



Captive While Waiting to Be Free: Legal Violence and LGBTQ Asylum Applicant Experiences in the USA

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Abstract

Introduction In this article, I demonstrate how US asylum practices and immigration regulations impact lesbian, gay, bisexual, transgender, and queer (LGBTQ) asylum applicants in distinct and traumatic ways.

Method I conducted interviews with 18 LGBTQ applicants from Caribbean and African countries in 2018.

Results In the analysis, I show that legal mechanisms intended to curb fraud—including work restrictions and shifting asylum timelines—produce traumatic outcomes for LGBTQ asylum applicants in four ways: isolation and loneliness, prolonged uncertainty, mental vulnerability, and physical vulnerability. This trauma is compounded by broader systems of homophobia and transphobia that make disclosing gender identity and sexual orientation difficult and prevent the development of protective social networks within immigrant communities and white, US-born LGBTQ spaces.

Conclusion I argue that legal procedures are not necessarily preventing or flushing out fraudulent cases; they serve as regulatory practices predicated on heteronormativity and inflict legal violence on LGBTQ asylum applicants.

Policy Implications This work has implications not only for the scholarly study of sexuality and immigration, but also for immigration reform, starting from how particular kinds of migration are conceptualized at the bureaucratic level. Reconceptualizing asylum policy will require a shift in focus from fraud to protection, from assuming illegitimacy to ensuring human rights for all.

Keywords LGBTQ · Asylum · Immigration · Legal violence

Applying for asylum in the USA as a lesbian, gay, bisexual, transgender, or queer (LGBTQ)¹ individual is difficult. Legal scholars describe the substantial barriers for this population in accessing protections, particularly as sexuality and gender are relatively new grounds for asylum. While existing literature clearly identifies the legal issues specific to proving sexual orientation and gender identity in the context of asylum, few works interrogate the broader constellation of immigration regulations that impact LGBTQ asylum applicants. In fact, fears of fraudulent activity have produced increasing legislative oversight, resulting in policies aimed at curbing fraudulent

behavior for all asylum claimants. However, as I will demonstrate in this article, these policies impact LGBTQ asylum applicants in distinct and traumatic ways. Drawing on analysis of interviews conducted in 2018 with 18 LGBTQ asylum applicants from Caribbean and African countries, my findings demonstrate that legal procedures are not necessarily preventing or flushing out fraudulent cases; they serve as regulatory practices predicated on heteronormativity and inflict legal violence on LGBTQ asylum applicants.

In this article, I extend the existing socio-legal literature on barriers for LGBTQ asylum applicants to include policies aimed at reducing fraudulent claims which target all asylum applicants. As I will demonstrate, these policies differently impact the LGBTQ population, as their experiences are compounded by homophobia and transphobia. While the policies may not be explicitly homophobic and transphobic in their construction, they are in their consequences. As I will argue, these policies represent a form of legal violence, a concept that makes explicit the convergence of laws that regulate immigrant lives in harmful ways (Menjívar & Abrego, 2012). As immigration policies become more restrictive and in many

¹ I situate this work in terms of the broader literature on lesbian, gay, bisexual, transgender, and queer (LGBTQ) asylum. However, my respondents only identify as lesbian, gay, and transgender. Still, previous works identify similarities across the LGBTQ community, which is why I chose to situate my work in this way.

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ways more white supremacist, we need to turn our attention to how they are experienced on the ground, from the perspective of those most impacted, including the LGBTQ asylum applicants interviewed in this study.

LGBTQ Asylum in the USA

To start, the USA uses the standard definition of a refugee as outlined in the *United Nations Convention (1951) and Protocol (1967) Relating to the Status of Refugees*. Individuals can apply for asylum if they have a well-founded fear of persecution in their country of origin on account of their race, nationality, religion, political opinion, or membership in a particular social group. A nexus, or a link, must exist between the persecution and the ground for which the applicant applies for asylum. Sexual orientation and gender identity are not specifically referenced in this definition, but over time, individuals with sexual and gender minority identities have been understood as members of particular social groups (Randazzo, 2005).

The first case to find group membership on the grounds of sexual orientation was the *Matter of Toboso-Alfonso (1990)*, in which a gay Cuban man applied for asylum on the basis that he would be harassed, assaulted, and even imprisoned if he returned to his home country. The immigration judge hearing this case granted Toboso-Alfonso asylum, citing *Matter of Acosta (1985)*, which defined a particular social group as individuals that share fundamental and immutable characteristics, and stating that his sexual identity put him at risk for persecution. The Immigration and Naturalization Service (INS, now United States Citizenship and Immigration Service, USCIS) appealed this decision, stating that “homosexual activity” should not form the basis of membership in a particular social group, especially when, at the time, the US laws in some states criminalized such activity. In 1990, the Board of Immigration Appeals dismissed the appeal made by the INS, granting Toboso-Alfonso withholding of deportation but not establishing the case as asylum precedent (Randazzo, 2005).

