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Exploring Legal Aid Provision for  
LGBTIQ+Asylum Seekers in the American  
Southwest from 2012-2021

**Claire Weaver**

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**Department of International Development**

**London School of Economics and Political Science**

**Houghton Street**

**London**

**WC2A 2AE UK**

**Tel: +44 (020) 7955 7425/6252**

**Fax: +44 (020) 7955-6844**

**Email: [d.daley@lse.ac.uk](mailto:d.daley@lse.ac.uk)**

**Website: <http://www.lse.ac.uk/internationalDevelopment/home.aspx>**

## **Abstract**

The aims of this research are twofold: it explores legal barriers for LGBTIQ+ asylum seekers in the U.S. and investigates legal aid provision in the American Southwest. In interviewing representatives of legal NGOs, this research finds that LGBTIQ+ asylum seekers encounter four main barriers to accessing legal aid in the U.S.: 1) 'prevention through deterrence' policies, 2) prolonged detention, 3) asylum delays & liminality (legal violence), and 4) personal prejudices of legal officials. Equally, it finds that legal NGOs fill gaps for the government and form transnational networks. Ultimately, it recommends increased protections for LGBTIQ+ asylum seekers, including bias training for judges and more thorough vetting processes for ICE and CBP officials.

## **Content Warning**

This dissertation discusses instances of LGBTIQ+ persecution, sexual assault, and death by suicide.

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I would like to thank my academic mentor, Dr. Alessandra Radicati, for her valuable insight, interview participants of this research for their incredibly important work, and my friends for supporting me through my second pandemic dissertation.

*"It is certain, in any case, that ignorance, allied with power, is the most ferocious enemy justice can have." -James Baldwin*

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## Abbreviations

ACLU: The American Civil Liberties Union

AOL: Al Otro Lado (NGO)

CBP: United States Customs and Border Patrol

DHS: Department of Homeland Security

EOIR: Executive Office for Immigration Review

ICE: United States Immigration and Customs Enforcement

INGO : International Non-Governmental Organisation

LGBTIQ+ : Lesbian, Gay, Bisexual, Transgender, Intersex, Queer

MPP: Migrant Protection Protocols

NGO: Non-Governmental Organisation

RAICES: The Refugee and Immigrant Center for Education and Legal Services (NGO)

RCT: Respond Crisis Translation (NGO)

USCIS: United States Citizenship and Immigration Services

UN: United Nations

U.S.: United States of America

## Exploring Legal Aid Provision for LGBTIQ+ Asylum Seekers in the American Southwest from 2012-2021

### Introduction

From Stonewall in 1969 to the legalisation of gay marriage in 2015, the LGBTIQ+ movement in the U.S. has been described as the “fastest-progressing social movement in history” (Schmidt, 2019, p.1). In the past decade, the American public’s attitude toward homosexuality has shifted significantly: as of 2019, 79% of Americans believed that homosexuality should be socially accepted, compared to just 49% in 2007 (Poushter & Kent, 2020). Though the U.S. is becoming a safer place for queer Americans, this has not yet bled into the immigration system (Alessi et al., 2017). In *Queer Migration Politics*, Chávez notes that immigration rights and LGBTIQ+ rights movements have been treated as separate in activist spaces, when in reality they are inherently entwined; queer people must often migrate due to persecution in their countries of origin, including within the U.S. (2013).

Consensual homosexual ‘conduct’ remains criminalised in 69 countries – and in 11 of these, capital punishment remains a consequence of accused or overt queerness (Poushter & Kent, 2020). Because of this, asylum applications on the grounds of LGBTIQ+ related persecution have become an increasingly accepted occurrence over the past several decades in ‘Global North’ countries (Turk, 2013; Soucek, 2010). According to Fitzsimmons (2020), using USCIS data obtained through a Freedom of Information Act request, at least 4,385 people have been successfully granted asylum in the U.S. on the basis of LGBTIQ+ persecution in their country of origin since 2007. Interestingly, in the U.S., 98.4% of asylum seekers who progress to the *interview stage* in their LGBTIQ+ persecution asylum applications are granted (Shaw et al., 2021). However, this does not mean that everyone who applies is successful in their application: between 2012 and 2017, 11,400 asylum claims were filed on the grounds of LGBTIQ+ persecution, while only 4,385 of these claims led to interviews (Shaw et al, 2021). This is traceable to the myriad of obstacles in reaching the U.S. in the first place as well as a range of legal barriers one must navigate in proving their queer identity to the state (Alessi et al., 2017; Vogler, 2016). In particular, proving one’s LGBTIQ+ status to immigration judges requires a range of documents and ‘credible’ or ‘reasonable’ fear interviews to prove an applicant’s persecution, including proof of past relationships, entrance to gay clubs and queer spaces, accounts of one’s trauma, amongst other documentation (Bennish-Weisman, 2019). This

begs the question: who is unable to apply for asylum, and to what extent is this a result of barriers to accessing quality legal representation? Further, who provides legal aid to these populations? Particularly in the last decade, there has been a growing understanding that LGBTIQ+ asylum seekers encounter unique legal barriers that require specific types of legal support (Llewellyn, 2017). Upon further investigation, there are dozens of NGOs in the American Southwest providing legal aid generally for migrants who take on LGBTIQ+ cases and, although few and far between, some who provide specifically for LGBTIQ+ asylum seekers (Mayers, 2018). Even within the LGBTIQ+ community, there are a range of experiences and reasons for applying for asylum, requiring differing forms of legal representation (Ghoshal, 2020). For example, transgender people face the highest rates of violence of any social group in the world, especially trans women of colour (Alessi et al., 2017). Similarly, openly presenting gay men and lesbian women are more prone to homophobic violence in their countries of origin due purely to visibility (Greenberg, 2017). Because of their heightened risk of financial vulnerability, LGBTIQ+ individuals may not be able to pay for an immigration lawyer and have to rely solely on legal aid and translation (Heller, 2009; Hopkinson et al., 2017).

Within International Development, there is a significant paucity in research surrounding the experiences of LGBTIQ+ migrants as well as the importance of legal aid, especially in the 'Global North'. Because neither the Executive Office for Immigration Review (EOIR) nor the United States Customs and Immigration Service (USCIS) publish data on asylum claims based on LGBTIQ+ status, little was known about gender identity and sexual orientation asylum claims until reporter Tim Fitzsimmons (2020) published his research on the topic only last year. The resulting dearth in literature surrounding LGBTIQ+ asylum seekers and their applications based on social groups under the 1951 Refugee Convention warrants deeper investigation of queer migrations. Thus, this study's aims are twofold: one, to explore the barriers faced by LGBTIQ+ asylum seekers applying in the U.S. and two, to map NGOs providing legal aid in the Southwest, defined as the states surrounding the U.S.-Mexico border: Arizona, California, New Mexico, and Texas. This research is grounded in Puar's (2007) theory of 'Homonationalism' and the framework of legal violence, which argues that certain social groups face continuous trauma via liminality within the current immigration system (Menjívar & Abrego, 2012). As such, this dissertation explores the following questions:

### **Research Questions:**

1. How do LGBTQ+ migrants experience the asylum-seeking process in the U.S. as a distinct social group? (*Primary question*)
2. What are the specific needs of queer communities in terms of legal support and how are they provided for? (*Primary question*)
3. How does legal violence present in the U.S. asylum system? (*Secondary question*)
4. What legal support does the U.S. provide and how do NGOs fill the gaps? (*Secondary question*)

To investigate these questions, this dissertation first reviews relevant literature, establishing specific barriers in asylum applications for LGBTQ+ asylum seekers and extrapolates its epistemological underpinnings. It then outlines the context of the American Southwest and the U.S.-Mexico Border, assesses immigration policy changes from 2012 to the present, and analyses qualitative interview data with participants from legal NGOs. In chapters I, II, and III it weaves findings and analysis together, then recommends policy changes and concludes.

## Literature Review

Relevant literature exists in four arenas: 1) queer migrations, 2) theories of Homonationalism and legal violence, 3) securitization and the 'asymmetric' U.S.-Mexico border, and 4) humanitarian space and NGOs. This dissertation uses the term 'queer' and 'LGBTIQ+' interchangeably, defining queer as anyone who falls under the umbrella of Lesbian, Gay, Bisexual, Transgender, Intersex and other queer identities (Berger, 2009). 'Queer' has historically been used as a slur, but this research opts to reclaim the term to describe the community with pride in its diverse range of experiences (Perlman, 2019). Further, in accordance with their United Nations definitions, the term 'asylum seeker' will be used throughout to demarcate individuals with 'well-founded fear of persecution' in their country of origin. While often referred to together with the term 'refugee', it is crucial to note the term 'asylum seeker' refers broadly to those claiming asylum in a country other than their own, whilst 'refugee' refers to a legal status (United Nations, 1951).

