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**Inability to Protect:**

**Mexican State Capacity and United States Asylum Claims**

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*Abstract*

*The social contract in modern democracies requires that states provide a degree of human security in exchange for select duties and obligations that citizens carry out. A state’s inability to provide physical security calls into question the very bedrock of democratic governance. In this article, I focus on how the Mexican state remains unable to protect certain categories of people based on particular identity characteristics. I draw on examples of gang-related corruption within the police and the judiciary, as well as the impact of cultures of violence and impunity on vulnerable categories of citizens, especially women and girls. Based on my experience as an expert witness in United States (US) asylum cases for claimants from Mexico, I argue that Mexico’s inability to protect women and girls coexists with its democratic status and has direct implications for asylum-seekers in the US immigration system.*

**Keywords**: asylum, expert witness, immigration, Mexico, protection

**Introduction**

Mexican asylum claims in United States (US) immigration courts that are based on some iteration of power-based violence share some common patterns.Dora’s[[2]](#endnote-1) story is a typical one of someone seeking asylum based on her identity as a woman rejecting the gender hierarchy and norms that train women and girls to be subservient to boys and men in Mexico. Raised in a family that held strict notions of gender roles, Dora was taught from a young age to be servile to male family members at the expense of her own well-being. This translated into tolerance for physical abuse by men in her life that only intensified when she began to resist it; the abuse against her increased as the abuser attempted to reassert the gender hierarchy in relation to Dora. Because cartels controlled the local police branch, Dora did not report the abuse, but instead fled. She saw no opportunity to gain protection from her family (which in cases like Dora’s are either complicit in the abuse or unwilling to buck societal conventions to stop it) or from the state due to corruption, lack of capacity, and engrained sexism within the police and judiciary.

Variations in stories like Dora’s might include persecution by violent partners, spouses, or cartel members who tried to claim women or girls as sexual partners, and police who either refuse to take a complaint if the abuser is gang-involved, or report the complaint to gangs who then terrorize victims further. Police may abuse people who come to them seeking to report a violence, or they may take the complaint and issue a truthful assessment of the abuse. I have seen each of these variations in my time as an expert witness in cases of people seeking asylum in the US.

Many people who have crossed the border into the US from Mexico have stories about past experienced violence and a hope for protection from future violence under US asylum law. Asylum-seekers, as a specific kind of migrant seeking identity-based protection after arrival in the US,[[3]](#endnote-2) must argue that their own states are unable or unwilling to provide protection, and are entitled to certain institutional processes that evaluate the merits of their claims. The social contract in modern democracies requires that states provide a degree of human security in exchange for select duties and obligations that citizens carry out. For example, citizens pay taxes, and some portion of those taxes fund local police who control crime in a given neighborhood. A state’s inability to provide physical security calls into question the very bedrock of democratic governance, as a lack of security can jeopardize the viability of the social contract.

In this article, I argue that the Mexican state remains unable or unwilling to protect certain categories of people based on particular identity characteristics. I discuss multiple factors that undermine Mexican democratic quality, including gang-related corruption within the police, cultures of violence and impunity on vulnerable categories of citizens, especially women and girls, as well as the multifaceted backdrop of predatory capitalism that is part of neoliberal globalization. Drawing on my experience as an expert witness in more than eighty asylum cases for claimants[[4]](#endnote-3) from Mexico and El Salvador, as well as nearly twenty years of research on democratization and violence in both countries (Gellman 2017, 2019, 2020, 2021, 2023 forthcoming), I analyze what a state’s inability or unwillingness to protect means for asylum-seekers from Mexico who are survivors of gender-based violence. I also look at how categories of identity inform state (non)protection. Engaging scholarly secondary sources, human rights reports, and my personal experience as a researcher and expert witness, I argue that the Mexican state remains both unable and unwilling to protect some categories of women and girls fleeing gender-based violence, and this inability threatens Mexico’s democratic status.