The next major case occurred in 1993, when an immigration judge granted asylum to Marcelo Tenorio, a gay Brazilian man who was the target of anti-gay violence. The judge again cited *Matter of Acosta*, noting that Tenorio was “openly homosexual, a characteristic that the court considered immutable, and one which an asylum applicant should not be compelled to change” (quoted in Randazzo, 2005, 34). Again, the INS appealed the decision, and again, the Board of Immigration ruled in favor of the applicant. In 1999, Tenorio was granted asylum. On the heels of this case, Attorney General Janet Reno set the Toboso-Alfonso case as a precedent, meaning applicants would not have to prove on a case-by-case basis that sexual orientation constitutes a particular social group. However, the precedent did not set any criteria

for determining an individual’s sexual orientation, leaving that decision-making process up to the adjudicators who hear each case (Leitner, 2004).

While the decision to not describe specific criteria was likely motivated by a fear of creating overly restrictive evidentiary burdens for asylum applicants, the consequence was that adjudicators used (and continue to use) their own assumptions about sexuality in order to determine membership of a particular social group, ultimately resulting in misguided and still restrictive adjudication. One persistent problem identified in the socio-legal literature is that adjudicators expect applicants to conform to white, western norms of sexuality, including gender nonconformity (Cantú, 2005; Hanna, 2005; Kimmel & Llewellyn, 2013; Morgan, 2006), linear narratives of sexual realization with clear “coming out” stories (Berg & Millbank, 2009; Choi, 2010; Llewellyn, 2017; Mayers, 2018; Murray, 2014; Shakshari, 2014; Vogler, 2016), and visible and politically oriented identities (Akin, 2017; Bresnahan, 2011; Greenberg, 2017; Marouf, 2008; Shuman & Bohmer, 2014; Soucek, 2010; Turk, 2013). In addition to placing an unrealistic evidentiary burden on applicants who may intentionally hide their sexual orientation to prevent or escape persecution, the centrality of coming out stories and political identities has been critiqued as a colonialist project intended to use LGBTQ rights as a marker of progress and legitimation globally (Berg & Millbank, 2009; Carrillo, 2010; Keenan, 2011; Llewellyn, 2017; Mayers, 2018; Murray, 2014; Vogler, 2016).

In addition to the work on legal barriers to asylum access, other scholars have studied the trauma experienced by members of this population, both prior to and after their arrival in their host country (Alessi & Kahn, 2017; Alessi, Kahn, & Van der Horn, 2017; Heller, 2009; Hopkinson et al., 2017; Johnson, 2011; Munro et al., 2013; Piwowarczyk, Fernandez, & Sharma, 2017; Reading & Rubin, 2011; Shidlo & Ahola, 2013). In particular, a growing body of literature addresses the role that the asylum process can play in exacerbating underlying mental health issues (Alessi, 2017; Alessi & Kahn, 2017; Heller, 2009; Johnson, 2011; Kahn, Alessi, Woolner, Kim, & Olivieri, 2017; Kahn, Alessi, Kim, Woolner, & Olivieri, 2018; Reading & Rubin, 2011). For example, Kahn and Alessi (2017) and Alessi, Kahn, Greenfield, Woolner, and Manning (2020) describe day-to-day precarity and experiences of not belonging as result of asylum processes in Canada, Austria, and the Netherlands.

Asylum Procedures and Legal Violence

The asylum system periodically comes under fire as a source of potential fraudulent immigration activity in the USA. In the context of this study, two specific procedures—delayed work authorization and shifting timelines—were relevant to the lives of the LGBTQ asylum applicants interviewed. Delayed

work permits were implemented in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act, 1996 as a result of a perception that asylum applicants were actually “economic migrants” seeking to work in the USA (Cianciarulo, 2006). After 9/11, immigrant entries became increasingly scrutinized, and the asylum system was flagged as a potential avenue for terrorists. As a result, the Congress passed the *REAL ID Act* in 2005, which increased subjectivity in judicial decision making for asylum cases and made the process more difficult for applicants, especially those that lacked legal representation (Fletcher 2006).

The Trump administration showed a renewed interest in the asylum system, with former Attorney General Jeff Sessions stating that the asylum system is exploited by immigrants seeking illegal entry to the USA (Planas & Foley, 2017). Shortly after his statement, a new timeline for hearing cases was released (USCIS, 2018). Prior to 2018, affirmative asylum applications (i.e., those cases initiated by asylum applicants at border entry or after a short stay in the USA visiting on some other visa) were heard by immigration officers on a first come, first-served basis i.e., an individual would submit an asylum application, which entered a queue, and the applicant would start a lengthy waiting process. After 150 days, as guided by the Illegal Immigration Reform and Immigrant Responsibility Act, 1996, the applicant could apply for a work permit, which allowed them to become legally employed while they waited for their case to be heard (USCIS, 2018). The queue for these hearings was long, with individuals waiting years to appear before an officer. Beginning in January 2018, the process changed: cases would now be heard on a last in, first-out basis i.e., individuals submit their applications and can expect a hearing within the next 21 days. At that point, the officer will decide to grant asylum and a work permit, or deny both. Cases already in the queue are being heard in a reverse order of arrival, starting with the most recent applications (USCIS, 2018).