### *Queer Migrations and 'Chosen Family' Solidarities*

Thanks to the ground-breaking research of Eithne Lubhéid, Martin F. Manalansan, Timothy Randazzo, and Lionel Cantú in the late 1990s and early 2000s, unique barriers for LGBTIQ+ migrants have emerged as a topic of academic research (Llewellyn, 2021). In *Queer Migrations*, Cantú and Lubhéid (2005) note that LGBTIQ+ asylum seekers often have very strong claims.

Due to heightened risk of violence at home, domestic abuse, bullying and discrimination, resulting economic marginalization, and lack of legal protections in countries of origin, LGBTIQ+ individuals are at heightened risk of forced migration (Alessi, 2017; Bresnahan, 2011). Further, heightened risk of social marginalisation, disownment by families, and financial precarity are recognised as unique barriers to queer communities across national contexts (Alessi et al., 2020; McKinnon, Gorman-Murray, and Dominey-Howes, 2017; Donoso, 2020). Particularly in the wake of disaster or conflict, queer communities face higher risk of ‘domicide’, a term for destruction or loss of one’s home due to existing housing insecurity, which leads to higher rates of migration (Gorman-Murray, McKinnon, and Dominey-Howes, 2014). Within conflict situations, LGBTIQ+ populations experience both generalised violence and persecutions on the grounds of gender identity and sexual orientation; particularly in South and Central America, gangs often target openly queer or queer presenting individuals (Doyle, 2008; Shaw et al., 2017; Chávez, 2011). Further, a major issue regarding queer migrations is the treatment of LGBTIQ+ people on their journeys to the border and in detention centres; queer populations often require special accommodations in detention centres due to higher risk of sexual violence (Berger, 2009; Enarson, Fothergill, and Peek, 2018, Alessi et al., 2017).

Moreover, most asylum seekers attempting to enter the U.S. are from Central and South America, where criminalisation of queerness is a direct colonial legacy (Cantú, 2005). Political corruption, gang violence, and crumbling institutions in the Northern Triangle contribute to high numbers of migrants from Guatemala, Honduras, and El Salvador, whilst violence in other South American countries impact queer communities disproportionately (Bhalla, 2020). This dissertation argues that it is crucial to note that America has played a massive role in the reasons that people in Central and South America must flee their homes via its destabilizing diplomacy in Latin America over the past several decades (Cianciarú, 2006; Doyle, 2008). There are also asylum seekers from African and Caribbean countries – though rarer, they face unique cultural stigma in their countries of origin (Bohmer & Shuman, 2018).

Finally, A key element of LGBTIQ+ migrations is “chosen families”, whereby LGBTIQ+ individuals form their own tightly knit social groups (Carrillo, 2010; Turk, 2013). Often, discrimination in one’s home country and/or community makes it harder to connect with existing networks within the U.S., hence the importance of established LGBTQ+ affirming social NGOs (Chávez, 2011; Chávez, 2019; Ritholtz & Buxton, 2021).



### ***Homonationalism and Legal Violence***

This dissertation employs the framework of Homonationalism and legal violence, touching on related concepts of biopower and the 'everywhere border'. Jasbir Puar's (2007) theory of Homonationalism contributes to this dissertation in two ways: one, it suggests that queer migrants deemed to fit the Western values and considered to be "beneficial" to the state (due to their profession or otherwise) may be more likely to get their applications approved, and two, notes that states now gain political legitimacy if they appear accepting of queer communities in the Western gaze (2007). In her seminal work *Terrorist Assemblages: Homonationalism in Queer Times*, (2007), Puar explains that while homosexuality was formerly viewed as a threat to the state, after years of gay liberation movements and increasing acceptance of queer communities, states now favour queer individuals who espouse traditionally white, Western ideals (2006). In particular, it is now beneficial for Western governments to appear accepting of homosexuality, implying that 'Global South' countries who do not accept homosexuality remain 'backwards' and less progressive than the West (Piwowarczyk, Fernandez, and Sharma, 2017). This means that Western states may use 'virtue signalling' within national imagery and messaging to convey their 'progressive' policies; she uses the example of Israel's embrace of gay rights giving it legitimacy for its progressive values compared to other countries in the MENA region (Poushter & Kent, 2020). Further, in *Mapping US Homonormativities* (2006), Puar highlights the rise of normativity in the wake of 9/11 as an attempt to control the American identity, marking an uptick in masculinist nationalism (Turk, 2013).

Additionally, the theory of legal violence elucidates that certain groups face violence via liminality within immigration processes (Menjívar & Abrego, 2012). Legal violence suggests that the asylum process systematically excludes queer applicants by making it very difficult to reach the interview stage (Fletcher, 2006). It is a direct form of Foucault's notion of 'biopower' introduced in *The History of Sexuality*, defined as the state's power to control bodies and the Sovereign's prerogative to 'make live or let die'. Indeed, legal mechanisms designed to limit fraudulent claims (work restrictions, strict documentation requirements, shifting asylum timelines) contribute to four distinct forms of trauma for LGBTIQ+ applicants: "isolation and loneliness, prolonged uncertainty, mental vulnerability, and physical vulnerability" (Llewellyn, 2020, p.203). Fear and stigma may add to this resistance to apply for asylum and the resulting liminality has dire consequences on the mental health and financial capabilities of migrants (Abrego, 2011; Abrego & Lekhani, 2015).

### ***Asymmetrical U.S.-Mexico Border and Securitization***

In political and academic discourse, borders are geographical sites of securitization and existential threat (Doty, 2001; Slack et al., 2016; Wright, 2019). Political geographer John Agnew (2019) extrapolates the 'asymmetry' of the U.S.-Mexico border, in which the U.S. has more jobs, resources, and political stability than the Southern side, meaning there will inherently be a desire for people to cross into the safer U.S. in search of safety and financial stability, touching on the concept of 'Global South' to 'North' flows (Berg & Millibank, 2009; De Genova, 2010). The border works for American citizens, who may freely cross the border as they please but for migrants, the concept of 'borderisation' manifests in the U.S., whereby the government is overwhelmingly more interested in implementing restrictive border policies than addressing the causes of migration (Salter, 2003; Pallister-Wilkins, 2017). This is a form of 'Border Work', by which Chris Rumford argues that borders function in different ways depending on who you are to the state (2012). This dissertation considers the border as the edge of the state, and the legal system as a secondary 'everywhere' border whereby the government gets to decide whether or not someone deserves entry to the country (Voegelé, 2019).

Further, restrictive border policies, detention centres, media discourse, and speech acts lead to securitization of migrants, a concept that Buzan et al (1998), suggest "is inherently a matter of dispute because no neutral definition is possible" (7). This dissertation argues that securitization is a social process involving a variety of agents and argues that both the Copenhagen and Paris schools have manifest in the case study of the U.S. (Stritzel, 2007). Securitization often impacts LGBTIQ+ applicants disproportionately as the pre-existing marginalisation makes all these barriers more concrete (Shaw et al., 2021). Hence, securitizing migration functions to construct and reinforce the U.S.'s territorial boundary as the border becomes an increasingly militarised space (Jones & Johnson, 2016). In the Copenhagen school, security is constructed via speech acts (Waeber, 2011) whilst in the Paris school, securitization manifests in panics surrounding detention centres and media discourses implying that migration is an existential threat (Bigo, 2008). Though the Copenhagen school is reductive in its narrow focus on discursive elements of securitization, speech acts dramatize immigration as a critical issue, in turn becoming a key item on certain politicians' agendas (Buzan, 1998; Buzan, 2008).

Huntington (2005) claims that migrants from Latin America have been framed as a threat to America's labour market and Anglo-Saxon, heteronormative values within American politics. More specifically, neoliberal tension between promotion of economic globalisation and securitization of territorial boundaries reflects through the policies of Obama, Trump, and Biden (Llewellyn, 2021). Donald Trump's "big beautiful wall" rallying cry throughout the 2016 General Election campaign sparked national anxieties about border security and illegal immigration; indeed, Waever (1995) writes that "something is a security problem when the elites declare it to be so" (54; Miller & Nevins, 2017, p145). This form of 'speech act' securitization demonises migrants as 'enemies' of the state because they pose a danger to the homogeneity of society (Bigo, 2002). In terms of the Paris school, images of migrant caravans storming the border implement a sense of fear in the American public, exacerbating the issue and making it appear to be a bigger threat than it is (Baker, 2019). Further, detention centres are inherently "spaces of displacement and exile, and a time of interruption, waiting, stasis" (Ramadan, 2012, 72). Giorgio Agamben's theory of *homo sacer*, or bare life, presents in U.S. detention centres in which migrants are suspended in a space between life and death (1998; Minca, 2015). Indeed, securitizing migrants via detention centres not only creates a threat in the mind of citizens, but perpetuates conditions of bare life whereby migrants are suspended 'between life and death' (Agamben, 1998; Katz, 2015). Mbembe's *Necropolitics* further argues that contemporary Sovereign "subjugation of life to the power of death" (2003, 39) manifests directly in the detention centres of a securitized state.

