CHALLENGING STEREOTYPES IN REFUGEE PROTECTION

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ABSTRACT

The Trump administration attempted to drastically curtail protections for asylum seekers in the United States through a series of regulatory changes, including a prohibition on the admission of certain stereotype-based evidence in asylum proceedings. While seemingly benign on its face, the provision would have made it difficult, if not impossible, for many asylum seekers to succeed in their claims. Given the challenges asylum seekers routinely face in gathering corroborating evidence, advocates often rely on stereotype-based evidence in support of asylum claims. Although courts enjoined the rule, preventing it from taking effect, the provision nonetheless offers an opportunity to rethink the role of stereotype-based evidence in refugee protection. By interrogating the type of evidence required to establish asylum eligibility, immigration advocates, scholars, and adjudicators alike can begin to push back against harmful cultural stereotypes and return to a core principle of refugee law: the need to afford asylum seekers the benefit of the doubt.

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INTRODUCTION

The Trump Administration's efforts to fortify U.S. borders are well known. In addition to establishing physical barriers to entry, the administration promulgated a steady stream of policy and regulatory changes to prevent asylum seekers from obtaining protection in the United States. Despite the change in administration, many of these barriers are still in place today—from the continuation of the Migrant Protection Protocols,[1] which require people to wait in Mexico while their asylum claims are processed in the United States, to the invocation of an arcane public health law to justify expulsions of asylum seekers arriving at the border during the COVID-19 pandemic.[2]

One seemingly benign regulatory provision proposed under Trump would have prohibited the use of stereotype-based evidence in asylum claims—on its face, an unobjectionable proposition.[3] Indeed, immigration lawyers have long grappled with a tension inherent in refugee law: how to win protection for individual clients without reinforcing victim narratives and negative stereotypes about other cultures and countries. Yet, considered in the context of the Trump administration's sweeping efforts to drastically curtail asylum protection, the purpose of this now-enjoined regulatory change was clearly to fortify the United States against successful asylum claims.[4]

In the United States, as well as in other countries around the world, advocates often rely on generalizations about individuals and societies, including stereotype-based evidence, to corroborate asylum claims. Attorneys may, for example, present news articles or human rights reports

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[1] Press Release, U.S. Dep't of Homeland Sec., Migrant Protection Protocols (Jan. 24, 2019), https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols; *see also* Dep't of Homeland Sec., Court Ordered Reimplementation of the Migrant Protection Protocols (Jan. 20, 2022), https://www.dhs.gov/migrant-protection-protocols.

[2] *See generally* American Immigration Council, *A Guide to Title 42 Expulsions at the Border* (Oct. 15, 2021), https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border; Azadeh Erfani, *The Latest Brick in the Wall: How the Trump Administration Unlawfully 'Expels' Asylum Seekers & Unaccompanied Children in the Name of Public Health*, National Immigrant Justice Center, NAT'L IMMIGRANT JUST. CTR. (Apr. 15, 2020), https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2020-04/Updated%20One%20Pager%20on%20border%20closure.pdf.

[3] *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264, 36,282, 36,292, 36,300 (June 15, 2020) (codified as amended at 8 C.F.R. §§ 208.1(g), 208.1(g)).

[4] *S*ee Pangea Legal Servs. v. U.S. Dep't of Homeland Sec., 512 F. Supp. 3d 966, 969 (N.D. Cal. 2021) (preliminary injunction); *see also* Press Release, Hum. Rts. First, Trump Administration Enacts Rule Gutting Protection for Refugees and Asylum Seekers (Dec. 10, 2020), https://www.humanrightsfirst.org/press-release/trump-administration-enacts-rule-gutting-protection-refugees-and-asylum-seekers.

that describe certain religions or political groups as extremist to show why someone might fear persecution because of their contrary beliefs. Attorneys may also submit evidence of a "culture of machismo" to help explain power dynamics and societal tolerance of abusive relationships and to debunk outdated understandings of gender-based violence as a "private" or "purely personal" matter. In many cases, submitting such evidence may be the only recourse for asylum seekers who do not have much, if any, corroboration of the harm they suffered or fear. Without it, adjudicators may find that asylum seekers have failed to carry their burden of establishing eligibility for protection, and asylum seekers may face deportation to persecution, torture, or even death.

But this approach, while necessary in the context of zealous representation of individual clients, is also fraught—part of a larger, movement-wide debate over the use of stereotypes, most prominently in messaging and storytelling about "good" vs. "bad" immigrants.[5] These stereotypes pervade different types of asylum claims, from those based on religion and political opinion to those based on race and nationality.[6] They are well-documented in the context of asylum claims for people from countries in the Middle East and people fleeing harm due to conflicting interpretations of Islam or religious persecution.[7] They are particularly insidious in contexts like gender asylum, where generalizations about a culture of machismo may vilify all men in a country—men who are in turn indiscriminately labeled criminals, murderers, and rapists, in an effort to justify closing borders and turning back bona fide refugees.[8] Given the pernicious effects of such stereotypes, this longstanding

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[5] *See, e.g.*, Michelle A. McKinley, *Cultural Culprits*, 24 BERKELEY J. GENDER L. & JUST. 91, 93–114 (2009) (citing ANTHONY GOOD, ANTHROPOLOGY AND EXPERTISE IN THE ASYLUM COURTS (2007); DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004); Susan Akram, *Orientalism Revisited in Asylum and Refugee Claims*, 12 INT'L J. REFUGEE L. 7 (2000); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001); Corinne Kratz, *Circumcision Debates and Asylum Cases: Intersecting Arenas, Contested Values, and Tangled Webs*, *in* ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES 309 (Richard A. Shweder, Martha Minow & Hazel Rose Markus eds., 2002) (discussing the role of stereotypes and cultural essentialism in asylum law); *see also* Deborah Weissman, *The Politics of Narrative: Law and the Representation of Mexican Criminality*, 38 FORDHAM INT'L L.J. 141, 191–93 (2015) ("The structure of an asylum claim provides little opportunity to set forth the relationship between the complex historical determinants of violence and the violence itself.").