These policies were created to curb fraudulent behavior, but as I will demonstrate, are exclusionary practices that have adverse and often violence consequences for those subject to them, particularly and especially for LGBTQ claimants. To this end, I suggest that the literature on legal violence (Menjívar & Abrego, 2012) provides a useful analytical lens for understanding the asylum system as it is experienced by LGBTQ asylum applicants in the United States.

The framework of legal violence makes visible “the law’s underside” (Menjívar & Abrego, 2012, 1382) by grounding analysis of immigration law in immigrant experiences. Examining the case of Central American immigrants, Menjívar and Abrego (2012) demonstrate how the convergence of immigration and criminal law has produced negative, violent effects on immigrants, particularly in the arenas of family, work, and school. Though many immigrants (including legal permanent residents) have felt the impact of

increasingly restrictive immigration laws, individuals living with “tenuous legal statuses” (Menjívar & Abrego, 2012, 1381) experience more harm than previously observed in any other point in history and for any other migrant groups. In this context, immigration law does more than serve as an exclusionary practice; it enacts physical, material, emotional, and psychological violence and limits incorporation into society. Using the analytical framework of legal violence “captures the suffering that results from and is made possible through the implementation of the body of laws that delimits and shapes individuals’ lives on a routine basis” (Menjívar & Abrego, 2012, 1387).

LGBTQ asylum applicants are among those living with “tenuous legal statuses” as they await a final determination about their cases. In this article, I demonstrate the ways in which the US asylum system enables and enacts violence that is both general to the experience of claiming asylum (see also Abrego, 2011; Abrego & Lakhani, 2015) and in many ways specific to the LGBTQ population. Just as Abrego and Menjívar (2011) have identified the particular gendered consequences of legal violence (for example by preventing immigrant mothers from mothering), asylum procedures can differently impact sexual and gender minority populations who contend with their liminal status and homophobia/transphobia.

Method

Research Design

The purpose of this research project was to understand the lived experience of LGBTQ asylum applicants; that is, what is the day-to-day experience of navigating the US asylum system as an LGBTQ individual? To answer this research question, this paper draws upon an interview study conducted in 2018 with 18 LGBTQ individuals applying for asylum in the USA. A university institutional board approved this project, and I utilized a number of protections to maintain the confidentiality and well-being of participants. Given the relative invisibility of LGBTQ asylum applicants, participants were recruited through an organization that assists this population, and through snowball sampling methods. Importantly, I was clear that participation in this study was not linked to any services they received from the organization. Additionally, any communication with the participants was deleted after completion of the interviews.

Since the purpose of the study was to understand the process of navigating the asylum system, I did not specifically ask questions about their pre-arrival experiences, though participants sometimes referred to their lives in their countries of origin. My experience spending time with this population indicated that they were often asked to recount their stories, even when it was uncomfortable. In fact, the organization that I

used to recruit participants had a set of procedures to minimize the negative effects of telling pre-arrival stories. While the organization did not explicitly guide the development of my interview protocol, I respected the sentiments of their approach in minimizing the trauma of recounting difficult life events. However, I did not prevent any participants from telling their stories if they wanted to share, as recounting experiences of violence can be a tool of empowerment (Burgess-Proctor, 2015). I started the interviews rather open-ended, allowing participants to tell me about their initial days in the USA and about the process of waiting for asylum. Asking respondents to narrate specific phases rather than asking specific questions can be helpful for traumatized populations (Rosenthal, 2013). However, I did ask follow-up questions about issues identified in the literature, including their finances and potential future employment opportunities, interactions with community organizations, and day-to-day issues of socialization and integration (for example, see Alessi & Kahn, 2017; Chavez, 2011; Kahn et al., 2017; Shidlo & Ahola, 2013). Interviews lasted an hour and half to two hours.

About half of the applicants arrived before 2018, meaning their cases fell under the “old system” in which they submitted an application, applied for a work permit, and then were in the process of waiting to be called for an interview (INS, 2000). The other half of participants were subject to the new rules imposed in 2018, meaning quicker interview timelines within 21 days of a submitted application (USCIS, 2018). In the latter group, about half of the individuals had applied and were awaiting a hearing with an immigration officer, while the rest were working with a lawyer to bring their case forward within the 1-year deadline required by the law.