**Migration, democracy, and the social contract**

Migration, democracy, and state social contracts are indelibly linked as governments’ capacity and will to provide for people and offer opportunities for both protection and upward mobility shapes trends in human movement. Migrants enter the United States from the south at significant rates, with annual apprehensions moving between 521,090 in US federal fiscal year 2018,[[5]](#endnote-4) 977,509 in fiscal year 2019, dropping to 458,088 in 2020 (in part due to Covid-19 related reductions in movement), and up above 1,119,204 in FY 2021 through June 2021 (U.S. Customs and Border Protection, 2021). More than 100,000 people were apprehended by U.S. Border Patrol in March 2021 alone, with approximately 42 percent of Mexican origin (Gramlich, 2021). Asylum continues to be denied much more than it is granted for Mexican claimants along with those from El Salvador, Guatemala, and Honduras, although the outcomes vary from court to court and year to year (TRACSyr, 2021).

The Covid-19 pandemic as well as ongoing weaponization of immigration courts under the Trump administration has shaped asylum processes in the 2020s. The opening quote in one report on deportation reads:

Since its creation, the contemporary immigration court system has been perpetually afflicted by dysfunction. Today, under the Trump administration, the immigration court system—a system whose important work is vital for our nation's collective prosperity—has effectively collapsed (ILL and SPLC, 2019: 3).

This collapse is evident in the directives from past attorneys general to immigration judges, who engage in numerous problematic behaviors that undermine rights of asylum-seekers (ILL and SPLC, 2019: 13-16).

While asylum and deportation figures change month to month and year to year, congressional balance of power, and its fate in the mid-term election, continues as an obstacle to real reform of the U.S. immigration system. Even as President Biden rolls back some Trump-era policies through executive orders (AILA, 2021), Vice President Kamala Harris’s message, “Do not come,” delivered to Guatemalans in 2021, encapsulates an approach of continuing the prioritization of border security while symbolically gesturing to human rights (Naylor & Keith, 2021).

Migration to the U.S. by those not perceived to be White has long stirred backlash (Garland, 2014; Kendi, 2016: 170; Tabellini, 2020). Mexican migration in particular has a contentious history bound up with fluctuating U.S. labor needs that play out through migration policy (FitzGerald & Alarcón, 2013; Russell, 2011: 437-9; Smith, 2013: 291-307). Most recently, White nationalists and other nativist groups in the U.S. have framed Mexican migration as a threat to either racial or class-based hierarchies (Kulig, Graham, Cullen, Piquero, & Haner, 2020; Libal, 2019). Former President Trump’s goal of further building the wall that divides Mexico from the U.S. was coupled with his anti-Mexican statements and dismissal of non-Anglo, LGBTQ+ identities (Patrón, 2021; Zepeda-Millán & Wallace, 2018: 90). This devaluing of diverse ways of being gave a national platform to nativism, racism, sexism, classism, and homophobia that was less evident during Obama’s tenure.

Perceiving migrants as a threat based on racial, cultural, or economic profiles does not adequately take into account the reasons that drive people to leave behind family, community, and citizenship privileges to enter the hostile migration pipeline. The risks people take to migrate to the U.S. are tremendous. Whether economic migrants looking for a new means of providing for themselves and their families or asylum-seekers fleeing violence, the process of crossing the U.S.-Mexico border is fraught (Slack, 2019; Slack, Martínez, Lee, & Whiteford, 2016). For those who have been persecuted in their home country, such risk of potential harm in crossing the border or remaining in the U.S. may appear the better options compared to the certainty of violence if one returns home. This calculation of harm is made by asylum-seekers daily, and brings up both theoretical and practical questions about what we expect states to do for citizens, and who has the right to U.S. asylum law protections.