### ***Humanitarian Space and Legal Aid***

To understand NGO presence in the American Southwest and the support they are able to offer LGBTIQ+ asylum seekers, it is important to establish this concept as distinctly 'humanitarian' and within the theoretical lens of humanitarianism. Defining 'humanitarianism' proves very difficult in practice; paradoxically, it doesn't have a singular definition, but is widely understood to demarcate the values of saving lives, reducing human suffering, and protecting human rights (Allen, 2018). The academy generally considers it a "closed system of thinking and behaving" in which organisations operate on similar foundations, systems, and the four principles of humanity, neutrality, impartiality and independence (Allen, 2018, p. 143). Barnett's *Empire of Humanity* considers humanitarianism as a regulated common enterprise, including professionalisation, interaction amongst an ingroup of humanitarians, and

prioritization of organisational survival (2009). Alchemical humanitarianism manifests in legal aid, in which legal NGOs provide both emergency relief and participate in advocacy and research to attempt to eliminate the problem at the root (Pallister-Wilkins, 2017; Barnett, 2014). Barnett (2009) further differentiates between old and new humanitarianism, contrasting the religion-based humanitarianism beginning with the Red Cross in the 18<sup>th</sup> century and the modern 'non-partial' humanitarianism funded by donors, primarily philanthropists. Traditional ICRC principles of neutrality, impartiality, and independence conflict with 'new' humanitarianism that accepts the inherent political nature of providing aid (UNHCR, 2012). In *The Order of Things* (1966), Foucault emphasizes the importance of categorizing discourse; this demarcation as 'humanitarian' will influence the legal and socio-political lenses under which subsequent data will be analysed.

## Research Gap

Although there are increasingly more reports on gendered experiences of migration, gender research often focuses solely on the experiences of cisgender women and girls (Jolly, 2011; Gorman-Murray, McKinnon, and Dominey-Howes, 2014). In particular, there is a paucity of literature surrounding NGOs that provide legal aid specifically for LGBTIQ+ migrants (Murray, 2014). Indeed, "there is a growing appreciation of the role of emotion in human spatial behaviour across the social sciences... yet studies that focus on the actual relevance of discourses and practices of 'love' in the development of migration are still quite rare" (Mai and King, 2009, p.296). Thus, out of this literature review emerges the question: in what ways must LGBTIQ+ applicants navigate the securitization of asylum seekers in the U.S., and what does this mean for NGOs and humanitarian space in the Southwest?

## Methodology

The purpose of this research is to understand legal aid that exists for LGBTIQ+ asylum seekers and how policy change from 2012-present has affected LGBTIQ+ individuals' asylum claims. That is, what does one encounter navigating the U.S. asylum system as an LGBTIQ+ applicant and what legal support exists in an absence of government aid? To answer this, in June and July 2021, I conducted 9 semi-structured, long-form qualitative interviews via Zoom with participants from legal NGOs in the American Southwest. The interviews were

subsequently analysed using NVivo 1.x and by hand, carefully conducting thematic analysis across participants' answers (Löfgren, 2013). Semi-structured interviews were chosen as a method to allow a level of flexibility and follow-up questions based on each participant's diverse responses, narratives, and backgrounds. This research emphasizes individuals' agentic ability to present reality via their lived experiences and "thick description"; as such, participants were encouraged to explain their experiences practicing law in the field and share anecdotes from (anonymous) cases of LGBTIQ+ asylum seekers (Creswell, 2013). Further, this research adopts a feminist epistemology, emphasising individual experiences to produce "more inclusive methods sensitive to the power relations in fieldwork" (England, 1994, p.80).

Within this dissertation, multiple methods of analysis are employed. Research design includes:

1. Qualitative interviews with legal NGOs and who work directly with LGBTIQ+ asylum seekers
2. Qualitative analysis of existing academic research, 'grey literature' (NGO and Advocacy Group reports), legal documents, and court briefings to investigate treatment of LGBTIQ+ asylum seekers within the U.S. legal system
3. Asylum Pre-screening System data from the United States Citizenship and Immigration Service (USCIS)

Additionally, participants were chosen on three conditions:

1. Work and/or recently worked for a legal organisation offering services to refugees and asylum seekers in the American Southwest
2. Interacted with LGBTIQ+ identifying beneficiaries
3. Direct involvement in providing legal aid

This relatively broad selection criteria lead to a diverse set of participants working for a range of legal NGOs based in the American Southwest. All participants were contacted by 'cold emailing' NGOs directly and messaging on LinkedIn and were subsequently provided participant information sheets and consent forms (See Appendix I and II). Further, interview questions are observable in Appendix III and a list of interview participants (anonymised) in Appendix IV. This dissertation opted not to interview any LGBTQ+ asylum seekers directly to avoid any risk of re-traumatization when discussing their experiences of navigating the U.S. legal system.

***Positionality***

As far as positionality, I am a white, American, cisgender, bisexual woman. As part of the LGBTIQ+ community, I understand aspects of LGBTIQ+ persecution that exist across national contexts: ostracization, financial difficulties, and homophobic violence, but may not understand the intersectionalities of race, age, and gender by first-hand experience. I also have experience of working for grassroots NGOs and understand how overextended and difficult their work can be. However, I have no lived experience of seeking asylum which will limit my analysis as I may miss crucial aspects of legal violence; perhaps if I had a similar background, I might have asked entirely different questions. This dissertation argues that there is a paucity of research focusing on development in the Global North, as the U.S. has unique developmental needs that are often overlooked because it is a powerful Western state, and as an American, it is important to be aware of my positionality and attempt to contribute to the betterment of legal systems that cause harm for so many attempting to gain asylum.

### ***Ethics and Limitations***

This research was granted ethical approval from the London School of Economics in June 2021 (See Appendix V). Conducting this research remotely in the span of only three months may have sacrificed some breadth of analysis for depth as it aims to centre the experiences of NGOs in the Southwest, which glazes over the important work of legal NGOs in other major cities. Further, evidence is solely qualitative as quantitative methods are not directly relevant to investigating this topic. Perhaps more statistical analysis of cases accepted for asylum would have been beneficial – however, there is no existing quantitative dataset.

Further, this research focuses solely on asylum and the applications of LGBTQ+ asylum seekers without delving into the experiences of LGBTQ+ refugees (a legal status separate from asylum) and inherently misses out on this group's experiences (Agnew, 2019). It also considers asylum seekers of all LGBTQ+ identities and does not discriminate based on country of origin, as applications on the basis of LGBTQ+ status remains a relatively low percentage of the population applying for asylum (0.02% of successful cases) (Baugh, 2020; INS, 2020). Finally, as one must apply for asylum within the U.S., this dissertation misses out on experiences of migrants who are unable to reach the American side of the border.

## **Chapter I: Case Study Context - The American Southwest**

To properly contextualise the findings and analysis of this research in the following two chapters, this chapter synthesizes three key aspects of applying for LGBTIQ+ asylum: 1) history of LGBTIQ+ asylum, 2) immigration policy change from 2012-present, and 3) current asylum processes.

### ***History of LGBTIQ+ asylum***

In the U.S., Lubhéid dates legal exclusion of queer asylum applicants to 1917, when those labelled as “constitutional psychopathic inferiors” were first turned away at Ellis Island (2003, pp.xxi). America was an unwelcoming place for people fleeing anti-LGBTQ persecution for most of the 20<sup>th</sup> century as “the Immigration and Nationality Act of 1951 barred admission of aliens with ‘a mental defect’ and a 1965 amendment to the act made Congress’ intention clearer by adding ‘sexual deviation’ as a medical bar to entry. Plus, homosexuality was considered a mental illness by American psychiatric manuals until 1973” (Fitzsimmons, 2020, p.1). Despite this

history, under the 1951 Refugee Convention, it is a human right to apply for asylum on the grounds of membership in a particular 'social group' (United Nations, 1951; Fortin, 2000). Though the US is not a signatory to the 1951 convention, it follows the standard definition of 'asylum' as outlined in the *United Nations Convention (1951) and Protocol (1967) Relating to the Status of Refugees* (Hathaway, 2005). The 1967 Protocol binds the United States to the obligations of the 1951 Convention regarding the treatment of asylum seekers and refugees (Mai and King, 2009). Further, the Refugee Act of 1980 brought U.S. immigration law in line with the international convention by allowing for asylum applications on the basis of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" (Shaw et al., 2021, p.2).

