SITES OF (MIS)TRANSLATION: THE CREDIBLE FEAR PROCESS IN UNITED STATES IMMIGRATION DETENTION

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"[E]very sensible and rigorous theory of language shows that a perfect translation is an impossible dream. In spite of this, people translate."[1]
— Umberto Eco

ABSTRACT

The credible fear interview presents a high-stakes encounter in the circumscribed legal process afforded to individuals in immigration detention as they seek asylum in the United States. Limited research, however, exists on the sociolegal consequences of translation and interpretation in the asylum process generally and the credible fear context specifically. This article advances that scholarship in the context of the credible fear process for detained individuals by focusing on two sites of potential (mis)translation and (mis)interpretation: 1) explaining "credible fear" and 2) transposing individual facts and trauma into the legal categories that United States and international asylum law recognize as forming the basis for asylum claims.

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I. INTRODUCTION

The credible fear interview presents a high-stakes encounter in the circumscribed legal process afforded to individuals in immigration detention as they seek to claim asylum or other relief in the United States. Successful navigation of the credible fear interview has long been a detained person's first step towards release from jail and the opportunity formally to claim asylum under U.S. law.[2] In contrast to proceedings in immigration court, however, the credible fear interview is meant to be non-adversarial.[3]

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2. *See, e.g.*, Deborah Anker, Bahar Khoshnoudi & Ron Rosenberg, *Expedited Removal: Applying the Credible Fear Standard*, *in* IN DEFENSE OF THE ALIENS 193, 194 (Lydio S. Tomaski ed., Vol. XXI, 1998).

3. U.S. CITIZENSHIP & IMMIGR. SERVS., RAIO, ASYLUM DIVISION OFFICER TRAINING COURSE, CREDIBLE FEAR OF PERSECUTION AND TORTURE DETERMINATIONS 10 (2019) [hereinafter U.S. CITIZENSHIP & IMMIGR. SERVS. (2019)].

The interview takes place with an asylum officer—not before a judge.[4] Attorneys are rarely present.[5] In the event that an attorney or other legal assistant accompanies the asylum seeker, the standard protocol insists on the attorney's silence during the interview itself, although the asylum officer has some discretion to allow a short closing statement. Even so, translation, both literal and cultural, and its concomitant hazards permeate the credible fear process and create a potentially adverse environment. Should any of the myriad sites of translation or interpretation fail, even detained individuals and families with the strongest cases face removal from the United States, with potentially life-threatening consequences.[6]

Beginning in 2014, a surge of women and children fleeing violence in El Salvador, Guatemala, and Honduras sought refuge in the United States.[7] President Obama's administration responded by implementing a draconian new family detention policy, jailing the women and their children in for-profit immigration detention centers.[8] With the inauguration of Donald Trump as U.S. president in January 2017, immigration detention skyrocketed across the demographic landscape for everyone: families, unaccompanied children, adults traveling with minors, and single adults.[9]

The South Texas Family Residential Center (STFRC), a detention facility operated at immense profit by the private corporation CoreCivic, opened in December 2014 primarily to house the surge of women and their children from Central America.[10] The detention center's modular units for security,

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4. 8 U.S.C. § 1225(b)(1)(A)(iii) (2018).

5. 8 CFR § 208.9(b) (2020) (allowing an attorney or other representative to be present with the asylum seeker in the credible fear interview, but as a practical matter, access to counsel within immigration detention is severely limited). *See* STEPHEN W. MANNING, INNOVATION LAW LAB, THE ARTESIA REPORT, https://perma.cc/4CU6-WBWY (last visited Nov. 11, 2020); INGRID EAGLY & STEVEN SHAFER, ACCESS TO COUNSEL IN IMMIGRATION COURT (Sept. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

6. *See, e.g.*, Kevin Sieff, *When Death Awaits Deported Asylum Seekers*, WASH. POST (Dec. 26, 2018), https://www.washingtonpost.com/graphics/2018/world/when-death-awaits-deported-asylum-seekers/; Sarah Stillman, *When Deportation Is a Death Sentence*, THE NEW YORKER (Jan. 8, 2018), https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence; Katie Morrissey, *Reporting in Honduras on Asylum Seekers Who Were Deported and Killed*, SAN DIEGO UNION TRIBUNE (Oct. 11, 2020, 6:00 AM), https://www.sandiegouniontribune.com/news/immigration/story/2020-10-11/back-story-reporting-in-honduras-asylum.

7. See JONATHAN T. HISKEY, ABBY CÓRDOVA, DIANA ORCÉS & MARY FRAN MALONE, UNDERSTANDING THE CENTRAL AMERICAN REFUGEE CRISIS: WHY THEY ARE FLEEING AND HOW U.S. POLICIES ARE FAILING TO DETER THEM 1 (Feb. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding_the_central_american_refugee_crisis.pdf; Karen Musalo & Eunice Lee, *Seeking a Rational Approach to a Regional Refugee Crisis: Lessons from the Summer 2014 "Surge" of Central American Women and Children at the US-Mexico Border*, 5 J. HUMAN MIGRATION & SECURITY 137, 138 (2017).

8. Wil S. Hylton, *The Shame of America's Family Detention Camps*, N.Y. TIMES (Feb. 4, 2015), http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html.

9. Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017), www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/; J. RACHEL REYES, CTR. FOR MIGRATION STUDIES, IMMIGRATION DETENTION: RECENT TRENDS AND SCHOLARSHIP tbl.2 (2018), https://cmsny.org/publications/virtualbrief-detention/.

10. Jim Forsyth, *Largest Family Detention Center for Immigrants Opens in Texas*, REUTERS (Dec. 15, 2014, 3:25 PM), https://www.reuters.com/article/us-usa-texas-immigration/largest-family-detention-center-for-immigrants-opens-in-texas-idUSKBN0JT2H320141215; REYES, *supra* note 9; Dana Nickel,

visitation, interviews, court, housing, and school all sit behind chain link fencing and razor wire in the former oil fracking fields near the small town of Dilley, Texas, an hour and a half southwest of San Antonio. When the detention center's 2,400 beds are full, the total population in the town of Dilley increases by more than fifty percent.[11]

Since the detention center opened, Proyecto Dilley has organized volunteer attorneys and law students in intensive, week-long, pro-bono stints to assist the jailed women and their children in navigating the credible fear interview process.[12] The pro-bono legal assistance and volunteer interpretation effort aims to empower the detained women to successfully navigate their credible fear interviews and obtain release from immigration detention to then pursue formal asylum claims in the United States.[13] The detained women seek to build lives in safety—free from violence.[14] In addition to assisting individual clients, Proyecto Dilley also engages in cause lawyering to change U.S. law and policy regarding immigration detention.[15] Within the detention center, legal volunteers with bilingual skills, but no formal training as translators or interpreters, act as front-line triage for vulnerable families, many of whom have suffered significant trauma.[16]

Bilingual volunteer lawyers' work with detained populations preparing them for a credible fear interview (CFI) falls within a lacuna in translation and interpretation studies. First, the work is neither strictly translation—creating a target language written text from a source language written text—nor strictly interpretation—oral representation in the target language of oral communication in the source language.[17] Rather than engaging solely in written translation or oral interpretation, CFI preparation work melds the two. Lawyers may engage in sight translation by representing orally the text of the

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Who Profits From Migrant Detention in the US?, THE GLOBE POST (Aug. 19, 2019), https://theglobepost.com/2019/08/19/profit-migrant-detention/.

11.   *Dilley, Texas Population 2020*, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/dilley-tx-population (last visited Nov. 8, 2020) (explaining that as of 2020 the town of Dilley has a population of 4,498).

12.   The organizational name and funding model for pro-bono legal work at the Dilley detention center has varied over the years. Currently, the project is a local partner of the Immigration Justice Campaign under the name Proyecto Dilley. *Proyecto Dilley*, IMMIGRATION JUSTICE CAMPAIGN, https://immigrationjustice.us/volunteeropportunities/dilley/ (last visited Nov. 9, 2020).

13.   *Id.*

14.   *Id.*

15.   *Id. See, e.g.*, Complaint for Declaratory and Injunctive Relief, M.M.V. v. Barr, No. 1:19-cv-2773 (D.D.C. Sept. 16, 2019) and related discussion at *infra* notes 63–65 and accompanying text; *see also CRCL Complaint on Challenges Faced by Indigenous Language Speakers in Family Detention*, AM. IMMIGR. LAW. ASS'N (Dec. 10, 2015), https://www.aila.org/advo-media/press-releases/2015/crcl-complaint-challenges-faced-family-detention (a letter dated December 15, 2015 from CARA Family Detention Pro Bono Project to Megan Mack, Office of Civil Rights and Civil Liberties, Department of Homeland Security and John Roth, Office of Inspector General, Department of Homeland Security entitled "Family Detention – Challenges Faced by Indigenous Language Speakers").

16.   *See Proyecto Dilley*, *supra* note 12.

17.   *See* Alessandra Riccardi, *The Concept of Strategies in Translation and Interpreting Studies: Shared and Dissimilar Features, in* TRANSLATION AND INTERPRETING: CONVERGENCE, CONTACT AND INTERACTION 63, 63–86 (Eugenia Dal Fovo & Paola Gentile eds., 2019).

1980 Refugee Act, other statutes, government regulations, or government forms. Likewise, legal assistants may create written language texts like sworn declarations based on asylum-seekers' oral statements in their primary language. Bilingual lawyers' CFI preparation work in immigration detention centers represents a case study in the convergence of translation and interpretation as modes of communication.