Political regimes are evaluated by the international community based on their ability to meet a range of liberties such as freedom of expression, freedom of the press, and the right to participate in politics, family life, and other aspects of identity expression without fear of persecution. Democracy is a concept used to designate rule by the people, whether directly or through representation, that circulates in the vernacular as an everyday word, but in fact is considered an ideal type by political scientists (Rousseau & Cranston, 1968 [1762]: 59). Dahl, for example, lays out a twenty-one point list of requirements for democracy and then shows a spectrum of political typologies that are more realistic than full democracy (Dahl, 1971: 3-7).

Fifty years later, it seems that even some of the countries people may most think of as democratic are better labeled polyarchies, meaning incompletely democratized regimes (Dahl, 1971: 8). Robinson, in an update to his earlier work on polyarchy (1996), defines the twenty-first century world order as one of “capitalist globalization,” defined by the elite consensus that neoliberalism and polyarchy are compatible (2013: 228). This predatory capitalist global order has big implications for vulnerable categories of people seeking safety, and operates as part of the complex structural backdrop to migration. This is all to say that Mexico has not failed at democracy on its own. Rather, U.S. foreign policy interventions, including neoliberal economic policies like structural adjustment that gutted social safety nets and prompted drug trafficking governance, have undermined democratic potential in Mexico over time.

My goal in invoking democratic quality is to use this framework to explore the complex reasons why asylum-seekers come to the U.S. and create a need for expert witnesses in the first place. Immigration judges and attorneys for the Department of Homeland Security may or may not have country-specific knowledge of the difference between policies and practices that inform human security conditions outside the U.S. Judges may see that states have laws in place to criminalize violence against women, for example, and not realize that such laws are aspirational and in fact not enforced. Similarly, judges may see regime labels like “democratic” applied to a country like Mexico and not grasp the nuance of how certain groups of people experience such a regime in daily life.

I have argued elsewhere that democratic quality should be evaluated based on the rights and protections afforded to a country’s most marginalized citizens (Gellman 2017). Otherwise, democracy is a label that may only describe the experiences of elites. How women and girls, Indigenous people, or other marginalized groups experience the social contract, including the right to physical security, is arguably a more holistic benchmark for regime type that captures a broader spectrum of realities. When the social contract is weak, meaning that the arrangement of rights and responsibilities between citizens and a state is insufficient to protect people from violence, people may emigrate. Asylum claims in this way are a result of human calculations for survival.

In Mexico, democratic quality has varied substantially in the twenty-first century, with advances in democratic consolidation as seen through the peaceful transition of political party power a net positive. But increasing cartel control of communities and rampant corruption have also grown in the same timeframe. Organizations such as Freedom House publish annual reports that rate countries on exactly these types of criteria. Mexico was rated “partly free” in 2020, with 61 out of 100 possible points in Freedom House’s rubric, with points lost for ongoing problems with corruption and repression of civil society organizations doing human rights work, just to name a few (Freedom House, 2021a). For comparativists, this ranks Mexico just behind Sierra Leone, which scored 65 out of 100 in the same time period (Freedom House, 2021b).

Protection for human rights in Mexico has been deeply problematic (Anaya-Muñoz & Frey, 2019). Even though some degree of problematization is recognized in the U.S. State Department reports on human rights, the official U.S. take is that progress continues to be made in Mexico through new laws and policies (U.S. Department of State, 2019). While it is important to maintain optimism and acknowledge institutional change, significant literature identifies the gap that exists between policies and practices of state protection, as well as the potential for Mexico to be identified as a failing state (Grayson, 2011). The impact of this reality on the lived experiences of women and girls, and in particular those who identify as Indigenous, is immense, as the promises of democracy have not born out (Castillo, 2016; Speed, 2019; Speed & Stephen, 2021). The policy-practice gap is an area to which expert witnesses can give voice.

**Power- and gender-based violence in Mexico**

In this section, I first discuss violence terminology and then present two main arguments regarding gender-based violence and Mexican state inability to protect women and girls from violence. I then explain the complexity of generalizing these arguments, as country conditions experts are often required to do in immigration courts, in relation to scholarly understandings of nuance and local context. In this way, I highlight tensions in the process of translating qualitative scholarship into a resource for expert witnessing.