Beginning in the 1990s, a series of landmark cases enshrined LGBTQ+ status as legal membership of a social group. The first landmark case was the Matter of Toboso-Alfonso (1990), a gay Cuban asylum seeker who was granted asylum to the US because he claimed he would be at risk of assault and imprisonment if he returned to Cuba. The immigration judge on the case, Janet Reno, cited the Matter of Acosta (1985) which established that members of social groups possess certain fundamental and immutable characteristics, arguing that LGBTQ+ identities demarcate one as a member of a particular social group. At the time, many U.S. states still had laws criminalising homosexual activity, thus this was appealed by the Immigration and Naturalization Service (INS, now USCIS) which claimed that queerness did not warrant a social group. This was dismissed and Toboso-Alfonso was in the end granted asylum (Shaw et al. 2021). However, the true precedent setting case was that of Marcelo Tenorio, a man targeted for his homosexuality in his Brazil, his country of origin. The judge again cited Matter of Acosta and cited that Tenerio was "openly homosexual, a characteristic that the court considered immutable, and one which an asylum applicant should not be compelled to change" (Randazzo, 2005, 34). The INS again appealed the case but the Board of Immigration again ruled in favour of the applicant; Tenerio was thus granted asylum, enshrining LGBTIQ+ status as membership of a social group (Llewellyn, 2021). However, this case set no legal criteria for establishing an individual's sexuality thus adjudicators in each case have the privilege of making this decision, leaving room for bias and individual discretion (Berg & Millibank, 2009).

### ***Evolution of U.S. Immigration Policy***



The criminalisation of migration is a political tool; the U.S.-Mexico Border has for decades been a political symbol of America-first policies and national security (Lusk et al., 2012). Immigration has long been one of the key platform issues of U.S. Republicans, as beginning in the Reagan era, politicians attached criminality to undocumented migrants to legitimise stricter border enforcement (Agnew, 2018; Nevins, 2002). Slack et al (2016) postulate that political rhetoric such as the 'War on Drugs' and 'War on Terror' introduced in this era increased the military presence at the border as a mechanism for 'protecting' the state (Miller, 2014). Further, the 1993 'Operation Hold the Line' and Clinton's 1994 'Operation Gatekeeper' set precedents of deadly 'prevention through deterrence' policies. *The Land of Open Graves*, an ethnography of the deadly effects of 'Prevention Through Deterrence' reveals the dire consequences of using extreme desert landscapes to kill migrants on their journey to the US over the past three decades (De Leon & Wells, 2015). Paradoxically, the North American Free Trade Agreement (NAFTA) between the U.S., Mexico, and Canada was implemented in 1994, promoting transnational economic cooperation (Miller, 2014). Finally, discourse focusing on immigration restriction to protect from 'invaders' increased steeply in the wake of 9/11 (White, 2011).

These conflicting sentiments continue to manifest through the most recent administrations: immigration policy under Obama was already highly restrictive, but as the border became one of Donald Trump's key platform issues, conditions were even more difficult for asylum seekers during his presidency (Donoso, 2020). Participant 3, who has been practicing law since Obama's first term, states that "conditions were bad under Obama, but they were really terrible under Trump." Trump's 2015 speech in which he shouted that Mexicans are 'rapists' and illegal immigrants set the tone for his term and perpetuated the idea that restricting immigration is crucial to 'Making America Great Again'; upon his inauguration, immigration became one of his key platform issues (Agnew, 2018). The most damaging policies began in January 2019, when the Migrant Protection Protocols (MPP), more famously known as the "Remain in Mexico" policy, required that migrants who attempt to enter the U.S. to seek asylum remain in Mexico while awaiting immigration court dates (Donoso, 2020). Under this policy, the U.S. government expelled nearly 70,000 migrants to Mexico, where many face threats to physical safety and hundreds have had to take refuge in makeshift camps and towns along the Southern border (Shaw et al., 2020). Further, in July 2019, the Trump administration declared that those travelling from El Salvador and Honduras would not be considered for U.S. asylum if they first passed through Guatemala; the administration required migrants to make their claims in

Guatemala, therefore excluding thousands from the ability to apply for asylum (Baker, 2019). Then, on June 15<sup>th</sup> 2020, Trump revealed 'Procedures and withholding of Removal; Credible and Reasonable Fear Review' which aimed to both restrict entry into the U.S. and make it harder to win a gender or sexuality based asylum claims by narrowing the definition of 'persecution' to solely politically related persecution (Fitzsimmons, 2020). According to Human Rights Watch (2020), these measures appeared to specifically target three groups: "Central American fleeing gang violence, women fleeing domestic abuse, and LGBTIQ+ people" (p.2). However, this was never ratified and recently, MPP was repealed by Merrick Garland in June 2021. In Chapter II, this dissertation explores whether the system has yet changed notably under Biden as promised in his 2020 campaign.

Finally, the U.S. government implemented an additional range of immigration restrictions due to the COVID-19 pandemic beginning in 2020. On 11/9/2020, the Centers for Disease Control and Prevention (CDC) implemented Title 42, the federal order that essentially closed the U.S.-Mexico border for public health reasons due to COVID-19 (Fitzsimmons, 2020). Subsequently, "under the pretext of enforcing this order, the Department of Homeland Security has expelled more than 200,000 people at the Southern border, including individuals seeking admission for asylum" (Shaw et al., 2021, p.4). Because of resulting overcrowding and deteriorating conditions in detention centres and border cities such as Tijuana, COVID-19 has posed severe threat to asylum seekers stuck on the Mexican side of the border, especially for LGBTIQ+ asylum seekers already more vulnerable to assault in overcrowded border towns (Ghoshal, 2020). Crucially, any legislation that makes it more difficult for migrants as a whole outlines above will in turn make the asylum process more difficult for LGBTIQ+ individuals (Fletcher, 2006).

### ***Current Processes of Seeking Asylum on the Basis of LGBTIQ+ Persecution in the U.S. as of August 2021***

"Sex" and "gender" are ever-evolving legal terms, making it difficult to prove queerness in court (Fitzsimmons, 2020). Among existential debates about whether LGBTIQ+ identity is a component of Maslowian actualisation or essential to one's character, this dissertation argues the latter, espousing the idea that queerness is an inherent and immutable trait (Maslow, 1943). As these terms are not concrete in law, decisions on an LGBTIQ+ asylum case are ultimately up to individual immigration judge's assessments of each case (Fitzsimmons, 2020). Thus, the process of applying for asylum in the U.S. requires a combination of documentary proof and

narrative in credible fear interviews (Morgan, 2006). Because ‘refugee’ is a legal status with defined protections whilst asylum seekers are merely *seeking* safety, they have no inherent legal protections except ‘non-refoulement’ under international humanitarian law.

There currently exist two methods of obtaining asylum in the U.S.: the ‘affirmative’ process and ‘defensive’ process, for those who are and are not in the removal process respectively (USCIS, 2021). Credible and reasonable fear interviews are for those who have recently entered the U.S.: as of 2020, 88.3% of LGBTIQ+ asylum claims were heard through credible fear interviews “which are conducted at ports of entry or if a migrant is apprehended after crossing the border. The remaining 11.7% were heard at reasonable fear interviews, which are conducted when migrants are subjected to reinstatement of a prior removal order”. The change over time in this distribution is observable in Fig. 1 (Shaw et al., 2021, p.2).

