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QUEERING IMAGES OF CITIZENSHIP: RHETORIC, REPRESENTATION, AND LGBTI REFUGEES

by

EMILY KOFOED

Under the Direction of Nathan Atkinson, PhD

ABSTRACT

In the following dissertation, I consider how the legal challenges faced by LGBTI refugees might compel reflection on and revision to traditional conceptions of citizenship in the United States. Specifically, I explore the question of how queer refugees and asylum seekers might alter – or queer – the meaning of “citizenship” in the United States. This project contributes to the conversation about citizenship in the field of rhetoric in multiple ways: (1) It highlights tensions between the cultural construction of citizenship and its legal parameters, (2) It expands rhetorical citizenship scholarship through attention to the intersection of identification, marginalization, and the political imaginary, and (3) It reveals tensions between norms of civic and sexual identity. It does this by tracing rhetorical precedent through a case study of sexual orientation and gender identity asylum in the United States.

I argue that LGBTI refugees and asylees can shape a queered discourse of citizenship, but that the discourse produced is limited based on narrow definitions of sexual orientation and identity categories. To make this argument, I analyze the precedent-setting case involving Fidel Armando Toboso-Alfonso, in which I address how the establishment of that case as precedent set in place norms of sexual identity that persist in the adjudication of LGBTI asylum cases today. Next, I look to the U.S. Citizenship and Immigration training module for handling LGBTI asylum claims in order to make sense of the ways the norms set forth in the precedent-setting case have become codified and interrogated in current efforts to adjudicate LGBTI asylum claims. Finally, I compare visual representations of LGBTI asylum seekers to other refugees in order to understand how photographs of LGBTI asylum seekers fit within or rupture the genre of refugee photography. Taken together, these case studies provide insight into how citizenship is discursively imagined when access to citizen status is predicated on simultaneous normative and non-normative performances of sexual identity.

INDEX WORDS: Rhetoric, Citizenship, Asylum, Immigration Policy, Queer Theory, LGBT

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REFUGEES

by

EMILY KOFOED

A Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

in the College of Arts and Sciences

Georgia State University

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2016

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August 2016

DEDICATION

To my family in Georgia, Minnesota, and beyond

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	v
LIST OF FIGURES	xi
1 INTRODUCTION: QUEERING CITIZENSHIP IN THE PUBLIC IMAGINARY	
1	
1.1 Review of Literature	9
1.2 Methodology	26
1.3 Outline of Dissertation Chapters	31
2 CITIZENSHIP CONTROVERSY IN <i>THE MATTER OF TOBOSO-ALFONSO</i> .	36
2.1 History of LGBTI Asylum	39
2.2 Controversy and the Public Sphere.....	43
2.3 Story of Toboso-Alfonso	52
2.3.1 Toboso-Alfonso and Cuba: Historical and Legal Context.....	53
2.3.2 The Controversy of the Citizen in Matter of Toboso-Alfonso	58
2.3.3 Majority Opinion.....	59
2.3.4 Dissenting Opinion	64
2.4 Toboso-Alfonso as Precedent.....	71
2.5 Conclusions	77
3 REGULATING QUEER ASYLUM: HETERONORMATIVE CITIZENSHIP	
AND HOMONATIONALIST POLITICS	81

3.1	Heteronormativity, Homonationalism, and Critical Rhetoric.....	89
3.2	Reading the RAIO Training Module	95
<i>3.2.1</i>	<i>Training Officers for Sensitivity in Asylum Interviews.....</i>	<i>101</i>
<i>3.2.2</i>	<i>Representing LGBTI Asylum Seekers.....</i>	<i>105</i>
3.3	Conclusions.....	131
<i>3.3.1</i>	<i>The (Im)possibility of Definition.....</i>	<i>132</i>
<i>3.3.2</i>	<i>Identity and the Absence of Choice.....</i>	<i>134</i>
<i>3.3.3</i>	<i>Homonationalism in “Queer” Citizenship.....</i>	<i>138</i>
4	DEPICTING LGBTI REFUGEE CASES: LOOKING AT QUEER ASYLUM. 142	
4.1	Photojournalism and Refugee Photographs.....	146
<i>4.1.1</i>	<i>Looking at Suffering.....</i>	<i>147</i>
<i>4.1.2</i>	<i>Looking at Refugees.....</i>	<i>149</i>
<i>4.1.3</i>	<i>Creating Identification Between Spectator and Subject.....</i>	<i>152</i>
<i>4.1.4</i>	<i>Visual Rhetoric and Refugee Photography</i>	<i>154</i>
4.2	Reading Refugee Photography	156
4.3	Depicting Suffering of LGBTI Refugees.....	162
<i>4.3.1</i>	<i>Alexandra Reyes.....</i>	<i>166</i>
<i>4.3.2</i>	<i>Romulo Castro</i>	<i>176</i>
4.4	Queering the Genre of Refugee Photography	184
4.5	Conclusions: Refugee Photographs and Creating the Queer Citizen	186

5 CONCLUSIONS	190
5.1 Reflecting on Rhetorical Precedent and Homonationalism	190
5.2 Queering citizenship?	194
REFERENCES.....	197

LIST OF FIGURES

Figure 1: Tenório in the news, photo published in <i>Reuters</i> , 1990	76
Figure 2: Successful lesbian asylum claimant AJ, photo by Lauren Ober, 2015	115
Figure 3: Transgender asylee Jennicet Gutiérrez, photo by Al Dia Dallas, 2015.....	123
Figure 4: Yarmouk Refugee Camp, photo by UNRWA, 2014.....	158
Figure 5: Refugees in Greece, photo by Vadim Ghirda, Associated Press, 2016.....	160
Figure 6: Alexandra Reyes 1 by Kathryn Scott Osler, 2010.....	171
Figure 7: Alexandra Reyes 3 by Kathryn Scott Osler, 2010.....	174
Figure 8: Romulo Castro by Marcus Yam for the <i>New York Times</i> , 2008	180

1 INTRODUCTION: QUEERING CITIZENSHIP IN THE PUBLIC IMAGINARY

At its core, citizenship is an official membership within a community. In the United States, citizenship status has determined who can vote, work, buy housing, receive employment or spousal benefits, and travel freely within and beyond the nation's borders. A history of various disenfranchisements has shown that this legal status is subject to change according to the collective socio-cultural conceptions of citizenship. These conceptions, which I refer to as cultural citizenship, are normative, disciplining, and dynamic forces that determine not only who belongs within a nation, but also whose life is legally protected as part of their citizenship status. Our understanding of citizenship is therefore shaped not only by laws, regulations, and rights, but also by the social imaginary—the normative ideals and actual practices of society that define what it means to be a citizen.¹ Legal status as a citizen can impact one's cultural citizen standing, but a shift in one's cultural citizenship may also impact legal regulations of who gets citizenship and who does not.

The relationship between legal and cultural citizenship is especially pronounced where issues of sexuality are concerned. Although the United States has made progress toward sexual orientation and gender identity equality, targeted hate crimes persist,² and many states are still engaged in efforts to restrict certain privileges and benefits to only those people who are

¹ Cornelius Castoriadis is credited with first using the term “social imaginaries” in French publications in the 1950s under a pseudonym. Dilip Gaonkar situates most contemporary discussions of social imaginaries (like those undertaken by Charles Taylor and Michael Warner) as different than Castoriadis's ontological orientation to the concept: Dilip Parameshwar Gaonkar, “Toward New

² “FBI Releases New Hate Crimes Report Ahead of First-Ever Congressional Forum on Anti-Trans Violence,” *Human Rights Watch*, November 16, 2015 <http://www.hrc.org/press/fbi-releases-new-hate-crimes-report-ahead-of-first-ever-congressional-forum>; Patrick Saunders, “Atlanta Police Release Details on 12 Most Recent Anti-Gay Hate Crimes,” *GA Voice*, December 10, 2014 <http://thegavoice.com/atlanta-police-release-details-12-recent-anti-gay-hate-crimes>.

cisgender and not openly gay.³ Not only has immigration been restricted on the basis of sexual orientation until the recent past, but sexual orientation and citizenship have likewise shared a complicated relationship within our nation's borders. From legislating private sexual behavior to upholding laws that make being out as LGBTI in public a near impossibility, there has long been an investment by the U.S. government in upholding national heterosexuality. Citizenship in the United States has traditionally been imagined in a decidedly heteronormative way. This heteronormativity is manifested in recent state efforts to institutionalize discrimination under the guise of "civil liberty" and to regulate public restroom use by biological gender.⁴ Here, we see how legal and cultural forms intertwine to define and promulgate notions of citizenship and complicate boundaries of public and private civic and sexual identity.

In 2011, the Obama Administration officially declared U.S. support for refugees and asylees fleeing their home countries because of sexual orientation-based persecution.⁵ Not only would the U.S. allow entry to people fleeing this type of persecution; it would welcome them. The declaration stated that it would "improve protection for LGBT refugees and asylum seekers" and that the Departments of State, Justice, and Homeland Security would ensure "appropriate

³ An *MSNBC* article states, "LGBT people in these states risk being fired, evicted, or denied service on the basis of their identity." See: Adam Talbot, "The State of LGBT Equality in America," *MSNBC*, January 18, 2015, para. 5, <http://www.msnbc.com/msnbc/the-state-lgbt-equality-america>; Matthew Clark, "In 2016, An Influx of Anti-LGBT State Laws," *Spectrum*, 11 February 2016 <http://spectrum.suntimes.com/news/10/155/10982/2016-anti-lgbt-bills-legislatures>.

⁴ Eithne Luibhéid argues that migrants are disciplined into performances that are in line with U.S. gender, sex, race, and class standards. For LGBTI refugees, this pressure to perform citizenship in a certain way complicates these standards while still operating within them. See: Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis, MN: University of Minnesota Press, 2002), xxvii. See also: Lauren Berlant and Elizabeth Freeman, "Queer Nationality," in *Fear of a Queer Planet: Queer Politics and Social Theory*, ed. Michael Warner (Minneapolis, MN: University of Minnesota Press, 1993); Carol Johnson, "Heteronormative Citizenship and the Politics of Passing," *Sexualities*, 5 (2002): 317-338.

⁵ Barack Obama, "Presidential Memorandum – International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons," *White House Official Home Page* December 6 2011, <http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l>.

training is in place” so that government personnel can work together to protect LGBTI refugees and asylum seekers.⁶ In this declaration, the LGBTI asylum seeker is declared equal to other asylum seekers, but not the same.⁷ Like other refugees, they seek protection from oppressive regimes.⁸ Unlike those refugees, their oppression is not based on their religion or politics, but instead on their sexual orientation or gender identity. As made clear by the statement regarding the need for “appropriate training,” their situation is different than that of *prima facie* refugees,⁹ and this difference demands changes to the asylum process. For those fleeing sexual orientation or gender identity persecution, the asylum process includes interviews and exams designed to establish their identity as a sexual minority and to prove that their identification as such caused them to experience unlivable conditions in their home nation.¹⁰ Paradoxically, if the refugee succeeds in proving their membership in a persecuted sexual minority, they overcome an important barrier to achieving legal citizenship in the United States. However, this success

⁶ Obama, “Presidential Memorandum,” section 2.

⁷ A note on terminology: In Obama’s 2011 declaration, he used the initialism “LGBT” to describe this population of refugees and asylum seekers. The United States Citizenship and Immigration Services Refugee, Asylum, and International Operations division currently uses the initialism “LGBTI” – with the addition of the “I” to represent intersex people – in all of its training materials. Because of this, I use the “LGBTI” initialism throughout this dissertation. A more thorough discussion of this initialism appears in Chapter 3.

⁸ The legal distinction of “refugee” differs slightly from the legal distinction of “asylee” in the U.S., as those seeking refugee status must secure legal refuge in the U.S. before they leave their home nation. An asylum seeker is someone who meets the threshold of persecution required of those receiving refugee status, but does not obtain that status before entering the U.S. These slight differences mean the terms are not wholly interchangeable, but their similarities allow the term refugee to generally represent the same meanings as asylee or asylum seeker.

⁹ In order to respond to large-scale refugee migrations, the U.S. can designate certain groups as *prima facie* refugees who will be granted refugee status upon their arrival in a new country. See Bonaventure Rutinwa, “Prima facie status and refugee protection,” *UNHCR Evaluation and Policy Analysis Unit*, October 2002, <http://www.unhcr.org/3db9636c4.pdf>

¹⁰ The term “sexual orientation asylum seeker” or “sexual minority” is frequently used to represent people seeking asylum from persecution targeting them for their sexual orientation or gender identity. I recognize that the term “sexual orientation” does not account for or incorporate transgender or intersex asylum seekers, and that the term “sexual minorities” runs the risk of reinforcing a minoritizing perspective of LGBTI people. Identities and orientations can be difficult to categorize, and at times it is necessary to deploy an imperfect phrasing or terminology to help make sense of these issues.

creates a barrier to achieving cultural citizenship, which is determined in large measure according to normative images of civic identity.

Asylum granted on the basis of sexual orientation persecution is paradoxical because its attainment requires proof of sexual minority identity, but it then places asylees into a culture that does not offer full rights to sexual minorities. This paradox is significant for what it reveals about the relationship between citizenship as a legal status that can be attained through the naturalization process and citizenship as a social status that is shaped through processes of cultural imagination. Given the heteronormative dimensions of cultural citizenship, the move to recognize sexual orientation or gender identity as a basis for asylum puts LGBTI refugees in a double bind: The path to citizenship begins with their adoption of an identity that is at odds with the prevailing image of cultural citizenship.

My dissertation takes this paradox as the starting point for an examination of how the legal challenges faced by LGBTI refugees might compel reflection on and revision of traditional conceptions of citizenship in the United States. Specifically, I explore the question of how LGBTI asylees might alter – or *queer* – the meaning of “citizenship” in the United States. Asylum granted on the basis of sexual orientation persecution abroad forces an official and public conversation in the United States about the relationship between sexuality and citizenship – a conversation that queers current, heteronormative definitions of the term “citizenship.” Specifically, those seeking and obtaining refuge in the U.S. through the sexual orientation asylum clause hold the potential to upset traditionally heteronormative ideas about citizenship because their access is based on their ability to prove their homosexuality as necessary for membership.¹¹ I argue that the system through which the U.S. offers asylum to some LGBTI

¹¹ For the most comprehensive study of the ways border control and immigration regulation in the U.S. have functioned as a regulation of sexual orientation, see Luibhéid, *Entry Denied*.

asylum seekers may rupture the traditional heteronormativity of citizenship but ultimately contributes to a system of homonationalism in which only certain LGBTI asylees are fully incorporated into citizenry. This homonationalism functions to improve slightly the cultural and legal citizenship of certain LGBTI individuals while concomitantly establishing new restrictions on the legal citizenship of others. While LGBTI asylum cases might not “queer” citizenship in the United States, an analysis of its precedent, regulation, and representation does provide insights about the relationship between citizenship, sexual orientation, and gender identity.

When extending asylum status to those who are fleeing sexual orientation-based persecution, the United States extends the rights to citizenship for people who are explicitly not heterosexual. This creates tension with the traditional (heteronormative) imaginary of cultural citizenship, which forces us to reimagine the implicit or traditional norms of citizenship. Moreover, it seems as though it creates the potential for a queering of citizenship – for rejecting the binaries of sexual expression and embracing fluidity and instability. Yet, while legal citizenship may be somehow altered through the inclusion of queer bodies into the citizenry through LGBTI asylum, legal citizenship itself can never truly be queer because it can only ever exist within institutions and never actually rupture them.¹² Nevertheless, I see potential for cultural norms of citizenship to become queerer. Here, the phenomenon of queering does not function in opposition to some norm or hierarchy. Instead, the queering of citizenship is *athwart* – it moves across categories and across hierarchies to transform current understandings of what it means to be a citizen.

This project contributes to the conversation about citizenship in the field of rhetoric in multiple ways: (1) It highlights tensions between the cultural construction of citizenship and its

¹² Amy Brandzel argues that “citizenship itself is necessarily exclusive, privileged, and normative,” and that “‘queer’ and ‘citizen’ are antithetical concepts.” Amy Brandzel, “Queering Citizenship?: Same-Sex Marriage and the State,” *GLQ* 11, no. 2 (2005): 173, 197.

institutional parameters, (2) It contributes to rhetorical citizenship and civic identity scholarship through attention to the intersection of identification, marginalization, and the political imaginary, and (3) It complicates/solidifies the relationship between civic and sexual identity. Although rhetorical studies has paid much attention to various performances of citizenship, this dissertation offers the concept of “rhetorical precedent” as a way to trace the official constraints on rhetorical performances of citizenship. Specifically, I look to rhetorical precedent established in the first successful U.S. LGBTI asylum claim and trace its influence to the present. In so doing, I offer a way to better understand institutional constraints not only on refugee performances of citizen identity, but also on performances of all who seek to affirm or display their citizenship. My findings assert that institutional discourses have the ability to set in place rhetorical precedent that shapes future performances associated with that precedent – performances of citizenship in particular – by shaping the collective understanding of citizenship (and citizens) in the political imaginary. This insight contributes to studies of the political imaginary as an account of the how that imaginary develops and how deeply it is connected to rhetoric. Finally, this dissertation highlights the necessity of considering the inextricability of sexual and civic identity in rhetorical studies. This is important because it forces us to consider the intersectionality of all citizenship and the ways in which our distinct subject positions become enmeshed within the institution of citizenship. Looking at cases of LGBTI asylum and citizenship help us see how our own citizenship is not a stable, monolithic status, but is both the product of a history of institutional discourses and a collective process of imagining.

In my dissertation I explore the discourses surrounding LGBTI asylum to uncover what they tell us about conceptions of legal and cultural citizenship both in and beyond the field of rhetoric. In its course, I tell the story of LGBTI asylum in the United States, tracing the social

imaginary of the LGBTI asylum seeker through the inception of this type of asylum in the U.S., through efforts to train immigration officers to process LGBTI asylum claims, and through the visual representation of LGBTI refugees and asylum seekers in news media. I read institutional and cultural discourses of LGBTI asylum to understand the tensions embodied in efforts to grant asylum on the basis of sexual orientation or gender identity persecution. This project is situated between studies of public address and studies of critical/cultural communication through its unification of queer theory, institutional rhetoric, and theories of citizenship. At the intersection of these bodies of research lies a gap that I intend to fill with my dissertation. Here, I am not looking to determine whether or not LGBTI asylum seekers themselves are deemed authentically queer enough to receive asylum, but rather, how this population both reveals and ruptures norms of citizen and sexual identity.

Given that the issue of legal citizenship is a life-or-death matter for many refugees, it may seem strange to focus an entire dissertation on the tensions between this new avenue to legal citizenship and the traditional, heteronormative imaginary of citizenship. It may seem as though I am forsaking questions about human safety and material well-being for a more scholastic discussion about identity. In response to this, I argue that identity is an essential component of one's material well-being. Yes, for many refugees, citizenship can eventually be attained through a long legal process. Yet, even with the official distinction, citizens not born in the U.S. are sometimes faced with circumstances that depict their citizenship as less valuable than the citizenship of others. In my dissertation, I show that this multi-faceted othering that faces people who are both refugees and sexual minorities has significant implications to ongoing discussions about the relationship between legal and cultural citizenship and for the well-being of refugees and asylum seekers in the United States. First, I will show that this tension between legal and

cultural citizenship can make assimilation and identification with a new nation difficult or even impossible. Second, I will show that as this tension manifests in public discourses about citizenship, it creates opportunities and obstacles for incorporating new identities and bodies into the citizenry; although these discourses cannot queer the institutional dimensions of citizenship, they do operate in a way that could lead to full equality among legal and cultural citizens.

In an effort to make sense of the interwoven but independent discourses surrounding these issues, my project focuses primarily on the rhetorical representation of citizenship as it develops through queer refugee and asylum cases. In order to frame this study, I begin this introduction with a review of scholarship on citizenship. This review focuses on discussions of citizenship as a normative identity perpetuated in and altered by social practices as well as the relationship between this normative identity and legal or institutional definitions of and requirements for citizenship. From there, I turn to the expanding body of rhetorical scholarship that addresses the notion of imagined citizenship - paying special attention to work at the intersection of citizenship and sexual identity. In the course of this discussion, I connect the scholarship in rhetoric to complementary accounts from disciplines like law, sociology, gender and sexuality studies.

Following my review of these bodies of literature, I explain precisely how my project contributes to these conversations. As part of my explanation, I discuss the theories that inform my approach, which include work in the social imaginary, rhetoric, and queer theory. Next, I introduce my methodology, which includes a variety of rhetorical approaches to analyzing the imagination of citizenship in queer refugee cases. Following this, I introduce the texts selected for this study. Finally, I conclude with a chapter outline that charts the course to my contribution.

1.1 Review of Literature

In order to parse a concept as vast as citizenship, I first address its history as a legal status and set of rights and responsibilities that implicitly upholds social and cultural hierarchies. Next, I turn to scholarship that is explicit in recognizing citizenship as more than just a collection of rights and obligations under the law through its attention to citizenship as an identity that is culturally constructed and enacted in social practices. Here, I address the concept of imagination and imaginaries as they relate to and shape our perceptions of citizenship in the United States. Next, I discuss recent scholarship that combines work in the cultural constructedness of citizenship with work on the social and political imagination of citizenship. I follow this discussion with a review of work in rhetoric on citizenship. In this section I look to three rhetorical approaches to studies of citizenship – that of citizenship as a process of identification, that of citizenship as an institution with the potential to marginalize and/or liberate, and that of citizenship as a performative process. In the final paragraphs of this literature review, I focus on the body of scholarship that addresses specific questions about queer refugees, asylum seeking, and U.S. citizenship to show how my intervention both brings together and expands upon these discussions.

From its inception, the legal status of citizenship and its cultural constructedness have been inseparable. Long before the establishment of U.S. boundaries, questions of citizenship and citizen identity circulated. Plato and the members of the Greek polis have been credited with developing the conception of citizenship that is valued by Western societies today.¹³ For Plato, citizenship was of both legal and ethical importance. In *Laws*, he describes the necessity of

¹³ Peter Riesenberg, *Citizenship in the Western Tradition: Plato to Rousseau* (Durham, NC: University of North Carolina Press, 1994), 3-4.

proper moral education for the development of virtuous citizens.¹⁴ Similarly, Aristotle wrote of the connection between the common good and the duties of citizens.¹⁵ Rhetoric itself emerged as an art of civic education, and for the Greeks, citizenship functioned both as a legal status and as a social status defined by implicit norms (or *doxa*). For Isocrates, this came in the form of his commitment to an education in *logos politicos*: “an education in speaking well for the purposes of citizenship and statesmanship.”¹⁶ The abilities to speak on one’s own behalf, to make public argument, and to commit to the good of the state were essential for citizens. This idea that commitment to one’s city/state merited certain behaviors was carried well beyond the Greeks. Cicero, for example, extolled the concept of the ideal citizen – someone who was wise, an exemplary orator, and who valued the principle of equity.¹⁷ Quintilian’s “good man speaking well”¹⁸ required a moral education in order to become a valued citizen-orator.¹⁹ From its earliest acknowledgement, citizenship involved more than mere legal status, as there were standards and expectations for how to best enact one’s citizenship.²⁰ Of course, many individuals were excluded from Greek and Roman citizen status altogether, but even among those granted

¹⁴ Plato, *Laws*, trans. Thomas L. Pangle (Chicago: University of Chicago Press, 1980).

¹⁵ Susan Collins, *Aristotle and the Rediscovery of Citizenship* (Cambridge: Cambridge University Press, 2006).

¹⁶ Takis Poulakos, “Isocrates’ Use of *doxa*,” *Philosophy and Rhetoric* 34, no. 1 (2001): 62.

¹⁷ Hans Baron, *Cicero and the Roman Civic Spirit in the Middle Ages and Early Renaissance* (Manchester University Press, 1938); Kenneth Burke, *A Rhetoric of Motives* (Berkeley: University of California Berkeley, 1969), 24; Marcus Tullius Cicero, *On the Commonwealth* 1929 (Whitefish: Kessinger Publishing, LLC, 2004).

¹⁸ Quintilian, *Institutes of Oratory*, ed. Lee Honeycutt, trans. John Selby Watson (Ames: Iowa State University Press, 2006), XII.1.1.

¹⁹ Quintilian, *On the Teaching of Speaking and Writing: Translations from Books One, two, and Ten of the Institutio Oratoria*, ed. James J. Murphy, (Carbondale: Southern Illinois University Press, 1987), xii.

²⁰ Hobbes’ writing on citizenship serves as a notable exception to the call for citizenship as participatory and requiring of a civic education. For Hobbes, the sovereign individual and obedience to a protective state power should take precedent – leaving little space for a conceptualization of a participatory, citizen-orator. Keith Faulks, *Citizenship: Key Ideas* (Oxfordshire: Routledge, 2005), 22. Richard Turk and Michael Silverthorne, *Hobbes on the Citizen* (Cambridge: Cambridge University Press, 1998).

citizenship, certain hierarchies arose which constructed some subjects as better citizens than others.

Although citizenship today excludes people in a different way from ancient societies, today's conceptions of citizenship have inherited much from classical political philosophy. For the Greeks and Romans, democratic citizenship was first and foremost a legal status, but it was also inextricably social – even though that distinction was not explicitly acknowledged. Likewise, U.S. citizenship today is most obviously a political status; yet, the meaning of this status is shaped by social and cultural factors. Citizenship in the United States is officially granted to all people born within the nation's borders, regardless of income, religion, race, or moral standing. But although these legal protections might technically extend to all citizens, they do not necessarily extend to all citizens in the same way. As noted by sociologist T.H. Marshall, citizenship is not merely a legal or political status, but also, and just as importantly, a social status. In his 1950 book of lectures, *Citizenship and the Social Class*, Marshall delineates three types, or elements, of citizenship: the civil, the political, and the social.²¹ Most citizenship research up until the time of his writing in the early 1900s had been primarily concerned with political and civil notions of citizenship.²² Marshall's introduction of social citizenship provided a way to explicitly account for society's unequal treatment of people with equal legal or political status.

²¹ T. H. Marshall, *Citizenship and Social Class and Other Essays* (London: Cambridge University Press, 1950).

²² Marshall's concept of social citizenship itself did not gain widespread acceptance until the 1960s, and from that point on, most any discussion of social citizenship turned to Marshall as the originator of the concept. Anthony M. Rees, "T.H. Marshall and the Progress of Citizenship," in *Citizenship Today: The Contemporary Relevance of T.H. Marshall*, eds. Martin Bulmer and Anthony M. Rees (London: Routledge, 2003), 3. Further, Marshall himself claimed that it was not until the post-WWII welfare state that social citizenship rights became obviously distinct from political and civil citizenship status. Peter Dwyer, *Understanding Social Citizenship: Themes and Perspectives for Policy and Practice* (Bristol: The University of Bristol Policy Press, 2003), 38-40.

Theorists in political science, sociology, and political philosophy have since extended Marshall's insight that citizenship involves more than a solely political or legal status. For many of these theorists, citizenship is best understood as something one does, rather than as a status one has – it requires active participation in a society and a conscious commitment to one's nation. For Eric Hobsbawm, understanding the relationship between a nation and its subjects can help to account for the ways power becomes imbricated within citizenship. However, Hobsbawm seeks to make clear that the existence of this relationship is not necessarily an indication of equally shared identifications between citizens and their states. To account for this, he encourages scholars to find ways to address the shifts in national identification over time or across spaces.²³ Charles Tilly argues that what makes citizenship unique among other similar contracts is the way it “encases vital rights and obligations that impinge significantly on life outside the world of constitutional affairs.”²⁴ He further refers to citizenship as a necessary but insufficient condition of democracy. What this means is that in order for the process of democracy to function, people must deeply identify with their roles as citizens²⁵—to imagine themselves as having rights through their citizen status as well as obligations to an imagined nation and an imagined citizenry.²⁶ Isaac West characterizes this obligation as an adoption of a politics of “wholeness,” or an emphasis of “the need to accept others on their own terms without

²³ Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge, UK: Cambridge University Press, 1990) 11.

²⁴ Charles Tilly, “Conclusion: Why Worry About Citizenship?” in *Extending Citizenship, Reconfiguring States*, eds. Michael Hanagan and Charles Tilly (Lanham, MD: 1999), 256.

²⁵ Or, for Ariella Azoulay, their status as non-citizens - See: Ariella Azoulay, Ruvik Danieli and Andrew Skomra, “Citizens of Disaster,” *Qui Parle* 15, no. 2 (2005): 105-137

²⁶ See: Rogers Smith, “The ‘American Creed’ and American Identity: The Limits of Liberal Citizenship in the United States,” *The Western Political Quarterly* 41, no. 2 (1988): 225-251; Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, (New Haven: Yale University Press, 1997).

demanding fealty to a belief in essential similarities” instead of a politics of “oneness” which merely demands assimilation.²⁷

One’s identification with their own citizenship can manifest itself in different ways – as active engagement with one’s nation, through passive reflection upon one’s citizen status, or both of these at once. Despite the varied possibilities for enactment of citizenship, members of the citizenry must be able to imagine themselves either as equals among their fellow citizens or as possessing the potential for equality among their nation’s inhabitants. For citizenship scholars Thomas Janoski and Brian Gran, citizenship functions both passively and actively as a “membership of individuals in a nation-state with universalistic rights and obligations at a specified level of equality.”²⁸ Their definition is helpful because it incorporates the tension between equality and access to rights while accounting for the ways that not all citizen participation is consciously active. The granting of citizenship to birthright or naturalized citizens carries with it inalienable rights; yet, some people are more equal under the law than others. This determination of citizen equality is enacted through a process of imagination.

The notion of imagined citizenship has roots in the work of Benedict Anderson, who introduced the idea that nations and communities are themselves “imagined.”²⁹ Anderson observed that the people within a nation or community could never know or even encounter all of the other members of their nation or community. Therefore one’s conception of a community as large as a nation is necessarily based on its common representations – the images and narratives about the community, which become circulated by community members and the

²⁷ Isaac West, *Transforming Citizenships: Transgender Articulations of the Law* (New York: New York University Press, 2014): 31

²⁸ Thomas Janoski and Brian Gran, “Political Citizenship: Foundations of Rights,” in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner (London: Sage Publications, 2002), 13.

²⁹ “...all communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined.” Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised edition (London: Verso, 2006) 6.

media.³⁰ Sociologist Charles Taylor extends this conception of imagination through his introduction of “social imaginaries,” which he defines as “the way our contemporaries imagine the societies they inhabit and sustain.”³¹ Taylor is particularly interested in how social relations are “carried” in vernacular discourse comprised of shared “images, stories, and legends.”³² Although Taylor’s language is that of the social, his examples of how the social imaginary plays out in contemporary western societies relies on concepts related closely to citizenship, like voting and protesting. For this reason, a focus on the imaginary suggests a focus on the social practices through which our shared conceptions about citizenship develop.

Although not always explicitly interested in the social processes of imagining, scholarship in cultural citizenship similarly acknowledges the varied conceptions of citizenship developed through social practices. This work often incorporates imaginaries and imagination through its efforts to depict the instability of a citizen status that holds certain cultures to be ideal. For anthropologist and transnational citizenship scholar Aihwa Ong, cultural citizenship is a term that encapsulates “ways of belonging according to the dominant cultural criteria.”³³ Other scholars of cultural citizenship emphasize that not only is there a type of citizenship that exists in addition to political and economic status, but also that more needs to be done to incorporate a right to communication and cultural difference within civic life.³⁴ One of the most widely cited proponents of this type of attention to cultural citizenship is Renato Rosaldo. For Rosaldo, cultural citizenship is a “deliberate oxymoron” because it accounts for differences while actively seeking equality among and equal treatment of all people within a state; it “refers to the right to

³⁰ Anderson, *Imagined Communities*, 22, 25.

³¹ Charles Taylor, *Modern Social Imaginaries*, (Durham: Duke University Press, 2004) 6

³² Taylor, *Modern Social Imaginaries*, 23.

³³ Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham, NC: Duke University Press, 2004), 106.

³⁴ Toby Miller, “Cultural Citizenship,” *MATRIZES* 4, no. 2 (2011): 57.

be different and to belong in a participatory democratic state.”³⁵ Keith Faulks further argues for greater attention to cultural difference in studies of citizenship in his book *Citizenship: Key Ideas*. Faulks claims that conceptions of citizenship need to better account for the tension between the sovereign individual and the collective needs of a society through a cosmopolitan cultural citizenship. His emphasis on an egalitarian conception of citizenship allows him to account for the ways societies and cultures exclude certain people from civic life.³⁶ Further, in his review of cultural citizenship scholarship, Toby Miller concludes that the field still needs to find ways to reject neoliberalism and to vigilantly attend to those who are consistently excluded from conversations about citizenship.³⁷ The scholarship attending to questions of cultural citizenship serve as a departure from some traditional citizenship scholarship through its critical focus on who is excluded from citizen status and the cultural construction of citizenship.

Attention to cultural citizenship provides a way to both recognize and deal with the marginalizations that certain notions of citizenship perpetuate. In the United States, circulating discourses tend to reinforce heterosexual and masculine ideals of citizenship that subordinate queer and feminine notions of citizenship.³⁸ Lauren Berlant and Michael Warner claim that in the United States, “national heterosexuality” has become the dominant, unspoken space of “pure citizenship” that allows systemic inequalities regarding sexuality to remain in the shadows.³⁹

This renders unintelligible the relationship between sexuality and citizenship and makes

³⁵ Renato Rosaldo, “Cultural Citizenship and Educational Democracy,” *Cultural Anthropology* 9, no. 3 (1994): 402.

³⁶ Keith Faulks, *Citizenship* (London: Routledge Press, 2000) 3.

³⁷ Miller, “Cultural Citizenship,” 71-73.

³⁸ Lauren Berlant argues that circulating images (of the military, in particular) reinforce presumed connections between masculinity and citizenship. Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham, NC: Duke University Press, 1997), 150.

³⁹ Lauren Berlant and Michael Warner, “Sex in Public” in *Publics and Counterpublics* (New York: Zone Books, 2002), 189.

heteronormativity the standard operation of the state.⁴⁰ Citizenship is inherently embodied and performative, and, as Lauren Berlant argues, it is also inherently paradoxical:

In the patriotically-permeated pseudopublic sphere of the present tense, national politics does not involve starting with a view of the nation as a space of struggle violently separated by racial, sexual, and economic inequalities that cut across every imaginable kind of social location. Instead, the dominant idea marketed by patriotic traditionalists is of a core nation whose survival depends on personal acts and identities performed in the intimate domains of the quotidian.⁴¹

For Berlant, citizenship is paradoxical because it requires of its citizens certain publicly performed private identities. The nation is both public and inherently intimate, and private acts like sex are forced to “bear the burden of defining proper citizenship.”⁴² Sexual orientation becomes an integral part of the performance of citizenship, yet it is only recognized as such when it deviates from heteronormative structures of citizen identity.

Recently, scholars have turned to a concept of “sexual citizenship” to help clarify this relationship between minoritized sexual identities and the performance of citizenship.⁴³ Attention to sexual citizenship promises to account for the tethering of rights to sexual orientation and to highlight the ways in which distinctions between public and private disenfranchise women and sexual minorities whose private acts have long been subject to public legal regulation.⁴⁴ Much of this work, however, is focused on the experiences of heterosexual subjects as they undergo a

⁴⁰ Berlant and Warner, “Sex in Public,” 194; Carol Johnson, “Heteronormative Citizenship and the Politics of Passing,” *Sexualities* 5, no. 3 (2002): 317-336.

⁴¹ Berlant, *Queen of America*, 4.

⁴² Berlant, *Queen of America*, 5.

⁴³ David Bell, “Pleasure and Danger: The Paradoxical Spaces of Sexual Citizenship,” *Political Geography* 14, no. 2 (1995): 139-153; David Bell and Jon Binnie, *The Sexual Citizen: Queer Politics and Beyond* (Cambridge: Polity Press, 2000); Brenda Cossman, *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* (Stanford, CA: Stanford University Press, 2007); David Evans, *Sexual Citizenship: The Material Construction of Sexualities* (New York: Routledge, 1993); Martin Zebracki, “Right to Space: Moving Towards Sexual Citizenship Beyond the Nation State,” *Antipode* 45, no. 4 (2013), 785-788.

⁴⁴ Ruth Lister, “Sexual Citizenship,” in *Handbook of Citizenship Studies*, eds., Engin F. Isin and Bryan S. Turner (London: Sage Publications, 2002): 192-207.

process of “becoming and unbecoming” citizens.⁴⁵ Barbara Cossman’s definition of sexual citizenship is an example of this approach, and she makes the claim that merely by choosing to engage or not engage in certain sexual behaviors, one can move fluidly between categories of good and bad citizenship.

The notions of citizenship outlined above have been integrated into contemporary scholarship on rhetoric in a number of ways. From the most traditional public address scholarship to the most progressive critical/cultural work there exists an investment in how citizenship is framed by political figures, how citizenship is denied or restricted for marginalized populations, and how the relationship between citizenship and democracy plays out in the public. To do this, scholars tend to adopt one of the following distinct, though often overlapping, foci: 1) civic identity and identification, 2) exclusions and marginalization, and 3) performance.

Rhetorical studies of citizenship often focus on the ways in which rhetors invite audiences to accept and adhere to a preferred civic identity. This literature is generally interested in the duties of people who have already obtained citizenship, and specifically how those in positions of power attempt to shape citizen identities. Much of this scholarship occurs in the area of presidential rhetoric, where scholars look to the successes and failures of presidents (or the presidency) to constitute audiences or create certain identifications among their audiences. For example, in Mary Stuckey’s *Defining Americans*, she claims that citizenship is a key theme of presidential discourse and the presidency’s constitutive capacities are most evident in their role in defining citizenship.⁴⁶ Both Stuckey and Vanessa Beasley find that in U.S. presidents’ efforts to shape the concept of citizenship, they must openly assert that it is a status open to all, while

⁴⁵ Cossman, *Sexual Citizens*, 70.

⁴⁶ Mary E. Stuckey, *Defining Americans: The Presidency and National Identity* (Lawrence, KS: University of Kansas Press, 2004).

finding ways to implicitly exclude certain people from its definition.⁴⁷ On this view, presidential rhetoric is one of the main sites of citizenship's definition in the United States, and these collective definitions both constitute some as citizens while also excluding others entirely.

There is also a rich body of rhetoric literature that considers the relationship between public sphere participation and citizenship.⁴⁸ The relationship between the critical role of the individual citizen and the rhetoric of the public sphere is echoed in Paul Stob's claim that most academic research of these discourses are ultimately interested in "*identity, access, and power*."⁴⁹ Stob ultimately finds the most fruitful entry points for discussion of rhetoric, citizenship, and the public sphere to be located in the work of John Dewey and Kenneth Burke. For my project, and many others that consider rhetorical citizenship, Burke's concepts of *identification* and *consubstantiality* provide a starting point for dealing with citizenship's inclusions and exclusions.⁵⁰ Gregory Clark argues that Burke's identification helps people to see the ways in which rhetorical power functions outside of conventional realms and that the symbols shared between people work rhetorically to shape a common identity – a rhetorical citizenship.⁵¹ For Burke, "Identification is compensatory to division. If men were not apart from one another, there

⁴⁷ Stuckey, *Defining Americans*; Vanessa Beasley, "Identity, Democracy, and Presidential Rhetoric," in *Politics, Discourse, and American Society: New Agendas*, eds., Roderick P. Hart and Bartholomew H. Sparrow (Lanham, Maryland: Rowman & Littlefield Publishers, 2001), 29; Vanessa Beasley, *You, the People: American National Identity in Presidential Rhetoric* (College Station, TX: Texas A&M University Press, 2013) 67.

⁴⁸ Ronald Walter Greene, "The Concept of Global Citizenship in Michael Hardt and Antonio Negri's *Empire*: A Challenge to Three Ideas of Rhetorical Mediation," in *Rhetorical Democracy: Discursive Practices of Civic Engagement*, eds. Gerard Hauser and Amy Grim (Mahwah, NJ: Lawrence Erlbaum Associates, Inc., Publishers, 2004); Gerard A. Hauser, *Vernacular Voices: The Rhetoric of Publics and Public Spheres* (Columbia, SC: U of South Carolina Press, 1999); Melanie Loehwing and Jeff Motter, "Publics, Counterpublics, and the Promise of Democracy," *Philosophy & Rhetoric* 42, no. 3 (2009): 220-241.

⁴⁹ Paul Stob, "Kenneth Burke, John Dewey, and the Pursuit of the Public," *Philosophy & Rhetoric* 38, no. 3 (2005): 228 emphasis in original.

⁵⁰ Burke, *Rhetoric of Motives*, 20-23.

⁵¹ Gregory Clark, *Rhetorical Landscapes in America: Variations on a Theme from Kenneth Burke* (Columbia, SC: University of South Carolina Press, 2004), 5, 52.

would be no need for the rhetorician to proclaim their unity.”⁵² Thus, we can approach citizenship as state-sponsored identification, a sanctioned wholeness that defines a person as part of one group and not another. In so doing, citizenship determines who matters within a nation-state and sets forth a hierarchy of common identities.

Where some rhetoric scholars look to the processes of state for insights into identification, others look to the ways identification with one’s citizenship is enacted through one’s civic participation. Alessandra Beasley Von Burg describes this as “philosophical citizenship,” which she claims complicates the nationality-centered concept of citizenship, and which comes to be only through a participatory, engaged process.⁵³ Christian Kock and Lisa S. Villadsen move Beasley Von Burg’s philosophical citizenship toward the concept of “rhetorical citizenship,” a discursive phenomenon achieved by civic engagement and public deliberation.⁵⁴ Rhetorical citizenship differs from philosophical citizenship through its emphasis on collective engagement. Here, one identifies with their citizenship through their participation in political activities. The identification of oneself or others as “good citizens” requires normative definitions of citizenship, which tend to benefit certain individuals and groups at the expense of others.

Sovereign power exploits divisions between members of society who enjoy the full rights of citizenship and those who do not. As a result, any effort to gain citizenship threatens the political order and is met with resistance. Despite the potential for a diverse group of people to gain legal access to citizenship in the United States, a number of groups have faced a long struggle to become recognized as having citizenship of equal cultural value, including (but

⁵² Burke, *Rhetoric of Motives*, 22.

⁵³ Alessandra Beasley Von Burg, “Caught Between History and Imagination: Vico’s *Ingenium* for a Rhetorical Renovation of Citizenship,” *Philosophy and Rhetoric* 43 (2010): 26-53.

⁵⁴ Christian Kock and Lisa S. Villadsen, *Rhetorical Citizenship and Public Deliberation* (University Park, Pennsylvania: Penn State University Press, 2012).

certainly not limited to) women,⁵⁵ the homeless,⁵⁶ and migrants.⁵⁷ Acceptance into the U.S. citizenry matters because it unites those under its protection while excluding or foreclosing outsiders. Immigrants generally, and refugees more specifically, disrupt the nation-state. Or, as Giorgio Agamben explains, “by breaking up the identity between man and citizen, between nativity and nationality, the refugee throws into crisis the original fiction of sovereignty.”⁵⁸ Immigrants and refugees alike have been viewed as threats to the (perceived) sovereignty and purity of the United States. For Anne Demo, many of our justifications for keeping people from citizenship are based on ideas about the importance of U.S. sovereignty.⁵⁹ In her analysis of immigration politics and sovereignty discourse, Demo finds a number of arguments wielded within political discourse that serve to depict migrants as excessive, alternative, and dangerous. As John Fletcher explains, citizenship can be dangerous because it inherently includes and excludes while serving as “a major tool of neoliberal hegemony” because it is based on a model that includes some and excludes others.⁶⁰ The ways in which these inclusions and exclusions are regulated is subject to change over time, and that instability perpetuates fear of immigrants and refugees – inciting slippery slope arguments about the potential outcomes of amnesty or even asylum. In addition to the multiple concerns facing sexual orientation refugees, one of the most challenging to combat is the fear that people will be able to fake their sexual orientation and

⁵⁵ Susan Zaeske, “Signatures of Citizenship: The Rhetoric of Women’s Antislavery Petitions,” *Quarterly Journal of Speech* 88 (2002): 147-168; Angela G. Ray, “The Rhetorical Ritual of Citizenship: Women’s Voting as Public Performance, 1868-1975,” *Quarterly Journal of Speech* 93 (2007): 1-26.

⁵⁶ Melanie Loehwing, “Homelessness as the Unforgiving Minute of the Present: The Rhetorical Tenses of Democratic Citizenship,” *Quarterly Journal of Speech* 96 (2010): 380-403.