The participants originated from two countries—one in Africa and one in the Caribbean. The exact countries, and the location of the interviews, will not be referenced to maintain confidentiality of the participants. All participants identified as members of the LGBTQ community. Fourteen participants identified as gay cisgender men, while three identified as lesbian cisgender women, and one identified as a trans woman. No respondents specifically identified as bisexual or queer, though I did attempt to recruit any member of the community. Though gay men may appear overrepresented in the sample, this demographic breakdown reflects gendered trends in the asylum system (Berger, 2009; Nielson, 2005). Lesbian women encounter systematic challenges in accessing the asylum system, as both their gender and sexual orientation make them vulnerable to violence and prevent their movement across borders. If lesbian women do arrive in their destination country, they may be more likely to apply for asylum on the basis of gender-based persecution, since adjudicators may more easily understand the gendered dynamics at play in their cases (Nielson, 2005). Therefore, my sample, specifically the small number of lesbian women participants, is likely reflective of broader trends in sexual orientation and gender identity asylum cases.

The interviews were recorded with permission of the participants. If a participant refused recording, hand-written notes were taken. Notably, none of the women-identified participants agreed to be recorded, for fear of being identified, perhaps as a result of some of the barriers described above (see also Nielson, 2005). The interview recordings were transcribed, and all identifying material was removed to protect the participants.

Analytic Procedure

Transcripts were coded using an inductive process, utilizing the methods of “coding cycles” (Saldaña, 2016, 68) and thematic analysis (Braun & Clarke, 2006). In the first cycle, I read the transcripts to identify emergent themes. According to Braun and Clarke (2006), a theme “represents some level of patterned response or meaning within the data set” (10). While the interviews covered a wider range of topics, the findings presented in this article are centered around the themes of trauma identified in the dataset. Notably, trauma in this sense does not refer to a clinical definition, but rather moments, events, and ideas that participants identified as distressing, overwhelming, and frustrating. Specifically, during my first round of coding, I identified psychological distress, cultural shock, and feelings of loss and loneliness as examples of the types of trauma experienced by the participants (see Bennish-Weisman, 2009 for more discussion about immigration and trauma).

After the first round of coding, I brought the initial findings to a subset of the asylum applicants that I interviewed. While this was not a community-based participatory research project, this process served as a “member check” (Koelsch, 2013), which added accountability in my analysis and ensured the centrality of the voices of the asylum applicants. Given that my findings elaborate trauma, I was especially cognizant of asking the applicants if I interpreted their words correctly and if my bias as a white, US born researcher skewed my understanding of their experiences as immigrants and people from the global south. The participants agreed that my interpretation captured their narrated experiences, and therefore, I proceeded to the second cycle of coding.

During the second cycle, I identified every instance of trauma in the dataset. While I did use the qualitative analysis program, NVIVO, to organize data, I coded all transcripts by hand to ensure that I captured the nuance of the interviews. After this round of coding, I abstracted more general patterns that emerged across the themes, moving iteratively between the data and existing literature. During this phase, I used memos as a procedural and analytical strategy to make conceptual leaps from data to abstractions/literature that explain research phenomena in the context in which it is examined (Birks, Chapman, & Francis, 2008; Saldaña, 2016). This resulted in collapsing categories into four main themes: isolation and loneliness, prolonged uncertainty, mental vulnerability, and

physical vulnerability. Additionally, my memos reflected the extent to which the themes of trauma were tied to asylum policies and procedures, which lead me to situate the findings in terms of the broader framework of legal violence (Menjívar & Abrego, 2012).

Findings

While a substantial body of literature elucidates the issues of judicial bias in constructing cases based on sexual orientation and gender identity, my findings reveal that LGBTQ asylum claimants expressed more concern about broader immigration policies (delays in work authorization, shifting asylum timelines) largely targeted at flushing out fraudulent asylum cases. This is not to say that participants in this study did not worry about proving their sexual identities. However, these concerns were secondary to their experiences of waiting for asylum and navigating complex and constantly changing immigration processes, which they described as both intensifying their existing trauma and producing new anxieties. The delay in work authorization and shifting asylum timelines added precarity to already tenuous situations, particularly when compounded by homophobia and transphobia that make disclosing gender identity and sexual orientation difficult and prevent the development of protective social networks within immigrant communities and white, US-born LGBTQ spaces. Here I elaborate the four key trauma-focused themes that emerged from my findings: isolation and loneliness, prolonged uncertainty, mental vulnerability, and physical vulnerability.

Isolation and Loneliness

The theme of isolation and loneliness indexes how experiences of marginality are configured by complex intersectional politics. Most of the interviewees expressed feelings of isolation and loneliness while they waited to have their case heard, and these feelings were exacerbated because they did not have support networks—either with other immigrants from their country of origin or the white, US LGBTQ community. For some, isolation and loneliness were also compounded by the stress of not being ready to tell their pre-arrival stories of persecution.