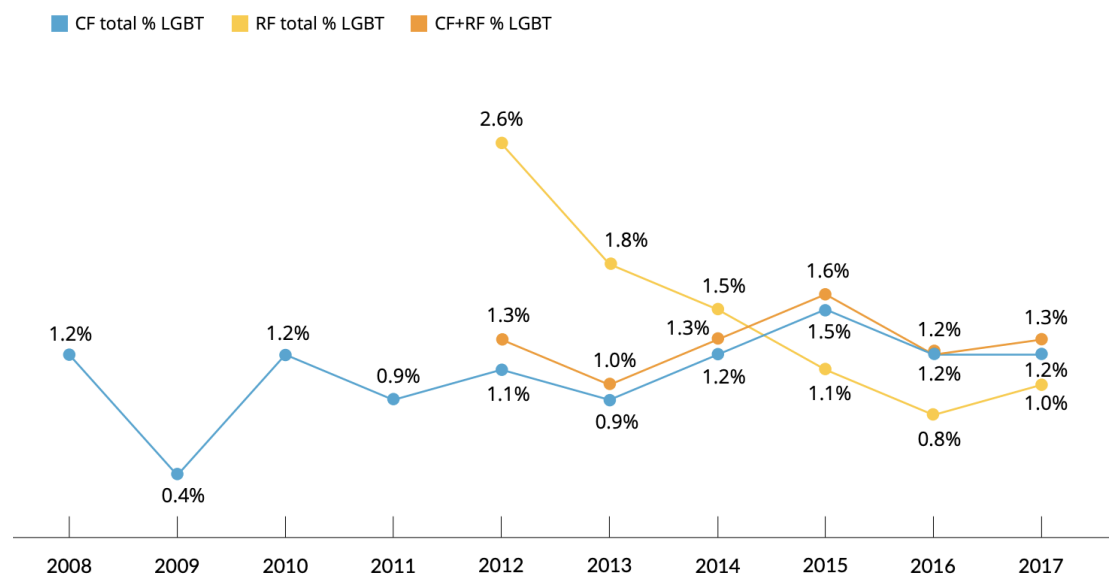


FIGURE 1: CREDIBLE (CF) AND REASONABLE FEAR INTERVIEWS CONDUCTED FOR LGBT APPLICANTS FROM 2008-2017 (SHAW ET AL., 2021)

There are three U.S. government agencies directly charged with asylum claims:

1. USCIS: charged with initial processing and ‘credible’ or ‘reasonable’ fear interviews
2. CBP: charged with ‘protection’ and maintenance of the border; occasionally conduct credible or reasonable fear interviews
3. ICE: operates mostly inside USA, charged with detention and interior coordination

According to USCIS, LGBTIQ+ asylum acceptance rates to the U.S. are high: the 98.6% approval rate for the credible and reasonable fear interviews of LGBTQ+ asylum seekers is “significantly higher than everyone else,” as estimates for the general population falls to around 75% (Fitzsimmons, 2020). However, a representative of Al Otro Lado stated, “I found it really

interesting to statistic that 98% of LGBTIQ+ asylum seekers who make it to the interview stage get their applications approved. That statistic does not agree with my experience” (Participant 2). Indeed, according to Alessi et al., only 500 LGBTQ+ applicants were granted asylum in 2017, making up only 0.02% of cases for that given year (2017). Within this context, Chapter II will extrapolate this context to explore legal barriers to LGBTQ+ asylum applicants in the US.

## Chapter II: LGBTIQ+ Asylum in the U.S. and Legal Barriers

To first explore barriers to LGBTIQ+ asylum seekers accessing legal aid in the U.S., this section unpacks four themes identified through qualitative interview analysis: 1) 'prevention through deterrence' policies, 2) prolonged detention, 3) asylum delays & liminality (legal violence), and 4) personal prejudices of legal officials. This dissertation emphasizes the legal violence the LGBTIQ+ population must encounter directly from the US government and the fact that NGOs are the sole providers of legal aid (Menjívar & Abrego, 2012). Crucially, it adopts an empowerment lens to emphasize the agency of LGBTIQ+ communities in constructing forms of queer solidarity as well as seeking self-preservation and coalition building throughout (Chavez, 2013; Lavers, 2019). The main finding of this chapter is that within the U.S. immigration system, there exists "a lack of literacy [on queer issues], a lack of curiosity, a lack of understanding, and ultimately a lack of compassion" (Participant 2).

### *'Prevention Through Deterrence'*

Because asylum seekers must apply from within the U.S., getting across the border in the first place is a major barrier to accessing legal representation for multiple reasons. Multiple interview participants cite these conditions make it incredibly difficult for LGBTIQ+ asylum seekers, especially those traveling through Central America, to reach the border in the first place (Participant 3, 4, 6). Indeed, a huge factor in prevention of reaching the border results from having to live in a constant state of hypervigilance to protect oneself from sexual assault, robbery, or homicide as an LGBTIQ+ person (Participant 9; Alessi et al., 2017). The U.S. has a '100 Mile Border Patrol Zone', in which the Department of Homeland Security has the right to apprehend migrants (De Leon & Wells, 2015). Further, the life-threatening heat and lack of shelters in the Sonoran and Chihuahuan deserts have led to thousands of migrant deaths by intentional exclusion there over past several decades; Border Patrol estimates that 8,000 have died at or around the border in the desert since 1998, but the real figure is likely far higher (Verini, 2020). Further, ICE may refuse to allow people to make asylum claims in the first place if they are apprehended in the desert, leading to immediate deportations, which is especially dangerous for LGBTIQ+ asylum seekers due to persecution in their countries of origin (Participant 2, 3; Donoso, 2020). However, even for those who do manage to cross the desert or

are caught in the process, they often end up in detention and face further legal and physical violence (Kimmel & Llewellyn, 2013). Indeed, these deterrence measure contribute to “erosion of standards of treatment, including the denial of some of the important social, economic, and cultural rights guaranteed by the 1951 convention and IHRL” (Edwards, 2005, 293).

### *Detention*

In terms of detention, there are few codified protections for LGBTIQ+ individuals, especially as most people in detention centres are asylum seekers rather than refugees (Mayers, 2018). ICE officially lists 111 centres on its website, but this does not include the hundreds of other facilities in its network: an estimated 637 detention centres, county jails, and processing centres (Darby, 2019). These centres are largely run by private companies GeoGroup and CoreCivic

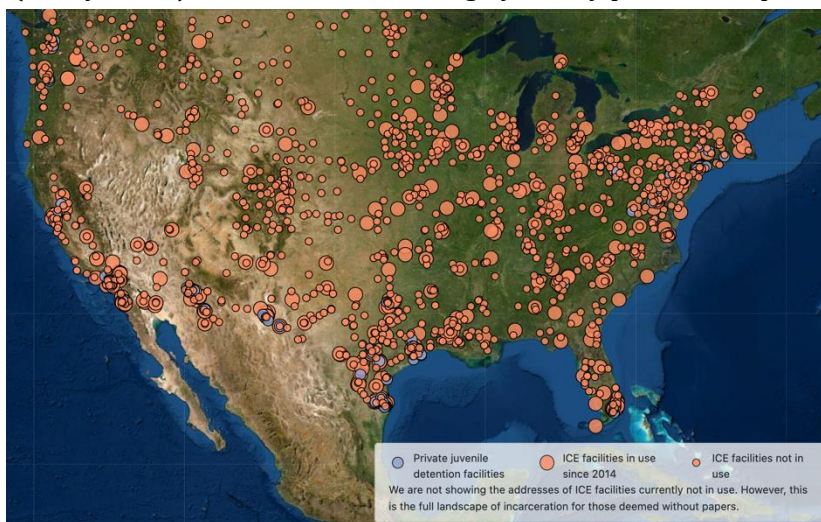


FIGURE 2: ICE DETENTION CENTRES BY CONCENTRATION IN THE US (SEPERADOS, 2021)

with a pay incentive of migrant per bed or occasionally by ICE and CBP, thus incentivising detention for these agencies (Participant 9). Here, LGBTIQ+ asylum seekers are prone to violence from both ICE officials and fellow detainees (Participant 6).

One interview participant refers to ICE and CBP officials as “low-trained and thuggish” (Participant 2). Multiple participants and reports cite that the type of person who wants to work this job is often highly xenophobic and racist, with multiple participants citing they witnessed instances of homophobic speech and behaviour, including slurs (Provine, 2011; Participant 5, 7). According to Participant 2, “There’s a white supremacist problem because [ICE] actually hire KKK members and I’m not exaggerating, white nationalists are very common.” Indeed, white supremacist rhetoric has famously surfaced in an ICE Facebook group called 10-15 (Border Patrol code for ‘aliens in custody’) where agents joked about migrant deaths (Thompson, 2019).