⁵⁷ Robert Asen and Daniel C. Brouwer, *Counterpublics and the State* (Albany, NY: State University of New York Press, 2001); Karma Chávez, “Embodied Translation: Dominant Discourse and Communication with Migrant Bodies-as-Text,” *The Howard Journal of Communications* 20 (2009): 18-36.

⁵⁸ Giorgio Agamben, “We Refugees,” *Symposium* 29 (1995): 117.

⁵⁹ Anne Demo, “Sovereignty Discourse and Contemporary Immigration Politics,” *Quarterly Journal of Speech* 91, no. 3 (2005): 306.

⁶⁰ John Fletcher, “Of Minutemen and Rebel Clown Armies: Reconsidering Transformative Citizenship,” *Text & Performance Quarterly* 29 (2009): 234.

sneak into the U.S.⁶¹ This fear compounds the scrutiny faced by LGBTI refugees whose presence not only might be seen to threaten U.S. sovereignty, but might even appear to do so mendaciously.

For LGBTI refugees, sexual orientation and refugee status combine to create an especially difficult path to citizenship – one that is wrought with multiple exclusions – as they do not readily conform to legal or cultural definitions of U.S. citizenship. Their foreignness sets them apart, and their refugee/asylee status serves to place them in a liminal position between immigrant and citizen.⁶² Karma Chávez argues that, in the United States, immigrants (regardless of sexual orientation) are inherently queer because “they are most other, abject, and in the minds of many, they belong outside of the nation-state.”⁶³ This means that LGBTI refugees are deemed queer both because of their sexual orientation and through their position as migrants. For Chávez, immigrant rights discourses and LGBTI rights discourses work to counter the metaphors and narratives that subordinate them within the national social imaginary.⁶⁴ This process, argues Chávez, can result in efforts to belong within the nation that force identity performances that fit within heteronormative citizen ideals, and which ultimately embrace domesticity and “normal” sexual relations. As an alternative, Chávez offers “differential belonging” as a strategy of cultural citizenship that can confront exclusionary conceptions of belonging. This differential

⁶¹ Scrutiny over these cases has increased in Europe where a group based out of Brussels was caught selling fake stories to African and Russian immigrants to improve their chances of being offered asylum in Belgium. P Gonzalvés, “Fake Gay Refugees,” *Radio Netherlands Worldwide* (19 August 2013) <<http://www.rnw.nl/africa/article/fake-gay-refugees>>.

⁶² Refugees and asylum seekers are similarly positioned within the state but there are some differences in their definitions. The main difference between the two terms is that refugee status is sought from outside of the United States and that refugee status protection is granted to people who cannot return to their home nation for fear of persecution. Asylum status is granted to people who are already in the United States and who already meet the definition of refugee (but do not necessarily have refugee status). From the Immigrant and Nationality Act, Sec. 208(b)(1), (2010).

⁶³ Karma Chávez, “Exploring the Defeat of Arizona’s Marriage Amendment and the Specter of the Immigrant as Queer,” *Southern Communication Journal*, 74 (2009): 320.

⁶⁴ Karma Chávez, “Border (In)Securities: Normative and Differential Belonging in LGBTI and Immigrant Rights Discourse,” *Communication and Critical/Cultural Studies* 7, no. 2 (2010) 136-155.

belonging would require recognition of different identities while leaving space for all of those different identities to coexist within a citizenry. An effort toward differential belonging would help to encourage relationships across margins and differences in a way that expands the social imaginary. Further, it may help to break individuals free from the restrictions of an imagined, normative understanding of good citizenship.

Chávez's work serves as a link between rhetoric's attention to large-scale institutional processes of inclusion/exclusion and the ways citizenship is performed and disciplined in subtler ways.⁶⁵ For immigrants, refugees, and asylum seekers, the transition into cultural citizenship requires them to transcend the boundary that forecloses them by sufficiently performing citizen-identity. Though the idea of performance as related to civic engagement is a frequent theme in rhetorical scholarship, what constitutes a performance sufficient to, or typical of civic engagement varies significantly. For some, citizenship is inextricably tied to the act of voting, which makes sense in the context of the suffrage movement or other efforts to gain voting rights.⁶⁶ Robert Asen goes so far as to call voting "the quintessential act of citizenship."⁶⁷ Although Asen acknowledges voting as a powerful mode of civic engagement, he recommends that scholars turn their attentions to other forms of civic action to investigate questions of how best to engage civically. David Zarefsky similarly advocates expanding the notion of active citizenship to include argument and critical deliberation as modes of civic engagement,⁶⁸ as do

⁶⁵ Jeffrey A. Bennett, "Passing, Protesting, and the Arts of Resistance: Infiltrating the Ritual Space of Blood Donation," *Quarterly Journal of Speech* 94 (2008): 24-25.

⁶⁶ Ray, "The Rhetorical Ritual of Citizenship," Angela G. Ray and Cindy Koenig Richards, "Inventing Citizens, Imagining Gender Justice: The Suffrage Rhetoric of Virginia and Francis Minor," *Quarterly Journal of Speech* 93, no. 4 (2007): 375-402.

⁶⁷ Robert Asen, "A Discourse Theory of Citizenship," *Quarterly Journal of Speech* 90, no. 2 (2004): 205.

⁶⁸ David Zarefsky, "Spectator Politics and the Revival of Public Argument," *Communication Monographs* 59 (1992): 412-414.

M. Lane Bruner,⁶⁹ and Brian Ott and Greg Dickinson when they posit everyday criticism as a signature mode of critical performance.⁷⁰ John Lucaites claims that performance of citizenship requires one to be “both agent and spectator, enacting the demands of civic life for the benefit of others to witness or observe—if not judge, while also viewing the world through the eyes of the citizen.”⁷¹ And while Kenneth Rufo and R. Jarrod Atchison warn that such efforts to expand what counts as civic engagement might subsume the private and fail to theoretically account for everything *outside* of citizenship, their argument does not undermine the basic insight that citizenship is something one does, and that its definition emerges through repeated, public performance.⁷²

To understand the relationship between imagined citizenship and performance, rhetoric scholars have looked to the public discourses that shape and frame our ideas about citizenship. For example, Darrell Wanzer-Serrano and J. David Cisneros consider how legal and cultural non-citizens work to gain access to citizenship. Both find ways that these non-citizens appeal to the civic imaginary and through this appeal performatively present the possibility of its reformation. Specifically, Wanzer reads an embodied discourse that has the potential to shift the social imaginary, which, drawing from Charles Taylor, he defines as “one way to talk about the complex hegemonic structuration of ‘the social’ in manners that inform and are informed by

⁶⁹ M. Lane Bruner, “Carnavalesque Protest and the Humorless State,” *Text & Performance Quarterly* 25, no. 2 (2005): 137; M. Lane Bruner, “Rhetorical Theory and the Critique of National Identity Construction,” *National Identities* 7, no. 3 (2005): 310, 323 n. 2.

⁷⁰ Brian L. Ott and Greg Dickinson, “Visual Rhetoric and/as Critical Pedagogy,” in *The SAGE Handbook of Rhetorical Studies*. Eds. Andrea Lunsford, Kirt H. Wilson, and Rosa A. Eberly (Thousand Oaks, CA: SAGE, 2008), 401.

⁷¹ John Louis Lucaites, “Border Optics,” in *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*, ed. D. Robert DeChaine (Tuscaloosa, AL: University of Alabama Press, 2012), 228.

⁷² Kenneth Rufo and R. Jarrod Atchison, “From Circus to Fasces: The Disciplinary Politics of Citizen and Citizenship,” *The Review of Communication* 11, no. 3 (2011): 211.

political discourse and habitus.”⁷³ Cisneros considers how non-citizens themselves are “alienized” through a process he calls “discursive bordering” which ultimately maintains the concept of citizenship in a particular way. He explains that the functioning of democracy requires people to perform and identify with traits belonging to “good” citizens – traits like rationality, eloquence, and the motivation to become informed participants in the democratic process.⁷⁴ Cisneros further explains that adherence to this “ideal” type of citizenship makes possible the silencing of immigrants, the stateless, and other minorities who might lack the ability to perform citizen identity in this desired way. What is important for Cisneros, however, is that even non-citizens have the ability to embody and perform a citizen identity, and these performances can “reborder the civic imaginary” – in essence, reshaping or challenging the borders between citizen and non-citizen.⁷⁵

Within rhetorical studies, there are some studies addressing queer performances of citizenship,⁷⁶ and some addressing the plight of LGBTI refugees and immigrants.⁷⁷ However, there is currently no rhetorical scholarship that looks specifically at how LGBTI refugees are called to perform specific identities in order to be given access to citizenship or what may

⁷³ Darrel Enck-Wanzer, “Decolonizing Imaginaries: Rethinking ‘the People’ in the Young Lords’ Church Offensive,” *Quarterly Journal of Speech* 98, no. 1 (2012): 16; Darrel Enck-Wanzer, “Trashing the System: Social Movement, Intersectional Rhetoric, and Collective Agency in the Young Lords Organization’s Garbage Offensive,” *Quarterly Journal of Speech* 92 (2006): 195.

⁷⁴ Josue David Cisneros “(Re)Bordering the Civic Imaginary: Rhetoric, Hybridity, and Citizenship in La Gran Marcha,” *Quarterly Journal of Speech* 97, no. 1 (2011): 41.

⁷⁵ Cisneros, “(Re)Bordering,” 28.

⁷⁶ Jeffrey A. Bennett, *Banning Queer Blood: Rhetorics of Citizenship, Contagion, and Resistance* (Tuscaloosa, AL: University of Alabama Press, 2009); Bennett, “Passing,” 23-43; Charles E. Morris and John M. Sloop, “‘What Lips These Lips Have Kissed’: Refiguring the Politics of Queer Public Kissing,” *Communication and Critical/Cultural Studies* 3, no. 1 (2006): 1-26.

⁷⁷ Karma Chávez has produced the largest body of literature on this subject. See Karma Chávez, “Specter,” Karma Chávez, “Identifying the Needs of LGBTI Immigrants and Refugees in Southern Arizona,” *Journal of Homosexuality* 58 (2011): 189-218; Karma R. Chávez, “Border (In)securities: Normative and Differential Belonging in LGBTI and Immigrant Rights Discourse,” *Communication and Critical/Cultural Studies* 7, no. 2 (2010): 136-155; Karma R. Chávez, *Queer Migration Politics: Activist Rhetoric and Coalitional Possibilities* (Urbana: University of Illinois Press, 2013).

become of the discourses and assumptions that comprise cultural definitions of citizenship as a result of this new policy.⁷⁸ Refugees face discrimination similar to that of the broader population of migrants in the U.S., but their identity is further scrutinized.⁷⁹ Although the vast archive of rhetorical scholarship on immigration and border politics informs my project, it is still important to account for the specific demands placed on refugees. Refugees' reasons for leaving their home nations can be complicated and traumatic, and their needs are often perceived in ways that differ from those of other immigrants. Moreover, queer refugees' literal and metaphorical subordination doubly others them and creates a paradox. If they are able to prove to their immigration officer or judge that they immutably belong to an identity or orientation category considered "sexual minority," they foreclose their ability to be part of the group privileged in heteronormative conceptions of cultural citizenship. Conversely, if they conform to heteronormative conceptions of cultural citizenship they will be denied their claim to refugee status, thus ending their journey to legal citizenship. This paradox creates situations in which multiple actors in the public sphere negotiate definitions of citizenship. My project looks to these negotiations for insights into how we imagine and reimagine citizenship.

LGBTI asylum cases provide a new way of considering the rhetorical construction of

⁷⁸ Sara McKinnon has published work that shares my interest in asylum courtroom performances of citizenship that complicate notions of public and private, but her work focuses on female refugees who flee gender-based persecution and domestic violence abroad. McKinnon is similarly interested in how these women provide sufficient evidence of abuse through their embodied affect, just as I am interested in how LGBTI refugees evidence their claims that their sexual orientation caused them significant danger abroad. See: Sara McKinnon, "Citizenship and the Performance of Credibility: Audiencing Gender-based Asylum Seekers in U.S. Immigration Courts," *Text and Performance Quarterly* 29 (2009): 205–221; Sara McKinnon, "Positioned In/by the State: Incorporation, Exclusion, and Appropriation of Women's Gender-Based Claims to Political Asylum in the United States," *Quarterly Journal of Speech* 97 (2011): 178–200.

⁷⁹ In her analysis of the term *refugee* and its post-Hurricane Katrina use, Louisa Edgerly found that public perception of the term was repeatedly linked to "a condition of helplessness...of receiving undeserved benefits" and to a mental image of foreigners without agency. Louisa Edgerly, "Difference and Political Legitimacy: Speakers' Construction of 'Citizen' and 'Refugee' Personae in Talk About Hurricane Katrina," *Western Journal of Communication* 75 (2011): 314.

citizenship for a population that is excluded from cultural citizenship in multiple ways despite their potential for legal citizenship status. This dissertation will expand rhetorical citizenship scholarship through this new focus as well as through its attention to the interrelationship between identification, exclusion, and performance in this set of citizenship discourses. In order to account for the challenge of intersectionality as it relates to the LGBTI refugee I turn to the concept of “rhetorical imagining” as a framework for analyzing the notion of citizenship that emerges in the discourse surrounding LGBTI refugee cases.

1.2 Methodology

Most of the academic focus on sexual orientation refugees has been on the laws that regulate them.⁸⁰ This dissertation will take a rhetorical approach through a turn toward the institutional discourses surrounding these asylum cases and an analysis of the ways citizenship is discursively imagined for queer refugees. In order to assess the ways citizenship is imagined in the discourse surrounding sexual orientation asylum cases, my methodology relies on Robert Asen’s notion of public imagining as a “tool that may inform critical investigations of the ways in which included and excluded people appear in public spheres.”⁸¹ Asen argues that inclusion and exclusion in the public sphere occur not only through the vocalization and embodiment of a

⁸⁰ United States and Canadian law journals have extensively discussed the legal aspects of sexual orientation-based persecution. Some articles to note include Alan G. Bennett, “The ‘Cure’ that Harms: Sexual Orientation-Based Asylum and the Changing Definition of Persecution,” *Golden Gate University Law Review* 29 (1999): 279; Julia Blanche Meister, “Orientation-Based Persecution as Grounds for Refugee Status: Policy Implications and Recommendations,” *Notre Dame Journal of Law, Ethics, & Public Policy* 9 (1995): 275; Venice Choi, “Living Discreetly: A Catch 22 in Refugee Status Determinations on the Basis of Sexual Orientation,” *Brooklyn Journal of International Law*, 36 (2010) 241. One notable exception to the claim that most of this attention stems from legal research is the work of Eithne Luibhéid whose book *Entry Denied: Controlling Sexuality at the Border* discusses the history of the relationship between sexuality and immigration in the U.S. and offers specific insights on the ways performances of certain sexual identities are called for through the asylum process for sexual orientation refugees.

⁸¹ Robert Asen, “Imagining in the Public Sphere,” *Philosophy & Rhetoric* 35, 4 (2002): 348.

person or population, but also through the imagining of others.⁸² For Asen, such “representing is not a disinterested process, but one that implicates social judgments and relations of power.”⁸³

Following Asen, I will look to the tension between what is made present in the news articles and official documents of support for queer refugees and what is left out – what is made positive and what is made negative. Through political imagining, the images and documents that surround queer asylum cases hold the potential to impact legislation, and they present an enduring legacy that shapes cultural understanding of LGBTI migrants and refugees as they seek citizenship in the United States.

Even when citizenship is granted, one is not guaranteed equal status among the citizenry. Robert Asen finds that the process of imagining often reveals important information about who is included or excluded within public spheres. By invoking “public sphere” here, I refer not to actual publics, but to the shared idea of the public as discussed by scholars like Jürgen Habermas and Michael Warner.⁸⁴ Specifically, I turn to the concept of counterpublics as described by Warner as “an indefinitely accessible world conscious of its subordinate relation.”⁸⁵ Although Warner addresses the need to create a literal space for queer counterpublics, the needs of LGBTI refugees move beyond the desire for a literal space and instead work toward literal access to citizen identity.

⁸² Asen, “Imagining,” 347

⁸³ Asen, “Imagining,” 353.

⁸⁴ Studies of the public sphere emerging from the work of Jürgen Habermas have had untold influence in the field of rhetoric, however, critiques of Habermas and public sphere theory in general note its neglect of gendered privilege and the struggles of subaltern populations. Studies of counterpublics have helped bring forth these issues in a way that allows discussion of the political (and of publics) while still acknowledging the masculinist power structures at play in the world. For example, Nancy Fraser suggests that Habermas’s conception of the public sphere is fundamentally “masculinist.” For more, see Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” in *Habermas and the Public Sphere*, ed., Craig Calhoun (Cambridge, MA: Massachusetts Institute of Technology Press, 1994), 117.

⁸⁵ Warner, *Publics and Counterpublics*, 199.

In addition to Warner's attention to counterpublics, his insight that imaginaries develop and circulate through the sharing of texts further augments Asen's concept of imagining. For Warner, "the circulation of texts among strangers" enables a reflexive conception of identity; addressed as a "social entity" within a network of circulating discourse, it allows readers to imagine themselves a public of a particular sort.⁸⁶ Warner's emphasis on circulation is important to my analysis because of the ways that individual news stories about refugees are printed, re-printed by other sources, or used as fodder for commentary on other web sites or as representative anecdotes in NGO and U.S. government documents addressing asylum issues. The movement of this discourse and its framing and re-framing over time contribute to a particular image of citizenship in the United States. Tracing this helps account for what Asen refers to as the "multimodality" and multidirectionality of political imaginaries.⁸⁷

From these conceptions of a public imaginary informed by theories of counterpublics and circulation, I work to understand how an act of public imagining can queer dominant notions of citizenship. Because of this, I supplement Asen's iteration of imagining with a perspective that accounts for my cases' embodiment (and legislation) of queer identities. Much of the queer theory work being done in the rhetorical discipline relies on Warner and particularly on his notion of queer counterpublics. However, Warner is only one piece of the queer rhetoric puzzle.⁸⁸ The term "queer" may seem to be interchangeable with other sexual-orientation terms

⁸⁶ Warner, *Publics and Counterpublics*, 11-12.

⁸⁷ Asen, "Imagining," 357, 359.

⁸⁸ In addition to a reliance on Warner (and Eve Sedgwick), queer rhetorical theories have deep roots in the work of Michel Foucault and Judith Butler. Foucault's notion of the fluidity of power and resistance, in combination with his writing on the socially constructed nature of sexual categories, offer rhetoricians a means of dealing with the relationship between power and sexuality. Butler relies on and critiques Foucault throughout her work, but in addition, she contributes the notion that there are always meanings already embedded in the language we use, that gender is performative, and that the performativity of gender is citational – it always refers to other performances of gender that we have knowingly or unknowingly witnessed. See: Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*,

like “gay” and “lesbian,” but it differs because it brings with it a new consciousness regarding sexuality and gender norms. “Queer” serves an important role in the LGBT civil rights movement. Terms like “gay” or “lesbian” function within (and/or are deployed within) dominant institutions, and queer theorists argue that they function to uphold seemingly stable categories of sexual orientation. Although their usage can help one to assimilate with the dominant social force, it cannot help to complicate or problematize those forces. As Eve Kosofsky Sedgwick explains, *queer* is “transitive – multiply transitive.”⁸⁹ Sedgwick uses “transitive” to emphasize the ways in which queer is not meant to exist only in opposition to something – it functions across spectrums and boundaries, and it is meant to be a disruptive and integrating force. For Sedgwick, and others following her path, *queer* provides a way to both rupture and maintain; it is an embodied, material *both/and*. Addressing the capacity of LGBTI asylees and refugees to queer citizenship means not merely to alter it, but to re-shape and re-imagine what it can be for this population and all other people existing under its umbrella. I am interested in the ways sexual orientation has traditionally precluded certain people from the material benefits of citizenship and how the discourse surrounding and produced by LGBTI asylees and refugees might complicate ideas of proper sexual and rhetorical citizenship.⁹⁰ Attention to queer

trans., Robert Hurley (New York: Random House, 1978); Judith Butler, *Bodies that Matter: On the Discursive Limits of “Sex”* (New York: Routledge, 1993); Judith Butler, “Critically Queer,” *GLQ: Journal of Lesbian & Gay Studies* 1, no. 1 (1993): 17-32; Judith Butler, *Excitable Speech: A Politics of the Performative*, (New York: Routledge, 1997); Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, (New York: Routledge, 1990).

⁸⁹ Eve Kosofsky Sedgwick, *Tendencies* (Durham, NC: Duke University Press, 1993), xii.

⁹⁰ In her book addressing the intersection of sexual citizenship, the law, and popular culture, Brenda Cossman claims that citizenship “...is a process of becoming. It is about the process of becoming recognized subjects, about the practices of inclusion and membership.” While I wholeheartedly agree with this premise, my project departs from the remainder of her argument, which places sexual citizenship in a strict *good citizenship/bad citizenship* dialectic and focuses on the production of what she calls “bad or failed sexual citizens.” Cossman, *Sexual Citizens*, 2-3.

perspectives allows for a critical reading of texts that embraces and engages the relationship between sexual orientation, gender identity, and the citizen status sought by LGBTI refugees.

The theories described above fit together in a way that will allow me to thoroughly and conscientiously address my diverse and sensitive texts. Discursive identifications and divisions are at play in the news stories about LGBTI refugees and the documents used to facilitate their trials and resettlement. Theories of counterpublics and queer identity performance combine to provide a framework for considering queer citizenship, refugee status, and the social imaginary. For Asen, drawing here from Sarte, the imagining is a process of “connecting consciousness to objects through mental images.”⁹¹ Visual and verbal representations of people or groups contribute to the enduring understandings of these people or groups. That is, the discourse about citizenship in these cases and the actual images that become part of that discourse function to create a collective understanding of what citizenship itself means. The imagining of citizenship in these cases takes place through a variety of means – both visual and verbal; therefore, I analyze visual and verbal texts related to the process of sexual orientation asylum.

Although Asen’s concept of rhetorical imagining provides a rationale and framework for analyzing the discourses that shape cultural, and ultimately legal definitions of citizenship, he leaves it to subsequent scholars to establish a method for analysis. This is beneficial because it allows others to read for imagining in a variety of texts. However, it can present a challenge when attempting to fashion a methodology for investigating the process of public imagining. Specifically, although Asen puts rhetorical representation at the center of the process of public imagining, he does not explain how this process works, or provide a method for analyzing it. Fortunately, rhetorical scholarship suggests a variety of methods for analyzing the processes of rhetorical representation. In the chapter outline that follows, I explain how other theories that

⁹¹ Asen, “Imagining,” 348.

complement this approach to rhetorical representation will be used to uncover the ways citizenship is imagined in each set of texts I analyze.

1.3 Outline of Dissertation Chapters

In order to understand the impact LGBTI asylum seekers have on the tensions between legal and cultural citizenship, I turn to the process through which LGBTI asylum was embedded into U.S. policy, the institutional efforts to incorporate or reject LGBTI asylum seekers from the citizenry, and the cultural discourses through which this population is represented. The first chapter reads the social controversy surrounding the precedent-setting LGBTI asylum case, *The Matter of Toboso-Alfonso* and considers the ways in which its establishment as precedent helped to set in place norms of LGBTI asylum. In order to understand the ways those norms of LGBTI asylum became codified and disputed, the subsequent chapter looks to the U.S. office of Citizenship and Immigration training module titled “Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims.” In the final chapter I consider how these norms impact ways of seeing LGBTI refugees/asylum seekers by reading images of LGBTI refugees alongside the genre of refugee photography.

Throughout, I look to the ways LGBTI asylum seekers and refugees are discursively imagined in a way that shapes legal and cultural notions of citizenship. The following chapters are organized chronologically. I begin with the precedent-setting case, proceed to the current training manual for immigration officials, and end with a consideration of visual representation in the present and its potential to shape a queer future. Of course, rhetorical representation can proceed in a variety of ways and is case specific. In what follows, I will discuss my texts, and the characteristic modes of representation therein, to provide a more detailed explication of my methodology and conclusions.

In the second chapter, titled “Citizenship Controversy in *The Matter of Toboso-Alfonso*,” I establish the context through which LGBTI asylum cases have emerged, and discuss the history of the relationship between sexual orientation and citizenship. *The Matter of Toboso-Alfonso* was a 1990 Bureau of Immigration Appeals case that first established LGBTI people as “members of a particular social group” who could gain asylum in the United States upon proof of their membership in that group and their “well-founded fear of persecution.” The particular citizenship controversy in the *Toboso-Alfonso* case brought together issues of immigration and sexual orientation – complicating notions of private and public, and calling into question the necessity of exclusionary immigration policies. In making public what had been understood as private, the case began to construct the LGBTI asylum seeker in the political imaginary. This representation complicated prior representations of LGBTI migrants as ineligible for citizenship by providing a path to citizenship for LGBTI migrants through their ability to prove that their identity alone caused them to be persecuted. I argue that in making *Toboso-Alfonso* precedent for similar cases, the U.S. ultimately set forth a standard of asylum that complicated LGBTI citizenship. It removed the barrier to entry for LGBTI migrants but set in place norms that continue to regulate LGBTI identity.

The third chapter, titled “Regulating Queer Asylum: Heteronormative Citizenship and Homonationalist Politics,” looks to the U.S. Citizenship and Immigration Services training module for government officials who handle asylum cases involving sexual orientation or gender identity persecution.⁹² Obtaining asylum in the U.S. following sexual orientation persecution involves a lengthy process of migrating, navigating the immigration court system, and

⁹² U.S. Citizenship and Immigration Services Refugee, Asylum, and International Operations Directorate (RAIO), “Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims,” 28 December 2011.
<http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf>

resettlement. This document provides 65 pages of training materials that cover the unique needs and processes undertaken by LGBTI asylum seekers. This document is the official (government-issued) guide for working with this group of refugees and asylees. The document contains resources for authenticating these asylum claims as well as prompts for how to interview asylees fleeing potentially abusive or violent situations.

The RAIO training module stands as an institutional effort to resolve the contradictions between identity, orientation, persecution, and citizenship produced by LGBTI asylum cases. It sits at the intersection of immigration law and the political sphere – speaking to an audience of lawyers, judges, and most importantly, immigration officers in their efforts to parse the political contradictions surrounding LGBTI asylum. I examine the module as an index of the social imaginary. This examination is informed by work in critical rhetoric, which approaches texts as sites of power relations. Through this reading, I argue that the training module strives for inclusivity but ultimately engages in a practice of homonationalism, which draws boundaries that exclude the potential for a queer understanding of sexual orientation and identity. This institutionalized homonationalism defines certain bodies and identities as deserving of citizenship and excludes those who cannot be identified as embodying the desired LGBTI citizen. The training module is a response to heteronormativity in U.S. culture that, though claiming itself to be progressive and accepting of difference, reifies the boundaries of queer identity and produces the subject worthy of sexual orientation asylum. While efforts toward inclusivity of different identities and orientation has seen significant progress over the past twenty years, the institutional response ultimately upholds a version of national heteronormativity through the projection of homonationalism.

For the fourth chapter, titled “Depicting LGBTI Refugee Cases: Looking at Queer Asylum,” I consider visual representations of LGBTI refugees within the context of the broader genre of refugee photography. Reading photojournalistic images of large-scale refugee crises alongside images of LGBTI asylum seekers, I ask how photographs of LGBTI refugees fit within the larger genre of refugee photography, and how these photographs highlight challenges faced by LGBTI asylum seekers as they seek to appear worthy of citizenship. I argue that images of LGBTI asylum seekers both belong to the genre of refugee photography and concomitantly rupture understanding of what is meant by “refugee photography” through their construction of a different image of refugeeness. Images of LGBTI refugees have the potential to queer our collective understanding of what it means to be a refugee because they complicate the heteronormativity of typical refugee photographs. However, photographs of LGBTI asylum seekers highlight the struggle of rhetorical representation because they do not depict or call to mind suffering in the same way as *prima facie* refugee photographs.

Finally, I conclude by addressing the relationships between these cases and the argumentative collective imaginary of citizenship produced through all these disparate texts. The analysis will work to uncover patterns of discourse and disparities in what gets excluded and included in narratives about LGBTI refugee cases and the efforts to streamline the asylum process. By focusing on how queer refugees and citizenship itself gets imagined over a range of discourses, I will be able to expand current understanding of the rhetoric of citizenship. Here I consider the ways these cases might alter the heteronormativity of citizenship while codifying a system of homonationalism. Through this codification, progress for some LGBTI people occurs at the exclusion of others and results in the establishment of national enemies whose anti-gay policies become fodder for our national superiority. In my conclusions I further consider the

ways in which homonationalism might itself become eroded through or outside of LGBTI asylum.

2 CITIZENSHIP CONTROVERSY IN *THE MATTER OF TOBOSO-ALFONSO*

Until 1990, any person migrating the United States who identified as lesbian, gay, bisexual, transgender, or intersex would be denied entry under the regulations set forth in the Immigration and Nationality Act (INA). Under the Refugee Act of 1980, however, any person seeking refuge in the United States after fleeing persecution for their “race, religion, nationality, membership in a particular social group, or political opinion” would be eligible for asylum.⁹³ This meant that it was possible to fall into conflicting categories of eligibility for entry – someone could be both excludable because of their sexual orientation and eligible for asylum because of their status as a refugee. The contradictions in refugee and immigration policies resulted in a lack of clarity regarding how to handle LGBTI people seeking refugee status in the United States. For the most part, the INA held sway over the 1980 Refugee Act. In the late 1980s there existed conflicting opinions in the courts and among the general population about what rights should be granted to whom. For example, while the 1986 Supreme Court case *Bowers v. Hardwick* upheld the constitutionality of sodomy laws and the ability to prosecute people for private sex acts, a majority of Americans in 1989 supported homosexual partners’ rights to inherit one another’s property and receive medical and life insurance benefits from one another’s policies.⁹⁴ There existed discomfort over private acts but acceptance of public relationship status.

Opinions on LGBTI rights were undergoing an evolution but not one that occurred linearly or steadily. Like most social change, the evolution of LGBTI rights progressed over time, vacillating between progression and regression in different areas of LGBTI life. The late 1980s and early 1990s constituted a period of controversy that reflected uncertainty over the

⁹³ Public Law 8 1521 note. (Refugee Act of 1980)

⁹⁴ Walter Isaacson, “Should Gays Have Marriage Rights?” *TIME* (20 November 1989): 101-102.

granting of rights. It was a moment of shifting ideas about and shifting regulations of public sexual identity. This controversy not only concerned how these rights might look within the United States, but also who would be allowed legal access to citizenship, and what kind of path, if any, should be provided for LGBTI migrants arriving in the U.S. seeking citizen status. The controversy over LGBTI rights in the late 1980s and early 1990s helped to shape cultural understanding of what citizenship in the United States looked like and who would be included within its boundaries.

The *Toboso-Alfonso* case took place within a broader social controversy in the United States over who should be granted citizenship and under what circumstances.⁹⁵ In 1990, the U.S. Board of Immigration Appeals (BIA) granted a withholding of deportation to Fidel Armando Toboso-Alfonso, a gay man forced to leave Cuba in 1980.⁹⁶ The BIA determined that Toboso-Alfonso was eligible for asylum and withholding of deportation because homosexuals constituted a “particular social group” and Toboso-Alfonso showed a “clear probability” of persecution in his home nation because of his membership in that group. The decision in this case was groundbreaking for U.S. immigration policy because it explicitly contradicted the regulations set forth in the INA, and because in 1994, Attorney General Janet Reno declared *Toboso-Alfonso* precedent for any case involving “an individual who has been identified as a homosexual and persecuted by his or her government for that reason alone.”⁹⁷

The particular citizenship controversy in the *Toboso-Alfonso* case brought together issues of immigration and sexual orientation – complicating notions of private and public and calling into question the necessity of exclusionary immigration policies. Because controversies engender

⁹⁵ When referring to the *Matter of Toboso Alfonso* case, I use italics to distinguish it from Toboso-Alfonso the person, whose name will not appear in italics.

⁹⁶ *Matter of Toboso-Alfonso*, U.S. Department of Justice, Board of Immigration Appeals, 20 I. & N. Dec. 819 (BIA 1990)

⁹⁷ 1895 Op. Att’y Gen. 94 (1994) (reported at 71 No. 25 Interpreter Releases 859 (July 1, 1994)).

oppositional arguments, cases like *Toboso-Alfonso* inspire images that become part of the collective understanding of that controversy. In order to make sense of how *Toboso-Alfonso* reflected and inflected images of citizenship, I look to the case as a moment of controversy in which sexuality was established as a status, not an activity.

The *Toboso-Alfonso* case made public what had been understood as private, positioning sexual orientation as a public status that could exist regardless of one's private sexual activity and determining that such an identity should not preclude someone from access to U.S. citizenship. In making public what had been understood as private, the case provides a window into the process of political imagining, where participants in a controversy draw on and develop images of the stakes and stakeholders therein. In its course, *Toboso-Alfonso* became a representative image of the LGBTI asylum seeker. At one level, this expanded the repertoire of acceptable representation of citizenship within the social imaginary. At the same time, however, it created a barrier for those unable or unwilling to conform to that representation. This barrier resulted in norms that ultimately privilege cisgender, male asylum seekers whose sexual orientation can be made most legible in immigration courts. This moment of advancement in immigration policy is dampened by the fact that what looks like progress, and what allowed a different group of migrants to seek asylum, resulted in narrowed definitions of identity and orientation. Establishing more than just legal precedent, *Toboso-Alfonso* also set forth a rhetorical precedent through which future LGBTI asylum cases would be measured – one that I return to in the following chapters.

In order to make this argument, I first discuss the history of LGBTI migration and asylum, tracing the different iterations of homosexuality delineated in U.S. immigration policy. Following this, I outline the relationship between controversy and the political/social imaginary,

placing in conversation Lauren Berlant's concept of incipient citizens, G. Thomas Goodnight's discussion of controversy, and Robert Asen's development of a citizen imaginary. Next, I tell the story of Toboso-Alfonso, highlighting the impact Cuban-U.S. relations had on the process and progress of his immigration hearings. I read the majority and dissenting opinions in the *Toboso-Alfonso* case to make sense of the construction of the LGBTI asylum seeker in the citizen imaginary. Finally, I turn to the establishment of *The Matter of Toboso-Alfonso* as precedent for similar cases and address the ways it helped to set up norms of LGBTI asylum and citizenship through its establishment of legal and rhetorical precedent.

2.1 History of LGBTI Asylum

Over the past hundred years, U.S. immigration policy has defined categories of sexual and gender identity in myriad ways and has ranged from exclusion of this population to inclusion under most circumstances. The effort to define LGBTI people within immigration policy and law has taken a variety of turns over the course of U.S. history. Within U.S. law, there have been a number of different approaches used to deny citizenship to people on the basis of sexual orientation. Sodomy laws enforced the criminalization of certain types of sexual activity, the Diagnostic and Statistical Manual of Mental Disorders (DSM) classified homosexuality as a sociopathic personality disturbance, and identification of oneself as a homosexual would bar anyone from access to citizenship status when immigrating. While immigration restrictions in the United States have excluded many different populations over the course of the nation's history, Congress has used a variety of descriptions and tactics to exclude LGBTI people.

In 1790, the United States passed the first legislation restricting citizenship and immigration, and it excluded most everyone who was not a white man with certain financial means. While several subsequent acts restricted who could enter the U.S. and how those entering

could become citizens, the 1917 Immigration and Nationality Act was the first to ban people on the basis of their actual or imputed sexual orientation. In this Act, homosexuals were barred from entry not on moral grounds, but on pseudoscientific ones.⁹⁸ Homosexuality was considered to be a “constitutional psychopathic inferiority” but was not explicitly defined as a violation of any moral or ethical guidelines. The connection between psychopathy and homosexuality in the 1917 INA came 35 years before the American Psychiatric Association added homosexuality to the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1952.⁹⁹ Perhaps related to this characterization of homosexuality, the 1952 INA, often referred to as the McCarran-Walter Act, expanded the grounds upon which homosexuals could be barred from entry. It listed “Aliens coming to the United States to engage in any immoral sexual act” as a population “ineligible to receive visas and excluded from admission.”¹⁰⁰ In addition to the “immoral sexual act” clause, Margot Canaday states that the 1952 INA had two other provisions that restricted entry of the homosexual population:

One provision was based on *conduct* and treated homosexuality as a behavior; it barred from entry immigrants who had committed unspecified ‘crimes of moral turpitude.’ A second provision relied on the notion that the homosexual was a type of person; it barred immigrants based on *status* by excluding homosexuals as *persons* ‘afflicted with psychopathic personality.’¹⁰¹

Canaday identifies how the term “homosexual” concomitantly refers to a conduct and a status – both of which rendered a person understood to be a member of those categories ineligible for citizenship. Here, the INA defined homosexual acts as immoral and homosexual people as

⁹⁸ Atticus Lee, “Sexual Deviants Need Not Apply: LGBTQ Oppression in the 1965 Immigration Amendments,” in *The Immigration and Nationality Act of 1965: Legislating a New America*, eds. Gabriel J. Chin and Rose Cuison Villazor (New York: Cambridge University Press, 2015) 251.

⁹⁹ Robert L. Spitzer, “Harmful Dysfunction and the DSM Definition of Mental Disorder,” *Journal of Abnormal Psychology* 108, no. 3 (August 1999): 430-432.

¹⁰⁰ Pub.L. 82–414, 66 Stat. 163, enacted June 27, 1952, Sec. 202 (a) (13)

¹⁰¹ Margot Canaday, “‘Who is a Homosexual?’: The Consolidation of Sexual Identities in Mid-Twentieth-Century American Immigration Law,” *Law and Social Inquiry* 28, no. 2 (2003): 353 (emphasis in original).

psychopathic. Although the term homosexual does not appear anywhere in the 1952 INA, it was explicitly discussed in the Senate subcommittee meetings in which that legislation was drafted.¹⁰² The 1965 revision to the INA was widely lauded for its elimination of restrictions based on race, but it further solidified restrictions based on sexual orientation - introducing the “sexual deviation” clause, which more plainly denied entry to anyone identifying or identified as homosexual. Here, “sexual deviation” was combined with “psychopathic personality” afflictions under the same sub-clause. The word “homosexual” does not appear in the 1965 amendment, but it was assumed to fit under the umbrella definition of sexual deviance and psychopathic personality. Under the list of revisions from the 1952 policy “sexual deviation” was added in place of the word “epilepsy.”¹⁰³ While medical opinions on epilepsy shifted away from categorizing it as a psychopathic disorder, fear of homosexuality was increasing – leading to the seemingly incongruous substitution in terms.

The Immigration Act of 1990, introduced by Senator Ted Kennedy, was the first major revision of U.S. immigration policy since the 1965 INA. Along with the removal of the English literacy requirements, the implementation of a lottery system for low admittance countries, and changes to the visa requirements for highly skilled workers, the 1990 INA excluded the “sexual deviance clause.” Because of this, the U.S. could no longer consider sexual orientation an excludable violation for prospective immigrants. This was, in many ways, a victory for LGBTI rights groups, but this version of the INA brought increased restrictions on HIV-positive

¹⁰² Siobhan B. Somerville, “Sexual Aliens and the Racialized State: A Queer Reading of the 1952 U.S. Immigration and Nationality Act” in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, ed. Eithne Luibhéid and Lionel Cantú Jr. (Minneapolis: University of Minnesota Press, 2005) 78-79.

¹⁰³ Pub. L., 89-236, 79 Sec. 15 b., enacted October 3, 1965

migrants – tarnishing what appeared to be progress for sexual minorities and focusing the fear of sexual deviance in one particular area.¹⁰⁴

Although the United States did not revise its immigration policy to include LGBTI migrants until 1990, the international community started taking steps for inclusivity as early as 1951. In the 1951 United Nations *Convention relating to the Status of Refugees*, it was determined that women, families, homosexuals and others could constitute a “particular social group,” and it was acknowledged that people belonging to these groups in other nations may face discrimination and persecution solely because of their membership in that particular group.¹⁰⁵ The “particular social group” clause was the least explicated of the five grounds for refugee status determinations in the international guidelines. In the United States, the “particular social group” clause for refugee admission was not adopted until the passage of the 1980 Refugee Act where it defined a refugee as “any person who is...unable or unwilling to avail himself or herself of the protection of that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁰⁶ Note that sexual orientation was not explicitly included in the U.S. definition of a “particular social group” in 1980. Eligibility for asylum in the U.S. required membership in a group understood to widely face persecution in their home nation, and homosexuality was still an excludable offense for any migrant. By the early 1990s, immigration courts still debated whether or not homosexuals could constitute a particular social group – in spite of that group’s inclusion

¹⁰⁴ Karma R. Chávez, *Queer Migration Politics: Activist Rhetoric and Coalitional Possibilities* (Urbana: University of Illinois Press, 2013): 1

¹⁰⁵ “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

¹⁰⁶ Public Law 8 1521 note. (Refugee Act of 1980); Also, at that time, the term “persecution” itself lacked an explicit, statutory definition. See Alan G. Bennett, “The ‘Cure’ that Harms: Sexual Orientation Based Asylum and the Changing Definition of Persecution,” *Golden Gate University Law Review* 29, no. 2 (1999) 279-309.

in the international refugee rights document – because they had not been listed in the 1980 Refugee Act as a group deserving of protection. Moreover, associations between LGBTI migrants and HIV were commonly used as arguments in favor of further restrictions. Yet, despite the removal of the sexual deviance clause from the INA and international regulations that treated LGBTI people as a particular group deserving of human rights, there was not a clear precedent for treating LGBTI asylum claims within the U.S. immigration system.

The *Matter of Toboso-Alfonso* preceded the removal of the sexual deviance clause, and while it would be difficult to claim that the case was the impetus for the removal of that clause, it can be said that 1990 was a moment of significant controversy over who should get access to U.S. citizenship and which rights should be granted to members of a sexual minority. At the time of Toboso-Alfonso's appeal in 1990, there were a handful of other cases involving LGBTI asylum seekers pending in the immigration system. The decision in *Toboso-Alfonso* had the potential to influence decisions in similar pending cases even before it was officially set as precedent. Before reading the opinions issued in the *Toboso-Alfonso* case, I consider how arguments made in moments of controversy contribute to the collective imagining of a subordinated population.

2.2 Controversy and the Public Sphere

The *Toboso-Alfonso* case is frequently cited in law journals and immigration studies largely because it serves as precedent for similar cases.¹⁰⁷ Its surrounding controversy, however,

¹⁰⁷ Kristin A. Breshnahan, "'Social Visibility' Test for Determining 'Membership of a Particular Social Group' in Asylum Claims and its Legal and Policy Implications," *Berkeley Journal of International Law* 29, no. 2 (2011): 649-679; Paul O'Dwyer, "A Well-Founded Fear of Having My Sexual Orientation Asylum Claim Heard in the Wrong Court," *New York Law School Law Review* 52 (2007/08): 185-212; Jin S. Park, "Pink Asylum: Political Asylum Eligibility of Gay Men and Lesbians Under U.S. Immigration Policy," *UCLA Law Review*, 42 (1995): 1115-1156; Keith Southam, "Who am

has been less widely addressed. *Toboso-Alfonso* receives its most thorough treatment in Eithne Luibheid and Lionel Cantú Jr.'s *Queer Migrations*, specifically in Timothy Randazzo's chapter discussing the social and legal barriers to asylum for queer migrants. Randazzo helps to make sense of the context in which *Toboso-Alfonso* was named as precedent in 1994. At that time nine other nations had officially granted asylum on the basis of sexual orientation persecution, and in which at least forty similar cases were pending in the U.S. immigration system.¹⁰⁸ Randazzo offers the most thorough scholarly discussion of *Toboso-Alfonso*, but he largely uses the case as a starting point in a discussion of the barriers to this type of asylum. Lionel Cantú Jr., Eithne Luibhéid and Alexandra Minna Stern discuss the ways the *Toboso-Alfonso* case (and the later *in re Tenorio* case) reveal how gay asylum in the United States has been profoundly shaped by relations with Latin America.¹⁰⁹ Although Cantú, Luibhéid, and Stern address how the U.S. asylum process often leaves claimants they must perform a particular type of identity in order to gain asylum, they do not fully address the role *Toboso-Alfonso* played in the demand for these performances.