*Power-and gender-based violence definitions*: In general, gender-based violence is the term that describes any type of violence rooted in exploiting unequal power relationships between people of different genders. This is the most common type of violence that I have been asked to testify about as an expert witness, and the term is still widely used, particularly in Latin America. However, power-based violence has become a more recent adopted term in the United States, especially within higher education spaces, as in the policies of many colleges and universities. Power-based violence expands the definition of violence to incorporate any form of harm that is based in an assertion of power, control, or intimidation. Such violence may include sexual assault‚ stalking‚ and other uses of force or harassment, but it steps outside the gender binary to account for the fact that the perpetrator and victim can be of either or any sex or gender.

While many gender-based violence asylum claims from Mexico follow the standard binary of males as aggressors and females as victims, it is helpful to situate gender-based violence within power-based violence to account for other societal dynamics that may be at play. For example, mothers, aunts, and other female relatives who hold socially condoned power over a girl or woman based on age and family hierarchy may be complicit in violence against her, sometimes in solidarity with male perpetrators and out of a desire to maintain the social order they themselves are confined by. Such experiences are shared with me regularly by women claiming asylum, and I have also observed these behaviors during fieldwork in Mexico over many years.

Gender-based violence is a subset of power-based violence and my testimonies about the former are invariably situated within the latter. In court and written affidavits, gender-based violence is the expected term, and this is one of many examples where expert witnesses may calibrate their expertise to the linguistic confines of immigration courts. An overarching trend with expert witness work in U.S. immigration courts is that the rich space for nuance that many of us may document and write extensively on as scholars is not generally welcome in court, where high caseloads, tight court schedules, and a tendency towards generalizations are the norm. Such simplification of typically complex and contextualized arguments may be intellectually painful for some scholars. Working through what it means to apply our expertise in this legal bureaucratic arena, where indicators of certain factors may be distinct from those we reference in scholarly work, is part of the process of learning how to translate regional or thematic expertise into expert witness work.

*Gender norms in Mexico:* The analysis I offer most often as an expert witness is about gender-based social norms and power hierarchies. The historic and continued prevalence of gender-based violence in Mexico is well known. Violence against women in Mexico, particularly femicide, is extraordinarily high, even when accounting for the fact that much gender-based violence is not formally reported (Amnesty International, 2018; Human Rights Watch, 2021; Sweet & Ortiz Escalante, 2010: 2138-2141). An understanding of toxic masculinity in Mexico is fundamental to identifying patterns of violence in the socio-political context there. Mexican culture is deeply rooted in the practice of *machismo*, or male domination, where men and boys are socially prized and granted control over women and girls (Eber & Antonia, 2014: , 20-21, 92-93, 96; Reyna & García Cadena, 2006; Stevens, 1965).

Within the norm of machismo, boys are socialized to not show emotions considered to be feminine, such as empathy or pain, and they demonstrate their toughness through establishing turf, challenging anyone who questions their domination, and fighting to protect what they consider to be either their possessions or their honor (Gutmann, 2007; Nuñez et al., 2016; Ramirez, 2008). As boys transition into manhood, this socially embedded concept of masculinity is reinforced at every stage, from the culture of bragging over virility and the number of children one has, to the display of total control over women and girls (Terrazas-Carrillo & Sabina, 2019; Uresti Maldonado, Orozco Ramírez, Ybarra Sagarduy, & Espinosa Muñoz, 2017).

Gender norms for women in Mexico are encapsulated female inferiority (Domínguez-Ruvalcaba & Corona, 2010: 4-5; SEGOB, 2014) and *marianismo*, a reference to emulating the Virgin Mary (Nuñez et al., 2016), seen as the ultimate representation of womanhood in Catholic-majority Mexico. In line with the revered Virgin Mary (María), Mexican women are trained to prize purity and obedience over independent or critical thinking. Motherhood and family responsibilities are sacrosanct, and compliance with the wishes of male family members is an expected norm.