While many asylum applicants turn to other immigrants from their country of origin for support while awaiting their case outcomes, LGBTQ applicants do not always have the same access to these networks because of homophobia and transphobia (see also Kahn, 2015). Julia, a lesbian woman from an African country, described arriving in the USA after feeling an ambivalence to leave her home country and her girlfriend. She initially stayed with a friend from her home country, but she described feeling uneasy because her friend

did not know that she was gay. Her girlfriend was attacked back home, and Julia felt that she could not discuss the situation with her hosts. Even though she explained that she felt safer in the USA, she still felt like she had no support and was living with a great deal of uncertainty while waiting for her case to be heard. Julia had been in the USA for 2 years at the point of the interview, meaning her case was sitting in the lengthy queue of pre-2018 cases with no asylum hearing in sight. She described feeling trapped and was tentative about broadening her social network because she did not know who she could trust. She continued to suffer a great deal of depression, and she still felt isolated, even after she moved to a new living situation with a family who knows that she is gay. Julia, like many other interviewees for this project, described the resulting effects of homophobia in resettled immigrant populations from her country of origin coupled with the perceived lack of protection while she was awaiting her asylum claim.

Many LGBTQ applicants perceived prior to coming to the USA that the culture is welcoming and accepting of sexual minorities. However, most expressed reluctance at participating in LGBTQ events. While some attended large-scale events, like pride parades, few joined any organizations upon arrival in the USA. Gregory, a gay man from a Caribbean country, explained that he felt very isolated in the USA, especially because he could not work and connect with people as he had done in his previous job prior to coming to the USA. He initially thought that he could find some volunteer opportunities with LGBTQ organizations. However, while the white LGBTQ community might seem like natural allies, he did not feel at home with that community, which intensified feelings of isolation and loneliness. Gregory attended a pride parade and, at the end of the event, heard a white woman yell a derogatory slur aimed at black people. This example illustrates why LGBTQ asylum applicants might be reluctant to find “allies” in the LGBTQ community: they enter the USA as people of color, and in the case of the asylum applicants in this study, they are racialized as black and encounter racism, often for the first time in their lives as race is constructed and policed differently in their countries of origins.

In addition to lacking social networks, Frank, a gay man from an African country, explained how the feelings of isolation and loneliness are intensified by knowing that he will have to retell his story about violence, even though he might not be entirely ready to do so. Frank had just found a lawyer and was in the process of applying for asylum, meaning his case fell under the new post-2018 system in which he would be called for a hearing in 21 days after his application. He stated,

You are away from everywhere that you know. You’re, everybody here is new, you are meeting new people, the culture is different, the weather is different, I am stuck inside all the time. So I cannot really go out as much and

you know just see what is up. So it's a lot going on, you are forced to go through a lot all at once. And then going through the asylum process, you have to pull up experiences that you probably buried in your mind because you have to write the affidavit and explain stuff to your lawyers and your case workers, so it kind of intensifies the whole, the process.

Here Frank is particularly concerned about telling his story, a fear observed in other studies of LGBTQ asylum claimants (see Alessi, 2017, and Heller, 2009, for example). Frank, like many other participants in this study, had lived a long time fearing that people would find out about his sexual orientation. Unfortunately for Frank, and the others, this disclosure often led to violence—physical, emotional, and sexual. When Frank described being “forced to go through a lot all at once,” he linked the isolation that comes from living somewhere new with a process that will compel him to recall his sexual trauma in a relatively quick time period.

Prolonged Uncertainty

The theme of prolonged uncertainty makes explicit the ways in which extended asylum hearing timelines and delayed work authorization impacts the psychological well-being of LGBTQ applicants. While this theme has been identified in the literature (for example, see Alessi et al., 2020), a unique aspect of my study was that the participants were subject to different timelines for their hearings. Again, about half of the interviewees fell under the pre-2018 timeline for hearing cases, in which they were placed in a lengthy queue and had to wait a substantial period of time to know their case outcome. Prolonged uncertainty was more pronounced for these individuals, as their extended timeframe caused distress as they waited in a suspended state of uncertainty, unsure how to proceed with their life. The applicants talked about “wanting to be as they are.” When they invoked this statement, they were referring to living as openly gay individuals. However, given their lack of protection as a result of their tenuous legal status and the prolonged waiting period to have their case heard, they were afraid, in many ways, to start living openly. Ultimately, the respondents were well aware of homophobia and transphobia in the USA, and unsure how the laws would protect them while they were in their prolonged state of uncertainty. In this way, the respondents did not feel the freedom that they expected to find in the USA, and instead entered a period of lengthy and stressful waiting.

Patrick, a gay man from the Caribbean, noted the irony of coming to the USA to find freedom only to be met with a period that he described as captivity. He explained,

I think the uncertainty of whether in a few months I will actually get a court date, whether or not I will actually

get my paperwork done. And even if I actually get through with asylum I have to wait a year until I can apply for a green card, so it is kinda like you come here to get the freedom in order to get that legal backing to be somewhere you can be as you are and there are laws to protect you. But at the same time you just kind of feel stuck. Stuck in a state of uncertainty because the paperwork takes so long and that at the end of the day, nothing is guaranteed... Ok you are safe now but at the same time you feel like you have to be on your tippy toes...so you are still feeling captive, while waiting to be free. Which would not be terrible if it was a 5-month wait, but this is years of waiting.