[6] *See* McKinley, *supra* note 5, at 93–94.

[7] Akram, *supra* note 5, at 16, 18.

[8] Jenni Fink, *Trump Says 'Rapists,' 'Murderers' Crossing Border, Calls Biden Not Visiting 'Disgraceful,'* NEWSWEEK (June 7, 2021, 11:49 AM), https://www.newsweek.com/trump-says-rapists-murderers-crossing-border-calls-biden-not-visiting-disgraceful-1598228.

tension in asylum law requires further attention. And, despite the nefarious origins of the Trump administration's regulation, eliminating reliance on stereotypes may itself be an appropriate goal.

This article argues for two concrete shifts in asylum law and practice that, if adopted, could reduce reliance on stereotype-based evidence in refugee claims. First, adjudicators should reconsider the corroboration demands imposed on refugees, fully embrace the principle that an asylum seeker's testimony alone can be enough to carry her burden of proof, and, in so doing, return to a core tenet of refugee law—the need to afford asylum seekers the benefit of the doubt. Second, adjudicators and policymakers alike should recognize that refugees require meaningful access to holistic representation and to a robust and readily-available body of research-based evidence to corroborate asylum claims. Although international organizations,[9] government agencies,[10] and non-governmental organizations[11] have established databases with country condition information, the quality of information may vary depending on the type of claim, country, and database, and asylum seekers who lack representation may not have the ability to access the information or cull from it the best evidence. Yet such evidence is key both to challenging stereotypes and to satisfying adjudicators' evidentiary demands.

This article's focus on the intersection of two distinct sets of issues—evidentiary questions, on the one hand, and the role of stereotypes, on the other hand—raises a range of questions that are outside of the scope of this inquiry but require future consideration. These include, for example, questions about the process through which country condition evidence is constructed: What is the role of grassroots reporting from a particular country as compared to documentation from governments and well-established human rights organizations based in the United States and around the world? What effect does translating evidence—both literally and figuratively—to support asylum claims have on the evidence itself?

This article also raises questions about the typology of evidence and comparative law that are outside of its scope and require further consideration. These include: What is considered a research-based generalization vs. a stereotype? Can there be harmless generalizations or

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[9] *See, e.g.*, *Country Information*, U.N. HIGH COMM'R FOR REFUGEES: REFWORLD, https://www.refworld.org/category,COI,,,,,0.html (last visited Mar. 26, 2022).

[10] *See, e.g.*, U.S. DEP'T OF JUST., COUNTRY CONDITIONS RESEARCH (Oct. 9, 2020), https://www.justice.gov/eoir/country-conditions-research.

[11] *See, e.g.*, *Countries*, AMNESTY INT'L, https://www.amnesty.org/en/countries/ (last visited Jan. 23, 2022); *Technical Assistance & Training*, CTR. GENDER & REFUGEE STUD., https://cgrs.uchastings.edu/our-work/technical-assistance-training (last visited Mar. 26, 2022); *Research for Asylum*, ASYLOS, https://www.asylos.eu/ (last visited Mar. 26, 2022).

stereotypes? What about stereotypes about individuals as opposed to stereotypes about countries? Are there other areas of U.S. law where testimony alone, without corroboration, can be enough to support relief? How have other countries addressed these tensions?

This article is intentionally focused on the narrow intersection of evidence and stereotypes in asylum claims because of the importance of engaging with these questions to rethink the U.S. asylum system and approaches to advocacy at this critical time. This article first examines the role of cultural stereotypes in gender-based asylum claims. It next explains why advocates and adjudicators rely on stereotype-based evidence in establishing eligibility for refugee protection, and the politicized evolution of such evidence in the United States. The article concludes with a proposal to move away from reliance on cultural stereotypes by affording asylum applicants the benefit of the doubt and eliminating corroboration requirements, while at the same time making high quality research-based evidence available to assist in the adjudication process.

I. CULTURAL STEREOTYPES IN GENDER-BASED ASYLUM CLAIMS

While refugee law scholars and advocates have long been concerned about cultural stereotypes,[12] reliance on generalizations in asylum claims emerged from a distinct and pressing need. To debunk outdated understandings of domestic violence as a "private" matter,[13] advocates and courts have invoked

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[12] *See, e.g.*, McKinley, *supra* note 5, at 93 (arguing "[a]sylum law and advocacy are structurally dependent on victimhood and rescue, and essentialism is key to construction of 'savages-victims-saviors,'" and highlighting "racist effects of essentialism in asylum claims" (footnote omitted)); Jacqueline Bhabha, *Internationalist Gatekeepers?: The Tension Between Asylum Advocacy and Human Rights*, 15 HARV. HUM. RTS. J. 155, 162–63 (2002) (highlighting the role of asylum law in perpetuating cultural and national stereotypes, reinforcing victim narratives, and "den[ying] the political complexities in the state of origin"); *see also* Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 355 (2011) (highlighting how cultural stereotypes shame other cultures and depict cultures as inferior for operating under different values than Western cultures under the "guise of human rights").

[13] *See, e.g.*, Matter of A-B-, 27 I. & N. Dec. 316, 345 (A.G. 2018) (describing domestic violence as "personal harm" or "private violence"), *vacated*, 28 I. & N. Dec. 307, 307–09 (A.G. 2021); Campos-Guardado v. INS, 809 F.2d 285, 287–91 (5th Cir. 1987) (finding that rape was motivated by personal feelings and not on account of a protected ground, where applicant was raped and forced to watch her family members murdered as a result of their political position). *See also* Anita Sinha, *Domestic Violence and U.S. Asylum Law: Eliminating the 'Cultural Hook' for Claims Involving Gender-Related Persecution*, 76 N.Y.U. L. REV. 1562, 1577 (2001) (noting that the "myth that the 'private' is not political . . . remains central in the application of refugee law"); Leti Volpp, *Talking "Culture": Gender, Race,*

countervailing evidence that describes power dynamics and social and cultural context—evidence that the Trump administration's now-enjoined rule would arguably have deemed stereotype-based and therefore inadmissible.