Serving male family members is also a typical expectation for women and girls, and this starts in early childhood. For example, multiple teenage girls who participated in a 2018 workshop on gender and human rights that I facilitated at a Mexican non-governmental organization described being required to make the beds and do the laundry of their brothers, even when the boys were capable of performing the chores themselves. This and other highly gendered stories of family chore division were echoed in my individual interviews with teenage girls at several high schools in southern Mexico as part of a larger mixed methods project examining youth identity formation (Gellman 2023 forthcoming). Interviewees recounted that they regularly help their mothers prepare food in the kitchen while their brothers and fathers watch television and wait to be served. Women and girls who perform these domestic obligations without complaint are viewed as loyal, modest, and held in positive community regard. Those who resist male domination can be viewed as making a political statement that undermines basic social cohesion. Gender norms are reinforced socially, politically, and culturally at every stage of life, including in marketing, media, and educational opportunities, as well as in the treatment by state actors, such as the police and judiciary, of women and girls who try to speak out about gendered abuse (See multiple chapters in Domínguez-Ruvalcaba & Corona, 2010; SEGOB, 2014: 7-8).

As mentioned earlier, this assessment of aspects of Mexican society is not comprehensive, as it generalizes phenomena that may vary significantly in many different contexts. However, it sketches a basic profile of social reality that is part and parcel of what expert witnesses do in immigrations court. As experts, we may be asked to take voluminous and extensive research experiences as well as literatures and package them into brief overviews to help courts understand the country conditions of claimants.

**Mexico’s provision of human security**

The second analysis I frequently offer as an expert witness pertains to the state’s ability to protect certain categories of citizens from bodily harm. Gendered behavioral norms do not operate in isolation, but rather intersect with Mexico’s institutional efforts to protect certain types of people from violence in a range of ways. For example, Mexico is also caught in the midst of intense violence by both state and non-state actors towards civilians. Narcotrafficking and the cartels associated with this industry have created webs of violent social control throughout the country that threaten the very existence of democracy (Dear, 2015; Grayson, 2011). Regular media reports of this violence have pervaded the national psyche and further normalized violence in other contexts (Loredo et al., 2014), including femicides other gender-based violence (Fregoso & Bejarano, 2010; Wright, 2011).

Cartels have become all-pervasive, with a role in both legal and illegal businesses spanning the breadth of the economy. These international criminal organizations intensify the culture of machismo in Mexico, since they have weapons and unchecked power to back up their demands for total control of women and girls (Tamés, 2019). This results in economic, sexual, and other forms of physical victimization through power-based violence. Speed, in her work sharing the stories of female Indigenous migrants, labels the different forms of oppression that intersect to threaten human security as “neoliberal multicriminalism” (2019: 5).

Mexico has a poor human rights record in protecting vulnerable categories of people in general (Denham & Collective, 2008; Hincapié, 2019; Liffman, 2014; Shannon & Collier, 2000; Tamés, 2019). Currently, the laws protecting women and girls from gender-based violence that exist on paper try to show compliance with international best practices. For example, Mexico’s Congress ratified the General Law on Women’s Access to a Life Free of Violence (2007), The General Law for Equality Between Men and Women (2006), and the Inter-Family Violence Law (1996). In 2012, Mexico’s Congress decreed that the Federal Penal Code would name femicide as a particular crime (UNODC, 2018: 59-60), after extensive protest by women’s organizations. Yet only four Mexican states have brought state laws into alignment with the federal femicide law (Piña, 2021).