Moreover, detention can kill. In recent years, a wide range of grey literature has surfaced highlighting the human rights abuses rampant in U.S.-Mexico border detention centres (Shuman

& Bohmer, 2014). On the one hand, there are many examples of queer people who have been denied asylum and killed upon return to their home countries (Johnson, 2011, Kahn et al., 2018). On the other, queer people have been killed in detention itself: multiple trans women have died in detention in the past 5 years (Herrera, 2019). Little information exists on this phenomena: it may be due to the fact that transgender migrants are sometimes housed with people of their assigned gender at birth: that is, trans women are housed with cisgender men and trans men with cisgender women (Baker, 2019). This puts these trans migrants at a severely increased risk of sexual assault, physical abuse, and verbal harassment. However, Participant 9 states that GeoGroup, CoreCivic and ICE are moving away from this as migrant deaths in detention create legal issues for detention companies. He explains that transgender migrants are often now detained independently in 'pods' for protection, though this may put them at higher risk due to increased visibility (Participant 9). He highlights that it is incredibly important for them to remain in states where there are legal NGOs, as in states such as Louisiana they would be without representation. Alternatively, in some situations, Participant 7 states that trans people are placed in isolation for their protection, but in reality, this leads to detrimental mental health effects (Shidlo & Ahola, 2013). Further, they often do not have access to hormones in detention (Participant 5). Finally, Participant 6 added that she recently lost a friend stuck in detention, a transgender woman who was subjected to abuse to such an extent that she later died by suicide.

### ***Asylum Delays and Liminality – Legal Violence***

In the U.S., asylum applicants must wait anywhere from 6 months to several years to hear whether their application has been approved (National Immigration Forum, 2020). Several participants state that liminality is the most harmful aspect of asylum seeking for LGBTIQ+ applicants (Piwowarczyk, Fernandez, and Sharma, 2017). Liminality has a dire effect on the mental health of migrants as many in detention are awaiting their verdict while unemployed, homeless, and without access to mental healthcare (Participant 4, 5; Hopkinson et al., 2017). Indeed, the work permit track for asylum seekers changed under the Trump administration: for the non-detained track, instead of 150 days, asylum seekers had to wait a year before applying to be able to find employment (Participant 9).

Another form of legal violence manifests in U.S. trial attorneys, who are paid by the government to 'defend' the U.S., working to essentially keep migrants out and find holes in their

cases (Participant 3). According to a representative of Al Otro Lado, “the government's job is to keep people from entering the country. I think that system is really bizarre and unhealthy: the asylum seeker isn't afforded an attorney, so either they hire one or non-profit organisations may take on their case. And then the US government pays for an attorney to try and keep the person out” (Participant 5). In the words of Participant 6, “trial attorneys are an embarrassment to the country – they come ill prepared to court, and it’s because they know cases are slanted in their direction”. Indeed, she adds, “I've never met a trial attorney who was trying to help the person stay, and the U.S. government pays for that.”

A final form of legal violence manifests in the fact that the U.S. offers no legal or translation support: if one’s documents are not in English, the applicant has a far lower chance of their application being approved (Participant 1; 8). A person in detention may go through 5+ different interpreters in their cases (Participant 1, 8).

### ***Personal Prejudices and Voyeurism***

Further, according to multiple participants, judges are biased toward keeping people from entering the country and these prejudices manifest in their decisions (Participant 2; 5; 8). Is this enforcement of exclusion via legal practices is a form of Hannah Arendt’s *Banality of Evil*, in which human rights abuses are perpetuated by ‘normal’ civilians (1964)? This research shows that there is often malicious or homophobic intent on behalf of immigration officials, building upon previous research on social visibility (Marouf, 2008).

LGBTIQ+ asylum seekers have the option of defending themselves in court, but this greatly lowers their chances of approval for their asylum cases, as writing or retelling small details incorrectly may warrant rejecting a case, which is why lawyers are so necessary (Participant 8; Shakshari, 2014). There are certain intersectionalities that multiple reports and participants cite affecting the outcome of one’s applications as in many of these situations, “decision makers bring in their bigotries” (Participant 2). For example, lesbians who have been married to men before and have children who may not have come out yet or are uncertain of their sexuality are sometimes deemed as a straight women falsely using LGBTIQ+ status to obtain asylum (Participant 5). Participant 9 states that sometimes, it is more difficult for gay and lesbian people to prove their queerness than transgender people because with trans applicants, there tends to be more documentation of medical procedures and persecution. In addition, there are complicated dynamics of how queerness presents across different cultures. “In non-American



societies, queerness doesn't always look the same, and this presents in some bigotry and anti-BIPOC [Black, Indigenous, and People of Colour] assumptions in court" (Participant 2). This may be because, according to Participant 2, immigration judges are usually privileged white men and sometimes privileged white women (Participant 8). Participant 3 cites that "we encounter the same judges over and over, and sometimes it feels like they're playing dumb and know nothing about LGBT persecution every single time." Further, Participant 3 notes that judges often lack awareness about cultural context in various countries. For example, because Brazil has higher rates of acceptance of homosexuality compared to surrounding countries and hosts an annual Pride festival, but this leads to an assumption that LGBTIQ+ persecution cases from Brazil are less valid and a judge may be more likely to assume that the applicant is lying about their fear (Participant 6). Participants observed instances of geographic discrimination that may manifest in privilege instead: "For instance, Cuban cases are much easier because Cuban American relations are improving. With Maduro, government officials understand the dynamics because politically, we understand them to be places that the United States recognise." (Participant 2).

Finally, these interviews require one to "trade in trauma as currency" and are often highly invasive (Participant 8). In *Rites of Passage*, Mark Salter argues that performing one's identity to the state and proving one's persecution inherently raises invasive moral qualms (Salter, 2003). Interview participants confirmed this: "often, you have to explain your life experiences and trauma in egregious detail that, in my opinion,

is voyeuristic" (Participant 4). This voyeurism is

best summed up in the words of Participant 2:

"often, the interview contents are essentially judges asking people to recount torture porn - you're just asking people to expose their history in bed, very intimate details. You should have an extremely, extremely good reason to ask about

this. Most immigration judges believe that people are trying to scam their way into America - it's an oppressive system that presumes dishonesty and is based around heteronormativity" (Participant 2).

This dissertation supports multiple interview participants in stating that the interview process is inherently retraumatizing (Participant 3, 4, 7, 8). Further, he cites a culture of impunity under

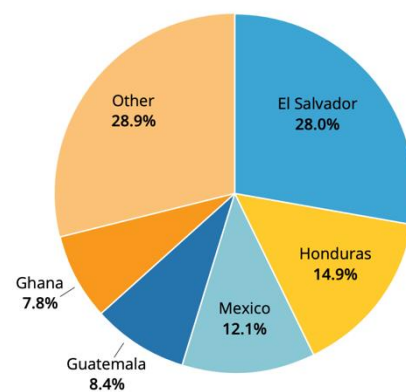


FIGURE 3: CREDIBLE AND REASONABLE FEAR USCIS INTERVIEWS WITH LGBTIQ+ STATUS CLAIMS BY COUNTRY OF ORIGIN, 2007-2017 (SHAW ET AL., 2020)

Trump in which the CBP openly flouted judges' rulings, or whereby judges were allowed to openly violate international law in hearings.

To improve the situation, Participant 2 suggests that the U.S. government should bring in experts on two things: first, country conditions (the political climate and current events of migrants' countries of origin), and secondly, on queer experiences and social norms. He adds that the queer experiences should be taught to cisgender, heterosexual judges, as most queer norms are learned by being in queer circles (Shuman & Bohmer, 2014).

### **Chosen Families & Queer Solidarities**

Further, in asylum cases, a U.S. address is required, but this hugely disservices LGBTIQ+ applicants as they are often ostracised from their biological families. It is for this reason among others that 'chosen families' are incredibly important in queer communities, whereby queer people build communities of friends and create their own support networks (Ritholtz & Buxton, 2021). These social bonds may be what makes it possible to migrate to the U.S., but it depends highly on the individual whether they have a 'chosen family in the U.S. The U.S. runs a family reunification programme which privileges heterosexual, biological families, but there exists no such programme for queer communities hoping to reunite with 'chosen families' in the U.S. (Kahn, 2015; Llewellyn, 2021). Thus, social support NGOs and homelessness shelters are incredibly important, and legal NGOs may be able to provide LGBTIQ+ applicants with an address or connect them with relevant NGOs (Reading & Rubin, 2011). Finally, there are occasionally instances of queer solidarity at the border in the form of caravans: for example, a 'Rainbow Caravan' assembled at Nogales, Mexico in August 2017, composed of six gay men and 11 trans women, linking hands attempting to cross into Arizona and in 2018 at the border near Texas. Some of the caravan's members self-deported due to mistreatment in detention centres; others' applications were eventually successful (Baker, 2019). There was another such Caravan in 2018 in which LGBTIQ+ asylum seekers supported each other; though imagery of migrant caravans attempting to "storm" the border used to create fear and mark migration as a moral panic issue, in reality, they are instances of solidarity (Chávez, 2019).