The rule would have banned "evidence . . . which *promotes cultural stereotypes* about a country, its inhabitants, or an alleged persecutor, including stereotypes based on race, religion, nationality, or gender."[14] The rule did not define what constitutes a stereotype, but rather declared that "bald statements that a country or its denizens have a particular cultural trait that causes citizens, nationals, or residents of that country to engage in persecution is evidence lacking in probative value and has no place in an adjudication."[15] Such statements are, however, often integral to demonstrating that an asylum seeker has suffered persecution or has a well-founded fear of persecution on account of one of the five protected grounds—race, religion, nationality, political opinion, or membership in a particular social group.[16]

Consider the case of Jacelys De Pena-Paniagua, a woman who fled the Dominican Republic in 2013 to escape her abusive partner and sought

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Nation, and the Politics of Multiculturalism, 96 COLUM. L. REV. 1573, 1616 (1996) (arguing that advocates should shift their focus away from "tradition" or "culture" and "abandon the ethnocentric notion of the inferiority of certain cultures, and to understand that all communities are characterized both by patriarchal formations as well as by resistance to those formations"); Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 CORNELL INT'L L.J. 625, 636 (1993) ("For the most part, asylum law has developed through the adjudication of the cases of male applicants and has therefore involved an examination of traditionally male-dominated activities.").

[14] Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80,274, 80,386 (Dec. 11, 2020) (to be codified at 8 C.F.R. pts. 208, 235) (emphasis added).

[15] *Id.* at 80,281.

[16] *See* U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Convention Relating to the Status of Refugees*, arts. 1, 33, U.N. Doc. A/CONF.2/108 (July 28, 1951); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (incorporating articles 2 through 24 of the Convention Relating to the Status of Refugees of July 28, 1951) [hereinafter together Refugee Convention and Protocol]; 8 U.S.C. § 1231 (b)(3)(A); Refugee Act of 1980, Pub. L. No. 96-212, § 203(e), 94 Stat. 102, 107 (1980) (amended 1996); *see also* U.S. CITIZENSHIP & IMMIGR. SERV. [USCIS], RAIO DIRECTORATE – OFFICER TRAINING: RESEARCHING AND USING COUNTRY OF ORIGIN INFORMATION IN RAIO ADJUDICATIONS 14–15 (2019), https://www.uscis.gov/sites/default/files/document/foia/COI_LP_RAIO.pdf (stating "[w]hen making a decision, COI may play a critical role in evaluating: credibility, claim of past persecution or fear of future persecution (including evaluating the objective basis for fear, e.g. reasonable possibility), nexus to a protected ground" as well as bars to asylum).

protection in the United States.[17] An immigration judge and the Board of Immigration Appeals, the administrative body that reviews asylum decisions, summarily rejected her claim.[18] In so doing, the Board labeled the violence she suffered a "private" or personal matter and proclaimed that women fleeing domestic violence are generally foreclosed from refugee protection.[19]

In April 2020, a federal court reversed the Board's decision.[20] The court concluded that gender could form the basis of a valid asylum claim, recognizing that cultural factors may inform power dynamics in abusive relationships.[21] The court pointed to the role of "societal expectations about gender and subordination" in cases involving domestic violence[22] and noted that "[e]conomic disparity [between men and women in the Dominican Republic] puts women in a vulnerable position because it renders them powerless."[23]

The court drew on this country condition evidence because it is a functional requirement in assessing the cognizability of social groups under U.S. law.[24] In order to establish a cognizable social group in the United States, an asylum seeker must show that the group shares an immutable or fundamental characteristic, is distinct in society, and has well-defined or particular boundaries.[25] Country condition evidence, including evidence of

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[17] De Pena-Paniagua v. Barr, 957 F.3d 88, 89 (1st Cir. 2020).

[18] *Id.* at 90–91.

[19] *Id.* (noting that the Board invoked *Matter of A-B-* in denying the claim).

[20] *Id.* at 98.

[21] *See id*. at 94.

[22] *Id.* (quoting Matter of A-R-C-G-, 26 I. & N. Dec. 388, 393 (B.I.A. 2014)).

[23] *Id*. (quoting Gizelle Lugo, *The Dominican Republic's Epidemic of Domestic Violence*, GUARDIAN (Nov. 23, 2012), https://www.theguardian.com/commentisfree/2012/nov/23/dominican-republic-epidemic-domestic-violence).

[24] *See id.* at 92–94.

[25] *See* Matter of Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985) ("The shared characteristic might be an innate one such as sex, color, or kinship ties."); *see also* Matter of M-E-V-G-, 26 I. & N. Dec. 227, 244 (B.I.A. 2014) (noting an asylum "applicant has the burden to establish a claim based on membership in a particular social group and will be required to present evidence that the proposed group exists in the society in question"); Matter of W-G-R-, 26 I. & N. Dec. 208, 217 (B.I.A. 2014) (explaining the social distinction and particularity requirements); *accord* Directive 2011/95/EU, of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, art. 10, 2011 O.J. (L 337) (explaining that members of a particular social group share (1) "an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it," and (2) share "a distinct identity in the relevant country, because it is perceived

societal views and expectations, is critical to satisfying the social distinction requirement.[26]

Indeed, the Board has emphasized the importance of highlighting "country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like" in order to establish social distinction.[27] The Board has explained that for domestic violence based claims, "the issue of social distinction will depend on the facts and evidence in each individual case, including documented country conditions; law enforcement statistics and expert witnesses, if proffered; the respondent's past experiences; and other reliable and credible sources of information."[28] Yet such evidence often relies on generalizations about a country, including, for example, assertions about "a culture of 'machismo and family violence,'"[29] that could be construed as harmful stereotypes.