Frequently referenced, but rarely the subject of thorough investigation, *Toboso-Alfonso* occurred in a moment of controversy over rights and identities, and helped set in place the system through which LGBTI people could gain asylum as members of a particular social group. In this chapter, I turn to the text of *Toboso-Alfonso* case and its surrounding controversy to help

I and Who do You Want Me to Be? Effectively Defining a Lesbian, Gay, Bisexual, and Transgender Social Group in Asylum Applications," *Chicago-Kent Law Review* 86, no. 3 (2011): 1363-1387.

¹⁰⁸ Timothy J. Randazzo, "Social and Legal Barriers: Sexual Orientation Asylum in the United States" in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, ed. Eithne Luibhéid and Lionel Cantú Jr. (Minneapolis: University of Minnesota Press, 2005) 35

¹⁰⁹ Lionel Cantú Jr., Eithne Luibhéid and Alexandra Minna Stern, "Well-Founded Fear: Political Asylum and the Boundaries of Sexual Identity in the U.S.-Mexico Borderlands," in *Feminist Theory Reader: Local and Global Perspectives*, ed. Carole Mccann and Seung-kyung Kim (New York: Routledge, 2013) 297; See Also, Lionel Cantú, Nancy A. Naples, and Salvador Vidal-Ortiz, *The Sexuality of Migration: Border Crossings and Mexican Immigrant Men* (New York: New York University Press, 2009) 57-58.

make sense of the role this case played in shaping a path to citizenship for LGBTI asylum seekers. The attention to controversy helps make sense of the origins of ruling images of LGBTI asylum. As Robert Asen notes, the images produced within moments of controversy persist, and in so doing, they can perpetuate power imbalances and function as barriers to entry for counterpublics.¹¹⁰

In the 1991 Proceedings of the Seventh SCA/AFA Conference on Argumentation, G. Thomas Goodnight lamented the lack of scholarly attention to controversy. He noted that the term itself appeared frequently in the journals and texts emerging from a variety of academic disciplines, but that the term was not theorized or attended to in any way that helped us make sense of its importance. He suggested that controversy “is a site where the taken-for-granted relationships between communication and reasoning are open to change, reevaluation, and development by argumentative engagement.”¹¹¹ Controversy marks a moment in which arguments have particular importance because they have the ability to alter the future in a number of ways. In order to make sense of controversy, Goodnight argues it is necessary to find both the “culturally constitutive moments” in which controversies arise and the arguments used by all sides whose stake shapes the controversy.¹¹² Several years later, Goodnight and Kathryn Olson analyzed pro- and anti-fur arguments, defining social controversy here as “an extended rhetorical engagement that critiques, resituates, and develops communication practices bridging the public and personal spheres.”¹¹³ And while Goodnight would go on to publish several more

¹¹⁰ Asen, *Visions of Poverty*, 15.

¹¹¹ G. Thomas Goodnight, “Controversy,” In *Argument in Controversy: Proceedings of the Seventh SCA/AFA Conference on Argumentation*, ed. Don W. Parsons (Annandale, VA: Speech Communication Association, 1991): 5.

¹¹² Goodnight, “Controversy,” 8.

¹¹³ Kathryn M. Olson and G. Thomas Goodnight, “Entanglements of Consumption, Cruelty, Privacy, and Fashion: The Social Controversy Over Fur,” *Quarterly Journal of Speech* 80, no. 3 (1994): 249.

essays theorizing controversy,¹¹⁴ and these essays spawned a host of critiques and theoretical interventions,¹¹⁵ the connection he made between controversy and conceptions of the public has particular value for a project on the citizen imaginary.

The personal, public, and technical spheres are not completely discrete. Instead, they are “vast, and not altogether coherent, superstructures which invite them to channel doubts through prevailing discourse practices.”¹¹⁶ For Goodnight, the public sphere transcends the personal and technical realms, and “while not reducible to the argument practice of any group of social customs or professional communities, nevertheless may be influenced by them.”¹¹⁷ In this realm, arguments attempt to appeal to an imagined public in which all involved have equal say and equal capacity for action. Just as the argument practices of the public sphere transcend the personal and technical spheres, so do the consequences of dispute within this realm.

While Goodnight’s conceptualization of the personal, technical, and public spheres is influenced by Habermas, it moves beyond Habermasian notions of the “public sphere.” In Craig

¹¹⁴ See: G. Thomas Goodnight, “Complex Cases and Legitimation Inference: Extending the Toulmin Model to Deliberative Argument in Controversy,” in *Arguing on the Toulmin Model*, ed. David Hitchcock and Bart Verheij (Dordrecht, Netherlands: Springer, 2006) 39-48; G. Thomas Goodnight, “Predicaments of Communication, Argument, and Power: Towards a Critical Theory of Controversy,” *Informal Logic* 23, no. 2 (2003): 119-137; G. Thomas Goodnight, “Science and Technology Controversy: A Rationale for Inquiry,” *Argumentation and Advocacy* 42, no. 1 (2005): 26-30; G. Thomas Goodnight, “The Engagements of Communication: Jürgen Habermas on Discourse, Critical Reason, and Controversy,” in *Perspectives on Philosophy of Communication*, ed. Pat Ameson (Pittsburgh, Duquesne University Press, 2007): 91-110; G. Thomas Goodnight, “The Personal, Technical, and Public Spheres: A Note on 21st Century Critical Communication Inquiry,” *Argumentation and Advocacy* 48, no. 4 (2012): 258-268; G. Thomas Goodnight, “The Personal, Technical, and Public Spheres of Argument: A Speculative Inquiry into the Art of Public Deliberation” in *Contemporary Rhetorical Theory: A Reader*, ed. John Louis Lucaites, Celeste Michelle Condit, and Sally Caudill, (New York: The Guilford Press, 1999) 251-264.

¹¹⁵ See: Leah M. Ceccarelli, “Let Us (Not) Theorize the Spaces of Contention,” *Argumentation and Advocacy* 42, no. 1 (2005): 30-34; Carolyn R. Miller, “Risk, Controversy, and Rhetoric: Response to Goodnight,” *Argumentation and Advocacy* 42, no. 1 (2005): 34; Kent A. Ono and John M. Sloop, “Critical Rhetorics of Controversy,” *Western Journal of Communication* 63, no. 4 (1999) 526-538; Kendall R. Phillips, “A Rhetoric of Controversy,” *Western Journal of Communication* 63, no. 4 (1999): 488-510.

¹¹⁶ Goodnight, “The Personal, Technical, and Public Spheres of Argument,” 253

¹¹⁷ Goodnight, “The Personal, Technical, and Public Spheres of Argument,” 256

Calhoun's introduction to *Habermas and the Public Sphere* he claims that Habermas's conception of the public sphere was two-sided – it focused both on the quantity and the quality of rational-critical discourse.¹¹⁸ While Calhoun takes issue with Habermas's impossibly tidy divisions between a public and a private sphere, he finds Habermas's work to have value for the debate and dissent it created. Goodnight acknowledges the exclusionary history of the term “public sphere,” but notes that understanding the personal, technical, and public spheres “is a useful way to uncover prevailing expressions of human conditions (the views of the world implicit in particular practices of making argument).”¹¹⁹ He also notes that the spheres of argument are not always stable or impermeable, but that they can permeate one another. Looking to these moments of permeability can aid in the understanding of controversy. For Goodnight, scholars of argument are especially equipped to analyze present argumentative practice and provide (deliberative/public) alternatives.

Moving beyond the Habermasian roots of Goodnight's study, I follow critical scholars who have reinterpreted (and riposted) Habermas's theory of the public sphere, namely, Lauren Berlant, Nancy Frazer, and Michael Warner to guide my reading of one moment in a larger controversy over identity, citizenship, immigration, and policy. Critiques of Habermas and public sphere theory in general note its neglect of gendered privilege and the struggles of subaltern populations. Studies of counterpublics have helped bring forth these issues in a way that allows discussion of the political (and of publics) while still acknowledging the masculinist power structures at play in the world. Nancy Fraser, for example, suggests that Habermas's

¹¹⁸ Craig Calhoun, “Introduction: Habermas and the Public Sphere,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MIT University Press, 1992): 1-45.

¹¹⁹ Goodnight, “The Personal, Technical, and Public Spheres of Argument,” 254.

conception of the public sphere is fundamentally “masculinist,” and she introduced the term “subaltern counterpublics” to describe groups of people subordinated within social hierarchies.¹²⁰

Within the rhetorical discipline, a number of scholars have relied on this idea of counterpublics in order to address the cases made by subordinated populations for equality, visibility, and validation.¹²¹ For Michael Warner, counterpublics are a type of public that has a subordinate position within a society, that is constituted and socially marked by discourse, and that is in possession of transformative identities.¹²² Michael Warner and Lauren Berlant clarify that the relationship between publics and counterpublics is more intimate than antagonistic, because counterpublics can only exist within (and not necessarily against) a public. The turn to counterpublics is essential for considering the citizenship claims of LGBTI asylum seekers, because counterpublic theories can provide a way of conceptualizing what is at risk for this population and for better understanding why their access to citizenship is especially tenuous. Robert Asen finds that the ability to access a public sphere can exist outside of counterpublics because “exclusion is never total.”¹²³ For Asen, in discussions *about* a group of people, the group is entered into the public sphere (whether or not they are participating), and their imagined image is circulated in public discourse. Because they are thrust into the public sphere through their

¹²⁰ Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: Massachusetts Institute of Technology Press, 1994) 117.

¹²¹ Karma R. Chávez, “Counter-Public Enclaves and Understanding the Function of Rhetoric in Social Movement Building,” *Communication Quarterly* 59, no. 1 (2011): 1-18; Thomas R. Dunn, “Remembering Matthew Shepard: Violence, Identity, and Queer Counterpublic Memories,” *Rhetoric & Public Affairs* 13, no. 4 (2010): 611-652; Ronald Walter Greene, “Rhetorical Pedagogy as a Postal System: Circulating Subjects through Michael Warner’s ‘Publics and Counterpublics,’” *Quarterly Journal of Speech* 88, no. 434-443; Mark Porrovecchio, “Lost in the WTO Shuffle: Publics, Counterpublics, and the Individual,” *Western Journal of Communication* 71, no. 3 (2007) 235-256; Michael Warner, “Publics and Counterpublics (Abbreviated Version),” *Quarterly Journal of Speech* 88, no. 4 (2002): 413-425; David Wittenberg, “Going Out in Public: Visibility and Anonymity in Michael Warner’s ‘Publics and Counterpublics,’” *Quarterly Journal of Speech* 88, no. 4 (2002) 426-433.

¹²² Michael Warner, *Publics and Counterpublics* (New York: Zone Books, 2002), 119-121.

¹²³ Asen, “Imagining in the Public Sphere,” 346, 347

imagined image, Warner states that a counterpublic can “make possible new forms of gendered or sexual citizenship.”¹²⁴ Although Warner addresses the need to create a literal space for queer counterpublics to make possible these new forms of citizenship, the needs of LGBTI asylum seekers require space within the law as well. Their path to citizenship is predicated on the existence of legal and social spaces that account for their identities. Yet, in order to be legible within these spaces, and to ultimately be eligible for citizenship, LGBTI asylum seekers are expected to present evidence of their subordination within some other public – evidence that requires them to make public information they may have needed or wished to keep private.

The potential permeability of private and public spheres precedes discussions of counterpublics, as Hannah Arendt noted the ways participation in the public sphere was predicated on certain behaviors in the private sphere.¹²⁵ For Arendt, the ability to speak freely in public required certain wealth, genetic lineage, and adherence to expectations of culturally acceptable behaviors. Berlant takes this observation further in order to investigate how the “collapsing of the political and personal into a world of public intimacy” is enacted in violent ways.¹²⁶ For Berlant, the ideals of citizenship are measured more through private and personal acts than through civic ones, meaning that what one does in their home has a greater impact on their cultural citizen standing than more public acts associated with citizenship like voting, protesting, or public deliberation. The result is what Berlant calls an “intimate public sphere,” one in which value to the citizenry is predicated on private actions and through which the unborn child becomes the ideal citizen. Like fetuses, immigrants function as “incipient” citizens – they are potential, future citizens around whom a new national public sphere is constructed. Further, for Berlant, the people who are most impacted by the collapsing of the private and public spheres

¹²⁴ Warner, *Publics and Counterpublics*, 57

¹²⁵ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 22-78.

¹²⁶ Berlant, *Queen of America*, 1

are those whose private identities are least legible in public, or which deviate the furthest from expected behaviors.

Berlant claims that immigrants, as potential citizens, are useful for the establishment of “patriotic nationalism” because they allow us to construct an image of a future good life in the United States.¹²⁷ To extend Berlant’s argument, refugees are especially useful because not only do they embody democratic ideals as people “*who desire America,*” but they also require access to U.S. citizenship to escape persecution in their home nation.¹²⁸ LGBTI asylum seekers are in need of U.S. support, and the U.S. sees itself as distinctly qualified to incorporate them as future citizens.¹²⁹ The potential future citizen Berlant describes is different from the LGBTI asylum seekers because LGBTI asylum seekers belie the national heterosexuality assumed for the nation’s future. Yet, the incorporation of different bodies and identities into the U.S. citizenry has been met with competing representations of LGBTI migrants and U.S. citizens more broadly. However, these representations of LGBTI asylum seekers in the civic imaginary are not merely oppositional. Rather, they incorporate understandings of national heterosexuality, patriotic nationalism, and the potential future of the citizenry. In a case like *Toboso-Alfonso*, it is possible to see how the population of LGBTI asylum seekers is constructed within the case and in what ways that constructed imaginary shifts understandings of private and public spheres. Moreover, it is possible to examine how these representations of citizen and non-citizen actors enable and constrain subsequent discourses about asylum and citizenship. But first, a brief note on the theoretical and methodological underpinnings of this examination.

¹²⁷ Berlant, *Queen of America*, 195, 219

¹²⁸ Berlant, *Queen of America*, 195, emphasis in original

¹²⁹ This claim is expanded and incorporated into the discussion of homonationalism in the following chapter.

For Robert Asen, moments of controversy become active sites of collective imagining because they are especially visible and attended to by people on all sides of an issue. Asen claims that controversy “engenders moments especially amenable to shifts in imagining. Controversy unsettles collective imagining as a background understanding and engages imagining as an active social force.”¹³⁰ In order to make an argument for a possible outcome within a controversy, each side must advance images of their imagined outcome – images that can be contested and that can have effects on people excluded from the actual debate. Drawing from Sarte, Asen explains that imagining is a process of “connecting consciousness to objects through mental images.”¹³¹ Visual and verbal representations of people or groups contribute to the enduring understandings of these people or groups. That is, the discourse about citizenship in these cases and the actual images that become part of that discourse function to create a collective understanding of what citizenship itself means.

Both Asen and Goodnight base their discussions of controversy and the civic imaginary on the concept of the social imaginary. As described by sociologist Charles Taylor, the social imaginary is “that common understanding that makes possible common practices and a widely shared sense of legitimacy.”¹³² In moments of crisis or uncertainty, people engage social imaginaries in order to support their side of an argument. For Goodnight, policy debates often tap into social imaginaries in an effort to “name, frame, tame, and thereby capture the disruptive moment.”¹³³ Social imaginaries are normative in that they require collective understanding of images, and they perpetuate ideas about groups of people that adhere to certain norms. At the

¹³⁰ Robert Asen, *Visions of Poverty: Welfare Policy and Political Imagination* (East Lansing: Michigan state University Press, 2002) 12

¹³¹ Robert Asen, “A Discourse Theory of Citizenship,” *Quarterly Journal of Speech* 90, no. 2 (2004): 348.

¹³² Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2007), 23

¹³³ G. Thomas Goodnight, “The Metapolitics of the 2002 Iraq Debate: Public Policy and the Network Imaginary,” *Rhetoric & Public Affairs* 13, no. 1 (2010): 68

same time, social imaginaries are not stagnant. Every moment in which a social imaginary is invoked, its meaning accumulates – it shifts to incorporate new perspectives and progressing ideals. Social imaginaries provide “a vocabulary of identifications and meanings that can be extended, contested, and reshaped to renew older practices or inaugurate different activities.”¹³⁴ In the *Toboso-Alfonso* decision, the LGBTI asylum seeker is constructed in the social imaginary, and its construction relies on past understandings of migrants, asylum seekers, and LGBTI people. The majority and dissenting opinions each attempt to construct Toboso-Alfonso in a particular way as a member of a particular social imaginary.

In an analysis guided by Goodnight’s efforts to uncover the themes produced in arguments on either side of a controversy, and the imagined citizen stemming from that controversy as discussed by Asen and Berlant, among others, I read the majority and dissenting opinions in *The Matter of Toboso-Alfonso* to uncover how either side spoke to the public, private (or social or technical) spheres, and to find the places where the distinction between these spheres becomes unclear. After this, I turn to the institutional response to *Toboso-Alfonso*, in Janet Reno’s statement listing the case as precedent for future sexual orientation persecution asylum hearings as well as a case that is credited with contributing to *Toboso-Alfonso*’s status as precedent, *in re Tenorio*.

2.3 Story of Toboso-Alfonso

The controversy surrounding *The Matter of Toboso-Alfonso* was shaped both by contextual factors and the facts of the case itself. Before turning to an analysis of *The Matter of Toboso-Alfonso* in the decision rendered by the Board of Immigration Appeals on March 12, 1990, I first discuss Toboso-Alfonso’s story and the geopolitical context in which his case

¹³⁴ Goodnight, “The Metapolitics of the 2002 Iraq Debate,” 68.

emerged. This case existed in a moment of controversy over how citizenship and asylum should function in the United States following shifting social attitudes and mass immigration. Norms of citizenship – both explicit and implicit – are in tension here with institutional and social changes. I read the final decision and dissent in the *Matter of Toboso-Alfonso* (A23 22 644) for the institutional response to this controversy, paying particular attention to the ways in which this case set forth an imagined queer refugee and helped to establish future norms by which asylum applicants would be measured. Further, I address the ways in which this case blurred the boundaries of the public and private realms. The *Toboso-Alfonso* case required a new interpretation of legal precedent, which I discuss below, and more importantly for this study, it constructed the images of queer asylum. While the legal precedent helps set forth guidelines regulating asylum within the immigration system, the images produced by the case help to structure the understanding of LGBTI asylum seekers in the broader social imaginary, ultimately contributing to a rhetorical precedent that impacted future LGBTI asylum cases.

2.3.1 Toboso-Alfonso and Cuba: Historical and Legal Context

Laws guaranteeing civil rights for LGBTI people in the United States have clearly evolved since the 1952 INA, but for the broader public, that evolution did not make itself widely known until the late 1980s and early 1990s. Along with gradually shifting attitudes toward LGBTI people in the United States, the relationship between the U.S. and Cuba was foundational in the shifting of immigration policies toward less exclusion of particular groups. While Cuban policy under Castro drove people to flee its borders, Richard Fagen and T.J. O’Leary argue that the willingness of the U.S. to adapt its policies to the incoming migrants made possible the entry

and resettlement of the migrant population.¹³⁵ From 1959 until the early 1990s, several hundred thousand Cubans migrated to the United States, with the largest numbers arriving in 1980. Referred to as the Mariel Boatlift, more than 125,000 Cubans arrived in the United States on a series of boat migrations from April 1, 1980 through the end of that year.¹³⁶ Fidel Armondo Toboso-Alfonso arrived in June of 1980, the month with the second highest number of Marielitos. Despite the U.S. regulations on immigration written into the INA, the Mariel Boatlift brought to the U.S. a large number of people who were listed as being barred from entry in the United States including mental patients, criminals, and homosexuals – people classified as “undesirable” by Castro’s regime.¹³⁷ Thus, the Toboso-Alfonso case emerged in a moment of great change when the largest numbers of Cuban migrants in history sought refuge in the U.S., when international refugee law met with major changes, and when U.S. public sentiment on sexual orientation very gradually began to shift.

These separate moments of political, legal, and social change collided in the *Toboso-Alfonso* case, as shifting social norms gave rise to shifting legal regulations. Although Toboso-Alfonso was exiled from Cuba and arrived in the United States with other people who sought residency in the U.S. through the Cuban Adjustment Act, he was not granted asylum upon first request.¹³⁸ In his first hearing, Toboso-Alfonso was denied asylum because of a drug possession

¹³⁵ Richard F. Fagen, R. A. Brody, and T. J. O’Leary, *Cubans in Exile: Disaffection and the Revolution* (Stanford: Stanford University Press, 1968), 102.

¹³⁶ Felix Roberto Masud-Piloto, *From Welcomed Exiles to Illegal Immigrants: Cuban Migration to the U.S., 1959-1995* (Lanham, Maryland: Rowman & Littlefield, 1996).

¹³⁷ Susana Peña, “‘Obvious Gays’ and the State Gaze: Cuban Gay Visibility and U.S. Immigration Policy during the 1980 Mariel Boatlift,” *Journal of the History of Sexuality* 16, no. 3 (2007) 485-486; See also, Julio Capó Jr. “Queering Mariel: Mediating Cold War Foreign Policy and U.S. Citizenship among Cuba’s Homosexual Exile Community, 1978-1994,” *Journal of American Ethnic History* 28, no. 4 (2010) 78-106.

¹³⁸ The current law at the time, the Cuban Adjustment Act, allowed Cuban refugees in the United States to receive lawful permanent residence. This policy was adjusted in 1995 to what is frequently called the “wet foot dry foot” policy, which allowed any Cuban migrant who set foot on U.S. soil to be expedited to permanent legal resident status and eventually U.S. citizenship.

conviction in the United States. The drug conviction, however, did not prevent him from staying in the United States. The lower court judge ruled that he was technically eligible for asylum because his status as a homosexual made him belong to a particular social group and because he was able to show a well-founded fear of persecution if returned to Cuba. Because of his drug conviction he had to show a higher likelihood of persecution – a “clear probability of persecution” in order to receive a withholding of deportation. The judge ruled that he was able to prove a clear probability of persecution, and he was allowed to stay in the United States. In the appeal to this first ruling the Immigration and Naturalization Services (INS) cited the 1952 Immigration and Nationality Act’s prohibition of migrants guilty of “crimes of moral turpitude” to claim that Toboso-Alfonso could not be granted asylum or a withholding of deportation because he was a homosexual. Yet, in his hearing with the Board of Immigration Appeals following the INS appeal, the reasons for his exclusion were considered alongside his rights as a refugee as delineated in the Refugee Act of 1980. Thus, the panel of judges determined that the lower court’s ruling should stand, and Toboso-Alfonso should be granted a withholding of deportation. What was especially novel in the lower court and BIA ruling was the decision that homosexuals could constitute a particular social group eligible for asylum. The decision that homosexuals constituted a particular social group largely relied on Toboso-Alfonso’s ability to prove that that population was targeted and systematically persecuted in his home nation of Cuba.

Toboso-Alfonso was raised in Guines, Cuba and reports that for thirteen years of his life, Cuban police and government officials repeatedly threatened his peace and safety. In 1967, at the age of nine, Toboso-Alfonso was classified as a homosexual, and the Cuban Government opened a file to keep track of him. As part of the maintenance of this file, he was subpoenaed to appear

for a hearing every two to three months over a span of thirteen years. During these hearings, he was often detained for several days even though no charges had been filed against him. At some point during every hearing, Toboso-Alfonso received physical examinations and was questioned about his sexual behavior. One of those prolonged detainments caused him to miss several days of his factory job. As his punishment for missing work and, he claims, as punishment for being a registered homosexual, he was forced to attend a labor camp for two months. His string of detentions and hearings were not handed to him as a punishment for his participation in any particular sexual act. At that time in Cuba, it was illegal to *be* homosexual. Because of this, one could be punished for identifying as a homosexual or being identified by another person as a homosexual regardless of their private or public sexual activity. In other words, Toboso-Alfonso's crime was related to his identity, not his conduct.

In addition to the institutional punishment he faced, Toboso-Alfonso recalls harassment from other Cuban citizens not affiliated with the government. In 1980, the Union of Communist Youth held an anti-homosexual rally at the factory where he worked. The demonstrators shouted that all homosexuals should leave Cuba for the United States. One day in 1980, Toboso-Alfonso returned home from work to find a sheet of paper telling him to report to local officials. He reported to the Guines police station where the chief of police gave him an ultimatum: leave Cuba for the United States or serve a four-year prison sentence for being a homosexual. Given one week to decide, Toboso-Alfonso ultimately chose to leave and arranged his exit. His initial attempt to leave Cuba was reportedly met with harassment from neighbors yelling and throwing eggs and tomatoes at him. With the help of authorities he rescheduled his exit for 2:00 a.m. to avoid meeting the same harassment.

In June of 1980 Toboso-Alfonso arrived in Miami by boat as part of the Mariel Boatlift migration and was paroled into the United States. His parole was terminated in 1985, and he was found to be excludable from the United States because he violated three statutes of the Immigration and Nationality Act of 1952: a criminal statute, an immigration paperwork statute, and the sexual deviance clause. While the failure to maintain a valid immigrant visa and a controlled substance violation for possession of cocaine constituted part of Toboso-Alfonso's excludability, it was his violation of a "crime involving moral turpitude" that became the subject of the immigration system's debate over whether or not to allow him to stay in the United States.¹³⁹ Following the termination of his parole in 1985, Toboso-Alfonso applied for asylum and withholding of deportation to Cuba. The immigration judge in his first hearing ruled that he was eligible for asylum because he was a member of a "particular social group" who showed a clear probability of persecution if returned to Cuba.

Although legal matters regarding the rights of LGBTI people have met with staggered acceptance (and other rights have not yet been granted), following the decision rendered in the 1990 *Matter of Toboso-Alfonso* case, political refugees who identified as lesbian or gay met with increased acceptance in U.S. immigration courts. The International Gay and Lesbian Human Rights Commission (IGLHRC) reported that in the first three years following the *Toboso-Alfonso* decision, the U.S. provided asylum to 164 applicants from 25 countries on the basis of sexual orientation persecution.¹⁴⁰ By 2003, those numbers reached 773. Less than one percent of the successful applicants were women – a fact that will be discussed more fully in a subsequent

¹³⁹ Toboso-Alfonso was found excludable for violations in the following sections of the 1952 INA: Sec 212(a)(9) [U.S.C. § 1182 (a)(9)] (Crime involving Moral Turpitude), Sec 212(a)(20) [U.S.C. § 1182 (a)(20)] (No valid immigrant visa), and Sec 212(a)(23) [U.S.C. § 1182 (a)(23)] (Convicted of controlled substance violation).

¹⁴⁰ Tracy J. Davis, "Opening the Doors of Immigration: Sexual Orientation and Asylum in the United States," *Human Rights Brief* 6 (1999): 19.

chapter.¹⁴¹ The acceptance of LGBTI migrants in the United States was slow – ‘exceptional in terms of its homophobia’¹⁴² – but the changes set in place by *Toboso-Alfonso* ensured that slow acceptance would not fully restrict LGBTI asylum.

2.3.2 *The Controversy of the Citizen in Matter of Toboso-Alfonso*

In Toboso-Alfonso’s first hearing in immigration court, the judge ruled that homosexuals were a “particularly identifiable group,” stating “Though Congress may have intended to exclude homosexuals from entering the United States, there is no indication that Congress ever sought to condemn homosexuals to a life of suffering and persecution solely as a result of their sexual orientation.” At the time, this was a fairly progressive move for a judge to make – basing the argument on the intent of the legislature with regards to the exclusions brought forth by their immigration policy. Nevertheless, the INS appealed the Houston court’s ruling that Toboso-Alfonso should not be granted a withholding of deportation because:

homosexuals [are] not a particular social group contemplated under the [Refugee] Act...the applicant has not presented adequate evidence to show either a well-founded fear or a clear probability of persecution, and...the applicant is ineligible for relief under section 243(h) of the Act because of his conviction for possession of cocaine.¹⁴³

The appeal cited Toboso-Alfonso’s drug conviction and the 1952 INA as reason for their appeal of Toboso-Alfonso’s case. The Board of Immigration Appeals (BIA) issued their decision to that appeal on March 12, 1990, with Chairman David L. Milhollan writing the majority opinion.¹⁴⁴

Board members Dune and Heilman joined Milhollan’s majority opinion in the *Toboso-Alfonso*

¹⁴¹ See: Randazzo, “Social and Legal Barriers,” 43; Omise’eke Natasha Tinsley, “Queering Caribbeaness in the Novels of Zoé Valdés and Christopher John Farley” in *Hispanic Caribbean Literature of Migration: Narratives of Displacement*, ed. Vanessa Pérez Rosario, (New York: Palgrave MacMillan, 2010), 156.

¹⁴² Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009), 1.

¹⁴³ *Matter of Toboso-Alfonso*, A23-220-644 20 I&N Dec. 819 (BIA, March 12, 1990), 822

¹⁴⁴ Milhollan had presided over other cases in which a complicated immigration case ruled for the immigration or asylum applicant over the desire of the INS. See: Margaret Randall, *Walking to the Edge: Essays of Resistance* (Boston: South End Press, 1991), 32.

case, and the dissenting opinion was written by Fred W. Vacca and joined by James P. Morris. Taking the majority opinion, the dissenting opinion, and the events through which this case became precedent for future LGBTI asylum cases, I turn to the controversy over what rights should be offered to LGBTI asylum seekers and the construction of the LGBTI asylum seeker in the social imaginary.

2.3.3 *Majority Opinion*

In the 1990 ruling, Chairman Milhollan upheld the lower court's ruling from February 3, 1986, which claimed that Toboso-Alfonso "both established his membership in a particular social group in Cuba and demonstrated that his freedom was threatened within the meaning of section 243(h)(1) [of the 1952 INA] on account of his membership in that group."¹⁴⁵ Thus, Milhollan's ruling upheld the withholding of deportation but sustained the denial of asylum to Toboso-Alfonso. Milhollan's opinion offered arguments from the personal and public spheres to make the case that Toboso-Alfonso should be allowed to stay in the United States because he could prove a "clear probability" of persecution.

A large part of Toboso-Alfonso's ability to prove "clear probability" of persecution relied on the history of discrimination in Cuba. The Mariel Boatlift was widely known to have carried a large number of people identified by Cuban authorities as homosexuals, and there were multiple stories of Fidel Castro's efforts to rid the nation of those he considered undesirable citizens.¹⁴⁶ In his majority opinion, Milhollan lists the materials (aside from his own personal narrative) that Toboso-Alfonso brought as evidence of homosexual persecution in Cuba. These include:

¹⁴⁵ Randazzo, "Social and Legal Barriers," 33

¹⁴⁶ See: Capó Jr. "Queering Mariel"; Martinez, Ramiro. "Homicide among the 1980 Mariel refugees in Miami: Victims and offenders." *Hispanic Journal of Behavioral Sciences* 19, no. 2 (1997): 107-122; Peña, Susana. *Oye Loca: From the Mariel Boatlift to Gay Cuban Miami*. 2013; Peña, "'Obvious Gays' and the State Gaze"

...several articles describing ‘Improper Conduct,’ a film which centers on the testimony of 28 Cuban refugees and recounts the human rights violations, including incarceration in forced labor camps...suffered by Cubans whom the Government considers to be dissidents or ‘antisocial,’ particularly male homosexuals; a newspaper article entitled ‘Gay Cubans Survive Torture and Imprisonment,’ in which Cuban homosexuals in the United States, most of whom were part of the Mariel boat lift, describe their treatment by the Cuban Government, including repeated detentions, incarcerations, and physical beatings...¹⁴⁷

The ability to document human rights abuses made it possible for Toboso-Alfonso to paint a clear, discernable picture of what happens to homosexual people in Cuba. The BIA’s decision to grant Toboso-Alfonso a withholding of deportation depended largely on the clear documentation of persecution in Cuba. Because Cuba kept a register of homosexuals, forced them to appear regularly for hearings and examinations, and ultimately forced or “encouraged” most of them to leave the country, there was little to no question about the hospitability of Cuba for people identified as homosexual in the eyes of those writing the majority opinion in the case.

In addition to the evidence of Cuba’s treatment of homosexuals, Toboso-Alfonso brought multiple stories, some listed in the previous section that detail his personal struggle with authorities because of his sexual orientation. Milhollan spends most of his decision telling Toboso-Alfonso’s story, lending weight to his personal experiences, and granting credibility to his need for state protection. Despite the specificity of legal jargon and its presence in all court cases, the majority opinion in *Toboso-Alfonso* spends little time making appeals to the technical sphere. Much of Milhollan’s opinion is directed at the formation and regulation of a public sphere, one where arguments attempt to appeal to an imagined public in which all involved have equal say and equal capacity for action. Milhollan lends weight to Toboso-Alfonso’s story, and acknowledges the tension inherent in the imagined future of the United States if it takes Toboso-Alfonso as a member of its citizenry. The first half of Milhollan’s opinion is dedicated to

¹⁴⁷ *In re: Toboso-Alfonso* 821

explaining Toboso-Alfonso's claim for asylum. He tells the story of Toboso-Alfonso's persecution while living in Cuba, explaining both the individual struggles he faced, and the greater context in which his persecution occurred. This does not limit Milhollan's arguments to the personal sphere, despite his use of personal narrative as evidence. For example, Milhollan explains that Toboso-Alfonso "testified that it was a criminal offense in Cuba simply to be a homosexual" and then lists the different types of abuse that helped to construct his case, explaining the Union of Communist Youth's demonstrations against homosexuals in factory where Toboso-Alfonso worked and acknowledging that Toboso-Alfonso would not have been sent to a forced labor camp if he were not a homosexual.¹⁴⁸ Following the lower-court decision, Milhollan claims that not only did he find "the applicant's testimony to be credible and worthy of belief," but that Toboso-Alfonso was actually also "restrained in his testimony as to the difficulty of his life during the years that he lived in Cuba."¹⁴⁹ For Milhollan and the others signing onto the majority opinion, Toboso-Alfonso's testimony is not only credible, but it proves his claim for asylum even though it seems to be only part of the narrative of his persecution.

Milhollan takes a holistic perspective of the case with regard to U.S. citizenship and migration more broadly, weighing the need for freedom over the need to uphold existing statutes. An example of this occurs in Milhollan's choice to background Toboso-Alfonso's criminal charges as "not particularly serious crimes" and to foreground Toboso-Alfonso's right to not live in fear of persecution:

This is not simply a case involving the enforcement of laws against particular homosexual acts, nor is this simply a case of assertion of 'gay rights.' Particularly in view of the final governmental threat that precipitated the applicant's departure from Cuba, we agree with the immigration judge's finding that the applicant's freedom was and is threatened within the contemplation of section 243(h)(1).¹⁵⁰

¹⁴⁸ *In re: Toboso-Alfonso* 821, para 1

¹⁴⁹ *In re: Toboso-Alfonso* 822, para 1.

¹⁵⁰ *In re: Toboso-Alfonso* 823, para 2.

Here, Milhollan describes Toboso-Alfonso's story as one that ultimately concerns his lack of freedom. Although Milhollan spends a substantial amount of time discussing the difference between status and conduct (elaborated below), here he explains that this is not really a case about gay rights, and is not really a case about Cuba's laws. Instead, this is a case about what type of people should be granted asylum in the United States. The opinion never positions Toboso-Alfonso as an outsider, even when taking into consideration his violation of the policies that currently structure the boundaries of the U.S. citizenry. Instead, Toboso-Alfonso's situation marks a moment in which those boundaries are permeated and permanently altered to account for changes in cultural attitudes.

The ability for an asylum applicant to prove that homosexuals are a particular social group who face either "well-founded fear of persecution" or "clear probability" of persecution does not automatically grant them asylum in nation of first application. In the words of BIA chair Milhollan, "once he establishes that he qualifies for withholding of deportation, it must be granted and he cannot be returned to the country where he would face persecution. He can, however, be sent to another country under certain circumstances."¹⁵¹ This means that Milhollan does not necessarily have to make the United States accept Toboso-Alfonso into the U.S. citizenry – he could recommend sending the applicant elsewhere. However, he does create a space for Toboso-Alfonso, and he does it by arguing for a citizenry that allows public homosexuality. This argumentative move happens more implicitly through his repeated claims about homosexuality as a status rather than an action or set of actions. He uses Toboso-Alfonso's stories of abuse at the hands of the state to argue that this state-sponsored subordination was unfair because it was targeted at a person who had no choice over his identity; his punishment

¹⁵¹ *In re: Toboso-Alfonso* 820

and persecution were not the result of any direct action; instead, he was targeted for merely identifying as (or being identified as) gay. For example, on page 821 of the opinion, Milhollan states Toboso-Alfonso's persecution occurred "not in response to a specific conduct on his part (e.g, for engaging in homosexual acts); rather, they resulted simply from his status as a homosexual."¹⁵² And later, on page 822, Milhollan states, "The applicant's testimony and evidence...do not reflect that it was specific activity that resulted in the governmental actions against him in Cuba, it was his having the status of being a homosexual." While one of the early versions of the INA forbid entry of LGBTI people by classifying homosexuality as both a status and an action, the opinion in the *Toboso-Alfonso* case determined that one could face persecution for their status alone. It is not clear whether Toboso-Alfonso's *actions* mattered – the court saw a problem with the persecution of someone based on his *status*. In this – and many other civil rights related claims – the persecution was deemed especially problematic because it targeted a person for something that could not easily be changed.

The attention to status over action served as the foundation of Milhollan's ruling about persecution and immutable characteristics. Following the immigration court's decision, Milhollan ruled that sexual orientation is an "immutable" characteristic and that one should not be denied access to citizenship because of an inherent element of their identity. In fact, Milhollan states that the INS appeal did not challenge "the immigration judge's finding that homosexuality is an 'immutable characteristic. Nor is there any evidence or argument that, once registered by the Cuban government as a homosexual, that characteristic is subject to change."¹⁵³ Even if the INS did not consider homosexuals capable of constituting a "particular social group" under the Refugee Act of 1980, they did not argue against the lower court's definition of homosexuality as

¹⁵² *In re: Toboso-Alfonso* 821

¹⁵³ *In re: Toboso-Alfonso* 822, para. 4

immutable. Refugee laws had long protected people who faced persecution for something like race or religion which were treated under the law as immutable. In this case, sexual orientation was added to the list of immutable characteristics for which someone might face persecution and is thus deserving of protection. The declaration of its immutability made sexual orientation justifiable for inclusion as a “particular social group.”

In the majority opinion, the courts defer to the rights of asylum seekers as outlined in the Refugee Act of 1980, effectively placing international human rights over the rights of U.S. sovereignty. The most progressive, and surprising development in *Toboso-Alfonso* was the constitution of homosexuals as a “particular social group.”¹⁵⁴ This is the moment at which private, subordinated LGBTI identities became protected within U.S. immigration law.¹⁵⁵ In the Refugee Act of 1980, the U.S. limited “particular social group” to religious, ethnic, and political minorities, but here the category expanded through the addition of sexual minorities to that list. However, in adding sexual minorities because of the “immutability” of their identity, the court restricts identity to that which is inherent. This denies the flexibility and fluidity of sexual identity and the process through which many people come to understand their identity. Thus, the majority opinion imagines LGBTI asylees as people with the capacity to prove their sexual orientation and their persecution.

2.3.4 Dissenting Opinion

In his dissenting opinion, Fred W. Vacca denies the immutability of homosexuality and disputed *Toboso-Alfonso*’s claims about the inhospitability of life in Cuba for those identified as homosexuals. Vacca notes that to prove a “clear probability” of persecution, the case “requires a

¹⁵⁴ Davis, “Opening the Doors of Immigration,” 19.

¹⁵⁵ *Bowers v. Hardwick* (and the right to prosecute people for engaging in private sex acts) would not be overturned until the Supreme Court’s decision in *Lawrence v. Texas* in 2003.

showing that is more likely than not that an alien would be subject to persecution.”¹⁵⁶ When presented with the stack of articles and films Toboso-Alfonso provides as evidence of his continued threat to persecution, Vacca dismisses the evidence, claiming that much of it relates to the 1960s and 1970s, and he claims *The 1985 Amnesty International Report* does not address homosexuals at all.¹⁵⁷ Twice he calls for Toboso-Alfonso to be deported back to Cuba.¹⁵⁸ In attempting to understand Toboso-Alfonso’s claim for citizenship, Vacca repeatedly espouses the ways in which Toboso-Alfonso does not meet the “clear probability” standard for a withholding of deportation. In so doing, Vacca constructs the potential LGBTI asylum-seeker as someone who is especially threatened, and delineates the way in which Toboso-Alfonso is not threatened.

Because Toboso-Alfonso was able to live as an out homosexual in Cuba, Vacca does not think Toboso-Alfonso’s case showed a clear threat of persecution. He states, “I find the applicant’s situation best evaluated in light of his own experiences over his 13 years as a known homosexual in Cuba.”¹⁵⁹ Here, Vacca finds Toboso-Alfonso’s ability to *live* in Cuba as an out homosexual for 13 years to be evidence that he would not face a clear probability of persecution – failing to acknowledge that existing and facing persecution are not mutually exclusive. It seems Vacca considered Toboso-Alfonso’s ability to exist without ever experiencing violence as an indication that he was not actually persecuted. Following his statement about living as a “known homosexual,” Vacca delineates the ways Toboso-Alfonso would not fare better in the United States than in Cuba. He mentions how the United States found regulation of private behaviors to be constitutional, citing *Bowers v. Hardwick*, and defers to Cuba and their decisions to prosecute Toboso-Alfonso for violating Cuban laws prohibiting homosexuality. Overall,

¹⁵⁶ *In re: Toboso-Alfonso* 824, para 2.

¹⁵⁷ *In re: Toboso-Alfonso* 825, para 3.

¹⁵⁸ *In re: Toboso-Alfonso* 824, para 3; 826, para 2.

¹⁵⁹ *In re: Toboso-Alfonso* 825, para 3.

Vacca is less interested in Toboso-Alfonso's relationship to the current laws of the United States and more interested in Toboso-Alfonso's inability to act within the laws governing Cuba while living there. He states:

I do not find this testimony regarding the circumstances of the applicant's previous experiences in Cuba as a known practicing homosexual to be such as to indicate a 'clear probability' that his life or freedom would be threatened if he were to return to that country. There are apparently Cuban criminal laws regarding homosexuality.¹⁶⁰

In this statement, Vacca seems to contradict himself. He says he does not believe Toboso-Alfonso faced a "clear probability" of persecution, but he also acknowledges the laws criminalizing homosexuality in Cuba. Vacca does not consider the criminalization of homosexuality to constitute persecution, and he finds Toboso-Alfonso's inability to follow this law since the age of nine to be a problem with Toboso-Alfonso, not Cuba. In continuing to place the blame on Toboso-Alfonso instead of Cuba, Vacca later states that Toboso-Alfonso knew his homosexuality was in violation of Cuban law, yet he knowingly lived as "a practicing homosexual since he was 9 years old."¹⁶¹ This statement denies the immutability argument made in the majority opinions by suggesting that Toboso-Alfonso knew he was in violation of Cuban law but chose to violate it anyway.

Vacca's opinion repeatedly addresses Toboso-Alfonso's health as a way of understanding his lack of threat in Cuba. He argues that Toboso-Alfonso himself classifies his detentions with the Cuban government as "health examinations," which is less threatening than the physical examinations depicted in the majority opinion. He uses Toboso-Alfonso's own testimony to show how the Cuban health examinations were for his benefit and could not be classified as persecution: "When asked whether the government examinations were primarily health examinations, the applicant responded: 'Yes, and mostly ... so there wouldn't be any kind of

¹⁶⁰ *In re: Toboso-Alfonso* 825, para 3.

¹⁶¹ *In re: Toboso-Alfonso* 824.

disease or sickness.”¹⁶² Later, Vacca returns to Toboso-Alfonso’s detentions by the Cuban government, stating, “The applicant himself characterized his experiences with the authorities as part of either investigations or health examinations. He did not describe these incidents as being ‘incarcerated’ because he was a homosexual.”¹⁶³ And again, while citing *Bowers v. Hardwick*, Vacca states, “Considering the applicant’s own characterization of the events, these experiences appear related to the investigation of criminal activities and the control of health matters rather than persecution of the applicant.”¹⁶⁴ For Vacca, the periodic detentions, questionings, and physical exams were not at the same level as incarceration or proven abuse as they were performed out of concern for the health and safety of other Cubans.

