University Long Beach, Long Beach, CA, USA

Correspondence

Nielan Barnes, Department of Sociology, California State University Long Beach, Long Beach, CA, USA.
Email: Nielan.Barnes@csulb.edu

Abstract

Despite that Mexico has experienced significant legislative gains for LGBT rights, why is transphobic violence on the rise, driving increasing numbers to immigrate to the United States, even though the United States also experiences high levels of transphobic violence? This paper uses action-based research from within the “asylum-advocacy nexus” to analyze the experiences of Mexican transgender and gender non-conforming persons within both the Mexican society and the US society and asylum process. Data show early childhood socialization is deeply informed by conservative religious (trans- and homophobic) ideas and practices that extend from the family and church into each sector of society—educational, employment, health care, public security, popular culture, sports, etc. Despite some legislative advances and possibilities for empowerment, there remains a programmatic need to address a culture of violence against sexual minorities within family, educational, legal, and public security sectors in both countries.

KEY WORDS

asylum, country conditions, human rights, immigration, Mexico, transgender, United States

1 | INTRODUCTION

The first four months of 2016 counted 100 reported murders of transgender¹ and gender-diverse people worldwide, which was the highest number registered in so little time since 2008² (Transgender

Murder Monitoring Project, 2017). In the Americas, the average life expectancy for transgender persons is between 30 and 35 years of age (Inter-American Commission on Human Rights, 2015). As reported by the Transgender Murder Monitoring project (2017) and other sources (de la Dehesa, 2010; Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs, & Human Rights, 2014; Transgender Law Center, 2016) Brazil ranks first, Mexico second, and the United States third (see Table 1) in absolute numbers of murders. Relative murder rates (see Table 2), however, indicate a marked increase over time for both Brazil (from 0.49 in 2013 to 4.68 in 2017) and Mexico (from 0.36 in 2013 to 2.37 in 2017), whereas the US murder rate has increased by very little (from 0.05 in 2013 to 0.50 in 2017).

While it is difficult to give an exact rate, sources (Gates, 2013; United Nations Refugee Agency, 2015) note that the number of LGBT asylum seekers in the United States has risen sharply in recent years, particularly those coming from Central America and Mexico. Estimates (Gates, 2013) calculate there are 267,000 LGBT identified individuals among the adult undocumented immigrant population (2.7% of undocumented adults). This paper asks why is transphobic violence on the rise in Mexico, despite significant legislative changes in favor of gay marriage and adoption and a relatively high ranking as a “gay friendly” Latin American country (Corrales, 2012)? And why are increasing numbers immigrating North, to the United States, despite that the United States also experiences high levels of transphobic violence?

To answer that question, this paper uses direct action research—specifically the concept of the “asylum-advocacy nexus” (Hepner, 2015)—to identify and understand patterns of violence experienced by transgender persons from Mexico who are seeking asylum in the United States. This paper expands on previous research on the topics of “sexual minority” immigration and citizenship (Epstein & Carrillo, 2014; Gates, 2013; Gruberg, 2014; Luibheid, 2005), LGBT asylum seekers and refugees (Arnold, 2013; Jenkins, 2010; Jordan, Bahreini, & Lidstone, 2009; McClure, Nugent, & Soloway, 2000; Walker-Said, 2015), and LGBT immigrant human rights activism and legislation (Hepner, 2015; Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs, & Human Rights, 2014; Transgender Law Center, 2016). Despite proliferation of research, few have focused on the experience of transgender immigrants and asylum seekers

TABLE 1 Country ranking by absolute number of transgender deaths 2008–2018

	Brazil	Mexico	United States
TOTAL	1238	408	209
2018	167	71	28
2017	133	47	21
2016	136	61	27
2015	113	35	22
2014	132	40	14
2013	104	45	23
2012	126	49	17
2011	103	33	17
2010	99	14	9
2009	68	9	14
2008	57	4	17

Source: TvT research project (2018) “Trans Murder Monitoring (TMM) TDoR 2018 Update”, Transrespect versus Transphobia Worldwide TvT project website: https://transrespect.org/wp-content/uploads/2018/11/TvT_TMM_TDoR2018_SimpleTable_EN.pdf and https://transrespect.org/wp-content/uploads/2018/11/TvT_TMM_TDoR2018_Tables_EN.pdf

TABLE 2 Rate of transgender deaths in 2013, 2015, 2016, and 2017

	Brazil	Mexico	United States
2017 ^a	4.68	2.37	0.50
2016 ^b	4.49	2.21	0.48
2015 ^c	3.84	1.77	0.40
2013 ^d	0.49	0.36	0.05

Sources:

^a<https://transrespect.org/en/tdov-2017-tmm-update/>.^b<https://transrespect.org/en/tmm-trans-day-remembrance-2016/>.^c<https://transrespect.org/en/transgender-day-of-remembrance-15-tmmupdate/>.^d<https://transrespect.org/en/transgender-europe-tdor-2013/>.

from an applied theoretical (“theory in praxis”) perspective that includes analysis of both sending and receiving country contexts. This analysis of both Mexico and US contexts indicates ongoing institutionalized violence and a programmatic need to drill down into micro-level family socialization, educational, religious, legal, and public security processes to combat a deeply embedded culture of violence against sexual minorities in both countries. This paper addresses that void and provides an analysis generally useful to LGBTQ asylum seekers, immigration lawyers, judges, activists, policy-makers, and academics in North America and globally.

2 | THEORETICAL AND METHODOLOGICAL FRAMEWORK

The data for this project were gathered via qualitative action-based methods. Largely derived from social movement and organizational development theory and practice, action-based methods are multiple and known by many names, including participatory research, action learning, and collaborative inquiry. Gilmore, Jim, and Rafael (1986) define action research as work that “aims to contribute both to the practical concerns of people in an immediate problematic situation and to further the goals of social science simultaneously.” (161) Action-based methodologies have a dual commitment to both study a problem and at the same time to collaborate with stakeholders in the problem in creating and implementing interventions.

The origins of this project stem from the early 1990s, when I worked as an activist-organizer in the San Diego–Tijuana LGBTQ and HIV/AIDS communities. I subsequently pursued academic studies on HIV/AIDS and LGBTQ activism and policy in Mexico and the United States; much of my research involved immersion as an administrative volunteer in LGBT and HIV/AIDS community-based organizations for extended periods in both the United States and Mexico. Formal, systematic data collection for this project began in 2009 (and continues at present), when I started working as a pro bono expert witness in US immigration asylum trials, providing testimony on country conditions for LGBT persons from Mexico. Since 2009, I have consulted as an expert witness in over 120 cases in numerous US immigration courts (e.g., California, Oregon, Washington, Nevada, New Mexico, Arizona, Texas, Colorado, Georgia, Illinois, Michigan, New York, New Jersey, Minnesota, and Florida). Of the 110 cases, the majority (approximately 52%; 50 women, 7 men) were transgender or gender non-conforming persons (GNCs). The rest consisted of 38 gay men, 8 lesbians, 8 bisexuals, and 7 “non-gay identified” men with HIV. Of note is that several persons claimed multiple identity categories (i.e., transgender and gay). Also important is that approximately 10% had significant mental health



diagnosis (post-traumatic stress, obsessive–compulsive disorder, and schizophrenia). Given the majority of cases were transgender women, the analysis focuses on that subpopulation.

As an expert witness for LGBT asylum cases, I was in the position to purposefully engaged in action-based research best described as working within “the asylum-advocacy nexus” (Hepner, 2015). The “asylum-advocacy nexus” is a form of “theory in practice” developed by social scientists to analyze the connections between why people migrate to seek asylum and the “constraints and opportunities” associated with (im)migration policies and discourses. Within the asylum-advocacy nexus “conflict and human rights abuses, North-South inequities, development dynamics, diasporic or transnational network, and international and national (im)migration policies together form a shifting complex that structures and contextualizes the movements and claims of refugees and asylum seekers.” (226) Hepner (2015) suggests the concept of the asylum-advocacy nexus forms a “coherent, if troubled, circle of praxis, in which advocacy or activism enriches research and knowledge.” (227) For the expert, witness participating in asylum claims can be part of one's academic (and activist) research agenda; for the asylum seeker, it can “shape and give expression to refugees changing consciousness and political-legal subjectivities.” (227)

As a country conditions expert working within the asylum-advocacy nexus for Mexican LGBT asylum cases in the United States, I employ a specific set of qualitative action-based methods, including participant observation, in-depth interviews, and document analysis. Participant observation included serving as an expert witness and/or consultant in more than 110 asylum hearings; each asylum case typically required a minimum of 3–10 hr of in-depth interviews and consultation with legal advocates (immigration and asylum lawyers and organizational activists) that generated pages of detailed notes. It is important to emphasize that while the narratives of asylum seekers inform the project, the analytical lens of the project is determined by the asylum-advocacy nexus, which provides a more comprehensive assessment of asylum seekers' characteristics, home country experiences of persecution and discrimination, and obstacles in the US asylum process. Participant observation also included making regular visits to Mexico from 2009 to 2018 to attend LGBT-relevant events (such as annual gay pride and gay rights events), and to interview representatives from Mexico's human rights commission and LGBT organizations.

In addition to participant observation and interviews, I systematically consulted a wide range of documents and textual sources including organizational and social media blogs and websites of local, state, and international human, immigrant, and LGBT rights NGOs; government policy documents and reports (e.g., US State Department, Immigration and Refugee Board of Canada, Mexican National Center for Human Rights); US, Mexican, and international immigration and human rights reports and case law; news media (English and Spanish language print media and email List Serves); and social science literature from applied and academic presses and journals.