Courts have also relied on such generalizations about social and political context in a given country when determining whether an asylum seeker is targeted on account of her feminist political opinion or an opinion imputed to her. In *Hernandez-Chacon v. Barr*, for example, the Second Circuit overturned the Board and found that gang members attacked Ms. Hernandez Chacon, beat her unconscious, and threatened her with rape and death because of her feminist political opinions, including her "resistance to male domination in Salvadoran society."[30] The court emphasized that the agency did not adequately consider Ms. Hernandez Chacon's argument that "when she refused to submit to the violent advances of the gang members, she was taking a stance against a culture of male-domination and her resistance was therefore a political act."[31]

In granting Ms. Hernandez Chacon's appeal, the court relied on evidence that "gang members wanted to punish her because they believed she was taking a stand against the pervasive norm of sexual subordination."[32] The record contained, *inter alia*, a country expert declaration describing "the

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as being different by the surrounding society").

[26] *M-E-V-G-*, 26 I. & N. Dec. at 244.

[27] *Id*.

[28] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 394–95 (B.I.A. 2014); *see also W-G-R-*, 26 I. & N. Dec. at 217 ("To have the 'social distinction' necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.").

[29] *A-R-C-G-*, 26 I. & N. Dec. at 394 (quoting *Guatemala Failing Its Murdered Women: Report*, CANADIAN BD. CORP. (July 18, 2006), http://www. cbc.ca/news/world/guatemala-failing-its-murdered-women-report-1.627240).

[30] Hernandez-Chacon v. Barr, 948 F.3d 94, 98–99, 105 (2d Cir. 2020).

[31] *Id.* at 102–03.

[32] *Id.* at 105.

plight of women in El Salvador," including the effects on women of living in a culture of "machismo, a system of patriarchal gender biases which subject women to the will of men" and in a society that "accepts and tolerates men who violently punish women for violating these gender rules or disobeying male relatives."[33] Such evidence relied on by the court, while crucial to the success of Ms. Hernandez Chacon's claim, may inadvertently reinforce harmful stereotypes about Salvadoran culture—which in turn may fortify U.S. adjudicators and borders against certain claims.[34]

In addition, courts often rely on country condition evidence in assessing whether an asylum applicant has demonstrated a nexus between the harm suffered or feared and a protected ground, as required under refugee law. In *Alvarez Lagos v. Barr*, for example, the Fourth Circuit pointed to expert evidence about Honduras to establish nexus between the threats Ms. Alvarez Lagos experienced at the hands of gang members and her proposed gender-based social group.[35] The court relied on the expert's explanation that Barrio 18, the gang at issue in the case, "operates in a 'very patriarchal,' 'very machista' culture 'that largely sanctions violence against women,'" in particular, "vulnerable groups like single mothers."[36] In so doing, the court rejected the agency's reasoning that Ms. Alvarez Lagos suffered persecution due to "general civil strife and private criminal activity."[37] The U.S. government itself has explained in training materials for asylum officers that circumstantial evidence relevant to the analysis of nexus includes evidence of "patterns of violence" against similarly situated individuals that are "(1) supported by the legal system or social norms in the country in question, and (2) [that] reflect a prevalent belief within society, or within relevant segments of society."[38]

Furthermore, stereotype-based evidence is often relevant to assessing the ability or willingness of a government to protect an asylum seeker from persecution. Refugee law is intended to provide surrogate protection where

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[33] *Id.* at 99 (citation omitted).

[34] In upholding the Board's decision to deny protection on account of membership in the particular social group of "El Salvadoran women who have rejected the sexual advances of a gang member," the Second Circuit in *Hernandez-Chacon* reasoned that, albeit evidence suggesting widespread violence against women in El Salvador, the evidence did not "discuss whether women who reject the sexual advances of gang members are perceived as a distinct group in society or are at greater risk than anyone else who refuses to comply with a gang member's demands." *Id.* at 101–02. *See also* Bhabha, *supra* note 12, at 162–63.

[35] Alvarez Lagos v. Barr, 927 F.3d 236, 249–51 (4th Cir. 2019).

[36] *Id.* at 250 (citation omitted).

[37] *Id.* at 246, 254–55.

[38] USCIS, RAIO COMBINED TRAINING COURSE: GENDER-RELATED CLAIMS 34 (2012), perma.cc/D3YU-RHCP.

an individual's home country fails to protect them.[39] And, as U.S. government training materials make clear: "Evidence that the government does not respond to requests for protection is a strong indication that state protection is unavailable."[40] In domestic violence cases, such evidence may be especially important to demonstrate that even though a country has enacted laws against domestic violence, the laws are not enforced. Indeed, government training materials indicate that violence against women "is often related to the historically more powerful position of men in the family and in society," and such violence may be ignored, or even condoned, by a country's authorities.[41] Given the "significant evidentiary challenge[s]" to proving individualized circumstances in "a society half a world away," such reports may be the only corroboration submitted for adjudicators' consideration.[42]

II. EVIDENTIARY REQUIREMENTS IN ASYLUM CLAIMS

U.S. adjudicators have ratcheted up the requirements for establishing asylum eligibility in recent years, and, in so doing, have fortified the United States against affording refugees the protection required under domestic and international law. In fiscal year 2020, for example, the grant rate for asylum cases in immigration court was about 27 percent—nearly 37 percent lower than in fiscal year 2016.[43] Only about 13% of asylum seekers from Honduras, El Salvador, and Guatemala succeeded in their claims for protection.[44]

Individuals seeking refugee protection bear the burden of proving that they meet the requirements of the refugee definition.[45] Corroborating evidence, in

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[39] *See* DEBORAH E. ANKER, LAW OF ASYLUM § 4:8 (2021-2022 ed. 2021), Westlaw (database updated Aug. 2021).

[40] USCIS, ASYLUM OFFICER BASIC TRAINING COURSE: FEMALE ASYLUM APPLICANTS AND GENDER-RELATED CLAIMS 39 (2009).

[41] USCIS, *supra* note 38, at 44.