Vacca’s dismissal of the “health examinations” as a form of persecution or threat reveals the tensions at play in this case between what type of homosexual would be allowed in the United States and under what circumstances. Vacca does not indicate any concern with the periodic health examinations Toboso-Alfonso was required to undergo even though he was selected for these examinations solely because he was registered as a homosexual. At the time of Toboso-Alfonso’s hearing, fear of HIV and AIDS had given way to a fear of queer bodies, and the fear of immigrants as “sites of contagion” was doubled in the fear of queer immigrants.¹⁶⁵ Eithne Lubhéid notes that migrants are often “portrayed as the bearers of aberrant sexual practices, questionable sexual morals, and sexually transmitted diseases, including AIDS that

¹⁶² *In re: Toboso-Alfonso* 824, para 5.

¹⁶³ *In re: Toboso-Alfonso* 825, para 3.

¹⁶⁴ *In re: Toboso-alfonso* 825, para 3.

¹⁶⁵ J. David Cisneros, “Contaminated Communities: The Metaphor of ‘Immigrant as Pollutant’ in Media Representations of Immigration,” *Rhetoric & Public Affairs* 11, no. 4 (2008): 569-602, See also: Zachary Bromer, “*Boer-Sedano v. Gonzales*: The Increasing Influence of HIV/AIDS Status on Asylum Claims Based on Homosexual Identity,” *Law & Sexuality: A Review of Lesbian, Gay, Bisexual, and Transgender Legal Issues* 15, (2006): 163-174.

threaten to ‘contaminate’ the citizenry.”¹⁶⁶ The way Vacca talks about the regulation of Toboso-Alfonso’s body in Cuba indicates that instead of seeing this regulation as persecution, he sees it as a necessary measure to protect the health and safety of other Cubans. Just as migrants, and particularly HIV-positive migrants have been treated in the United States as threats to our health and safety, Toboso-Alfonso could not show a clear probability of a threat on his life because, to Vacca, he *was* the threat.

Vacca claims that the crux of the case lies in Toboso-Alfonso’s ability to prove a “clear probability” of persecution if deported to Cuba, and he argues that this case did not reach that standard because Toboso-Alfonso was unable to prove that he would face persecution in 1990s Cuba. When discussing Toboso-Alfonso’s testimony that he was given an ultimatum between leaving Cuba or being jailed for four years, Vacca states:

In my view, this threat must be evaluated in the context of the time and situation in which it was made. During the massive exodus of Cubans from Mariel in the spring of 1980, some departures were entirely voluntary, some coerced. Fidel Castro used the plight of the ‘Marielitos’ as an opportunity to rid Cuba of many who were deemed undesirable by his government, including criminals and homosexuals. In view of his prior experiences, it is clear that the purpose of the particular threat to the applicant was to get him to leave the country. If he were to return to Cuba today with the permission of the Cuban authorities, has he demonstrated a ‘clear probability’ that the threat made in 1980 has relevance?...I would find that such is not the case.¹⁶⁷

Vacca goes on to note that the Cuban government has agreed to take back any Marielitos who so desired a return to Cuba, assuring “no reprisal” if they returned. Not only did Vacca dismiss Toboso-Alfonso’s suffering in Cuba as persecution worth granting asylum for, he also showed he believed Cuba had made progress since 1985 that would prevent Toboso-Alfonso from suffering any more than he would in the United States. For Vacca, Toboso-Alfonso’s story paints the picture of a man who was not persecuted, but rather, one who was subject to uncomfortable and

¹⁶⁶ Eithne Luibhéid, “Queer/Migration: An Unruly Body of Scholarship,” *GLQ: A Journal of Lesbian and Gay Studies* 14 no. 2-3 (2008): 174.

¹⁶⁷ *In re: Toboso-Alfonso*, 824-825.

unorthodox regulations – regulations that do not rise to the level of persecution. Fully dismissing the evidence Toboso-Alfonso provides as part of his explanation of the threat to homosexual people in Cuba in the early 1980, Vacca claims the only real threat he sees in Toboso-Alfonso's case came in the ultimatum that led him to voluntarily leave Cuba. He suggests that even Toboso-Alfonso's departure from Cuba may not indicate a "clear probability of persecution" in the context of the 1990 hearing. For Vacca, there are significant contextual differences between Cuba in the 1980s and Cuba in the 1990s. He raises the question, "If [Toboso-Alfonso] were to return to Cuba today with the permission of the Cuban authorities, has he demonstrated a 'clear probability' that the threat made in 1980 has relevance?" This question embraces a hypothetical shift in Cuban attitudes toward LGBTI people, and it sets forth the notion that while Toboso-Alfonso may not be widely embraced within Cuba, he would likely not be actively persecuted.

Vacca positions *Toboso-Alfonso* not as a case about the public sphere, but rather as the story of one man's private difficulties with national laws. The dissenting opinion revealed how Toboso-Alfonso could do little to convince Vacca of his well-founded fear, and it raises the question over who (or what kind of case) might make Vacca consider asylum to be the best outcome for the applicant and the nation. Vacca's standard for proving well-founded fear and clear probability is substantially higher than that of those writing the majority opinion, and Vacca's other BIA opinions reveal his tendency to deny asylum or green cards far more often than he votes to grant asylum. Some of the most widely publicized cases in which Vacca argued to deny entry include cases involving a writer and political activist born in the U.S. but living in Central America,¹⁶⁸ a woman from Togo seeking asylum out of fear of genital mutilation,¹⁶⁹ and

¹⁶⁸ Henry S. Matteo, *Denationalization v. "The Right to Have Rights": The Standard of Intent in Citizenship Loss* (New York: University Press of America, 1997) 93; Margaret Randall, *Walking to the Edge*, 32.

¹⁶⁹ *In re: Fauziya Kasinga* A73 476 695 I&N Dec. #3278 (BIA 13 June 1996)

an Afghan man seeking asylum for political persecution.¹⁷⁰ In reading his opinions on a variety of cases, Vacca's standard for "well-founded fear" and "clear probability" of persecution requires the asylum seeker to have experienced violence that absolutely, unquestionably resulted from their membership in one of the groups eligible for asylum. This hard stance allows the courts to help maintain U.S. sovereignty and reserve asylum for the most desperate, persecuted person. What this high standard for proving persecution fails to account for, however, is the difficulty many asylum seekers face in migrating to the United States. Those who face the most intense and violent persecution may never have the ability to leave their current situation, eliminating the possibility to even apply for asylum. In his essay discussing barriers to asylum in the United States, Timothy Randazzo states that most LGBTI people seeking to escape persecution through migration never make it to the United States, and that the poor are both more likely to experience persecution and less likely to have the resources necessary to leave.¹⁷¹ Vacca's hard standard ensures that asylum can only be granted to those who can offer some sort of definitive proof of identity and persecution and who possess the means necessary to leave their current situation. Vacca's imagined queer refugee, then, is in many ways a paradoxical figure. In his view, an acceptable refugee is one who is both unable to live safely in their home nation and who possesses great resources and legal knowledge to navigate the immigration court system. Moreover, the ideal refugee possesses the capacity to prove beyond a reasonable doubt that their identification as lesbian or gay caused them to face interminable persecution.

Vacca's positioning of Toboso-Alfonso as a private individual struggling to obey national laws is in stark contrast with the majority opinion's narrative of the struggling asylum seeker whose public freedoms outweigh his personal downfalls. For Milhollan and the other judges

¹⁷⁰ *In re: B-Applicant* I&N Dec. 3251 (BIA 19 May 1995) 66-76

¹⁷¹ Randazzo, "Social and Legal Barriers," 39.

signing the majority opinion, Toboso-Alfonso was worthy of protection because of his identity, because identity is public – especially in Cuba. Private sex acts, on the other hand, are private and not the concern of the state – a stance that is countered in Vacca’s dissent under the precedent set by *Bowers v. Hardwick* which upheld states’ rights to prosecute private sexual acts (and was largely used as a way to incarcerate gay men). The *Toboso-Alfonso* case granted rights to a homosexual person because of his homosexual identity, not in spite of it. And it did this not by presenting homosexuality as a deficiency or deviance, but rather as a locus of human rights. In order to recognize homosexual people as eligible for state protection, the case needed to situate homosexual identity as a public status. Despite the multitude of ways in which private acts determine public eligibility for citizen status, it is precisely those public actions that constitute a “civic” identity and make possible social and civic imaginaries. Berlant discusses how the regulation of bodies and identities is often targeted at the regulation of sexual acts. Further, Berlant notes that the government’s investment in what queer people do in the bedroom is one of the fundamental sites of the intimate public sphere in which private behaviors become the site of public worth.¹⁷² In his *Toboso-Alfonso* opinion, Milhollan is not willing to make that leap, classifying Toboso-Alfonso as worthy of protection because of his identity and status and the persecution he could face in Cuba merely for existing as he (immutably) *is*.

2.4 Toboso-Alfonso as Precedent

In addition to the removal of “sexual deviance” as an excludable offense, the Immigration Act of 1990 brought to the United States a set of more progressive immigration policies, including the elimination of English language testing in the naturalization process and an increase in overall numbers of admitted immigrants. President George H. W. Bush signed the

¹⁷² Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham: Duke University Press, 1997).

Act into law and stated that he supported the Act because it “facilitates immigration not just in numerical terms, but also in terms of basic entry rights of those beyond our borders.”¹⁷³ The passage of this law in late 1990 meant that William Clinton’s Administration and then Attorney General Janet Reno became primarily accountable for implementing and regulating the changes brought forth by this Act. Although she called for more restrictions on immigration in some areas, like greater border agent presence at the U.S. Mexico border, Reno also oversaw more inclusive asylum policies emerging in this context. When Reno set *Toboso-Alfonso* as precedent, her words helped to frame the case as having a broader application than it had upon the initial writing of the decision. She stated that the board appropriately applied the law and that their decision could help to guide immigration judges hearing similar cases. Reno set the case as precedent for all future cases “involving the same issue or issues,” where an individual “identified as homosexual and persecuted by his or her government for that reason alone may be eligible for relief under refugee laws on the basis of persecution because of membership in a social group.”¹⁷⁴ Beyond its status as legal precedent, the case would also go on to establish the rhetorical precedent through which identities would be measured, persecution would be understood, and arguments for asylum would be generated. For example, Reno’s use of the words “identified as” made possible asylum in the case of imputed homosexuality and not just admitted homosexuality, meaning someone could receive asylum after facing anti-LGBTI persecution whether or not they identified as a member of a sexual minority. But despite Reno’s choice of words, the burden to prove not only persecution but also a sexual minority identity remains high.

¹⁷³ George Bush, “Statement on Signing the Immigration Act of 1990” November 29, 1990. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=19117>.

¹⁷⁴ Janet Reno, “Memorandum for Mary Maguire Dunne, Acting Chair Board of Immigration Appeals,” Attorney General Order, 16 June 1994.

In setting this case as precedent, Reno may have unknowingly set an unreasonably high burden of proof for LGBTI people claiming persecution. The rhetorical precedent set in place by *Toboso-Alfonso* was shaped by the specific context of U.S.-Cuba relations at play in that case. Both the proximity of Cuba to the United States and the hundreds of thousands of Cuban exiles living in the U.S. created rich corroborated documentation of the persecution of LGBTI people in Cuba. And while the majority of LGBTI asylees came to the U.S. from Central and South America, especially in the first ten years after *Toboso-Alfonso* was set as precedent, not every asylum seeker was able to provide the same type of documentation of political and state-sponsored persecution of LGBTI people. In many cases, the abuse was hard to prove, and maintaining documentation of abuse while living in a nation hostile to LGBTI people could be dangerous. There were few to no stories of LGBTI persecution in other nations circulating in the U.S. media in the years following *Toboso-Alfonso*, so the ability to prove persecution was met with a far greater challenge than that faced by the Marielitos of Cuba.

One of the few cases to receive national attention following *Toboso-Alfonso* was that of Brazilian national Marcelo Tenório – a case that is at least partially responsible for Reno’s declaration of *Toboso-Alfonso* as precedent.¹⁷⁵ In 1993, Tenório was one of the first LGBTI refugees to be granted asylum in the United States on the basis of sexual orientation-based persecution, and was the first from a nation with less explicit or publicized prejudices against LGBTI people. Similar cases prior to *in re: Tenorio* primarily involved people seeking refuge from Iraq, Iran, and Cuba– nations with laws prohibiting homosexual behavior and a history of

¹⁷⁵ Although the claimant’s name included an accent over the first ‘o’ (i.e., Tenório), the official legal opinion for the case left the accent out of the case’s title. For this reason, Tenório refers to the person making the asylum claim and *Tenorio* designates the case itself.

state-sponsored hostility toward homosexuals.¹⁷⁶ In these cases, there was not a high burden to prove that the state was hostile and that being gay could endanger someone's life. For Tenório, it proved more difficult to make the same claims to persecution as someone from Iraq, Iran, or Cuba. By the early 1990s, Rio de Janeiro was already home to one of the biggest gay pride parades in the world, and it had acquired a reputation as a LGBTI vacation mecca. Like the U.S., Brazil formally listed homosexuality as a mental illness for many years – finally changing the designation in 1990.¹⁷⁷ Although Tenório had been severely beaten, stabbed multiple times, and had faced systematic (and at times, state-sponsored) violence, he still had to convince his immigration judge that Rio de Janeiro was a hostile environment for members of the LGBTI community.¹⁷⁸ While Brazil does not keep statistics on LGBTI violence, a Brazilian human rights group estimates that in 1993 one homosexual was murdered every five days and only ten percent of those murders were ever prosecuted.¹⁷⁹ The precedent for proving national hostility toward homosexuals set by *Toboso-Alfonso* was one in which documentaries, news articles, and the personal records of thousands of gay Marielitos made strong proof of their persecution. In order to be granted asylum in the U.S., Tenório had to perform a convincing gay identity – the very same identity he worked to keep secret while living in Brazil.¹⁸⁰ Judging Tenório by the standard set in *Toboso-Alfonso* would make it difficult to prove sexual orientation in the same

¹⁷⁶ Saeed Kamali Dehghan, "Iran's Persecution of Gay Community Revealed," *The Guardian (UK)*, (May 17, 2012); Peter Graff, "Fear as Death Squads Hunt Iraq's Gays and 'Emos,'" *Reuters* (March 12, 2012); Human Rights Watch (HRW), "Iran: Two More Executions for Homosexual Conduct," (2005) from <http://hrw.org/english/docs/2005/11/21/iran12072.htm>; "Fidel Castro Takes Blame for Persecution of Cuban Gays," *BBC News*, (Aug 31, 2010).

¹⁷⁷ Rodrigo Couto, "For 20 Years, the WHO Removed Homosexuality from the List of Mental Illnesses," *Correio Braziliense* (16 May 2010) Translated from Portuguese, para 1.

¹⁷⁸ Juana María Rodríguez, *Queer Latinidad: Identity Practices, Discursive Spaces* (New York: New York University Press, 2003) 89-91.

¹⁷⁹ James Brooke, "Rio Journal: In Live-and-Let-Live Land, Gay People are Slain," *The New York Times* (12 August 1993) A4.

¹⁸⁰ Rodríguez, *Queer Latinidad*, 91.

way. There were no known public records of Tenório's sexual orientation and no required participation in "health examinations" or interrogations.

In making the immutability standard of *Toboso-Alfonso* one which relies on public identities instead of private acts, the case seemed to simplify the confusing distinctions between public and private. However, as Berlant shows, the line between public and private is not stable, and does not always exist in the same ways for all people at the same time. The judges siding with Tenório stated, "Respondent is openly homosexual, a characteristic the court considers immutable, and one which an asylum applicant should not be compelled to change. Thus, a reasonable person in respondent's circumstances would not stop fearing persecution."¹⁸¹ The court's interpretation of *Toboso-Alfonso*'s precedent shows how they apply the immutability standard. However, the way in which that standard was applied here required particular evidence that the applicant was "openly homosexual." As a result, Tenório's case involved a lengthy debate over what it meant to be openly homosexual, and much of this debate relied on making sense of his seemingly contradictory public and private identities. Juana María Rodríguez's reading of the *In re: Tenorio* transcripts highlights Tenório's "seemingly contradictory statements about hiding and visibility" that the court had to parse:

Marcelo Tenório did not belong to any gay political groups, had not declared himself a homosexual in any recognized public forum, and was not engaged in any sexual act or other overt manifestations of homosexual desire... In his testimony, Tenório states he had been a practicing homosexual since the age of fourteen, and claims 'everything in hiding.' Yet, when asked by Allen Lee, the trial attorney for the INS, 'Well, how would people know that you were gay?' Tenório responded, 'Because I live among gays, I live with gays. My friends are gay, and I can't live in hiding. Sometimes when I talk in Brazil, just because of my voice, they'll say I'm gay.'¹⁸²

Tenório was both publicly and privately homosexual and both publicly and privately straight. Public and private acts and identities do not have clear boundaries. Unlike the public records

¹⁸¹ *In re: Tenorio*, No. A72 093 558 (EOIR Immigration Court, July 26, 1993).

¹⁸² Rodríguez, *Queer Latinidad*, 90, 91.

kept to track Toboso-Alfonso's "health examinations," Tenório's evidence of public homosexuality was less explicit and less official. Tenório's case shows how the standard of public identity in *Toboso-Alfonso* is only roughly applicable to cases involving asylum applicants from other nations. And while Tenório was granted asylum, his case shows how the application of *Toboso-Alfonso*'s immutability standard could place overwhelming burdens on asylum applicants to parse the complexities of public and private identities in a way that makes sense to an immigration judge.

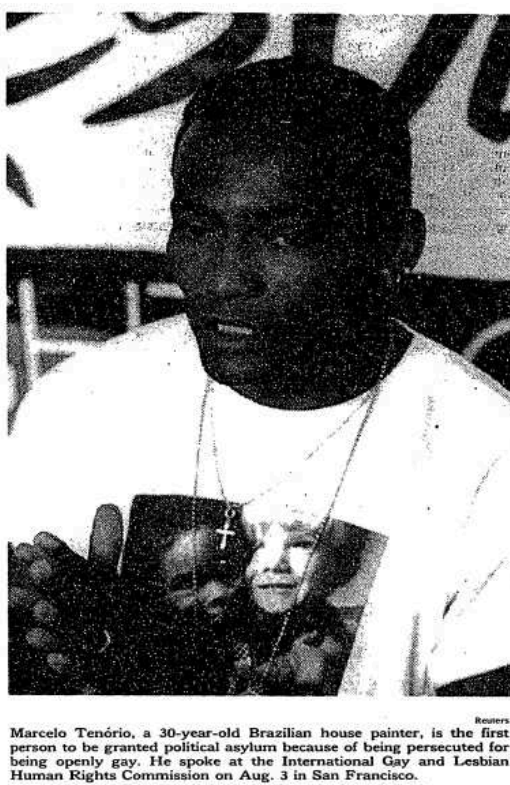


Figure 1: Tenório in the news, photo published in *Reuters*, 1990

Like Tenório, those who wish to obtain asylum in the United States must first successfully prove to a judge that they were persecuted or are at a high risk for persecution and that they actually are members of a sexual minority. In order to become eligible for citizenship,

they must prove some acceptable and believable level of homosexual identity – a standard not needed in the *Toboso-Alfonso* decision. While there exists fear of people using the precedent set by *Toboso-Alfonso* to get sexual orientation asylum in the United States, as of 2016, no cases have been found to create a false narrative of persecution. In fact, the majority of sexual orientation asylum cases are rejected. The standard set forth through *Toboso-Alfonso*'s precedent is one that places a large burden on the asylum seeker to prove what is difficult to prove – identity and persecution. In the shifting moment of controversy over LGBTI asylum in the early 1990s, the decision to grant asylum to LGBTI people won the day, but in making *Toboso-Alfonso* the precedent for these cases, asylum became an option only for those who were legibly gay or lesbian according to widespread understanding of identity categories.

2.5 Conclusions

In his book *Visions of Poverty*, Robert Asen notes, “Especially in moments of controversy, imagining may unsettle established evaluations of policy initiatives and positions of advantage and disadvantage.”¹⁸³ We see this unsettling occur following the *Toboso-Alfonso* decision, where a group once barred from entering the United States was provided a path to asylum and eventual citizenship based on their membership of that same group. The positions of advantage and disadvantage became cloudy in the *Toboso-Alfonso* decision, as his persecution and institutionally marginalized identity – a great disadvantage and traumatic experience in his own life – became the advantage necessary to be granted permission to stay in the United States. Regardless of the court's intent in writing this particular decision, the establishment of *Toboso-Alfonso* as precedent made immigration courts most likely to understand cases where the asylum claimants most resembled Toboso-Alfonso. Thus, eligible asylum claimants came to be widely

¹⁸³ Asen, *Visions of Poverty*, 15

understood as men who could perform their sexual identity in a way that made sense to immigration officers and who had the means to provide certain evidence of persecution like news stories and public declarations that showed the subordination of LGBTI people.

Legal scholar Joseph Landau calls Toboso-Alfonso's precedent a "soft immutability" standard that requires proof of sexual orientation but allows criteria to shift to fit the context of each case.¹⁸⁴ While this may benefit people whose cases do not look exactly like Toboso-Alfonso's (and given the specific context of the Mariel Boatlift, most do not), it does require applicants to prove the immutability of their identity. This means that LGBTI asylum seekers must be able to prove their sexual orientation or gender identity and the ways in which it has persisted in their lives – they must show that they were "born this way" and that they cannot change. For many asylum applicants, this is possible, but it requires the presentation of an identity that is especially legible to immigration officers and judges. They must be able to be understandably, immutably gay, or lesbian, or transgender, and deviations from these categories like bisexuality or genderqueer identities become more difficult to prove. People who identify as bisexual or genderqueer are not any less likely to face persecution, but the soft immutability standard implies that only those with more obviously LGBTI "traits" are at a greater risk of persecution. The subsequent cases show that this soft immutability became the method by which systemic heteronormativity is upheld within the institution of citizenship, and through which legibly gay men in particular become the most likely to gain asylum under this standard. Toboso-Alfonso was able to prove persecution in a way not all LGBTI migrants could (or can), and his classification as a homosexual by the Cuban government removed the demand for Toboso-Alfonso to prove his sexual orientation in his hearing.

¹⁸⁴ Joseph Landau, "'Soft Immutability' and 'Imputed Gay Identity': Recent Developments in Transgender and Sexual-Orientation-Based Asylum Law," *Fordham Urban Law Journal* 32, no. 2 (2004): 99-126.

Further, Reno's statement that the case would apply to similar cases involving "gay and lesbian" asylum seekers was both in line with vocabulary in use at the time and an improvement from the often derogatory term "homosexual." However it also helped to institutionalize a fairly narrow understanding of sexual orientation and identity. Transgender asylum seekers have faced some of the harshest decisions because the courts could not recognize the immutability of their identity and because their cases did not necessarily look like those of *Toboso-Alfonso* –whose persecution began at the age of nine years old and was monitored in a register by his nation. In setting *Toboso-Alfonso* as precedent, Reno simultaneously expanded the possibilities for inclusivity in U.S. asylum policy and narrowed the definitions of identity for future applications of the case.

Toboso-Alfonso slightly eroded the traditional heteronormativity of citizenship because it opened a pathway to rights for people previously excluded from the nation. More importantly, though, it set forth standards of legibility in identity that institutions continue to wrestle with today. *Toboso-Alfonso* became a case that influenced debates over who belongs in the United States and who does not. The controversy surrounding the course was, in many ways, one over the unspoken desire for purity in citizenship. In deciding to account for the persecution of LGBTI individuals, the immigration courts still needed to delineate how, and in what circumstances someone could be granted asylum. The ways in which that decision has privileged certain identities and people from certain nations has helped to shape the face of LGBTI asylum. The norms set in place by *Toboso-Alfonso* have expanded access to U.S. citizenship in some ways, but they have also established criteria that limit the identity performances and even the types of asylum applications processed in the immigration system. In the next chapter, I explore

the ways the U.S. immigration system has wrestled with these established norms in LGBTI asylum policy.

3 REGULATING QUEER ASYLUM: HETERONORMATIVE CITIZENSHIP AND HOMONATIONALIST POLITICS

Following the decision in *The Matter of Toboso-Alfonso*, immigration officials in the United States were faced with the task of delineating who met the standard for sexual orientation (and eventually, gender identity) asylum. Their efforts led to the creation of a training module that relied on the rhetorical precedent set in *Toboso-Alfonso* to create a definition of the successful sexual orientation or gender identity asylum claimant. Definition and naming are means of rhetorical representation that construct certain subjects within the public imaginary. Constructing more than just rhetorical representation, these definitions codify a rhetorical precedent that sets in place demands for particular identity performances and particular arguments that fit examples set forth in legal precedent from prior LGBTI asylum cases. I argue that in defining LGBTI asylum seekers, the training module strives for inclusivity but ultimately engages in a practice of homonationalism. This institutionalized homonationalism defines certain bodies and identities as deserving of citizenship and excludes those who cannot be identified as embodying the desired LGBTI citizen.

In the years since *The Matter of Toboso-Alfonso* set a precedent for cases involving asylum granted on the basis of sexual orientation persecution, global persecution of LGBTI people became a more prominent feature of news, and LGBTI rights in the U.S. shifted toward greater inclusivity of different identities. These shifts in attitudes and awareness were met with a shift in policy, and the Obama Administration laid out a plan in 2011 that would involve a widespread effort toward global LGBTI rights objectives. As part of this effort, the U.S. Citizenship and Immigration Services (USCIS) began to offer greater support for LGBTI asylum

seekers who fled persecution abroad. The USCIS released a training module to aid immigration officers in the adjudication of sexual orientation and gender identity asylum claims. The module, titled “Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims,” was produced for the Refugee, Asylum, and International Operations Directorate (or RAIO).¹⁸⁵ It provides 65 pages of research, guidance, and interview materials for immigration officers working in the RAIO and dealing with LGBTI asylum claims. The RAIO training module stands as an institutional effort to resolve the contradictions between identity, orientation, persecution, and citizenship produced by LGBTI asylum cases. It sits at the intersection of immigration law and the political sphere – speaking to an audience of lawyers, judges, and most importantly, immigration officers in their efforts to parse the political contradictions surrounding LGBTI asylum. In this chapter, I read the training module through the lens of critical rhetoric to uncover the structures of power it upholds and/or resists. While the training module marks an effort toward a progressive understanding of lesbian, gay, bisexual, transgender, and intersex asylum seekers, it ultimately codifies norms of sexual orientation and gender identity and contributes to a system of homonationalism.

The USCIS training module represents recent efforts by the government to extend the rights of citizenship to people long denied those rights. The rights of U.S. citizenship have never been fully granted to people identifying as gay, lesbian, bisexual, transgender, or queer. Rights to marriage, spousal benefits, private sexual activity, and public use of spaces have all been restricted from LGBTI people at one point in U.S. history. In addition, LGBTI people continue to be denied protections granted to heterosexual people in employment, housing, and beyond.

¹⁸⁵ U.S. Citizen and Immigration Services, *RAIO Combined Training Course: Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*, (Washington, DC, 2012, 12, <<https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf>>

Elizabeth Freeman and Lauren Berlant claim that citizenship has long been reserved for people inhabiting a “straight, undiseased body,” that the regulation of bodies through immigration policy literally supported these exclusions in multiple ways, and that this practice of regulation ultimately defined citizens accordingly.¹⁸⁶ Heterosexuality is presumed, and any identity that is not explicitly, legibly heterosexual is treated as a deviation from a norm. This treatment takes a variety of forms – from the explicit denial of rights to more covert incidences of prejudice or inequality.

While this presumed, institutional heteronormativity can be traced through the history of U.S. legal regulations, the cultural dimensions of heteronormative citizenship are more difficult to parse. Lauren Berlant and Michael Warner claim that in the United States, national heterosexuality has become the dominant, unspoken space of pure citizenship that allows systemic inequalities regarding sexuality to remain in the shadows.¹⁸⁷ This renders unintelligible the relationship between sexuality and citizenship and makes heteronormativity the standard operation of the state.¹⁸⁸ The world that Berlant and Warner paint is one marked by dispute over identity, rights, privacy, and publicity. In *The Queen of America Goes to Washington City*, Berlant describes how citizenship has always functioned as a false promise for many living in the U.S. including women, immigrants, and homosexuals who have “long experienced simultaneously the wish to be full citizens and the violence of their partial citizenship.”¹⁸⁹

¹⁸⁶ Lauren Berlant and Elizabeth Freeman, “Queer Nationality,” in *Fear of a Queer Planet: Queer Politics and Social Theory*, ed. Michael Warner (Minneapolis, MN: University of Minnesota Press, 1993).

¹⁸⁷ Lauren Berlant and Michael Warner, “Sex in Public” in *Publics and Counterpublics* (New York: Zone Books, 2002), 189.

¹⁸⁸ Berlant and Warner, “Sex in Public,” 194; Carol Johnson, “Heteronormative Citizenship and the Politics of Passing,” *Sexualities* 5, no. 3 (2002): 317-336.

¹⁸⁹ Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham: Duke University Press, 1997), 19.

Berlant further addresses how laws may expand to provide pieces of citizenship to those populations, but full incorporation into the world of democratic national privilege is impossible.

One of the places where we can see this ongoing deferral of rights is in the “intimate public sphere” ushered in through Regan-era politics and through which individual public worth became dependent on private interactions.¹⁹⁰ For Berlant, the public and private spheres are only independent for people whose lives fit within the established heteronormative boundaries of citizenship. In an intimate public sphere, regulation of private sexual acts became a focus of public political activity.¹⁹¹ Further, political focus on upholding an ideal version of a family became a crusade to protect our “most vulnerable citizens” – namely children – from the threat of sexual activity, particularly from LGBTI people themselves. Much like efforts to protect Americans from immigrants, we have seen fear of LGBTI people play out in legislation regulating private sex acts and the regulation of their mere existence in certain public spaces.

In *The Matter of Toboso-Alfonso*, private sexual acts were differentiated from sexual orientation as a status in a way that left a dent in the heteronormativity of citizenship by expanding LGBTI access to citizenship. However, it also set in place a rhetorical precedent for the arguments and identity performances most likely to earn someone sexual orientation asylum. The decision in *Toboso-Alfonso* created a path to citizenship for a person who had been legally barred from entering the United States but who could not return to his homeland for fear of persecution. The case established LGBTI people as eligible for asylum because their membership in that particular group made them a target of persecution. The *Toboso-Alfonso* case

¹⁹⁰ Although *The Matter of Toboso-Alfonso* took place at the same time in which Berlant was writing *Queen of America*, Marita Sturken argues that what Berlant identifies as the “Reagan era” has developed into an age of neoliberalism that continues to structure our lives. It is embedded in Reagan-era ideology, but appears to have more lasting power than was evident in the early 1990s. Marita Sturken, “Feeling the Nation, Mining the Archive: Reflections on Lauren Berlant’s *Queen of America*,” *Communication and Critical/Cultural Studies* 9, no. 4 (2012): 355.

¹⁹¹ Berlant, *Queen of America*, 5.

also set in place a rhetorical precedent that established the types of arguments that would be most salient in future LGBTI asylum cases as well as the types of identities that could be most clearly depicted as eligible for this type of asylum. This rhetorical precedent inflects the language of the training module, and structures the types of identity and orientation categories accounted for in current immigration officer training.

Following the decision in *The Matter of Toboso-Alfonso* to offer asylum to people fleeing persecution on the basis of their sexual orientation, a number of tensions arose in the adjudication of LGBTI asylum cases and the effort to interpret its rhetorical precedent. When the case was set as legal precedent, Reno's statement only included "lesbian and gay asylum seekers." This means that the application of *Toboso-Alfonso* in subsequent cases required immigration officers and judges to broaden their interpretation of its meaning as the U.S. began to acknowledge a greater variety of identities and orientations. Further, the demand to prove one's sexual orientation (and in some cases its immutability) demanded asylum seekers to provide evidence from their private lives. The *Toboso-Alfonso* case set in place a standard by which LGBTI asylees would be judged, but it did not – and could not – fully establish how that standard would be applied. In setting both a legal and rhetorical precedent for future LGBTI asylum cases, *Toboso-Alfonso* both "paved the way for hundreds of lesbian, gay, bisexual, and transgender individuals as well as individuals with intersex conditions (LGBTI) to obtain refugee and asylum status in the United States" and established the image to which future LGBTI asylees are expected to adhere.¹⁹²

Although Reno set the case as precedent in 1994, it took almost twenty years for any official statement from the U.S. government in support of LGBTI people fleeing persecution, partly because the drive for rights remained mostly stagnant under the George W. Bush

¹⁹² USCIS, *RAIO Combined Training Course*, 11.

presidency. Near the end of President Obama's second term, he began to make more public statements of overt support for LGBTI people. Preceding his more widely publicized defense of same-sex marriage in May of 2012, President Obama and then Secretary of State Hillary Clinton separately issued statements of support for global LGBTI rights on International Human Rights Day in December of 2011. Both of their statements acknowledged that across the world, LGBTI people face persecution and must flee their homelands to escape it. In her speech to the United Nations Human Rights Council in Geneva, Clinton declared, "gay rights are human rights" – a statement that would resonate through future statements of support from Obama and members of his administration.¹⁹³ On that same day, President Obama issued a memorandum announcing a host of initiatives aimed at responding to human rights abuses of LGBT people in the U.S. and abroad. One section of his statement was dedicated to "protecting vulnerable LGBT refugees and asylum seekers." Here he discussed programs designed to ensure "appropriate training" for governmental offices working to protect LGBTI refugees and asylum seekers.¹⁹⁴ As immigration courts began to hear different cases of LGBTI persecution and claims for asylum, there arose a need to deal with the varied claims to citizenship. Obama acknowledged in his memorandum that there are a variety of challenges facing a population he described as "highly vulnerable persons with urgent protection needs." Here, Obama not only acknowledges the suffering sexual minorities face, but he classifies their need as "urgent," and pledges his support to the programs that will process these asylum claims and resettle this population. Obama and Clinton's statements acted both as a response to the exigence created by global human rights abuses

¹⁹³ Hillary Rodham Clinton, "Remarks in Recognition of International Human Rights Day," *U.S. Department of State*. (Geneva, Switzerland, December 6, 2011) <<http://www.state.gov/secretary/20092013clinton/rm/2011/12/178368.htm>>.

¹⁹⁴ Barack Obama, "Presidential Memorandum – International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons," *White House Official Home Page*. (Washington, DC, December 6, 2011) <<http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l>>.

involving LGBTI individuals, and as their own exigences, calling into being texts that could aid in the enactment of this new policy.

Less than six months after Obama's declaration, the USCIS released the training module titled "Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims." It provides 65 pages of training resources to aid in authenticating these asylum claims as well as prompts for how to interview asylees fleeing potentially abusive or violent situations. The training module reflects current conceptions about the relationship between sexual orientation and citizenship even as it seeks to revise them on behalf of potential citizens. In this regard, the manual functions as a rhetorical handbook for immigration officials, who must produce convincing representations of prospective citizens. The efforts to provide comprehensive definitions of worthy LGBTI asylum seekers may seem at first glance to merely identify who is eligible and illegible for asylum, but I argue this module actually creates worthy asylum seekers.

In addition to being made available on the USCIS website, the module is occasionally distributed at CLEs (Continuing Legal Education) for immigration, asylum, and refugee law. The document explains how to determine which asylum applicants are eligible for and should be granted asylum and whose claims should be denied. As Eithne Luibhéid notes in the introduction to *Queer Migrations*, the refugee and asylum system shapes the nation through inclusions and exclusions. Although some exclusions are explicitly written into immigration policy, exclusions also emerge because "the refugee/asylum system involves an inherent tension between, on the one hand, providing protection to people who are persecuted by national governments and, on

the other hand, respecting the sovereignty of individual nation-states.”¹⁹⁵ Tasked with upholding sovereignty, immigration officials must adhere to both legal guidelines and cultural norms in order to determine which individuals meet the criteria for asylum and who must be turned away.

The RAIO training module exists as a comprehensive effort to guide immigration officials in their adjudication of LGBTI asylum cases which require them to determine whose cases are worthy (and not worthy) of asylum. In this chapter, I read the training module as an index of the social imaginary. This examination is informed by work in critical rhetoric, which approaches texts as sites of power relations. Through this reading, I argue that the training module strives for inclusivity but ultimately engages in a practice of homonationalism, which draws boundaries that exclude the potential for a queer understanding of sexual orientation and identity. This institutionalized homonationalism defines certain bodies and identities as deserving of citizenship and excludes those who cannot be identified as embodying the desired LGBTI citizen. The training module is a response to heteronormativity in U.S. culture that, though claiming itself to be progressive and accepting of difference, reifies the boundaries of queer identity and produces the subject worthy of sexual orientation asylum. While efforts toward inclusivity of different identities and orientation has seen significant progress over the past twenty years, the institutional response ultimately upholds a version of national heteronormativity through the projection of homonationalism. Where heteronormativity is the normalization of heterosexual identities, unions, and family structures, homonationalism is more insidious. It involves the incorporation of LGBTI bodies and identities into the national culture in a way that limits what those bodies and identities can look like. In other words,

¹⁹⁵ Eithne Luibhéid, “Introduction: Queering Migration and Citizenship” in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, ed. Eithne Luibhéid and Lionel Cantú Jr., (Minneapolis: University of Minnesota Press, 2005), xvii.

heteronormativity is fully, obviously exclusionary and homonationalism appears to be inclusive while masking the ways in which it perpetuates exclusions.

To make this argument, I establish my critical framework informed by both theories of heteronormativity and homonationalism. Next, I analyze the ways in which the construction of and directive to the implied immigration officer audience sets in motion the homonationalist system. I follow this by uncovering the sources of power and repression in the LGBTI initialism itself and each of the identity categories represented by that initialism. Finally, I discuss the implications of this analysis, which include a consideration of essentialism in definitions and the ways a foreclosure of “queer” from the training module helps to codify the norms of sexual orientation for the LGBTI asylum seeker.

3.1 Heteronormativity, Homonationalism, and Critical Rhetoric

When the USCIS training module was released, it was lauded for its inclusivity and because it appeared to show the ways in which the Obama Administration was enacting progressive asylum policies.¹⁹⁶ It served as one of the highlights of President Obama’s global LGBTI rights program through its attention to the unique cultural needs of different LGBTI asylum seekers and its comprehensive definitions of categories of sexual orientation and gender identity. In structuring the training module to delineate categories of identity, however, the USCIS contributes to a system of homonationalism through which certain nations are presented

¹⁹⁶ Mike Corradini, and Dasha Rojkova, “USCIS Releases Module Addressing LGBTI Refugee and Asylum Claims,” *Physicians for Human Rights* (January 31, 2012) <<http://physiciansforhumanrights.org/blog/uscis-releases-module.html>>; Daniel M. Kowalski, “Immigration Equality Hails New Government Training Module for LGBTI Asylum Claims,” *LexisNexis Legal Newsroom* (24 January 2012) <<https://www.lexisnexis.com/legalnewsroom/immigration/b/insidenews/archive/2012/01/24/immigration-equality-hails-new-government-training-module-for-lgbti-asylum-claims.aspx>>; Lundgren, Kelsey “International Protection for a Newly Surfacing Refugee Community” *Migration Information Source* (2 January 2013) <<http://www.migrationpolicy.org/article/international-protection-newly-surfacing-refugee-community>>.

as more progressive (or “better”) than others, and certain identities and orientations are presented as more worthy of asylum. Before reading the module to help make sense of this argument, I place the system of homonationalism in conversation with concepts of heteronormativity and national sovereignty.

In order to uphold the sovereignty of a nation-state, the nation is driven to maintain a certain level of purity. It does so by excluding or expelling those who threaten that sovereignty. This drive toward a pure citizenry results in a number of institutional efforts to enforce the homogeneity of a nation. For example, Judith Butler claims that most nations deal with this effort at homogeneity through the “recurrent expulsion of national minorities,” implementing exclusionary policies that impact both birthright citizens and migrants.¹⁹⁷ One of the results of these efforts is the national heteronormativity that persists in both legal and vernacular discourses. Berlant and Warner define this heteronormativity as “material practices that, though not explicitly sexual, are implicated in the hierarchies of property and propriety.”¹⁹⁸ They use the word “material” here to note the ways certain spaces in the nation are constructed to protect heterosexual privacy; at the same time, laws and norms both condemn queer publics to certain spaces and require performances of acceptable public actions. Policies that make space for LGBTI people to be publicly queer have filtered through U.S. legislature over the past twenty years. These policies, however, continue to set forth certain norms about what being queer in public *looks like*. Lisa Duggan calls this “*the new homonormativity* – it is a politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them, while promising the possibility of a demobilized gay constituency and a privatized, depoliticized

¹⁹⁷ Judith Butler and Gayatri Chakravorty Spivak, *Who Sings the Nation-State?: Language, Politics, Belonging* (Oxford: Seagull Books, 2007), 30

¹⁹⁸ Berlant and Warner, “Sex in Public,” 548.

gay culture anchored in domesticity and consumption.”¹⁹⁹ Duggan’s homonormativity is not at odds with national heteronormativity because they rely on and contribute to one another.

Drawing from Duggan’s homonormativity, Jasbir Puar finds “homonationalism” to be an especially powerful companion to national heteronormativity. Puar wrote her book *Terrorist Assemblages* partly in reaction to the constant claims of national heteronormativity and the assumption of full exclusion of queer bodies echoed in queer theory and transnational feminist discourses. Homonationalism helps make sense of the ways a nation’s status as “gay-friendly” results in the expansion of normativizing identity practices and ultimately, allows nations to justify military intervention in places that do not share their same perspective of progress.²⁰⁰ For Puar, homonationalism consists of the interdependent efforts to incorporate some homosexual bodies and exclude or quarantine others.²⁰¹ Within homonationalism, what appears to be progress for queer rights is really another way to discipline LGBTI people into certain normative categories through exclusionary practices in law and conservative political imaginaries. Puar explains that the grounds for these exclusions rely on Orientalist ideas about treatment of homosexuality outside of the U.S., particularly in Muslim countries. This move toward homonationalism both allows the rights-granting (Western) nation to see themselves as embodying the “right” side of human rights history and simultaneously maintain their sovereignty from what is constructed as terroristic threats from other nations. Puar explains:

Queerness is proffered as a sexually exceptional form of American national sexuality through a rhetoric of sexual modernization that is simultaneously able to castigate the

¹⁹⁹ Lisa Duggan, *The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston: Beacon Press, 2004), 50, emphasis in original.

²⁰⁰ Jasbir Puar, “Rethinking Homonationalism” *International Journal of Middle East Studies* 45 (2013): 336.

²⁰¹ Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times*. (Durham: Duke University Press, 2007).

other as homophobic *and* perverse, and construct the imperialist center as ‘tolerant’ but sexually, racially, and gendered normal.²⁰²

Homonationalism is what allows the U.S. to create space for LGBTI people in a generally heteronormative nation while predicating their admission on the construction of their home nation as a place that is violent, regressive, and homophobic. Homonationalism is not a methodology, “not simply a synonym for gay racism,” not an identity politics, or even a position:

It is rather, a facet of modernity and a historical shift marked by the entrance of (some) homosexual bodies as worthy of protection by nation-states, a constitutive and fundamental reorientation of the relationship between the state, capitalism, and sexuality.²⁰³

To say that certain practices of LGBTI asylum are homonationalist is not to say that that they are not also heteronormative. The efforts of the Obama Administration to provide asylum to persecuted LGBTI people does not stem from heteronormativity, however. The practices that led to those policies are at least partly a reaction to heteronormativity in the decisions of early LGBTI asylum cases. The Obama Administration’s declaration of support, and the RAIO training module that was released after that declaration reflect the attempt within the U.S. government to provide a system for processing LGBTI asylum claims. The resulting system is rooted in the heteronormativity of national U.S. identity, but is simultaneously homonationalist through its articulation of certain bodies as acceptable and migrants from certain nations as most persecuted.

Attending to heteronormativity and homonationalism in institutional rhetorics as well as acknowledging the public formations that exist within and as a result of those rhetorics demands a broad, critical approach. Following Foucault, Raymie McKerrow called for a critical rhetoric that would unmask and demystify discourses of power through a critique of both domination and

²⁰² Puar, *Terrorist assemblages*, 122, emphasis in original.

