

CHAPTER

5

Strategic Place-Making in US Immigration Courts

The Role of Immigration Attorneys, Expert Witnesses, and Place Narratives in Asylum Cases

Lirio Gutiérrez Rivera

In 2020, 82.9 percent of nationals from Honduras, El Salvador, and Guatemala entering the United States were asylum claimants (Migration Data Portal 2022). Yet obtaining asylum as well as avoiding deportation has become an ordeal for many Central Americans in the United States. The Executive Office of Immigration Review (EOIR) is the office responsible for deciding immigration cases, including cases involving “detained aliens, criminal aliens, and aliens seeking asylum as a form of relief from removal” (EOIR website) at immigration courts. It consists of 67 courts and 460 judges (Pagni Barak 2023). Regardless of their legal status (i.e., documented or undocumented), Central American migrants are already at odds in the asylum/immigration system that constructs them outside of the category of political asylum (Coutin 2011). Seventy percent of Central Americans will be deported (Pagni Barak 2023). As Menjivar (2006: 1000) points out, Central Americans can even remain in a legal limbo, which she terms as “liminal legality,” in the asylum/immigration system for decades.

Obtaining asylum depends mainly on being able to access legal counsel and representation at an immigration court. However, the Department of Homeland Security (DHS) generally deports non-citizens using fast-track methods of removal such as “expedited removal” or “reinstatement of removal.” One report noted that only three out of every ten families had been represented by legal counsel in removal proceedings and that families and individuals that had legal counsel and representation were ten times more likely to be granted protection from deportation (American Immigration Lawyers Association 2016).

One of the main challenges of Central Americans seeking asylum is getting access to legal counsel and representation at an immigration court. Representation rates for Central Americans from El Salvador, Guatemala, and Honduras are low. A news report in *The Guardian* pointed out that approximately 30 percent of Central American families had legal representation in 2016.¹ This is less than other nationalities—for instance, 95 percent of Chinese asylum claimants have legal representation at immigration courts. Legal counsel and representation matter as it considerably increases Central American migrants’ chances to be granted asylum. For instance, from 2010 to 2016, 96 percent of Central Americans with legal representation were granted asylum (Human Rights First 2019).

However, in recent years, Central Americans have faced challenges securing asylum even with legal representation at an immigration court. The Trump administration delegitimized asylum applications by Central Americans, claiming they were “abusing the asylum system” (Human Rights First 2019). The EOIR’s Board of Immigration Appeals’ landmark decision *Matter of A-B-* in June 2018, which blocked asylum to persons on the grounds of domestic violence and nongovernment persecutors such as gangs or criminals, limited considerably Central Americans’ chances of asylum.² Since then, the percentage of Central Americans granted asylum has decreased considerably. For instance, from June to November 2018 the asylum grant rate fell to 14.4 percent, which was right after the *Matter A-B-* decision, whereas from January to May in that same year before *Matter of A-B-* the asylum grant rate was 23.9 percent.

Central Americans face asylum limitations not only because of the EOIR’s Board of Immigration Appeals’ decisions, which limits the interpretation of asylum/immigration law, but also because of the judge assigned to the case.³ Some immigration judges have high denial rates—granting asylum to only one or two applications. Since the Trump administration, Central Americans are more dependent on legal counsel and representation to secure asylum as they must demonstrate that they are eligible. In other words, they must show that they have “fear of persecution due to their race, religion, nationality, political opinion, or their inclusion in a particular so-

cial group” (Immigration and Naturalization Act). Yet demonstrating to be part of a “particular social group” has represented a challenge for Central American asylum claimants under the recent Board of Appeals’ decisions. Claims based on fear of gangs and/or domestic violence, for instance, are immediately rejected as these claimants are not considered as part of a particular social group.

Aside from immigrant attorneys, expert witnesses have become increasingly important in asylum applications and immigration courts as their reports add credibility to the legal claims of deserving asylum. Their expertise on the country, the country’s particular political history, and key events that shaped its political history gives weight and coherence to an asylum claimant’s application. Expert witnesses typically write an unbiased report on country conditions of the asylum claimant’s place of origin, which is tailored to their migratory journey. Expert witnesses are expected to rely on a positivist language that, in many cases, reinforces stereotypes of many places (e.g., a country, a low-income neighborhood, a city, etc.) (see Wilson 2016). At the end of the report, expert witnesses write their opinion based on their personal expertise (i.e., “positivist” facts and objectivity based on their research), stating whether the fear of returning is credible if the asylum claimant is returned. In reshaping their migratory narratives of place or places and participating in immigration courts giving testimony to support their expert opinion during a hearing, expert witnesses become part of asylum claimants’ migratory journey and experience. In doing so, expert witnesses participate in the power structure of immigration courts, which reproduces asymmetries between asylum claimants, expert witnesses, immigration attorneys, judges, and other actors present in the US asylum/immigration system.