[42] Helen P. Grant, *Survival of Only the Fittest Social Groups: The Evolutionary Impact of Social Distinction and Particularity*, 38 U. PA. J. INT'L L. 895, 926–33 (2017) (calling on applicants and their attorneys "to think outside the box and look to sources that are not as routinely utilized as country condition reports, such as sociological, anthropological, and historical literature, press reports, and testimonial evidence of academics and others who are experts on the particular country" but noting the "danger that is associated with the use of this type of evidence . . . that it may be alien to many asylum adjudicators who typically place great weight upon State Department Country Condition Reports in assessing asylum claims").

[43] *Grant Rates Plummet as Trump Administration Dismantles U.S. Asylum System, Blocks and Deports Refugees*, HUM. RTS. FIRST (June 11, 2020), https://www.humanrightsfirst.org/resource/grant-rates-plummet-trump-administration-dismantles-us-asylum-system-blocks-and-deports ("Asylum grant rates in immigration court for fiscal year (FY) 2020 have fallen sharply by nearly 37 percent since FY 2016 . . . .").

[44] *Id.*

[45] *In re* S-M-J-, 21 I. & N. Dec. 722, 724 (B.I.A. 1997).

particular evidence of country conditions, serves "as a background against which an adjudicator may evaluate the credibility of testimony."[46] Yet many asylum seekers are not represented,[47] and the barriers to obtaining and presenting evidence—let alone robust and nuanced documentation—are often insurmountable. Nonetheless, such documentation is integral to showing that an asylum seeker's fear is in fact well-founded and tied to a protected ground.[48]

As the United Nations High Commissioner for Refugees ("UNHCR"), which provides interpretative guidance to signatories to the Refugee Convention and the Protocol, has explained, "it is not only the frame of mind of the person concerned that determines his refugee status, but [] this frame of mind must be supported by an objective situation."[49] U.S. courts have adopted this same approach.[50]

In order to establish a well-founded fear under U.S. law, an asylum seeker must show either past persecution or a fear of future persecution that is "both subjectively genuine and objectively reasonable."[51] Although an asylum seeker's credible testimony alone can demonstrate that her fear of future

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[46] DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES § 3:26 (2021-2022 ed.), Westlaw (database updated Aug. 2021); *see also S-M-J-*, 21 I. & N. Dec. at 724 (noting that adjudicators must "have some background information against which to measure an applicant's claim").

[47] *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015) (finding that only "only 37% of all immigrants, and a mere 14% of detained immigrants" were represented by counsel in removal proceedings).

[48] *See S-M-J-*, 21 I. & N. Dec. at 724 ("Because the burden of proof is on the alien, an applicant should provide supporting evidence, both of general country conditions and of the specific facts sought to be relied on by the applicant, where such evidence is available. If such evidence is unavailable, the applicant must explain its unavailability . . . ." (citing Matter of Dass, 20 I. & N. Dec. 120, 124 (B.I.A. 1989)).

[49] U.N. High Comm'r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, ¶ 38, HCR/1P/4/ENG/REV. 4 (Feb. 2019) [hereinafter UNHCR Handbook], https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html.

[50] *See generally* INS v. Cardoza-Fonseca*,* 480 U.S. 421, 436–37 (1987) (explaining that Congress enacted the Refugee Act of 1980 "to bring United State refugee law into conformance with the 1967 Protocol").

[51] *See, e.g.*, Karim v. Holder, 596 F.3d 893, 896–97 (8th Cir. 2010) (quoting Uli v. Mukasey, 533 F.3d 950, 955 (8th Cir. 2008)); Lusingo v. Gonzales, 420 F.3d 193, 199 (3d Cir. 2005) ("The inquiry into whether an alien has established the requisite well-founded fear of future persecution is both subjective and objective. The subjective component is satisfied by proof that the professed fear is genuine. The objective component is satisfied by proof that the alien's subjective fear is reasonable in light of all of the record evidence." (citation omitted)).

harm is subjectively genuine, courts have held that "establishing its objective reasonableness requires 'credible, direct, and specific evidence that a reasonable person in the [asylum seeker's] position would fear persecution.'"[52] In assessing whether a fear is objectively reasonable, adjudicators often rely on evidence of country conditions that corroborates (or fails to corroborate) what the asylum seeker suffered or fears.[53] Yet, nuanced country conditions evidence may not be readily available and information about countries of origin may be politicized and may rely on stereotypes and generalizations, rather than objective research and statistics.

Given that refugees often flee their home countries with only "the barest necessities and very frequently even without personal documents," UNHCR has cautioned against "strictly appl[ying]" evidentiary requirements.[54] It is well-established that "cases in which an applicant can provide evidence of all [their] statements will be the exception rather than the rule."[55] As UNHCR has explained, "it is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized."[56]

Moreover, in evaluating asylum claims, adjudicators share the duty to develop the record with the asylum applicant in order to "ascertain and evaluate all the relevant facts," and adjudicators may need to "use all the means at [their] disposal to produce the necessary evidence in support of the application."[57] As UNHCR explains, it may not be possible, even with an adjudicator's efforts, to corroborate all of an applicant's statements.[58] Accordingly, "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."[59]

In the United States, the Board has indicated that the benefit of the doubt

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[52] La v. Holder, 701 F.3d 566, 572 (8th Cir. 2012) (quoting *Karim*, 596 F.3d at 897); *see also* Matter of Mogharrabi, 19 I. & N. Dec. 439, 445 (B.I.A. 1987) (noting that an asylum seeker must show that "a reasonable person in his circumstances would fear persecution") (quoting Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986)).

[53] *E.g.*, *Lusingo*, 420 F.3d at 199 (stating that an asylum seeker can demonstrate a reasonably objective fear by "documentary or expert evidence about the conditions" of her country); *see also S-M-J-*, 21 I. & N. Dec. at 724 (explaining that country condition evidence provides context in assessing the credibility).

[54] UNHCR Handbook, *supra* note 49, ¶¶ 196–97.