²⁰³ Puar, “Rethinking Homonationalism,” 337.

freedom in rhetorical texts.²⁰⁴ His 1989 essay sparked criticisms of his reading of Foucault,²⁰⁵ a debate over whether criticism can and should have a *telos*,²⁰⁶ and a discussion of material rhetorics,²⁰⁷ while also significantly shaping the way rhetoricians “do” rhetoric. McKerrow defends critical rhetoric as an “orientation,” not a methodology, and provides space for critical rhetoric to happen within institutions instead of only in opposition to them. Since the 1980s, critical rhetoric has persisted, making a path for debates about the relationship between ideology, power, and rhetoric. The analysis of texts produced by dominant institutions or that advocate dominant ideologies has been a common focus of critical rhetoric scholarship that seeks to make sense of identity formation in civic life.²⁰⁸ While much of this literature follows McKerrow in citing Foucault as a way to make sense of power relations, Louis Althusser is almost as frequently cited in an effort to understand the ways in which power and ideology function in discourse. Whereas Foucault characterizes power as a set of relations that cannot be fixed or

²⁰⁴ Raymie E. McKerrow, “Critical Rhetoric: Theory and Praxis,” *Communications Monographs* 56, no. 2 (1989): 91-111.

²⁰⁵ Barbara Biesecker, “Michel Foucault and the Question of Rhetoric,” *Philosophy & Rhetoric* 25, no. 4 (1992): 351-364.

²⁰⁶ Maurice Charland, “Finding a Horizon and *telos*: The Challenge to Critical Rhetoric,” *Quarterly Journal of Speech* 77 (1991), 71-74; Kent A. Ono and John M. Sloop, “Commitment to *telos*—A Sustained Critical Rhetoric,” *Communications Monographs* 59, no. 1 (1992): 48-60.

²⁰⁷ Dana L. Cloud, “The Materiality of Discourse as Oxymoron: A Challenge to Critical Rhetoric,” *Western Journal of Communication* 58 (1994): 141-163; Ronald Walter Greene, “Another Materialist Rhetoric,” *Critical Studies in Mass Communications* 15 (1998): 21-41.

²⁰⁸ See: Barbara Biesecker, “No Time for Mourning: The Rhetorical Production of the Melancholic Citizen-Subject in the War on Terror,” *Philosophy & Rhetoric* 40, no. 1 (2007): 147-169; M. Lane Bruner, *Strategies of Remembrance: The Rhetorical Dimensions of National Identity Construction* (Columbia: University of South Carolina Press, 2002); Celeste Michelle Condit, “Hegemony in a Mass-Mediated Society: Concordance About Reproductive Technologies,” *Critical Studies in Media Communication* 11, no. 3 (1994): 205-230; Chris Earle, “Good Muslims, Bad Muslims, and the Nation: The ‘Ground Zero Mosque’ and the Problem With Tolerance,” *Communication and Critical/Cultural Studies* 12, no. 2 (2015): 121-138; Michael A. Kaplan, *Friendship Fictions: The Rhetoric of Citizenship in the Liberal Imaginary* (Tuscaloosa: University of Alabama Press, 2010); Kent A. Ono and John Sloop, *Shifting Borders: Rhetoric, Immigration, and California’s Proposition 197*, (Philadelphia: Temple University Press, 2002) 19, 189 n. 38.

located in a specific institution,²⁰⁹ Althusser locates power in ideological state apparatuses (among other places). For Althusser, ideological state apparatuses dominate through ideology and constitute subjects through interpellation.²¹⁰ Drawing from Louis Althusser's concept of interpellation, much of the identity formation scholarship seeks to understand how certain discourses might call subjects into existence.²¹¹ Ideological state apparatuses function through a largely unconscious, material process that masks the means of production and makes us aware of our own subject positions through interpellation. This is important for LGBTI asylum because immigration officers function as part of the ideological state apparatus – they are able to perpetuate ideologies through discourse. Thus, the training module itself exists as a state-sanctioned handbook that not only helps immigration officials identify subjects – it also represents or imagines them.

The training module establishes guidelines that will result in the exclusion of migrants seeking asylum in the United States, but it also accounts for sexual orientation and gender identity as complex categories for which some people in the world are violently persecuted. Following McKerrow, the critique of power in this case helps us consider the ways citizenship itself can be oppressive in its heteronormativity and provides a way to read the training module

²⁰⁹ Michel Foucault, "Disciplinary Power and Subjection" in *Power*, ed. S. Lukes, (New York: Pantheon Books, 1986), 229-242.

²¹⁰ Louis Althusser, "Ideology and Ideological State Apparatuses (Notes Towards an Investigation)," *The Anthropology of the State: A Reader*, ed. Aradhana Sharma and Akhil Gupta (Malden, MA: Blackwell, 2006): (2006): 86-111.

²¹¹ Those who call this "constitutive rhetoric" mostly follow Althusser – See: Maurice Charland, "Constitutive Rhetoric: The Case of the *Peuple Québécois*," *Quarterly Journal of Speech* 73, no. 2 (1987): 133-150; James Jasinski and Jennifer R. Mercieca, "Analyzing Constitutive Rhetorics," in *The Handbook of Rhetoric and Public Address*, ed. Shawn J. Parry-Giles and J. Michael Hogan (Hoboken: Wiley-Blackwell, 2010): 313-341. Yet, others who deal with constitutive discourses and are particularly interested in locating concepts of a "public" find Ernesto Laclau to provide a better approach for talking about the ways "A subject...is not simply interpellated by one discourse; rather, a subject is constituted as the nodal point of a conglomeration of conflicting discourses, a position that leaves room for agency, but not the free will of a preconstituted subject." Kevin Michael DeLuca, "Articulation Theory: A Discursive Grounding for Rhetorical Practice," *Philosophy and Rhetoric* 32, no. 4 (1999), 338; See also: Ernesto Laclau, *On Populist Reason* (New York: Verso, 2005).

for the places where it might embody or uphold national heteronormativity. While some have found fault with McKerrow's separation of freedom and domination,²¹² this language helps us consider the ways discourse is never fully oppressive or fully dominating or fully liberating. The critique of freedom requires reflexivity about one's own role in systems of power and directs attention to the ways these systems might perpetuate advantage and disadvantage that could simultaneously benefit and harm. In the case of the training module, the critique of freedom combined with the critique of domination helps parse the ways this progressive document, created to increase access to rights, might simultaneously limit and foreclose rights. These critiques alert us to the system of homonationalism reinforced by these progressive "liberating" discourses. An analysis of the RAIO training module for adjudicating LGBTI asylum claims considers the ways it resolves contradictions of heteronormative citizenship and the ways in which it reinforces or reinscribes those contradictions, effectively upholding homonationalism. To make this argument, I look at the effort to train immigration officers and facilitate their "sensitivity" before I analyze the definition and categorization of queer asylum seekers.

3.2 Reading the RAIO Training Module

As a document intended to structure the rhetorical approach of U.S. immigration officers in their interactions with LGBTI asylum seekers, the Refugee, Asylum, and International Operations (RAIO) training module exists within a long tradition of rhetorical handbooks. For Janet Atwill, the handbook was initially intended to serve as "a neutral tool in service to the higher causes of ethics, politics, or philosophy," and only in practice did these admirable goals

²¹² See critiques of McKerrow's "critique of freedom": Dana L. Cloud, "The Materiality of Discourse of Oxymoron," 155; Dilip Gaonkar, "Performing With Fragments: Reflections on Critical Rhetoric," in *Argument and the Postmodern Challenge: Proceedings of the Eighth SCA/AFA Conference on Argumentation*, ed. Raymie E. McKerrow (Annandale, VA: SCA, 1993), 149-166; Ronald Walter Greene, "Another Materialist Rhetoric," 28; Kent Ono and John Sloop, "The Critique of Vernacular Discourse," *Communication Monographs* 62 (1995) note 6.

shift focus toward oratory as material, persuasive product.²¹³ Although the training module does not necessarily seek to make the immigration officers more persuasive, it does seek to make them more rhetorically effective. It serves as a tool to aid a political process by training immigration officers to be informed of the technical requirements of their position and to be culturally and rhetorically sensitive when engaging in interviews with asylum seekers. The training module makes formal and prescriptive the rhetorical precedent that was informally established in *Toboso-Alfonso*.

The RAIO training module was produced for a fairly limited audience of immigration officers who are responsible for adjudicating LGBTI asylum claims. It is available to the public through the USCIS website in the section containing information for employees and immigration officers. It is not a private document requiring certain clearance or credentials to obtain. The module lists its objectives on page three – noting that it seeks to provide guidelines for the immigration officer to “elicit all relevant information from an LGBTI applicant” in order to properly adjudicate their claim. More specific objectives take shape in three main categories: 1) description of harms and legal guidelines, 2) identification of potential constraints on the evaluation of these cases, and 3) a call for rhetorical sensitivity in interviewing. The training module contains a list of required and recommended reading for officers, scripts to aid in the conducting of interviews, descriptions of relevant case law, and definitions pertaining to sexual orientation and gender identity. The module contains three separate sections dedicated to directly defining terms and it also contains multiple pages throughout that explain topics related to LGBTI asylum and sexual identity categories more implicitly. In so doing, the module constructs

²¹³ Janet Atwill, *Rhetoric Reclaimed: Aristotle and the Liberal Arts Tradition* (Ithaca, New York: Cornell University Press, 2010), 6.

the subject of LGBTI asylum claims in a particular way, and thus, shapes the imagined LGBTI asylee/citizen.

Immigration officers conduct interviews with asylum seekers in order to build the asylum claim. Through their interviews they are tasked with determining whether the asylum applicant is lesbian, gay, bisexual, transgender, or intersex, whether their actual or imputed sexual orientation is immutable, and whether it lead them to face persecution. The training module provides lines of questioning and suggested question order depending on the asylum seeker's particular needs. Because asylum on the basis of sexual orientation or gender identity persecution requires asylum seekers to prove both that they have been persecuted, and that their persecution was the result of their actual or imputed identity, immigration officers have a responsibility to elicit as much information in their interviews as possible. Thus, a successful asylum claim is largely dependent upon the thorough, sensitive, nuanced, and strategic interview tactics of the immigration officer.

The assumption through which the RAO and the USCIS operates is that at the end of an hour-long interview, an immigration officer will be able to determine whether or not the asylum applicant is authentic in their claim and fits within the established categories of people who can get asylum on the basis of LGBTI persecution. Because the training module explicates definitions of identity and sexual orientation categories, it provides a way for immigration officers to elicit information in the interview and then use that information to place the asylum seeker in a particular category (e.g. "lesbian, not socially visible, no credible threat of persecution" or "transgender, socially visible, evidence of state persecution"). I argue that while this categorization certainly occurs as a result of these interviews, the immigration officer has even more power than what is listed on their job application. They not only possess the ability to define the LGBTI asylum seeker/citizen – they also have the ability to create them. Immigration

officers hearing LGBTI asylum claims call into being an entire group of citizens and also shape the nation's exclusions. Despite the weight of this responsibility, sufficient training is presumed to be possible within a fairly limited training system.

Immigration officers who handle asylum claims undergo several weeks of training. In some cases it is possible for an officer to gain expedited approval, which limits their training. If this occurs, the officer is monitored for a period of time before they are allowed to conduct interviews on their own. Most asylum interviews are one-hour long, and in that hour, officers are expected to determine whether or not to recommend a claimant for asylum. If the officer does not grant asylum to the applicant, the case is then referred to an immigration judge and that initial decision can also be appealed to the Board of Immigration Appeals (BIA) within the U.S. Department of Justice.²¹⁴ Immigration officers handle a variety of cases and typically do not focus on only one type of refugee or asylum category. Because of this, immigration officers must be prepared for different types of cases involving asylees fleeing persecution targeting them because of their race, religion, nationality, political opinion, or membership in a particular social group.²¹⁵ This means the asylum seeker they interview could have any level of English language proficiency and could have experienced persecution in one of many different cultural climates for a variety of reasons. Asylum seekers who are not fluent in English are expected to provide their own interpreter, but that person cannot be their attorney, a witness in their case, or a representative of their home country's government.²¹⁶ Although the USCIS website offers information for interpreters handling these cases, the RAIO training module notes that it is

²¹⁴ Stephen H. Legomsky, "Refugees, Asylum and the Rule of Law in the USA," in *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives*, ed. Susan Kneebone (Cambridge: Cambridge University Press, 2009), 129.

²¹⁵ United States Citizenship and Immigration Services, "Asylum," August 6, 2015 <<https://www.uscis.gov/humanitarian/refugees-asylum/asylum>>.

²¹⁶ United States Citizenship and Immigration Services, "Questions & Answers: Asylum Interviews," July 17, 2015 <<https://www.uscis.gov/archive/questions-answers-asylum-interviews>>.

possible for a hired interpreter to feel uncomfortable relaying some of the asylum seeker's information to the officer, making it difficult for the interview to accurately represent the asylum seeker's case.²¹⁷ Thus, while the asylum seeker is responsible for providing the interpreter, the immigration officer is responsible for determining whether the interpreter may be obscuring or excluding any details pertinent to the case.

Despite the universal training module for all immigration officers adjudicating LGBTI asylum claims, the application of its recommendations varies depending on regional cultures within the United States. For example, a gay male working with an immigration officer in San Francisco, California is more likely to be granted asylum there than in rural Arkansas for a number of reasons including but not limited to the amount of LGBTI asylum cases that immigration officer has personally adjudicated, the number of cases in that region that act as precedent, the presence of local organizations dedicated to resettlement of LGBTI asylum seekers, and the existence of local political figures who have vocally supported or denounced measures to aid in LGBTI asylum and resettlement. The choice of San Francisco and rural Arkansas are not random in this example. The California Bay Area has one of the highest numbers of resettled LGBTI asylum seekers, and Arkansas takes in the smallest number of refugees per capita in the United States. Another barrier to successful LGBTI asylum in the U.S. emerges from the increasing tolerance toward LGBTI people both in the U.S. and abroad. While a lawyer in Denver was able to argue in 2010 that transgender asylum applicant Alexandra Reyes

²¹⁷ The RAIO module for LGBTI asylum claims notes, "...the interpreter may be inhibited about discussing LGBTI-related issues or using certain terms. For example, the interpreter may substitute the word 'harm' for 'rape' because the interpreter is not comfortable discussing rape due to cultural taboos" (page 28). The module also refers officers to a separate document: U.S. Citizen and Immigration Services, "Refugee, Asylum, and International Operations Directorate (RAIO) Combined Training Course: Interviewing – Working with an Interpreter," April 2012
<[https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/Interviewing%20-%20Working%20with%20an%20Interpreter%20LP%20\(RAIO\).pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/RAIO/Interviewing%20-%20Working%20with%20an%20Interpreter%20LP%20(RAIO).pdf)>

could face violent threats if forced to return to her home in Mexico, in 2015 a judge in Lumpkin County, Georgia denied asylum to a transgender woman from Mexico claiming Mexico City's legalization of gay marriage proves increased acceptance of LGBTI people and a reduced risk of violence if she would be returned to Mexico. These examples could be understood as evidence of something that looks like progress in attitudes toward sexual minorities in the U.S. and abroad, but these cases also reveal the rift in LGBTI asylum case adjudication between major metro areas in more progressive states and courts in more rural, conservative regions of the country.

Immigration officers may have a number of LGBTI asylum cases involving applicants from different countries, and as the Georgia case reveals, it is necessary to have an understanding of the cultural landscape from which the asylum applicant has fled in cases involving asylum for gender identity or sexual orientation persecution. The RAIO training module provides required reading on LGBTI persecution around the world, but it does not offer specific guidance for regionally specific issues. There exist different attitudes and laws regulating the expression of gender identity and sexual orientation around the world including pressure for people identifying as lesbian or gay to undergo sexual reassignment surgery in Iran,²¹⁸ the problem of "corrective rape" in South Africa and other nations,²¹⁹ and the criminalization of certain sexual acts in a number of countries.²²⁰ These factors can contribute to pressure to hide or deny one's orientation

²¹⁸ Elizabeth Bucar, "Unlikely Sex Change Capitals of the World: Trinidad, United States, and Tehran, Iran, as Twin Yardsticks of Homonormative Liberalism," *Feminist Studies* 37, no. 2 (2011): 301-328; Afsaneh Najmabadi, "Transing and Transpassing Across Sex-Gender Walls in Iran" *Women's Studies Quarterly*, 35, no. 3 (2008): 23-42; Afsaneh Najmabadi, "Verdicts of Science, Rulings of Faith: Transgender/Sexuality in Contemporary Iran," *Social Research* 78, no. 2 (2011): 1-24.

²¹⁹ Roderick Brown, "Corrective Rape in South Africa: A Continuing Plight Despite an International Human Rights Response," *Annual Survey of International & Comparative Law* 18, n. 1 (2012): 45-66; Megan E. Morrissey, "Rape as a Weapon of Hate: Discursive Constructions and Material Consequences of Black Lesbianism in South Africa," *Women's Studies in Communication* 36, no. 1 (2013): 72-91; Ryan Richard Thoreson, "Somewhere over the Rainbow Nation: Gay, Lesbian and Bisexual Activism in South Africa" *Journal of South African Studies* 34, no. 3 (2008): 679-697.

²²⁰ Susanna Berkouwer, Azza Sutan, and Samar Yehia, "Homosexuality in Sudan and Egypt: Stories of Struggle for Survival," *LGBTQ Policy Journal*; Valerie M. Hudson and Patricia Leidl. *A Conspicuous*

or identity, and thus, may unwittingly decrease the evidence available for proving an asylum claim once in the United States. Websites and publications that seek to aid LGBTI asylum seekers in arguing their case for asylum recommend providing news articles or other published information that can speak to the abuse faced by LGBTI people in their home nation, but in many cases, this type of persecution does not become news.

3.2.1 Training Officers for Sensitivity in Asylum Interviews

An asylum seeker may only get to speak with one immigration officer, and their access to asylum is largely contingent upon that one immigration officer's interpretation of their authenticity as a person who has (or could have had) faced persecution due to their actual or imputed identity. In Sara McKinnon's 2009 essay about the role of judges in determining outcomes of gender-based asylum cases, she argues that evaluation of certain cases rely mostly on the interpretation of the credibility of the claimant rather than on the content of the claimant's case.²²¹ This means that the responsibility for determining eligibility for asylum falls on one person's interpretation of a case, and that the decision made by that one person often relies more on their interpretation of a claimant's authenticity or adherence to expected norms than any other factor. In tasking one person with the majority of responsibility for determining whether an asylum applicant has faced persecution as a member of a particular social group, that one person plays a role in the way this population is collectively imagined through the cases they determine eligible for asylum and those they reject. Keeping in mind the individual agency of the immigration officer and the regional and cultural factors that might impact a case's interpretation, I turn to the text of the training module itself. After first examining the way the

Silence: American Foreign Policy, Women, and Saudi Arabia: A Selection from the Hillary Doctrine: Sex and American Foreign Policy (New York: Columbia University Press, 2015);

²²¹ Sara L. McKinnon, "Citizenship and the Performance of Credibility: Audiencing Gender-based Asylum Seekers in U.S. Immigration Courts," *Text and Performance Quarterly* 29.3 (2009): 206.

RAIO training module speaks to immigration officers and calls for their sensitivity, I look to the ways the training module defines categories of identity and orientation in order to aid immigration officers in their adjudication of LGBTI asylum cases.

One third of the pages in the 65-page training module reference the need for the immigration officer's "sensitivity" in adjudicating LGBTI asylum claims. The term "sensitivity" is used to describe the tone officers should maintain when asking questions, their attitudes toward cultural and sexual difference, and their approach to discussing violence and persecution. Throughout the document, the call for sensitivity takes place through the training module's use of the imperative mood written in the second person. The imperative mood commands "you," the reader, to take certain actions following your encounter with this text. The call for immigration officers' nuance and sensitivity is highlighted in a section set apart from the rest of page 30 in a gray shaded text box that reminds immigration officers to "Explore all relevant aspects of the claim, even if they make you particularly uncomfortable... You must not shy away from your duty to elicit sufficient testimony to make an informed adjudication."²²² Here, the immigration officer is addressed by the text as a person who may feel discomfort when discussing abuse and sexual orientation but is nonetheless responsible for responding to the applicant in an informed, appropriate way. They are asked to "create an interview environment that is open and non-judgmental"²²³ and to "be particularly sensitive when questioning the applicant about past sexual assault."²²⁴ There are constant reminders in the training module to not let the officer's own cultural biases and perspectives keep them from uncovering the amount of information needed to process the asylum claim.

²²² USCIS, *RAIO Combined Training Course*, 30.

²²³ USCIS, *RAIO Combined Training Course*, 26.

²²⁴ USCIS, *RAIO Combined Training Course*, 30.

In addition to “processing” the asylum claim, there is interpellation that occurs in the encounter with the immigration officer and the asylum seeker. Through the types of questions asked and the way in which they are presented, the asylum seeker is hailed as a particular type of subject. For them, the law will operate one way or another depending upon the type of subject they are hailed to be. Ultimately, the acceptance or rejection of their asylum claim renders them citizen or non-citizen. Rejecting a claim or recommending it for a hearing with an immigration judge automatically hails the claimant as an insufficient citizen in some way. Even if their claim is eventually accepted, they are always already less of a citizen in the eyes of the legal system than an asylum seeker whose claim is quickly granted or a non-queer migrant who has full access to rights upon entering the country. This process of interpellation relies on rhetorical precedent as earlier images of the potential citizens become codified and perpetuated. These images vary from region to region, culture to culture, and identity category to identity category.

Officers not only need to understand the cultural context from which the claimant fled, but they must also navigate categories of identity and orientation for which they may not share language. For example, people in some countries may talk about sexual orientation and identity using language considered in the U.S. to be inappropriate or offensive. Furthermore, there may not be direct or clear translations for all of the identity/orientation-related terms used in these cases. The RAIO provides a variety of training materials to help immigration officers make sense of the nuances of different asylum cases. It does this by providing a host of explanations and definitions that operationalize categories of identity and orientation and by referencing the potential divisions in language and culture that may act as a barrier for a successful LGBTI asylum claim. This is addressed in most detail on page 30 where the module notes, “for many LGBTI individuals who come from countries where topics of sexuality are taboo, the way that

applicants express themselves may be different from what an interviewer would expect from an LGBTI person in the United States,” and later recommends doing extensive research on the applicant’s country of origin because:

Awareness of country conditions may also assist you in conducting the interview with cultural sensitivity and may help you put the applicant at ease during the interview. If the applicant notices that you took the time to try to understand the situation he or she faces in the country of origin as an LGBTI individual, he or she may be more inclined to talk in detail about his or her experiences and fears.²²⁵

The training module repeatedly addresses how the immigration officers must not be tied to their own understanding of cultural norms surrounding orientation and identity.²²⁶ It reminds officers that the understanding of LGBTI people in the U.S. is not universally applicable in all of these cases, and country of origin information must be used to make all decisions instead of rendering judgment based on a myopic, Ameri-centric conception of identity and sexual orientation.

This myopia is only one of the factors that contributes to the system of homonationalism enabled or perpetuated through progressive immigration policies. Puar explains that “the production of ‘homosexuality as taboo’ is situated within the history of encounter with the Western gaze.”²²⁷ For Puar, there is Orientalism in the claim that sex *is* a certain way in the East, broadly with the implication that it is an inferior or backward compared to the treatment of sex in the United States, a perspective she calls “sexual exceptionalism.” While this sexual exceptionalism may be a disadvantage to queer politics more broadly, it is this exact understanding of persecution as worse, or more violent in other nations, that allows LGBTI asylum to exist in the United States. In order to grant asylum to someone who is fleeing persecution targeting their sexual orientation or gender identity, the immigration officer must perceive the threat they face in their homeland to be greater than the threat they would face in the

²²⁵ USCIS, *RAIO Combined Training Course*, 30.

²²⁶ USCIS, *RAIO Combined Training Course*, 41.

²²⁷ Puar, *Terrorist assemblages*, 125.

United States. Homonationalism may also structure the immigration officer's perception of the United States as uniquely suited to aid the world's LGBTI population in their search for freedom and peace. Thus, the immigration officers reading the module and using it to guide their asylum interviews must be sensitive to the concerns and fears of each asylum seeker, and they must be able to see U.S. asylum as a way to improve the life of those making these claims. While the immigration officers are expected to understand what it means to be culturally sensitive when told to do so in the training module, they are not expected to have a vast, rich understanding of sexual orientation and identity prior to reading the module. To account for this, the module spends much of its ink defining terms related to sexual minority status, and in so doing, constructing the image of the successful LGBTI asylum claimant.

3.2.2 *Representing LGBTI Asylum Seekers*

Looking for the word "homosexual" in government documents produced since the early 2000s yields few results.²²⁸ The term first appears in the RAIO training module for adjudicators of LGBTI asylum on page 12 of the document's 65 pages, and the note that includes the word reminds readers: "It has a somewhat derogatory connotation within the LGBTI community as it has historically been used in a medical context to describe being gay or lesbian as an illness."²²⁹ Just as the dramatic transition in policy impacting LGBTI migrants occurred over a short span of years, the terms used to define and categorize this population evolved at a similar rate. From "homosexual" in Janet Reno's 1994 statements, to "gay" in former President George W. Bush's policies, to "LGBT" in Obama's 2011 statement of support for refugees, the term used to

²²⁸ The absence of the term in much of U.S. policy stems from the fact that it is a fairly recent invention, and has only been used with any frequency in laws written since the late 1800s and early 1900s. See: Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1978).

²²⁹ USCIS, *RAIO Combined Training Course*, 12.

represent the population of sexual minorities has become more expansive over the past 20 years in an effort at inclusivity. The RAIO training module uses the initialism LGBTI for Lesbian, Gay, Bisexual, Transgender, and Intersex.²³⁰ This initialism appears multiple times on almost every page, but it is not officially explained until page 12 where it is acknowledged that terminology is still evolving, and the creators of the training module chose to use the terms LGBTI and “sexual minorities” interchangeably to best represent this population. Following the statement about the use of these two terms, the module provides a brief definition of related terms and provides a hyperlink to a glossary in the latter pages of the module. The brief definitions include an explanation of the differences between sex and gender, a discussion of why the word “homosexual” is not typically appropriate, and a summary of the differences between gender expression, gender identity, and sexual orientation. The LGBTI initialism and its parts function as one of the main ways in which the RAIO training module provides immigration officers with the inventional resources for representing potential citizens. Through the definitions provided throughout the training module, immigration officers are able to construct an image of successful or rejectable lesbian, gay, bisexual, transgender, or intersex asylum claimants. This process has the potential to negatively affect asylum seekers who do not fit the image of the ideal LGBTI refugee, or who might even fit the image of the dangerous, deficient, or unworthy citizen.

²³⁰ I am guided by Michelle A. Marzullo and others who note that LGBT(I, Q) is an initialism, not an acronym, because it is a string of letters pronounced separately instead of a “string of letters taken from the first letter of each word in a title or phrase that when placed together may be pronounced as a word.” The distinction is important for many scholars of queer theory because it keeps each part of the initialism distinct instead of combining the parts to form one word. Others consider it notable because the various initialisms are not as memorable or easy to use as an acronym might be. See Michelle A. Marzullo, “LGBT/queer sexuality, history of, North America,” in *International Encyclopedia of Human Sexuality, First Edition*, ed. Patricia Whelehan and Anne Bolin (Hoboken, NJ: John Wiley & Sons, Inc., 2015) 1-6.

Definitions narrow – they specify – they categorize. We use definitions to draw boundaries and make sense of the world around us and, sometimes unknowingly, to produce subjects. Edward Schiappa claimed, “Definitions tell us when it is ‘proper’ or ‘correct’ to use words in a particular way and, in doing so, they tell us what is in our world.”²³¹ The claim that definitions shape or represent our understanding of reality is not new to scholars of communication, but what Schiappa’s studies highlight is the way (what he calls) “real” definitions tend to tell us what *is* rather than what *ought* to be. He claims that definitions, by their nature, essentialize.²³² This essentializing function of definitions is especially worthy of attention when discussing definitions of sexual identities and orientation, positions that, at the point of identification, are already in danger of becoming essentialized. Defining allows us to influence not only the interpretation of a particular concept’s meaning but, more importantly, definitions influence “the relations of the concept with the whole system of thought,” creating entirely new perceptions of what is normal or even true.²³³ By creating associations through definition, we create categories, map arguments, and shape understanding. Our shared definitions help construct shared images in the social imaginary. Yet, in defining terms – particularly those that are presumed to help us understand categories of identity and orientation – we essentialize. In defining, and even in the process of determining categories, we create depictions of what the world *is*. And, in so doing, we draw sharp boundaries around what are often hazy and immeasurable experiences that elude definition.

In the RAIO training module for adjudicating LGBTI asylum claims, the provided definitions act as tools or instruments for making sense of complicated categories of identity and

²³¹ Edward Schiappa, “Arguing about Definitions,” 404.

²³² Edward Schiappa, “Arguing about Definitions,” 412.

²³³ Chaïm Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame: University of Notre Dame Press, 1969), 213.

orientation within the legal realm.²³⁴ The definitions create the grounds of an argument about which asylum applicants should be granted refuge and which applicants should be rejected. Despite the challenges that arise in attempting to define identities and orientations that may be fluid or in transition, any attempt to provide space for LGBTI people within the asylum system requires the establishment of clear, measurable definitions. For any asylum policy to function, there must be guidelines, and those guidelines are inevitably going to rely on definitions to draw the boundaries of acceptable asylum claims. The creators of the RAIO training module for LGBTI asylum seekers take the power of definition to heart, as there are definitions provided on almost half of the document's pages. There is clearly great effort taken in crafting definitions of various identity and orientation categories as the document's footnotes, suggested readings, and careful wording throughout indicate. Even with an audience of primarily upper- to middle-class, white, cisgender, heterosexual immigration officers, the document offers a host of definitions that are sensitive to the unique concerns of LGBTI migrants seeking asylum in the United States. However, the training module's definitions often fall into a pattern of representation that, while providing asylum as an option to a new and evolving population, defines the people within that population in terms of essential notions of identity.

Currently, there is not one agreed-upon initialism or acronym used to represent the group of people classified in the module as sexual minorities. The "LGBT" initialism is widely used in the U.S., especially in legal texts, but over the past twenty years, different forms of the initialism have been popular among different groups at different times. In an effort to represent a greater variety of orientations and identities, it is sometimes written as LGBTQI, LGBTQIA or LBGTQ,

²³⁴ For Kenneth T. Broda Bahm, "meaning is a political arena, and definition is an instrument of struggle." Broda-Bahm, "Finding Protection in Definitions: The Quest for Environmental Security," *Argumentation and Advocacy* 35, no. 4 (1999): 169 and for Peter C. Sederberg, the representative function of definitions makes them "tools, not truths." Sederberg, *The Politics of Meaning: Power and Explanation in the Construction of Social Reality* (Tucson: University of Arizona Press, 1984).

incorporating queer/questioning, intersex, asexual, and sexually curious people. In most versions of the initialism used in the past decade, the “L” (for lesbian) precedes the “G” (for gay). This ordering of letters is not arbitrary, as leading with the “L” helps “to avoid the sexist connotation implied when “gay” (the masculine generic term for homosexuality) is used first.”²³⁵ Detractors sometimes refer to the expanding initialism as an “alphabet soup” because its effort at inclusivity is seen as cumbersome and ultimately serving to emphasize differences instead of creating unity.²³⁶ Further critiques claim the long string of initials “masks more than it reveals about the diversity of sexual and gender expressions and practices, as well as the myriad forms of coalescing across common interests and common struggles.”²³⁷ Critiques like this one raise the argument that instead of enveloping difference into one unified group, the expanding initialism merely emphasizes an ever-growing list of normative categories of identity. In reading the training module for the definitions it provides, and thus, the reality it depicts, I break down the LGBTI initialism and read the module’s construction of each of the identity categories represented by that initialism and the ways in which that construction contributes to or denies a system of homonationalism.

3.2.2.1 *Gay Asylees*

Since the decision to grant Toboso-Alfonso a withholding of deportation in 1990, the majority of attempted and approved asylum claims on the basis of sexual orientation persecution

²³⁵ Marzullo, “LGBT/queer sexuality,” 1.

²³⁶ Kimberly Cosier, et al., “(Un)Becoming Queer/(Un)Becoming LGBTIC” *The Journal of Social Theory in Art Education* 25, (2005): 75.

²³⁷ Sangeeta Budhiraja, Susana T. Fried, and Alexandra Teixeira, “From Alphabet Soup to Sexual Rights and Gender Justice,” in *Development, Sexual Rights and Global Governance*, ed. Amy Lind (London: Routledge, 2010): 132.

have involved a gay male claimant.²³⁸ One of the most telling examples of the ways gay asylum cases become the preponderance of LGBTI asylum cases is in the list of “LGBTI-Related Case Law” that begins on page 57 of the training module. Of the 37 cases listed, 24 of them, or about 65 percent, involve men identifying as or imputed to be gay. Cases involving transgender women and then transgender men have the second and third greatest representation, respectively.

Further, with *Toboso-Alfonso* and *Tenorio* serving as the most widely cited cases of LGBTI asylum, there seems to be a greater understanding of how to adjudicate cases involving gay men than there is of other LGBTI cases.

The most widely cited concern with gay asylum involves the pressure for an applicant to “act” according to the stereotypes most widely associated with a particular population. Because gay men are the most globally visible members of the LGBTI community, there is an assumption that this population is also the easiest to point out or label or understand. Most often, gay men seeking asylum are told they must act effeminate in order to prove their sexual orientation.²³⁹ Tenório and other men involved in publicized cases reported being told to act effeminate to increase their chances of being granted asylum for gay persecution. An immigration judge in a 2010 case involving a gay man from Serbia did not grant asylum because “[t]he Court studied the demeanor of this individual very carefully throughout his testimony in Court today and this gentleman does not appear to be overtly gay.”²⁴⁰ Upon appeal, the court ruled that stereotypes would be considered impermissible evidence in asylum hearings. Yet, since that ruling, the

²³⁸ Deborah A. Morgan, “Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases,” *Law and Sexuality: Review of Lesbian, Gay, Bisexual & Legal Issues* 15 (2006): 135-161.

²³⁹ William Lee Adams, “Gay Asylum Seekers Forced to ‘Prove’ their Sexuality” *Newsweek* (25 September 2014) <<http://www.newsweek.com/2014/10/03/gay-asylum-seekers-forced-prove-their-sexuality-272666.html>>; Dan Bilefsky, “Gays Seeking Asylum in U.S. Encounter a New Hurdle,” *The New York Times* (28 January 2011) <http://www.nytimes.com/2011/01/29/nyregion/29asylum.html?pagewanted=all&_r=0>;

²⁴⁰ *Todorovic v. Attorney General*, Case No. 09-11652 (11th Cir. Sept. 27, 2010).

claims of being told to “act gay” in asylum hearings have not exactly ceased. There persists an understanding that there is a particular gay identity that can be performed and read by an informed audience. This understanding is evident in cases like *in re Tenorio* and *Todorovic v. Attorney General*, where a rhetorical precedent in which “gay” is associated with femininity becomes the standard by which gay asylum claimants are encouraged to adhere.

Finding ways to visually present one’s sexual orientation in an effort to make it legible in asylum hearings can improve the chances of getting asylum. Swetha Sridharan states, “Judges look for material proof of sexual identity in asylum applicants’ answers.” Sridharan explains that this proof often requires “an effeminate or masculine appearance that indicates homosexual identity.”²⁴¹ In other words, a common feature of successful LGBTI asylum cases involve gay men who appear more feminine and lesbian women who appear more masculine, based on shared images within the social imaginary. The logic behind this expectation is unquestionably flawed. However, the expectation of a visually legible queer identity is a common feature of LGBTI asylum cases – a feature that has become the subject of many legal studies of LGBTI asylum cases.²⁴² While “looking gay” is sometimes a way to expedite or ease the asylum process, the idea that there is one common image of all people of one sexual orientation is neither possible, nor something one could reliably act upon in an effort to gain asylum.

²⁴¹ Swetha Sridharan, “The difficulties of U.S. Asylum Claims Based on Sexual Orientation” *Migration Information Source* (29 October 2008) <http://www.migrationpolicy.org/article/difficulties-us-asylum-claims-based-sexual-orientation>.

²⁴² See: Berger, Susan A. “Production and Reproduction of Gender and Sexuality in Legal Discourses of Asylum in the United States,” *Signs* 34, no. 3 (2009): 659-685; Héctor Carrillo and Jorge Fontdevila, “Border Crossings and Shifting Sexualities Among Mexican Gay Immigrant Men: Beyond Monolithic Conceptions,” *Sexualities* 17, no. 8 (2014): 919-938; Fadi Hanna “Punishing Masculinity in Gay Asylum Cases,” *The Yale Law Journal* 114, no. 4 (2005) 913-920; Pamela Heller, “Challenges Facing LGBT Asylum-Seekers: The Role of Social Work in Correcting Oppressive Immigration Processes,” *Journal of Gay & Lesbian Social Services* 21, no. 2-3 (2009): 294-308; Joseph Landau, “Soft Immutability and Imputed Gay Identity: Recent Developments in Transgender and Sexual-Orientation-Based Asylum Law,” *Fordham Urban Law Journal* 32 (2004): 237-265; Deborah H. Morgan, “Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases,” *Law & Sexuality: A Review of Lesbian, Gay, Bisexual & Legal Issues* 15 (2006): 135-161.

The training module accounts for the critique that LGBTI asylum is most often bestowed upon asylum seekers who fit stereotypes of their identity category, noting, "...it would be inappropriate for you to hold against the applicant the fact that he or she does not fit your notion for how LGBTI people should look or behave," and reminding immigration officers:

While there are some individuals who identify as gay who may also consider themselves effeminate and some individuals who identify as lesbian who may also consider themselves masculine, many men who identify as gay will not appear effeminate and many women who identify as lesbians will not appear masculine.²⁴³

The training module further explains that the stereotypes the officer might hold could potentially differ from the stereotypes held by the applicant.²⁴⁴ Later, the module reminds immigration officers again to not assume the applicant's masculinity or femininity indicates anything about their sexual orientation: "A man may identify as gay and not appear or consider himself effeminate. A woman may identify as lesbian and not appear or consider herself masculine."²⁴⁵ Gender presentation is repeatedly explained as a masculine/feminine binary, but it does not explain what it means to act effeminate or act masculine. This interpretation is left up to the immigration officer, so where one officer may consider a vocal inflection to be the greatest indicator of an applicant's masculinity or femininity, another may consider something like clothing or stature to act as a visual indication of sexual orientation.

The list of questions provided for immigration officers to ask applicants when determining sexual orientation treat "gay" as the baseline or norm. Some of these questions include: "When did you first realize you were gay (or lesbian or bisexual?)," "Did you know

²⁴³ USCIS, *RAIO Combined Training Course*, 40. In making that statement of warning, the training module cites *Hernandez-Montiel v. INS* – an immigration case from 2000. Hernandez-Montiel identified as a "gay male with a female sexual identity." Because she was biologically male but most often presented as a woman, the first hearing and the Bureau of Immigration Appeals found the feminine presentation to not be immutable. The U.S. Court of Appeals agreed to hear the case and Hernandez-Montiel was granted asylum.

²⁴⁴ USCIS, *RAIO Combined Training Course*, 41.

²⁴⁵ USCIS, *RAIO Combined Training Course*, 49.

other gay people in your home country?,” “Did you hear about other gay people in your home country?,” “Have you met other gay people?,” and “Does your family know you’re gay?” Only one question does not begin with “gay”: “How do lesbian [or gay, or bisexual] people meet one another in your country?”²⁴⁶ This section on “appropriate lines of inquiry” and “inappropriate lines of inquiry” regarding sexual orientation is the shortest of the available guidelines for interviewing in the training module. The only item listed as “inappropriate” for a gay, lesbian, or bisexual asylum seeker addresses the applicant’s specific sexual practices. All other sections of the document tend to gloss over or presume understanding of “gay” orientation. Even the sections that address cultural sensitivity and variation say little about gay men specifically. It is implied throughout that the immigration officer understands how to handle these cases. There is an implied homonormativity, persisting even in this document that attempts to widely and thoroughly address sexual orientation and gender identity, that presumes a collective understanding of “gay,” and thus, does not explicate the unique needs of gay asylum seekers.

In Lisa Duggan’s *Twilight of Equality* she suggests homonormativity privileges domestic, nationalist gay and lesbian cultures, and these cultures are invested in rights that look like the rights of heterosexual people. Homonormativity is invested in the inclusion of gays and lesbians into the citizenry, but does not make space for other queer bodies. And while public acts of intimacy between gay men are still treated as taboo in many parts of the United States, the rights of gays and lesbians to marry, adopt, and receive partner benefits have expanded over the last few years. Further, despite lingering prejudice, a gay male asylum seeker is more likely to apply for and receive LGBTI asylum. The mode in which homonationalism operates is visible in the training module’s treatment of gay male asylum seekers as most common and most likely. Gay men who self-present as feminine become the most commonly associated with access to LGBTI

²⁴⁶ USCIS, *RAIO Combined Training Course*, 33-34.

asylum, and their cases end up establishing norms (as in *Toboso-Alfonso* and *Tenorio*) in a way that suggests to other gay male asylum seekers that they must present themselves in a similar way to have the best chance at asylum.²⁴⁷ Although homonationalism tends to privilege gay men most of all, it also impacts the adjudication of cases involving lesbian asylum seekers.

3.2.2.2 *Lesbian Asylees*

Lesbian asylum seekers (along with bisexual asylum seekers) receive the least specific treatment throughout the training module. Although the initialism chosen for the training materials is LGBTI, the module primarily focuses on the “G” (gay), the “T” (transgender), and the “I” (intersex). In all but three mentions, the term “lesbian” is discussed alongside the term “gay.” What this means is that the 65-page module dedicates only a handful of sentences to the unique challenges facing lesbians seeking asylum. The training module itself addresses the minimization of this population, noting, “The most common LGBTI claims are based on sexual orientation and involve gay men, and to a lesser extent lesbian women.”²⁴⁸ The terms “gay and lesbian” are frequently discussed in tandem (even in policy, LGBTI asylum seekers are frequently referred to as “gay and lesbian asylum seekers”), but this pairing tends to neglect the ways in which gay identity is normalized and lesbian claims are infrequent. Where the lack of in-depth interview advice about gay men appears to exist because of a presumed understanding of gay male sexual identity, the absence of lesbian women appears to have more to do with the presumed invisibility and flexibility of female sexual identity. This minimization of lesbian asylum could be partially responsible for the small number of successful lesbian asylum claims. More likely though, this minimization both feeds and is fed by the invisibility of lesbian asylum seekers.

²⁴⁷ Hanna, “Punishing Masculinity in Gay Asylum Claims,” 913-920.

²⁴⁸ USCIS, *RAIO Combined Training Course*, 33.



Figure 2: Successful lesbian asylum claimant AJ, photo by Lauren Ober, 2015

Women who identify (or are imputed to identify) as lesbians file far fewer asylum claims than gay men,²⁴⁹ and those who do file face difficulties proving that their sexual orientation caused them to be persecuted.²⁵⁰ A 2003 report found that the U.S. had only three successful lesbian asylum claims since 1994.²⁵¹ Low numbers can be partially attributed to the fact that fewer women know about the option to seek asylum on the basis of sexual orientation/identity persecution, and also that in some nations, women have less access to the resources needed to physically leave their current domestic situation.²⁵² Shannon Minter explains, “For many lesbians, fleeing persecution is an economic impossibility” because many women do not possess their own incomes or the ability to travel without approval from a male partner or guardian.²⁵³ In addition to the need for resources, there are multiple barriers to lesbian asylum emerging from attitudes about women and refugee policy more broadly:

²⁴⁹ Shannon Minter, “Lesbians and Asylum: Overcoming Barriers to Access,” *Asylum Based on Sexual Orientation: A Resource Guide* (2000): 5-6.

²⁵⁰ Rachel Lewis, “The Cultural Politics of Lesbian Asylum: Angelina Maccarone’s *Unveiled* (2005) and the Case of the Lesbian Asylum Seeker,” *International Feminist Journal of Politics* 12, no. 3-4 (2010): 425.

²⁵¹ Morgan, “Not Gay Enough for the Government,” 143

²⁵² “The Challenges to Successful Lesbian Asylum Claims,” *National Center for Lesbian Rights* (2013): 2.

²⁵³ Minter, “Lesbians and Asylum,” 7.