In addition, the Mexican laws that are already in place on gender-based violence have been for the most part ineffective because of corruption, the culture of machismo, and lack of state will or capacity to implement and enforce them. This is evident in the low numbers of perpetrators prosecuted and convicted since these laws have been put in place, which perpetrates a culture of impunity (Amnesty International, 2018: 5; National Human Rights Commission of Mexico, 2018: 14-15).[[6]](#endnote-5)

The lack of state protection for women in Mexico is not only a capacity problem, but a choice and therefore a failing of will by the state. Though the result might be the same—lack of protection—state unwillingness, in addition to the inability to protect, is doubly concerning for marginalized groups who have been past targets for violence. A lack of capacity is something that can be fixed with training and technical assistance. A lack of will points to deeper socio-political issues in Mexico that are harder to transform, and have a direct bearing on how vulnerable groups experience a state’s (in)ability to protect them from harm.

*Corruption and complicity of police*: Police are the most common state security actor to whom people have access in daily life. The complicity of state actors in the perpetuation of violence against women and girls is present even in the official channels built to address issues of gendered violence, as police, military, judiciary actors, and court officials routinely act on sexist internal biases as well as those built into the system itself. Police corruption in Mexico is deeply entrenched, with officers regularly colluding with both state and non-state actors for monetary reward, social status, or to avoid being harmed by narcotrafficking cartels for noncompliance (Beith, 2013; Freedom House, 2021a; Heredia González, 2021; U.S. Department of State, 2017). In public opinion surveys about government performance in Mexico, police consistently rank lowest, with explanations from respondents that police are dishonest, criminally involved, and abusive of their authority (Ai Camp & Mattiace, 2020: 65).

Police collusion with cartels may take place for many reasons, but three central ones are as follows. First, police are underpaid in Mexico and thus have an economic incentive to accept bribes on both a short- and long-term basis (Agerholm, 2018; Freedom House, 2021a; Holman, 2018). Circumstantially, given their positions of authority, the combination of poor pay with little training and apathy towards impunity has created a corruptible group of state actors, for whom professionalization has been discussed but not fully implemented (Heredia González, 2021). Second, police may for various reasons become instigators of regional violence themselves (Trejo & Ley, 2016). Violent leadership can be indicative of social relationships in Mexico, where many police and military officials may have family ties to narcotrafficking or human trafficking organizations, resource extraction companies, or other enterprises that benefit from back-channel deals (GAN Integrity, 2018). Third, police often harbor sexist attitudes towards women and girls and may abuse them rather than protect them based on ingrained cultures of discrimination (Amnesty International, 2016; Pizarro, 2019). Given this understanding of both corruptible and sexist police identity, it is thoroughly unreasonable to expect the majority of police in Mexico to act independently and for the good of women and girls, when men have been socialized otherwise.

This behavior by police is situated in a framework of impunity, where perpetrators are not held accountable for acts of violence. Violence against women is regularly ignored by police, the legal system, politicians, and religious leaders, which sends a clear message to perpetrators that their behavior will not suffer reproach (Amnesty International, 2016: 36-40). Rape and sexual violence are regular violations against many women and girls, and because of the sexist beliefs upheld by police and members of the judiciary, reports of these crimes are rarely taken seriously or properly investigated (Amnesty International, 2016: 22-26; Piña, 2021). Intimidation by past perpetrators, both individual men and also police and military forces, is common to dissuade women and girls from reporting acts of sexual violence (Amnesty International, 2016: 10). Regardless of changing governments in Mexico, “impunity remains the norm” across multiple actors and for a range of human rights violations (Human Rights Watch, 2021).

Political scientists define a state monopoly on the use of legitimized violence as a baseline attribute for democratic states (Weber, 2004 [1919]). In Mexico, the public perception of the use of police force is not legitimate, and cartels carry out a great deal of additionally illegitimate violence that undermines human security. For this reason, some question if Mexico is a failed, rather than democratizing, state (Dear, 2015: 126-46; Grayson, 2011).

One example of the inability to protect people via state security actors is the fate of some women deported to Mexico. Cases of women being killed by previous abusers after deportation from the United States to Mexico, sometimes even years after having left Mexico in the first place, have briefly made headlines (Keung, 2009; Stillman, 2018). In addition, the inability to relocate safely within Mexico, whether because of state identification cards that require disclosing an address (Immigration and Refugee Board of Canada, 2003), or the challenges of economic survival outside of a family network, illuminate multiple angles of how the state imperils its own citizens.