[55] *Id.* ¶ 196.

[56] *Id.* ¶ 203.

[57] *Id.* ¶¶ 196–97.

[58] *Id.* ¶ 203.

[59] *Id.* ¶¶ 196–97, 204 (noting that where an "[a]pplicant's statements are coherent and plausible and do not run contrary to generally known facts," the applicant should be afforded the benefit of the doubt).

principle may be relevant when "there is some *ambiguity* regarding an aspect of an individual's claim."[60] The Board has also, in principle, embraced the approach set forth by UNHCR whereby "the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner."[61] Some courts have followed suit, invoking the UNHCR Handbook to note that asylum "applicants 'may not be able to support [their] statements by documentary or other proof' and thus should 'be given the benefit of the doubt' where their 'account appears credible.'"[62] Others have acknowledged that many are forced to leave "their home countries under circumstances of great urgency" and "[t]o expect these individuals to stop and collect dossiers of paperwork before fleeing is both unrealistic and strikingly insensitive to the harrowing conditions they face."[63] At least one court has, however,

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[60] *In re* Y-B-, 21 I. & N. Dec. 1136, 1139 (B.I.A. 1998) ("We recognize that a case may arise in which there is some *ambiguity* regarding an aspect of an alien's claim, at which time we might consider giving the alien the 'benefit of the doubt' concerning the fact in issue."). Courts and tribunals in Europe have also invoked the principle. *See* KS v. SOS of the Home Dep't [2014] UKUT 552 (IAC), [1]–[3]; Brian Gorlick, *Common Burdens and Standards: Legal Elements in Assessing Claims to Refugee Status* 9 (UNHCR, Working Paper No. 68, 2022) ("The application of the benefit of the doubt has been widely adopted in national determination procedures and as part of UNHCR's practices in the field."). The European Court of Human Rights has, for example, "acknowledge[d] that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof." R.C. v. Sweden, App. No. 41827/07, ¶ 50 (Mar. 9, 2010), https://hudoc.echr.coe.int/eng?i=001-97625; N. v. Sweden, App. No. 23505/09, ¶ 53 (July 20, 2020), https://hudoc.echr.coe.int/eng?i=001-99992; F.H. v. Sweden, App. No. 32621/06, ¶ 95 (Jan. 20, 2009), https://hudoc.echr.coe.int/eng?i=001-90743. The benefit of the doubt principle is also implied within Article 4(5) of the Recast Qualification Directive, which states that "where aspects of the [asylum] applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when [*inter alia*] . . . the applicant has made a genuine effort to substantiate his application" and "the general credibility of the applicant has been established." Directive 2011/95/EU, of the European Parliament and of the Council of 13 December, *supra* note 25, at 14; European Asylum Support Office [EASO], *Practical Guide: Evidence Assessment*, at 9 (Mar. 2015), https://www.refworld.org/pdfid/55420d654.pdf ("Article 4(5) QD is also known in some Member States' systems as applying the benefit of the doubt."); UNHCR, BEYOND PROOF: CREDIBILITY ASSESSMENT IN EU ASYLUM SYSTEMS 226 (May 2013), https://www.unhcr.org/51a8a08a9.pdf.

[61] *S-M-J-*, 21 I. & N. Dec. at 727–29 (quoting UNHCR Handbook, *supra* note 49, at 47).

[62] Diallo v. INS, 232 F.3d 279, 286 (2d Cir. 2000) (quoting UNHCR Handbook, *supra* note 49, at 43); *see also Cardoza-Fonseca*, 480 U.S at 439 n.22 (noting that the UNHCR "provides significant guidance" in the interpretation of the Protocol to the Refugee Convention).

[63] Dawoud v. Gonzales, 424 F.3d 608, 612–13 (7th Cir. 2005); *see also S-M-J-*, 21 I. & N. Dec. at 725; H.R. REP. NO. 109-72, at 165–69 (2005) (Conf. Rep.).

rejected the Handbook's guidance, including the benefit of the doubt principle.[64] The extent to which adjudicators have applied this principle in practice is thus erratic and unclear.[65]

Under U.S. statute, an applicant's testimony alone "may be sufficient to sustain the applicant's burden," if the testimony is credible, persuasive and specific.[66] At the same time, however, U.S. law allows adjudicators to require corroboration of credible testimony: where an adjudicator "determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence *must be provided* unless the applicant does not have the evidence and cannot reasonably obtain the evidence."[67] And, in practice, adjudicators often rely on the presence or absence of such corroborating evidence in their decision making.[68]

Yet, asylum seekers who are not represented may not have access to corroborating evidence, and even those with counsel may grapple with evidentiary constraints, including the dearth of robust, research-based information about country conditions and the politicization of human rights reports. These evidentiary challenges can stymie advocates' efforts to present nuanced information about countries of origin and can result in reliance on cultural stereotypes and shorthand.[69]

Since the early days of U.S. refugee law, cultural stereotypes and politics

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[64] *See* Sukwanputra v. Gonzales, 434 F.3d 627, 634–35 (3d Cir. 2006) (noting that the UNHCR Handbook set forth procedures to determine refugee status rather than changed circumstances in late filings, which was the issue presented in that case and concluding that the benefit of the doubt principle could not be applied to "implausible" testimony). *Compare* Garland v. Ming Dai, 141 S. Ct. 1669, 1681 (2021) ("The Ninth Circuit's deemed-true-or-credible rule cannot be reconciled with the INA's terms.").

[65] J. Hugo Storey, Editorial Advisory Panel, *"The Benefit of the Doubt" in Asylum Law*, REFLAW (Mar. 2, 2015), http://www.reflaw.org/the-benefit-of-the-doubt-in-asylum-law/ ("What the term actually means and when it should be applied are questions left shrouded in relative mystery.").