Data from these sources were analyzed using an interpretive grounded theory (Bohm, 2004; Fischer, Miller, & Sidney, 2007; Glaser & Strauss, *The Discovery of Grounded Theory*, 1967). Grounded theory is both an inductive interpretive theory and a methodological technique that enables identification of core social concepts, processes, patterns, and structures within the data via a process of constant iterative comparison. Using multiple qualitative methods and grounded theoretical techniques for conducting action-based research on complicated, multidimensional social problems is increasingly common (Epstein & Carrillo, 2014; Hankivsky (Ed.), 2011; Needle, 2003). Such approaches accommodate the complexities of research and align with the need for data saturation (the point at which sources of data about a question, theme, or category produce no “new” or outlying observations) and verification via constant iterative comparison between analytical categories. In the case of this project, analysis involved coding hundreds of pages of primary and secondary materials for key themes and categories about the experience of transgender persons within specific realms of the Mexico and US

contexts. The complex nature of action-based qualitative research makes it impossible to analyze and identify all themes relevant to all aspects of Mexican and US society. Rather, the analysis centers on specific patterns (and outliers) that characterize the experience of transgender asylum seekers in first the Mexico, then the US contexts.

3 | THE MEXICO CONTEXT

As stated above, Mexico is ranked as the second most deadly country for transgender persons; overall, 80%–95% of LGBTQ Mexicans will face some degree of discrimination and/or physical violence on a regular basis during their lifetime (Asistencia Legal por los Derechos Humanos A.C, 2013; Ortiz-Hernandez & Granados-Cosme, 2006; REDLACTRANS, 2012; Torres-Ruiz, 2011; Transgender Law Center, 2016). Prejudice, discrimination, and violence toward sexual minorities remain widespread throughout Mexico, as evidenced by a wide range of evidence and documents, including the 1999–2017 US Department of State Country Reports on Mexico (US Department of State, 1999; US Dept of State, 2011, 2013, 2014, 2015, 2012, 2017), as well as number of international Human Rights reports from Amnesty International (Amnesty International, 2010), the Immigration and Refugee Board of Canada (Immigration & Refugee Board of Canada, 2005, 2006, 2008, 2010, 2011, 2012a, 2012b, 2015), the International Human Rights Clinic (International Human Rights Clinic et al., 2010), the Transgender Law Center (Transgender Law Center, 2016), and the Center for International Human Rights of Northwestern University School of Law (Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report 2014).

The nature of hate crimes and violence against transgender individuals in particular is extreme: The bodies of victims often show signs of torture, of being shot, beaten, dismembered, and burned (Flores, 2011). For example, on March 11, 2012, transgender rights advocate Agnes Torres was found dead in a ravine in Atlixco Puebla and the degree to which her body was tortured is inconsistent with most cases of assault or robbery (SDP noticias.com, 2012; XQsí Magazine, 2012). On February 7, 2013, a youth dressed as a woman was found dead in Puebla with extensive skull injuries and torture marks on his body (Latino Daily News, 2013). At the 2014 Mexico City Gay Rights March, a transgender woman was accosted by youths in car who grabbed and dragged her along the road (Una transexual denuncia haber sido agredida tras el Orgullo Gay 2014). Despite the extremely violent nature of the crimes, more than 80% are never reported and so left uninvestigated or are dismissed by Mexican authorities as “crimes of passion” (International Human Rights Clinic et al., 2010; Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs, & Human Rights, 2014).

Violence against those who deviate from the expected standards of gender (and imputed sexual) behavior typically starts early in life, is committed by family members, friends of the family and/or peers, and therefore is often hidden and not measured by statistics. At the individual level, the family is the first experience of society and is the primary source of information about social role norms attached to gender, sexuality, class, race, ethnicity, and nationality. Given that historically and today the traditional patriarchal and heteronormative family structure is the organizing principle of Mexican society and a highly valued Mexican social and cultural institution, it is unsurprising that gender non-conforming behavior of a child will attract sanctions from close family members. Male family members (fathers, brothers, uncles) are those most often identified as perpetrators of verbal, physical, and sexual violence against children who transgress gender and sexual norms. In particular, boys who break gender norms are subjected to verbal bullying and accusations of being “gay” or “girls,” ostracism, and physical and sexual abuse, most often in their own homes and by members of their

own families (Brito & Bastida, 2009; Mondragon, 2009; Ortiz-Hernandez & Granados-Cosme, 2006; Transgender Law Center, 2016). Despite the predominance of family violence and rejection, strong ties with (often female and/or extended) family members can exist and give valuable support. Such relationships can help to buffer the daily effects of discrimination and violence by providing a safe place to live, employment, and/or protection while on the street.

The school system, like the family, is also deeply influenced by traditional patriarchal and heteronormative ideas of gender and sexuality and therefore a place of discrimination and violence for LGBT children. Children who do not conform to gender and sexuality norms regularly experience severe forms of verbal and physical violence from peers and teachers. Despite a 2009 nationwide anti-bullying and anti-violence in school campaign in Mexico's public and private educational systems, 75% of LGBT children have been victims of bullying and violence in school (Bastida Aguilar, 2012). As an example, in March 2014, in Durango, seven boys took a razor or knife and carved the Spanish word for "girl" on a non-conforming male classmates left hand, and none of the perpetrators were sanctioned. Indeed, 80% of the incidents are never reported; and of those reported, only 50% received any remediation (Bastida Aguilar, 2012). The dropout rate of LGBT students is very high; studies estimate that up to 60% of LGBT children complete but do not go beyond primary or secondary school compared to an average of 71% in the general population. The rate is even lower for transgender children, only 30%–44% complete secondary school and 12%–24% complete high school (Colchero et al., 2015). Lack of education is a primary factor in restricting the economic and employment options of transgender persons, and explains why many are concentrated in low skill work in the informal sector.

Lack of formal employment reduces access to benefits such as health care, housing, and other social services. Data from the first (2014) survey on Workforce and Homophobia in Mexico (only 10% of which were transgender, 64% were gay/bisexual men, and 24% were gay/bisexual women) show employment patterns for the LGBT population in Mexico (Espolea.Org, 2014). The survey reveals a fairly well-educated population in that 55% of respondents had a 4-year college degree and 17% completed postgraduate education. However, only 45% of the respondents reported having a job with an indefinite contract; 17% had a short-term or temporary job; 14% reported being unemployed and looking for work; the other percentage include self-employed, freelance, and retired. Despite that 42% of employed respondents said they were "out" on the job, 35% said they were denied employment or discriminated against at their job; of those, only 15% reported the act or filed an official complaint.

Within the formal employment sector, LGBT persons often experience denial of employer-based social security and health benefits. According to the Mexican National Human Rights Commission Reports (CONAPRED, 2009, 2013), unequal treatment in health care, education, and employment, and refusal of social security enrollment (among other benefits) are common types of complaints. Employment data on exclusively transgender women tend to reflect a different reality. In general, transgender women are concentrated in the informal sides of the manufacturing, entertainment, and service industries (Colchero, Cortés, Sosa-Rubí, & Romero, 2013); a large majority end up as beauty salon or sex workers. The propensity for transgender women to resort to sex work for survival results in a high risk for contracting HIV; rates are 20% (Colchero et al., 2015), compared to 16.9% for men who have sex with men (MSM) (Bautista-Arredondo, Colchero, Romero, Conde-Glez, & Sosa-Rubí, 2013) (the national rate is 0.2%).

According to a number of national and international conventions including the United Nations Human Rights Council and the International LGBTI Association for Latin America and the Caribbean among others (CONAPRED, 2013; ILGA-Europe, 2018), the violence and discrimination committed by non-state actors against transgender persons clearly constitute human rights abuses. However, the most concerning trend is a well-documented culture of violence with impunity crimes against transgender (and LGB) persons as committed by police, military, and security forces (Amnesty International,

2010; Amnesty International Network, 2011; ILGA-Europe, 2018; Immigration & Refugee Board of Canada, 2012a; Inter-American Commission on Human Rights, 2015; International Human Rights Clinic et al., 2010; Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs, & Human Rights, 2014; Transgender Law Center, 2016; Transgender Murder Monitoring Project, 2017). Statutes prohibiting “immoral” and “lewd behavior” and “creating a public display or nuisance” are regularly used by police and other public authorities as a basis for “social cleansing, arresting, extorting, and even destroying homes of transgender persons who are characterized as ‘traitors’ and ‘criminal-deviants’” (El Sol de Tijuana, 2007; Transsexuals Protest Police Raid, 2005; Estrada Zuniga & ‘Resulta que el era mas gay’: homofobia y policia municipal, 2014; Hernández García & Fernández Mendiburu, 2014; Mexico: The police are the ones that most discriminate against the gay community, 2008; Planet Transgender; REDLACTRANS, 2012; Transgender Law Center, 2016).

Examples of police harassment and violence against transgender women include the following: In November 2007, a group of transgender sex workers begin investigating police harassment of 500 transgender sex workers in the north zone of Tijuana; 30 of them eventually sought asylum in San Francisco based on police sexual abuse, extortion, and persecution (International Human Rights Clinic et al., 2010). In May 2007, approximately 40 female transsexual and transgender sex workers were detained and brutally assaulted by about 20 members of the Military Police in Ciudad Juárez. The police stole money from the women and destroyed their homes. Many of the women were hospitalized, and some of them in grave condition (International Human Rights Clinic et al., 2010). In April 2008 and December 2009, 40 transgender and transvestite sex workers were robbed, beaten, and arrested by the police near a Supermanzana 63 in Cancun; the president of the municipality confirmed the action by the police justified by the need of “cleaning the garbage from the streets” (Amnesty International, 2010, 12). On March 6, 2014, police in Chihuahua City arrested five transgender sex workers and forced them to undergo HIV testing before being able to leave the jail, a violation of human rights currently under investigation by the United Nations (Bastida Aguilar, 2014; Hernández García & Fernández Mendiburu, 2014; Transgender Law Center, 2016). In May 2018, a transgender woman was assaulted by five police while using the bathroom at the Puebla State Fair (Desastre, 2018).