The courts have typically considered human rights abuses more commonly associated with men, such as arrest and torture for government activism, as legitimate ‘political’ persecution deserving asylum protection. On the other hand, acts of violence more often experienced by women, such as rape, forced marriage, or honor killings as punishment for refusing to conform to societal norms, have typically been labeled as ‘private’ matters outside the scope of asylum law.²⁵⁴

Thus, asylum is typically reserved for people who have the ability to voice political opinion in the public sphere, and the violence that many women face does not get considered as persecution in refugee and asylum law because of its domestic or private nature. Lesbian identity in particular is often treated as invisible, malleable, and private in a way gay, transgender or intersex identities and orientations are necessarily treated – making the proof of that identity/orientation especially challenging. The shared image of lesbians in the social imaginary lacks a consistent or stable rhetorical precedent that makes lesbian asylum cases particularly challenging for both the claimant (in their identity performances) and the adjudicator (in their effort to compare this case to those which have been set as precedent).

In the training module, the term “lesbian” is mostly mentioned in definitions and brief examples to illustrate larger claims about subjects related to LGBTI asylum. There are few stories recounted or cases cited that pertain specifically to lesbian asylum seekers. One of the first mentions is a definition: “The term lesbian is used to mean women who are attracted to women, although homosexual women also sometimes use the term gay to describe themselves.”²⁵⁵ Here the module defines sexual orientation in terms of attraction. Also, as one of the two places lesbian asylum seekers are discussed apart from gay asylum seekers, it is interesting to note that this particular mention establishes that “lesbian” may not exist in an asylum seeker’s vocabulary at all. Although this does not provide significant insight into how an

²⁵⁴ Timothy J. Randazzo, “Social and Legal Barriers: Sexual Orientation and Asylum in the United States,” in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, ed. Eithne Luibhéid and Lionel Cantú Jr. (Minneapolis: University of Minnesota Press, 2005) 43-44.

²⁵⁵ USCIS, *RAIO Combined Training Course*, 12.

immigration officer might construct their image of a lesbian asylum seeker, it does help to show the ways in which lesbian asylum seekers face barriers and exclusions from the very beginning of their journey.

One section where the training module does separate lesbian asylum seekers from others is in its discussion of persecution. On page 23 the training module discusses forced marriage:

Societal and cultural restrictions that require them to marry individuals in contravention of their sexual orientation may violate their fundamental right to marry and may rise to the level of persecution. For instance, a lesbian who has no physical or emotional attraction to men and is forced to marry a man may experience this as persecution.²⁵⁶

This passage footnotes a paragraph in a United Nations High Commission on Refugee (UNHCR) document which sites a 1979 UN *Convention on the Elimination of Discrimination Against Women* document that establishes the right to freely choose a spouse. While forced marriage can also affect men and boys, it disproportionately impacts young women.²⁵⁷ In the following paragraph, the training module notes, “Lesbians often experience harm as a result of their gender as well as their sexual orientation. The types of harm that a lesbian may suffer will frequently parallel the harms in claims filed by women in general more closely than the harms in gay male asylum claims.”²⁵⁸ This statement is evidence of the above suggestion that persecution of lesbian women is often viewed as gender-based, not sexual orientation-based persecution. Because gay males are treated as the default or paradigmatic LGBTI asylum seeker, lesbian women’s claims of persecution are often considered to be gendered, “domestic” violence in a way that persecution of male asylum seekers is not. This is noted in a following sentence: “In many parts of the world persecution faced by lesbians may be less visible than that encountered by gay

²⁵⁶ USCIS, *RAIO Combined Training Course*, 23.

²⁵⁷ “Child Marriage Facts and Figures” *International Center for Research on Women*
<http://www.icrw.org/child-marriage-facts-and-figures>.

²⁵⁸ USCIS, *RAIO Combined Training Course*, 24.

men.”²⁵⁹ It is good that the training module makes note of the ways lesbian persecution can be less visible than persecution of other sexual minorities, but without explaining what types of questions to ask or key terms to listen for, the module runs the risk of dooming lesbian asylum seekers to the invisibility to which they alert us.²⁶⁰ The tendency to treat women’s persecution as “private” or “domestic”²⁶¹ can make it difficult for an asylum officer to characterize the persecution they hear about in interviews as sexual orientation persecution.

3.2.2.3 *Intersex Asylees*

In the training module, the chosen initialism of LGBTI incorporates the traditional LGBT but adds “I” for Intersex. Like “transgender,” intersex is not a sexual orientation. The training module spends a substantial amount of time discussing intersex applicants and the unique challenges they present immigration officers in interviews. One of these challenges is that intersex is distinguished from the other parts of the LGBTI initialism specifically through biological distinction. This means that immigration officers who are trained in law and immigration policy must evaluate whether intersex applicants are biologically intersex and faced persecution because of that status.

Although intersex people only make up between 0.02% and 2% of the general population, they constitute a significantly larger percentage of sexual minorities seeking asylum for sexual orientation or gender identity.²⁶² Intersex is not a sexual orientation, nor is it explicitly

²⁵⁹ Ibid.

²⁶⁰ Rachel Lewis discusses in detail efforts to make lesbian identity and persecution visible in asylum hearings: Rachel Lewis, “Deportable Subjects: Lesbians and Political Asylum,” *Feminist Formations* 25, no. 2 (2013): 174-194.

²⁶¹ Randazzo, “Social and Legal Barriers,” 43-44.

²⁶² Anne Fausto-Sterling estimates that Intersex people make up 1.7% of the world’s population, but Leonard Sax’s research takes a slightly more narrow definition of intersex, finding 0.018% of people to fit under that category (which he restricts to only accounting for chromosomal differences). Sharon Preves, however, notes that sexual ambiguity is more complicated and states that between one or two of every 1000 babies to as many as two percent of all babies are born with genitalia that does not

understood to be an identity. The training module describes intersex as a “condition” in which the anatomical features or chromosomal pattern with which someone is born does not “fit typical definitions of male or female.”²⁶³ Affiliate terms and causes for intersex include DSD (Differences in Sex Development), congenital adrenal hyperplasia, Klinefelter’s syndrome, Turner’s syndrome, hypospadias, and others. The module notes that the term “hermaphrodite” should only be used if the applicants use it to describe themselves. The Organization Intersex International (OII) has denounced the definition of intersex as a “condition” in this particular training module. The group instead prefers a description of intersex as a “natural human variation,” or as an identity, claiming: “Intersex is not something one has, but who one is.”²⁶⁴ Despite the OII’s concerns, medical definitions of intersex still tie it to anatomy or chromosomal make-up.²⁶⁵ The OII’s clarification reveals a need for intersex to be treated as something other than a medical problem to solve. In the immigration court system, however, the biological distinction of intersex makes it slightly less difficult to “prove” than “gay,” “lesbian,” or “bisexual” as these terms are tied more widely to identity than biology. Further, in some countries, intersex people face a threat of forced gender (re)assignment surgery – a threat that is cited in U.S. immigration policy as persecution that could more clearly constitute a well-founded fear in the eyes of an immigration officer than some other types of persecution. Although

“conform to socially acceptable norms of sexual anatomy.” See: Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000); Leonard Sax, “How Common is Intersex? A Response to Anne Fausto-Sterling,” *Journal of Sex Research* 39, no. 3 (2002): 174-178; Sharon E. Preves, *Intersex and Identity: The Contested Self* (New Brunswick: Rutgers University Press, 2005), 2.

²⁶³ USCIS, *RAIO Combined Training Course*, 13.

²⁶⁴ “US LGBTI Refugee Asylum Immigration Officer Training Course Module Flawed, Contains Contradictions for Intersex Refugees,” *Organisation Internationale des Intersexués* (January 27, 2012) <http://oiiinternational.com/751/lgbti-refugee-asylum-immigration-officer-training-module-flawed-contradictions-intersex-refugees/>

²⁶⁵ Katrina Karkazis, *Fixing Sex: Intersex, Medical Authority and Lived Experience* (Durham: Duke University Press, 2008), 261.

intersex asylum applicants may not have specific terms to describe their situation, the biological factors that contribute to a person's status as intersex makes the burden of proving eligibility for asylum slightly less complicated than in cases involving other sexual minorities. Nevertheless, the training module is careful to address the different ways an intersex person may understand their body and that the understanding may vary greatly depending upon the cultural context from which the applicant arrived. This means that while intersex asylum applicants may be able to more clearly articulate the biological basis of the identity that has led them to face persecution, the ways in which that identity or biology manifests itself may not be legible to either the applicant or the immigration officer.

In President Obama's declaration of support for LGBTI refugees and asylum seekers, his statement used the initialism "LGBT" instead of "LGBTI," and most other government documents use the shorter set of initials instead of adding intersex people. The inclusion of "intersex" in the training module allows the USCIS to train immigration officers for the unique needs of people whose biological sex does not adhere to normative conceptions of male or female anatomy. Of all the terms in the initialism, "intersex" is the only one that appears to be undeniably inherent. Because of this, it is treated as a status, or even a "fact" in a way other parts of the initialism are not. In being treated as a biological status in the training module (or even as an identity by the OII), intersex becomes tied to genitalia and chromosomes, identifications of which would require a medical examination. In the United States, there are no medical exams given as part of the asylum process. This means that immigration officers are responsible for determining the validity of an intersex asylum claim based on their interpretation of the claimant's stories and experiences. In a section beginning on page 37, the training module offers "Appropriate Lines of Inquiry" for cases involving "Intersex Conditions." The module

recommends using the same approach used in all other cases, but implores the immigration officer to think about the variety of ways in which intersex conditions may express themselves and the variety of ways in which nations of origin may treat intersex people. It suggests that understanding of intersex conditions not only varies from nation to nation, but from family to family, noting:

Where the condition is known in a given culture, an applicant should be able to describe how people like them are treated. Where the condition is known to run in a family (but not throughout the culture), the entire family may face stigma, or family members may be on the lookout for signs of the condition in order to keep the family secret.²⁶⁶

The module goes on to list different versions of intersex identity including Androgen Insensitivity Syndrome in order to explain how there is no clear, absolutely reliable way in which intersex status may present itself. Immigration officers are reminded in the training module that many asylum applicants may not know that there is a specific type of asylum that can be granted for people who identify as (or are imputed to identify as) LGBTI. And while the biological factors contributing to intersex asylum may imply an easier path to citizenship once in the United States, the intersex population is one of the least likely to seek this type of asylum. If their identity as intersex is a source of shame, they may struggle to speak about their situation with an unknown immigration officer. If their identity does run in their family, it would be unlikely for the whole family to receive asylum. Intersex asylum claims and their reliance on unseen biological characteristics make them a complicated, and subsequently more carefully parsed area of LGBTI asylum within the training module.

²⁶⁶ USCIS, *RAIO Combined Training Course*, 37.

3.2.2.4 *Transgender Asylees*

Along with discussions of intersex, the training module most frequently defines and discusses the term “transgender” and its ancillary terms. In the training module, transgender is defined as:

a term used for people whose gender identity expression, or behavior is different from those typically associated with their assigned sex at birth. Some transgender people dress in the clothes of the opposite gender; others undergo medical treatment, which may include taking hormones and/or having surgery to alter their gender characteristics.²⁶⁷

The note below this definition links to a document created by the National Center for Transgender Equality with more transgender terminology. The training module clarifies, “Transgender is a gender identity, not a sexual orientation. Thus, like any other man or woman, a transgender person may have a heterosexual, bisexual or homosexual sexual orientation” but the training module also points out that “transgender individuals may be more visible and may be viewed as transgressing societal norms more than gay men or lesbians. Therefore they may be subject to increased discrimination and persecution.”²⁶⁸ In addition to these definitions throughout the text, the glossary at the end of the document defines a series of terms related to transgender identity including “birth sex,” “corrected gender,” “FTM,” “MTF,” “Passing,” and “Sex Reassignment Surgery.” The definitions provided reveal an effort to be careful with its definition of *trans* – attempting to account for all of its variations. However, despite the effort toward sensitivity for trans people, the document does not do much to clarify the ways in which gender transitions may be complex, partial, ongoing, or unknown. Transitions are explicitly mentioned, and even defined, but in the sections of the module focused on interviewing transgender people, the prompts tend to assume the transgender person has in some way “completed” their transition.

²⁶⁷ USCIS, *RAIO Combined Training Course*, 13.

²⁶⁸ USCIS, *RAIO Combined Training Course*, 24; This clarification is also repeated on pages 36 and 41.



Figure 3: Transgender asylee Jennicet Gutiérrez, photo by Al Dia Dallas, 2015

In his book *Transforming Citizenships: Transgender Articulations of the Law*, Isaac West notes, “One of the inherent problems associated with defining transgender is that in naming it we risk assigning a normative telos to an identity category that is often employed to oppose this modernist, binary logic.”²⁶⁹ It becomes difficult to trace the rhetorical precedent within the social imaginary when the identity in question is in transition. This drive for a “telos” in transgender identity is evident in the training module in its discussion of “completed” transitions and “corrected” genders.²⁷⁰ In assigning gender a telos, the training module may fail to lead immigration officers to an understanding of the liminal spaces that accompany gender identity more broadly. West goes on to suggest that Susan Stryker’s definition of transgender is best for capturing “the performative, or non-essential, nature of identity,”²⁷¹ but it would be understandably difficult to adopt her definition (“*the movement across a socially imposed boundary away from an unchosen starting place*”) in asylum law where an identity must be

²⁶⁹ Isaac West, *Transforming Citizenships: Transgender Articulations of the Law* (New York: New York University Press, 2014), 9

²⁷⁰ USCIS, *RAIO Combined Training Course*, 26, 35, 41, 41, 53.

²⁷¹ West, *Transforming Citizenships*, 10.

proven and legible to an immigration officer.²⁷² This conundrum over the need to define identities is heightened in discussions of transgender people, as the concept of “transgender” is immersed in periods of transition that can express this liminality differently from individual to individual and from month to month. The problematic pitfalls of essentialism that accompany most definitions are especially precarious for transgender people, as there are a number of ways in which the chosen definition might exclude certain applicants but allow space for others.

The struggle to understand what it means to be transgender is both a current feature of post-same-sex-marriage politics and also a feature of the history of transgender asylum.²⁷³ The training module takes this struggle to heart, offering a long discussion of appropriate and inappropriate lines of inquiry for adjudicating transgender asylum claims. Where most asylum interviews would begin with basic demographic information like age, place of birth, and gender, the training module reminds officers that in transgender asylum cases, the “gender” question may be difficult to answer. Because the beginning of the interview should be dedicated to “putting the applicant at ease,” the module recommends that “For transgender applicants, it may be better to come back to the question about ‘gender’ at the end of the interview as this issue may be sensitive and go to the heart of the claim.”²⁷⁴ The module recommends being sensitive and not making assumptions about a transgender applicant’s anatomy or putting “words in the applicant’s mouth.” Instead, it notes, “It is important to remember that being transgender involves an overall dissatisfaction with the gender assigned at birth; it is not about having one particular surgery.”²⁷⁵ Throughout, the training module frames transgender identity as an

²⁷² Susan Stryker, *Transgender History* (Berkeley, CA.: Seal Press, 2008), 1, emphasis in original.

²⁷³ See: *N-A-M- v. Holder*, 587 F.3d 1052 (10th Cir. 2009); *Reyes-Reyes v. Ashcroft*, 384 F.3d 782 (9th Cir. 2004); *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000).

²⁷⁴ USCIS, *RAIO Combined Training Course*, 48.

²⁷⁵ USCIS, *RAIO Combined Training Course*, 34.

inherent “dissatisfaction” with one’s birth gender and explains the ways this dissatisfaction has made life particularly difficult for transgender people.

The training module’s lines of inquiry for transgender applicants requests treating their issues with heightened sensitivity. Statements along these lines include, “Start off with easy questions and gradually ease into asking the most sensitive ones,”²⁷⁶ and “It may be appropriate to elicit information about what steps the applicant has taken in his or her transition but remember how personal and difficult it will be for the applicant to talk about these issues.”²⁷⁷ While it is good that the training module suggests being sensitive to the specific challenges facing someone who decides to undergo a gender transition, the result is a sort of infantilization that reduces the agency of transgender applicants to comfortably embrace their gender expression. Transgender applicants who may proudly and comfortably discuss their gender identity or transition might be seen as not also being a victim or as not experiencing persecution as harshly as someone who might be reluctant to talk about their gender identity. Part of this perspective of trans people as lacking agency (or needing to show a lack of agency) likely comes from the rhetorical precedent set in cases that rejected asylum claims of transgender people because the judge considered the “choice” to transition or live as another gender to belie the immutability of gender identity. The result is one where the most legible transgender asylum applicant is one who has suffered deeply and struggles to speak about their identity. While this may be the case for many transgender asylum applicants, considering it as the standard or norm for transgender asylum cases runs the risk of failing to acknowledge transgender identity as something that may bring comfort or peace.

²⁷⁶ USCIS, *RAIO Combined Training Course*, 34.

²⁷⁷ USCIS, *RAIO Combined Training Course*, 45.

3.2.2.5 *Bisexual Asylees*

In addition to the relative invisibility of lesbian asylum seekers, the RAIO training module offers only two sentences specifically addressing bisexuality. In all other instances “bisexual” is attached to lesbian, gay, or transgender, and often it is the last term mentioned in the series of terms. Despite the presence of “bisexual” in almost all widely used versions of the sexual minority initialism, bisexuality is relatively invisible in most discussions of LGBTI rights.²⁷⁸ Although I discuss sexual orientation and object choice later in this chapter, it is worth noting here that one of the two sentences specifically addressing bisexuality in the RAIO training module notes that bisexuality is not a choice.²⁷⁹ The other specific mention notes how an asylum claimant may use inconsistent language to discuss their sexual identity/orientation, defining themselves as gay at one point in an interview and bisexual in another.²⁸⁰ Although the training module discusses this as a reminder to immigration officers to not treat inconsistent labels as an incitement of a claimant’s authenticity, it raises the point that for many people, claiming to be bisexual may stand in for the confusion or evolution of one’s own identity or orientation. This is not to say that bisexuality is not a perfectly legitimate identity on its own, but that there is evidence to suggest that bisexuality is sometimes invoked as the most appropriate term when one is unsure of how to deal with instability and liminality in their own identity.²⁸¹ Bisexuality can be a telos, but it does not have to be. It is even sometimes listed as a “stepping stone” for people working to understand the complexities of their own sexual orientation and identity.

²⁷⁸ The perceived “invisibility” of bisexuality persists beyond immigration courts. See: Beth A. Firestein, *Bisexuality: The Psychology and Politics of an Invisible Minority* (Thousand Oaks, CA: Sage Publications, 1996).

²⁷⁹ USCIS, *RAIO Combined Training Course*, 52.

²⁸⁰ USCIS, *RAIO Combined Training Course*, 42.

²⁸¹ Clare Hemmings, “Locating Bisexual Identities: Discourses of Bisexuality and Contemporary Feminist Theory,” in *Mapping Desire: Geographies of Sexualities*, ed. David Bell and Gill Valentine (New York: Routledge, 2004), 37-49; Kristen McLean, “Inside, Outside, Nowhere: Bisexual Men and Women in the Gay and Lesbian Community,” *Journal of Bisexuality* 8, no. 1/2 (2008): 63-80.

Bisexuality is lumped in the “Sexual Orientation” section for lines of appropriate and inappropriate inquiry. There is no question listed that addresses bisexuality specifically. Further, not one of the 37 cases listed at the end of the training module involves a bisexual applicant. This lack of precedent for adjudicating cases involving bisexual applicants and the lack of specific guidance for adjudicating these claims means that immigration officers are largely left to decide what to do with these cases on their own. Further, the lack of information about the unique needs of bisexual applicants may lead immigration officers to consider these cases to be less sensitive or the people in these cases less deserving of asylum.

3.2.2.6 The Absence of “Queer”: Definition by Omission

In laying out his plan for a critical rhetoric, McKerrow declared that a critical orientation should analyze the text that exists, but must also account for “what is absent, unmarked, the unspoken, the unsayable.”²⁸² McKerrow claims that what is missing from a text or set of texts is as important as what is present because the choice to not include certain terms, concepts, or images can reveal underlying ideologies. I mentioned above that lesbian and bisexual asylum seekers are addressed in a minimal capacity within the training module, but they are addressed, and they are always present in the initialism itself. The term “queer,” on the other hand, does not appear anywhere in the document – not even in the comprehensive glossary of related terms that begins on page 52. Yet, an initialism that omits the “Q” leaves out an important piece of sexual minority existence.

Teresa de Lauretis suggested a turn to “queer theory” in 1990 as a way to move toward a discussion of sexual orientation and identity as something other than sexual preference or sexual deviance. In *Tendencies*, Eve Sedgwick offers multiple descriptions of *queer*, which includes

²⁸² McKerrow, “Critical Rhetoric,” 107.

terms like “transitive,” “athwart,” and “*troublant*,” as well as the explanation that queer can refer to: “the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning...”²⁸³ Michael Warner points out that “queer” is not always or only about sexuality – it is anti-assimilationist, and it is a source of upheaval.²⁸⁴ For Judith Butler, “the term ‘queer’ emerges as an interpellation” that can never purport to fully describe those it seeks to represent. It must always be contingent.²⁸⁵ The instability of *queer* is appealing because it offers a way out of structured categories of identity and orientation, or for Eithne Luibhéid, it provides a way to “transform, rather than to seek accommodation within, existing social structures.”²⁸⁶ Those who self-identify as queer find it less limiting than the continually expanding normativity within other parts of the LGBT initialism. Queer is both an appropriation of a formerly derogatory term and an upheaval of identity categories altogether.

Critical/Cultural and Rhetorical scholarship since the mid-2000s often uses the initialism LGBTQ to account for the power of *queer* discussed above. However, adding the “Q” to the initialism does not necessarily help remedy the problems with an “alphabet soup.” For example, Sharalyn R. Jordan explains that the initialism LGBTQ “holds both the contesting and the essentializing possibilities inherent in naming,” making it “an imperfect approach to an irresolvable issue.”²⁸⁷ What Jordan means is that the LGBTQ initialism is a paradox that runs the risk of essentializing through the use of a normativizing acronym while accounting for the revolutionary practices of queer politics through the addition of the “q.” Adding the “Q” to the

²⁸³ Eve Kosofsky Sedgwick, *Tendencies* (Durham: Duke University Press, 1993), xii, 8, emphasis in original.

²⁸⁴ Michael Warner, *Fear of a Queer Planet: Queer Politics and Social Theory* (Ann Arbor: University of Michigan Press, 1993), xxvi; Michael Warner, *Publics and Counterpublics* (Zone Books, 2005), 219.

²⁸⁵ Judith Butler, “Critically Queer,” *GLQ: Journal of Lesbian & Gay Studies*, 1, no. 1 (1993): 18.

²⁸⁶ Eithne Luibhéid, “Introduction,” x.

²⁸⁷ Sharalyn R. Jordan, “Un/Convention(al) Refugees: Contextualizing the Accounts of Refugees Facing Homophobic or Transphobic Persecution,” *Refuge* 26, no. 2 (2009): 167-168.

initialism helps to remind us of the instability and immeasurability of identities and orientations, but it does not solve the problem inherent in definitions' essentializing functions.²⁸⁸ Furthermore, the choice to use LGBTQ in the RAIO training module would not necessarily provide more comprehensive opportunities for queer asylum seekers.

Official/legal discourse rarely incorporate the term “queer” – and understandably so. Within the law there is a need to categorize, elucidate, and concretize, and *queer* shatters those efforts. It rattles or unsettles rather than affirms or solidifies. It may seem as though there is no space for “queer” in law, yet the absence of “queer” could possibly impede an immigration officer's comprehensive understanding of identity's complexities. Proponents of an initialism like LGBTI and those who advocate the use of “queer” may seem to contradict or oppose one another, as those who use a term like LGBT are interested in seeking rights within the existing system and those who use “queer” seek to overhaul that system. However, Jeffrey Bennett claims that these two approaches can inform one another:

Far from being a reactive form of scholarship, queer theory can offer insightful alternatives to diabolically heterosexist politics, attempting to alter the frames through which people understand issues and events. In this manner gay and lesbian scholarship, as well as queer theory, are productive in as much as they seek to forge new spaces for understanding civic identity and its discontents.²⁸⁹

Queer does not need to exist only in contradiction to LGBTI – these concepts can function together to create a more comprehensive understanding of the worlds from which sexual minority asylum applicants arrive. It would be possible to either include the “Q” in the chosen

²⁸⁸ In order to account for this, much of the recent critical scholarship in and beyond communication studies eschews the initialism altogether for the term “queer.” For example, Karma Chávez uses “queer” for its ability to orient us “not toward the ‘not yet’ but rather toward coalition” and Jeffrey Bennett notes that his book *Banning Queer Blood* exists at the fulcrum between LGBT studies and queer theory, but uses the term “queer men” throughout the text. See Karma R. Chávez, *Queer Migration Politics*; Jeffrey A. Bennett, *Banning Queer Blood: Rhetorics of Citizenship, Contagion, and Resistance* (Tuscaloosa: University of Alabama Press, 2009).

²⁸⁹ Bennett, *Banning Queer Blood*, 21-22.

initialism, or to at least provide an explanation of “queer” in one of the training module’s glossaries to help make sense of this. Further, in leaving “Q” out of the initialism and in excluding a discussion of “queer” entirely, legal documents like the RAIO training module produce a limited understanding of the complexities of identity. The training module addresses this complexity briefly when it notes that applicants may not be familiar with LGBTI terminology, and that it is possible that the applicant “does not even have words for different sexual orientations other than homophobic slurs...The fact that an applicant may be uncomfortable with these terms may be a result of his or her own ingrained homophobia from growing up in a country where such terms were the equivalent of violent curses.”²⁹⁰ This statement defines the applicant as an outsider – one who may not understand western, English terms for identity and orientation categories – even though these are the categories upon which their claim for asylum rests. Further, it is possible that the people writing the training module understand “queer” to be a “homophobic slur,” since it was used as such for so long. It is also possible, but less likely, that the authors of the training module were fully aware of the radical politics associated with “queer” and wanted to distance the institutional effort to include LGBTI people from a politics of radical change and upheaval.²⁹¹

There does exist in the training module an effort to make the process of asylum more comfortable for people whose persecution in their homeland may involve sensitive topics like sexual or physical abuse, but in foreclosing “queer,” the training module fails to train its officers to understand and account for the multiplicity and complexity of identity and orientation related to sex and gender. Even though the training module notes that sexual orientation and identity

²⁹⁰ USCIS, *RAIO Combined Training Course*, 40.

²⁹¹ Erin Rand traces the uses of “queer” for activist and radical political movements, and questions its (institutionalized) future, aiming to connect queer activism and queer scholarship. See Erin J. Rand, *Reclaiming Queer: Activist and Academic Rhetorics of Resistance* (Tuscaloosa: University of Alabama Press, 2014).

may evolve or transition over the course of a person's life, it leaves out a discussion of how "queer" fits into that equation. Therefore it creates the impression that these identity and orientation categories have a telos – implying that there is an end point toward which identity is moving – instead of the possibility for an identity or orientation to be always unsettled. In excluding definitions of "queer," the training module helps to uphold the system of homonationalism that excludes bodies and identities that cannot be neatly categorized or easily read. This not only helps to enforce exclusions of people based on the legibility of their identity, but it helps to enforce Western ideals of sexual orientation as inherent, categorizable, and permanent.

3.3 Conclusions

The *Toboso-Alfonso* case set in place the norms by which future LGBTI asylum seekers would be judged, but the RAIO training module serves as an institutional response that both alters and codifies those norms. The ability for LGBTI asylum seekers to access citizenship is still dependent upon their performance of an identity that adheres to categories established in the technical realm of legal discourse. And while the training module for immigration officers adjudicating LGBTI asylum cases attempts to offer definitions that respect the varied and culturally bound expression of gender identity and sexual orientation, it does not go far enough to account for the complexities of identity or orientation. LGBTI asylum seekers' identity performances are expected to be especially legible as belonging to the categories as defined in the training module. Now, in a moment of broadly heightened scrutiny on refugees and asylum seekers in the United States and abroad, LGBTI asylum seekers are further expected to prove themselves as especially persecuted, often being viewed in relation to people in the mass migrations from Syria. It is a seemingly arduous and unwinnable process that requires a

particular performance of identity that will be judged as authentic or inauthentic by a person who may or may not have a rich understanding of subtle differences in identity and orientation or a culturally specific understanding of language used to discuss these identities and orientations. Immigration officers are primarily people in the legal field (but not necessarily lawyers) who are trained in immigration law and policy. These officers are not necessarily trained in gender/sexuality studies or even the nuances of another culture's customs or language. Each individual decision to accept or deny an asylum claim is made by an immigration officer in the region where the claim is being filed. Taken together, these individual cases shape the precedent for future applicants, ultimately indexing the LGBTI asylum seeker. There are several implications for LGBTI asylum and the collective imagining of citizenship brought forth by the RAIO training module. To make sense of these implications, I turn now to a discussion of the training module and the (im)possibility of non-essentialized definitions, and discuss the absence of choice from the training module. Finally, I turn to the ways in which these attempts at definition and the foreclosure of queerness and choice help contribute to homonationalism in LGBTI migrant policy.

3.3.1 The (Im)possibility of Definition

The RAIO training module for LGBTI asylum cases highlights the problem inherent in attempts to define people. In some instances, it is beneficial for definitions to essentialize, to help uncover a truth or reality through language. But when addressing a group of people, especially one that is typically understood to be a minority, making claims about how that group of people innately *is* becomes a less worthwhile task. Looking to the potential for definitions to queer, however, a roadblock may lie in one of definition's main functions – they essentialize. In her book on Aristotle's understanding of definition, Marguerite Deslauriers claims that in Aristotle's

Topics, Posterior Analytics and Metaphysics he illustrates how definitions not only tell us what something means, but what it *is* – definitions reveal essence.²⁹² Although for Aristotle, understanding essence is desirable, when discussing complex categories of sexual identity and orientation, arguments about the existence of a true essence become less helpful. Although some people may embrace an argument for an essential gay identity, discussions of essence are, in many ways, antithetical to discussions of queerness. Any attempt to locate the essence of *queer* is doomed to fail because *queer* is without the structure needed to support an essence. The most productive notions of *queer* are undecidable and “de-essentialized.”²⁹³ Further, in adhering to or upholding an “essential” definition of different gender identities or sexual orientations, we fall into the trap of homonormativity.

Yet, in order for LGBTI asylum to function in the United States, there must be boundaries, descriptions, and benchmarks. If a category of people is not defined at all, there could not be asylum procedures written to accommodate them. This leads me to wonder whether there is space to craft definitions that can both facilitate productive, sensitive asylum interviews, be clear or limited enough to provide a legal function, and be inclusive enough to account for different expressions of gender identity or sexual orientation in the public imaginary. Definitions for argument need to limit – they need to essentialize in order to craft strong claims. Definitions in this case (existing at the nexus of law and identity) potentially need to do something else. Susan Stryker’s definition of transgender (“*the movement across a socially imposed boundary away from an unchosen starting place*”)²⁹⁴ is an example of what a non-essential definition might look like, but it is not necessarily one that could help facilitate the asylum process for trans

²⁹² Marguerite Deslauriers, *Aristotle on Definition* (Leiden: Koninklijke Brill NV, 2007), 1-2.

²⁹³ Erin J Rand, “An Inflammatory Fag and a Queer Form: Larry Kramer, Polemics, and Rhetorical Agency,” *Quarterly Journal of Speech* 94, no. 3 (2008): 298-299.

²⁹⁴ Susan Stryker, *Transgender History* (Berkeley, CA.: Seal Press, 2008), 1, emphasis in original.

people. Much of the anti-normative literature within queer theory addresses how the constant expansion of the LGBT(I/Q/C/A) initialism may only continue to create normative categories to which queer people must adhere in order to maintain rights or gain access to citizenship.

Combining all people under the banner of “queer” does not necessarily solve this dilemma either.

As evidenced by the exclusion of queer entirely from the RAIO training module, the term “queer” does not easily fit into discourse of legal regulation because of its capacity for rupture and upheaval. Perhaps what is needed in the immigration system is not merely a better system for training lawyers and immigration officers to understand queer theory, but rather, an incorporation of people who understand queer theory into the immigration system. Instead of seeking better definitions, perhaps there is a way to incorporate a greater diversity of immigration officers. One of the places this group of officers could start is with an effort to problematize the treatment of “queer” and “immutability” within U.S. asylum policy.

3.3.2 Identity and the Absence of Choice

In addition to the foreclosure of “queer,” the training module also asserts that the U.S. grants asylum on the basis of these types of persecution because the asylum seeker did not choose the identity/anatomy that led to their persecution. Arguments for admission to the U.S. only for those who are biologically or immutably identified as lesbian, gay, bisexual, transgender, or intersex require proof of one’s identity as something stable and innate. The training module states:

Sexual orientation, gender identity, and having an intersex condition can be classified as either innate or fundamental. They are characteristics that an individual cannot change about him or herself or should not be required to change. Most experts agree that sexual orientation – whether heterosexual, lesbian, or gay – is set in place early in life and is highly resistant to change.²⁹⁵

²⁹⁵ USCIS, *RAIO Combined Training Course*, 16.

The definition here limits sexual orientation to people identifying as “heterosexual, lesbian, or gay” – a definition which excludes bisexuality altogether. Further, the quoted passage above refers to the existence of a “natural” orientation and the proposition that sexual orientation is “set in place” – it is presumed to be fixed and unchanging from a young age. The module defers to experts who, we are told, “agree” that sexual orientation is “highly resistant to change.”

Although this likely appears to remind immigration officers that asylum applicants were not in a position to hide their identity, and that efforts to “reform” someone’s sexual orientation do not work, the consequence is one in which identity is presented as immutable, and those who identify as LGBTI are stripped of agency within their own identity. Later, the module states that officers should “not assume that being a sexual minority is a lifestyle or choice.”²⁹⁶ Here, the document turns away from the language of choice not in an effort to dissolve the agency of the asylum applicant, but to train the officer to be reflexive about their prejudices.

The “choice” rhetoric also appears in the glossary definition of “bisexual” where there is a reminder that bisexual people “cannot ‘choose’ whom (or which gender) to feel attracted to any more so than a heterosexual or homosexual individual can.”²⁹⁷ Even though “B” is included in the training module’s chosen initialism, bisexuality has long complicated arguments for an essentialist perspective of sexual-object choice. Sean Rehaag, for example, found that asylum claims by people identifying as bisexual are accepted far less often than claims from people identifying as gay, lesbian, transgender, or intersex.²⁹⁸ He argues that there does exist a failure on the part of immigration officials to account for bisexuality in asylum claims and that these claims are met with skepticism more often than other claims. For Rehaag, “bisexual refugee claims

²⁹⁶ USCIS, *RAIO Combined Training Course*, 31.

²⁹⁷ USCIS, *RAIO Combined Training Course*, 52.

²⁹⁸ Sean Rehaag, “Patrolling the Borders of Sexual Orientation: Bisexual Refugee Claims in Canada” *McGill Law Journal* 53 (2008): 59-102.

mark a border—an unruly edge—in struggles by adjudicators to understand sexual orientation.”²⁹⁹ The lack of a clear position on one side of a sexual orientation binary inhibits the ability to clarify one’s identity in a way comprehensible within the law. Rehaag found that immigration officers describing the claimant’s explanations of their sexual orientation frequently used the word “confused” with the implication that the claimant could eventually figure out their sexual orientation instead of remaining bisexual.³⁰⁰ Bisexuality troubles the law’s treatment of identity as immutable and innate, but in the case of the RAIO training module, it is still defined as something one is born with instead of something one becomes.

One of the earliest debates around which queer theory formed was the debate over identity as essential or constructed, whether identity is “natural, fixed, and innate,” or whether it is “fluid, the effect of social conditioning and available cultural models.”³⁰¹ In the late 20th century (and still today), arguments for the rights of LGBTI people have often centered on the inability to choose sexual orientation or gender identity. These arguments held that anti-discrimination statutes, same-sex marriage, and a host of other protections and rights should be granted to LGBTI people because their status as a sexual minority was not under their control – they were “born that way.”³⁰² Thus, the definition of identity and orientation as immutable became fundamental to many arguments for LGBTI rights, and LGBTI rights become (in the eyes of queer theorists) another way to discipline and normativize queer bodies. Much like the arguments for accepting refugees that address the lack of choice refugees have in leaving their home nations, many arguments for LGBTI rights address the ways the law should accommodate this population because they did not choose to be part of a population of sexual minorities. This

²⁹⁹ Rehaag, “Patrolling the Borders of Sexual Orientation,” 61.

³⁰⁰ Ibid., 77.

³⁰¹ Annamarie Jagose, *Queer Theory* (New York: NYU Press, 2012), 8.

³⁰² Vera Whisman, *Queer by Choice: Lesbians, Gay Men, and the Politics of Identity* (New York: Routledge, 1996), 66.

analogy is not without precedent, as Lisbeth Lipari claims that human rights discourse itself tends to be essentialist. Lipari finds “our definition of rights often relies on an ideology of immutable identity” and that our capacity to help them requires their helplessness.³⁰³ In contemporary, individualistic societies, it is difficult to comprehend the need to help a person who has agency within their current situation. However, claims for LGBTI rights based on a lack of choice means that those rights can only be granted within the same system that differentiates and subordinates people on the basis of their sexual orientation or gender identity. As Karma Chávez has argued, “homosexuality is not a choice” rhetoric is complicit with the essentialist binary opposition between choice and pre-determined sexuality.³⁰⁴ By denying choice, the module enforces a biological determinism that “made” the applicant the way they are – and in this case – made them the target of persecution.

Although the training module upholds an essentialist perspective on identity and orientation, the essentialism/constructionism debate in queer theory and LGBT studies is as old as queer theory itself. In Judith Butler’s 1990 book *Gender Trouble* for example, she critiqued Beauvoir’s essentialist assumptions about gender and sexuality and turned instead toward Wittig to develop her argument that gender is an *action*, it is something one *becomes*, not something one is born into.³⁰⁵ In 1996 Michelle Eliason argued in the *Journal of Homosexuality* that all sciences, not just social sciences, needed to embrace a more fluid understanding of gender identity.³⁰⁶ Annamarie Jagose traces the highlights of the essentialism/constructionist debate, noting that for constructionists, identity itself “is not a demonstrably empirical category but the

³⁰³ Lisbeth Lipari, “Queering the Public Sphere: Liberalism and the Rhetoric of Rights,” *Argumentation & Advocacy* 38, no. 3 (2002): 169.

³⁰⁴ Karma R. Chávez, “Beyond Complicity: Coherence, Queer Theory, and the Rhetoric of the ‘Gay Christian Movement,’” *Text and Performance Quarterly*, 24, no. 3/4 (2004): 255-275.

³⁰⁵ Judith Butler, *Gender Trouble* (New York: Routledge, 1990), 113.

³⁰⁶ Michelle J Eliason, “Identity Formation for Lesbian, Bisexual, and Gay Persons: Beyond a ‘Minoritizing’ View,” *Journal of Homosexuality* 30, no. 3 (1996): 31-58.

product of processes of identification.”³⁰⁷ Yet, for Jagose, the relationship between constructionism and essentialism is more complicated than many queer projects project, and notes that, “Combinations of the two positions are often held simultaneously by both homophobic and anti-homophobic groups.”³⁰⁸ For Jagose, it is likely that her both/and perspective on essential/constructed identities was drawn, at least partly, from Eve Sedgwick. Sedgwick argues that debating essentialism versus constructivism fails to account for the ways in which “there are, with equal certainty, rhetorical and political grounds for underwriting continuously the legitimacy of both accounts.”³⁰⁹ I am not arguing here for the module to adopt a fully constructivist queer politics, but rather that denying LGBTI applicants choice altogether risks upholding discourses that continue to treat certain identities as problematic.

The possibility to account for instability in identity categories would not necessarily make these cases harder to argue if the officers were trained to account for choice. However, it is implied in the module that to be eligible for asylum, claimants must fit neatly into an identity category and be especially representative of the perceived norms of that category as interpreted by an immigration officer. The absence of “queer” and foreclosure of choice denies the ways identity is a process rather than a property and upholds a perspective in which gender and sexual expression must be made legible within the law instead of modifying the law to account for varieties of expression.

3.3.3 *Homonationalism in “Queer” Citizenship*

Amy Brandzel claims that citizenship “functions as a double discourse: it serves as a source of political organizing an national belonging and as a claim to equality, on the one hand,

³⁰⁷ Jagose, *Queer Theory*, 9.

³⁰⁸ Ibid.

³⁰⁹ Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley: University of California Press, 2008), 27.

while it erases and denies its own exclusionary and differentiating nature, on the other.”³¹⁰ For Brandzel, there is no space for “queer” within the citizenry. Instead, for Brandzel, citizenship itself is irredeemable because it can never escape its cycle of exclusions.³¹¹ Brandzel finds no possibility for queering citizenship because citizenship is inherently and violently exclusionary and normativizing. And while I largely agree with Brandzel’s characterization of citizenship, it is difficult to fight her fight of rupturing citizenship altogether. She argues that citizenship is always exclusionary when it makes space for inclusions. However, LGBTI asylum has the potential to include a large group of people who faced literal violence if they stayed in their home nation. It would be ethically tenuous to argue that the inclusion itself is bad solely because it will also create exclusions, particularly when no asylum at all would simply maintain the cycle of violence and exclusions faced by LGBTI people all over the world. Isaac West notes in response to positions like those taken by Brandzel that the “privileged position of legal critique must negotiate the reality that the call to reject citizenship until it has been queered is a political stand few, if any, can afford to take.”³¹² I see potential in the RAIO training module to broaden the understanding of who belongs in the U.S. citizenry. Although I do not see how, given its limited definitions, it can truly *queer* citizenship in the United States, I believe it is possible to minimize exclusions and expand the ground on which inclusion happens. What is needed is precisely what the RAIO training module seeks to provide. Yes, it falls short of accounting for the complexities of identity, but it marks a movement toward a different, more inclusive type of citizen space.

³¹⁰ Amy Brandzel, “Queering Citizenship? Same-Sex Marriage and the State,” *GLQ: A Journal of Lesbian and Gay Studies* 11, no. 2 (2005): 176.

³¹¹ Amy Brandzel, *Against Citizenship: The Violence of the Normative* (Champaign: University of Illinois Press, 2016).

³¹² West, *Transforming Citizenships*, 33.

While heteronormativity continues to reveal itself in policies enacted across the United States, the U.S. system that grants LGBTI asylum may seem to exist in a space of acceptance and progress. However, the failure of this system to account for queer bodies and practices as well as its commitment to protecting immutable identities only makes space for certain people to gain asylum. Further, those granted asylum in this system must adhere to certain norms in their asylum interviews – proving themselves to be especially “gay” and especially persecuted. It is estimated that the vast majority of LGBTI asylum claimants are denied asylum. For Jaspir Puar, this is indicative of a homonationalist system that appears progressive and open to nonnormative identities and practices, but that ultimately one that uses the guise of progress and openness to regulate the citizenry. The more sinister piece of homonationalism exists in the way this guise of progress establishes a narrative that privileges Western understanding of sex and citizenship and constructs Eastern – especially Muslim – understandings of sex and citizenship as backward, threatening, and grounds for military intervention.

When I first found this training module I was optimistic that it might provide some way to facilitate a queering or upheaval of citizenship. What I found was an expanding of accepted sexual orientation/ identity categories in immigration law accompanied by fairly narrow definitions of categories. Immigration officers evaluating these types of cases have the power to exclude asylum seekers from the U.S. based on their interpretation of these definitions and their interpretation of the asylum seeker’s adherence to these categories. These findings can be disheartening – reminding us that not only does every inclusion create an exclusion, but that it may even expand the types of exclusions possible. Even in its efforts to expand/incorporate a greater number of subjects into the citizenry, legal discourse still upholds norms of citizenship

that – though less heteronormative than in years past – still results in exclusions and upholds the homonationalism of the United States.

4 DEPICTING LGBTI REFUGEE CASES: LOOKING AT QUEER ASYLUM

“The bodies and faces of refugees that flicker onto our television screens and the glossy refugee portraiture in news magazines and wall calendars constitute spectacles that preclude the “involved” narratives and historical or political details that originate among refugees. It becomes difficult to trace a connection between me/us – the consumers of images – and them – the sea of humanity.”

- Liisa Malkki³¹³

“You’re not a transsexual. You don’t look gay. How are you at risk?”

- Immigration officer to Jhuan Marrero

Ongoing efforts to represent the plight of refugees are necessary not only as part of the process of documenting international relations and marginalized lives, but also for defining relationships between refugees, citizens, and state powers. Refugee photographs constitute their own genre of photography. They share formal features – almost always depicting movements of suffering people, often blurring into a “sea of humanity” in which one face cannot be distinguished from the next, depict women or children if focused on individuals, display movement toward the camera, and feature boundaries like water or fences³¹⁴ Refugee photography circulates widely in news media following any large-scale movement of refugee populations. It alerts people across the world to the plight of a refugee population and to the changes imminent in our own cities as we prepare to take in the displaced. These photographs document tragedy, suffering, movement, and upheaval. Large-scale refugee crises, wars, and famines are often a focus of photojournalism.