Second, even as translation and interpretation converge in the lawyers' CFI preparation work, that work does not fit neatly within established professional genres and the associated loci of physical and content performance. The preparation work is not exactly court interpretation, legal translation, or community translation and interpreting, although it draws on and encounters challenges associated with all three subdisciplines.[18] Whatever the boundaries of particular subdisciplines or genres in translation and interpretation studies, scholars repeatedly note the limited research on asylum processes around the world.[19] Third, fulfilling a primary professional role as lawyers and legal assistants complicates bilingual volunteers' simultaneous performance of a secondary interpretive/translative function as laypersons.

In their groundbreaking scholarship and innovative practice, Juliet Stumpf and Stephen Manning theorize immigrant advocacy like Proyecto Dilley as "massive collaborative representation."[20] As Stumpf and Manning describe it, massive collaborative representation strives to deliver legal services to detained migrants and asylum-seekers in a manner and on a scale commensurate with the staggering need, recognizing that access to justice in immigration detention depends on access to legal representation.[21] Our research on the credible fear interview process builds on and interrogates the concept of massive collaborative representation in the context of language access. The vast majority of individuals jailed in U.S. immigration detention centers speak a primary language other than English.[22] The feasibility of massive

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18. *See* Carmen Valero Garcés, *Public Service Interpreting and Translation: Some Convergences and Trends at the Beginning of the Twenty-first Century, in* TRANSLATION AND INTERPRETING: CONVERGENCE, CONTACT AND INTERACTION 21, 25 (Eugenia Dal Fovo & Paola Gentile eds., 2019); Ignacio García, *Volunteers and Public Service Translation, in* TRANSLATING FOR THE COMMUNITY 98–109 (Mustapha Taibi ed., 2018); HOLLY MIKKELSON, INTRODUCTION TO COURT INTERPRETING (2d ed. 2016); Marjory Bancroft, Lola Bendana, Jean Bruggeman & Lois Feuerle, *Interpreting in the Gray Zone: Where Community and Legal Interpreting Intersect*, 5 TRANSLATION & INTERPRETING 94 (2013).

19. Jennifer S. Holmes, Banks P. Miller & Linda Camp Keith, *Levelling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability*, 49 LAW & SOC'Y REV. 209 (2015); Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007); ANDREW I. SCHOENHOLTZ, PHILIP G. SCHRAG & JAYA RAMJI-NOGALES, LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY (2014).

20. Stephen Manning & Juliet Stumpf, *Big Immigration Law*, 52 U.C. DAVIS L. REV. 407 (2018).

21. *Id*. at 420–21.

22. Cristobal Ramón & Lucas Reyes, *Language Access in the Immigration System: A Primer*, BIPARTISAN POL'Y CTR. (Sept. 18, 2020), https://bipartisanpolicy.org/blog/language-access-in-the-immigration-system-a-primer/ (citing government data to show that 89% of individuals received immigration hearings in a language other than English in 2018); U.S. IMMIGR. & CUSTOMS ENF'T, LANGUAGE ACCESS PLAN (June 14, 2015), https://www.ice.gov/sites/default/files/documents/Document/2015/LanguageAccessPlan.pdf; *see Proyecto Dilley*, *supra* note 12.

collaborative *legal* representation depends on linguistic access for the detained individuals—translation and interpretation not only among languages, but also between the highly technical categories of U.S. immigration law and the everyday understanding of detained individuals.

In this article, we identify and explore two sites of potential (mis)translation and (mis)interpretation in CFI preparation, and we detail the insights gained from our research in each context. First, bilingual lawyers and legal volunteers may encounter difficulty explaining the concept of "credible fear" to Spanish-speaking asylum-seekers because: (a) "credible fear" is a term of art that asylum-seekers are unlikely to have encountered prior to seeking asylum and (b) Spanish speakers may interpret "credible fear" to mean something different from its legal meaning based on their intuitive understanding of "temor," the Spanish word asylum officers and asylum-related forms and documents use as the translation of "fear."

Second, volunteer lawyers encounter additional difficulties in transposing individual facts and trauma into the legally recognized categories that serve as legitimate bases for asylum claims: (a) asylum-seekers instinctively focus on experiences and events that had the most immediate and traumatic impact on their decision to flee their homes rather than other facts that may more closely map onto the legal bases for asylum; (b) the bases for which asylum is available are tightly intertwined with concepts that have varying contours across cultures and countries; and (c) the legal definition of at least one basis for asylum—membership in a particular social group—has expanded and contracted in an unpredictable fashion that creates a moving target for asylum-seekers.

To provide the necessary background for our discussion, Part II introduces the credible fear process, including relevant statutes and case law, and Part III describes our methodology and data collection process. We then discuss each of the sites of (mis)translation identified above in Parts IV and V. Finally, Part VI provides some brief conclusions and questions for future research and policy decisions.

II.   THE CREDIBLE FEAR PROCESS

A.   *Procedures: Expedited Removal and Credible Fear Interviews*

In 1996, the United States Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA).[23] The Act implemented major changes in U.S. immigration law, including the creation of a new procedural tool called expedited removal, that allowed immigration officers to refuse entry to or remove certain non-citizens from the country with

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23.   Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. § 1225 (2018).

almost none of the procedural protections that law had previously provided.[24] For non-citizens subject to expedited removal, gone were full hearings before an immigration court, and gone was the opportunity for appellate review before both the Board of Immigration Appeals (BIA) and federal courts.[25] Under expedited removal, IIRAIRA provided immigration officers with nearly unfettered power to order certain non-citizens removed "without further hearing or review."[26]

Consistent with international law and the Refugee Act of 1980, however, IIRAIRA provided one safeguard to check immigration officers' removal power: the credible fear process.[27] When a non-citizen expresses a fear of return to her home country or an intent to apply for asylum, IIRAIRA requires the immigration officer to refer the case to an asylum officer for a credible fear interview.[28] An asylum officer then conducts a non-adversarial interview with the individual "to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture. . . ."[29] As part of the evaluation, the asylum officer also considers whether any unusual issues exist that merit full exploration before an immigration judge.[30] An individual who passes her credible fear interview moves from expedited removal to the regular removal process with its attendant procedural safeguards, including the opportunity to present a fully developed case before an immigration judge, and in the event of the immigration judge's negative decision, to avail herself of appellate review before the BIA and in federal court.[31] Individuals who receive negative credible fear determinations from an asylum officer have a limited right to appeal to an immigration judge but no further appellate rights and no right to fully develop their case.[32] They remain in the truncated process of expedited removal. Individuals with negative credible fear determinations are subject to quick deportation from the United States and a five-year ban on their return.[33]

B. *The Meaning of Credible Fear in U.S. Law*

Credible fear is not an intuitive concept; its meaning is not readily apparent from the bare juxtaposition of the adjective "credible" and the noun "fear."

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24. For critiques of the expedited removal process, see, for example, Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. Cal. L. Rev. 181 (2017) and Daniel Kanstroom, *Expedited Removal and Due Process: "A Testing Crucible of Basic Principle" in the Time of Trump*, 75 Wash. & Lee L. Rev. 1323, 1328 (2018) (examining the development of the expedited removal process and its expansion during the Trump administration).

25. *See* Am. Immigr. Council, A Primer on Expedited Removal 1–2 (2019), https://www.americanimmigrationcouncil.org/research/primer-expedited-removal.

26. 8 U.S.C. § 1225(b)(1)(A)(i) (2018).

27. 8 U.S.C. § 1225(b)(1)(B)(ii) (2018).

28. *Id.*

29. 8 C.F.R. § 208.30(d) (2021).

30. *Id.*; 8 C.F.R. § 208.30(e)(4) (2021).

31. 8 U.S.C. § 1225(b)(1)(B) (2018).

32. 8 U.S.C. § 1225(b)(1)(B)(iii)(II)–(III) (2018); 8 C.F.R. § 208.30(g)(1)–(2) (2021).

33. 8 U.S.C. § 1182(a)(9)(A)(i) (2018).

Even in American English, before bilingual lawyers translate or interpret the concept for detained individuals, the meaning of credible fear is both technical and contested. As described in Part IV, the difficulty of defining "credible fear" as a technical term, asylum-seekers' likely unfamiliarity with the term or its Spanish translation, and asylum-seekers' likely understanding of the component words of "credible fear" all pose difficult challenges in helping asylum-seekers navigate the credible fear process.

At its statutory inception in 1996, IIRAIRA defined "credible fear" as "a significant possibility . . . that the alien could establish eligibility for asylum."[34] The relevant sections of the Code of Federal Regulations reiterate "significant possibility" as the standard that non-citizens must meet to establish credible fear of persecution.[35] In December 2018, the United States District Court for the District of Columbia decided *Grace v. Whitaker*, the first federal court case to address the "significant possibility" standard in the context of a credible fear interview.[36] The court agreed with the plaintiffs' contention that "to prevail at a credible fear interview, the alien need only show a 'significant possibility' of a one in ten chance of persecution, i.e., a fraction of ten percent."[37] To support its holding, the D.C. District Court cited IIRAIRA itself and pre-IIRAIRA Supreme Court precedent, *INS v. Cardoza-Fonseca*,[38] in which the Court had found a ten percent chance of persecution sufficient for a positive asylum decision itself.[39] The D.C. District Court bolstered its decision further with the legislative history of IIRAIRA: "[t]he credible fear standard . . . is intended to be a low screening standard for admission into the usual full asylum process."[40]

On July 17, 2020, the Circuit Court for the District of Columbia ruled on the government's appeal from the decision below.[41] In its decision to affirm in part and remand in part, the court did not comment on what constitutes a "significant possibility" of eligibility for asylum.[42] Rather, the court focused on the substantive requirements for asylum eligibility and remanded the case for further consideration.[43] As of November 2020, no other federal courts have defined "credible fear" or "significant possibility" in the immigration context or adopted the D.C. District Court's "fraction of ten percent" reasoning.[44]

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34. 8 U.S.C. § 1225(b)(1)(B)(v) (2018).
35. 8 C.F.R. § 208.30(e)(2)–(3) (2021); 8 C.F.R. § 1208.30(e) (2021).
36. Grace v. Whitaker, 344 F. Supp. 3d 96, 105 (D.D.C. 2018).
37. *Id*. at 127.
38. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).
39. *Whitaker*, 344 F. Supp. 3d at 96.
40. *Id*. at 127 (citing 142 Cong. Rec. S11491-02).
41. Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020).
42. *Id*.
43. *Id*. at 897–906.
44. Data was generated through a terms and connectors search on Westlaw for "('credible fear' OR 'significant possibility') /s defin!" filtered to cases from federal courts after December 19, 2018, the date on which the D.C. District Court decided *Grace v. Whitaker*. Of the fifteen cases in the results list, none related to immigration law define "credible fear" or "significant possibility" beyond the statutory

In its own training materials for the asylum officers who conduct credible fear interviews, the U.S. government has long defined credible fear by reference to the statutory language of "a significant possibility . . . that the alien could establish eligibility for asylum."[45] The evolving explanation of "significant possibility" in those training materials since 2006, however, highlights the technical and indeterminate meaning of credible fear over time.