Research on the daily training and work practices of Mexico's military, police, and other public security forces documents how police and military subcultures are informed by traditional notions of masculinity and heteronormativity that are reinforced via use of homophobic and anti-gay language including use of police codes (e.g., the code number “50” signifies a “homosexual,” whereas “76” signals a “citizen”) and a predominance of anti-gay homophobic jokes in the workplace (Estrada Zuniga, 2014). To address the problems, police training protocols for understanding and respecting LGBT “diversity” were established in Mexico City in 2013 (Acuerdo 31/2013 por el que se expide el protocolo de Actuacion Policial de la Sec. de Sed. Publica del DF para preservarlos DH de las personas LGBTQ 2013); however, it remains to be determined whether there has been change in police codes and practices.

Mistreatment of transgender individuals and sexual minorities generates a culture of mistrust and silence toward police and military officials for failure to provide protection from assault by either public authorities or private citizens. In spite of the gravity of the aggressions suffered, the majority (over 80%) of victims prefer to keep silent about what happens because police, military, and public security forces are the perpetrators in 20%–30% of cases; consequently, vast majority (95%) of hate crimes and murders are committed with impunity and remain unsolved (Amnesty International Network, 2011; Brito & Bastida, 2009; Estrada Zuniga, 2014; International Human Rights Clinic et al., 2010; Transgender Law Center, 2016).

Despite—or likely because of—violence experienced by police and public security actors, as well as within the family, school system, employment, and healthcare sectors, etc., LGBT activists began to organize in the early 1970s. Research on the history(s), strategies, and achievements of LGBT activism in Mexico (de la Dehesa, 2010) indicates a robust civil society response, particularly in regard to HIV/AIDS activism (Torres-Ruiz, 2011) and the politics of gay marriage (Diez, 2015). However, the price of activism in Mexico can be high, as evidenced by a sustained pattern of murders and hate crimes against activists. For example, in March 2012, transgender activist Agnés Torres Hernández was brutally murdered; her body—showing signs of torture—was found in a ditch near the city of Puebla (Agnes Hernandez, Mexican Transgender Activist, Brutally Murdered 2012). In April 2017, LGBT rights activist and freelance reporter, Juan Jose Roldan, was found dead in Talaxcala, a town 120km east of Mexico City; his body showed signs of torture (Milliken, 2017). And in June 2018, three LGBT activists were shot, killed, and left on the side of the road in Guerrero (3 Gay Rights Activists Shot to Death in Southern Mexico 2018).

In no small part due to activist efforts and sacrifices, the legislative landscape for LGBT rights in Mexico looks, on paper, rather progressive (Beer & Cruz-Aceves, 2018). The first Federal law banning discrimination on the basis of sexual and/or gender identity was passed in 2003, and was followed with a national LGBT anti-discrimination campaign in 2005–2006. In 2004, Mexico City passed legislation to allow transgender individuals to change the sex on their birth certificate to match their gender identity; in 2009–2010, Mexico City passed same-sex civil union and adoption measures; and in June 2015, the Mexican Supreme Court ruled that state bans on same-sex marriage were unconstitutional. Characterized as “fragmented” and divisive (Diez, 2015), same-sex policy advances have largely occurred in Mexico City due to the pressure from civil society and the LGBT rights organizations, but have been blocked in other policy venues at state and local levels by socially conservative actors. Indeed, the reaction of members of the Catholic Church to the gay marriage laws has been extremely negative and powerful. The Archdiocese of Mexico City, Father Hugo Valdemar stated that “Marcelo Ebrard and his party, the PRD, have created laws that are destructive to the family, that cause worse damage than narco-trafficking” (National Catholic Register Staff, 2010), and the Mexican National Bishop's Conference stated “making these unions equal to marriage is disrespectful both to the very essence of marriage between a man and a woman [...] as well as to the customs and our culture, which have governed us for centuries” (National Catholic Register Staff, 2010).

Policy advances have been symbolically meaningful, but have yet to take effect at the local level in terms of enforcement and effectively reducing discrimination and violence on the ground (Asistencia Legal por los Derechos Humanos A.C, 2013; Carroll & Mendos, 2017; Colchero et al., 2013). Notably, gay marriage and adoption laws do not apply to transgender individuals. And even for same-sex couples, judges and civil registries frequently refuse to marry lesbian and gay couples, forcing them to spend a great deal of time and money to file legal injunctions (*amparos*) to receive the service and documents (Fentanes, 2014). In many cases, judges will still refuse to perform the civil ceremony and will just issue the certificate while complaining of being forced (El Universal, 2015). In regard to legislation (modifications of the Mexico City Civil Code passed in 2008 and 2015) that allows transgender individuals to change their sex on their birth certificate, the 2008 law required a lengthy and expensive (up to 7,000 USD) process of traveling to Mexico City to file paperwork with the courts, doctors, and legal counsel to obtain the document, a cost that few could afford (Fentanes, 2014; Transgender Law Center, 2016); the 2015 revision of the Code streamlines the process and reduces the cost in Mexico City. However, in the rest of the country local and state Civil Codes and Public Registries do not allow birth certificate revisions, nor do they recognize certificates that were changed in Mexico City (González, 2018; Roldán, 2017).



A result of the high visibility of LGBT activism and same-sex marriage rulings in Mexico has been to generate a backlash from conservative actors in society, particularly from Catholics and Evangelicals (Mexico ranks second within the 10 countries with the largest number of Catholics; 83% identify as Catholic (Toro, 2013)). After the June 19 and August 11, 2015, Mexican Supreme Court rulings that the 26 state laws preventing same-sex couples from marrying were not constitutional, there was an immediate negative response from Evangelical and Catholic Churches across the country. Arturo Farela, the leader of the *Confraternidad Nacional de Iglesias Cristianas Evangélicas* (National Confraternity of Christian Evangelical Churches), a network of 800 religious associations throughout Mexico, released a statement that condemned the ruling and confirmed receipt of 110,000 signatures required to submit an initiative to prevent gay marriage and adoption (Excelcior, 2015). Representatives from a wide range of Mexican religious organizations and networks including the Secretary General of the Mexican Episcopal Conference (*Conferencia del Episcopado Mexicano*; CEM); the “La Luz del Mundo” Church; the president of the Gender Equity Commission in Campeche; the organizations “Cruzada por la Familia,” “Alianza por la Familia” and “Colectivo por la Vida” in Chihuahua; the United Durango Network all released statements exhorting their state congresses and legislatures to not pass laws that allow same-sex marriage and adoption (El Universal, 2015).

These religious groups argue they are not homophobic but rather in favor of preserving the “human rights” of children and the traditional family as the base of society. They state:

“Nosotros no somos homofóbicos. Los papás pueden tener o no tener hijos, los niños tienen derecho a tener papá. La adopción no es válida, porque ellos han decidido casarse con alguien que no puede tener hijos. Creemos que se vulnera los derechos humanos de los niños” (El Universal, 2015). [English (translation mine): We are not homophobic. Parents can choose or to not have children, children have the right to have a parent. Same-sex adoption is not valid, because they have decided to marry someone with whom they can't have kids. We believe what is vulnerable are the human rights of children.]

The pro-family position denies being against LGBT rights but rather for the human rights of children and the traditional family.

In sum, pro-LGBT legislation has, over time, led to increased visibility and a violent backlash against sexual minorities in Mexico. While statistics are challenging to estimate due to under- and misreporting, conservative sources (Brito & Bastida, 2009; Ortiz-Hernandez & Granados-Cosme, 2006) found an average of nearly 30 killings a year motivated by homophobia between 1995 and 2000, compared to nearly 60 a year between 2001 and 2009 (Associated Press, 2010; Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs, & Human Rights, 2014). A more recent comparison of 2009 and 2013 Mexican Human Rights Commission Reports indicates a hate crime rate of approximately 4 per month in 2009 as compared to 14 monthly crimes in 2014 (CONAPRED, 2009, 2013). Due to visible gender non-conformity, transgender individuals receive the brunt of the backlash, evidenced by an increase in transgender homicides from 27 recorded between 2008 and 2009 (the year before same-sex marriage legislation was first passed) to 120 murders between 2010 and 2013 (postlegislation) (Transgender Law Center, 2016).

While each person is unique, the data indicate a profile of the “typical” experiences of transgender and GNC persons who immigrate to the United States and are able to file for asylum (or CAT and withholding of removal). As a child growing up in Mexico, gender non-conforming children are subjected to repeated verbal, physical, and/or sexual violence by (predominantly male) family members, as well as by teachers and peers. As a result of violence in the family and school, many transgender

and GNC teens drop out of school, resulting in lower rates of educational attainment. High rates of employment discrimination combined with lower high school and college graduation rates result in concentration in the informal sector in low-earning jobs (most often in hair salon and sex work). Engaging in survival sex work contributes to higher risk for HIV, as well as increased likelihood of police and ICE profiling (even for those not engaged in sex work) in which systematic extortion and verbal, physical, and sexual violence are common. Finally, despite a relatively strong response by LGBTQ civil society and legislative advances, transgender persons (and activists) have borne the brunt of backlash from conservative actors. This pervasive context of violence within every area of social, economic, and political life pushes many transgender (and LGB) persons to leave Mexico and migrate to the United States. It is important to emphasize that most to flee to the United States without any knowledge or idea that asylum or refugee status is a possibility (asylum seekers who came to the United States as small children also had no or little knowledge of the asylum possibility).