[66] Immigration and Nationality Act (INA) § 208(b)(1)(B)(ii), 8 U.S.C. § 1158(b)(1)(B)(ii) (1952), *amended by* REAL ID Act of 2005, Pub. L. No. 109-13, Division B, § 101(a)(3), § 208(b)(1), 119 Stat. 231, 303 (2005).

[67] *Id.* (emphasis added).

[68] *See, e.g.*, Wei Sun v. Sessions, 883 F.3d 23 (2d Cir. 2018) (upholding an asylum denial due to failure to produce corroborating evidence and rejecting any additional hearing, reasoning that the applicant had failed to produce such evidence over six years and § 1158(b)(1)(B)(ii) did not require the immigration judge to tell the applicant which corroborating evidence was missing); *cf.* Diallo v. INS, 232 F.3d 279, 284, 290 (2d Cir. 2000) (vacating BIA judgement that solely relied on the absence of corroborating evidence since the applicant could meet her burden of proof by offering a sufficient explanation).

[69] *See* Bhabha, *supra* note 12, at 162–63 ("Asylum advocates' simplifying tendency may also be a consequence of their own inadequate information . . . .").

have influenced the State Department's country reports on human rights practices, which adjudicators generally consider "the best source of information on conditions in foreign nations"[70] and accord "special weight."[71] The explicit statutory goal of these reports is to support the political objectives of the President of the United States, to aid in diplomacy, and to inform the allocation of military assistance to foreign countries.[72] As such, the reports may be politicized or missing critical information. To give one example, when the State Department initially started including a section on treatment of LGBTQ individuals in its country reports, the State Department often documented no reports of violence, because such data was difficult to collect given individuals' fears of coming forward about attacks they suffered.[73]

Under current regulations, adjudicators may rely on a range of "credible sources," including governmental and non-governmental reports, reports from news organizations, academic articles, documentation from international organizations, among other evidence, in evaluating asylum claims.[74] But this evidentiary flexibility has not eliminated excessive reliance in asylum adjudications on politicized and flawed evidence, such as the State Department reports, which often include cultural stereotypes.[75]

Recent accounts by a U.S. government whistleblower and U.K. NGO

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[70] Matter of H-L-H- & Z-Y-Z-, 25 I. & N. Dec. 209, 209 (B.I.A. 2010), *abrogated by* Hui Lin Huang v. Holder, 677 F.3d 130, 131 (2d Cir. 2012).

[71] *Id.* at 213 (quoting Aguilar-Ramos v. Holder, 594 F.3d. 701,705 n.6 (9th Cir. 2010)); *see also* Brief for Law Professors et al. as Amici Curiae Supporting Petitioners, Hui Lin Huang v. Holder, 677 F.3d 130 (2d Cir. 2012) (No. 10-1263-AG), 2010 WL 4160717; Sabrineh Ardalan, *Country Condition Evidence, Human Rights Experts, and Asylum-Seekers: Educating U.S. Adjudicators on Country Conditions In Asylum Cases*, 13 IMMIGR. BRIEFINGS, Sept. 2013, at 1, 2, https://www.westlaw.com/Document/Ide762bc01baf11e380dd0000837bc6dd/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0.

[72] *See* 22 U.S.C. § 2304; Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 116, 75 Stat. 424 (codified in 22 U.S.C § 2151n).

[73] Deborah Anker & Sabi Ardalan, *Escalating Persecution of Gays and Refugee Protection: Comment on Queer Cases Make Bad Law*, 44 N.Y.U. J. INT'L L. & POL. 529 (2012); *see also, e.g.*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, 2009 HUMAN RIGHTS REPORT: DEMOCRATIC REPUBLIC OF THE CONGO 83 (2010); BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, 2012 HUMAN RIGHTS REPORT: DEMOCRATIC REPUBLIC OF THE CONGO 19 (2012).

[74] 8 C.F.R. §§ 208.12(a), 1208.12(a) (2021); USCIS, *supra* note 16, at 19–20 (instructing asylum officers to consider "a wide variety of sources").

[75] *See* Eliot Walker, *Asylees in Wonderland: A New Procedural Perspective on America's Asylum System*, 2 NW J. L. & SOC. POL'Y 1, 6–8 (2007) (observing that circuit courts and academics alike had challenged "[t]he substantive reliability of State Department reports").

exposed changes to the State Department reports under the Trump Administration that prejudiced asylum seekers by white-washing the actions of countries that many asylum seekers flee.[76] The shift in State Department country report content addressing gender-based violence from the 2016 report to the 2017 report provides one example of politicization. The 2016 El Salvador country report included, for example, twelve paragraphs of information on domestic violence and rape in the country, including specific statistics about numbers of cases.[77] By contrast, the 2017 report contained only three general paragraphs about the laws criminalizing rape and domestic violence and investigation of incidents involving police.[78] Such changes can have profound implications for asylum seekers, especially those who are unrepresented and may have no choice but to rely on these reports, which are "routinely entered into evidence," as their main source of corroborating information.[79]

Adjudicators' demanding corroboration requirements and the generalized country condition evidence often presented in asylum cases have thus contributed to the entrenchment of stereotypes in asylum law.

III. THE ROAD AHEAD

The Biden Administration has the opportunity to reassess the role of evidence and corroboration in asylum claims, to pushback against pernicious stereotypes, and to create an asylum system that recognizes the need to protect bona fide refugees.

First, both DHS and DOJ should provide adjudicators with guidance about

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[76] *See* Alex Ward, *What to Make of the DHS Whistleblower's Shocking Complaint*, VOX (Sept. 11, 2020), https://www.vox.com/21429671/whistleblower-dhs-russia-interference-border-chad-wolf (setting out the whistleblowing reports); *see also* LIZ WILLIAMS & STEPHANIE HUBER, ASYLUM RSCH. CTR., COMPARATIVE ANALYSIS: U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES (2016–2019), at 4–14 (2020), https://asylumresearchcentre.org/wp-content/uploads/2020/10/Executive-Summary_USDOS_ARC_21-October-2020.pdf.