In this chapter I suggest that immigration courts are not the endpoint of asylum claimants’ journeys. In fact, they add to the uncertainty of cross-border trajectories. To continue their trajectories, asylum claimants depend on the legal outcome of their claim. Immigrant attorneys and expert witnesses’ reports and testimony can increase their chances of obtaining asylum. To do this, immigrant attorneys and expert witnesses reshape the asylum claimants’ migration journey(s) at an immigration court in order to show that they deserve asylum. Immigration courts are yet to be understood as part of the asylum claimants’ migratory journey as well as a place of place-making that involves not only asylum claimants but also immigration attorneys and expert witnesses (see Schapendonk and Davids’s chapter on migrants’ journeys temporalities in this volume). In this chapter, place-making is understood as how places are remembered, represented, and reconstructed. In immigration courts, place-making is a “survival strategy and a tool to unveil opportunities in a new place” (Castillo 2014:

114), which is done through written documents, such as the client declaration and the expert's report, as well as by oral testimony describing how a place or places are remembered, represented, and reconstructed. I argue, however, that immigration attorneys use a strategic form of place-making with the aim of making asylum claims more credible and logical. "Strategic place-making" is intended to help asylum claimants navigate the asylum/immigration system with its power-laden institutions that discriminate and, in some cases, criminalize asylum claimants. Strategic place-making invokes a sense of solidarity of the expert witness and, to a lesser degree, the immigration attorney toward the asylum claimant; however, as part of the power-laden complex of the asylum system, it also contributes to reproducing asymmetries in knowledge regarding the asylum claimants' migratory journey. Following Drotbohm and Winters (introduction to this volume), immigration courts can be conceptualized as places "along-the-way" for asylum claimants, but simultaneously as powerful places, in which imaginings are transformed through narratives of origin, persecution, and flight. How place is reimagined and represented influences the legal outcome that determines an asylum claimant's next move. In this sense, immigration courts are key to rethinking and reconstructing place. Despite scholarship on expert witnesses in immigration courts, expert witnesses in the case of Central American asylum claimants and the role they play in constructing place is yet to be explored. In this chapter, I look at expert witnesses' work from a place-making perspective, which sheds light on how places of origin are reimagined and re-presented in immigration courts but also how this reimagination of place is tied to the institutions of power in the asylum system.

To explore immigration attorneys and expert witnesses' narratives of asylum claimants' migratory journeys in immigration courts, this chapter draws on my own experience as an expert witness for Hondurans seeking asylum in the United States since 2012. I have written more than one hundred asylum cases for US immigration courts and have given telephonic testimony (or have been available for testimony) to support asylum claimants. Writing reports and giving testimony has not required that I physically attend US immigration courts or meet with immigration attorneys and asylum claimants in person. I have carried out my work as an expert witness mainly through the exchange of emails with immigration attorneys and via telephone calls. Beforehand, the immigration attorney submits my telephone number to the immigration court, and on the day of the hearing I am called by the immigration attorney or the immigration judge. When the COVID-19 pandemic started in 2020, immigration judges used virtual platforms (e.g., WebEx) to allow testimony at the hearing. Today, many immigration judges and immigration attorneys maintain virtual platforms to allow testimony in an immigration court. It is through these multiple forms

of online and offline, formal and informal forms of interaction with immigration attorneys and asylum claimants and ways to testify in immigration courts, that I was able to trace and figure out the forms and processes of place-making in court procedures.

As an expert witness, I have written reports based on documents provided by immigration attorneys such as the asylum application form, a declaration of the events of the asylum claimant that led him or her to leave the country, statements and/or declarations from other family members, and, when available, evaluations by medical practitioners. In some cases, I have written reports based only on the asylum claimant's declaration and telephone calls with immigration attorneys who explain their legal arguments. In other cases, I have been able to speak to the asylum claimant to clarify parts of the declaration drafted with the immigration attorney. As an expert witness, I navigated the asylum system from a position of power/knowledge since I was providing expertise and credibility to an asylum claim based on my research and other studies. In reading their declarations, speaking with immigration attorneys handling their case—in some instances, speaking with the asylum claimant—writing a report tied to the asylum claimants' experiences, and testifying in the immigration court, I too became involved in the asylum claimants' migratory journey. In this chapter, I reflect critically on this experience as well as on the expert witnesses' role in reshaping migrants' journeys, including the immigration court as a place "along-the-way" to obtain asylum, but also an unsettling place. Passing through it adds uncertainty and anxiety to the journey of migrants trying to figure out their next move.

In what follows I develop my claim about strategic place-making by immigration attorneys and expert witnesses in US immigration courts. In the next section I briefly discuss the literature on expert witnesses and the debates surrounding their work. The third section looks at immigration attorneys and expert witnesses' reshaping of asylum claimants' journeys and place-making in immigration courts. The final part of this chapter offers conclusions; it suggests ethics expert witnesses and immigration attorneys could consider in their work in immigration courts.

Expert Witnesses in Immigration Courts

Given the increasing role of academics and researchers in asylum casework, there has been a growing scholarship examining and reflecting their role. An expert witness is defined in international law as "a person who by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute" (Wilson 2016: 732). Most of

the expert witnesses working on asylum or international criminal casework are academics and researchers who have extensive knowledge of a country or region generally acquired through their fieldwork, investigations, and academic training. Through their reports, academics bring nuanced knowledge of the asylum claimant's country of origin. Furthermore, the expert witness assesses the social and political conditions of the country of origin and the degree of danger for the asylum claimant if deported (Lawrance and Ruffer 2015). Immigration judges do not grant asylum solely on the expert witness's report; however, it is one of the documents a judge consults when deciding. As Wilson (2016) points out, judges from immigration and criminal courts tend to cite more reports from academic expert witness, in particular social researchers, than medical, financial, and military and police experts.

