# Western Transnormativity and the U.S. Asylum Process: From Gender-Nonconforming Forced Migrant to Neoliberal Transgender Refugee

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## Abstract

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This research exposes the ongoing violence from sustaining Western nation-state apparatuses. By considering U.S. asylum processes at the turn of the 21st century, it provides insights on how contemporary Western nation-state exported models of bureaucratized legalities and accompanying social norms produce and (re)produce transgender migrant subjectivities. To do so, this research employs three decolonial feminist methods: 1) critical rhetorical analysis of legal and media sources, 2) personal experiences and *testimonio*, and 3) a historically materialistic dialogical analysis. Through these methods, this research demonstrates the violent process of conversion of gender-nonconforming Global South subjects into transgender refugee ones.

## INTRODUCTION

In 2018 the *New York Times* published an article titled "What It Takes to Get Asylum in the U.S." explaining that "the biggest hurdle for the migrants is convincing an immigration judge that [we] belong to a particular social group."[1] In this research, I focus on the United States' asylum system and its relationship to gender-nonconforming migrants in particular. I argue that the asylum system works to transform gender-nonconforming people into neoliberal transgender refugee subjects through a multi-faceted legal process that demands evidence of transness as well as cultural and gender disidentification. Further, I argue that such processes are linked to Western U.S. projects of nation-state building that serve to erase or dismiss Global South gender identities and knowledges and advance neoliberal agendas that perpetuate Western U.S. economic and political hegemony.[2]

In this thesis, I analyze the United States' refugee legal system through an examination of the United States (U.S.) Board of Immigration Appeals legal case of Toboso-Alfonso, which set the precedent for asylum/refugee claims based on one's sexual orientation and membership into an LGBTI-specific social group. In examining the Toboso-Alfonso landmark case, I trace the evolution of this U.S. legal precedent and how it has shaped the asylum/refugee application process for Global South gender-nonconforming forced migrants, such as myself. Additionally, I examine the multifaceted legal processes of international and U.S. immigration laws in various bureaucracies and legal contexts, focusing in particular on the U.S. Board of Immigration Appeals (BIA) Matter of Acosta case (1985); the Matter of C-A-23 I&N Dec. 951 (BIA 2006), which later became the Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014); and the Matter of W-G-R, 26 I&N Dec. 208 (BIA 2014).[3]

A central goal of this research project is to shed light on the material, cultural, psychosomatic, and relational costs that the asylum process generates. Towards this end, in addition to analyzing the above legal texts, I will share my *testimonio* as a gender-nonconforming migrant.[4] Through the reflections on my seventeen years of experience as a refugee oscillating between lawful presence and living fully undocumented in the U.S., I seek to center and prioritize the subjectivities and experiences of the refugee transgender subject in my analysis of the refugee-asylum process. This methodological intervention informs the writing structure of this thesis. My thesis weaves together personal storytelling with feminist legal analysis to unpack the process of what I refer to as nation-state induced gender conversion and to trace the geopolitical, physical, economic, epistemic, and relational violence of this process.

Underpinning this research is a commitment to a multidimensional analytic that accounts and factors class, gender, gender identity, race, ethnicity, sexuality, sex, nationality, immigration, and disability status as different and sometimes overlapping categories of analysis crucial to understanding power and systemic violence. I posit that neither race theory nor queer theory nor gender theory alone captures the experiences of gender-nonconforming *mestizas* from the Global South nor that of those converted into transgender neoliberal refugee subjects who exist at the intersection of a multiplicity of experiences. Instead, a careful study requires a polyvocal and multidimensional analytic in order to highlight the textured and multifaceted ways that transgender, as an identity category, is linked to Western projects of nation-state building and the stratification of living beings based on citizenship status. In section one, I analyze the particular gender embodiments of the contemporary moment that are required of gender-nonconforming asylum seekers in order to become legible subjects in the U.S. citizenship system. In section two, I explore ways that procedural productions of gender are linked to Western capitalist technologies

of gender. Specifically, I examine U.S. capitalist understandings of transness that is enforced as an objective, measurable standard and how it exacts a transgender tax from gender-nonconforming refugee subjects.

## SECTION ONE: U.S. Asylum Law and the Production of Transgender Subjects

In the 1990s, the U.S. and other Western Global North nation-states (mostly nation-states in Europe but also Australia, New Zealand, and Canada) began considering and processing refugee claims from queer and gender-nonconforming peoples. Canada was the first country to get on board with this expanding definition of membership in a particular social group as it pertains to sexual orientation. This is an important turning point for people of all sexualities and gender identities to be able, and even eligible, to escape persecution based on one's sexual orientation and/or gender identity.