## Chapter III: Mapping NGO Legal Aid

Situated at the nexus of migration studies and human rights law studies, this chapter seeks to shed light upon legal aid available for LGBTIQ+ asylum seekers in the U.S. Crucially, this dissertation argues that legal aid is inherently political and founded on the belief that all people deserve proper representation (Menjívar & Abrego, 2012). This chapter delineates two key themes identified from interviews and compiled reports and literature: 1) Transnational NGO cooperation in the Southwest and 2) absence of support from the US government, then explores the concept of humanitarian space in practical terms around the U.S.-Mexico border.

### *Mapping Legal Aid & Networks in the Southwest*

Within the American Southwest, there are a range of NGOs that operate near the U.S.-Mexico Border. Most legal NGOs simply take on cases of LGBTIQ+ migrants as they come in, especially as LGBTIQ+ asylum seekers often have very strong claims, though they lack the capacity and funding to take on most cases; the majority of asylum cases continue to be self-defended (Abrego & Lakhani, 2015, Participant 2). There are LGBTIQ+ specific NGOs, but they are rare and often geographically exclusive (Participant 2, 9). Most are located around the U.S.-Mexico border due to the nature of detention and asylum; the NGOs present are mapped below:



**Key: Figure 4 (created by the author)**

California: ACLU, Al Otro Lado, Transgender Law Centre, the LGBT Asylum Project

Arizona & New Mexico: ACLU

Texas: ACLU, American Gateways, RAICES, Texas Civil Rights Project, Diversidad Sin Fronteras

Remote: Respond Crisis Translation

Though each organisation has its own internal operations system, the key finding of this chapter is that legal, social, and medical NGOs form transnational networks to ensure as many cases as possible are covered (Participant 1, 3, 9). As NGOs take up as many cases as possible, multiple participants state that this only makes a dent in the total number of cases at the border (Participant 3, 7). Thus, NGOs such as Al Otro Lado and RAICES may refer cases to each other or smaller NGOs to ensure that as many asylum seekers as possible receive pro bono legal aid across Arizona, California, New Mexico, California, and often across the border into towns such as Tijuana (Participant 9). For example, the cooperation of legal NGOs and language justice NGOs is very important because U.S. government requires all court documents to be in English but offers sparse translation support (Participant 1; 8). Currently, USCIS has extended its rule that certain applicants must use the government's contract interpreters rather than bringing their own interpreters until September 18<sup>th</sup>, 2021 as a COVID safety measure (USCIS, 2021). Finally, because integration of LGBTQ+ refugees from MENA, Central and South Asia may require different forms of aid, and it takes skilled lawyers well versed in country conditions to provide aid sensitively and appropriately (Alessi et al., 2020; Participant 9). Thus, NGOs may refer clients to each other if they know a lawyer at another organisation who may be better qualified to take on a case (Participant 5, 6). Finally, other than legal aid, migrants require social and financial support whilst awaiting the verdict of their asylum claim, and as these are higher survival priorities, these must be prioritized and legal NGOs may refer clients directly to medical or social support NGOs (Alessi & Kahn, 2017).

Moreover, the length and intensity of the asylum process alone often discourages people from applying in the first place, much less making the effort to access legal aid, opting to immigrate without a visa and undertake off-the-books work (Alessi, 2017). To address this, NGOs try to find clients early in their asylum process via 'passive client contact'. Further, there is a platform called AsylumConnect which connects migrants to the legal care and NGOs applicable to the type of aid they need, another form of transnational NGO cooperation (Participant 3, 8). As free legal assistance is so rare, migrants often pass information via word of mouth about the legal NGOs surrounding the border (Participant 2). However, one participant cites that there are often instances of sabotage of NGO outreach, explaining that at the San Diego office, Al Otro Lado put out posters as advertisements for their services, and they were subsequently removed by unknown sources (Participant 2).

### ***Filling the Gaps for the Government***

Legal NGOs fill a unique role in the asylum-seeking process in the U.S. due to the absence of government aid; as it stands, NGOs provide all legal work at the U.S.-Mexico border. As discussed in Chapter II, an applicant must provide reasonable fear of returning to their home country, which must be in the form of documents and subsequent interviews, and NGOs play a key role in ensuring all documents are present and narratives are well-presented, often offering 'practice' interviews (Cantú, 2005). The USCIS 'credible and reasonable fear' interviews tend to be very intensive and if one does not mention their LGBTIQ+ status from the beginning, it is very difficult to prove or change one's case (Alessi et al., 2017). Further, interviews are only meant to last 30 minutes but often last hours, and without a practice interview, there is room for error that may be detrimental to the approval of their case (Berger, 2009). Ultimately, legal NGOs are essential because of the need for perfect presentation of one's story; in the words of participant 5, "It really is important to have your story straight and consistent. It's difficult because trauma can cause a person to forget small things like dates or misremember things. And unfortunately, some judges use that as an opportunity to deny claims" (Participant 5). In terms of choosing which cases to take on, participants of Al Otro Lado explain that there is a vetting process whereby they examine which documents each applicant has and ask for the applicant's narrative, which Participant 3 states is discernible often by gut feeling – that is, those conducting vetting interviews can often tell if the applicant is being honest. "We're about impact work; we're a resistance project and we don't have the resources to take on every case" (Participant 2).

Because the U.S. government spends such vast amounts of money deterring and detaining people, many participants state that it would be far cheaper for the U.S. to simply improve the immigration system (Participant 2, 5). In the words of Participant 6, "there's a crisis at the border. There's a need for a complete overhaul". Participants of all organisations cited receiving more requests for aid than they could take on, and the responsibility of very important legal statuses such as humanitarian parole lies with the Border Rights Project at Al Otro Lado. While many participants wished for radical change in the U.S. immigration system, they are also aware this is incredibly unlikely (Participant, 3, 8). Indeed, in the words of Participant 2, "it is politically advantageous for both major U.S. parties to The Republican party trades in hate for votes, then the Democratic party gets a platform to run against GOP".

### ***The Southwest's Humanitarian Space***

Because of this, this dissertation confirms that legal NGOs occupy the majority of the humanitarian space around the U.S.-Mexico border. Thus, legal NGOs fit securely within 'humanitarian space' which is meant to be apolitical, but in this case, is highly political. Though 'voluntourism' is often an issue in humanitarian space, whereby unpaid volunteers choose to help refugees to gain social capital, resulting in white saviourism or "good-hearted, well-meaning volunteers doing important and challenging work but with little training or accountability," legal NGOs are careful to avoid this (Erikson, 2012, p.169). Legal aid in the Southwest is unique in that lawyers must be fully qualified as attorneys or litigators in order to qualify for this field of work and they are fully paid by the NGO for which they work and the client need not pay for the services rendered (Participant 7, 8). In short, the Southwest's humanitarian space is small due to the ongoing securitization of migration and COVID-19 pandemic, but legal NGOs occupy a crucial and occasionally life-saving space for LGBTIQ+ asylum applicants.

The consensus is that border policy has long been constricting immigration rights. Participant 2 says that Obama's policies laid the groundwork for Trump and that Trump's MPP hit vulnerable groups especially hard. Multiple participants stated that in their experiences, very little has changed so far under the Biden administration and campaign promises feel empty (Participant 1, 2, 4, 7, 9). "They promised to roll more migrants in but the burden still fell on NGOs to write up the paperwork and get it to DHS – what kind of system is that?" (Participant 2). Indeed, this lack of follow through on campaign promises is observable when in July 2021, Vice President Kamala Harris told Guatemalan migrants in a speech, "do not come" (Grant, 2021). However, Participant 6 says that there has been much more of a culture shift and a "more positive philosophy" as Biden has the chance to appoint judges who may be more sensitive to queer issues and less conservative-leaning. But if the immigration system is to remain largely as is, in the words of Participant 2, "what the government should do is give us f\*\*\*ing money" because the government provides no legal support for LGBTIQ+ asylum seekers.