When asked to think of a “refugee photograph,” most of us likely have an image readily available in our mind. But when asked to picture an LGBTI refugee, what do we see? What are

³¹³ Liisa H. Malkki, “Emissaries: Refugee, Humanitarianism, and Dehistoricization,” *Cultural Anthropology* 11, no. 3 (1996): 388.

³¹⁴ Ibid.

the features of LGBTI refugee images, and how and where might photographs of LGBTI asylum seekers fit within the genre of refugee photography? Unlike groups of mass movements of refugees, the scattered, disconnected cases of LGBTI asylum seekers become more difficult to depict. LGBTI asylees and refugees are largely left out of our collective mental picture of “refugees.” This occurs largely because the term refugee is more often associated with mass displacement following war or conflict, and LGBTI refugees more often migrate and travel alone to escape persecution targeting them as an individual. In comparison to large-scale refugee movements, LGBTI asylum seekers often struggle for visibility – both as individuals seeking to be read as legibly queer and persecuted in asylum hearing, and in making known the plight of this particular group of migrants.³¹⁵ Further, when their stories are made public, it can be difficult for viewers to understand photographs of LGBTI refugees as existing within the larger corpus of refugee photography. Yet, seeing LGBTI refugees is an important step toward a collective understanding of how they fit into a shifting social imaginary.

While photographs of large-scale refugee crises are prominent in Western media, LGBTI asylum seekers are rarely the focus of news stories or photographs. Indeed, most media coverage of LGBTI asylum does not seek to portray the plight of individual refugees in the United States. When LGBTI asylum is the focus of a particular story, photographs of asylum seekers themselves are rare. Most cases that are acknowledged receive a snippet or a brief mention in a larger story about LGBTI asylum in general. One of the most in-depth news articles on this issue – one that is listed as required reading in the RAIO training module – left all refugees anonymous and focused solely on the process of moving gay men from Iraq to safer refuge in

³¹⁵ Amy Shuman and Wendy Hesford explain, “the discourses of protection and the discourses of persecution are both complicit in rendering LGBTI individuals invisible and illegible.” Amy Shuman and Wendy Hesford, “*Getting Out: Political Asylum, Sexual Minorities, and Privileged Visibility*,” *Sexualities* 17, no. 8 (2014): 1030.

Western Europe.³¹⁶ State-sponsored discrimination of LGBTI people in Russia and Uganda, as well as the refugee exodus from Syria, has increased the numbers of LGBTI refugees arriving in the U.S. and the media coverage of this population from those nations.³¹⁷ Other recent articles list the names of several LGBTI refugees or provide brief biographies.³¹⁸ A common trope in news stories about LGBTI asylum is the display of a rainbow flag and shadowed faces. When there are photographs of individual LGBTI asylum seekers in news articles, they tend to look similar.³¹⁹ All of these examples highlight the ways in which individual LGBTI asylum seekers are treated differently than mass migrations of refugees following war or conflict.

Like stories tracing large-scale refugee crises, news stories about LGBTI asylum seekers still rely on photographs help to make visible the aftermath of persecution. Refugee photographs from the last fifty years share many features. The increase in LGBTI asylum cases since President Obama's 2011 declaration of support has led to increased publicity of LGBTI migrant claims and stories. The photographs included in LGBTI asylum stories may seem to function in the same way that refugee photographs function more generally. However, while both sets of

³¹⁶ Matt McAllester, "The Hunted," *New York Magazine* (October 4, 2009) <<http://nymag.com/news/features/59695/>>.

³¹⁷ "How Will Ugandan Gay Refugees be Received by U.S.?" *National Public Radio All Things Considered*, (February 24, 2014) <<http://www.npr.org/2014/02/24/282123664/how-will-ugandan-gay-refugees-be-received-by-u-s->>; Carl Schreck, "Russian Asylum Seekers to U.S. Spike in Wake of Anti-Gay Law," *Radio Free Europe* (October 2014); Kevin Ozbek, "Meet the LGBTI Refugees Who are Fleeing Syria for the U.S." *TIME* (September 29, 2015) <http://time.com/4048421/meet-the-lgbti-refugees-who-are-fleeing-syria-for-the-u-s/>.

³¹⁸ See: Henry Goldman, Susie Armitage, and J. Lester Feder, "We Asked 4 LGBTI Refugees About Why They Came to the U.S." *Buzzfeed* (August 5, 2014) <http://www.buzzfeed.com/henrygoldman/what-its-like-to-be-an-LGBTI-refugee-in-the-us#.nl9O1b95J>; Erwin de Leon, "What About LGBTI Refugees in the United States?" *Huffington Post* (June 20, 2014) http://www.huffingtonpost.com/erwin-de-leon/what-about-LGBTI-refugees-_b_5514698.html; Jacob Kushner, "Inside the Nightmares of Africa's LGBTI Refugees," *Huffington Post* (June 26, 2015) http://www.huffingtonpost.com/the-groundtruth-project/inside-the-nightmares-of-_b_7674502.html; Richard Gonzales, "Gays and Lesbians Seeking Asylum in U.S. May Find a Hard Road," *National Public Radio* (February 26, 2014) <http://www.npr.org/sections/parallels/2014/02/26/282568084/gays-and-lesbians-seeking-asylum-in-u-s-may-find-a-hard-road>.

³¹⁹ For reference, see the news images of LGBTI asylees and refugees in Chapter 3 of this dissertation.

photographs depict refugees, the relationship between them is not fully clear. In this chapter, I ask how photographs of LGBTI refugees fit within the larger genre of refugee photography, and how these photographs highlight challenges faced by LGBTI asylum seekers as they seek to appear worthy of citizenship. I argue that images of LGBTI asylum seekers both belong to the genre of refugee photography and concomitantly challenge understanding of what is meant by “refugee photography” through their construction of a different image of refugeeness. For this reason, images of LGBTI refugees have the potential to queer our collective understanding of what it means to be a refugee because they complicate the heteronormativity of typical refugee photographs. However, photographs of LGBTI asylum seekers highlight the struggle of rhetorical representation because they do not depict or call to mind suffering in the same way as *prima facie* refugee photographs. This means LGBTI asylum photographs fail to make visible the past tragedies that give the genre of refugee photographs a particular emotional weight.

To make this argument, I first discuss the scholarly literature that addresses the relationship between Western photojournalism and depictions of refugees. Next, I discuss my methodology, which is drawn from a public address approach to visual rhetoric. Following this, I read photographs of widespread refugee crises and photographs of people who have received asylum in the U.S. on the basis of sexual orientation or gender identity persecution – turning here to photographs of Alexandra Reyes, a transgender woman from Mexico, and Romulo Castro, a gay man from Brazil. The findings of this chapter contribute to an understanding of visual rhetoric and political imagining, what it means to be a refugee and a citizen, and the relationship between images of suffering and policy action.

4.1 Photojournalism and Refugee Photographs

Photojournalism has long been an important site of political and rhetorical representation. We look to photographs in media to help us understand the world around us – to represent groups of people, places, policies, and relationships that we do not have access to or that exist on a scale we could never fully encounter. Yet, as we look to images to represent certain pieces of the world, we remember that all representations are reductions – they only can show part of that which they purport to represent. As reductions, representations function as both reflections and deflections of reality.³²⁰ They show us part of some larger group and insist that they accurately stand in for some whole.³²¹ For Robert Asen, representation creates a “fundamental tension between absence and presence, between standing for something and embodying that something.”³²² In looking at photographs of suffering, of difference, of “others,” the subject is made present before us as spectators. John Lucaites implores us to consider how “‘seeing’ and ‘being seen’ are not simply metaphors for a representational process, but they actively and performatively constitute the very terms of our identities in a multitude of palpably visible ways.”³²³ As viewers, we are supposed to recognize that no image could fully depict what it represents; we are to recognize that an image can never speak for its represented subjects. In an effort to make sense of photographs, representation, and refugees, I discuss the features of photographs of suffering and human rights tragedies more broadly before addressing the ways photographs of refugees constitute their own genre of photography – looking here to the common tropes of refugee photographs and the purpose they serve in photojournalism. Next, I turn to the

³²⁰ Kenneth Burke, *A Grammar of Motives* (Berkeley: University of California Press, 1962), 59.

³²¹ See: Frank Lentricchia, *Criticism and Social Change* (Chicago: University of Chicago Press, 1983), 153.

³²² Robert Asen, *Visions of Poverty: Welfare Policy and Political Imagination* (East Lansing: Michigan State University Press, 2002), 13.

³²³ John Louis Lucaites, “Afterword: Border Optics,” in *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*, ed. D. Robert DeChaine (Tuscaloosa: University of Alabama Press, 2012), 228.

promises and pitfalls of photography as a means to create bonds between the subjects and spectators of refugee photography before finally explaining what we can gain from an analysis of refugee photography from the perspective of visual rhetoric.

4.1.1 *Looking at Suffering*

Plenty of concerns exist over the politics of representation,³²⁴ but ultimately, photographs in Western media are central to making sense of the relationship between nations, i.e., for the “production of a contemporary geopolitics.”³²⁵ Looking at suffering may serve as a necessary step in developing compassion for others.³²⁶ News articles that tell us stories about refugees and share their photographs do not hide their efforts to educate us about a group of people’s suffering.³²⁷ When we hear about suffering well beyond U.S. borders in a place we have never been, we may struggle to comprehend or even believe the stories we hear. News photographs of tragedy need to represent that tragedy in a way that compels a disparate, international audience to respond with compassion. And while photographs have the potential to index global violence,

³²⁴ See: Stuart Hall, “The Spectacle of the Other,” in *Discourse Theory and Practice: A Reader*, ed. Margaret Wetherell, Stephanie Taylor, and Simeon J. Yates (London: Sage, 2001), 324-344; Wendy S. Hesford and Wendy Kozol, eds. *Just Advocacy?: Women's Human Rights, Transnational Feminisms, and the Politics of Representation* (New Brunswick: Rutgers University Press, 2005).

³²⁵ David Campbell, “Geopolitics and Visuality: Sighting the Darfur Conflict” *Political Geography* 26, no. 1 (2007): 357-382.

³²⁶ Barbie Zelizer claims that a particular genre of photographs (photojournalism depicting possible, presumed, or certain death) provides a safe springboard for imagining what could have happened to the photographed subject and allowing oneself to experience the feelings that come with tragedy, and Christine Harold and Kevin DeLuca discuss how lynching images (those of Emmett Till specifically) in magazines created a visceral response that sits in the memory and allows viewers to understand ineffable inequalities and suffering. See Christine Harold and Kevin Michael DeLuca, “Behold the Corpse: Violent Images and the Case of Emmett Till,” *Rhetoric & Public Affairs* 8, no. 2 (2005): 265; Barbie Zelizer, *About to Die: How News Images Move the Public* (New York: Oxford, 2010), 8, 11.

³²⁷ Susana de-Andrés, Eloisa Nos-Aldas, and Agustín García-Matilla. “The Transformative Image. The Power of a Photograph for Social Change: The Death of Aylan/La imagen transformadora. El poder de cambio social de una fotografía: la muerte de Aylan.” *Comunicar* 24, no. 47 (2016): 29; Athanasia Batziou, *Picturing Immigration: Photojournalistic Representation of Immigrants in Greek and Spanish Press* (Bristol, UK: Intellect Books, 2011); Simon Faulkner, “Asylum Seekers: Imagined Geography and Visual Culture,” *Visual Culture in Britain* 4, no. 1 (2003).

there also exist concerns over how to represent another person's suffering without exploiting them, minimizing their suffering, or turning their suffering into spectacle. Photojournalistic images of war, famine, disease, and other bodily horrors may be viewed with pity, disdain, or fear – leading some to argue that we should limit publication of images of suffering.³²⁸ For Susie Linfield, not only should we view photographs of suffering, we *must*; Linfield warns that in looking, we have other responsibilities as well:

The suffering such photographs depict cannot, and should not be denied. But it does mean that we, the viewers, must look outside the frame to understand the complex realities out of which these photographs grew. Like human rights themselves, this expansive kind of vision is not particularly natural but, rather, is something we must consciously create.³²⁹

Linfield asks that instead of disparaging photography, we use the ambiguities of photographs as places to begin a process of discovery and dialogue.³³⁰ Wendy Hesford notes that photographs can haunt and that looking may not always compel people to do something about what they have seen. She suggests that we can transform the pitfalls of looking by treating witnessing as rhetorical and material and placing witnessing in part of an economy of affect.³³¹ One of the places where this witnessing is most needed is in the viewing of refugee photographs, which often depict masses of people suffering because of injustice and inhumanity somewhere in the world.

³²⁸ For example Susan Sontag argues in her book *On Photography* that to photograph something is to appropriate it, and that for most of the people in the world, photography is not a social rite; it is a tool of power. She revised this sentiment slightly in her 2003 book *Regarding the Pain of Others*, suggesting that there is one group of people who can look at another's suffering: "those who would do something to alleviate it...or those who could learn from it. The rest of us are voyeurs, whether or not we mean to be." For Sontag, if we view horror and merely feel disturbed, that is not enough. Even if we wish to take action to improve the life of the photographed subject, we should not look unless we are physically in a position to help those depicted. See: Susan Sontag, *On Photography* (New York, NY: Picador, 1997); Susan Sontag, *Regarding the Pain of Others* (New York: Picador Press, 2003), 40.

³²⁹ Susie Linfield, *The Cruel Radiance: Photography and Political Violence* (University of Chicago Press, 2010), 51.

³³⁰ Linfield, *Cruel Radiance*, 29-30.

³³¹ Wendy Hesford, *Spectacular Rhetorics: Human Rights Visions, Recognitions, Feminisms*, (Durham, NC: Duke University Press, 2011), 57.

4.1.2 *Looking at Refugees*

The genre of refugee photographs shares with other photographs of tragedies the ability to alert audiences to the distant suffering of others. Refugee photographs constitute their own genre of photographs, one that exists on a line between informing and objectifying.³³² At times it can be difficult to understand the magnitude of an atrocity on the other side of the world, and it can be difficult for a photograph to accurately represent the horrors of such atrocities. When looking at a photograph of refugees, we are reminded of, or in many cases, informed about, persecution that we could not see or understand otherwise. For Anthony Downey, refugee photographs rely on a paradoxical visible invisibility – one that alerts us to a moment that lives on only as trauma but that can be represented visually.³³³ Photographs of many different refugee groups have been credited with stirring compassion and acting as an impetus for international involvement in refugee issues. Or, as Liisa Malkki argues, “Pictures of refugees are now a key vehicle in the elaboration of a transnational social imagination of refugeeeness.”³³⁴ Refugee photographs index violence and persecution for people in all parts of the world and contribute to a constructed refugeeeness in the social imaginary.

In this process of representing refugees through photographs, certain patterns emerge that obscure the agency of photographed subjects in ways different than do other human rights images. Liisa Malkki, for example, harbors concern for the inability of refugee photographs to humanize individual struggles, and for the tropes that most commonly appear in photographs of

³³² For example, Anna Szörényi analyzes coffee table books of refugee photographs and considers the ways in which dimensions of privilege shape the relationship between the spectators and subjects of these photographs. Anna Szörényi, “The Images Speak for Themselves? Reading Refugee Coffee-Table Books,” *Visual Studies* 21, no. 1 (2006): 28.

³³³ Downey, “Thresholds of a Coming Community,” 40-41.

³³⁴ Liisa H. Malkki, “Emissaries: Refugee, Humanitarianism, and Dehistoricization,” *Cultural Anthropology* 11, no. 3 (1996): 386.

refugees. She claims that most photographs of refugees fit in one of two categories: those depicting refugees “as a miserable ‘sea of humanity,’” or those that focus primarily on women and children.³³⁵ These types of photographs, Malkki argues, create a false understanding of a supposedly ideal refugee whose struggle is “pure,” and who is most visibly in need of rescue; helplessness becomes the most important feature of a photographed refugee. Or, as Lynda Mannik explains, “Refugees are observed. Their agency as observers is rarely recognized,” and the effect of this genre of photography is one that ultimately silences refugees and erases the necessary contingency for compassionate human rights action.³³⁶ Mannik is further concerned with the problematic nature of the phrase “refugee crisis” because it implies that refugees themselves constitute the crisis, and this implication is exacerbated by the lack of narratives and testimonies of individual refugees in news media. She notes, “Visual images of refugees also devalue their suffering by hiding, commodifying and sensationalizing individualized and actual experiences of suffering. Invisibility is damning, but misrepresentation can be just as damning.”³³⁷ The term “refugee” itself implies a lack of safety or shelter, or as Louisa Edgerly found in her analysis of Hurricane Katrina discourse, the term “refugee” carries a connotative meaning that people under that label are somehow not full citizens in the United States.³³⁸ To be a refugee, one must be in need, and while this construction of refugees might seem to indicate that they are passive, it is a necessary part of the asylum process. If one proves that they are unable to live in their home nation due to fear of violence or persecution, they may gain access to

³³⁵ Malkki, “Emissaries,” 388.

³³⁶ Lynda Mannik, *Photography, Memory, and Refugee Identity: The Voyage of the SS Walnut, 1948* (Vancouver: UBC Press, 2013), 42.

³³⁷ Lynda Mannik, “Public and Private Photographs of Refugees: The Problem of Representation” *Visual Studies* 27, no. 3 (2012): 264.

³³⁸ Louisa Edgerly, “Difference and Political Legitimacy: Speakers’ Construction of ‘Citizen’ and ‘Refugee’ Personae in Talk about Hurricane Katrina,” *Western Journal of Communication*, 75, no. 3 (2011): 305.

asylum in the United States. However, in gaining acceptance as a refugee, they may be seen as subordinate to birthright citizens. For Alice Szczepanikova, there is essentialism in depictions of refugees as “objects of assistance” who are utterly without agency. And, for Anna Szörényi, that essentialism exists in the construction of refugeeness as “an intrinsic state of being, rather than the effect of particular and changeable historical and political process.”³³⁹ Given Szörényi’s perspective, we must also consider how humanity and individual agency could be restored through a different type of photography and a different type of journalism.

Beyond their indexical characteristics, refugee photographs ask for more than our recognition: they ask us to make space in our own nations and communities for those who are displaced.³⁴⁰ Where photographs of other natural and man-made disasters might serve a similar indexical function, and they may be used to solicit donations or other support for people affected, refugee photographs signify a change to our own lives. They remind us about the temporariness of our own living situations and the necessity of caring for others.³⁴¹ In a 2009 essay, art theorist Anthony Downey stated that photographs of refugees remind us that they “...are not liminal figures that exist in a hinterland of invisibility; on the contrary, they are symbols of a ‘coming community’ that is based on exclusion.”³⁴² Downey finds refugee photographs to be especially powerful because they alert us as viewers to the potential for any

³³⁹ Alice Szczepanikova, “Performing Refugeeness in the Czech Republic: Gendered Depoliticisation through NGO Assistance,” *Gender, Place, and Culture* 17, no. 4 (2010): 461; Anna Szörényi, “Reading Refugee Coffee-Table Books,” 28.

³⁴⁰ For example, in 2015 there were multiple news articles that displayed photographs of Syrian refugees and noted that these images revealed the need for Western countries to take in those refugees. Titles included “Look at these Photos Before You Say We Can’t Take in Syrian Refugees” (*Huffington Post*), “We Can, and Should, Do More to Help Syrian Refugees” (*Other Worlds*), and “Heartbreaking Photo of a Drowned Toddler Embodies the World’s Failure in Syria” (*Business Insider*), and “Syria’s Refugees are Human Beings: Why the U.S. Has a Moral Duty to Help Them” (*Salon*).

³⁴¹ Anthony Downey, “Zones of Indistinction: Giorgio Agamben’s ‘Bare Life’ and the ‘Politics of Aesthetics” *Third Text* 23, no. 2 (2009): 123.

³⁴² Anthony Downey, “Thresholds of a Coming Community: Photography and Human Rights,” *Aperture* 194 (Spring 2009): 36.

of us to belong to the same, transitional community. They both alert us to the changes in our own community, as people who will live among newly resettled refugees, and they remind us of the fallibility of the seemingly sovereign nations we inhabit. Refugee photographs are important because they capture something *provisional* – they tend to reveal the liminality of refugee status and can even make plain human rights violations. Any new community of refugees and citizens exists because of an earlier, potentially violent exclusion that we did not witness but now know exists.

4.1.3 Creating Identification Between Spectator and Subject

The process of engaging with photographs has the potential to lead us to more compassionately look at photographs of others and to make sense of our own, temporary and tenuous place within the world. Looking at images of refugees holds the potential to create civic bonds that can enable resettlement and ease the transition of displaced people. For Ariella Azoulay, there is a way to look at photographs of others' suffering that can mitigate the potential violence of spectatorship. She calls for a type of looking that she refers to as a civil gaze.³⁴³ For Azoulay, the civil gaze is the product of a civil imagination – an exercised, ongoing capacity to understand how we are all governed and we are all equally subject to state violence.³⁴⁴ The civil gaze allows us to view photographs of victims of violence without pity or disdain for the photograph's subject. A civil gaze provides a space to encounter the image with an open, non-judgmental understanding of our relationship to the photograph and the photographed. Because photography is a set of relations and not a stable, objective display, through a civil intention with

³⁴³ Ariella Azoulay, *The Civil Contract of Photography* (New York: Zone Books, 2012), 14.

³⁴⁴ Ariella Azoulay, *Civil Imagination: A Political Ontology of Photography* (New York: Verso, 2012).

photography, the act of witnessing itself can operate as a mode of citizenship.³⁴⁵ For Azoulay, photography is the medium that allows noncitizens to make visible the ways in which they are violated. It “marks the beginning of a demand to become citizens, even when that demand is hidden behind a demand for the protection of human rights.”³⁴⁶ Like Azoulay, T.J. Demos argues that photography depicting migrants and refugees can help make sense of the ways in which “none fully belong, that all are displaced in one way or another, and that we all share in this condition of immeasurability and opacity.”³⁴⁷ Likewise, Anthony Downey addresses how looking at images of refugees and others existing in zones of indistinction serve as a marker of a coming community of rightless individuals to which any of us could one day belong.³⁴⁸ Recognizing this can lead us to a new understanding of citizenship that accounts for the way in which we are all subject to the dominance of the sovereign. Thus, photographs of refugees function in a particular way to articulate the place of a group of noncitizens in a citizenry, and in so doing, require us to look with compassion, if not with a truly civil gaze.³⁴⁹

Photography allows us to make present “what is now absent: the moment which no longer exists as anything but trauma.”³⁵⁰ Photographs have the potential to help us become aware of the failures of citizenship to protect people from atrocities and remind us to look at images in a way that engages these failures. Those who seek refuge in the United States as a protection from persecution targeting LGBTI people similarly warrant representation. But given the ethical

³⁴⁵ Emily Dianne Cram, “Angie Was Our Sister: Witnessing the Trans-Formation of Disgust in the Citizenry of Photography” *Quarterly Journal of Speech* 98, no. 4 (2012): 415.

³⁴⁶ Azoulay, *Civil Contract of Photography*, 123-124.

³⁴⁷ T.J. Demos, *The Migrant Image: The Art and Politics of Documentary During Global Crisis* (Durham: Duke University Press, 2013), 249-250.

³⁴⁸ Downey, “Zones of Indistinction,” 123.

³⁴⁹ See Robert Hariman, “Cultivating Compassion as a Way of Seeing,” *Communication and Critical/Cultural Studies* 6, no. 2 (2009): 199-203; Birgitta Höijer, “The Discourse of Global Compassion: The Audience and Media Reporting of Human Suffering,” *Media Culture & Society* 26, no. 4 (2004): 513-531.

³⁵⁰ Downey, “Thresholds of a Coming Community,” 40-41.

challenges of depicting suffering, how might these representations look? How might they differ from the most common refugee photographs? And, how might they make present a threat that is individually targeted at a time some point in the past? To make sense of these questions, I briefly address my methodology before turning first to photographs that depict current, large-scale refugee crises and then looking to photographs of LGBTI refugees. This reading contributes to the conversation about refugee photography by acknowledging the ways refugees exist not only as mass movements of displaced people, but also as small-scale, individual movements that demand attention. By approaching these images through visual rhetorical methodologies, we gain insight into the arguments that get circulated through photojournalistic images of refugees more broadly and LGBTI refugees specifically.

4.1.4 Visual Rhetoric and Refugee Photography

To make sense of how photographs of LGBTI refugees fit within and/or rupture the genre of refugee photography, I approach the images through a perspective of visual rhetoric as Public Address. A Public Address approach, as described by Brian Ott and Greg Dickinson, considers the way images argue or persuade – it approaches visual rhetoric as a way of “doing.”³⁵¹ Consideration of how a photograph functions as an ideograph,³⁵² an enthymeme,³⁵³ or an exigence³⁵⁴ all deploy this type of methodology because they draw on principles and practices from traditional rhetorical analyses of public address scholarship. A methodology rooted in a

³⁵¹ Brian Ott and Greg Dickinson, “Visual Rhetoric and/as Critical Pedagogy” in *The SAGE Handbook of Rhetorical Studies*, ed. Andrea Lunsford, Kirt H. Wilson, and Rosa A. Eberly (Thousand Oaks, CA: SAGE, 2008), 401.

³⁵² Dana L. Cloud, “‘To Veil the Threat of terror’: Afghan Women and the <Clash of Civilizations> in the Imagery of the U.S. War on Terrorism,” *Quarterly Journal of Speech* 90, no. 3 (2004): 285-306; Janis L. Edwards and Carol K. Winkler, “Representative Form and the Visual Ideograph: The Iwo Jima Image in Editorial Cartoons,” *Quarterly Journal of Speech* 83, no. 3 (1997): 289-310.

³⁵³ Cara A. Finnegan, “The Naturalistic Enthymeme and Visual Argument: Photographic Representation in the ‘Skull Controversy,’” *Argumentation and Advocacy* 37, no. 3 (2001): 133-149.

³⁵⁴ Cori E. Dauber, “The Shots Seen ’Round the World: The Impact of the Images of Mogadishu on American Military Operations,” *Rhetoric & Public Affairs* 4, no. 4 (2001): 653-687.

Public Address perspective allows close reading of a photograph's elements and also helps make sense of the arguments conveyed by or within that image. This approach is especially helpful for a study of images that seeks to make sense of the civic dimensions of images. For example, Hariman and Lucaites consider the ways images appeal through a common spectatorship, and Finnegan addresses how images might foster particular forms of civic engagement.³⁵⁵ This provides a way to think about the national and international context in which this image is produced, as well as a way to think about how this photograph might reflect our own understanding of citizenship. A close reading of photographs through a public address methodology considers the individual elements of the photographs – its colors, layout, framing, central focus, subjects, shadows, and the like, while attempting to understand what argument these elements combine to make. In this chapter, I look less at how those images may persuade us of something, and I focus more on how the genre of refugee photographs functions as a set of images, drawing here from rhetoric scholarship that combines visual rhetoric and genre analysis.³⁵⁶ The roots of this type of analysis can be seen in Michael Osborn's essay in which he claims that rhetorical depiction is less evident in a single moment of discourse, and more often "is a controlled gestalt, a cumulative impact."³⁵⁷ Turning to the genre of refugee photography and reading recent photographs depicting refugees, we gain a better sense of how the elements of

³⁵⁵ Ott and Dickinson, "Visual Rhetoric and/as Critical Pedagogy," 395.

³⁵⁶ See: J. Cherie Strachan, and Kathleen E. Kendall, "Political Candidates' Convention Films: Finding the Perfect Image – An Overview of Political Image Making," in *Defining Visual Rhetorics*, ed. Charles A. Hill and Marguerite Helmers (Mahwah, NJ: Lawrence Erlbaum Associates, 2004), 135-154; Sonja Foss, "Framing the Study of Visual Rhetoric: Toward a Transformation of Rhetorical Theory," in *Defining Visual Rhetorics*, ed. Charles A. Hill and Marguerite Helmers, (Mahwah, NJ: Lawrence Erlbaum Associates, 2004), 303-313.

³⁵⁷ Michael Osborn, "Rhetorical Depiction," in *Form, Genre, and the Study of Political Discourse*, ed. Herbert W. Simons and Aram A. Aghazarian (Columbia: University of South Carolina Press, 1986), 79-107.

individual photographs accumulate to construct the understanding of refugees in the United States.

4.2 Reading Refugee Photography

Photographs of refugees have been a mainstay in media from news to art, surfacing en masse every few years and drawing our collective attention to groups of people whose lives are at an unimaginable intersection.³⁵⁸ In 2015 alone, more than fifteen professional photographic essays were published in print and online sources depicting the refugee struggle. With titles like “21 Photos that Capture the Heartbreak of Europe’s Refugee Crisis,” “War, Home, and Hope,” and “The Flight and Plight of Refugees in Europe,” these essays prominently feature the movement of large groups of migrants and life within refugee camps. In year-end lists of photographs that defined the year 2015, most contained at least one photograph related to the Syrian refugee crisis. In a *Reading the Pictures* blog post, rhetorician Robert Hariman presents a photograph of a large number of refugees lying in a plastic structure. He states, “You don’t have to see too many of the many photographs of the European refugee crisis before they all begin to blend together. Even those that may seem moderately distinctive have a generic quality to them.”³⁵⁹ Although Hariman’s larger argument addresses the decontextualization of cultural images within globalization, his discussion of the images as lacking distinctive qualities is important for thinking about images of refugees more generally.

Of the thousands of photographs taken and the hundreds published, the most widely circulated of these depicts masses of people – groups so large they often fade into infinity in the background of a photograph. While Liisa Malkki noted how “sea of humanity” photographs

³⁵⁸ Szörényi, “Reading Refugee Coffee-Table Books,” 24-41.

³⁵⁹ Robert Hariman, “Photographing the Refugee Crisis: The Significance of Less Context” *Reading the Pictures*, November 3, 2015, para 1 <<http://www.readingthepictures.org/2015/11/generic-refugees/>>

dominate, these photographs featuring massive groups of migrants have also been labeled a “blur of humanity,”³⁶⁰ a “vast and throbbing mass,”³⁶¹ an “anonymous corporeality,”³⁶² and “massed throngs of silent victims.”³⁶³ Malkki further notes that the most widely viewed photographs of individual refugees primarily focus on children, women, and facial expressions of extreme anguish or pain, and almost all of the photographs feature movement – often towards the camera instead of away. Because most of these photographs are taken and produced for Western media outlets (Reuters and the AP have produced the most photographs of the Syrian refugee crisis), the photographs seem to literally show crowds of people moving toward (or encroaching on) Western nations.

Of the “huddled mass” or “sea of humanity” photographs, one of the most widely circulated in recent years depicts Syrian and Palestinian refugees walking through a bombed out area of Damascus in the Yarmouk refugee camp. The photograph, taken by the United Nations Relief and Works Agency for Palestine Refugees in the Near East on January 31, 2014, was the focus of stories on a variety of news sites,³⁶⁴ labeled as “The image that brought Yarmouk to the

³⁶⁰ David Lamb, “Threading Through a Surreal World on the Way to Tragedy in Rwanda,” *Los Angeles Times*, June 14, 1994, H5.

³⁶¹ Pamela Warrick, “Tipper Gore’s Mission of Mercy,” *Los Angeles Times*, August 15, 1994, E1.

³⁶² Allen Feldman, “On Cultural Anesthesia: From Desert Storm to Rodney King” *American Ethnologist* 21 (1994): 407.

³⁶³ Mannik, “Public and Private Photographs of Refugees,” 273.

³⁶⁴ Zack Bouchamp, “Why Syrians are Risking Everything to Reach Europe, Explained in 9 Devastating Photos,” *VOX*, September 8, 2015, <http://www.vox.com/2015/9/8/9277127/syrian-refugees-photos>; Dana Khraiche and Nafeesa Syeed, “Jihadist Cash Lures Syrian War Refugees as Aid Dwindles,” *Bloomberg Business*, April 5, 2015, <http://www.bloomberg.com/news/articles/2015-04-05/jihadist-cash-lures-syria-refugees-as-international-aid-dwindles>; “ISIL Re-Enters Yarmouk Refugee Camp in Syria’s Capital,” *Aljazeera*, April 5, 2015, <http://www.aljazeera.com/news/2015/04/isil-enters-yarmouk-refugee-camp-syria-capital-150403124537528.html>; Jack Moore, “ISIS Storm Palestinian Yarmouk Refugee Camp in Syrian Capital,” *Newsweek*, April 1, 2015, <http://europe.newsweek.com/isis-storm-palestinian-yarmouk-refugee-camp-syrian-capital-318586?rx=us>.

world's attention" by the *BBC*,³⁶⁵ and given a clickbait title in the *Huffington Post* proclaiming, "This one photo will show you just how terrible the Syrian refugee crisis is."³⁶⁶ This photograph is jarring because of the immeasurable amount of people packed into the image's frame and the desolate ruins that tower above them on both sides.



Figure 4: Yarmouk Refugee Camp, photo by UNRWA, 2014

This photograph draws attention to the plight of Syrian refugees by shocking us with the enormity of suffering. Despite the widespread attention this photograph garnered, it is visually similar to many of the images that appear with searches for "refugee photographs," "refugee crisis," or "refugee." This photograph and others like it appear to be almost in grayscale; the lack of color or sun casts shadows over what appears to be a dirty and inhospitable place. These mass migration images have become commonplace in representations of refugee movements from Syria and beyond, whether the throngs of people fade into the background in the sea, the desert, or road. The effect is at once unsettling and overwhelming. Lynda Mannik claims that photographs of mass movements of refugees "make it very difficult for media viewers to find

³⁶⁵ "Profile: Yarmouk Palestinian Refugee Camp," *BBC*, April 7, 2015, <http://www.bbc.com/news/world-middle-east-20773651>.

³⁶⁶ Nick Robins-Early, "This One Photo Will Show You Just How Terrible the Syrian Refugee Crisis is," *The Huffington Post*, February 26, 2014, http://www.huffingtonpost.com/2014/02/26/syria-refugee-photo_n_4858814.html.

any emotional connection, thus they emphasize the ‘them/us’ distinctions common to discriminating media repertoires.”³⁶⁷ Images of mass refugee migration draw attention to the scale of the refugee population leaving Syria. By presenting refugees in massive throngs, however, these photographs risk failing to elicit compassion for individual migrants. The overwhelming nature of these massive crowds fading to infinity draws our eyes to the group – specifically the infinity point in the background – not individual faces.

In addition to these “sea of humanity” photographs, the second most common refugee photographs feature women and children, according to Malkki. As Birgitta Höijer notes, women and children are “ideal victims” for circulated images of suffering.³⁶⁸ With most of these photographs there is little known about the photographed subjects – they become anonymous ciphers for the refugee struggle. An exception to this trope of anonymous, helpless women and children can be seen in the photograph of three-year-old Syrian Aylan Kurdi whose lifeless body was photographed on the shore of the Mediterranean Sea in Turkey where he drowned in the process of fleeing Syria. The photograph of Kurdi inspired an outpouring of compassion not seen as a response to other photographs – even those depicting death.³⁶⁹ Kurdi’s story is particularly compassion-inducing, and it has served as an exigence for an international response to the current refugee crisis in ways other photographs have not. Apart from the photograph of Kurdi,

³⁶⁷ Mannik, “Public and Private Photographs of Refugees,” 264.

³⁶⁸ Höijer, “The Discourse of Global Compassion,” 516.

³⁶⁹ Anne Barnard and Karam Shoumali, “Image of Drowned Syrian, Aylan Kurdi, 3, Brings Migrant Crisis Into Focus,” *New York Times*, September 3, 2015, <http://www.nytimes.com/2015/09/04/world/europe/syria-boy-drowning.html>; Justin Wm. Moyer, “Aylan’s Story: How Desperation Left a 3-Year-Old Boy Washed up on a Turkish Beach,” *The Washington Post*, September 3, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/09/03/a-desperate-refugee-family-a-capsized-boat-and-3-year-old-dead-on-a-beach-in-turkey/>; Olivier Laurent, “What the Image of Aylan Kurdi Says About the Power of Photography,” *TIME*, September 4, 2015, <http://time.com/4022765/aylan-kurdi-photo/>; Adam Withnall, “Aylan Kurdi’s Story: How a Small Syrian Child Came to be Washed up on a Beach,” *Independent (UK)*, September 3, 2015, <http://www.independent.co.uk/news/world/europe/aylan-kurdi-s-story-how-a-small-syrian-child-came-to-be-washed-up-on-a-beach-in-turkey-10484588.html>.

photographs of people whose faces show pain and fear remain anonymous. Many depict women and children, but few stories report their names or narratives.

While Malkki's observation of the most common subjects of refugee photography holds in recent refugee photojournalism, my survey of refugee photography led me to observe several other visual features common to most available refugee photographs. Two elements appear in combination in most of the refugee photographs I surveyed: expressions of pain or suffering and depicted or implied movement (that contributes to a sense of temporariness). Many photographs depict movement toward the camera and feature a frenzied, chaotic scene that illustrates the urgency with which refugees must move. These often depict a group of people running onto a beach; the splashing water and strained faces indicating the effort exerted in the movement.



Figure 5: Refugees in Greece, photo by Vadim Ghirda, Associated Press, 2016

In this photograph from March 2016, we see two men helping a woman through a river near Idomeni, Greece while the people following them extend into the distance. The photograph's caption tells us that these people are attempting to get to Macedonia through this river in order to avoid a border control fence they would encounter by land. They move toward the camera, and the group fades into an infinity point at the back (right) of the photograph. We

see huddled families carrying their possessions through the murky waters of the river. While this photograph highlights frenzied, chaotic movement, others – like the Yarmouk photograph – feature what looks more like a slow, massive drudge toward some unknown camp. Some of these photographs show people moving one another through or over some type of boundary. Railroad tracks, fences, and temporary housing imbue the images with an unsettled feeling and indicate the lack of permanence indicative of the refugee experience. Fences themselves are prominent, with groups of people looking through a fence or passing children through barbed wire fences. These fence and boundary images help to depict refugees as in need of assistance, as they mostly appear to be fenced in or trapped. In combination with movement, these photographs of chaos and frenzy depict a population in need; yet, they concomitantly depict a population encroaching on the camera in a way that can be perceived as threatening.

The chaotic movement *toward* depicted in refugee photographs alert us to a coming change in our own communities, and the desolation or pain depicted serves to remind us of why this change is necessary. These types of photographs might obscure, make anonymous, or blur the particular features and identities of individual refugees, but they also help us to see tragedy we could not have imagined. The movement, the pain, and the desolation depicted in refugee photographs alert us to horrors that we cannot see, but whose violent consequences persist. Refugee photographs do double-work – they alert us to the presence of past (or ongoing) violence so horrific it pushes masses of people from their homes, and they also alert us to the changes this violence will bring to our own communities. They invoke our emotional responses to aid us in accepting this change.

4.3 Depicting Suffering of LGBTI Refugees

Like photographs depicting large-scale refugee crises, images of LGBTI asylum need to depict a specific struggle and must somehow indicate the presence of a past violation. The movement and resettlement of LGBTI refugees is lacking the representation of larger refugee resettlement for many reasons. Most LGBTI refugees in the United States arrived on their own or with little other support – sometimes entering the country illegally. In developing an argument for how an asylum seeker possesses a “well-founded fear,” the asylee must discuss the sources of that fear, and the court must determine whether those stories of fear are authentic. In large-scale refugee crises, the burden of proof of abuse is far lower than in individual asylum cases for those fleeing individually targeted persecution, as most are considered *prima facie* refugees – eliminating the need for individual asylum interviews and assessments.³⁷⁰ Those who flee persecution targeting people of a particular sexual orientation or identity cannot always carry with them evidence of their abuse or of their accepted or perceived orientation. Instead, their evidence is primarily anecdotal. Even if they were to reveal scars or wounds from an injury, they would still need to convince immigration officials adjudicating their claims that those injuries were tied to abuse they received and that they were abused because of their orientation or identity. LGBTI asylum seekers are tasked with making their identities and their persecution visible within the immigration system. Rachel Lewis claims:

Unlike other refugee claimants who are not compelled to perform a visible identity in the country to which they migrate, lesbian and gay asylum applicants frequently are expected to conform to neoliberal narratives of sexual citizenship grounded in visibility politics,

³⁷⁰ In the case of mass movements of refugees, individual asylum evaluations are impossible, and the population of migrants is granted refugee status upon their arrival in a new country. These refugees are considered *prima facie* refugees, unlike those who seek asylum on the basis of domestic violence, sexual orientation persecution, or individual fear of targeted persecution at the hands of the state. See Bonaventure Rutinwa, “Prima facie Status and Refugee Protection,” *UNHCR Evaluation and Policy Analysis Unit*, October 2002, <http://www.unhcr.org/3db9636c4.pdf>.

consumption, and an identity in the public sphere in order to be considered worthy candidates for asylum.³⁷¹

Not only must they prove their sexual orientation throughout the asylum process, but LGBTI migrants must also prove that their actual or perceived sexual orientation made them a target of violent abuse. Without news stories of violence in their home region or war/terror, their bodies become the evidence and their ethos bears part of the burden for proving the evidence connects to the crime. Therefore, any claims require affective displays of fear and pain, while storytelling and memories themselves become evidence.

Since the opening of U.S. borders to LGBTI people facing persecution, two stories of individual asylum have garnered thorough coverage from national and local media – that of Alexandra Reyes and Romulo Castro. Although more than 20 years have passed since *The Matter of Toboso-Alfonso* created a path to asylum for LGBTI individuals, very few of the several hundred cases heard have received any media attention, and almost none have been the sole focus of articles that were accompanied by photographs.³⁷² Reyes and Castro offer the best opportunity to consider the position of LGBTI refugee photography within the larger genre of refugee photography because they are two of the only LGBTI refugees in the United States to have been the subject of multiple news photographs and multiple stories. And although more photographs of them have been circulated than other refugees, their images share many

³⁷¹ Rachel Lewis, “Deportable Subjects: Lesbians and Political Asylum,” *Feminist Formations* 25, no. 2 (2013): 179.

³⁷² Most often, there are narratives and photographs addressing multiple refugees or asylum seekers combined in one story about LGBTI asylum. See: Associated Press, “Gay Russians Face Uncertain Wait for Refugee Status in US” *The Guardian*, November 29, 2014, <http://www.theguardian.com/world/2014/nov/29/gay-russians-refugee-status-us-asylum-seekers>; Henry Goldman, Susie Armitage, and J. Lester Feder, “We Asked 4 LGBTI Refugees About Why They Came to the U.S.,” *Buzzfeed*, August 5, 2014, https://www.buzzfeed.com/henrygoldman/what-its-like-to-be-an-lgbt-refugee-in-the-us?utm_term=.ji0yR1za8#.woK814gR0; Joel Millman, “The Battle for Gay Asylum: Why Sexual Minorities Have an Inside Track to a U.S. Green Card,” *Wall Street Journal*, June 13, 2014, <http://www.wsj.com/articles/why-sexual-minorities-have-an-inside-track-to-a-u-s-green-card-1402676258>.

similarities with other LGBTI refugee photographs depicted throughout this dissertation and available in the news stories cited in footnotes 6 and 60.

Alexandra Reyes is a transgender woman who fled Mexico and was granted asylum in 2010. Reyes faced scrutiny as reactions to her case frequently mentioned gay-friendly resorts in Mexico – her home nation.³⁷³ Articles about Reyes’s case discuss the deplorable violence she faced at the hands of her own family while living at home in Cenotillo, Mexico. Her case highlights the perceived visibility of queer identity and the privileging of this visibility in a legal setting. Second, Romulo Castro’s case was brought to light through extensive profiles in national publications like the *New York Times* and the *Huffington Post*.³⁷⁴ Like Reyes, Castro faced scrutiny for his asylum claim because he was emigrating from Brazil – a nation known to have popular gay pride parades in its major cities. Much of the discussion surrounding Castro’s case repeatedly addressed visual elements of his claim – what he wore, what was provided as visual evidence of his sexuality and persecution, and his own affective displays throughout the trial.