Researchers and academics who work as expert witnesses are motivated by ethical and moral reasons in part because most have spent considerable time in the asylum claimant's country or region and have extensive networks there (Good 2004). In addition, in some cases academics see their expert witness work in a more critical light resembling a form of activism (Speed 2006). Hepner sees expert witness work as a form of "pragmatic solidarity," understood as a form of social justice that contributes to "the needs and interests of the vulnerable" (Hepner 2019). A sense of ethics, duty, and service in expert witness work was pointed out by Farmer and Gastineau (2002) who highlight the moral duty of researchers and academics to use their expertise in assisting populations affected by structural violence and different forms of abuse. In the case of Central American asylum claimants, most of whom lack or have difficulties accessing legal representation, expert witnesses' work can be a way of counteracting the asymmetries of power in immigration courts.

Despite this sense of solidarity, scholars have pointed out the troubles surrounding the work of expert witnesses. They are inevitably tied to what Farmer (cited in Hepner 2019) identified as powerful institutions such as governments and judicial systems. Asylum and refugee law are no exception; both are "tightly tied to power" (Farmer cited in Hepner 2019: 266). Expert witnesses navigate in a legal system that distrusts and suspects asylum claimants' life stories, but also reproduces unequal power relations between asylum claimants and the institutions that are tied to asylum, refugee, and migration law. Though not the intention, immigration courts end up "undermining legal protections and reinforcing existing hierarchies of class and ethnicity" (Terrio 2003: 137). Berger et al. (2015) point out that this is in part because of the discretionary powers of immigration judges as well as assumptions by immigration officers and judges about the place of origin of the asylum claimant.

Complicating things more, academic expert witnesses must frame their report within the world of law, which, in some cases, differs epistemologically from systems of knowledge used in the social sciences. Whereas law makes assertions using “nonscientific rationalism” and positivist approaches, social sciences such as anthropology, political science, sociology, and history tend to draw on interpretative epistemology to give nuanced cultural and historical explanations based on fieldwork (Wilson 2016). This “clash of epistemologies” (Wilson 2016: 730) troubles academic expert witnesses as they find themselves reducing complex information that has been researched using critical epistemological frameworks and theories to a “simplistic” approach and to a “reductive legal process” that reproduces stereotypes and reinforces discourses of inequality regarding a region, a country, or the persons from that place (Good 2004; Hepner 2019; Speed 2006).

Referring to asylum claimants as “vulnerable” in the expert reports is common as it makes them eligible for asylum (see Galli 2020); however, this is problematic for academic expert witnesses. As Speed (2006) points out, asylum is not only a human right but also a form of agency. Asylum claimants see it as a “durable solution” to the risky journeys, threats, and danger experienced in their place of origin. Yet, in immigration courts, asylum claimants are silenced—despite being hypervisible—because “they do not possess the proper subjectivity through which they can be heard” (Gibson 2013: 3). Rather, they require legal representation through experts and attorneys to structure a narrative to make their stories credible vis-à-vis immigration judges. For instance, Galli (2018a) observes that immigration attorneys victimize and infantilize Central American minor asylum claimants as a strategy to distance them from criminalized adults and to present them as “child refugees.” For some adults, suffering is transformed into “humanitarian capital” as a strategy to grant asylum based on compassion (Galli 2020). Both strategies are a contradictory and dehumanizing process for the “vulnerable” and “suffering” persons.

The media portray Central American migration as a humanitarian crisis, nevertheless, Coutin (2011) shows that Central Americans mainly from El Salvador, but also from Guatemala and Honduras, have been seeking asylum since the 1980s when the region was going through civil wars. However, they were perceived as economic migrants and deemed ineligible for asylum in the United States. Recent studies find that the narratives used by immigration attorneys reinforce the vulnerability of Central American asylum claimants in immigration courts and describe how US migration and border controls, which extend beyond their political territory, strip Central American asylum claimants from basic human rights (Galli 2020, 2018a, 2018b; Torres 2018; Stephen 2017).

Immigration Courts as a Place of Place-Making

This chapter sees immigration courts as places that are “along-the-way” of migrants’ journeys. For asylum claimants, immigration courts are places along-the-way to have the papers to work and not be exploited, to not be separated from their children or family members who are legal residents or even citizens, to feel safe and protected. Specially, immigration courts are places along-the-way to not be deported. Asylum claimants see immigration courts positively; they are places where rule of law works and that may secure their legal entry and a life of opportunity and safety in the United States. As Pagni Barak (2023) notices in her study of immigration courts, asylum claimants described immigration courts optimistically, even considering that they had had a fair experience in these places.

Despite seeing immigration courts in such positive light, these along-the-way places do not always have great outcomes. Immigration courts can be along-the-way places that order an asylum claimant to go to a detention center to be deported to the country of origin where they might again relive the experiences that led to them to flee the country in the first place. In this sense, immigration courts are a “transitory space” (Haas 2023) characterized by ambivalence. As Haas points out, immigration courts are places that show the inclusionary and exclusionary aspects of the asylum system as asylum claimants “assert the need for protection, but do not have it yet” (ibid: 5). The outcome of a hearing may be positive if asylum is granted, or negative if deportation is ordered.

Immigration attorneys and expert witnesses play key roles in this transitory and ambivalent space of immigration courts. The materials presented by an immigration attorney, which include the asylum claimant’s declaration—that is, the story detailing her experiences in the home country—the expert witness report, and the testimony of the asylum claimant, witnesses, and the expert, are part of the strategic forms of place-making that aim to demonstrate that the asylum claimant has “credible fear” if deported, thus deserving asylum. Immigration courts are places where strategic place-making occurs. Even though immigration attorneys and expert witnesses have written the materials beforehand, it is the immigration court where strategic place-making makes sense as the migrants’ story is retold, re-narrated, reproduced in ways to demonstrate that there is credible fear of returning.