In the U.S., the Board of Immigration Appeals (BIA), the highest administrative body for interpreting and applying immigration laws in the U.S., set the legal precedent for considering, evaluating, and determining refugee status based on persecution due to one's sexual orientation in the case of Fidel Armando Toboso-Alfonso. The case was decided on March 12, 1990. Toboso-Alfonso entered the United States as part of the Mariel Cuban Migration in the 1980s and filed for asylum after his parole was revoked due to a cocaine conviction, which placed him in exclusion proceedings that may have led to his deportation or indefinite detention. Although the court first denied his asylum claims, Toboso-Alfonso appealed. Despite the appeal, Toboso-Alfonso was not granted full asylum due to his drug conviction. Instead, he was granted withholding of removal in 1994 in light of the fact that he would face persecution in his native Cuba on account of his sexual

orientation. His case established sexual orientation as "membership in a particular social group" and paved the way for asylum based on sexual orientation.[5]

The Immigration and Nationality Act (INA), which governs U.S. refugee and asylum claims, does not define membership in a particular social group with much specification. Such lack of specificity gives judges tremendous power and discretion to vet the legitimacy of non-Western subjects in humanitarian need who must prove their group membership in order to claim asylum/refugee status. The INA's Matter of Acosta case has been particularly influential in shaping judicial decision-making about group membership. In 1985, the BIA court made a decision on the asylum application of Acosta, a member of a taxi driving collective from El Salvador. Guerillas threatened Acosta repeatedly who wanted to disrupt transportation service to the city of San Salvador, and some of the fellow taxi drivers and colleagues in the taxi business had been beaten as well as killed. The BIA denied Acosta's claim, concluding that members of a taxi collective did not share either immutable or fundamental traits and thus did not constitute a particular social group. In explaining their decision, the BIA wrote that while each social group claim must be analyzed on an individual basis, "whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences."[6]

The Matter of Acosta established group membership as a category based on shared common, immutable, or fundamental characteristics. It further established the judicial precedent of requiring evidence from forced migrants seeking asylum or refugee status to prove their group membership by demonstrating that they do indeed share common, immutable or fundamental traits with other members of a group. According to this logic, sexuality, sex, gender, gender identity, race, ethnicity, and religious affiliation are all examples of groups that share "immutable" or

"fundamental" characteristics despite extensive research showing the instability, constructedness, and cultural variability of these categories.[7]

For decades, Matter of Acosta was the only legal precedent the BIA used to determine membership in a particular sexual orientation social group. However, in more recent years, the BIA has further defined what belonging to a particular social group entails for purposes of granting refugee/asylum status—see Matter of C-A- 23 I&N Dec. 951 (BIA 2006)—until it finally came up with a three-part test (Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014)). The three-part test to determine membership in a Social group evaluates whether the group (1) shares immutable and/or fundamental traits; (2) is "socially distinct"; and (3) is "particular."[8]

When applied to questions of gender identity, this test relies on deeply ahistorical, culturally particular, and universalizing assumptions about sex, sexuality, and gender. Indeed, given the strong impetus to pass the test and the high stakes involved if one fails it, this three-part test serves as a mechanism for the harmful political imposition of normative Western transgender identity. In my case, this process compelled my transformation from a gender-nonconforming migrant to a neoliberal transgender refugee. I do not share my testimonio in order to question the legitimacy of gender identity asylum and refugee claims. Instead, I share it to illuminate the systemic coercive forces behind the production of transgender identities in the U.S.

## SECTION TWO: Testimonio—My Story on My Terms

*Sebastian Velasquez*

Sebastian was a happy delicate child. He played with dolls and pretended to be the pink power ranger when playing with his sister Jessica. He also spent hours emulating Ms. Colombia and enacting home-style beauty pageants. He worked hard sorting through his mother's clothes when nobody was policing his gender, wearing some of the most eye-popping polka-dot dresses and

the most fashion-forward heel styles from the 90s. Sebastian was not a confused child; he was just being himself. He was growing into his womanhood like other girls his age. Today, Sebastian is Catalina. This does not mean that Catalina killed Sebastian. Sebastian will always exist, not as a reminder of an incomplete womanhood but as a person within Catalina that gives her the strength to live life unapologetically in her truth. When Catalina's mother looks into Catalina's soul, she sees that Sebastian continues to exist happily with the support of Catalina. The truth is that without Catalina, Sebastian would have never survived.

I was born in the land of eternal spring, a place filled with birds of all colors and biodiversity that is second only to Brazil. I was born in the land where emeralds are abundant and flowers are never in shortage—a place with unparalleled configurations of animal, human, and plant life that coexist in intentional relationalities that sustain life as we know it. My experiences as a migrant, however, brought attention to the relationships I left behind. This same process that compelled me to disrupt previous relationalities has also pushed me to embed into new ones. Despite the overarching conditions of Western Global North domination, genders and gender identities in Colombia operate within their own definitions, which correspond to the land's unique cultural worldviews and diverse geographies. Colombian notions of gender, gender identity, sex, and sexuality are not as neatly separated or as rigidly defined as they are in the U.S. legal, social, and political systems. The culturally specific Colombian concept of *travesti*, for example, refers to a particular person in regard to their gender, sometimes still operating on a feminine-woman-and-masculine-man dichotomy. Yet, it still acknowledges Colombian gender and sexual distinctness from the expectations of other Colombians who more uniformly act a gender typically associated with one's body parts and culturally-informed sex characteristics. In Colombian social and cultural contexts, such a concept indicates a more fused and entangled relationship between gender, gender identity, sex, and sexuality than the supposedly counter-equivalent categories in the U.S.[9] That said, I refuse to romanticize Colombia as a nation-state, with its continuous

engagement and implementation of a Western imaginary and socio-political and economic logics by the Colombian regime.