4 | THE US CONTEXT

Transgender individuals from Mexico who seek refuge in the United States arrive under a variety of challenging circumstances. Most lack legal status and have difficulties accessing needed resources such as employment, housing, health, and social services. As previously stated, the United States also has high rates of transphobic violence; the United States consistently ranks third in absolute number of transgender deaths worldwide, with 2015–2016 as the most deadly years for transgender women of color (Anti-Transgender Legislation Spreads Nationwide & Bills Targeting Children Surge, 2016; Transgender Murder Monitoring Project, 2015, 2015). Anti-LGBT laws increased from 125 (21 specifically anti-transgender) in 2015 to 175 (44 specifically anti-transgender) proposed laws in 2016 (Anti-Transgender Legislation Spreads Nationwide & Bills Targeting Children Surge, 2016), and 23 US states currently have “negative gender laws” in place (Movement Advancement Project, 2016). Yet despite the high risks of experiencing physical and social violence, the United States is still viewed by LGBT asylum seekers from Mexico as a place where public security and individual legal rights and processes are intact, regardless of whether they have knowledge of US country conditions and/or immigration and asylum laws.

Historically, the United States has taken a restrictive stance to LGBT immigrants. The Immigration and Nationality Act of 1917 excluded LGBT immigrants as “mentally or physically defective” (Sridharan, 2008). As recently as 1965, the United States passed an amendment that excluded “sexually deviant” foreign nationals; and in 1967, the Supreme Court upheld the deportation of a gay man (Luibheid, 2005). In 1979, the Surgeon general attempted to allow gays and lesbians to enter but it was not until the Immigration Act of 1990 that the “sexually deviant” ban was lifted (Luibheid, 2005). In 1994, in the *Matter of Toboso-Alfonso* the US courts gave asylum for the first time to a gay male from Cuba, and the number of LGBT asylum claims has increased since (Sridharan, 2008). Even so, an historical review of results of LGBT Asylum cases heard by Federal Courts from 1996 to 2012 (Immigration Equality, 2012) indicates a consistently low approval rate. Of 188 total cases, only 35 were granted; 11 cases were granted and denied in part; and 142 were denied applications. Of those, Mexico represented 5 of the granted cases, one granted and denied in part, and 10 of the denied appeal applications.

Low approval rates are due to the many legal requirements and barriers to obtaining asylum for transgender persons. One primary roadblock frequently encountered is failure to file for asylum with the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) within one year of first entry to the United States. The failure to meet the one-year filing deadline is



due to lack of knowledge of the asylum process requirements and/or arriving in the United States as a minor/child, prior to full development of sexual and/or gender identity. Most transgender asylum applicants do not find out about asylum until many years after living in the United States. Often, it is only after being arrested by police and/or detained by ICE and subjected to removal proceedings do potential applicants learn of the possibility of asylum. Once arrested and/or detained by ICE, asylum applicants are forced into a defensive asylum process that can be extremely lengthy, stressful, and potentially dangerous, while in detention, transgender persons have suffered extreme forms of isolation and violence (Center for American Progress; Movement Advancement Project, 2016; LaVozArizona.com, 2015; Lieberman, 2013; Movement Advancement Project, 2016). The violence committed against transgender individuals in ICE detention was brought to the forefront of national news on Wednesday June 24, 2015, when Jennicet Gutierrez, an undocumented Latina transgender activist, interrupted President Obama while he was speaking at a White House LGBT event to ask for their release (Gutierrez, 2015).

Ironically, on June 29, 2015, just a few days after Jennicet Gutierrez's protest, ICE issued a new guidance on the treatment of transgender individuals in custody (US Immigration & Customs Enforcement, 2015), which stated that transgender individuals will be housed in women's facilities. According to the press release, the new guidance was "the result of a six-month agency Working Group that examined these issues with subject matter experts, sought input from transgender individuals, and visited various non-federal facilities across the country to observe best practices" (US Immigration & Customs Enforcement, 2015). Prior to 2015, efforts were made to improve treatment by ICE and detention conditions; in 2012, the detention center in Santa Ana, California, established a "gay pod" (the only one in the country), which typically houses about 30 transgender women or gay or bisexual men (of 250 detained immigrants in the Santa Ana jail), most from Mexico or Central America. Before the pod was established, eight transgender women filed complaints alleging denial of HIV drugs and hormone treatment and there were at least 17 official complaints by transgender immigrants in detention nationwide. As of publication, the ICE detention facility—and the LGBT pod—in Santa Ana has since been closed and LGBT detainees relocated to the Cibola detention center in New Mexico.

The obstacles created by lack of knowledge of the asylum process and getting caught up in the criminal and/or immigration detention system are considerable, but not insurmountable. Indeed, one arguably positive result of being detained by ICE is that many potential asylum seekers are provided the opportunity to connect with pro bono legal advocates who provide information about eligibility for asylum as well as help with accessing available medical (including HIV testing and treatment) and psychological services. Most non-asylum eligible applicants can still qualify for "Withholding of Removal" (based on protected ground and/or membership in a persecuted group) and/or "Conventions against Torture" (CAT; based on likelihood of being tortured if returned to Mexico). The thresholds of evidence are higher for these categories, and the scope of relief is narrower in that neither offers full citizenship rights, but often the only other option is deportation. Obtaining "withholding" or CAT allows an individual to stay in the United States, albeit in a liminal zone as these classifications do not automatically include a green card application and path to become a legal permanent resident or to later naturalize as a citizen. Other restrictions include *only* being able to work with a valid employment-authorization document that can be years in forthcoming; not being able to travel outside the United States (or will be barred from returning); and the possibility that the U.S. government may terminate Withholding/CAT status if conditions in the home country change for the better.

Meeting the higher thresholds of evidence required by Withholding and CAT classifications is a challenge in several respects. Many claimants have difficulty meeting the simultaneous and conflicting requirements of proving direct experience of systematic and repeated persecution by state actors



(police, public security and military, etc.) on the basis of membership within the particular social group, and at the same time, prove repeated attempts to seek out protection from the same state actors. In the case of those who lack evidence of direct harm by Mexican police or military (as in the case of those who immigrate to the United States as young children, prior to full development of gender and sexual identity) does an applicants' lack of experience in Mexico negate the copious evidence of abuse suffered by other transgender persons at the hands of the state and private actors? Clearly, this requirement will be difficult if not impossible to meet by individuals who came to the United States as children or young adults, and who have since not returned or spent little time in Mexico. Ironically, in some cases, those without direct evidence of state persecution have been deported to Mexico, where they finally do experience violence at the hands of police and/or military, thereby enabling them to qualify when and whether they are able to return to the United States and re-file their claim.

Another problem faced by asylum seekers is that US Immigration Judges and government attorneys often conflate gender identity with sexual identity and assume the experience of transgender persons is the same as LGB persons. This results in Judges and government attorneys believing that that legislation approving gay marriage and adoption has helped improve conditions for transgender persons in Mexico. The distinction between gender identity and sexual orientation was clarified on September 3, 2015, when the Ninth Circuit Court issued a ruling that established transgender individuals as a "separate particular group" apart from LGB groups (US Court of Appeals for the Ninth Circuit, 2015) and that recent pro-gay adoption and marriage laws are not applicable to transgender persons. The opinion specified that:

While the relationship between gender identity and sexual orientation is complex, and sometimes overlapping, the two identities are distinct.... [The Immigration Judge also] erred in assuming that recent anti-discrimination laws in Mexico have made life safer for transgender individuals, while ignoring significant record evidence of violence targeting them.... Significant evidence suggests that transgender persons are often especially visible, and vulnerable, to harassment and persecution due to their often public non-conformance with normative gender roles. Country conditions evidence shows that police specifically target the transgender community for extortion and sexual favors, and that Mexico suffers from an epidemic of unsolved violent crimes against transgender persons. (US Court of Appeals for the Ninth Circuit, 2015).

While this decision sets precedent, it has yet to be understood by many Immigration Judges and government attorneys both in and outside the Ninth Circuit.

Finally, asylum claimants and their counselors must mitigate the use of irrelevant and/or flawed country condition evidence by government attorneys to prove violence and discrimination against transgender and sexual minorities is a thing of the past. Specifically, government attorneys rely heavily on redacted portions of US State Department reports on Mexico, and articles on gay life in Mexico from tourist magazines, as evidence that country conditions have improved. For example, US State Department Reports on Mexico are selectively quoted as evidence that there are no complaints of human rights abuses against LGBT individuals. Yet when read in their entirety, these reports consistently state that while the law prohibits discrimination against LGBT individuals, the Mexican government does not always investigate and punish those complicit in abuses. In general, US State Department Country Condition reports present a mixed picture at best, acknowledging that discrimination based on sexual orientation and gender identity is prevalent, despite a growing public acceptance of LGBT individuals. The Ninth Circuit case cited above helps address this misconception, stating that "lots of evidence does support a pattern of persecution," acknowledging that there is a difference

between “legislation and laws” and the capacity to implement and make “effective” laws and legislation. Importantly, the Ninth Circuit decision stated there is no significant contrary evidence in the record that indicates life is getting better for transgender and gay people in Mexico (US Court of Appeals for the Ninth Circuit, 2015).