In 2006, training materials for asylum officers candidly noted that "[n]either the statute nor the immigration regulations define the 'significant possibility' standard of proof, and the standard has not yet been discussed in immigration case law."[46] At the same time, the 2006 training materials cited legislative history to show that the standard was "intended to be a low screening standard," the same legislative history upon which the D.C. District Court relied in *Grace v. Whitaker*.[47] The 2006 training materials informed an asylum officer's understanding of "significant possibility" by contrasting it with other legal standards. "Significant possibility" was a low standard, but not as low as not "manifestly unfounded" or not "clearly fraudulent" or "a mere possibility of success."[48] It was also not as high as "more likely than not" or "more probable than not"—a standard which the House version of IIRAIRA had rejected.[49] Further, the 2006 training materials used *Holmes v. Amerex Rent-a-Car*, a 1999 Circuit Court of Appeals for the District of Columbia case—which it acknowledged had nothing to do with immigration law—to provide a specific positive description of "significant possibility" as "'a substantial and realistic possibility' of succeeding."[50]

Reliance on *Holmes* survived through revisions to the asylum officer training materials in 2014, 2017, and 2019 as did *Holmes*'s derivative explanation of "significant possibility" in the preliminary credible fear context as a "substantial and realistic possibility of succeeding" in a later full asylum claim.[51]

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definitions with the exception of *Gonzalez Garcia v. Barr*, No. 06327, 2020 WL 525377 (W.D.N.Y. Feb. 3, 2020). In *Gonzalez Garcia v. Barr*, the federal district court quotes the House Report from 1996 showing the legislative intent behind "credible fear." *Id.* at *9 (quoting H.R. Rep. No. 104-469(l) at 158) (emphasis added) ("The credible fear standard is designed to weed out non-meritorious cases so that *only applicants with a likelihood of success* will proceed to the regular asylum process. If the alien meets this threshold, the alien *is permitted to remain in the U.S.* to receive a full adjudication of the asylum claim—*the same as any other alien in the U.S.*"). Additional data was generated through a terms and connectors search on Westlaw for "'fraction of ten percent' OR 'fraction of 10%'" filtered to cases from federal courts after December 19, 2018. Of the nine cases in the results list, only one was related to immigration: Capital Area Immigrants' Rights Coalition v. Trump, 471 F. Supp. 3d 25 (D.D.C. 2020) (appeal filed). In *Capital Area Immigrants' Rights Coalition*, the District Court for the District of Columbia cites its own decision in *Grace v. Whitaker* regarding the "fraction of ten percent" reasoning to explain "significant possibility" in the credible fear context.

45. U.S. CITIZENSHIP & IMMIGR. SERVS., (2019), *supra* note 3, at 9, 11–12.

46. U.S. CITIZENSHIP & IMMIGR. SERVS., RAIO, ASYLUM DIVISION OFFICER TRAINING COURSE, CREDIBLE FEAR OF PERSECUTION AND TORTURE DETERMINATIONS 12 (2006).

47. *Id.* at 12–13 (citing 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch)).

48. *Id.*

49. *Id.*

50. *Id.* (citing Holmes v. Amerex Rent-a-Car, 180 F.3d 294, 297 (D.C. Cir. 1999)).

51. U.S. CITIZENSHIP & IMMIGR. SERVS., RAIO, ASYLUM DIVISION OFFICER TRAINING COURSE, CREDIBLE FEAR OF PERSECUTION AND TORTURE DETERMINATIONS 14 (2014) [hereinafter U.S. CITIZENSHIP & IMMIGR. SERVS. (2014)]; U.S. CITIZENSHIP & IMMIGR. SERVS., RAIO, ASYLUM DIVISION

Likewise, through those revisions, the training materials continued to contrast "significant possibility" with other legal standards such as "not manifestly unfounded," "a minimal possibility," "more likely than not," as well as a "preponderance of the evidence."[52]

Conversely, the explicit legislative history regarding the low screening standard for credible fear did not survive these various revisions. Rather, the 2014 training materials elided the legislative history in deference to regulatory history. The 2014 training materials noted that in promulgating final regulations in contrast to its interim regulations, the Department of Justice decided not to "adopt regulatory language emphasizing that the credible fear standard is a low one."[53] The 2019 revisions eliminated any mention of "significant possibility" as a low standard for screening credible fear, whether in interim regulations or the congressional record.[54] From 2006 to 2019, the standard for screening credible fear crept upward with each revision to the asylum officer training materials. Moreover, even though it revised the asylum officer training manual after the D.C. District Court's decision in *Grace v. Whitaker*, the U.S. government did not acknowledge the case at all in the 2019 materials but continued to rely on the non-immigration case *Holmes* to define "significant possibility."[55] The evolving explanation of credible fear in asylum officer training materials and the continued reliance on *Holmes* highlight the contested meaning of credible fear and "significant possibility" even among the government officials who are meant to apply it.

To inform the general public regarding the credible fear standard, the United States government quotes the statutory language of "significant possibility" in printed and electronic materials.[56] To inform asylum-seekers specifically, the U.S. government provides Form M-444, "Information About Credible Fear Interview." For most asylum-seekers, Form M-444 is likely their first encounter with the term "credible fear." For more than twenty years, from March 1999 to May 2019, the government distributed Form M-444 (Revised 3-22-99), a version of the form which identified "significant possibility" as the standard for credible fear.[57] Two single-spaced pages of text explained the credible fear process in detail, noting that the interview was not a formal hearing on the complete merits but was "only to help [the U.S. government] determine whether there is a significant possibility that [the individual] may qualify as a refugee or for protection from removal under the

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Officer Training Course, Credible Fear of Persecution and Torture Determinations (2017) [hereinafter U.S. CITIZENSHIP & IMMIGR. SERVS. (2017)]; U.S. CITIZENSHIP & IMMIGR. SERVS. (2019), *supra* note 3.

52. U.S. CITIZENSHIP & IMMIGR. SERVS. (2014), *supra* note 51, at 14; U.S. CITIZENSHIP & IMMIGR. SERVS. (2017), *supra* note 51; U.S. CITIZENSHIP & IMMIGR. SERVS. (2019), *supra* note 3, at 9, 11–12.

53. U.S. CITIZENSHIP & IMMIGR. SERVS. (2014), *supra* note 51, at 14.

54. U.S. CITIZENSHIP & IMMIGR. SERVS. (2019), *supra* note 3, at 9, 11–12.

55. *Id*. at 10.

56. *Questions and Answers: Credible Fear Screening*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening (last updated July 15, 2015).

57. FORM M-444 (REV. 3-22-99) "INFORMATION ABOUT CREDIBLE FEAR INTERVIEW" (1999).

Convention against Torture."[58] The Spanish-language version of Form M-444 translated "credible fear" as "temor creíble" and "significant possibility" as "posibilidad significativa."[59]

In May 2019, the U.S. government revised Form M-444 to decouple the definition of "credible fear" from the statutory language of a significant possibility of obtaining asylum, removing even that minimal guidance as to the meaning of the technical legal term.[60] Form M-444 (Revised 5-17-19) now states only that the credible fear interview "is a screening to determine if [an individual is] eligible for a hearing before an immigration judge."[61] Except recursively through the repeated use of the term "credible fear," Form M-444 (Revised 5-17-19) provides no information to the applicant or her attorney regarding eligibility for a full asylum hearing. Form M-444 (Revised 5-17-19) further obscures the already oblique standard by which an asylum officer is to determine whether an applicant's fear of persecution is sufficient for a positive credible fear decision and her release from immigration detention.