Due to Western colonialism, the U.S. war on drugs, and U.S. interventions and militarism in the region, Colombia's population of almost forty-eight million has endured over fifty years of civil war. My father survived a gunshot that nearly killed him. My sister and I have survived kidnapping attempts. Many members of our family and community have died or disappeared. These incidents forced my parents to make the radical decision to flee our country and seek refuge in the U.S. I came home from my school in Medellin one day, and on the next day I found myself in the U.S. Upon my family's arrival in the U.S., we filed for asylum and refugee status. Unfortunately, our asylum claim was denied, as was our appeal, leading to my family's detention in late 2008 and subsequent deportation in early 2009. I was able to avoid being detained and deported because I was a fulltime student at Georgetown University at the time Immigration Customs Enforcement raided my home. While detained, my father was denied the medication that he needed for his liver and hepatitis C. With this in mind, officers in the detention facility pressured my family into waiving their due process rights and signing an expedited order of removal, which meant that they were unable to contest their deportation. After my family's deportation, they were barred from coming to the U.S. for a period of ten years, which is standard protocol for people who have been deported "after having accrued one year or more of unlawful presence during a single stay, regardless of whether you leave before, during, or after removal proceedings."[10]

I was a college student at Georgetown University in Washington, D.C. when my family was deported. After they were deported, I lost the home that I shared with them in the U.S. and became houseless. It was thanks to kind peers and professors at Georgetown University that I gained limited access to food and shelter. I remember that due to the exorbitant costs of attending

a private institution like Georgetown University, I often went to class hungry and worried. When I graduated, I did not have a job permit and was barred from gaining lawful employment in the U.S. Thankfully, I had a wonderful professor and mentor who arranged a living space for me while I worked to resolve my situation by securing legal pro-bono support to access the opportunity to work.[11]

In 2011, I gained lawful presence via Deferred Action and the discretion of U.S. State officials from the Immigration Customs Enforcement agency the U.S. Executive Branch of government oversees. This was a bittersweet moment. I appreciated being able to work, as I could finally provide my own food and shelter. However, it was a demoralizing experience. To hold this discretionary lawful presence, I was required to appear before the agency at any moment's notice for interrogation and questioning. I felt as if I was being treated as a terrorist and a public hazard. They had the ability to question my every move and to make me feel like my existence was a problem. I registered these experiences as U.S. state-sanctioned violence and racism. Psychologically, I was living in constant fear, which was accompanied by U.S.-induced depression and anxiety. This affected my relationships with others and with myself, as I was always angry and frustrated. The uncertainty and lack of control over my life in combination with the terrorizing elements of maintaining a lawful presence in this country led to my formal diagnosis of "Adjustment Disorder with mixed anxiety and depressed mood."[12] After receiving such a diagnosis I was also diagnosed with being a "Target of Adverse Discrimination."[13] These social pathologies induced by the U.S. immigration process bore upon my interactions with others who often used my racialized and justified anger to excuse denying me jobs and life opportunities. This also created wedges with the people I love, who, to this date, have to account for the multiple structural triggers that affect my mood.

I was among the first people to apply for and receive a job permit under Deferred Action for Childhood Arrivals (DACA). This is important because, at this point, I was given relief to think of other less pressing aspects of living. It was not until this time that I was able to look inwards and make sense of my gender identity in relation to U.S. society. Thus, DACA was more than just a tool to seek employment, to feed myself, and to pay for my own shelter. With DACA, I found the ability to prioritize my right to self-express and live unapologetically in my truth as a gender-nonconforming person.

Upon my arrival in the U.S., to my surprise, I was required to assimilate beyond the problematic impositions of learning English and U.S. laws and institutions. My culturally-situated essence and identities were suddenly illegible and invalid, and I did not fit the ever-growing acronym of what many in the U.S. expected from a member of the Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) community. The idea of a singular community of gender-nonconforming people is still puzzling to me because the acronym's letters have never constituted a singular community in the U.S. or anywhere else. These are multiple distinct communities that have been reduced to an all-encompassing acronym for political ends. However, for me to survive and have my gender be legible, I had to transform into a transgender woman of color. I had to discover what it meant to be a member of the U.S. LGBTQ community—or a member of a transgender community. I had to learn what these categories were and how to become a legible member of these social groups.