Asylum claimants’ journeys are not necessarily smooth, predictable, or linear. Despite the experience of uncertainty in these journeys, scholars have pointed out the importance of place-making in these contexts (see De León 2015; Brigden 2017; Vogt 2016). Asylum claimants establish connections with the various places they pass through, inhabit, or stay, in some cases, for an unforeseeable period of time (Drotbohm and Winters 2020). These

connections can entail forms of place-making as asylum claimants become familiar with and ascribe meaning to these places (see Eichner in this volume). In the case of Central American migrants, their journeys tend to be understood as the transit from the place of origin in Central America to the United States. However, arriving to the United States—be it the border, a city, or a town—does not mean that the asylum claimant’s journey is over. On the contrary, it continues when some apply for asylum at the border, or when others are sent to detention centers (directly from the border or when detained by the Immigration Borders Enforcement) and, if lucky, get legal representation to apply for asylum.

Despite recent studies problematizing the beginnings and endpoints of migrant journeys (Galemba, Dingeman, and DeVries 2021), migration scholarship has not yet considered the asylum process as part of the asylum claimants’ journey or as part of a development of place-making. Similarly, studies about immigration courts, immigration attorneys, and expert witnesses in the context of asylum may point to testimony as a new form of knowledge (see Stephen 2017), yet they do not engage with the notion of place-making (Arriola Vega 2020; Good 2004; Wilson 2016). Drawing on a place-making perspective to understand how expert witnesses and immigration attorneys reshape asylum claimants’ journeys, stories, and connections with place shows, on the one hand, the place-making process as one of the many “survival strategies”—following Castillo’s (2014) notion of place-making—employed in migrants’ journeys and key to gaining asylum. On the other hand, it shows the adaptability of the place-making process depending on its context. In this case, a focus on place goes from what studies have shown as anchoring the uprootedness, unpredictability, and nonlinearity that characterize migrants’ journeys to presenting journeys and place(s) as linear, anticipated, a consequence of a fixed place that is “dangerous” and “insecure.” This is, I argue, a strategic form of place-making as expert witnesses and immigration attorneys essentialize place(s) in order to fit the eligibility of asylum. A place-making perspective contributes to understanding the significance of this strategy in that it reproduces stereotypical representations of place(s).

Immigration courts as a physical place of place-making are not the focus of this chapter; rather, it centers on the remembering, representing, and reconstructing of places *elsewhere* in the context of seeking asylum and immigration courts. Nevertheless, immigration courts have turned into a familiar place for migrants seeking asylum. The immigration court is not a one-time experience. Asylum claimants must go various times as hearings are constantly rescheduled. Haas (2023) rightly points out that hearings at immigration courts are part of violent bureaucratic practices of the asylum system that seek to govern and discipline asylum claimants as well as add

uncertainty to their journeys. Nevertheless, applying for asylum and going to the immigration court (i.e., navigating the asylum/immigrant system) has become a key practice in which asylum claimants, immigration attorneys, and expert witnesses view immigration courts as a place of opportunity and/or uncertainty. Asylum claimants develop attachments and commitments especially with the immigration attorneys and expert witnesses who not only become part of their journey but also play a role in retelling their stories during the hearings. Immigration attorneys and expert witnesses aim to produce a credible narrative based on a migrant's declaration or story of his/her journey in order to convince an immigration judge of the need for protection and, thus, asylum. In the immigration attorney's legal arguments and the expert witness's report, the aim is to re-signify the asylum claimant's journey in the immigration court by retelling place(s). They retell their experiences, their relation to the different places they live in or pass through—which includes attachments and connections to these places—and re-portray the home country in order to produce a convincing claim.

In the next section, I look at how expert witnesses and immigration attorneys' strategic form of place-making takes place in the case of Central American asylum claimants. In this strategic form of place-making, expert witnesses reimagine an asylum claimant's place of origin in order to make them more eligible for asylum. However, in doing so, expert witnesses reproduce stereotypes of the place of origin.

Navigating Asylum

The involvement of expert witnesses and immigration attorneys in reshaping narratives of Central American asylum claimants occurs within a specific context, which is asylum law and the institutions, actors, and places tied to it, such as immigration courts, detention centers, expert witnesses, immigration attorneys, immigration judges, the government—that is, the Department of Homeland Security—shuttling from home to the immigration court and back. As do their places of origin and the journey to the United States, so too the context of asylum represents another space in which Central American asylum claimants navigate with uncertainty.