Non-profit advocacy groups typically explain the threshold for a positive credible fear determination as either a ten percent chance of establishing eligibility for asylum or a fraction of ten percent, in reliance on *INS v. Cardoza-Fonseca*,[62] and as the D.C. District Court agreed in *Grace v. Whitaker*.[63] By defining "significant possibility" in terms of a specific percentage—whether ten percent or a fraction of ten percent—advocacy groups and non-profit organizations translate the more general idea of significance into specific, concrete numbers. Moreover, in September 2019, a group of women and children detained at the South Texas Family Residential Center filed suit against the U.S. government in the D.C. District Court to challenge the standard used to deny their credible fear claims.[64] The complaint identified an abrupt and dramatic decrease in the percentage of women detained at the jail who received positive credible fear decisions during late July and early August 2019.[65]

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58.   *Id.*

59.   FORMULARIO M-444 (REV. 17-mayo-2019) "INFORMACIÓN SOBRE LA ENTREVISTA DE TEMOR CREÍBLE" (2019).

60.   FORM M-444 (REV. 5-17-19) "INFORMATION ABOUT CREDIBLE FEAR INTERVIEW" (2019).

61.   *Id.*

62.   INS v. Cardoza-Fonseca, 480 U.S. 430, 440 (1987).

63.   Julie Veroff, *Asylum Officers Are Being Replaced by CBP Agents*, AM. C.L. UNION (May 6, 2019, 5:15 PM), www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/asylum-officers-are-being-replaced-cbp-agents; ASYLUM SEEKER ADVOCACY PROJECT AT THE URBAN JUSTICE CENTER, VINDICATING THE RIGHTS OF ASYLUM SEEKERS AT THE BORDER AND BEYOND (2018); Complaint for Declaratory and Injunctive Relief, *supra* note 15; Brief of Refugee and Human Rights Organizations and Scholars as Amici Curiae in Support of Petitioners, Castro v. DHS, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit, No.16-812 (Jan. 26, 2017), http://www.scotusblog.com/wp-content/uploads/2017/01/16-812-Refugee-Organization-Cert-Amicus-Brief.pdf.

64.   Complaint for Declaratory and Injunctive Relief, *supra* note 15.

65.   *Id.*

C. *Recognized Bases for Asylum*

The credible fear process is further complicated by the sometimes amorphous and contested categories upon which asylum is based. The credible fear process is designed to help asylum officers determine whether asylum-seekers have met a threshold likelihood of establishing eligibility for asylum, which means that asylum-seekers must also provide facts that on their face render them eligible for asylum.[66] Under the Refugee Act of 1980, individuals are eligible for asylum if they are 1) outside of their home country, 2) unable or unwilling to return to it, 3) unable or unwilling to avail themselves of the protection of their country, 4) because of persecution or a well-founded fear of persecution, 5) on account of race, religion, nationality, membership in a particular social group, or political opinion.[67] As more fully described in Part V below, these bases for asylum rarely map onto asylum-seekers' cultural understanding of their experiences, complicating the lawyer's role. The lawyer must not only attempt to explain the contours of applicable law, but she must also transpose the facts into legally recognized categories.

III.   Methodology and Data Collection

To explore and explain the difficulties that attorneys and other volunteers experience in assisting detained clients navigating the credible fear process, we use both quantitative and qualitative data. Our discussion of the volunteer attorneys' role in helping detained asylum-seekers to understand the complex meaning of "credible fear" relies on quantitative linguistics data. This data derives from research in corpus linguistics databases, including the Corpus of Contemporary American English (COCA) and El Corpus del Español (ECdEs). Corpus linguistics data and analysis involves the use of large collections of natural language text to identify patterns in word or phrase usage.[68]

COCA is a collection of natural language text equally balanced among five genres: spoken, fiction, popular magazines, newspapers, and academic texts.[69] The over 570 million words within the corpus derive equally from each year beginning with 1990 and ending with 2019. ECdEs contains billions of words of Spanish-language data.[70] Subsets within ECdEs allow searches for 1) genre/historical data from the 1200s through the 1900s, 2) Spanish-language developments based on web and dialect data collected more recently, and 3) printed materials from 2012 to the present. The Web/

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66. U.S. Citizenship & Immigr. Servs. (2019), *supra* note 3.
67. 8 U.S.C. § 1101(a) (2018) (defining the term "refugee").
68. *See, e.g.*, Tony McEnery & Andrew Hardie, Corpus Linguistics: Method, Theory and Practice 1 (2011), https://www.cambridge.org/core/books/corpus-linguistics/what-is-corpus-linguistics/C16393FB65F2BA9D7C7EFF9284F99EAE.
69. *Corpus of Contemporary American English*, English-Corpora.org, http://www.english-corpora.org/coca/ (last visited Nov. 9, 2020) [hereinafter *COCA*].
70. El Corpus del Español, http://www.corpusdelespanol.org (last visited Nov. 9, 2020) [hereinafter ECdEs].

Dialect section of ECdEs, which we heavily rely on in this article, includes "about two million words of Spanish, taken from about two million web pages from 21 different Spanish-speaking countries from the past three to four years."[71] Like COCA, ECdEs allows users to see the frequency, collocates (closely associated words), and the context of any search term. Unlike COCA, ECdEs is not divided by genre or year. It is, however, divided by country so that a researcher may look for specific information about a word's usage in a particular country.

The COCA and ECdEs web-based-user interfaces allow users to gather several different kinds of information for any particular word or phrase. First, users may examine the frequency of a word. This information can help paint a picture of how often a particular word or phrase is used in American English. Because COCA allows a researcher to view the frequency of a word or phrase in a single year or time period or in a particular genre, this tool can be helpful in comparing the usage of a term in various contexts. ECdEs provides particularly useful functionality for our purposes here: users may compare frequency and other data across the countries in which the corpus's text originates. Second, the COCA and ECdEs interfaces allow users to view words or phrases in context. By examining specific instances of a term's usage, a corpus user can become more familiar with the way that term has been and can be used. Finally, COCA and ECdEs can identify words that frequently occur in close proximity to a term of interest. These neighboring words—called "collocates"—often reveal insights into a word's meaning that may not be readily apparent even from examining words in context.

In addition to these primary corpora, we also rely on smaller corpora of English-language television shows and movies.[72] As a methodology, corpus linguistics allows us to map the frequency and usage of the term "credible fear" in English-language sources as well as the meaning of the word "fear" in relation to Spanish terms such as "temor" and "miedo." While the standard and official U.S. government translation of "credible fear" into Spanish is "temor creíble," the commensurability of the terms is far from apparent, particularly given that "credible fear" is a technical legal term of art created solely for the U.S. asylum process. It has no independent meaning in American English apart from the immigration context. In addition to the term's highly technical but contested use in English, differing connotations of "fear" and "temor" pose significant risks for detained individuals who face deportation if the credible fear process fails.

Our discussion of the volunteer attorney's role in helping asylum-seekers organize and transpose the facts of their lived experiences into the scaffolding

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71.   *Web/Dialects*, EL CORPUS DEL ESPAñOL, http://www.corpusdelespanol.org/web-dial/ (last visited Nov. 9, 2020).

72.   *The TV Corpus*, ENGLISH-CORPORA.ORG, http://www.english-corpora.org/tv/ (last visited Nov. 9, 2020); *The Movie Corpus*, ENGLISH-CORPORA.ORG, http://www.english-corpora.org/movies/ (last visited Nov. 9, 2020).

of U.S. asylum law relies on qualitative data. That data derives primarily from our pro-bono work at the South Texas Family Residential Center as Spanish-speaking volunteers and volunteer supervisors through Proyecto Dilley over the course of eight separate weeks since June 2016. As bilingual legal volunteers, but with no formal training in translation or interpretation, we educated hundreds of women about U.S. asylum law, prepared the women for credible fear interviews with U.S. government asylum officers, and trained other volunteers to perform those tasks. Behind the razor wire of U.S. immigration detention, we heard the women's stories and worked to translate the truth of those experiences into legally relevant categories that were often incongruent with the women's cultural understandings of their own experiences. We consulted with the volunteers we supervised to help them navigate the sites of (mis)translation and (mis)interpretation we explore in this article.

IV.   INTERPRETING AND TRANSLATING "CREDIBLE FEAR"

A legal volunteer at the South Texas Family Residential Center may first encounter a site of (mis)translation when discussing the term "credible fear" with an asylum seeker. "Credible fear" is a technical term virtually absent from English usage outside the asylum context. The Spanish translation used in U.S. asylum documents and interviews—"temor creíble"—is similarly nonexistent in ordinary Spanish usage. As a result, many legal volunteers will have little experience with the term, and Spanish-speaking asylum-seekers may have never heard the term used at all. To make matters more difficult, our research suggests that the term "fear" and its Spanish translation, "temor," have slightly different meanings and usage, further increasing the risk that an asylum-seeker may not understand the legal standards applicable to her claim.

A.   *"Credible Fear" as a Technical Term*

Despite high profile, highly politicized characterizations of immigration to the United States as a twenty-first-century crisis, the term "credible fear" remains obscure. In contrast to other legal terms of art, like "the right to remain silent," "credible fear" has not become part of the popular American lexicon, perhaps because only relatively small, marginalized, and racialized groups of individuals—primarily in immigration detention—feel its effects. "Credible fear" is a legal term of art created solely for the U.S. asylum process.[73] It appears with exceptionally low frequency in corpora of American English. Within the 560 million words that comprise the Corpus of Contemporary American English, the term "credible fear" appears only

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73. On Westlaw, a terms and connectors search for "'credible fear' BUT NOT (asylum OR immigra!)" for cases from all jurisdictions revealed 183 results. A cursory look at the results revealed that the term is used in employment law cases, though it appears that the term is not defined statutorily but through case law. 111 of the 183 results were labeled with the practice area "employment & labor."

fourteen times, all connected with U.S. immigration.[74] In the iWeb Corpus, a 14 billion-word website-based corpus, "credible fear" has only 420 hits on 120 unique websites, all but a small handful of which relate to the U.S. asylum process.[75]

"Credible fear" appears twice in a corpus of English language television programming from 1950 to 2018, once in 2000 in the White House drama *The West Wing* and once in 2011 in the police action show *NCIS*, both times in the context of U.S. asylum.[76] In a corpus of movie scripts from 1930 to 2018, the term appears only in the script for what would become the 2004 comedy-drama *The Terminal*.[77] In *The Terminal*, Tom Hanks stars as Viktor Navorski, a tourist who arrives at JFK Airport in New York City just as his fictional home country of Krakozhia implodes. Now stateless, Victor is unable to present the documents that would allow him to leave the airport legally. He remains trapped within the airport. Annoyed at Viktor's continued presence in his jurisdiction, the airport Customs and Border Protection chief eventually dangles the credible fear process as a sure-fire, legal way for Viktor to leave the airport and enter the United States. Viktor need only claim fear of returning to Krakozhia. When Viktor queries "Fear? From what?" the Customs and Border Protection chief responds, "It doesn't really matter what you're afraid of. It's all the same to Uncle Sam."