Despite the many challenges to obtaining asylum, CAT, or withholding of removal, the struggles and stories of transgender immigrant activists (such as Bambi Saucedo and Jennicet Gutierrez) and organizations (such as the Transgender Law Center and The TransLatin@ Coalition) offer Mexican transgender asylum seekers and activists opportunities to press for increased citizenship and human rights in the United States in a way not possible in Mexico. As early as 1997, the Midwest Human Rights Partnership for Sexual Orientation and the Lesbian and Gay Immigration Rights Task Force published “Preparing Sexual Orientation-Based Asylum Claims: A Handbook for Advocates and Asylum Seekers” (a second edition came out in 2000) (McClure et al., 2000). This 180+ page guide includes detailed client-centered information for working with asylum (and CAT) applicants, preparing the application and supporting documents, and preparing the client to testify. In 2008, a transgender focus group in Portland Oregon developed Basic Rights Oregon—Trans Justice, a team of leaders across the state to focus on inclusive health care for trans, genderqueer, and gender non-conforming people, including asylum seekers and refugees. In 2011, The Heartland Alliance issued the “Rainbow Welcome Initiative: An Assessment and recommendations report on LGBT refugee resettlement in the US” (Heartland Alliance, 2011). This 50+ page document describes the demographics and profile of LGBT refugees and outlines a number of findings regarding overseas protections, and barriers to housing, employment, health, and legal services in the United States. In April 2013, the Organization for Refuge, Asylum and Migration (ORAM) released “Rainbow Bridges” the first ever publication to offer practical guidance on “welcoming new [LGBTQ] refugees, ensuring their mental and physical well-being and helping them find support in their new home country” (Huffington Post, 2012a, 2012b). Also in 2013, the National Center for Transgender Equality released a 28 page report “Our Moment for Reform: Immigration and Transgender People” (Jeanty & Tobin, 2013), which addressed specific challenges faced by transgender immigrants, enforcement and due process concerns, and the dangers of detention among other topics. These reports and guides represent a wealth of organizational capacity and expertise in addressing the many legal, social, and economic issues faced by LGBT immigrants and refugees.

More recently, the intersection of immigration, race, and LGBT issues in the United States has led to a nationwide multimovement collaboration between transgender, immigrant Latin@, and #Black Lives Matter (BLM) activists and organizations (Abeni, 2015). For example, in August 2015, a number of protest events occurred throughout the United States (in D.C. Houston, Brooklyn, Dayton, Los Angeles, Nashville and San Francisco) as part of the August 25th Trans Liberation Tuesday. The event involved Black Lives Matter activists collaborating with Transgender activists to form the #TransLivesMatter campaign, citing that queer and transgender women have been at the forefront of the Black Lives Matter campaign since its inception. According to the Black Lives Matter guiding principles, the organization “affirms the lives of Black queer and trans folks, disabled folks, Black-undocumented folks, folks with records, women and all Black lives along the gender spectrum” (Black Lives Matter, 2015).

The experiences of transgender and GNC immigrants and asylum seekers in the United States are unique and varied, but data provide a profile of the “typical experience(s)” of US society and the asylum process. First, most arrive in the United States as a last resort after a long and arduous migration process having first made a series of moves within Mexico (from home town to larger cities) to escape persecution and violence. Most arrive without a visa or immigration documents, so access to employment, housing, and social services is limited. As a result, transgender immigrants and/or asylum

seekers tend to be concentrated in the informal sector in low-earning jobs, including survival sex work. Many are detained by police and/or ICE and end up spending months if not years in jails and/or immigration detention facilities that are notoriously dangerous for transgender persons. In some cases, however, being in jail or immigration detention can provide an opportunity to access vital legal and health (mental and physical) services. Virtually all lack knowledge of US immigration and asylum law and almost all end up in a lengthy, defensive legal asylum process. Immigration judges hold asylum applicants to high standards of evidence to determine membership in a protected group and past persecution by state actors, yet often used deeply flawed arguments and sources of information to justify denying a claim. For those successful in getting asylum (or CAT and/or withholding of removal), a vital element is obtaining pro bono legal counsel from immigration advocates and lawyers. Asylum cases can drag on for months, even years, during which applicants are held in a legal limbo in which their citizenship and human rights are limited. Even for those non-detained applicants engaged in a positive asylum process it can take months or years to get the required papers to access employment and/or health and social services. Ironically, while in the legal liminal zone of the asylum process, applicants must still uphold standards of “good conduct and citizenship” so as to not jeopardize their case.

5 | CONCLUSION

The analytical view from within the asylum-advocacy nexus shows that despite significant legislative changes in favor of gay marriage and adoption in the United States and Mexico, incidents of verbal and physical violence—including murder—of transgender and gender non-conforming people have intensified in both countries. In Mexico, increasing rates of violence—often left in impunity or even committed by state public security actors—pushes increasing numbers of transgender and GNC persons to immigrate north, to the United States. In the United States, transphobic violence is also endemic within society and politics, particularly within the US asylum and immigration enforcement processes. While US and Mexican activists and civil society have provided opportunities for empowerment and activism that can mitigate violence and provide vital support for LGBTQ immigrants and asylum applicants, is it enough to generate significant and lasting socio-cultural change?

If recent 2017 and 2018 US and Mexican elections are a predictor, there is reason for both hope and concern. The 2018 Mexico presidential election was notable in the overt silence and lack of support for the LGBT agenda by the candidates (Gómez, 2017); however, five lesbian and gay candidates were elected into office (three in Mexico City, one in Puebla, and one in Michoacán). The 2018 Mexican presidential elections were also unique in that the Instituto Nacional Electoral (INE) approved a protocol that allowed transgender and gender non-conforming persons to vote despite having voting credentials with a designation that may not match actual gender presentation. In the United States, the 2017 and 2018 elections resulted in a record number of LGBT candidates gaining office. According to the LGBTQ Victory Institute (LGBTQ Victory Institute, 2018), more than 400 LGBTQ candidates will run for public office in 2018, more than ever before in an election cycle. However, the report also notes that 22,827 more LGBTQ people need to be elected to public office to achieve “equitable representation” within the approximately 500,000 elected positions in the United States.

Even with some progress in politics, there is a clear need to expand the “Advocacy Nexus” from the asylum process to intervene within key social institutions—family, church, education, employment, public security, judicial system, etc.—to effectively eliminate transphobic discrimination and violence at individual and structural levels of society. One does not have to look far to find successful interventions; one of the most long-reaching and proven-effective interventions used by high ranking “LGBTQI-friendly”³ countries (most of which are in Western Europe/UK) (Feder, Singer-Vine, &



King, 2016; ILGA-Europe, 2018; McCarthy, 2015) is providing age-appropriate, comprehensive education on gender and sexuality as part of the K-12 educational curriculum (de Melker, 2015; UNESCO, 2015). Research on LGBTQ-inclusive comprehensive sex education (CSE) within grades K-12 of public and private schools shows CSE can promote gender equality and address transphobic and homophobic attitudes and practices among youth (Melesio, 2010; Slater, 2013); increase perceived willingness to intervene when witnessing LGBTQ bullying by teachers, school staff and fellow students, and to an improvement of school climate over time (Baams, Dubas, & Aken, 2017; UNESCO, 2015).

A brief look at the state of US and Mexican sexual education curricula is telling. A 2017 study (Rojas et al., 2017) analyzing the “coverage, comprehensiveness and continuity” of comprehensive sexual education in 45 public and private high schools in urban and rural areas of Mexico uncovered a number of serious deficiencies in all three areas. For example, topics on sexual and reproductive health were covered, while topics on “rights and relations” are rarely included. Sex education was not continuous, occurring mostly during junior high school and much less frequently in elementary or high school. Coverage, comprehensiveness, and continuity of sex education programs in the United States are also lacking. In the early 1980s, the federal government began endorsing “abstinence-only until marriage” (AOUM) programs (Irvine, 2001) and in the past two decades has spent approximately \$2 billion USD on such programs (Donovan, 2017). According to a 2011 policy brief from Advocates for Youth (Advocates for Youth, 2011), AOUM programs have been found to contain “false, misleading or distorted information”; be ineffective in reducing teen pregnancy and STD rates; and violate youth human rights and free speech. Yet in 2016, forty-nine states accepted federal funds to promote AOUM (Hall, Sales, Komro, & Santelli, 2016), despite that a majority (85%–98%) of US parents and public health professionals want comprehensive sex education in schools (Advocates for Youth, 2011; Hall et al., 2016; Slater, 2013).

Other interventions are offered by a range of recognized sources (Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), 2013; Grant, Mottet, & Tanis, 2012; Lunacek, 2015) and include the following: enacting and properly enforcing equal treatment directives and anti-discrimination laws; developing and implementing campaigns and expanded educational programs for youth (especially schools and sports); supporting LGBTQI communities, businesses, and inclusive workplaces; developing and implementing sexual orientation and gender equality campaigns and awareness programs within health and social service sectors, as well as police, incarceration, immigration enforcement, and legal systems; improving available data on the situation of LGBT people; and working at the global scale, including with the United Nations and other human rights organizations.

In sum, Mexico and the United States have many challenges and much work to do to effectively protect the human rights of transgender (and LGBQI) persons. A first step is expanding the “advocacy nexus” to include CSE and other educational programs for youth; however, both Mexico and the United States must direct more resources toward curriculum, training protocols, and programs that combat a culture of gender-based violence within all social institutions. To be effective, such protocols and programs must drill down into socialization processes—every-day ideas and practices—attached to gender and sexuality within family, educational, social welfare, and legal and public security spheres. Until conditions change at both the micro-interpersonal and macro-institutional levels, the stream of LGBT asylum seekers from Mexico will continue indefinitely to make their way north to the United States, where they will also continue to experience violence and human rights abuses.