Patrick, like the other participants who were subject to the pre-2018 system, described the process of waiting for asylum as psychologically distressing, causing him to feel “stuck” and “captive.” The participants mostly stated that they felt in some ways safer in the USA because laws protect LGBTQ individuals from outright violence. However, the prolonged uncertainty kept them on their “tippy toes,” as Patrick stated, without the “legal backing” to “be as you are.” In many ways, Patrick and the others are describing the trauma that comes from uncertainty about expressing their sexual orientation in the context of an asylum system that they do not trust to protect their best interests (see also Heller, 2009).

Mental Vulnerability

The next theme is mental vulnerability, which makes more explicit the role of compressed hearing timelines as implemented after 2018. Half of the interviewees were waiting in the pre-2018 queue, while the other half were subject to the new compressed post-2018 timeline. Both systems produced mental distress, as all interviewees reported problems sleeping and seeking out psychological services to deal with both their previous trauma and ongoing anxiety around the uncertainty of their future. Importantly, all asylum applicants indicated that they would be in grave danger if they were to return to their country of origin, making the stakes for having a successful case quite high. However, as described above, applicants who fell under the pre-2018 system expressed their anxiety more in terms of prolonged uncertainty. Interviewees who fell under the new, more compressed system described a different type of anxiety. While they did not face a long period of waiting, the speed at which their cases would be determined created fear. In particular, they were concerned about properly developing their cases in such a short period of time, as well as finding the strength to tell their stories so quickly.

Louis, a gay man from a Caribbean country, explained that the increased speed meant that he had to rush to compile documents for his case, including affidavits from people in his home country who were scared to sign a document stating

that he was gay and not safe. He explained that, “even after they sign their name and everything, they have to go to someone, to get it signed [notarized] which is the most difficult thing. Because they will tell other people and then that person can be targeted. So, none of my friends wanted to do it, but they were willing to write me a letter.” Louis continued to explain that he experienced many sleepless nights as he feared not getting his documents together on time, all while replaying the traumatic and violent experiences that caused him to flee. He also expressed mental anguish at putting his friends and family at risk to write an affidavit attesting to his sexuality. Producing this documentation is difficult, especially with rapid processing speeds of asylum applicants. While all applicants need to show proof of their group membership to gain asylum, the sexual and gender identities of LGBTQ asylum applicants are often questioned, and affidavits from friends and family serve as primary evidence (see Vogler, 2016).

Another issue for the LGBTQ asylum applicants interviewed was that the quick processing time did not allow them to completely come to terms with the trauma that they had experienced. They spent a significant amount of time hiding their sexuality (see also Heller, 2009). Under the new system, they are expected to tell their stories quickly and coherently, but they are not always ready to recount their persecution or to disclose their sexual orientation. John, a gay man from an African country, referred specifically to the “quick process” and its impact on his mental health:

With a quick process, I believe coming into the country and still having the burden of all that you have had to do to protect yourself, to save yourself in your country of origin, um to be able to go to an interview very quickly could be a disadvantage to some people because they have not been able to tell their story long enough to feel comfortable. I can see someone walking into an interview and still holding back because they are still having that mindset of being back in the country and not being able to fully express their thoughts on certain issues. I find that even with myself. I am still trying to navigate. Who can I really be honest with? Who can I share my true self? I faced so much rejection trying to be real and authentic and transparent in my country so that is a challenge in and of itself.

The type of anxiety John described is consistent with Kahn and Alessi’s (2017) observation that compressed timelines led to increased depression and anxiety for LGBTQ asylum applicants in Canada, particularly because the applicants were not yet ready to tell their stories, nor make a public determination about their sexual orientation. Moreover, being aware of homophobia and transphobia in the USA, the participants in this study were still unsure of who to trust with this information. In this sense, the policy exacerbates existing trauma

and also creates a new, very real stress of proving their case or risking deportation.

Physical Vulnerability

The final theme is physical vulnerability, which makes explicit the precarious and potentially dangerous positions of LGBTQ asylum applicants. For the respondents in this study, physical vulnerability was often the result of tenuous immigration statuses coupled with homophobia and transphobia. Maria, a trans woman who left her home country in the Caribbean after facing economic discrimination and sexual assault, explained how she faced similar job-based discrimination in the USA. She arrived prior to 2018, meaning she had submitted an asylum application and then waited for a work permit. She described the difficult process of waiting to apply for a job, only to be met with discrimination from potential employers. Upon securing employment, she encountered threats on public transportation en route to her job and dirty looks from customers and other employees. However, because she spent so long without a job and because she lacked permanent protection, Maria was afraid to pursue the instances of harassment and discrimination. Here the intersection of transphobia and economic insecurity becomes apparent. It was the experience of waiting to work as a result of the required delay in work authorization that made Maria resistant to reporting instances of discrimination in her workplace. Many immigrants who lack permanent protection face similar abuse and may be reluctant to report violence (Menjívar & Abrego, 2012), though those that Maria explained are not just related to documentation but also to her gender identity.