Under U.S. law, it does ultimately matter what an asylum-seeker fears. The law requires him to establish a credible fear of persecution on account of one of five protected categories: race, religion, nationality, political opinion, or membership in a particular social group.[78] Customs and Border Protection is the U.S. government agency charged with initial responsibility for asking non-citizens seeking admission to the U.S. if they are afraid of returning to their home country, thus potentially triggering the credible fear process.[79] That a Hollywood movie with a plot centered on border crossings would reduce the credible fear process (and asylum more generally) to the bare concept of fear hints at popular culture's unfamiliarity with the credible fear process.

In sharp contrast to credible fear's obscurity stands the legal concept of a right to remain silent. In 1966, the United States Supreme Court decided *Miranda v. Arizona*, instituting a requirement that police officers advise criminal suspects of their right against self-incrimination before custodial

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74. Data was generated through a list query of the term "credible fear." *COCA*, *supra* note 69.

75. *iWeb: The 14 Billion Word Web Corpus*, ENGLISH-CORPORA.ORG, https://www.english-corpora.org/iweb/ (last visited Nov. 9, 2020).

76. Data was generated through a list query of the term "credible fear" in the TV Corpus. *The TV Corpus*, *supra* note 72.

77. Data was generated through a list query of the term "credible fear" in the Movie Corpus. *The Movie Corpus*, *supra* note 72; THE TERMINAL (Amblin Entertainment 2004).

78. *See* 8 U.S.C. § 1101(a)(42)(A) (2018); *supra* Part II.C.

79. *Claims of Fear*, U.S. CUSTOMS & BORDER PROTECTION, https://www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear (last modified July 17, 2020).

interrogation.[80] Since then, the concept of *Miranda* warnings and the corresponding right to remain silent and have a lawyer have permeated American popular culture. COCA identifies 177 hits on the phrase "right to remain silent," seventy-one on "Miranda warnings," and twelve on "Mirandize." Hundreds of television shows and movie scripts incorporated *Miranda* warnings. The TV Corpus identifies 1,569 hits on the phrase "right to remain silent" in the United States and Canada, with the first appearing in 1968 in the crime-drama *The Invaders*.[81] The Movie Corpus shows over 450 hits on the phrase in the United States and Canada since 1966.[82]

The thirty-year difference in their origins alone does not explain the disparity in social understanding of these concepts. The sociolegal consequences of *Miranda* warnings are significant and potentially affect a much broader swath of individuals—anyone in the United States who might be accused of a crime. The credible fear process only affects non-citizens at U.S. ports of entry or in U.S. immigration detention.[83] Almost anyone who regularly watches U.S. television or movies can correctly recite the *Miranda* warnings: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. . . ." *Miranda* warnings have become a mantra of legal rights in the U.S. In 2000, the U.S. Supreme Court decided *Dickerson v. United States*, a case challenging the constitutional basis for requiring police to give *Miranda* warnings to criminal suspects.[84] Writing for the majority, Chief Justice Rehnquist justified the continued use of *Miranda* warnings not only as a constitutional matter but also because "the warnings have become part of our national culture."[85] Although the credible fear process polices U.S. borders and belonging, it has not become part of the national culture. Even Hollywood did not present it correctly in *The Terminal*.

The use of the Spanish-language term "temor creíble," the standard translation of "credible fear," has emerged only recently. As one would expect, given the passage of IIRAIRA in 1996, the term does not exist at all in ECdEs's genre/historical sub-corpus covering 1200–1990s. In data from 2013–2014 in ECdEs's web/dialect sub-corpus, "temor creíble" appears only fifteen times, and then almost exclusively in U.S.-based media. Beginning in 2017, the term "temor creíble" in the ECdEs's corpus appears with markedly greater frequency. Hits on the term "temor creíble" doubled from thirty-three in 2017 to sixty-six in 2018. The geographic use of "temor creíble" also expanded from media in the United States, Cuba, Honduras, Mexico, El

80. Miranda v. Arizona, 384 U.S. 478, 478–79 (1966).

81. Data was generated through a list query of the term "right to remain silent" in the TV Corpus. *The TV Corpus*, *supra* note 72.

82. Data was generated through a list query of the term "right to remain silent" in the Movie Corpus. *The Movie Corpus*, *supra* note 72.

83. *See* Jessica Strokus, Smith v. United States Customs and Border Protection*: The Troubling Reality for Courts Reviewing Expedited Orders of Removal*, 6 WAKE FOREST J. L. & POL'Y 303, 308–09 (2016).

84. Dickerson v. United States, 530 U.S. 428 (2000).

85. *Id*. at 430.

Salvador, and Colombia in 2017 to an additional six countries: Guatemala, Venezuela, Panama, Dominican Republic, Chile, and Spain in 2018. Hits on "temor creíble" are on-track to more than double again in 2019, appearing ninety-six times from January through early July and in the additional countries of Peru, Uruguay, and Ecuador.[86] Even with the marked increase in the use of the term "temor creíble" in Spanish-language media over the past two or three years, it remains an extremely low-frequency term. Except for the United States and Mexico, the term may appear in media in any given Spanish-speaking country only once or twice a year and never in some.

B. *Dissecting "Credible Fear"*

The near absence of the term "temor creíble" from everyday Spanish-language usage (as evidenced by the term's near absence in the ECdEs) suggests that the individuals whose rights are most affected by that term's legal definition are very unlikely to know the term's meaning or import. In the context of a legal process that often subjects an unrepresented asylum-seeker to documents and oral interviews that do little—if anything—to explain the technical meaning of that term,[87] the asylum seeker is severely disadvantaged.

The very real possibility that a client will understand the term "temor creíble" to mean something different from its legal definition or the ordinary English understanding of the term compounds this disadvantage. An asylum seeker who has not heard the term "temor creíble" will have no option but to interpret the meaning of the individual words that make up this legal term. But this can have dangerous consequences, as there is a potential mismatch between the meanings of the terms "fear" in English and "temor" in Spanish.

Interactions between volunteer supervisors and volunteers, as well as interactions between volunteers and clients, at the South Texas Family Residential Center, suggest that the gap between the English term ("credible fear") and its Spanish translation ("temor creíble") may stem from the distinct ways in which "temor" and "fear" are used in their respective languages. One of the most common questions that our legal volunteers ask us as supervisors is how to translate the word "fear" into Spanish. Upon discovering that the Spanish translation of "credible fear" is "temor creíble," many Spanish-speaking volunteers report that they have little to no experience with the term "temor" and would have instinctively translated "fear" as "miedo" instead. In credible fear interview preparations with clients, some volunteers have reported being unsure that clients understand the word "temor" to be equivalent to "fear."[88] Legal volunteers at the South Texas Family Residential Center, as a result, must employ

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86. ECDEs, *supra* note 70.
87. *See supra* Part II.B.
88. Data was generated through the personal experiences of the authors and reports from accompanying law students as legal volunteers with Proyecto Dilley, June 2016, October 2016, February 2017, October 2017, February 2018, October 2018, February 2019, and October 2019 [hereinafter Legal Volunteer Data 2016–2019].

nuanced counseling and client preparation methods to ensure that a client's (mis)understanding of a particular word does not prevent her from relaying important facts to the government officer during her credible fear interview.

Our study of "fear" and "temor" in COCA and ECdEs provides two key insights as further detailed below. First, Spanish-speaking asylum-seekers are unlikely to be as familiar with the term "temor" as American English speakers are with the term "fear." Second, the term "temor" can be used differently from the way "fear" is ordinarily used in American English. This is particularly true in the countries from which the majority of asylum seekers in the South Texas Family Residential Center originate. These findings underscore the important role that volunteers at the detention center play in translating legal terms into the asylum-seeker's preferred language and highlight the many junctures at which a mistranslation may undermine an asylum-seeker's case.

We recognize that COCA and ECdEs are not perfectly comparable corpora. COCA draws its text from print, audio, and video sources, while ECdEs draws its text exclusively from internet websites.[89] The two corpora likewise have collected data across different time frames and organize it differently.[90] Even with these limitations, comparisons of research done within the two corpora provide robust data from which our conclusions derive. COCA and ECdEs are two of the most widely used and largest corpora for their respective languages, and the differences in their makeup would not explain the differences in meaning and usage we find through these corpora.

1.   *Frequency of "Fear" and "Temor"*

Our research suggests that American English uses the word "fear" more frequently than Spanish uses "temor."[91] While this data does not explain exactly how "fear" and "temor" might differ in their meaning, it hints at a meaningful difference that can more fully be explored with other corpus linguistics tools. This data also suggests that a speaker of American English who engages with a Spanish-speaking asylum-seeker as part of the asylum process may assume the asylum-seeker is more familiar with one of the component terms of "credible fear" than is actually likely.

To compare the likely familiarity an American English speaker has with the term "fear" and a Spanish speaker has with the word "temor," we used the frequency tools in COCA and ECdEs. As shown in Table 1 below, the word "fear" appears in COCA a total of 63,314 times, which translates to a rate of 109.13 instances per million words. Limiting our search to text from the years 2015-2019 (the most recent years included in COCA and a time

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89.   *COCA supra* note 69; ECDES, *supra* note 70.
90.   *See supra* note 89.
91.   *See infra* Table 1.