**Expert witnesses bridging the gap**

Expert witnesses play a vital role in U.S. immigration courts by explaining the reality of country conditions or other aspects related to a case that may not be readily evident in a document review by judges and attorneys. As an expert witness for Mexico and El Salvador, I have analyzed more than eighty cases of asylum-seekers from a variety of backgrounds, most with the thematic connection of claims related to some form of power-based violence, including gender-based violence, gang violence, violence against Indigenous people, and political violence. I testify to the ways in which state policies that meet international norms and best practices on paper might fail to provide human security in practice, thus bringing a deeper understanding of how state capacity operates in reality.

 I was a Latin Americanist scholar for years before taking the step to become an expert witness. Though calls for expertise had come through my inbox, I didn’t yet understand how to translate my country-based and thematic knowledge into something that would make sense in immigration court. Mentorship was key. Senior scholars who had served as expert witnesses spoke with me about the process and shared anonymized drafts of their reports so I could see what they looked like. I also found my way to the U.C. Hastings Gender and Refugee Studies Center website,[[7]](#endnote-6) which maintains a robust database of expert witnesses and resources for both scholars and attorneys. Experts are able to create listings for themselves in the database, specifying the kinds of cases they accept, and attorneys can reach out to them via the platform.

 I also worked with colleagues to form what is now the Expert Witness Section of the Latin American Studies Association[[8]](#endnote-7) in 2019. The Section serves as a professional organization to bring together people who serve as expert witnesses in meetings and workshops to expand knowledge about the role of expert witnesses in U.S. immigration courts and human rights trials in Latin America alike. Scholars interested in expert witnessing could reach out to either of these organizations to get started.

In my experience, expert witnessing frequently entails reviewing case-related documents such as credible fear interview transcripts, I-589 applications, and claimant statements in order to explain the interconnection between someone’s identity and the ability of states to protect them. Issues of capacity, political will, and cultures of violence that prevent policies from translating into practice are central focal points in my affidavits and oral testimony. Because the political and human security contexts are constantly shifting, expert witnesses labor to ensure accurate and up to date information about the country conditions they describe, whether based on recent in-country experience, ongoing contact with relevant actors in the country, regular media analysis, or other ways of staying informed.

Disconnect between policy and practice regarding state ability to protect is not always clear from a distance or in the available reports and literature. For example, the norm of obtaining a police report for a violent incident is relatively straightforward in the U.S., but it is less common to do so in Mexico, where police are frequently on gang or cartel payrolls and may also collude with political leaders. Even when police reports are obtained, what is written may or may not reflect the accuracy of the incident that took place given the multiple motivations at play. Yet filing a complaint with police (or not) is sometimes taken as proof as to the seriousness of an offense, and the accompanying paperwork from police sometimes serves a legitimizing function in immigration court. Such assessments can miss the complex factors that determine reporting behaviors and police document products. Expert witnesses may be able to contextualize how social norms have developed to secure physical survival, such as non-reporting in the face of power-based violence.

Serving as an expert witness requires a willingness to be challenged in one’s expertise through the process of *voir dire*[[9]](#endnote-8), as well as to undergo sometimes hostile cross-examination, and neither is comfortable for scholars traditionally accustomed to a certain degree of professional respect. Like the distillation of complex issues into generalizable ones, the contestation of expertise is one of the elements of expert witness work that distinguishes itself from how things tend to operate in the scholarly world.

Similarly, expert witnesses must brace themselves for the real-world implications of what we write and say, something that is not a given in scholarly production. Jeremy Slack uses the term “necroliberalism” to describe the way the U.S. immigration system weighs “which potential murders should be prevented by granting clemency” (Slack, 2019: 173). In this version of liberalism, the U.S. is the arbiter of deaths foretold in deciding which lives are worthy of saving. Expert witnesses, by providing written and sometimes oral testimony in asylum cases in immigration courts, participate in this arbitration. The weight of this responsibility—playing a role in determining who is granted asylum and who is deported—is a heavy one, and the potential for secondary trauma from immersive work in claimant stories is also acute.