Asylum claimants from Honduras, El Salvador, and Guatemala enter these spaces of asylum asymmetrically. Carl, an immigration attorney who worked in an organization that advocated for migrants, explained to me that “getting access to legal representation and navigating asylum law are the most difficult things for Central Americans when they seek asylum” (Carl, phone call, May 2019).⁴ Getting legal representation is challenging because many asylum claimants are not aware that they have the right not

only to claim asylum in a country but also to be legally represented. Some undocumented migrants who may be aware of the immigration/asylum system see legal representation as too expensive and, thus, unreachable. In other cases, border agents detaining incoming migrants did not explain to them that there was a possibility of asylum if there was credible fear of returning to their place of origin. As a result, migrants are arrested and sent to detention centers for deportation. These examples show what Torres has termed “uneven geographies of immigrant justice” (2018: 29), which refers to “the different state practices which restrict asylum seekers and immigrants’ access to fair due process and legal relief to which they are entitled” (2018: 28). Uneven geographies of immigrant justice occur in various spaces such as the border or detention centers and, later on, in immigration courts when asylum claimants give testimony. Immigration attorneys like Carl try to counteract the limited access to legal representation by doing voluntary community work in neighborhoods with high populations of migrants to let them know about their legal rights, or by going to detention centers to speak with detained migrants, explaining their right to seek asylum and to be legally represented. Some migrant organizations work at the border where they inform incoming migrants about their rights and provide legal services such as representation. Despite these efforts, Central American migrants continue have little access to legal representation in part because migrant organizations work with limited funds, and they do not have enough resources to reach and legally represent all migrants.

As for the complications of navigating asylum law, Central American asylum claimants are at a disadvantage due to various reasons. As Abrego and Cárcamo (2021) point out, Central Americans are generally seen and represented in the media as violent or embodying danger and insecurity. Because many are undocumented, Central American migrants are not only subjected to “poorly paid, low-mobility jobs” (Massey and Riosmena 2010: 303) but are also deportable (Golash-Boza 2015). To legalize their stay through an asylum application, Central Americans need to demonstrate at the immigration court that there is credible fear if returned to their homeland. In US asylum law, this means that there is a high likelihood that the person will face future danger if deported. Immigration attorneys’ work is to demonstrate that there is credible fear of going back (e.g., threats, harassments, torture, and eventual death after returning). The Immigration attorneys assemble various documents⁵ including the expert witness report. I see these documents as part of the reshaping of asylum claimant’s narratives of place by immigration attorneys. A strategic form of place-making is part of an asylum claimant’s transit in the immigration court and can help determine his or her next move in the journey. It is beyond the scope of this chapter to explore all the documents of an asylum casework (some can be

over five hundred pages). Instead, I will focus on the role of expert witnesses in reshaping Central American asylum claimants' journeys in immigration courts.

Redefining Place

Immigration attorneys' main challenge in an immigration court is to demonstrate that asylum claimants' fear of returning to their place of origin is credible. To do this, immigration attorneys ask the asylum claimants to describe the events in their place of origin that led them to leave. As Galli (2020) has pointed out, this is an initial screening to see if the asylum claimant's story fits the requirements to obtain asylum. If immigration attorneys see a possibility of asylum, they will start organizing the documents. This includes organizing the prior conversations with asylum claimants about their journeys, which many perceive as a displacement, in a document known as the "client's declaration." The declaration is key to attorneys and expert witnesses' reshaping asylum claimants' narratives of place(s) and, in general, the asylum claim. It is *this* narrative that expert witnesses base their report on; it is the narrative that asylum claimants rely on during testimony in the hearing at the immigration court, and it is the narrative that the Department of Homeland Security (DHS) cross-examines with the asylum claimant during testimony.

The client's declaration involves rewriting an asylum claimant's experience of displacement "coherently," "logically," and in linear form. As I have witnessed when receiving materials from the immigration attorneys for an expert report, many asylum claimants have post-traumatic stress disorder (PTSD) symptoms due to the experience of severe trauma and/or near-death moments at the hands of criminal gangs, authorities, or partners (in cases of domestic violence). Reliving these moments is not only emotionally painful but also makes it difficult to provide a "consistent" account of the events. It is normal to "forget" painful and traumatic events due to alterations in memory of persons suffering PTSD (De Jesús-Rentas, Boehnlein, and Sparr 2010; Cohen 2002). As Drotbohm and Winters (2020) point out, such events can contribute to narrating migrants under new categories (e.g., asylum claimant, refugee). For instance, one asylum claimant mentioned that she was unaware of what a "refugee" was until she claimed for asylum. The use of these categories through strategic place-making favors the asylum claimant's eligibility for asylum. However, in immigration courts, narrating events in nonlinear form and "changing" or "forgetting" to tell the events that led to displacement and movement abroad are perceived as "inconsistent." Immigration judges and cross-examiners, that is,

the Department of Homeland Security, look for “consistent testimony without contradictions and a history that matches the known conditions in the country of origin” (De Jesús-Rentas, Boehnlein, and Sparr 2010).

To demonstrate such a testimony, immigration attorneys redefine the asylum claimant’s journey and place(s) by describing the events in a sequential order. This is because asylum and migration law and the institutions tied to it are rooted in the epistemology of law and its positivist approach to evidence (Wilson 2016)—that is, facts demonstrate a claim. However, showing facts in the declaration is laborious for immigration attorneys who try to “logically” write a story that, upon hearing the first time, does not fit their epistemological perspective. Difficulties increase when the asylum claimant does not speak or understand English, which is common. Immigration attorneys hire a translator who sometimes misses important information or does not understand social and cultural details of the place of origin, thus excluding them or misinterpreting them. I recall speaking to an immigration attorney about an asylum claimant’s “client declaration” I received. Some events described were not clear, especially of some places. I mentioned this to the immigration attorney who replied, “I don’t know what to do; I’ve spoken to her many times. I’ve tried to make sense of it” (Zoom meeting with immigration attorney, October 10, 2021).