I always knew that I was a "Miss," but I remained afraid to claim my womanhood. It took me a couple of years of sustained legal presence and the ability to work in the U.S. for me to unapologetically claim my womanhood. I started painting my nails, going by different pronouns, and letting my hair grow. It felt liberating to express and embody my agency—to be myself. I then

began to get rid of my body and facial hair with laser treatments that could permanently reduce and sometimes eliminate the regrowth of hair follicles.

As I lived my most authentic life, my resentment towards my experiences as an immigrant in the U.S began to grow. I made addressing those struggles my life mission. I became an immigrant justice advocate, a community organizer, and a city-level appointed commissioner. I was named one of the co-chairs of the 2017 Equality March for Unity and Pride, and I co-founded a media relations firm that now employs more than ten people. I am a co-founder of the Queer Undocumented Immigrant Project (QUIP) with United We DREAM. I acted as an advisor on immigration and LGBTQ issue areas for 2016 presidential hopeful and U.S. Senator from Vermont, Bernard Sanders, in addition to serving as a founding board member of Our Revolution, the nonprofit organization that emerged after the 2016 Sanders campaign. This was possible because I gained lawful presence and the ability to work. Hence, it should not be a surprise that, at this point, I also found the confidence to publicly claim my womanhood.

When I began living unapologetically in my truth as a woman and working as a policy analyst and organizer on immigrant justice in the U.S., I also elevated my legal literacy. [14] In particular, I became aware of the legal exemptions based on changes in circumstances that would allow me to once again file an asylum claim and be recognized as a refugee in the U.S. per the Immigration and Nationality Act §208(a)(2)(D). After I learned that people who missed the one-year deadline to apply for asylum could apply for this change of circumstances, I pursued legal counsel to file for asylum in my own right and not as a derivative of my family's application.

Once I qualified for filing my asylum case based on a change in my circumstances as a gender-nonconforming Colombiana, I began accruing evidence that demonstrates my membership in a particular social group of gender-nonconforming people within Colombian society.

Completing and filing my asylum application prompted a lot of anxiety and questions: How do I prove my sex? How do I prove my sexual preferences? How do I prove how I feel? My gender identity? While these are already difficult experiences to prove, the challenge is amplified by being in the position of an asylum seeker. How can you prove these things if you had to escape your country of citizenship with none of your belongings, with a carry-on, if you are lucky to bring one?

As I sought to find legal counsel for my asylum case, several attorneys questioned my changes in circumstances, which were grounded in me harnessing my confidence in my reclaimed womanhood to gather the strength needed to navigate the U.S. asylum system. These attorneys were more concerned with measurable and so-called objective bodily metrics to prove my womanhood than in my own story and experiences of reclaiming my womanhood. The expectation to prove one's transition puts a huge strain on gender-nonconforming refugees to affirm our genders based on the measurable methods recognized by the Western Global North and the U.S. in particular. These methods include medical procedures such as hormone therapy and body alterations. These medical transitions are perceived to be more objective metrics in determining the validity of a gender identity asylum/refugee claim. I felt extremely pressured to medically transition, due to their heavy emphasis on objective measurable markers of transgender identity. Indeed, many of these attorneys said that they would not represent me unless I began a medical transition. All preliminary questions pertaining to my pursuit of refugee status based on gender identity revolved around what they assumed to be true identifiers of transness. This created an additional layer of extralegal expectations for what legitimates a claim to refugee status based on gender identity. They were offensively focused on my body. They would ask me: Did you get boobs? Are you planning to get breast implants? Have you fully transitioned? If not, when are you planning to get bottom surgery? Have you begun hormone therapy? From these questions, there

were a series of others that signaled to me that in order to be believed and meet intransigent refugee filing deadlines, I had to rush and engage in more measurable transition markers that were heavily reliant on pathologization. I was made to believe that this was the best way to increase my odds of winning my refugee claims. It was at this moment of the process—in my search for legal representation—that I began to realize that who I am is insufficient for the U.S. legal system to recognize my womanhood and gender identity. As a result, I postponed filing for asylum.

It took me a lot of soul searching to consent to a medical transition. Under the threat of growing anti-immigrant sentiments, however, I did. For those of us who are immigrants, surviving the Bush and Obama administrations was already a life accomplishment in and of itself. However, the idea of Trump as the next U.S. president evoked paralyzing fear in me, the kind of fear that flared up my post-traumatic stress disorder (PTSD) and led to my formal diagnosis of Gender Dysphoria in Adults.[15] Witnessing the development of the 2016 presidential campaigns whilst I was given this diagnosis, I realized that a medical transition was necessary to protect myself from state violence. This is not a decision I regret, and as a matter of fact, I continue to take hormones. That said, I made this decision under immense pressure to perform my gender in ways that would make me legible as a possible citizen subject, through conforming to definitions of transness the U.S. legal system dictated. Even though I have no regrets, I did feel rushed and the process was a coercive experience. The deadlines and expectations set for measurable transitions imposed upon me violated my sense of self-determination by diminishing my agency and ability to transition on my own terms. The decisions that I was forced to make at that time have produced everlasting repercussions on my health, particularly my ability to plan and form a family. Many years of taking hormones and testosterone blockers has practically castrated me. Psychologically, many of us experience anxiety and mood swings as well as dramatic body changes resulting from these

medical transitions and gender affirming procedures that, when rushed, increase the likelihood of damaging side effects. Hence, the mandate of a one-year deadline to file for asylum as per 8 C.F.R. § 208.4(a)(2)(ii) in U.S. statutory federal immigration law disregards the long-term effects of transitioning and the damaging effects of rushing this process for gender-nonconforming people.[16] Not only are we required to prove our transness, but we are also forced to do so in prompt and so-called objective and measurable ways.