Both of these issues point towards the need for increased professional community as well as sustainable self-care practices for those who take on this work. In the face of such intensity, for people who have spent their careers documenting issues related to asylum-adjacent themes, expert witnessing offers a concrete way to apply research-based knowledge to other people’s lived experiences. It is a field in need of more scholars.

**Conclusion: the social contract on trial**

Democracy as an institutional arrangement upholds the social contract between the state and the people, not just elites or a minority of citizens. This means that both parties have rights and responsibilities in relation to one another. In exchange for people carrying out their obligations to states, such as paying taxes and following laws, they expect the right to basic human security and liberties.

While progress continues in Mexican legal and political frameworks to advance notions of human rights protections, in practice, a large gap remains in how people experience those protections, particularly women and girls who are survivors of power-based violence. Expert witnesses play an important role in casting light on this gap by explaining in more depth how certain identity characteristics intersect with country conditions to impact the risks that claimants might face if they are involuntarily returned to their country of origin.

For many women and girls, the Mexican state has been unable to uphold a social contract that includes protection from power-based violence. Not only is the state both unable and unwilling to offer some categories of people protection from violence, in fact it frequently furthers such violence. This is visible in the example of state actors such as police officers revictimizing women who seek intervention in cases of gender-based violence, but it is much bigger than any one sector. Numerous security actors, from police to military to judicial personnel, participate in a system that does not provide justice for Mexican people. Femicides, forced disappearances, internal displacement, and other forms of power-based violence undermine the credibility of the system as a whole.

Machismo, though not ubiquitous, continues to frame the dominant gender norms and dynamics in much of Mexican society. Certainly there are outliers, intersectional factors, and contextual ways in which broad claims about gender dynamics or the state’s ability to protect people can be unpacked. Generalizations about power-based violence can be uncomfortable for researchers like me who have based their scholarly careers on documenting and explaining nuance. Ethnographers from many disciplines, including political science, rely on deep context and a fine-grained approach to understand local politics in relation to larger state-level phenomena. Both depth and breadth are accessible to expert witnesses, but might take different forms than in scholarly research. Expert witnesses ultimately try to find ways to communicate these issues while also providing enough concrete analysis of a given case to assist immigration courts in assessing the merits of a given case. Highlighting why laws on paper do not protect certain categories of people in practice is an important part of defining what a state’s inability to protect actually looks like.

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2. A pseudonym [↑](#endnote-ref-1)
3. Asylum-seekers request relief after entry into the U.S., whereas asylum requests by refugees are processed before arrival. Both groups may be considered asylees after being granted asylum, but the process for achieving that status is distinct. [↑](#endnote-ref-2)
4. In immigration court, claimants are those who initiate claims, while respondents are those who are responding to charges against them. The majority of cases I work on are with people as claimants, but some are with respondents. To avoid repetition, I sometimes refer to asylum-seekers as claimants in this article. [↑](#endnote-ref-3)
5. October 1 2017 through September 30, 2018. [↑](#endnote-ref-4)
6. *See also* Center for the Integral Development of Women and Robert F. Kennedy Human Rights, *Alternative Report on Violence against Women in Ciudad Juarez, Chihuahua, Mexico* (June 11, 2018), *available at*https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\_CEDAW\_NGO\_MEX\_31432\_E.pdf. P. [↑](#endnote-ref-5)
7. See: https://cgrs.uchastings.edu/expert/search [↑](#endnote-ref-6)
8. See: https://lasaweb.org/en/sections/expert-witness/ [↑](#endnote-ref-7)
9. Voir dire is French for "to see, to speak,” and refers to the process through which potential experts or jurors are questioned by judges or lawyers to determine their appropriateness for a given role in court. [↑](#endnote-ref-8)