One LGBTQ applicant explained that the lack of work authorization and subsequent economic insecurity placed him in a violent situation. Harry, a gay man from an African country, came to the USA on a visa and initially resided with friends of friends from his country of origin. Among the interviewees, the strategy of living with other immigrants was common, especially when applying for asylum and not having the ability to legally work. However, Harry’s living situation quickly turned volatile when his host found out that he was gay. His host, an unmarried woman, sought out a relationship with him and would not let him leave the house until he complied. She became increasingly suspicious of his sexual orientation when he finally refused her advances. She turned off his phone, kicked him out of the house, and threatened to call the police. He was temporarily homeless before finding a safe place to stay. However, his host would not return his documents (passport, birth certificate, finances), and it was not until a US citizen intervened that he was able to retrieve them. In this case, Harry’s economic insecurity and his inability to provide for himself made him vulnerable to violence from his hosts.

Discussion

Each finding described above—loneliness and isolation, prolonged uncertainty, mental vulnerability, physical vulnerability—reveals the extent of suffering of LGBTQ asylum applicants in the USA. Participants in this study, either directly or indirectly, linked this suffering to the asylum process itself, a finding that is consistent with Menjívar and Abrego's (2012) concept of legal violence i.e., the law is never "neutral" when created in a society structured by inequalities. Intentionally or unintentionally, the law will reflect and reproduce inequality, and will disproportionately impact the most marginalized, sometimes in violent and traumatic ways. While there are many studies that document the deleterious outcomes for migrants/asylees as they go through the asylum process, there is a dearth of research examining the specific processes and points at which these occur—at times underestimating the extent to which the process itself contributes to people's suffering rather than being incidental to it. By utilizing in-depth interviews and attending to participants' narratives of their experiences, the present study was able to identify and detail the ways in which the asylum process itself—both discursive and material—are implicated in the traumatic nature of the experience for LGBTQ asylum applicants.

My findings lend support for the theory of legal violence, as they make explicit the linkages between policy and trauma. As I have demonstrated, asylum policies aimed at curbing fraud intersected with homophobia and transphobia and produced trauma for LGBTQ asylum applicants in four ways. The first theme—loneliness and isolation—highlighted the extent to both asylum timelines (pre- and post-2018) created stressful situations, which would ordinarily be buffered, to some extent, by supporting communities. However, the LGBTQ asylum applicants could not turn to other individuals from their country of origin who held sometimes homophobic ideas or to white LGBTQ individuals who sometimes held racist ideas. The second theme—prolonged uncertainty—revealed the ways in which the distress of waiting for an outcome, or even knowing when their case would be heard, prevented participants from living their lives as openly gay individuals in the USA. The third and fourth themes—mental and physical vulnerability—exposed how shifting timelines and work guidelines exacerbated mental illness and sometimes put asylum applicants in physical danger as members of the LGBTQ community. In essence, the LGBTQ individuals interviewed for this project were living the outcomes of policies aimed at curbing fraud in the asylum system.

The extent to which these outcomes are intentional is up for debate i.e., we do not know if the intention is to make LGBTQ asylum applicants so uncomfortable that they wish to leave, or so distressed that they choose not to immigrate in the first place. However, we do know that LGBTQ asylum has been

flagged as a potential avenue for individuals wishing to defraud the immigration system and that a strategy of "prevention through deterrence" has been utilized in the USA since the 1990s (see Provine & Doty, 2011). This strategy seeks to make border routes and entry inhospitable by increasing surveillance and channeling migrants to particularly dangerous locations with extreme climates. Given the hazardous conditions, policy makers believe that migrants will not want to make the journey to the USA. While the experiences of the LGBTQ asylum applicants in this study are not as extreme as getting funneled into the desert for days on end, the logic of making the process intolerable is consistent with the broader strategy of "prevention through deterrence." The asylum applicants interviewed described the policies—restrictions around work authorization and shifting timelines and procedures—as traumatic, both producing and exacerbating their suffering.

In addition to the broader framework of deterrence, we also know that immigration law is historically heteronormative and racist, and in many ways, these findings are in the same vein. At the very least, these policies aimed at reducing fraud do not consider the specific circumstances of LGBTQ applicants, who lack many of the protective factors—like shared communities—that other immigrant groups may be able to access (see also Kahn, 2015). However, when put into the broader history of immigration law, we must question all potential intentions. Immigration policies historically reflect gendered, sexual, and racialized hierarchies. Luibhéid (2002) outlines the history of the US immigration policies and demonstrates how they are constructed with white, heteronormative, and gender normative families in mind. Laws were constructed to exclude certain immigrant groups that could "taint" white families (for example, perceived Chinese prostitutes were banned from entering with the Page Law of 1875) and to include immigrant groups that reflected values and norms of middle-class whiteness (like the Gentleman's Agreement of 1908, which allowed Japanese wives to reunify with their husbands working in the USA if they paid a fee). The LGBTQ population was similarly the target of the US immigration laws, as they were constructed as "deviant" and "psychopathic personalities" that could destroy the US society. In fact, the US immigration law technically banned sexual minority migrants from entering until 1990.