In addition, being subject to medical transition and gender affirming surgeries in the asylum process, also compelled me to buy into a consumerist logic my performance of U.S. womanhood required. An unattainable image of womanhood defined by the U.S. Western-centered femininity dictated my spending decisions. My refugee claim was contingent upon my compliance with these ideals and its attendant consumption requirements. These expectations of Western femininity manufacture the need to shave, apply makeup, accessorize, and pursue standards of beauty such as smooth skin, soft legs, manicured hands, painted toe nails, round and perky breasts, and sculptured butts. These pursuits tether to capitalist industries that profit from hegemonic corporate and nation-state productions of gender. Throughout the years, I have spent thousands of my scarce dollars on Sephora products, laser hair removal boutiques, immigration attorneys, and many other businesses in order to meet the expectations of the refugee process. In paying for these products and services, I have increased the profits of these corporations and contributed to the growth of global capitalism.

When did transitioning become a business and a place for capitalist (re)production and labor exploitation? How did my U.S. transformation into a transgender Hispanic woman become a political statement against my cultural, ethnic, and national backgrounds? How has my forced adoption of U.S. transness come at the expense of my embodiment of Colombian notions of

gender-nonconformity? Why did I have to look a certain way to be palatable to workers who have a say on whether I can have a job to pay for food and rent? Why must I submit myself to body shaming and to the idea that my physicality should be corrected to offer objective and measurable proof of my gender-nonconforming identity? I call the added costs of existing outside a gender and sex binary within U.S. society the transgender refugee tax. The transgender refugee tax is imposed on transgender subjects who are co-opted into becoming neoliberal consumers and subjected to forced socializing that stems from the manipulation of our desires to exist, belong, and live in safety and without fear.

Failure to follow stereotypical archetypes of queerness and transness in the West all too often results in the rejection of one's asylum claims. For example, a recent *New York Times* article points to the case of Che Eric Sama from Cameroon whose asylum petition was denied for failing to prove to the U.S. government that he was facing persecution in his birth country for being a gay man.[17] Similarly, in an article entitled, "This is What LGBTQI+ People Have to go Through to Gain Asylum in the UK," Gary McIndoe exposes how the United Kingdom's (U.K.) Home Office has refused asylum claims "on the basis of not believing the applicants genuinely identify as gay, lesbian, bisexual, transgender or intersex."[18] In the article, McIndoe explains that "contrary to the rhetoric put forward by some of [U.K.'s] more right-wing media, the UK is not full of people pretending to be gay in order to successfully obtain refugee status."[19] He then goes on to unpack how individuals from various corners of the world are made to prove one's queerness or transness based on definitions of gender and sexuality that are specific to their nation or culture. This article not only exhibits the different realities and cultural expressions of what it is to be a sexual and gender minority, but it also showcases the intricacies and difficulties of navigating personal expressions of gender and sexuality in the shadow of the U.K.'s state definitions. In other words,

McIndoe critiques the Western biases by which queerness and transness is measured, pointing to specific examples where Western imposed transness and queerness makes gender-nonconforming asylum applicants' journeys "extremely traumatic, invasive and long-winded, with no guarantee of success."[20] Gender-nonconforming asylum seekers in the U.K. must not only prove that who they say they are is genuine but also ensure that their expression of these identities fits within Western Global North conceptualizations of gender identity and sexuality. Proving and coerced conformation is similar to the suffocating processes of joining many fraternities and sororities in the U.S. We, the queer and gender-nonconforming refugee/asylum seekers, must endure hazing and processes like pledging that Western Global North regimes perpetrate to vet, define, and approve our gender-nonconforming and sexual identities.

The overwhelming pressure to share a Western U.S. legible narrative of persecution and a narrative of gender identity that is credible to refugee/asylum authorities, limits gender-nonconforming refugees' agency to experience life according to our needs and priorities. I personally felt most violated and robbed of my dignity when I realized I had no control over my own narrative and that my ability to live and tell my story had been taken from me. This was the price I was forced to pay. In order to become legible to the U.S. government and petition for one's basic rights to live, work, and survive, gender-nonconforming forced migrants must transform into a transgender refugee. Such a loss of control over one's own narrative assaults one's autonomy and self-determination.