### **Recommendations**

People fleeing persecution and war today are facing a crisis of compassion, whereby wealthy nations are strengthening and outsourcing their borders, keeping displaced people outside for political gain (Llewellyn, 2021). Rather than turn their backs on asylum seekers, this

dissertation calls on the U.S. to implement more compassionate policies and urges the Biden administration to take immediate action to support LGBTIQ+ asylum seekers in practical terms. First, as legal NGOs implement LGBTIQ+ awareness training for lawyers' onboarding, it recommends the U.S. government implement LGBTIQ+ awareness trainings for immigration judges. Their training should automatically include expert advice on queer issues to explain sensitivities and nuance, as these are the individuals who decides each asylum seekers' fate. Further, there should be cultural sensitivity training and required education surrounding conditions asylum seekers' countries of origin. Secondly, to reduce violence in transit and detention centres, this dissertation recommends more scrutinous vetting processes in recruitment of ICE and CBP officials. Finally, as securitization itself implies that defence of a problem is provided by a centralised response from the state, this dissertation agrees with Waever (1995) in his suggestion that "de-securitising politics... would be more effective" (57). Though this would be a radical and unlikely change, this research recommends demilitarization of the border and de-privatization of detention centres. Ultimately, it would be cheaper and more efficient for the U.S. government to streamline the immigration system and invest in lawyers for each asylum seeker rather than investing in detention and inefficient court processes as the immigration system currently functions.

### **Further Research**

This research contributes to a burgeoning body of research on the unique experiences of LGBTIQ+ asylum seekers and the unique barriers they may face, as well as current conditions at the U.S.-Mexico border. It calls for more intersectionality within International Development research as most gender research focuses solely on the experiences of cisgender women and heterosexual families (Jolly, 2014). For example, it would be beneficial to have research that specifically investigates the experiences of transgender migrants as they face unique barriers in comparison to other queer groups. Further, this warrants more research on legal NGOs filling gaps for the government and emphasis on America's role in creating the political climates that cause Latin American migrants must flee in the first place.

### **Conclusions**

In conclusion, the new and unique aspect of this research is that legal aid is largely unavailable to LGBTIQ+ asylum seekers in the U.S. As it stands, the immigration system is

nearly impossible to navigate and worsened by the fact that there exists no cohesive hub for legal guidance. It postulates that migrants encounter not only the physical border between the U.S. and Mexico, but must continuously face and attempt to cross the 'everywhere' border of the American immigration regime and legal obstacles (Rumford, 2012). Overall, it argues that the current immigration system is not filtering fraudulent cases; rather, it perpetuates legal violence against LGBTIQ+ migrants and remains predicated on heteronormativity. This research has implications for further research on immigration reform and the conceptualization of LGBTIQ+ migration at the bureaucratic level. Ultimately, it espouses the idea that in Global North countries, the focus on immigration policy must shift from 'preventing fraud' to 'ensuring protection' of such vulnerable social groups and providing for their needs via adequate aid.



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## Appendix I



# Participant Information Sheet – Interview

### **What is the study about?**

We invite you to participate in a research project about seeking asylum as part an LGBTQ+ social group.

**Research Question:** *How have LGBTQ+ migrants' experiences at the US-Mexico Border affected their ability to apply for asylum from 2012-2021?*

### **Why have I been chosen?**

You work for an organisation that is relevant to applications for asylum in the US or an organisation that provides aid for this population. You may have input on the perceptions of LGBTQ+ asylum seekers within these systems and how it may affect their applications.

### **Do I have to take part?**

This information sheet has been written to help you decide if you would like to take part. It is up to you and you alone whether you wish to take part. If you do decide to take part you will be free to withdraw at any time without providing a reason.

### **What would I be required to do?**

You would be asked to complete a semi-structured interview which will take 30-45 minutes to complete.

### **Are there any risks associated with taking part?**

The only possible risk is retraumatisation when speaking about events witnessed on the ground, but questions will center around your organisation and events that affect LGBTQ+ asylum seekers' ability to apply for asylum.

### **Informed consent**

It is important that you are able to give your informed consent before taking part in the project and you have the opportunity to ask any questions in relation to the research before providing written consent.

### **What information about me or recordings of me ('my data') will you be collecting?**

I will collect your name, job title, the name of the organisation you work for, and responses to questions relating to your organisation and models of coordination via a semi-structured interview. I will obtain your written consent to audio record your interview.

This data will be stored in a protected folder on the LSE OneDrive facilities. Only members of the research team will have access to this. Furthermore, the information you provide on your consent form will be stored separately to your interview recording, which will be named using the format "Interview000" in order to avoid identification by filename.

Audio recordings will be taken on an encrypted device and transcribed at the earliest opportunity.

**How will my data be used, and in what form will it be shared further?**

Your research data will be analysed as part of the research study and may be published and/or used for future scholarly research without further consultation.

Your data will be shared (published and/or placed in a database accessible by others) in an anonymised form, which means that your data will be edited so that you are referred to by your organisation's area of work and country of operation.

It is expected that the project to which this research relates will be finalised by Monday 23 August 2021 and written as part of a dissertation for the London School of Economics.

Your data will be stored and processed in London. No matter their physical location, researchers are required to store and make use of personal data as if they were in the UK; University requirements and the provisions of the data protection law apply at all times.

**Will my participation be confidential?**

Yes, your participation will only be known to persons who have access to the identifiable data and / or consent forms.

You have a range of rights under the data protection legislation, including the right of complaint. However, some of those rights may not be available where you provide personal data for research purposes. For questions, comments or requests, consult the University website at <https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/datProPol.pdf>

You will be able to withdraw your data from now until Monday 23 August 2021.

**Ethical Approvals**

This research proposal has been scrutinised and subsequently granted ethical approval by LSE.

**What should I do if I have concerns about this study?**

In the first instance you are encouraged to raise your concerns with the researcher and if you do not feel comfortable doing so, then you should contact our team's Supervisor.

**Contact details****Supervisor:**

Dr. Alessandra Radicati ([a.radicati@lse.ac.uk](mailto:a.radicati@lse.ac.uk))

**Researcher:**

## Appendix II



# Informed Consent Form

The London School of Economics attaches high priority to the ethical conduct of research. We therefore ask you to consider the following points before signing this form. Your signature confirms that you are willing to participate in this study, however, signing this form does not commit you to anything you do not wish to do and you are free to withdraw your participation at any time.

### Please initial boxes:

- I understand the contents of the Participant Information Sheet.
- I have been given the opportunity to ask questions about the study and have had them answered satisfactorily.
- I understand that my participation is entirely voluntary and that I can withdraw from the study at any time without giving an explanation.
- I understand who will have access to my data, how it will be stored, in what form it will be shared, and what will happen to it at the end of the study.
- I understand that I will be able to withdraw my data at any point up to Friday 20 August 2021
- I agree to being quoted anonymously, without reference to any identifying factors, in research publications
- I agree to take part in the above study.

### Audio recordings:

- I understand that part of this research involves taking audio recordings. These recordings will be kept securely and stored separately to any identifiable information, i.e. consent forms.
- Audio and visual data can be valuable resources for future studies and therefore we ask for your additional consent to maintain this data for this purpose.
- I agree to have my audio tape recorded.
- I agree to my audio material being published as part of this research.

**I confirm that I am willing to take part in this research.**

**Participant name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature (typed):** \_\_\_\_\_

**Appendix III: Interview Questions**

1. How long have you been with (name of organisation) and can you explain your role?
2. In your experience, what barriers have your LGBTIQ+ clients faced in their asylum applications?
3. In your experience, what kind of proof must applicants provide to make it to interview stage?
4. Do LGBTQ+ applicants from certain geographic regions face specific barriers – if so, what barriers and regions?
5. How have you noticed changes in treatment of LGBTIQ+ asylum seekers in the past several years?
6. Have you noticed changes linked to U.S. immigration policy?
7. What support structures are in place whilst an asylum seeker awaits news about their application?
8. How does your NGO provide support?
9. What gaps in support remain?
10. Any further input



**Appendix IV: Interview Participants**

<b>Participant #</b>	<b>Organisation</b>	<b>Position held</b>
1	Al Otro Lado	Litigator
2	Respond Crisis Translation	Spanish Translator
3	RAICES	Intern
4	Al Otro Lado	Staff Attorney
5	RAICES	Former Staff Attorney
6	Al Otro Lado	Lead Attorney
7	LGBT Asylum Project	Coordinator
8	Respond Crisis Translation	French Translator
9	RAICES	Attorney

## Appendix V: Ethical Approval

Dear [REDACTED]

The **ethics** review application for the project:

*LGBTQ+ asylum seekers in the US*

*Ref: 25914*

has been **approved**.

The following comments from Lyn Grove were included:

*Dear [REDACTED]*

*I am pleased to say your application has been approved by the Research **Ethics** Committee.*

*I hope your study goes well.*

*With best wishes*

*Lyn*

*Dr Lyn Grove*

*Research Governance Manager*

*Secretary, Research **Ethics** Committee*

*[research.ethics@lse.ac.uk](mailto:research.ethics@lse.ac.uk)*