I suggested calling the asylum claimant to clarify some movements to places that seemed “irrational” for the attorney. I asked the asylum claimant in Spanish to tell me more about these movements. She explained that she moved to those specific places because she had relatives there who hid her from gang members and a violent partner. She associated these places with protection in part because of childhood memories. However, the information of relatives living in the places she “spontaneously” went to, the meaning of these places to her, as well as how family in Honduras (understood differently from the nuclear-extensive family distinction in the United States) constitute an emotional and financial support system had been left out by the translator and sounded “illogical” to the immigration attorney. When I explained to the immigration attorney these “gaps,” she spoke again to the asylum claimant and amended parts of the declaration to narrate her movements “consistently” while still leaving out meanings, feelings, and memories of place that would complicate the narrative. Immigration attorneys select thoughts, memories, and lived moments of the asylum claimant’s place (i.e., house, neighborhood, town, city, or country) when drafting the declaration with the purpose of demonstrating the credible fear. This example shows one of the ways place is redefined in an immigration court. In this case, the immigration attorney rewrites the journey and places logically; the places where the asylum claimant passed are presented as dangerous and unsafe to demonstrate credible fear of returning.

Client declarations and expert reports highlight asylum claimants' traumatic experiences lived in places when re-narrating place. My conversations with some asylum claimants, however, indicated that they did not always associate these places with violence. I remember a phone call I had with Carlos from Honduras. He spoke about his neighborhood in Tegucigalpa, which was gang controlled, as a difficult place to live, but where he also had good memories. Carlos had learned to cope with gang members' daily presence and, thus, was able to meet with friends and go to school. He described his relation to the neighborhood as "tough but bearable." Problems started when gang members wanted to involve him in their criminal activities, and he refused. As this example shows, asylum claimants' place-making is shaped by ambiguous relations, experiences, thoughts, and perceptions. But places in declarations and expert reports are not narrated relationally but rather as fixed, and characteristics are essentialized. For instance, in Carlos's case, my expert report included the following sections: "Violence in Honduras" and "Gang Violence" (especially in neighborhoods). In these sections I discussed the inability of the Honduran state to establish a stable democracy and to protect citizens, or the use of violence of gangs to impose order in their neighborhoods. Although violence in Honduras is real, the country's weak democracy and state inaction in protecting Hondurans are not essential features. Rather, they are products of the country's aborted state-formation process partially due to a detrimental involvement of the United States in the country's politics and economy, and Honduras's position within the global capitalist system. Similarly, even though I present gang violence as an essential feature of the gang, it is complex. It is also a product of the government's security policies to control violence, which, in turn, are part of a global agenda of crime control (see Gutiérrez Rivera 2013). In other words, violence is entangled with larger global and historical processes that I leave out in an expert report in order to strengthen the claim of reasonable fear if the asylum claimant is deported.

In instances when I included more critical discussions in the report, immigration attorneys suggested editing to avoid an interpretation by the immigration judge that the country is not so dangerous after all—for instance, if I point out that there are various social programs and state institutional restructuring initiatives to strengthen democracy. In one report I discussed the involvement of the United States in Honduras's aborted state-formation process to explain the "weak democracy" and state institutions. The immigration attorney suggested that I delete this as it appeared critical toward the US government and foreign policy and would not look solid or coherent in an asylum claim—after all, the asylum claimant is seeking protection from the US government, which grants or does not grant asylum. I deleted the section. In the report, these places—that is, country or neighborhood—are

essentialized as violent in order to adhere to the language of asylum law. The aim of narrating this strategic form of place-making, which involves stereotypical representation, is to show credibility and consistency of the asylum claimant's story and the credible fear if deported to the country, and to avoid upsetting the institution that grants asylum. As Gibson points out, the asylum regime is unwelcoming toward asylum claimants, inclined to consider their stories as "bogus." In this "culture of suspicion," asylum claimants' and refugees' stories are "carefully controlled and contained" (2013: 3). Hence the emphasis on presenting place(s) mainly as violent and dangerous, even though asylum claimants' experience with the place was more complex.

Strategic Place-Making

Expert witnesses' strategic forms of place-making use an objectivist, positivist approach rather than a nuanced analysis to fit legal claims of the asylum application. As mentioned above, I have employed such language when discussing violence in Honduras in my reports. For instance, I remember a report in which I discussed reasons why Hondurans did not go to the police for protection. The section supported the legal claim that there was reasonable danger of the place of origin due to the lack of state protection. I detailed the history of the police in the country, its former militarization, its history of human rights violations and disappearances under the military dictatorships, and failed attempts to restructure the police under the democratization process. The immigration attorney was particularly uncomfortable with the use of the word "restructure" as it gave the impression that recent governments had been trying to improve the police. An immigration judge could read this as a good sign of a government attempting to establish strong institutions—that is, "it might not be such a dangerous place after all." I agreed to leave out "restructure" from the report and phrased it instead as, "Despite various attempts, the Honduran government has been unable to establish the police as a credible and solid institution, thus, it continues to be mistrusted by Hondurans." This sentence supports the credible fear claim as it reproduces and represents Honduras as an unsafe place for a person who is forced to return. Furthermore, the sentence draws on a positivist approach that essentializes Honduras as an unsafe place, a "logical" consequence of weak state institutions.