My experience, though particular, is far from unique.[21] When gender-nonconforming subjects from the Global South seek asylum status with a pathway to citizenship in the U.S., they must first prove persecution due to membership in a gender-nonconforming social group as stipulated and recognized under international and U.S. refugee law. In doing this, we must operate

and convert our gender identity to fit Western Global North medico-legal parameters so as to be palatable and legible in the U.S. Upon this gender conversion, the U.S. often determines gender-nonconforming refugees as credible and therefore worthy of refugee status and a pathway to citizenship. However, the imposition and "idea that there is a large group of [gender-nonconforming] people who can be understood through the category transgender," in its broadest meaning, produces a reductive effect upon diverse communities of gender-nonconforming people. This imposition effaces their differences and imposes a singular story or a cohesive narrative of transgender identity.[22]

Transgender and feminist studies scholars such as David Valentine and Aren Aizura problematize understanding transgender as a universal and ahistorical category that resonates in the same way across geo-cultural-spatial localities. In David Valentine's text *Imagining Transgender: An Ethnography of a Category,* the author problematizes the U.S. produced category of transgender for its universalized usage and the implicit class privilege and embedded Anglo-White and Eurocentric assumptions upon which it rests.[23] The classism of the category has more to do with the pathologizing and medicalization of transgender identities, since medical transitions remain mostly inaccessible for people who do not have either health insurance or the means to pay for costly surgeries and procedures. The racism of this has to do with the ways in which Global South subjects, immigrants, refugees, indigenous people, and disenfranchised people of color in the Western Global North—due to histories of genocide, enslavement, and exploitation—disproportionately struggle with economic precarities as compared to Anglo-White Western counterparts. In addition to identifying the assumptions upon which transgender as a category rests, Valentine's sharpest critique aims at examining the supposed universality of the category that is utilized as both an identity marker as well as an analytic.

Valentine put words to my struggle of neatly separating sexual orientation, sex, gender, and gender identity, ignoring how these overlap. Gender identity as understood in Colombia can also be a sexuality. How else could one explain people who are only attracted to gender-nonconforming people? For many in the Global South, configurations of gender nonconformity in which the relationality of these categories and identities are formed make it difficult to parcel out gender from gender identity and sexuality. These non-Western Global North embodiments of gender, gender identities, and sexualities can also be examined through the gender-nonconforming mahu subjects within indigenous Hawaiian contexts and the Latin American *travestis*.[24] This is why other transgender scholars like Aren Z. Aizura remind us of the need to "remain cognizant of [the category's] potential to erase other lexicons of gender nonconforming life."[25] Aizura even points out that "the term gender nonconforming attempts to ameliorate the Eurocentrism of trans[gender] as [one] interrogate[s] the cultural and genealogical specificity of transgender's geographical imaginary," making it inappropriate to create false equivalences amongst gender-nonconforming peoples across geo-spatial, linguistic, and cultural localities.[26] With that said, this thesis's feminist decolonial analytic necessitates taking the Western Global North transgender category and contextualizing it to the degree that one can see, through U.S. medico-legal processes, how gender conversions of Global South subjects force the transformation of gender-nonconforming subjects into pathologized dependents of Western Global North standards of beauty and within narrowed gender affirming medical practices.

David Valentine and Aren Aizura expose transgender as a neocolonial fiction aimed at erasing diverse gender configurations across the Global South, which bears a Western U.S. capitalist agenda. In this sense, knowledge of gender is politically and subjectively produced to create a Western epistemic gender hegemony. The Western Global North promotes and enacts the

epistemicide of gendered knowledges produced in the Global South, and the violence of the material and embodied costs of these universalities are erased in narratives of so-called rescue and liberation.

When gender-nonconforming people seek asylum status with a pathway to citizenship, they must first prove persecution due to membership in a gender-nonconforming social group as stipulated and recognized under international and U.S. refugee law. In doing this, one must operate and convert their gender identity under Western medico-legal parameters to that of a transgender migrant that is palatable and legible in the Western Global North. Upon this gender conversion, the Western Global North often determines gender-nonconforming refugees are both credible and therefore worthy of refugee status and a pathway to citizenship. However, the "idea that there is a large group of [gender-nonconforming] people who can be understood through the category transgender," in its broadest meaning, is reductive of diverse communities of gender-nonconforming people who may have commonalities but also several differences amongst each other, impeding any singular story or cohesive narrative around a transgender identity.[27] Indeed, from the Hijra in South Asia, to the Fa'afafine of Polynesia, the ladyboys and the tomboys of Thailand, the travestis of Colombia, and the Takatāpui of New Zealand, there are myriad gender identities people of diverse genders adopt that exist outside of Western colonial logics.

## CONCLUSION

*¡Te Amo y Extraño Mamá!*

*Ohhhhhh* when I see my mother. *Ah ah*, see is not the right verb. Hug, squeeze, kiss, and grab are better substitutes. *Aiyyyyyyyyy mijita*, my knees get weak from just thinking about that moment. *Eeeeee* if people only knew how difficult it is to give and receive physical love from one's mama, maybe the U.S. regime officials wouldn't go after our mothers! When I get to see my mom, the world will stop, and then fast forward 11+ years. The effects of depleted serotonin will kick in. Oh and let's brace ourselves, the tears will pour stronger than in the Colombian rainforest. *Uh uh*, these are not sad tears I am talking about. These are healing tears. And for that,

I will celebrate! *Wepa*!!!! I owe my mother my life. She also taught me how to be a feminist. My success is my family's success and that of my communities. My values are shaped by my loyalties to the peoples I come from.