TABLE 1: FREQUENCY OF "FEAR" IN COCA[92]

Genre	Frequency	Per Million
All Genres	63,314	109.13
Spoken	12,346	97.07
Fiction	16,080	135.38
Magazine	12,289	120.02
Newspaper	11,437	89.54
Academic	10,599	86.40
Year	**Frequency**	**Per Million**
1990-1994	12,232	117.62
1995-1999	10,612	102.58
2000-2004	10,700	103.94
2005-2009	10,232	100.27
2010-2014	10,193	99.05
2015-2019	9,345	90.06
All Genres and Years Total	**63,314**	**109.13**

period that more closely corresponds to the years of the text included in ECdEs) results in a frequency of 9,354, or a rate of 90.06 words per million.

As Table 2 demonstrates below, the word "temor" appears in ECdEs a total of 90,928 times, a rate of 46.3 words per million, which is substantially lower than the rate at which "fear" appears in COCA. Interestingly, our research suggests that "temor" may be used more in the Northern Triangle—the very countries from which the majority of women detained in the South Texas Family Residential Center originate—than in the other eighteen countries that ECdEs includes. The rate per million of "temor" in texts originating in Honduras, Guatemala, and El Salvador is 69.01, 54.3, and 60.96, respectively. The next highest rates are in the United States (57.92 per million), Colombia (52.99 per million), and Puerto Rico (51.60 per million), with the lowest frequency in Spain (31.21 per million). Despite the possibility that "temor" is a more familiar term in Northern Triangle countries, the disparity between the usage rate of "fear" in COCA and "temor" in those countries is

92. *COCA, supra* note 69 (Data for Table 1 was generated through a frequency query of "fear" in COCA, divided by genre sections and time sections, on February 13, 2020).

nonetheless significant. "Fear" appears over 40% more often per million words in COCA than "temor" does in ECdEs's data for Honduras, the country with the highest frequency of "temor" per million.

TABLE 2: FREQUENCY OF "TEMOR" IN ECDES[93]

Country	Frequency	Per Million
All	46,089	49.2
Argentina	7,464	44.05
Bolivia	1,587	40.29
Chile	3,179	48.00
Colombia	8,821	52.99
Costa Rica	1,437	48.59
Cuba	2,938	46.45
Dominican Republic	1,681	49.88
Ecuador	2,623	50.09
El Salvador	**2,223**	**60.96**
Guatemala	**3,322**	**61.21**
Honduras	**2,424**	**69.01**
Mexico	13,504	54.9
Nicaragua	1,614	49.83
Panama	872	39.18
Paraguay	1,129	37.95
Peru	5,194	48.42
Puerto Rico	1,660	51.60
Spain	13,313	31.21
United States	9,615	57.92
Uruguay	1,299	33.53
Venezuela	5,029	51.23

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93.   ECDES, *supra* note 70 (Data for Table 2 was generated through a frequency query of "temor" in ECDEs, divided by country, on February 13, 2020).

2.   *"Fear" and "Temor" : Collocates and Context*

Data from COCA and ECdEs suggests that, besides the likely gap between an asylum seeker's familiarity with "temor" and an English speaker's familiarity with "fear," there is an additional challenge to volunteers' translation of "credible fear." Our research evidences a difference between the usage and meaning of "fear" and "temor" which may result in miscommunications that threaten to undermine asylum-seekers' preparation for the credible fear interview. Based on corpus linguistics analyses of each term, we find that "fear" most often denotes a negative apprehension of a concrete threat, while "temor" has more variability in its meaning. "Temor," it seems, is often used in a way that connotes reverence or respect, as in the English phrase "fear of God." Our corpus linguistics analysis suggests that this latter meaning is disproportionately used in the very countries from which many Spanish-speaking U.S. asylum-seekers travel.

Collocates—words that frequently appear with a search term—reveal aspects of a word's meaning and usage that are not otherwise apparent. Collocates can be particularly useful when comparing two words.[94] A comparison of the collocates for "totally" and "completely" helps illustrate this. Even a quick comparison of the collocates for each word reveals that "totally" has a positive connotation that is absent for "completely" even though both words mean "fully." The most frequent collocates for "totally" include "cute," "fun," "hot," "awesome," "excited," and "excellent." On the other hand, the most frequent collocates for "completely" are "controllable," "randomized," "bare," "immobile," and "reversible."[95] Collocation analyses are particularly appropriate for comparing two terms that appear to have the same meaning, such as "fear" and "temor" because collocates can highlight subtle contextual differences.[96]

As a starting point, we examined the usage of "fear" in COCA by searching for the most frequent collocates within two words after "fear." The twenty most frequent collocates are reproduced in Table 3 below. There is nothing particularly remarkable about the list of collocates; the ordinary American English speaker would recognize virtually all of the collocates in

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94.   *See* Eric Wehrli, Violeta Seretan & Luka Nerima, *Sentence Analysis and Collocation Identification*, *in* PROCEEDINGS OF THE COLING WORKSHOP ON MWES: FROM THEORY TO APPLICATIONS 30 (MWE 2010) ("Collocations, in their vast majority, are made of frequently used terms, often highly ambiguous (e.g., break record, loose change). Identifying them and giving them high priority over alternatives is an efficient way to reduce the ambiguity level.").

95.   *Corpus of Contemporary American English: COLLOCATES Display*, ENGLISH-CORPORA.ORG, https://www.english-corpora.org/coca/ (click plus sign above search field; then click on "Collocates") (last visited Nov. 9, 2020); Mark Davies, *English-Corpora.org: A Guided Tour*, ENGLISH-CORPORA.ORG, https://www.english-corpora.org/pdf/english-corpora.pdf.

96.   Richard Xiao & Tony McEnery, *Collocation, Semantic Prosody, and Near Synonymy: A Cross-Linguistic Perspective*, 27 APPLIED LINGUISTICS 103, 125 (2006) ("[A]s different languages can have different ranges of near synonyms . . . , near synonyms and their close translation equivalents in different languages may also demonstrate, to some extent, different collocational behaviour and semantic prosody.").

the list as negative concepts that an individual might intuitively "fear" or associate with "fear."[97]

Table 3 depicts an image of "fear" that represents a negative state of being or an apprehension of a specific threat. The contexts for instances of these collocates are consistent with this image. With few exceptions, each of the collocates generally appears in a similar syntax: "fear of [collocate]" or "fear and [collocate]." "Death," for example, appears hundreds of times in the phrase "fear of death." "Anxiety," however, most often appears as a collocate of "fear" in the phrase "fear and anxiety."

TABLE 3: MOST FREQUENT COLLOCATES OF "FEAR" IN COCA[98]

Collocate	Frequency	Mutual Information Score[99]
Being	1134	3.69
Losing	493	6.11
Death	411	3.91
Failure	351	5.52
Factor	287	5.08
Anger	258	5.62
Anxiety	247	5.84
Fear	230	4.10
Crime	213	4.21
Falling	186	5.04
Loathing	168	10.15

97.   A search in the master lexicon for VADER, a sentiment analysis tool, demonstrates the negative perception of these collocates. The mean reception of the collocates is -2.1, roughly the equivalent of the perception of words such as uneasy or unfair. Entries for all collocates found within the lexicon and their corresponding sentiment analysis can be found as follows: Death: -2.9; Failure: -2.3; Anger: -2.7; Anxiety: -0.7; Crime: -2.5; Falling: -0.6; Loathing: -2.7; Pain: -2.3; Loss: -1.3; Violence: -3.1; Hatred: -3.2; Uncertainty: -1.4.

98.   Data for Table 3 was generated through a query for collocates within two words to the right of "fear" in COCA on February 13, 2020. The top 20 collocates, ordered by frequency, are included.

99.   The Mutual Information Score measures the frequency with which a collocate appears with the search term and not with other terms in the corpus. It is calculated with the following formula: MI = log $((AB*sizeCorpus)/(A*B*span))/\log(2)$, with A = frequency of search term (here, "temor"), B = frequency of collocate, AB = frequency of collocate near the node word, sizeCorpus = number of words in the corpus, span = span of word distance to be measured (here 2 words to the right = 2), and log(2) = log10 of 2 (.30103). *See Mutual Information*, ENGLISH-CORPORA.ORG, https://www.english-corpora.org/mutualInformation.asp (last visited Nov. 9, 2020). The higher the Mutual Information Score, the stronger the association between the words.

Table 3: Continued

Collocate	Frequency	Mutual Information Score[99]
Retaliation	146	7.81
Flying	142	4.70
Retribution	135	8.50
Pain	132	3.42
Heights	109	5.78
Loss	103	3.04
Violence	102	3.01
Hatred	98	6.25
Uncertainty	94	5.35

We compared the collocates of "fear" in COCA to those of "temor" in ECdEs to understand how well the meanings and connotations of each term correspond to each other. As shown in Table 4 below, in stark contrast to our findings for "fear," the twenty most frequent collocates of "temor" in our query include a number of words that reflect respect and reverence. The most frequent collocate of "temor" is "Dios," or "God." Examining the context of this particular collocation confirms the use of "temor" as a term of reverence. An examination of all the instances in which "Dios" appears within two words after "temor" reveals an extensive list of the phrases "temor a Dios" and "temor de Dios," each of which can be translated as "fear of God." Likewise, as shown in Table 4, the word "Jehová," a proper noun referring to deity, is closely associated with "temor." Review of all the instances in which "Jehová" appears within two words of "temor" results in hundreds of examples of the phrase "temor de Jehová," or "fear of Jehova." Additional collocates of "temor" that further reflect a reverential connotation include "reverencial" ("reverential"), "reverente" ("reverent"), and "temblor" ("tremble," as in the Biblical phrase "fear and trembling" and used to refer to faithfulness).[100]

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100. The Spanish to English translations in this paragraph can all be found at Google Translate, https://translate.google.com/ (last visited Nov. 10, 2020). To understand the Biblical phrase "fear and trembling" and the Spanish equivalent, compare *Philippians* 2:12 (King James) ("[W]ork out your own salvation with fear and trembling.") with *Filipenses* 2:12 (Reina-Valera 1995) ("[O]cupaos en vuestra salvación con temor y temblor.").