Expert witnesses' strategic place-making not only occurs in the writing of reports as mentioned above but also happens during testimony at a hearing. Immigration attorneys generally have expert witnesses testify to strengthen the credibility and coherence of the asylum claimant's story, as well as to

support the legal claim of credible fear if deported to the place of origin. In some cases, the judge or the Department of Homeland Security (DHS) asks the expert witness to testify to clarify or even challenge the expert's report. Immigration attorneys generally prepare the asylum claimant and the expert witness for testimony. This involves meetings with the immigration attorney—in my case, via phone call or a virtual platform—before the hearing. In my experience as an expert witness, the immigration attorney sends me the questions she or he plans to ask at the hearing. Immigration attorneys sometimes organize these questions into sections: a set of questions aimed to establish the knowledge of the expert and to be admitted in the hearing for testimony, another set of questions organized around subjects discussed in the report (e.g., violence in the country, gender-based violence, or gang violence), the final questions about the expert's opinion if the asylum claimant is deported to the place of origin. In addition, a "prep session" or mock testimony is organized. As I answered the questions during preparation, the immigration attorney would give me feedback on my answers. For instance, I learned that using words such as "maybe," "could," "possible" have the effect of weakening the credible fear claim that Honduras was not a safe place for the asylum claimant. As immigration attorneys explained to me, these words were interpreted in an immigration court as, "[violence or death] might happen, it might not." The "might not" as a possible interpretation was the problem; it weakened the credible fear claim. Immigration attorneys suggested that instead I use words such as "more likely than not," "high likelihood," "highly likely" as they reinforced the legal claim. This example shows how expert witnesses' narratives of place-making in immigration courts are "carefully controlled and contained" (Gibson 2013: 3) through the suggestion of using or avoiding certain keywords. Immigration attorneys told me to base the answers on two main documents: the client's declaration and the expert's report. They suggested that I read these documents beforehand so the details of the (altered) asylum claimant's journey and experience with place were fresh. As one immigration attorney wrote to me, "When in doubt, [the client declaration and the expert report] are the pillars to fall back on" (Email from an immigration attorney, June 2022).

Testimony is the opportunity to retell the alternative narrative that both immigration attorneys and experts have prepared. Many immigration judges give weight to testimony that can be key to deciding whether or not to grant asylum. One immigration attorney shared an excerpt of the immigration judge's decision to grant asylum. In it, the immigration judge mentioned my report and testimony as crucial to his decision as it confirmed the reasonable fear the asylum claimant would "most likely" experience if returned. In other words, my work was "coherent," "logical," and adhered to the positivist language and approach that dominates in courtrooms. However,

an expert's testimony can also be contested. I have experienced being challenged by the Department of Homeland Security (DHS). As representatives of the government, they are expected to question the expert's narrative of place both in the report and testimony. Some take the positivist approach to the extreme. In one case, the DHS asked me how many policemen were in the neighborhood I mentioned in the report. In another case, the DHS asked what the exact number of domestic violence filings at the public prosecutor's office was. I answered negatively to both questions and, mirroring their positivist approach, explained that I did not have to know those exact numbers because, as a well-versed researcher of the subject, I was able to reach a conclusion based on other cases resembling the ones questioned.

Although potentially decisive in asylum decisions, immigration attorneys and expert witnesses' strategic place-making may also strip the asylum claimant from agency and a voice as narrations of places tend to frame asylum claimants as victims in need of protection. Studies have shown, however, not only that asylum claimants develop agency throughout their journeys (see Brigden 2017) but also that claiming asylum can be seen as an act of agency (Hepner 2019; Speed 2006). As Speed (2006) notes, asylum for many migrants is a "durable solution" when considering the risks and dangers they have been through in their journeys and places of origin. Various Honduran asylum claimants I spoke with described their experience in the immigration court as an opportunity, despite the fact that they were placed at the bottom of the asylum regime, and their stories and experiences were questioned and altered to fit legal claims. As Pagni Barak (2023) points out in her ethnography of asylum claimants from El Salvador, Honduras, and Guatemala in the United States, asylum claimants see the immigration court as a place of fairness and legitimacy. This is because they see the United States as a country that exercises the "rule of law." In some cases, the experience of successfully navigating the asylum regime and its immigration courts (i.e., obtaining asylum) contributed to new narratives of identity for the asylum claimant, most of which are rights based. Some Hondurans I spoke with and who had obtained asylum in the United States perceived the experience as life changing and had started to work voluntarily with local migrant organizations to help other Hondurans get legal representation.

Expert witnesses and immigration attorneys are aware that asylum is a key right and that migrants are entitled to apply for it. Being able to help and give service to persons who need to navigate an asylum system that structurally disadvantages asylum claimants is one of the main reasons why academics engage in expert witnesses' work. In other words, helping others and a sense of solidarity are at the heart of doing expert reports in the context of asylum. Hepner observes that expert witnesses' work is linked to

“pragmatic solidarity,” understood as social justice that aims at prioritizing the needs and interests of the most vulnerable (2019: 266). It is what drew me to do this work. It is only when I started writing expert reports that I became aware of the role that expert witnesses play in strategically altering migrants’ narratives of place(s). Doing so meant representing these places rather simplistically, leaving out certain information about a place, as well as reproducing stereotypes and asymmetries of knowledge by using a predominantly positivist approach and giving artificial coherence to migrants’ journeys and experience with place(s). Strategic place-making has become part of asylum claimant’s journeys, experienced principally in immigration courts when they apply for asylum.