In this thesis, I have argued that the U.S. and other Western governments impose a Eurocentric, homogenizing transgender identity on members of the Global South who have gender-nonconforming identities and are seeking asylum and refugee status. Through our asylum processes, we are beholden to perform and adopt a transgender identity in order for our humanity to be recognized and for us to be able to access pathways to naturalization. In this context, naturalization is a violent way of enfranchising subjects with a formalized and legible human status that creates a social hierarchy in which there are unofficial humans or subhumans and a legitimate deserving human citizen. The deserving humans are enfranchised citizen-certified people who politically have a voice and access civil, political, economic, and social rights. In this manner, coding some humans as non-citizens renders us exploitable, disposable, and unequal, stratifying us not only through Western U.S. conceptualizations of race, gender, gender identity, sex, sexuality, embodiment, ethnicity, and class differentials, but also via the institution of citizenship.

In light of growing anti-immigrant sentiments in the U.S. and several other parts of the Western Global North, this research underscores the threats to humanity that citizenship as an institution presents. I, therefore, recommend a long-term solution of abolishing citizenship as a social, economic, and political institution from which human rights are accessed. Abolishment of citizenship as an institution will stop the stratification of human subjects based on citizenship status. In this manner, human rights are not only guaranteed to citizens but all people residing within any given geography. In the context of this research, abolishing citizenship as an institution will also eliminate the need to assess the veracity of one's self-identification and claimed gender identity.

I also recommend an expansive definition of the Western-produced refugee category that protects all who are forcibly displaced, including economic refugees. As part of broadening the categorical definition of the refugee identity, cultural insiders who are from the refugees' places of origin should be involved in the process of assessing their culturally-specific gender identities. This will put into place the humility and sensitivity necessary for a trauma-informed approach to processing refugee claims. Moreover, the expansion of the refugee categorical parameters should take into account the fact that poverty is gendered. Thus, economic factors for migration amongst gender minorities often also relates to the persecution that they experience due to their gender identity.

Additionally, it is imperative that people asserting their fluid gender identities are believed and the burdens of proof are borne by the Western U.S. and the larger Western Global North that are processing the refugee claims and not the refugees ourselves.[28] Otherwise, forced migrants are at the risk of having to relive our trauma through retelling our experiences for vetting. Furthermore, it is in the act of having to prove our gender identity that we are expected to "come out of the closet" and celebrate our gender identities within Western traditions instead of on our terms. Therefore, believing gender-nonconforming people when we tell you who we are is not only essential for our mental wellbeing but also in alignment with scholarship on gender as a contingent, deeply personal, and culturally-situated social development.

Lastly, we need to eliminate timelines from asylum and refugee status applications, since the process of working through the trauma of persecution experienced at one's place of origin varies from person to person. Any standardizing attempts are not only ableist but disconnected from the experiences and realities of refugees. This is important, as it will enable gender-nonconforming forced migrants to process trauma based on our respective journeys without feeling

rushed to prove our gender identities. We also need time to consider the effects of medical transitions on our respective bodies. Hormones, for example, have different effects depending on one's health and embodiment. Another example is gender-nonconforming people living with Human Immunodeficiency Virus (HIV) or diabetes who have different interactions with hormones than gender-nonconforming people who do not live with these illnesses. Putting a timeline on when and how to come out as a gender-nonconforming person exposes us to public scrutiny and to further danger, especially if our asylum claims are denied and we are deported to our places of birth. Making decisions on hormone usage that could lead to consequences such as medical castration is a difficult process. The imposition of arbitrary legal and administrative deadlines for how and when we should prove our transness make this process more difficult than it should be. It should end. The one-year deadline for filing for asylum or other deadlines for filing based on changes in circumstances need to be eliminated.

My research suggests that refugee/asylum processes assess and determine transness according to a Western Global North standard of gender nonconformance. My thesis specifically exhibits how this is enacted in the U.S. context, which creates a specific set of challenges and inequities unique to gender-nonconforming forced migrants and those turned into transgender refugees. The above are some first steps in a path to migrant and Global South liberation that requires centering those nation-state sanctioned violence directly affects, as well as listening to us and incorporating our solutions.

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[1] Miriam Jordan and Simon Romero, "What It Takes to Get Asylum in the U.S.," *The New York Times*, May 2, 2018, www.nytimes.com/2018/05/02/us/what-it-takes-to-get-asylum-us.html.

[2] For the purposes of this research Global South means Latin America, the Pacific, Asia, Africa, and indigenous nations in every continent of the world.