[77] *See* Letter from Cent. for Reprod. Rts. et al. to Michael Pompeo, Sec'y of State, U.S. Dep't of State, app. B, at 7 (Oct. 2, 2018), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Pompeo%20Civil%20Society%20Letter%20Human%20Rights%20Reports%2010-2-18_final%20letter.pdf ("Side-by-Side Comparison of the Rape and Domestic Violence Subsections in the 2016 and 2017 El Salvador Human Rights Reports.").

[78] *See id.*

[79] Thomas M. McDonnell & Vanessa H. Merton, *Enter At Your Own Risk: Criminalizing Asylum-seekers*, 51 COLUM. HUM. RTS. L. REV. 1, 44 (2019), http://hrlr.law.columbia.edu/files/2019/11/1-Merton.pdf; *see also* Nahal Toosi, *State Department Report Will Trim Language on Women's Rights, Discrimination*, POLITICO (Feb. 21, 2018), https://www.politico.com/story/2018/02/21/department-women-rights-abortion-420361.

the need to apply the benefit of the doubt principle, both in evaluating asylum seekers' credibility and in determining the corroboration asylum seekers may be asked to provide to meet the requirements of the refugee definition.[80]

Second, as DHS and DOJ consider promulgating new asylum regulations, the agencies should return to the immutable characteristic test for evaluating the cognizability of a particular social group, originally set forth in *Matter of Acosta*.[81] Unlike the more recently imposed requirements of social distinction and particularity, which often necessitate the introduction of country condition evidence, the original immutability characteristic requirement can be established through the testimony of the asylum seeker alone. As such, a return to *Acosta* and the immutable characteristic test for membership in a particular social group would eliminate at least one reason asylum seekers are often forced to rely on stereotype-based evidence.

Third, as long as corroborating evidence continues to be integral to asylum claims, advocates should consider relying on research-based, empirical evidence, where possible. Although empirical evidence is not without its own biases (often hidden under the guise of "science"),[82] research-based evidence may help both with increasing the odds that asylum seekers obtain the protection they need and with ensuring that asylum claims do not reinforce negative stereotypes about countries and cultures. In the criminal law context, advocates have taken to presenting empirical research, including through amicus briefs and expert reports, to support their arguments and to inform adjudicators' understanding of institutions in order to push back against traditional—and sometimes inaccurate—generalizations about the role of police in society.[83] Lawyers in the asylum context should strive to do the same. They cannot, however, without better access to such empirical research. While activists and academics in asylum seekers' countries of origin often conduct studies and write reports that contain important data and

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[80] *See S-M-J-*, 21 I. & N. Dec. at 738–40 (Rosenberg, Board Member, concurring) (arguing that the benefit of doubt will complement judges' limited knowledge on country conditions); UNHCR Handbook, *supra* note 49, ¶ 196 (suggesting that the procedural rule should be that, if a judge finds an applicant's testimony to be credible, the judge should afford the applicant the benefit of doubt unless "there are good reasons to the contrary").

[81] 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

[82] *See, e.g.*, E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance*, ¶¶ 2–3, U.N. Doc. A/HRC/44/57 (June 18, 2020); *see also* E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Racial Discrimination and Emerging Digital Technologies: A Human Rights Analysis*, ¶¶ 7–9, U.N. Doc. A/HRC/44/57 (Nov. 10, 2020).

[83] *Cf.* Seth W. Stoughton, *Policing Facts*, 88 TULANE L. REV. 847, 854–55, 892 (2014).

information, that documentation may not be readily available and may not be translated into multiple languages. Critical efforts by organizations like the Center for Gender and Refugee Studies and the UNHCR, among others, to disseminate such country condition information need to be expanded upon.

Fourth, lawyers should take stock of the evidence they plan to submit and replace articles and reports based on generalizations about cultures and societies with research-based, empirical evidence, where possible. For example, rather than relying on news articles that include sweeping assertions about a culture of machismo or subordination of women, lawyers can try to submit reports or articles, grounded in research, including statistical information about rates of femicide and domestic violence in countries and the number of cases that authorities respond to or investigate.

Fifth, expanded access to counsel, including government-appointed counsel, is necessary to assist asylum seekers in presenting the strongest claim possible. Where empirical evidence falls short, country experts can help fill gaps,[84] but, if unrepresented, an asylum seeker may not know to seek out expert assistance. The government should thus provide funding for appointing counsel and for counsel to hire country experts as needed to fill gaps in information.[85]

Indeed, expanding access to representation is critical, as is the development of widely available research and expert testimony that asylum seekers, adjudicators, and advocates alike can draw upon in presenting and deciding cases. A fundamental rethinking of refugee law is necessary to ensure effective access to the protections the United States is obligated to provide by eliminating overreliance on corroboration, elevating the importance of the applicant's testimony and the weight given to it, and addressing longstanding concerns about stereotypes.

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[84] *See* Anker & Ardalan, *supra* note 73, at 554–55; *see also* ANKER, *supra* note 46, § 3:1.

[85] Banks v. Gonzales, 453 F.3d 449, 454–55 (7th Cir. 2006) (urging the immigration bureaucracy to produce systematic evidence about country conditions and assist immigration judges with country specialists and vocational experts in assessing the plausibility of asylum applicants' testimonies instead of refusing to take stances and relying on immigrations judges to fill the missing record); Sabrineh Ardalan, *Expert as Aid and Impediment: Navigating Barriers to Effective Asylum Representation*, *in* ADJUDICATING REFUGEE AND ASYLUM STATUS 147, 148 n.2 (Benjamin N. Lawrance & Galya Ruffer eds., Cambridge Univ. Press 2015); *see also* Ming H. Chen, *Leveraging Social Science Expertise in Immigration Policymaking*, 112 NW. U. L. REV. ONLINE 281, 308 (2018), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1261&context=nulr_online ("Requiring immigration agencies and immigration courts to engage in better data gathering and truthful reporting is critical to ensuring procedural fairness and substantive integrity in a policy area with such high stakes and such contested values.").