Conclusion

This chapter reflects on the role of expert witnesses and immigration attorneys working on asylum cases in the United States. Though writing expert reports and putting together asylum casework emerges from a sense of empathy and solidarity from expert witness and immigration attorneys, both immigration attorneys and expert witnesses alter the asylum claimants’ narratives of place(s) of origin to support their claims in immigration courts. The altered narrations of asylum claimants’ journeys and place, I argue, is a strategic form of place-making in immigration courts. These immigration courts are part of the asylum claimants’ journey and are key sites of place-making. This chapter uses a place-making perspective to show how immigration attorneys and expert witnesses reimagine, represent, and reconstruct place.

These altered narrations of place, however, reproduce asymmetries of knowledge as place adopts an essentialized and fixed notion in large part because they are framed from a legal, positivistic approach. As an expert, I am confronted by the “clash of epistemologies” (Wilson 2016), that is, the positivist approach that dominates in immigration courts and the interpretive approach that I use in my research.

One way of ameliorating this tension may be to reinforce expert witnesses’ work as a form of activism. Speed (2006) argues the need for a “critically engaged activist research” approach in which expert witnesses include ethical conduct and the politics of knowledge production in their reports to support a person’s claim in the immigration courts. Some experts I know are active, for instance, in migrant organizations; others have created expert witness groups and databases offering workshops and exchanging experiences.

Similarly, Eckenwiler (2018) has pointed out that “ethical place-making” could be helpful to try to navigate the controversies of place-making in asylum claims. Grounded in a capabilities-oriented conception of justice, she suggests that “ethical place-making” includes “nurturing relations of care and interdependence . . . supporting autonomy not in terms of individual self-reliance but in a relations sense that sees us persisting and flourishing within relations of care and interdependence.” (Eckenwiler 2018: 566) In this sense, expert witnesses and immigration attorneys could foster relationships of care in the hostile environment of the asylum world (e.g., judges, courts, the DHS)—for instance, following up on an asylum claimant after a hearing regardless of the legal outcome. I generally ask immigration attorneys about the legal outcome. In some cases, I have been able reach out to an asylum claimant and ask them how they felt after the legal outcome. It is difficult not to fall into the essentialization of places; however, it may be helpful to actually include the ways how asylum claimants understand place(s) into the expert report and the “client declaration.” For instance, immigration attorneys could bring an expert to help draft the “client declaration” (though this would demand significant time), this way not losing valuable information on place(s). Similarly, expert witnesses should be able to better incorporate their critical knowledge on how place is understood and experienced into the report as well as how these notions of place-making tie into the asylum claim. It is important for immigration judges, immigration attorneys, and the DHS to understand that place is complex. Finally, place-making is not limited to an immigration court. Many asylum claimants struggle to make sense of their new places of destinations, where in many cases they feel isolated or disconnected. Ethical place-making could contribute by involving migrant organizations and activists into healing the trauma of certain places—for instance, in the homeland, in the journey, or in the United States. Ortiz and Gómez Córdoba (2023) refer to “place-based healing” in the case of communities that have experienced different forms of violence. Ortiz and Gómez Córdoba focus on urban contexts that have experienced armed conflict (e.g., Colombia), yet the notion of healing from traumatic places resonates the experience of asylum claimants who witness violence in different moments of their journey—for instance, they are caught in the crossfire of gangs or criminal organizations—as well as the asylum system. Ethical place-making could involve community work and activities to heal and even repair asylum claimants’ traumatic past experiences with different places as well as making sense of the place(s) they have arrived.

At the center of ethical place-making is solidarity recognition. In the United States, some cities and/or states (e.g., California, Oregon, and New

York) with a high population of migrants from Central America and Mexico have become sanctuary states in which local governments do not cooperate with federal authorities to enforce immigration law. Various law departments in US universities have clinics that provide legal counseling to undocumented migrants and may even represent them in an immigration court. It is worth considering how the collaborative work of expert witnesses and immigration attorneys, which stems from a place of solidarity, can contribute, through relations of care and interdependence, to bear the difficulties and hostilities of the asylum regime and the immigration courts.

Lirio Gutiérrez Rivera is an associate professor at the Department of Political Science at the Universidad Nacional de Colombia. She researches on urban violence and security in Colombia and Honduras. She has studied Honduran migration in the context of gang violence and asylum. She currently researches on women community leaders living in low-income neighborhoods in urban contexts. She was an assistant professor at the Department for Urban and Regional Planning at the UNAL, and postdoc at the *desigualdades.net* Research Network (Freie Universität Berlin). Her research has been funded by the Latin American Social Sciences Council (or CLACSO) and the Alexander von Humboldt Foundation.

NOTES

1. See Oliver Laughland, “Most Families Facing Deportation from US Do Not Have an Immigration Lawyer,” *The Guardian*, 20 October 2016, <https://www.theguardian.com/us-news/2016/oct/20/family-deportation-immigration-lawyer>.
2. Matter of A-B- is the decision of then attorney general Jeff Sessions in which he overturned an applicant’s grant of asylum on the basis of domestic violence and gang violence. Matter of A-B- states that cases of domestic violence should not be approved because they are private issues.
3. Aside from Matter of A-B-, the EOIR Board of Immigration Appeals has made other decisions that limit Central Americans’ asylum claims such as the Matter of S-E-G-, which limits asylum on the grounds of gang recruitment.
4. All names have been changed.
5. The documents to file for asylum include drafting a declaration with the asylum claimant in which she or he describes the events that led to his or her departure from the place of origin, in some cases, medical and psychological evaluations, documents from the home country that support the asylum claimant’s claims (e.g., declarations from family members or neighbors, police reports, etc.).

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