ENDNOTES

¹ While there is much debate about definitions of terms (Hines, 2010), in this paper “transgender” and “gender non-conforming” (GNC) are used interchangeably as umbrella terms to describe those whose gender identity and expression do not always align with biological sex determined at birth.

- ² Statistics of murders and hate crimes against transgender persons typically represent only the “tip of the iceberg” as collected data show only those cases that have been reported; additionally, not all transgender persons who are murdered are identified as transgender, and murders may be mislabeled as “crimes of passion.”
- ³ Based on how the laws and policies of each country impact on the lives of LGBTQI people.

REFERENCES

- Abeni, C. (2015). Trans lives matters and black lives matters join forces for justice. *The Advocate*, September 10. Retrieved from <http://www.advocate.com/2015/9/10/trans-lives-matters-and-black-lives-matters-join-forces-justice>.
- Advocates for Youth. (2011). *Adolescent Sexual Health in Europe and the United States The Case For A Rights. Respect. Responsibility.® Approach*. Washington DC: Advocates for Youth. Retrieved from <http://www.advocatesforyouth.org/publications/publications-a-z/419-adolescent-sexual-health-in-europe-a>
- Alliance, H. (2011). *Rainbow Welcome Initiative: An Assessment and recommendations report on LGBT refugee resettlement in the United States*. Washington, DC: Office of Refugee Settlement US Dept of Health and. Human Services.
- Amnesty International (2010). *Amnesty international report 2010: Mexico*. Mexico City: Amnesty International. Retrieved from <http://www.amnesty.org/en/region/mexico/report-2010>.
- Amnesty International Network. (2011). *Unlawful killing/Legal concern/Fear for Safety—Mexico*. Washington DC: Amnesty International.
- Anti-Transgender Legislation Spreads Nationwide, Bills Targeting Children Surge. (2016). *Anti-transgender legislation spreads nationwide, bills targeting children surge*. Washington DC: Human Rights Campaign. Retrieved from <http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/HRC-Anti-Trans-Issue-Brief-FINAL-REV2.pdf>
- Arnold, S. (2013). Identity and the sexual minority refugee: A Discussion of conceptions and preconceptions in the United Kingdom and Ireland. *Human Rights Brief*, 20(3), 26–31.
- Asistencia Legal por los Derechos Humanos A.C. (2013). *Violencia contra las Lesbianas los Gays y las Personas Trans Bisexuales e Intersex en Mexico*. Asistencia Legal por los Derechos Humanos A.C, Federal District, Mexico: Asistencia Legal por los Derechos Humanos A.C. Retrieved from <http://reddtd.org.mx/wp-content/uploads/2014/08/informe-LGBTTTI-Copy.pdf>
- Associated Press. (2010). Violence against gays and lesbians increases sharply despite campaign. *Portland Press Herald*, May 14.
- Baams, L., Dubas, J. S., & van Aken, M. A. G. (2017). Comprehensive sexuality education as a longitudinal predictor of LGBTQ name-calling and perceived willingness to intervene in school. *Journal of Youth and Adolescence*, 46(5), 931–942. <https://doi.org/10.1007/s10964-017-0638-z>
- Bastida Aguilar, L. (2012). En México, 75 por ciento de jóvenes gays sufre violencia en escuelas. *Notiese*, May 16. Retrieved from http://www.notiese.org/notiese.php?ctn_xml:id=5682
- Bastida Aguilar, L. (2014). Presentan informe a relator de la ONU por violación a derechos humanos de trabajadoras sexuales transgénero de Chihuahua. *NotieSe.com*, April 28. Retrieved from http://www.notiese.org/notiese.php?ctn_xml:id=7358
- Bautista-Arredondo, S., Colchero, A., Romero, M., Conde-Glez, C. J., & Sosa-Rubí, S. G. (2013). Is the HIV epidemic stable among MSM in Mexico? HIV prevalence and risk behavior results from a nationally representative survey among men who have sex with men. *PLoS ONE*, 8(9), e72616. <https://doi.org/10.1371/journal.pone.0072616>
- Beer, C. B., & Cruz-Aceves, V. D. (2018). Extending rights to marginalized minorities: Same-sex relationship recognition in Mexico and the United States. *State Politics and Policy Quarterly*, 18(1), 3–26. <https://doi.org/10.1177/1532440017751421>
- Black Lives Matter. (2015). Black lives matter guiding principles. Retrieved from <http://blacklivesmatter.com/guiding-principles/>
- Bohm, A. (2004). Theoretical coding: Text analysis in grounded theory. In U. Flick, E. Kardoff & I. Stienke (Eds). *A companion to qualitative research*. London: Sage.
- Brito, A., & Bastida, L. (2009). *Informe de Crimenes de Oidio por Homofobia Mexico 1995–2008*. Mexico City: Letra S.

- Carroll, A., & Mendos, L. R. (2017). *State-sponsored homophobia: A world survey of sexual orientation laws - criminalisation, protection and recognition*. Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association. Retrieved from https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf
- Center for American Progress; Movement Advancement Project. (2016). *Unjust: How the Criminal Justice System Fails Transgender People*. Movement Advancement Project: Center for American Progress; Movement Advancement Project. Retrieved from <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>
- Colchero, A., Cortés, M. A., Sosa-Rubí, S., & Romero, M. (2013). *Principales resultados de la encuesta de salud con sero-prevalencia de VIH a mujeres transgénero en la Ciudad de México*. Mexico City: INSEP, USAID. Retrieved from http://condesadf.mx/pdf/ecuesta_trans2013.pdf
- Colchero, A. M., Cortés-Ortiz, A., Romero-Martínez, M., Vega, H., González, A., Román, R., ... Bautista-Arredondo, S. (2015). HIV prevalence, sociodemographic characteristics, and sexual behaviors among transwomen in Mexico City. *Salud Publica de Mexico*, 57(2), Retrieved from http://www.scielosp.org/scielo.php?script=sci_arttext&pxml-id=S0036-36342015000800002
- Committee for the Elimination of All Forms of Discrimination against Women (CEDAW). (2013). *The Relationship between Homophobia, Transphobia, and Women's Access to Justice for the Forthcoming CEDAW General Recommendation on Women's Access to Justice*. International Gay & Lesbian Human Rights Commission and MADRE & the International Women's Human Rights Clinic at CUNY School of Law.
- CONAPRED (2009). *464 crímenes de odio por homofobia en México: CCCCOH*. Mexico City: CONAPRED. Retrieved from http://www.conapred.org.mx/index.php?contenido=noticias&xml:id=3181&id_opcion=237&op=448
- CONAPRED (2013). *Contra La Homofobia y la Transfobia*. Mexico City: CONAPRED. Retrieved from http://www.conapred.org.mx/userfiles/files/Dossier_17Mayo_Homofobia_INACCSS.pdf
- Corrales, J. (2012). LGBT Rights in the Americas. *Americas Quarterly Spring*, Retrieved from <http://www.americasquarterly.org/node/3565>
- de la Dehesa, R. (2010). *Queering the Public Sphere in Mexico and Brazil: Sexual Rights Movements in Emerging Democracies*. Durham: Duke University Press.
- de Melker, S. (2015). The case for starting sex education in kindergarten. PBS Newshour, May 27. Retrieved from <https://www.pbs.org/newshour/health/spring-fever>
- Desastre, M. X. (2018). Denuncian agresión de 5 policías a mujer transgénero por usar el baño en la Feria de Puebla. April 17. Retrieved from <http://desastre.mx/mexico/denuncian-agresion-de-5-policias-a-mujer-transgenero-por-usar-el-bano-en-la-feria-de-puebla/>
- Diez, J. (2015). *The Politics of Gay Marriage in Latin America: Argentina, Chile and Mexico*. New York: Cambridge University Press.
- Donovan, M. K. (2017). The looming threat to sex education: A resurgence of federal funding for abstinence-only programs? *Guttmacher Policy Review* (Guttmacher Institute) 20. Retrieved from <https://www.guttmacher.org/gpr/2017/03/looming-threat-sex-education-resurgence-federal-funding-abstinence-only-programs>
- El Sol de Tijuana. (2007). Transsexuals are Victims of Police Extortion. November 27.
- El Universal. (2015). Crecen grupos en contra de bodas gay. EL UNIVERSAL / MÉXICO, D.F., August 2. Retrieved from <http://www.am.com.mx/celaya/mexico/crecen-grupos-en-contra-de-bodas-gay-220895.html>
- Epstein, S., & Carrillo, H. (2014). Immigrant sexual citizenship: Intersectional templates among Mexican Gay Immigrants to the United States. *Citizenship Studies*, (January), 1–19.
- Espolea.Org. (2014). 1st Encuesta Sobre Homofobia y el Mundo Laboral en Mexico. Retrieved from <http://www.espolea.org/uploads/8/7/2/7/8727772/resultados-encuesta-2014.pdf>
- Estrada Zuniga, D. (2014). Resulta que el era mas gay': homofobia y policia municipal. Retrieved from animalpolitico.com, November 3.
- Estrada Zuniga, D. (2014). *La homofobia aprendida socio-culturalmente como influencia en la sub cultura de la policia de Guadalajara*. FLACSO MEXICO, Distrito Federal: FLACSO MEXICO. Retrieved from http://bibdigital.flacso.edu.mx:8080/dspace/bitstream/handle/123456789/5028/Estrada_D.pdf?sequence=1
- Excelcior. (2015). Iglesias evangélicas de México catalogan de perversión la adopción gay. *NoticiasCristianas.com*, August 14. Retrieved from <http://www.noticiacristiana.com/sociedad/iglesiaestado/2015/08/iglesias-evangelicas-de-mexico-catalogan-de-perversion-la-adopcion-gay.html>
- Feder, J. L., Singer-Vine, J., & King, B. (2016). This is how 23 countries feel about transgender rights. December 29. Retrieved from <https://www.buzzfeednews.com/article/lesterfeder/this-is-how-23-countries-feel-about-transgender-rights>