[3] Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952) (codified as amended at 8 U.S.C. § 1101); Frontiero v. Richardson, 411 U.S. 677 (1973); Matter of Acosta, A-24159781, U.S. Board of Immigration Appeals (March 1, 1985); Matter of C-A-, 23 I&N Dec. 951 (BIA 2006); Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014); Matter of W-G-R, 26 I&N Dec. 208 (BIA 2014).

[4] *Testimonio* is a Latin American tradition and method for knowledge production that centers lived experiences and theorizing from the flesh. This method is not to be conflated with testimony or phenomenological methods.

[5] Matter of Toboso-Alfonso, 20 I. & N. Dec. at 820-21 (BIA 1990).

[6] *Matter of Acosta, A-24159781.*

[7] It is important to note that there have been historical incongruities between the uniformity of U.S. implemented federal immigration laws as claimed by the BIA and the Ninth Circuit, which at points have not been congruent in their adoptions of the same rigorous understandings of immutability. See, e.g., Frontiero v. Richardson, 411 U.S. 677, 686 (1973). In this case, an immutable characteristic is "determined solely by the accident of birth." I highlight this as there are biologically deterministic connotations foregrounding conceptualizations of immutability that when compounded with gender deterministic logics, naturalize Western nation-state

manufactured gender and sex binaries despite the instability of those same categories more closely linked to socio-cultural and political manipulations.

[8] Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014); Matter of W-G-R, 26 I&N Dec. 208 (BIA 2014).

[9] There is nothing natural about Western manufactured legalities and identitarian productions. Colombia and the U.S., while both operating under Western exported nation-state structures of governance, each exist differently as nation-states in reference to their particular physical and human geographies. I theorize the neoliberal production of transgender identities to highlight the inequities in power amongst Global North and Global South nation-states, connecting them to my embodied and material experiences as a gender-nonconforming mestiza Colombiana and forced migrant turned into a neoliberal transgender U.S. Hispanic refugee.

[10] *Immigration and Nationality Act,* section 212(a)(9)(B)(i)(I) and (II) [the three-year and ten-year unlawful presence bars] and 212(a)(9)(C)(i)(I) [the permanent unlawful presence bar].

[11] At that time, I could not even think of applying for jobs because I had to first gain permission from the U.S. government to work. This is important because a lot of the immigration policy initiatives the U.S. Congress presents actively bar immigrants from accessing any social safety nets that only citizens and certain groups of permanent residents have access to. Thus, these federal immigration policies U.S. Congress introduces are then focused on simply extending a pathway to citizenship with promises that we will refrain from accessing social safety nets, prioritizing our ability to work and nothing else. The implicit message here is that as long as we provide economic benefits to U.S. citizens, our humanity is not of importance.

[12] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (Washington, D.C.: Author, 2013), 309.28, F43.23.

[13] American Psychiatric Association, *Diagnostic*, V62.4, Z60.5.

[14] The knowledges from my experiences as an gender-nonconforming forced migrant and now as a transgender refugee are what Chela Sandoval theorizes as differential consciousness. For more information on differential consciousness read: *Methodology of the Oppressed*. Theory out of Bounds ; v. 18. Minneapolis, MN: University of Minnesota Press, 2000.

[15] American Psychiatric Association, *Diagnostic*, 302.85, F64.1.

[16] *Immigration and Nationality Act,* 8 C.F.R. § 208.4(a)(2)(ii).

[17] Jordan and Romero, "What It Takes."

[18] Gary McIndoe, "Opinion: This Is What LGBTQI+ People Have to Go Through to Gain Asylum in the UK," *The Independent*, July 29, 2018, www.independent.co.uk/voices/lgbt-rights-gay-lesbian-bisexual-transgender-asylum-uk-a8468456.html.

[19] McIndoe, "Opinion."

[20] McIndoe, "Opinion."

[21] This research is in conversation with other scholars in the undocuqueer and undocutrans migration studies canon. For more information read: Cisneros, Jesus, and Julia Gutierrez. 2018. "'What Does It Mean to Be Undocuqueer?' Exploring (il)Legibility within the Intersection of Gender, Sexuality, and Immigration Status." *QED: A Journal in GLBTQ Worldmaking*. https://doi.org/10.14321/qed.5.1.0084.

[22] David Valentine, *Imagining Transgender: An Ethnography of a Category* (Durham: Duke University Press, 2007), 166.

[23] Valentine, *Imagining Transgender.*

[24] For a recent article that speaks to the specificity of travesti in other corners of Latin America read: Di Pietro, Pedro José Javier. "Decolonizing Travesti Space in Buenos Aires: Race, Sexuality, and Sideways Relationality." Gender, Place & Culture 23, no. 5 (2016): 677-93.

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[26] Aizura, *Mobile Subjects,* 12.

[27] Valentine, *Imagining Transgender,* 166.

[28] When I use the term Western U.S., I make a deliberate distinction between indigenous nations under U.S. occupation and the U.S. as imagined by the new generations of settler colonizers.