TABLE 4: MOST FREQUENT COLLOCATES OF "TEMOR" IN ECDEs[101]

Collocate	English Translation of Collocate	Frequency	Mutual Information Score[102]
Dios	God	2,500	4.12
Equivocar	To make a mistake	2,142	10.29
Perder	To lose	1,335	5.98
Represalias	Retaliation	689	10.11
Sentir	To feel	507	4.18
Alguno	Any/None	474	4.91
Temblor	Tremor	365	8.81
Miedo	Fear	315	3.55
Jehová	Jehova	314	6.01
Quedar	To remain	290	3.96
Sufrir	To suffer	217	4.89
Desatar	To unleash	195	8.37
Reverencial	Reverential	194	11.72
Enfrentar	To face	179	4.04
Fundado	Founded	176	6.74
Reverente	Reverent	153	11.04
Caer	To fall	152	3.77
Ansiedad	Anxiety	143	4.66
Morir	To die	136	3.60
Inseguridad	Insecurity	125	4.81

Still more noteworthy is the disproportionate use of "temor" as part of the phrase "temor a Dios" or "temor de Dios" ("fear of God") in text from the countries of the Northern Triangle—the countries of nationality for most of the asylum-seekers in detention at the South Texas Family Residential

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101. Data for Table 4 was generated through a query for collocates within two words to the right of "temor" in ECDEs on February 13, 2020. The top 20 collocates, ordered by frequency, are included.
102. *See Mutual Information*, *supra* note 99.

Center.[103] Table 5 shows a total 2,500 instances in which "Dios" appears as a collocate within two words after "temor": 158 instances from Guatemala, 141 from Honduras, and 101 from El Salvador. These figures show that Guatemala, Honduras, and El Salvador have the three highest occurrences of "Dios" appearing within two words after "temor" per million words in the ECdEs.

TABLE 5: COMPARISON OF "DIOS" AS A COLLOCATE OF "TEMOR" ACROSS COUNTRIES IN ECDES[104]

Country	Frequency of "Dios" as a Collocate of "Temor"	Occurrence of Collocation Pairing per Million Words
Argentina	143	.84
Bolivia	40	1.02
Chile	62	.94
Colombia	302	1.81
Costa Rica	61	2.06
Cuba	19	.30
Dominican Republic	50	1.48
Ecuador	59	1.13
Guatemala	**158**	**2.91**
Honduras	**141**	**4.01**
Mexico	464	1.89
Nicaragua	56	1.73
Panama	20	.90
Peru	93	.87
Puerto Rico	69	2.14
Paraguay	29	.97

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103.   Legal Volunteer Data 2016–2019, *supra* note 88.
104.   Data for Table 5 was generated through queries for frequency and occurrences per million of collocates within two words after "temor" in ECDES, divided by country, on February 13, 2020.

TABLE 5: CONTINUED

Country	Frequency of "Dios" as a Collocate of "Temor"	Occurrence of Collocation Pairing per Million Words
El Salvador	**101**	**2.77**
Spain	218	.51
United States	328	1.98
Uruguay	31	.80
Venezuela	56	.57

Legal volunteers helping asylum-seekers through the credible fear process must become attuned to their individual clients' reactions to the words used in the credible fear process. A client who believes that she does not have a "credible fear" or who responds to questions about "credible fear" in the negative may simply be unfamiliar with the technical meaning of the term or may not fully understand what is meant by "temor." An important part of the legal volunteer's role is to guide asylum-seekers through these (mis)translations.

V.   TRANSPOSING FACTS INTO LAW

In initial discussions with detained mothers to prepare them for their credible fear interviews, volunteers with Proyecto Dilley step outside the strict parameters of legal counseling to recognize the moral validity of the women's decisions to flee their homes and seek asylum in the United States.[105] Conveying respect for and trust in the women's motivations and decision-making provides a foundation for a strong attorney-client relationship and hopefully facilitates the rapport necessary to the detained women's disclosure of the traumatic and intimate details of their lives on which their credible fear interview and eventual asylum claim depend. With that relationship as a foundation, legal volunteers explain that U.S. law regarding the credible fear process and asylum itself is quite restrictive.[106] In a manner similar to their translation of the term "credible fear," legal volunteers seek to translate the restrictiveness of U.S. asylum law into lay terms the detained asylum-seekers understand and thus provide a basic template for transposing the truth of their lived experience into legally cognizable categories.

105.   Legal Volunteer Data 2016–2019, *supra* note 88.
106.   *Id*.; *see also supra* Part II.C.

As noted previously, the Refugee Act of 1980 provides the legal basis for asylum claims in the United States.[107] The Act defines as eligible for asylum any person who is 1) outside of their home country, 2) unable or unwilling to return to it, 3) unable or unwilling to avail themselves of the protection of their country, 4) because of persecution or a well-founded fear of persecution, 5) on account of race, religion, nationality, membership in a particular social group, or political opinion.[108] For pro-bono legal volunteers at the South Texas Family Residential Center, helping detained women transpose their lived experiences into the requisite legal categories of persecution—race, religion, nationality, membership in a particular social group, or political opinion—constitutes a significant portion of the interpretive work associated with CFI preparation. Within the cultures of many of the detained Spanish-speaking women, religion tends towards basic commensurability with the term's parameters in U.S. asylum law.[109] The four other categories—race, nationality, political opinion, and membership in a particular social group—pose significantly greater interpretive challenges. Those challenges derive from the terms' fluid meanings in U.S. asylum law and the differential commensurability of similar terms and concepts in the asylum-seekers' languages and cultures. Despite the technical mode of U.S. asylum law, race, nationality, political opinion, and membership in a particular social group are terms with diffuse rather than discrete conceptual boundaries and changeable rather than fixed meaning.

A.   Race/Raza and Nationality/Nacionalidad

As part of CFI preparation, legal volunteers inform the detained individual that the asylum officer conducting her interview will ask her to identify her race.[110] Likewise, persecution on account of race is a statutory basis for claiming asylum. However a legal volunteer translates the English word "race" into Spanish, whether as *raza* or *etnia* or *etnicidad*, race is not foregrounded in the home countries of many of the women detained at the South Texas Family Residential Center in the same way that race and racial tensions figure prominently in the United States. For example, in Mexico, the social and political rhetoric of *mestizaje*—mixing between indigenous and Spanish populations—has denied the very existence of racism in Mexican society, even while excluding afro-descendants and others.[111] The rhetoric of *mestizaje* tends to identify class as the major axis of discrimination in

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107.   *See* Refugee Act of 1980, Pub. L. No. 96-212 (codified as amended at 8 U.S.C. § 1101); *see also supra* Part II.C.

108.   8 U.S.C. § 1101(a)(42) (2018).

109.   Legal Volunteer Data 2016–2019, *supra* note 88.

110.   *Id.*

111.   *See* GABRIELA ITURRALDE NIETO & EUGENIA ITURRIAGA ACEVEDO, CAJA DE HERRAMIENTAS PARA IDENTIFICAR EL RACISMO EN MÉXICO [Toolkit to Identify Racism in Mexico] 10 (2018).

Mexican society, not race.[112] In contravention of that denial, the complex task of defining race and racism occupied an afternoon and evening at the forum "Racism, Xenophobia, Inequality, and Violence in Mexico: Dialogue between Civil Society and Academia" organized by the Interdisciplinary Seminar on Racism and Xenophobia at the National Autonomous University of Mexico (UNAM) in Mexico City in November 2019.[113] Participants in the forum from indigenous communities, in particular, highlighted the incommensurability of *raza*, even if clearly defined in Spanish, with available terms in Yoreme, Mixtec, Nahuatl, and other indigenous languages.[114] The idea of race-based discrimination itself arrived as a cultural import rather than endemically.

Given the challenges of explaining the intricacies of race in the U.S. and what the U.S. asylum system means by the term, legal volunteers at the South Texas Family Residential Center often present the meaning of race through examples: *blanco* (white), *mestizo* (mixed), *negro* (black), *indigena* (indigenous), etc. The specific examples a legal volunteer uses may influence an individual's self-identification. Should a legal volunteer offer the potentially offensive term *indio* instead of the more neutral *indigena*? If a detained individual does identify as *indio*, how should the legal volunteer translate the term back into American English? Native American, indigenous, or even Indian all elide to differing degrees the latent insult in the term *indio* for some populations in Mexico and Central America.[115] Even with examples as an imperfect solution to a translation problem, the distinct examples may fail or be meaningless in the lived experience of the detained women. When legal volunteers queried one woman about her race/ethnicity and gave examples, she said, "Yes, we are *indios*. We are Hondurans." For her, concepts of race/*raza* and nationality/*nacionalidad* were coextensive.[116]

B.   *Political Opinion/Opinión Política*

In immigration detention, the legal category of political opinion also requires interpretation beyond just words. If a legal assistant were to ask a detained woman directly, "Have you ever been persecuted because of your

112.   *See, e.g.*, Kif Augustine-Adams, *Making Mexico: Mexican Nationality, Chinese Race, and the 1930 Population Census*, 27 LAW & HIST. REV. 113, 125 (2009); Alan Knight, *The Peculiarities of Mexican History: Mexico Compared to Latin America, 1821–1992*, 24 J. LATIN AM. STUD. 99, 118–23 (1992).