- Fentanes, G. H. D. (2014). LA MARGINACIÓN TRANSGÉNERO. Mexico Social, May 30. Retrieved from <http://www.mexicosocial.org/index.php/component/k2/item/548-la-marginacion-transgenero>
- Fischer, F., Miller, G. J., & Sidney, M. S. (2007). *Handbook of public policy analysis; theory, politics and methods*. New York: Taylor and Francis CRC Press.
- Gates, G. (2013). *LGBT Adult Immigrants in the United States*. Los Angeles: The Williams Institute, UCLA School of Law.
- Gilmore, T., Jim, K., & Rafael, R. (1986). Action based modes of inquiry and the host-researcher relationship. Consultation Fall.
- Glaser, B., & Strauss, A. (1967). *The Discovery of Grounded Theory*. Chicago: Aldine.
- Gómez, M. (2017). El triste panorama electoral para la comunidad LGBT mexicana en 2018. HuffPost Mexico, 12 14. Retrieved from https://www.huffingtonpost.com/marco-gmez/el-triste-panorama-electoral-para-la-comunidad-lgbt-mexicana-en-2018_a_23306354/
- González, M. S. (2018). Cambio de Genero, Una Problemática Legal. Retrieved from <http://netnoticias.mx>, April 10. <http://netnoticias.mx/2018-04-10-032b2804/cambio-de-genero-una-problematica-legal/>
- Grant, J. M., Mottet, L. A., & Tanis, J. (2012). *Injustice at every turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force. Retrieved from <https://transequality.org/issues/resources/national-transgender-discrimination-survey-full-report>
- Gruberg, S. (2014). LGBT Undocumented Immigrants Face an Increased Risk of Hate Violence. *Center for American Progress Report*, June 10. Retrieved from <https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-undocumented-immigrants-face-an-increased-risk-of-hate-violence/>
- Gutierrez, J. (2015). I interrupted Obama because we need to be Heard. *Washington Blade*, June 25. Retrieved from <https://www.washingtonblade.com/2015/06/25/exclusive-i-interrupted-obama-because-we-need-to-be-heard/>
- Hall, K. S., Sales, J. M. D., Komro, K. A., & Santelli, J. (2016). The State of Sex Education in the United States. *Journal of Adolescent Health*, 58, 595–597. <https://doi.org/10.1016/j.jadohealth.2016.03.032>
- Hankivsky, O. (Ed). (2011). *Health Inequities in Canada: Intersectional Frameworks and Practices*. Toronto: UCB Press.
- Hepner, T. R. (2015). The ‘Asylum-Advocacy Nexus’ in Anthropological Perspective: Agency, Activism and the Construction of Eritrean Political Identities. In I. Berger, T. Redeker Hepner, B. Lawrance, J. Tague, & M. Terretta (Eds.). *African Asylum at the Crossroads: Activism, Expert Testimony and Refugee Rights*. Athens: Ohio University Press.
- Hernández Flores, P. (2011). Contra quién hay que luchar Quién es el asesino. Corresponsales Clave, August 15. Retrieved from <http://www.corresponsalesclave.org/2011/08/%C2%BFcontra-quien-hay-que-luchar-%C2%BFqui-en-es-el-asesino.html>
- Hernández García, L., & Jorge Fernández, M. (2014). *Informe para el Relator Especial de la ONU sobre Tortura, Tratos Crueles Inhumanos y Degradantes*. Letra S, SIDA, Cultura y Vida Cotidiana A.C. Retrieved from http://www.letraese-ddhh.com/info_mujtrans_chih.pdf
- Hines, S. (2010). Introduction. In *Transgender Identities: Towards a Social Analysis of Gender Diversity*, by Sally Hines and Tam Sanger, 1-24. New York: Routledge.
- Hombres, C. (2013). *INFORME SOBRE MEXICO 17 Ronda de Examen Periodico Universal*. Programa Interdisciplinario de Investigación Acción Feminista (PIIAF A. C.), el Colectivo Hombres XX y la Iniciativa por los Derechos Sexuales, Federal District, Mexico: Programa Interdisciplinario de Investigación Acción Feminista (PIIAF A. C.), el Colectivo Hombres XX y la Iniciativa por los. Derechos Sexuales.
- Huffington Post. (2012a). Advocacy Group Releases First Ever Guide to Welcoming LGBTI Refugees to the U.S. Huffington Post, June 23.
- Huffington Post. (2012b). Agnes Hernandez, Mexican Transgender Activist, Brutally Murdered. March 15. Retrieved from https://www.huffingtonpost.com/2012/03/15/agnes-hernandez-hate-crime-mexican-transgender-activist-brutally-murdered_n_1345867.html
- ILGA-Europe. (2018). *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*. European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. Retrieved from <https://rainbow-europe.org/country-ranking>
- Immigration and Refugee Board of Canada. (2005). *Issue Paper, Mexico: Selected Issues of Internal Flight Alternatives (July 2003-July 2005)*. Ottawa: Immigration and Refugee Board of Canada.



- Immigration and Refugee Board of Canada (2006). *Mexico: Treatment of homosexuals and availability of state protection (May 2006)*. Ottawa: Immigration and Refugee Board of Canada, Retrieved from <http://www.refworld.org/docid/45f1477a2f.html>
- Immigration and Refugee Board of Canada. (2008). *Mexico: Situation of homosexuals in Guadalajara and whether there are support or advocacy groups acting on their behalf*. Immigration and Refugee Board of Canada, Immigration and Refugee Board of Canada.
- Immigration and Refugee Board of Canada. (2010). *Mexico: The situation of transgender people, particularly in Mexico City, Cancún, Guadalajara and Acapulco*. Ottawa: Immigration and Refugee Board of Canada. Retrieved from http://www.justice.gov/eoir/vll/country/canada_coi/mexico/MEX103460.FE.pdf
- Immigration and Refugee Board of Canada (2011). *Mexico: Treatment of sexual minorities, including legislation protecting sexual minorities, other state protection*. Ottawa: Immigration and Refugee Board of Canada. Retrieved from http://www.justice.gov/eoir/vll/country/canada_coi/mexico/MEX103804.E.pdf
- Immigration and Refugee Board of Canada. (2012a). *Mexico: Reports of sexual abuse committed by police officers against sexual minorities*. Ottawa: Immigration and Refugee Board of Canada. Retrieved from http://www.justice.gov/eoir/vll/country/canada_coi/mexico/MEX104172.E.pdf.
- Immigration and Refugee Board of Canada. (2012b). *Mexico: Situation of sexual minorities in Mexico City, Guadalajara (Jalisco) and Puerto Vallarta (Jalisco)*. Ottawa: Immigration and Refugee Board of Canada. Retrieved from http://www.justice.gov/eoir/vll/country/canada_coi/mexico/MEX104173.E.pdf
- Immigration and Refugee Board of Canada. (2015). *Mexico: Situation and treatment of sexual minorities, particularly in Mexico City, Cancun, Guadalajara and Acapulco*. Ottawa: Immigration and Refugee Board of Canada.
- Immigration Equality. (2012). *U.S. Court of Appeals GLBT and HIV Asylum Cases - 1996-present*. Chicago: Immigration Equality. Retrieved from <http://www.immigrationequality.org/wp-content/uploads/2012/12/Final-Circuit-Chart-12-12.pdf>
- Inter-American Commission on Human Rights (2015). *Violence against Lesbian, Gay, Bisexual*. Organization of American States: Trans and Intersex Persons in the Americas. Retrieved from <http://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>.
- International Human Rights Clinic et al. (2010). The violations of the rights of lesbian, gay, bisexual and transgender persons in Mexico: A shadow report. Human Rights Committee for the International Covenant on Civil and Political Rights.
- Irvine, J. M. (2001). The politics of sex education. In S. Steven, N. Fisher, & C. Meeks Seidman (Eds.). *Introducing the New Sexuality Studies* (pp. 486–491). New York: Routledge.
- Jeanty, J., & Tobin, H. J. (2013). *Our Moment of Reform: Immigration and Transgender People*. Washington, DC: National Center for Transgender Equality.
- Jenkins, E. (2010). Taking the Square Peg Out of the Round Hole: Addressing the Misclassification of Transgendered Asylum Seekers. *Golden Gate University Law Review*, 40(1), 67–95.
- Jordan, S., Bahreini, R., & Lidstone, R. (2009). *LGBT Refugees and Sexual Orientation/Gender Identity Asylum: An annotated bibliography of selected legal and social scientific publications*. Gender and Sexuality Working Group of the Refugee Research. *Network*.
- Latino Daily News. (2013). Latino Daily News, February 7. Retrieved from Mexican Authorities Investigate Whether Homophobia Played a Role in Murder <http://www.hispanicallyspeakingnews.com/latino-daily-news/details/mexican-authorities-investigate-whether-homophobia-played-a-role-in-murder/21930/>
- LaVozArizona.com. (2015). Inmigrantes LGBT piden a ICE un trato justo en los centros de detención. May 12. Retrieved from <http://www.lavozarizona.com/story/inicio/2015/05/12/inmigrantes-lgbt-piden-a-ice-un-trato-justo-en-los-centros-de-detencin/27198325/>
- Letra S, Center for International Human Rights of Northwestern University School of Law, Heartland Alliance for Human Needs and Human Rights. (2014). Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report. 111 Session of the Human Rights Committee. Geneva.
- LGBTQ Victory Institute. (2018). *Out for America 2018: A Census of out LGBT elected officials nationwide*. Washington DC: LGBTQ Victory Institute. Retrieved from https://3zpn148sctp38fwo2q3djou-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Victory_Out-For-America-2018.pdf
- Lieberman, A. (2013). GBT House 'Pod' Offers National Detention Model. WeNews, September 9. Retrieved from <https://womensenews.org/2013/09/gbt-housing-pod-offers-national-detention-model/>