As Luibhéid (2002) describes, many immigration policies are written with the intent of protecting white heteronormative structures. However, sometimes, policies may not have explicit intent and instead are created with ignorance to the experiences of diverse populations. Asylum law in particular has been critiqued as assuming a white, male, and heterosexual asylum seeker, who escapes public political or religious persecution. This is largely the result of the development of asylum law as a

response to the atrocities during World War 2. However, while the intention may not have been to exclude other populations from accessing the asylum system, the requirements of the law—that people must face public persecution—created challenges for gender and sexual minorities who encountered most of their violence in the home (Doyle, 2008; Lewis, 2010; Nielson, 2005). In this sense, no law can be thought of as neutral when they exist within a heteropatriarchal and white supremacist society that either explicitly and implicitly centers white, male, and heterosexual experiences.

Regardless of the intentions, of whether these policies are a form of “prevention through the deterrence,” the impact is that the everyday-lived experiences of LGBTQ asylum applicants are filled with trauma and suffering in many ways imposed by the very system that is supposed to protect them. The irony, of course, is that the purpose of the asylum system is to protect individuals from persecution that they face in their country of origin and offer a “safe” space. This makes the asylum system somewhat different from other avenues of immigration in that its intention is protection. In actuality, it creates harm for those who encounter it, an experience described by one of the participants as akin to captivity. This has implications not only for the scholarly study of sexuality and immigration but also for immigration reform, starting from how particular kinds of migration are conceptualized at the bureaucratic level. In particular, while asylum policies should reflect a commitment to international human right protections, what we see is increasing concern about fraudulent behavior, which results in policies that put many asylum applicants, and especially LGBTQ asylum applicants, at risk. Reconceptualizing asylum policy will require a shift in focus from fraud to protection, from assuming illegitimacy to ensuring human rights for all.

Limitations

Like any work, this study has limitations. The sample is small, and relatively homogenous. Given the invisibility of this population, I relied on existing networks and snowball sampling to recruit participants. The result was that my sample was not only small but also comprised of LGBTQ asylum applicants from only two countries. Therefore, the issues that I identify in this study may not be representative of the entire population of gender and sexual minorities claiming asylum in the USA. Future research could increase the sample size and consider cross-region or even cross-country comparisons (like some of the work by Alessi et al., 2020).

In addition to sample size, the interviews were conducted by a white, US born researcher. While respondents did not express discomfort during the interviews, my positionality

likely influenced how much information participants were willing to share with me. All women-identified respondents refused audio recording, which necessitated hand-written notes. While the notes captured the essence of the participants’ sentiments, detailed analysis could not be conducted on specific words. Future research could be developed with multiple researchers occupying different statuses and identities to ensure comfort of the participants and quality of the interviews.

Conclusion

Still, these limitations notwithstanding, this work is important both in its scholarly focus and political/public policy implications. In this article, I have shown how legal mechanisms intended to curb fraud—including work restrictions and shifting asylum procedures and timelines—produce traumatic outcomes for LGBTQ asylum applicants in four ways: isolation and loneliness, prolonged uncertainty, mental vulnerability, and physical vulnerability. This trauma, also referred to as legal violence, is compounded by broader systems of homophobia and/or racism that make disclosing sexual orientation difficult and prevent the development of protective social networks within immigrant communities and white, US-born LGBTQ spaces. As speculated in the discussion, the adverse effects of these policies are consistent with a broader heteronormative immigration agenda aimed at supporting white, heterosexual families.

Importantly, this work contributes to the existing socio-legal literature on LGBTQ asylum that mostly focuses on the process of constructing sexual identity for asylum adjudicators who are either explicitly homophobic or implicitly reliant on white, western norms of sexuality. The 18 LGBTQ asylum applicants interviewed for this project did express concerns around claim-making, but they were more concerned with the impact of broader asylum procedures, specifically those created to curb fraudulent behavior. The day-to-day traumatic impact of these procedures has been the focus of some of the scholarly literature aimed at practitioners working with this population. In this way, my work serves as a bridge between the two bodies of work by grounding legal mechanisms more concretely in the lived experience of LGBTQ asylum applicants.

As immigration policies become more restrictive and in many ways more white supremacist, we need to turn our attention to how they are experienced on the ground, from the perspective of those most impacted. This means understanding the day-to-day-lived experiences of people who live under these policies, including those whose identities are multiply marginalized, like the case of LGBTQ asylum applicants in this study.

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