113.   Foro "Racismo, xenofobia, desigualdad y violencia en México: diálogo entre sociedad civil y academia" Seminario Universitario Interdisciplinario sobre Racismo y Xenofobia; Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades, Universidad Nacional Autonoma de México, Nov. 13–15, 2019, https://www.gaceta.unam.mx/nace-seminario-para-combatir-racismo-y-xenofobia-en-mexico/.

114.   *Id.* (personal participation of Kif Augustine-Adams).

115.   *See, e.g.*, Raymundo M. Campos-Vazquez & Eduardo M. Medina-Cortina, *Skin Color and Social Mobility: Evidence From Mexico*, 56 DEMOGRAPHY 321, 322 (2019); Christa Little-Siebold, *Beyond the Indian-Ladino Dichotomy: Contested Identities in an Eastern Guatemalan Town*, 6 J. LATIN AM. ANTHROPOLOGY 176, 183, 189 (2008).

116.   Legal Volunteer Data 2016–2019, *supra* note 88.

political opinion?" or "Have you ever been threatened because of your political activities?" she may respond, "No." In her conceptual framework, politics relates to elections, candidates, voting, campaigns, and political parties. However, persecution on account of political opinion in the credible fear context can be interpreted more broadly as issue-related rather than electoral.

In preparing for her credible fear interview, one young detained mother described her passionate and active opposition to a hydroelectric dam on a river in her home country.[117] The legal volunteer helped her translate that neighborhood activism into the legal category of political opinion. Although the mother had not thought of herself and her activities as political, the personal was political. She marched and organized and protested against the dam construction because she believed it would compromise access to clean, plentiful water for future generations, including her young children. As she expressed it, her commitment was not to political parties, but to future generations, to the environment, to Mother Earth. In the translated narrative, her invitation to neighbors and friends to join her at meetings and to carry banners became more than neighborliness. It was political organizing. The murders of two local men and a third from a nearby town who also protested against the dam construction demonstrated her well-founded fear of future persecution on account of her political opposition to the dam. In the last meeting the young mother attended before she fled to the United States, a local official communicated to everyone present the threats of violence he had received against them all on account of their political opinion against dam construction. Translating the facts of her neighborhood involvement into the legal category of political opinion allowed the asylum seeker to pass her credible fear interview and be released from detention along with her young children.

Previously, some detained individuals successfully navigated the credible fear process by presenting their active resistance to gangs as political opinion.[118] Translating the fact of gang resistance into the legal category of political opinion depended on the asylum officer's recognition of second- and third-generation gangs like MS-13 and Barrio 18 or narco-trafficking cartels as de facto governments.[119] As de facto governments, gangs and cartels mirror the taxes and licensing fees of de jure government by extorting exorbitant payments of *renta* (rent) or *impuesto de guerra* (war tax) from food stand owners, bus drivers, school teachers, and others who live within the territory

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117. *Id.*
118. *Id.*
119. *See* Howard L. Gray, Gangs and Transnational Criminals Threaten Central American Stability (Oct. 3, 2009) (unpublished Master of Strategic Studies strategic research project, U.S. Army War College), https://apps.dtic.mil/sti/pdfs/ADA498136.pdf [https://perma.cc/TJX2-YXPZ]; ELIZABETH G. KENNEDY, DECLARATION OF ELIZABETH G. KENNEDY, EXPERT ON GANG-RELATED VIOLENCE IN EL SALVADOR (unpublished) (Jan. 17, 2016); John P. Sullivan & Robert J. Bunker, *Third Generation Gangs Strategic Note No. 1: Mara Salvatrucha (MS-13) 500 Man Commando Unit Planned for El Salvador*, SMALL WARS J. (Sept. 10, 2016), https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-1-mara-salvatrucha-ms-13-500-man-commando-unit-pla [https://perma.cc/W8PJ-S6MP].

the gang or cartel claims.[120] In delimiting territory and controlling the movement of people, goods, and capital, a gang or cartel exercises the similar power of sovereignty to determine and control the borders that define a nation-state.[121] Second-and third-generation gangs and cartels do not cede force and violence to the state as part of a social contract but impose their own judgment and penalties on those who resist them: rape, murder, dismemberment, disappearance.[122] Despite extensive expert analysis identifying certain types of gangs and cartels as de facto governments,[123] in June 2018, then-U.S. Attorney General Jeff Sessions defined gangs explicitly as private actors in his decision in *Matter of A-B-*.[124] Resistance to gangs—no matter how vicious their violence, no matter how valiant the opposition—now only rarely, if ever, successfully translates into the legal category of political opinion in the credible fear process.[125] The meaning of political opinion changed.

C.   *Membership in a Particular Social Group/Ser Miembro de un Grupo Particular Social*

Beyond its effect on the definition of political opinion, Attorney General Jeff Sessions's decision in *Matter of A-B-* decimated the carefully crafted, hard-fought jurisprudence of membership in a particular social group as a basis for asylum.[126] Through decades of litigation before the Board of Immigration Appeals and in federal court, membership in a particular social group had developed into a category for persecution based on an immutable characteristic such as disability, sexual orientation, or gender, where the group was also defined with particularity and was socially distinct within the society in question.[127] Particularly relevant to many of the women who were then in immigration detention, in 2014 in *Matter of A-R-C-G-*, the Board of Immigration Appeals recognized "married women in Guatemala who are unable to leave their relationship" as a particular social group.[128] Under the standard of that case and through trauma-informed strategies, legal volunteers could help detained women translate their experiences of domestic violence, forced sex, or forced labor into a legally cognizable basis to pass a credible fear interview. For some women, that translation process was the first time anyone identified the routinized, unexceptional violence of their everyday lives as unacceptable.

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120.   *Id.*
121.   *Id.*
122.   *Id.*
123.   *Id.*
124.   Matter of A-B-, 27 I. & N. Dec. 316, 323 (A.G. 2018).
125.   Legal Volunteer Data 2016–2019, *supra* note 88; *see also* Complaint for Declaratory and Injunctive Relief, *supra* note 15.
126.   27 I. & N. Dec. at 316.
127.   Matter of Acosta, 19 I. & N. Dec. 211, 213 (B.I.A. 1985); Matter of R-A-, 22 I. & N. Dec. 906, 917–23 (B.I.A. 1999); Matter of M-E-V-G-, 26 I. & N. Dec. 227, 237 (B.I.A. 2014).
128.   Matter of A-R-C-G-, 26 I. & N. Dec. 388, 389, 390–95 (B.I.A. 2014).

In *Matter of A-B-,* Attorney General Jeff Sessions overruled the Board of Immigration Appeals' decision in *Matter of A-R-C-G-* along with any other inconsistent BIA precedent.[129] Rather than setting forth a legal standard by which to judge individual asylum claims, *Matter of A-B-* articulated a near-categorical exclusion: "Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum" or by extension for credible fear.[130] In July 2019, in *Matter of L-E-A-*, Attorney General William Barr issued a similar directive regarding families when he held that "an alien's family-based group will not constitute a particular social group unless it has been shown to be socially distinct in the eyes of its society, not just those of its alleged persecutor."[131] With its basic parameters still intact, but specific articulations in gender-based violence, gang violence, and family-based claims largely disallowed, membership in a particular social group shrank as a cognizable basis for credible fear. By mid-2019, despite the persistence of detained women's lived experiences with violence in their home countries, the law of credible fear offered little commensurability. More often than not, legal volunteers' translation efforts in the credible fear process failed because an entire conceptual realm had disappeared from asylum.[132]

VI. CONCLUSION

(Mis)translation is a significant risk for asylum-seekers jailed at the South Texas Family Residential Center and other immigration detention centers around the country. Here, we have explored two potential sites of (mis)translation—navigating the term "credible fear" and assessing the relevancy of a client's experiences to legal bases for asylum. Our research highlights the potential legal, linguistic, and cultural complexities that can undermine an asylum seeker's claim, and legal volunteers may account for these complexities in their counseling and interviewing methods. But in the context of a process in which asylum-seekers often have no legal representation and are held in immigration detention centers far from family and loved ones, the implications of these sites of (mis)translation are especially grave. The amorphous nature of relevant legal terms, the variability in linguistic usage across countries and smaller linguistic communities, and the diversity of cultural frameworks for processing and relaying (often traumatic) experiences render the credible fear process a daunting and precarious one.

Though our research helps highlight and catalog potential (mis)translation in the credible fear process, it also raises many new questions. What additional considerations should legal volunteers and professionals have when

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129.   27 I. & N. Dec. at 317.
130.   *Id.* at 320 n.1.
131.   Matter of L-E-A-, 27 I. & N. Dec. 581, 582 (A.G. 2019).
132.   Legal Volunteer Data 2016–2019, *supra* note 88.

they play the role of linguistic, cultural, and legal translators for unaccompanied children in the credible fear process? What other sites of (mis)translation remain hidden to legal volunteers? And how should large-scale, "crowd-sourced" legal assistance projects like those of Proyecto Dilley account for potential mistranslations when the inherent nature of rotating volunteer stints reduces the amount of time a legal volunteer has to understand the nuances of the role she plays?

Perhaps most importantly, our research questions whether the credible fear process—a process meant to protect asylum-seekers from swift removal from the United States and subsequent potential exposure to serious harm—can adequately fulfill its role. Existing literature on the credible fear process focuses on the legal complexities that often bar individuals from pursuing asylum claims. At the same time, each juncture of the credible fear process is also fraught with cultural and linguistic hurdles that short-term volunteers may feel ill-equipped to handle and for which the only solution is a fundamental reconsideration of the credible fear process and family detention itself.