- Luibheid, E. (2005). Introduction: Queering migration and citizenship. In E. Luibheid & L. Cantu (Eds.). *Queer Migrations: Sexuality, US Citizenship, and Border Crossings*, xi–xlvii. Minneapolis: University of Minnesota Press.
- Lunacek, U. (2015). *List of Actions to advance LGBTI Equality*. Commission to Advance LGBTI Equality. Retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0062&language=EN&ring=A7-2014-0009>
- McCarthy, J. (2015). European countries among top places for gay people to live. June 26. Retrieved from https://news.gallup.com/poll/183809/european-countries-among-top-places-gay-people-live.aspx?utm_source=World&utm_medium=newsfeed&utm_campaign=tiles
- McClure, H., Nugent, C., & Soloway, L. (2000). *Preparing sexual orientation-based asylum claims: A Handbook for Advocates and Asylum Seekers*. Midwest Human Rights Partnership for Sexual Orientation and the Lesbian and Gay Immigration Rights Task Force.
- Melesio, L. (2010). Deficiente legislación en educación sexual en la región. Science and Development Network, February 11: 1–2.
- Milliken, A. (2017). Mexican LGBT activist and journalist found murdered. Pink News, April 20. Retrieved from <https://www.pinknews.co.uk/2017/04/20/mexican-lgbt-advocate-journalist-dead/>.
- Mondragon, J. M. (2009). Intolerancia a la diversidad sexual y crímenes por homofobia. Un análisis sociológico. *Sociologica*, 24(69), 123–156.
- Movement Advancement Project. (2016). *Mapping LGBT Equality in America*. Denver: Movement Advancement Project. Retrieved from <http://transgenderlawcenter.org/equalitymap>
- National Catholic Register Staff. (2010). Behind the Mexican Court Decision on Same-Sex 'Marriage. National Catholic Register, Sept 3. Retrieved from <https://www.ncregister.com/daily-news/behind-the-mexican-court-decision-on-same-sex-marriage>
- Needle, R. H., Trotter, R. T., Singer, M., Bates, C., Page, J. B., Metzger, D., & Marcelin, L. H. (2003). Rapid assessment of the HIV/AIDS crisis in racial and ethnic minority communities: An approach for timely community interventions. *American Journal of Public Health*, 93(6), 970–979. <https://doi.org/10.2105/AJPH.93.6.970>
- Noticias. (2008). Mexico: The police are the ones that most discriminate against the gay community. October 7. Retrieved from Universogay.com
- Ortiz-Hernandez, L., & Granados-Cosme, J. A. (2006). Violence against bisexuals, gays and lesbians in Mexico City. *Journal of Homosexuality*, 50(4), 113–140. https://doi.org/10.1300/J082v50n04_06
- Planet Transgender (2010). Transgender Woman Decapitated, Chihuahua Mexico. April 8, 2010. Retrieved from <https://planettransgender.com/transgender-woman-decapitated-chihuahua-mexico/>.
- REDLACTRANS (2012). *Impunidad y violencia contra mujeres transgénero defensoras de derechos humanos en América Latina*. Buenos Aires, Argentina: International HIV/AIDS Alliance. Retrieved from http://www.aidsalliance.org/assets/000/000/898/90624-Impunidad-y-violencia-contra-mujeres-transgenero-defensoras-de-derechos-humanos-en-America-Latina_original.pdf?1407754269
- Rojas, R., de Castro, F., Villalobos, A., Allen-Leigh, B., Romero, M., Braverman-Bronstein, A., & Uribe, P. (2017). Comprehensive sexual education in Mexico: An analysis of coverage, comprehensiveness and continuity of contents in Mexican public and private schools. *Salud pública. Méx* 59 (01) Retrieved from https://scielosp.org/scielo.php?script=sci_arttext&pxml:id=S0036-36342017000100019&lng=en&nrm=iso&tlng=en
- Roldán, N. (2017). Las autoridades de Jalisco se niegan a reconocer la nueva identidad de 400 personas transgénero. January 5. Retrieved from <https://www.animalpolitico.com/2017/01/jalisco-cambio-400-personas-transgenero/>
- SDP noticias.com. (2012). Encuentran cuerpo de travesti en Monterrey. January 18. Retrieved from <http://www.sdpnoticias.com/local/monterrey/2012/01/18/encuentran-cuerpo-de-travesti-en-monterrey>
- Slater, H. (2013). *LGBT-inclusive sex education means healthier youth and safer schools*. Center for American Progress. Retrieved from <https://www.americanprogress.org/issues/lgbt/news/2013/06/21/67411/lgbt-inclusive-sex-education-means-healthier-youth-and-safer-schools/>
- Sridharan, S. (2008). The Difficulties of U.S. Asylum Claims Based on Sexual Orientation. Migration Policy Institute. Retrieved from <http://www.migrationpolicy.org/article/difficulties-us-asylum-claims-based-sexual-orientation>
- Toro, R. (2013). The World's Catholic Population (Infographic). Retrieved from <http://www.livescience.com/27244-the-world-s-catholic-population-infographic.html>
- Torres-Ruiz, A. (2011). HIV/AIDS and Sexual Minorities in Mexico: A Globalized Struggle for the Protection of Human Rights. *Latin American Research Review*, 46(1), 30–53. <https://doi.org/10.1353/lar.2011.0000>

- Transgender Law Center. (2016). *2016 report on human rights conditions for transgender women in Mexico*. Law School LGBT Clinic, Transgender Law Center and Cornell University Law School LGBT Clinic, Cornell University Law School. Retrieved from <http://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf>
- Transgender Murder Monitoring Project. (2015). Transgender Europe: IDAHOT TMM Press Release: May 8th 2015. Transrespect Versus Transphobia Worldwide. Retrieved from http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2015.htm
- Transgender Murder Monitoring Project. (2015). Transgender Europe: IDAHOT TMM Press Release: May 8th 2015. Transrespect Versus Transphobia Worldwide. Retrieved from http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2015.htm
- Transgender Murder Monitoring Project (2017). Trans Day of Remembrance (TDoR) 2017 • Press Release. Transgender Murder Monitoring Project, Retrieved from <https://transrespect.org/en/tmm-update-trans-day-remembrance-2017/>
- UNESCO. (2015). *Emerging Evidence, Lessons and Practice in Comprehensive Sexuality Education - A Global Review 2015*. Paris: UNESCO. Retrieved from <http://unesdoc.unesco.org/images/0024/002431/243106e.pdf>
- United Nations Refugee Agency. (2015). *Asylum Seekers Monthly Data Report*. Welcome to the UNHCR Population Statistics Database, United Nations Refugee Agency, United Nations Refugee Agency. Retrieved from http://popstats.unhcr.org/en/asylum_seekers_monthly
- US Court of Appeals for the Ninth Circuit. (2015). On Petition for Review of an Order of the. September 4. file:///C:/Users/Nielan/Downloads/TransportRoom.pdf.
- US Department of State. (1999). *Mexico: Country Report on Human Rights Practices*. Washington DC: US Department of State.
- US Department of State. (2014). *Country Reports on Human Rights Practices for 2014*. Washington DC: US Department of State. Retrieved from <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.
- US Dept of State. (2011). *2010 Human Rights Report: Mexico*. Washington DC: Bureau of Democracy Human rights and labor, US Dept of State.
- US Dept of State. (2012). *2011 Human Rights Report: Mexico*. Washington DC: US Dept of State, US Dept of State.
- US Dept of State. (2013). *2012 Human Rights Report: Mexico*. Washington DC: Bureau of Democracy Human rights and labor, US Dept of State.
- US Dept of State. (2015). *2015 Human Rights Report: Mexico*. Washington DC: Bureau of Democracy Human rights and labor, US Dept of State.
- US Dept of State. (2017). *Human Rights Report: Mexico*. Washington DC: US Dept of State.
- US Immigration and Customs Enforcement. (2015). ICE issues new guidance on the care of transgender individuals in custody. ICE Press Releases, June 29. Retrieved from <https://www.ice.gov/news/releases/ice-issues-new-guidance-care-transgender-individuals-custody>
- Walker-Said, C. (2015). Sexual Minorities among African Asylum Claimants: Human Rights Regimes, Bureaucratic Knowledge and the Era of Sexual Rights Diplomacy. In I. Berger, T. Redeker Hepner, B. Lawrance, J. Tague, & M. Terretta (Eds.). *African Asylum at a Crossroads: Activism, Expert Testimony and Refugee Rights* (pp. 203–224). Athens: Ohio University Press.
- XQsí Magazine. (2012). UPDATED: Arrest made in connection to killing of trans LGBTQ activist. March 17. Retrieved from <http://xqsimagazine.com/2012/03/17/arrest-made-in-connect-to-killing-of-trans-lgbtq-activist/>

How to cite this article: Barnes N. Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States. *Sexuality, Gender & Policy*. 2019;2:5–25. <https://doi.org/10.1002/sgp2.12000>