The process of LGBTI asylum relies on stories and images, especially photographs, as evidence in multiple ways: they serve as evidence of the threat faced in their home nation, they serve as evidence of the pain and uncertainty faced in the asylum process, and, in many cases, they serve as evidence of the asylees’ sexual orientation. Photographs also help construct the social imaginary of a population; they tell us what LGBTI asylum looks like. In the discourse of LGBTI asylum hearings, visual evidence is used both in court and is circulated in stories about

³⁷³ Some immigration officials suggested that progress for gay rights in Mexico City indicates increased tolerance for all LGBTI people in Mexico. This perspective fails to consider the ways one region of Mexico might be more progressive than another, and it fails to make sense of how acceptance of some LGBTI people does not necessarily lead to acceptance of all. Felisa Cardona, “Mexican Transgender Asylum Seeker Allowed to Stay in U.S.,” *The Denver Post*, September 11, 2010, http://www.denverpost.com/news/ci_16560073.

³⁷⁴ Dan Bilefsky, “Gays Seeking Asylum in U.S. Encounter a New Hurdle,” *The New York Times*, January 28, 2011, http://www.nytimes.com/2011/01/29/nyregion/29asylum.html?pagewanted=all&_r=0.

the trial. There exists a fear surrounding LGBTI asylum for some members of the government and the public that people will gain citizenship in the United States through this clause dishonestly. And while there have been a few reported cases of fabricated LGBTI asylum cases,³⁷⁵ this fear mostly serves to illustrate the skepticism with which most LGBTI migrants are treated. Their word is not enough – the courts require evidence: evidence of persecution, evidence of minoritized identity or sexual orientation, and evidence of a hostile environment toward those identities and orientations in another nation. The few falsified LGBTI migrant narratives have increased the value placed on visual evidence in these cases. It is not enough to tell a sad story. Asylum for LGBTI migrants requires visual depiction of sexual orientation and/or persecution.

Visual representations of refugees generalize in ways that obscure the particulars of the LGBTI migrant experience. In order to trace the construction of sexual orientation asylum-seekers, and understand what concept of citizenship is promulgated through discussion of these cases, I look to the media circulated images from two different LGBTI asylum cases. The images of queer asylum depart from most photojournalistic images of suffering in multiple ways. They do not capture the moment of violence or persecution, but rather, they depict the asylees in their U.S. residences. They require meta-images to provide insight into the asylees life prior to and after migrating to the United States. These images and the stories they accompany become a starting point for conversations about LGBTI refugees in the United States. Further, the content

³⁷⁵ Although the debate over falsified LGBTI asylum claims is more prevalent in the U.K., (See: P Gonzalvés, “Fake Gay Refugees,” *Radio Netherlands Worldwide*, August 19, 2013, <http://www.rnw.nl/africa/article/fake-gay-refugees>), there have been cases of falsified histories in the U.S.: Maryclare Dale, “Russian Emigrants in Pa. Charged with Asylum Fraud,” *USA Today*, July 29, 2008, http://usatoday30.usatoday.com/news/nation/2008-07-29-677355707_x.htm; Sam Dolnick, “Immigrants May Be Fed False Stories to Bolster Asylum Pleas,” *New York Times*, July 11, 2011, <http://www.nytimes.com/2011/07/12/nyregion/immigrants-may-be-fed-false-stories-to-bolster-asylum-pleas.html>.

made available to the public by the Bureau of Immigration Affairs looks different than transcripts produced from criminal cases. At most, the public has access to a case brief authored by the judge in the hearing – a document that “tends to erase the polyvocality of the actual events of the trial.”³⁷⁶ This means that only through engagement with media coverage of LGBTI asylum hearings does the public form their understanding of this population. First, I discuss Alexandra Reyes – the story of her asylum, the photographs that accompanied news coverage of her story, and what her photographs tell us about depicting queer asylum. Next, I turn to Romulo Castro’s story of fleeing persecution, and I read photographs of him that accompanied a long profile in *The New York Times*. Following this, I address the stories of both asylees together in order to make sense of what these narratives and images tell us about the political imagining of citizenship gained through LGBTI asylum.

4.3.1 Alexandra Reyes

Alexandra Reyes was born to a traditional Mayan family in Cenotillo, Mexico – a small city on the Yucatan Peninsula. Named Carlos at birth and raised as a boy, Alexandra began wearing her sister’s clothing and living as a girl when she was eight years old. Her father reportedly beat her for wearing female clothes and her aunt attempted to murder her, claiming Alexandra was not welcome in the family if she lived life as a woman. She reports a life filled with abuse and threats of violence that were reported but not attended to by the local law enforcement. At the age of 22, Reyes crossed the border into the U.S. with the help of a smuggler. She walked for several days until reaching Colorado, where a friend told her she would be safe. Reyes lived, undocumented, in Colorado for several years, but she faced deportation in 2009 after encountering legal troubles. Reyes had been unable to pay a cab fare

³⁷⁶ Juana María Rodríguez, *Queer Latinidad: Identity Practices, Discursive Spaces* (New York: New York University Press, 2003), 85.

that a friend had promised to pay. When she arrived at the cab company's headquarters a week later and attempted to pay the fare, the company called the police, and the police called immigration and customs enforcement. Reyes paid restitution to the cab company, but she spent the next eleven months in immigration custody, detained with men, because she had not undergone sex reassignment surgery. Attorney Bryan Large of the Rocky Mountain Immigrant Advocacy Network took on her case pro bono to help fight her deportation.

Following a hearing in late 2010, the Board of Immigration Appeals withheld her deportation, and Reyes was granted asylum. The court acknowledged that she documented a well-founded fear of abuse in her home nation. Her lawyer, Large, argued that even walking down the street could be dangerous for Reyes, and she faced threats of sexual assault if she were forced to return to Mexico. In arguing the case, Large provided as evidence the story of Enrique Villegas, a gay Mexican immigrant who was denied asylum in Canada and was murdered after his deportation back to Mexico.³⁷⁷ The immigration judge in the case ruled that Reyes would likely face continued persecution in Mexico, and determined that if she were deported, the Mexican government would not be likely to protect her from abuse.

Reyes's lawyer Large noted that people in the United States sometimes struggle to imagine Mexico as a place hostile to those identifying as lesbian, gay, bisexual, or transgender, given that Mexico City legalized same-sex marriages in 2009 and that many coastal resorts are famous for hosting same-sex weddings and LGBTI events.³⁷⁸ Large anticipated that Reyes's case

³⁷⁷ Kilian Melloy, "Rejected Gay Refugee Dies in Mexico City," *Edge Media Network* (Boston), July 10, 2007, <http://boston.edgemedianetwork.com/news///35272>.

³⁷⁸ Further complicating the understanding of the Mexican LGBTI population is the southwestern Mexico Zapotec culture in which a third category of gender exists for men who live lives as women. See: Alfredo Mirandé, "Hombres Mujeres: An Indigenous Third Gender," *Men and Masculinities* (2015): 1-27; Alfredo Mirandé, "The Muxes of Juchitán: A Preliminary Look at Transgender Identity and Acceptance," *California Western International Law Journal*, 42, no. 2 (2011): 1-32; Analisa Taylor,

might face scrutiny by people in the U.S. whose understanding of Mexico is one largely based on knowledge of the capital city and costal vacation regions. To counter this conflation of Mexican regions and cultures, Large needed to make salient the threat of violence faced by many sexual minorities living in different regions of the country. Transgender men and women have faced violence, particularly at the U.S.-Mexico border.³⁷⁹ A 2005 report by the National Committee to Prevent Discrimination found that half of transgender Mexicans say they have been the targets of violence because they were transgender.³⁸⁰ A 2015 report from a European human rights group counted nearly 200 murders of transgender people in Mexico since 2008, making it the second most deadly nation to be transgendered (after Brazil).³⁸¹ Thus, despite progressive views in its federal district, many regions of Mexico remain largely unsafe for transgender people.

Reyes's detention in 2009 failed to garner any media attention. Her success in obtaining asylum, however, brought attention from local and national media. Reyes was granted asylum in a time between the revisions to international human rights law (including Reno's accompanying statements from 1994) and the official declaration of support from the Obama Administration in 2011. This meant that for the general audience of the *Denver Post*, *Huffington Post*, and other

"Malinche and Matriarchal Utopia: Gendered Visions of Indigeneity in Mexico," *Signs: Journal Of Women In Culture & Society* 31, no. 3 (2006): 815-840.

³⁷⁹ Héctor Domínguez-Ruvalcaba, & Ignacio Corona, Ed. *Gender Violence at the U.S.-Mexico Border: Media Representation and Public Response*, (Tucson: University of Arizona Press, 2010);

³⁸⁰ Daniel Hertz, "Mexico's LGBTI Community Faces Violence Despite Major Gains in Civil Rights," *Latin America News Dispatch*, August 4, 2011, <http://latindispatch.com/2011/08/04/mexicos-LGBTI-community-faces-violence-despite-major-gains-in-civil-rights/>.

³⁸¹ Of note –the United States is the nation with the third highest number of transgender murders, with just over 100 deaths between 2008 and 2015. Further, in many other nations transgender individuals are largely invisible, and abuse of transgender people is not documented. Transgender Europe, "Alarming figures: over 1,700 trans people killed in the last 7 years," IDAHOT TMM Press Release. <http://www.transrespect-transphobia.org/uploads/downloads/2015/TMM-IDAHOT2015/TMM-PR-IDAHOT2015-en.pdf>; Adrian Gonzalez, "Alarming Number of Transgender People Killed in the Last Seven Years," *Human Rights Campaign Blog*, May 12, 2015, <http://www.hrc.org/blog/entry/alarming-number-of-transgender-people-killed-worldwide-in-the-last-seven-ye>.

news outlets on both sides of the political spectrum, Reyes was their introduction to the possibility of gaining asylum on the basis of sexual orientation persecution abroad.

As noted in the earlier chapter on *The Matter of Toboso-Alfonso*, access to asylum in the United States on the basis of sexual orientation persecution requires proof of a well-founded fear of persecution and proof of membership in a particular social group. Reyes and her lawyer did not sense that her identity as a transgender woman was ever in question. Although there were comments on news stories about her case that questioned the existence of transgender people more generally, and several comments that accused Reyes of dressing like a woman to get asylum, the majority of the stories and comments did not question the veracity of her trans identity. She did not have to work to align herself as having “membership in a particular social group.” For Reyes, the question of whether LGBTI asylum in the U.S. would make sense for her was predicated on her ability to prove her well-founded fear. The majority of negative comments directed at Reyes’s case were concerned with her appearance and a general concern about transgender people in the United States – regardless of citizen or refugee status. Further, many commenters who found her unsuitable for citizenship were not using “well-founded fear” as the threshold for asylum. Instead, they based their claims on general/perceived knowledge about Mexico, the U.S., and migrants. For example, one commenter on the *Denver Post* article wrote, “I don’t particularly have a problem with her staying in the US, as she may have experienced local injustice. But ‘asylum’ is generally reserved for institutionalized injustice by the nation.”³⁸² It can be assumed that an immigration judge has a better grasp on the asylum person than this commenter, but the comment reflects the commonly held notion that asylum is reserved only for those whose suffering is most legible to a global audience.

³⁸² Ex-Pat Ex-Lawyer, November 9, 2010 (10:06 a.m.), comment on Felisa Cardona, “Mexican Transgender Asylum Seeker Allowed to Stay in U.S.,” *The Denver Post*, September 11, 2010, http://www.denverpost.com/news/ci_16560073.

The news coverage of Reyes's case frequently included one or more of a series of photographs, taken by Kathryn Scott Osler for the *Denver Post* and available through stock photography source Getty Images. There are three photographs available as news stock images available to accompany publication of Reyes's story. All are credited to Osler and were taken in 2010. Articles about her case have most widely published the close-up image of Reyes in which she appears to be crying (if any image accompanies her story at all). Another photograph depicts Reyes speaking with her lawyer present. Reyes is in the foreground turned so that her right side faces the camera, and her lawyer in the background is out of focus but facing the camera. They sit in what appears to be her lawyer's office, with framed certificates on the wall behind Reyes and a shelf of large books behind Large. Reyes appears to be speaking and looking upward to someone out of the frame. In the third photograph, Reyes is depicted smiling outside of a house. She leans on a porch pillar on the left side of the frame. Her hands are folded in front of her, and she wears a black blazer over a dark shirt. This is the only image where Reyes is smiling and looking directly at the camera. The smiling image was not used in any article about her case, but it remains available through Getty as a stock image.

4.3.1.1 Photograph of Reyes Crying

Almost all news coverage of Reyes' case, including the widely referenced *Denver Post* article, published the photograph in which she appears to be crying. This photograph is framed as a close-up portrait, but Reyes is turning slightly away from the camera. Her shoulders are mostly square to the camera, but her face is turned to the right and her eyes look even further to the right. She is wearing black, and her long, dark hair blends in with her black blazer. She is holding a tissue near her face, and her heavily lined eyes are glossy and red, showing signs of recent tears.



Figure 6: Alexandra Reyes 1 by Kathryn Scott Osler, 2010

The caption of the image on the *Denver Post* website reads: “Transgender woman Alexandra Reyes cries as she recalls abuse she suffered in Mexico. An immigration judge granted Reyes a form of asylum that allows her to stay in the U.S.”³⁸³ The caption on the stock photograph, available on Getty images provides more detail:

Alexandra Reyes, a Mexican transgender woman, was granted asylum by an immigration judge and can stay in the United States because she was subjected to violence in Mexico, including at the hand of her own family members. Reyes begins to cry as she remembers her father using a branch from a tree to beat her that was lined with sharp spikes.³⁸⁴

While the *Denver Post* caption references abuse in Mexico, the Getty caption describes the nature of that abuse. It reveals that a member of her own family attacked her with a weapon. It is unclear from either caption whether this abuse occurred frequently or only on one occasion. Both captions note that the memory of the abuse was enough to move Reyes to tears.

³⁸³ Cardona, *Denver Post*.

³⁸⁴ Kathryn Scott Osler, “Alexandra Reyes,” November 8, 2010. *Getty*, <http://www.gettyimages.com/detail/news-photo/alexandra-reyes-a-mexican-transgender-woman-was-granted-news-photo/161099890>.

The picture is mostly dark, with Reyes' dark skin, dark hair, dark eyes, dark eyeliner and artificial dark eyebrows set against the stark white of the tissue she uses to dry her tears. We see sadness and the possibility of past suffering, but the close frame of her face and hands keep us from making sense of the surrounding context. Without a caption, we could not know what made her cry, though her sullen expression indicates that she is crying out of sadness or loss instead of out of joy or excitement. There is nothing in the photograph itself that would lead a viewer to connect this image to the corpus of refugee photographs or to immediately make sense of Reyes as a refugee.

Of the three photographs, only the one in which Reyes cries begins to present the visible/invisible paradox discussed by Downey. The crying alerts us to a grievance or problem, but the nature of the violation remains unclear. Reyes could be crying for multiple reasons, and it is only through engagement with the image's caption that we understand her tears were motivated by her memory of her abuse. We see sadness in the crying photograph, but we cannot know what caused that sadness without first engaging with Reyes's story. The invisible trauma experienced by Reyes is obscured in these photographs. In refugee images, the violence itself is rarely depicted – only alluded to – but the fear and anxiety of migration is often made plain. In the photographs of Reyes, her migration and efforts to find a home in the U.S. are in the past. There are tears in Reyes' eyes, but she has a clean tissue with which to dry her tears, and the caption tells us she is in her lawyer's office, reminding us that she has legal representation.

With the exception of the photograph of Aylan Kurdi, most refugee photographs show people whose individual needs and concerns are abstracted in an effort to make known the struggle of large refugee populations. The photograph of Reyes is a departure from mass images of refugees not only because she is alone, but also because her photographs do not show the

transition she faced to migrate to the United States. There are no photographs of her crossing the border, or photographs of the violence she faced in her previous home. Instead, the migration we witness is one of a legal system that regulates migrant bodies and has the ability to grant asylum to some. In the photograph of Reyes crying and in the photograph of her in her lawyer's office we are reminded that asylum is not immediately conferred upon refugees when they cross the border. Instead, they are asylum *seekers*. They exist in a liminal space between refugee and citizen, and it is only through the legal granting of asylum that they can become citizens.

4.3.1.2 *Photograph of Reyes Smiling*

The photograph of Reyes smiling and standing on the porch is a visual departure not only from the other photographs of Reyes, but also from depictions of refugees more broadly. It can be viewed as the third photograph in the set of three – depicting the happy ending to a narrative about Reyes's challenges. It may also be viewed as an attempt to humanize a story that is unlike most stories about refugees. In her studies of photographs of refugees taken by other refugees, Lynda Mannik explains:

Images of smiling faces and eyes looking directly into the camera do not suggest that these individuals are afraid, feeling seasick, hungry, sad or anxious...Instead, these images emphasize...that refugees have families, have friends, belong, hope for a bright future, and are human.³⁸⁵

In presenting her research on refugees' own photographs, Mannik reports having to defend posed, smiling photographs of refugees because audiences consider those photographs to be counterproductive to refugee-friendly politics. When refugees do not look like they are suffering, audiences fail to understand the difficulties they face – or fear that others will not understand. In this way, the smiling photograph of Reyes illustrates the challenge of depicting refugees without requiring them to look like a helpless victim.

³⁸⁵ Mannik, "Public and Private Photographs of Refugees," 269.



Figure 7: Alexandra Reyes 3 by Kathryn Scott Osler, 2010

The photograph of Reyes smiling is framed much differently than the close-up image of her crying. Here, Reyes takes up only half of the frame. She is still wearing black, and has the same dark eyebrows and makeup, but the sun is shining on her hand and reflecting off of her smiling cheeks in a way that literally lightens her and also lightens the photograph's mood – even if the photo had been framed as closely as the one in which she cried. The right half of the image depicts a clean porch with sunlight streaking across it. There is a potted plant in the background, and the white porch is contrasted with a red door on the far right side of the photograph. This image depicts a clean, safe, and happy world. Without the caption or any knowledge of Reyes' case, this could be a stock image for an advertisement about home loans or the biography photograph for a realtor. It is utterly different than the refugee photographs most often circulated in the media.

This image is not only unrecognizable as a “refugee photograph,” it is unrecognizable as evidence of past suffering. In the context of the two other photographs, it creates closure on a three-photograph narrative. It provides the happy ending, the “after” for the “before”

photographs of fear and sadness. The pose and smile truncate the moment of photography, making it difficult to imagine what preceded and followed the taking of the photograph. It is possibly because of this incongruity that the smiling photograph was never run in any article about her story and trial. It is the only one of the three photographs that can only be found as a stock photograph – not as an image running alongside any news story about her case. As evidence of Reyes’s legal struggle, the photograph of her smiling does little. Focusing on asylees as individuals may humanize in ways that “sea of humanity” refugee photographs fail to do, but because the photographed subjects stand or sit in permanent structures, wear clean clothes, and are surrounded by personal artifacts (framed photographs, potted plants, art) their time of transition, movement, and fear are utterly abstracted. Unlike other refugee photographs that meet the “visible invisible” paradox suggested by Downey, these photographs do not help to make visible the suffering that led to their moment of movement or transition to the United States. We see the final parts of their migration in which sadness and nostalgia still exist, but they are not in transition in a way that shows the anxiety and fear in persecution and forced migration.

Groups that resettle LGBTI refugees cite the challenges of finding homes and communities for this population that will not subject them to the same types of abuse that caused them to flee their homeland in the first place. LGBTI asylum seekers are both alone and othered – their sexual orientation adds to the disenfranchisement experienced by refugees generally, and their lack of familial support is both reason for their exodus and argument for their asylum. Reyes noted that she had been a victim of violence at the hands of her own family members. For Reyes, the marked identity is more complicated. She wears a woman’s blazer, wears her hair long, and wears black eyeliner and other makeup on her face. Her face, however, maintains masculine features, and her eyebrows have been removed and are drawn on with a thick black

liner. She is not especially legible according to norms of female or male identity, but instead marks a queer space in between. Turning to Romulo Castro, we see similarities between photographs of him and photographs of Reyes. After discussing his photographs, I discuss their shared features and what these features tell us about representing LGBTI asylum.

4.3.2 *Romulo Castro*

Born into a staunchly Catholic military family in Brazil in the late 1970s, Romulo Castro spent most of his early life hiding his sexual orientation. Nevertheless, he reports a youth filled with violence directed at him because he acted gay. Castro stated, “I was persecuted for being fruity, a boy-girl, a fatso, a faggot – I felt like a monster.”³⁸⁶ In Brazil, Castro was raped by his uncle at the age of twelve, sexually and physically abused by two police officers after leaving a gay club as an adult, and the victim of violent persecution from his peers for most of his life.³⁸⁷ Castro initially came to the United States on a tourist visa in 2000 following the abuse he suffered in Brazil. He overstayed his visa by eight years, but was able to get a hearing with immigration officials in 2009. Following his hearing, he was granted asylum. Castro was the feature of a *New York Times* profile and video interview in addition to several LGBTI blogs and web news sites that covered his story.

Like Reyes, Castro faced skepticism from immigration officials who associated his home nation with outlandish festivals and gay pride parades. Castro was told that he would not only have to provide evidence of his own abuse, but also of widespread LGBTI persecution in Brazil. Prior to his asylum hearing his immigration officer instructed him to gather evidence to show that he risked persecution if he were to stay in Brazil. His file included articles detailing the

³⁸⁶ Dan Bilefsky, “Gays Seeking Asylum in U.S. Encounter a New Hurdle,” *The New York Times*, January 29, 2011: A19, para 3.

³⁸⁷ Ibid.

persecution of gays in Brazil and a letter from his psychiatrist that confirmed his antidepressant use and treatment for post-traumatic stress disorder related to the police officer abuse. He also presented an affidavit written by his brother in Brazil that implored the U.S. to keep Castro “forever away” from his family.³⁸⁸ In addition to the evidence of his past persecution, Castro reports being advised by his immigration officer that flaunting his sexual orientation would help him to best make his case for orientation-based asylum. He was encouraged to dress as his drag queen alter-ego “Fidela Castro” – an alter-ego who had never made an appearance in Brazil but who had appeared in several U.S. pride parades and drag shows.³⁸⁹ Although Castro declined his immigration officer’s proposal to dress as Fidela, he did wear a pink, v-neck shirt and pink eye shadow to his hearing. Pictures of him dressed as Fidela were used as evidence in his trial.

The irony of being told to perform the very identity that caused him to be persecuted in Brazil was not lost on Castro. He stated that despite the abuse and suffering he faced in Brazil for being gay, in the United States, “being gay was my salvation. So I knew I had to put on the performance of my life.”³⁹⁰ Castro’s lawyer reportedly told him to “queen it up” – especially because he had fled from a nation known for its massive pride parades.³⁹¹ Lori Adams, a Human Rights First lawyer who serves as an advisor to people seeking asylum based on sexual orientation-based persecution, noted that in many of these types of asylum trials, immigration officials must be able to visually verify the refugee’s homosexuality. Just as commentary around Reyes’s case questioned the true threat of violence in her home nation, and whether she really needed to be in the United States for her own safety, Castro had to prove that he was gay enough

³⁸⁸ Ibid., para 26.

³⁸⁹ Ibid., para 1.

³⁹⁰ Ibid., para 3.

³⁹¹ Melanie Nathan, “Gay, Lesbian, Transgender Asylum Seekers in USA Given a Raw Deal,” *Lez Get Real*, January 29, 2011, <http://lezgetreal.com/2011/01/gay-lesbian-transgender-asylum-seekers-in-usa-given-a-raw-deal/>, para 4-5.

to be a target of violence, and that if he returned to Brazil he would face persecution for being gay.

During his trial, Castro was reported to have cried several times. The articles available do not state whether Castro was encouraged to cry, but Castro himself noted how stressful the trial itself was. He stated that he was shaking and crying because he was afraid he would be deported.³⁹² In Juana Rodriguez' analysis of the 1994 *In re Tenorio* asylum trial (which shares many similarities with Castro's trial), she reports that Tenório became emotional when the judge began to recount the specific details of the most violent abuse he suffered while in Brazil. When the judge asked questions about a time he was brutally beaten after leaving a dance club, Tenório was forced "to both hear and repeat the epitaphs hurled against him."³⁹³ For both Tenório and Castro, the trial forced them to not only perform their sexual orientation, but to embody the affect of queer citizenship. As Jose Cisneros argues, there is an inescapable link between affect, performance, and citizenship that, when embodied, serves to constitute identifications and motivate people to belief or action.³⁹⁴ These performances can make emotions present in a set of cases, and they can serve as some mark of authenticity for refugees working to prove themselves as credible and worthy of citizenship. The embodied affect of the performance allowed both Tenório and Castro access to citizenship that is contradictory to traditionally masculinized (and heterosexual) notions of citizenship.

The *New York Times* story about Castro features a brief (two minute and forty second) video documenting his life in the United States. The video, produced by Dan Bilefsky and Ben Solomon, repeats much of the same content as the *New York Times* article, but it warrants

³⁹² Bilefsky, A19, para 25.

³⁹³ Rodríguez, *Queer Latinidad*, 93.

³⁹⁴ Josue David Cisneros, "Looking 'Illegal': Affect, Rhetoric, and Performativity in Arizona's Senate Bill 1070," in *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*, ed. D. Robert DeChaine (Tuscaloosa, AL: University of Alabama Press, 2012), 133, 137.

inclusion here through its footage of photographs that helped to document Castro's sexual orientation in court, as well as videos of Castro performing in drag. As the video opens, the camera pans over Castro's right shoulder to focus on a stack of photographs in his hands. It zooms in on Fidela Castro in a short black wig and a black, purple and red dress, in front of a rainbow flag on a parade float. The next minute of the film switches between the setting of Castro's apartment, where he is wearing t-shirt with the words "Legalize Gay" on the chest showing photographs to the cameraperson, and alternatively, to footage of him walking down the city street and speaking with the *New York Times* interviewer. All of the photographs Castro holds in this scene depict him in some sort of drag. In addition to the pride parade float photograph, there is a framed 8x11 photograph of Castro as Fidela in a black wig and red dress, one of Castro in make-up and a dress without a wig, and another of him wearing a blue dress and black bouffant wig performing with other drag queens in front of the Gay Men's Chorus of New York City.

In the photograph that accompanies the article, Castro sits solemnly on the couch, holding the framed photograph of Fidela, looking down at a point between the camera and the photograph in his hands. Behind him, there is another photograph of himself as Fidela in drag. Here, he also wears a "Legalize Gay" t-shirt, but it is in colors different from the one he wears in the video. The orchid color of this t-shirt is more traditionally feminine than the dark blue shirt he wears in the short documentary. He also wears fingerless black and red striped gloves. Castro is marked as a member of a sexual minority in this meta-photograph. He is both depicted in drag and shown wearing a "Legalize Gay" shirt, which literally labels him as gay.



Figure 8: Romulo Castro by Marcus Yam for the *New York Times*, 2008

The photograph is dark and shadow-filled, with Castro sitting in the middle third of the photograph, surrounded by shadows on either side. He does not look directly at the camera, but instead down, making what appears to be a pensive or possibly sad expression. The image itself is very still. It appears to be posed rather than candid, and the dark shadows and Castro's downturned expression bring an air of sadness to the image. In the picture he holds, the frame is too wide to determine his expression as Fidela, but the photograph in the background is cut closer, showing Fidela smiling in the shadow over his shoulder.

Refugee photographs are typically indexical. The photographs from the Yarmouk camp, the image of Aylan Kurdi's body, and the pictures of the families moving through the river have potential to make us aware of suffering we had ignored or not recognized. These images also function as an exigence. They call us to recognize others' suffering and implore us to consider what we can do to help. In the case of refugees, this typically means that we must open our borders and cities to a population seeking resettlement. Photographs like those of Reyes and Castro are technically refugee photographs in the sense that they depict people who were once or

are currently refugees. The sadness in these photographs still calls viewers to recognize suffering, and they alert viewers to a change in their community – just a different type of change than a large-scale refugee resettlement might create. If the photographs of LGBTI refugees function as an exigence, it is less directed at calling on viewers to end some type of suffering and more directed at calling on viewers to recognize the existence of and need for LGBTI asylum.

Unlike most other refugee photographs, Reyes and Castro are primarily depicted alone. There is a portrait-like quality to the photographs – especially the one of Castro sitting in his living room and the one of Reyes standing on her porch. In the moments of chaos, suffering, and transition depicted in most refugee photographs, the focus of photographs of smaller groups of people is primarily on family units. Women holding children and men passing children over fences or onto rocky beaches feature prominently. By focusing on families, these images present the coming community of refugees as one that is tied to the heterosexual family unit. In contrast, Reyes and Castro are both alone and marked as queer. Alienated from their own families, LGBTI asylees are left to find their own citizenship - highlighting one of the ways in which LGBTI asylum itself contributes to a paradox of citizenship.

Although both the article and video discuss the challenges of needing to prove sexual orientation for access to legal protection, the video and article photographs cannot fully depict these challenges, so they instead resort to showing all of the ways in which Castro adheres to the accepted behavior of a gay man in the United States. He sits in a room with large rainbow flags on the windows and walls, the camera zooms in on his “Legalize Gay” t-shirt multiple times, and the series of photographs of him in drag are a feature of the short film. The last lines of the video acknowledge this effort to traffic in gay imagery, as Castro states: “It is a very very hard and is a very intimidating process. It always come to your mind that, you know, am I gay enough? Am I

going to show them that yes, I'm really gay?"³⁹⁵ The video frequently lingers on photographs of Castro in drag, and Castro reports that his lawyers encouraged him to dress in drag.

Castro notes in the video that he did not begin performing in drag until several years after he arrived in the United States. The repeated reference to his drag career, however, becomes a marker of his lack of adherence to traditional gender norms. Perhaps in an effort to simplify the complicated relationship between biology, sexual orientation, and gender identity, the argument for how men can most effectively obtain asylum for sexual orientation persecution defaults to arguments where a gay man is able to show that he is like a woman. The attention to Castro's performances in drag indicates that for people in the United States, a man in female drag is particularly queer – it indicates a divorce from hypermasculinity that is most understandable as something "gay." And yet, counter to masculine ideals of citizenship, Castro's claim to citizenship is only accepted if he can prove himself to be less masculine. The attention to drag and the conflict over femininity and masculinity in LGBTI asylum cases highlights the problems with institutional reinforcement of binary notions of gender and sexuality.

The photographs of Reyes and Castro share many features. Not only are they (as individuals) the focus of these portraits, but their surroundings also carry a permanence not seen in other refugee photographs. Reyes and Castro are depicted in or near homes or offices. They are not shown in transition, and there is no implied temporariness to their surroundings. Their faces show expressions of sadness but are not contorted in pain, anxiety, or fear. In addition to the requirement for both Castro and Reyes to appear in a way counter to some unspecified, heterosexual norm, both of their cases featured affective displays that helped the courts to categorize them in a certain way. The most commonly published photograph of Reyes shows her

³⁹⁵ Ben Solomon and Dan Bilefsky, "Gay and Seeking Asylum," *New York Times Video*, January 29, 2011, <http://www.nytimes.com/video/nyregion/1248069596127/gay-and-seeking-asylum.html>, 2:19.

crying; Castro chokes up in his video and acknowledges that he cried during his asylum hearing. This display of emotion can serve double duty – it can be read as authentic fear of persecution or pain over past abuse and it can register both people as more feminine (which, in these cases, translates as queer).³⁹⁶ Crying may allow both Reyes and Castro to appear as needing U.S. support and possibly shows their fear of returning to their home nation, but the crying in their photographs looks different than the expressions of pain and suffering in photographs of refugees fleeing Syria.

Whereas the crying and sadness in the photographs helps to reinforce the idea that these refugees struggled or faced pain, the smiling in the other photographs reinforces the narrative that refugees struggles can be solved through migration to the United States. As Berlant explains, migrants are desirable for the U.S. because they desire America. The smiling photographs help show another way in which discourses of LGBTI asylum uphold a homonationalism. The struggling, queer, asylum seeker is “saved” through their acceptance into the United States. Reyes on the porch and Romulo in drag illustrate how U.S. citizenship becomes the source of happiness for LGBTI asylum seekers who, once in the United States can be disciplined into upholding homonationalism through their espousal of pro-American sentiments and embodiment of American identities. This Americentrism is revealed through photographs of them enjoying rural, domestic life that is what most in the U.S. have come to understand as queer: Castro, in drag – or quotidian – Reyes on her porch.

Photographs of LGBTI asylum seekers and refugees inherently fit within the larger distinct genre of refugee photography. But while refugee photographs tend to feature the mass movement of migrants, family units, frenzied and chaotic scenes, and the outdoors or other

³⁹⁶ Judith Halberstam discusses the trope of transgender people crying in film, claiming it speaks to the “tragedy in and around the transgender figure.” Judith Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* (New York: New York University Press, 2005), 83-92.

temporary space, photographs of LGBTI refugees and asylees focus on individuals standing or sitting, in a safe, calm, and permanent space. Both sets of images show affective displays of sadness or related emotions, but LGBTI photographs lack the fear, faces contorted in pain, and anxiety prominent in pictures of other refugees. Refugee photographs feature transition and temporariness, where LGBTI refugee photographs most often show people who have reached their destination – both in their physical location and their place in the asylum process. Yet, in presenting queer, calm, individuals in living rooms, porches, and offices, photographs of LGBTI migrants help to partially rupture understanding of what is meant by “refugee photography.” Instead of limiting refugee status in the collective imaginary to only include masses of people displaced because of war or conflict, the photographs of LGBTI refugees expand the idea of what a refugee can look like or be. These photographs acknowledge that refugees are not just helpless, anonymous masses of people moving toward the camera and our communities. In helping to depict people not typically or easily marked as refugees, however, LGBTI migrants may invoke reactions that see them as excludable for failing to be visibly in need of refuge. Sexual orientation and gender identity are so far removed from most refugee photographs that the ways in which Reyes and Castro are visually depicted as queer may also seem to mark them as different from other refugees. This could be seen as a disadvantage to a comprehensive understanding of refugeeness, or it could help to expand refugeeness to account for queer bodies and alter the standing of refugees within the civic imaginary.

4.4 Queering the Genre of Refugee Photography

In its early stages, this dissertation project purported that cases of LGBTI asylum might hold the potential to queer citizenship. While the analysis of the precedent-setting case and the current training materials for immigration officers has indicated that a queered citizenship will

not be an outcome of the institutional responses to LGBTI asylum cases, the analysis of images of LGBTI asylum has suggested potential for queering in another space – the genre of refugee photography. Photographs of LGBTI asylum seekers and refugees both exist within and rupture the genre of refugee photography. Technically, a photograph of an LGBTI asylum seeker or refugee *is* a refugee photograph, yet in depicting individuals, far from the moment of migration, in permanent structures, and with evidence of a queer sexual orientation or gender identity, they are not recognizable as such. These photographs serve as reminders that there is no universal refugee experience. And although they are not immediately recognizable as “refugee photographs,” images of LGBTI refugees alert us to the ways in which we might be engaging with photographs of large-scale refugee migrations in a way that is less than civil, and encourage us to think about all refugee photographs as evidence of the ways we are all governed and have the potential to be displaced or to incorporate one another into our new and changing communities.

Both sets of images depict people who have been so persecuted that they must leave their homeland. But only those who are able to be an individual in the U.S. apart from a mass of other migrants can truly be *happy*. It is possible that images of mass movements of refugees highlight problems with photographs of individual LGBTI asylum seekers more than photographs of individual LGBTI asylum seekers highlight problems with images of mass movements of refugees. Together they alert us to a common media narrative in which migrants in the East are suffering, they lack individual agency, and they will continue to suffer until they are settled in permanent structures in the West. The photograph of Reyes smiling and the photographs of Castro smiling in drag function to show the United States as a place where queer refugees can be happy and free. This idea that migrants can only smile in the West reinforces homonationalism

as it attempts to emphasize disparities in happiness and other resources between the East and West.

4.5 Conclusions: Refugee Photographs and Creating the Queer Citizen

In the rare instance that a specific LGBTI asylum case receives media attention, the stories are often accompanied by images of the asylees themselves and real or simulated evidence from the case. Comparing images of LGBTI migrant citizenship reveals the ways shifts in legal understanding of citizenship alter our cultural understandings of citizenship in ways different than traditional refugee photographs. They alert us to the possibility that our collective definitions of “refugee” may need expansion from the categories of people who are fleeing widespread, institutional violence, and it reminds us that sexual orientation and gender identity continue to be targeted in a way that might require asylum as an alternative to living in one’s home. These images and their surrounding discourse help build the political imagining of LGBTI refugees and asylees in the U.S., and in so doing, shift or construct anew our understanding of citizenship.

Photographs function as part of a civic imaginary. Through photojournalistic images of others, we can better understand others’ and our own citizenship. Efforts to depict global atrocities and widespread migration bring about a set of questions concerning how to best represent widespread, disparate tragedies and how, as spectators, we should (or should not) look at those tragedies. The images of LGBTI asylees accompanying news stories about sexual orientation persecution/asylum are important because they contribute to the collective imagining of this population. Seeing others is important for social and political action; the images we have of others are carried with us and impact our understanding of citizenship (discursively and visually), which in turn informs policy. Imagining is not merely a transmission of information. It

emerges through intersubjective relations and creates a new public – it is both constitutive and collective.³⁹⁷ For Asen, times of public controversy unsettle collective imaginaries – they call imaginaries into question and lead members of a group to reconsider the foundation of their beliefs.

By looking at photographs of others, we define and contextualize our own place in the world. Photography is crucial to the larger process by which we imagine what it means to become, and to be, a citizen. Widely circulated photographs can constitute new or altered understandings of one's own citizenship. In Danielle Alan's book *Talking With Strangers: Anxieties of Citizenship Since Brown vs. Board of Education*, she argues that photographs depicting the mobs that confronted young students entering white schools inspired a "psychic transformation of the citizenry" in which Americans had to confront the meaning of their citizenship in that time and place.³⁹⁸ For Robert Hariman and John Lucaites, this process of contextualization reaffirms a collective American citizen identity; our citizenship is defined through common spectatorship. As we encounter images of violence, we see ourselves in relation to but abstracted from the perpetrators of that violence.³⁹⁹ Hariman and Lucaites are particularly interested in how iconic images reveal the cultural rules that proscribe citizenship in different contexts. Their insights help show how the process of imagining oneself as part of a public or citizenry can be structured through shared images. In sharing photographs we come to see what types of citizenship are valued. Cara Finnegan, for example, has demonstrated this relationship over the course of U.S. history. She addresses how portraits of prominent individuals "served as

³⁹⁷ Asen, "Imagining," 349-350.

³⁹⁸ Danielle Alan, *Talking With Strangers: Anxieties of Citizenship Since Brown vs. Board of Education* (Chicago: University of Chicago Press, 2004), 3. See Also: Victoria J. Gallagher and Kenneth S. Zagacki, "Visibility and Rhetoric: Epiphanies and Transformations in the *Life* Photographs of the Selma Marches of 1965," *Rhetoric Society Quarterly* 37, no. 2 (2007): 113-135.

³⁹⁹ Robert Hariman and John Lucaites *No Caption Needed: Iconic Photographs, Public Culture, and Liberal Democracy* (Chicago: University of Chicago Press, 2011).

a way of educating the masses about what it meant to be a virtuous citizen,” in the nineteenth century⁴⁰⁰ how visual arts became “the form of communication closest to a model of ideal citizenship” in the New Deal era,⁴⁰¹ and has traced the iconoclasm in our public sphere theory that privileges certain modes of vision over others.⁴⁰² Through visual images – particularly through photographs – we calibrate our own understanding about good citizenship.⁴⁰³ Broadly speaking, photography tells us who we are.

In creating identification, however, photographs also alert us to differences; they make us aware of “others” and divisions.⁴⁰⁴ John Lucaites addresses the power dynamic inherent in photography, noting, “As civic performance, citizenship relies upon one’s capacity as both agent and spectator, enacting the demands of civic life for the benefit of others to witness or observe—if not judge, while also viewing the world through the eyes of the citizen.”⁴⁰⁵ Refugee photographs are especially susceptible to judgment of power differences and to concerns over objectification. It cannot be guaranteed that only viewers who will keep these ideas about privilege and power in mind will encounter photographs of suffering. Making sense of how photographs of LGBTI refugees belong in and trouble the genre of refugee photography more

⁴⁰⁰ Cara Finnegan, “Recognizing Lincoln: Image Vernaculars in Nineteenth-Century Visual Culture” *Rhetoric & Public Affairs* 8, no. 1 (2005): 42.

⁴⁰¹ Cara Finnegan, “FSA Photography and New Deal Visual Culture,” in *American Rhetoric in the New Deal Era, 1932-1945: A Rhetorical History of the United States, Volume 7*, ed. Thomas W. Benson (East Lansing: Michigan State University Press, 2006), 122.

⁴⁰² Cara A. Finnegan and Jiyeon Kang, “‘Sighting’ the Public: Iconoclasm and Public Sphere Theory” *Quarterly Journal of Speech* 90, no. 4 (2004): 377-402.

⁴⁰³ For Brian Ott and Greg Dickinson, visual rhetoric itself should function in service of critical citizenship – meaning, it should be part of a critical pedagogy that encourages visual literacy. Ott and Dickinson, “Visual Rhetoric and/as Critical Pedagogy.” See also: Charles Kostelnick, “Melting-Pot Ideology, Modernist Aesthetics, and the Emergence of Graphical Conventions: The Statistical Atlases of the United States, 1874-1925,” in *Defining Visual Rhetorics*, ed. Charles A. Hill & Marguerite Helmers (Mahwah, New Jersey: Lawrence Erlbaum Associates, 2004), 217, 226.

⁴⁰⁴ Dana L. Cloud, for example, addressed how U.S. photojournalism draws “visual binary oppositions between U.S. citizens and enemy Others.” Cloud, “‘To Veil the Threat of Terror,’” 288

⁴⁰⁵ John Louis Lucaites, “Afterword: Border Optics,” in *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*, ed. D. Robert DeChaine (Tuscaloosa: University of Alabama Press, 2012), 228.

broadly allows us to think about the relationship between citizen and refugee, individually targeted and institutional persecution, and the role of the “coming community” in the effort to expand their perspective of which type of migrant belongs in the United States. Just as there is no universally accepted picture of a refugee, there is not a universally accepted image of an LGBTI asylum seeker. The comparison of the tropes prevalent in both sets of images establishes a need for more humanizing photographs of all migrants and sets forth a reminder to those of us viewing these images to avoid generalizations in spite of what we repeatedly see.

5 CONCLUSIONS

The history of LGBTI asylum in the United States is one that reflects a persistent struggle between inclusivity and sovereignty. And while progress is encumbered by institutional restrictions and a series of ever more specific normativities, there exists within this system potential for positive change. In this conclusion I consider these tensions between equality and exclusion as well as the potential future directions of this project. I proceed by first addressing the main claims from the three chapters and articulating the contributions this project makes in the field of rhetoric. Next I consider the insights this project makes to the concept of “homonationalism.” Finally, I return to the concept of “queer citizenship” to consider a future in which queer citizenship could exist.

5.1 Reflecting on Rhetorical Precedent and Homonationalism

In this dissertation I traced the adjudication of LGBTI asylum cases in the United States beginning with the *Matter of Toboso-Alfonso*. This chapter dealt with the ways this case was argued and eventually named as precedent. From the decision in 1990 to grant asylum to Toboso-Alfonso and the establishment of his case as legal precedent in 1994, the U.S. presented itself as a refuge for LGBTI people who could not live in their home nation for fear of persecution. The case set in place a rhetorical precedent that established displays of certain legible identities as necessary for proof of sexual orientation persecution. By referring to this standard as a “rhetorical precedent” we are better equipped to consider the ways rhetoric gets bound to and rooted in institutional discourses and circulated in a social imaginary. Those who do not or cannot adhere to the established standard through their appearance, speech, and argument will not receive asylum unless immigration officers are able to expand their

understanding of the ways in which gender identity and sexual orientation are not always clearly categorized. This rhetorical precedent evolved and developed further in the institutional efforts to regulate and systematize the process of adjudication in LGBTI asylum cases.

The insight this project offers on the development of a rhetorical precedent provides several jumping off points for future research. I plan to more thoroughly place this concept in conversation with other theories of citizenship (in and outside of rhetoric). For example, Rogers Smith discusses the ways citizenship is frequently “ascribed” based on a hierarchical interpretation of different involuntary traits like gender or race, and Robert Hariman and John Lucaites orient their perspective of citizenship toward the ways in which “*public* identity is created as a potentially vital form of political affiliation.”⁴⁰⁶ Both of these perspectives are helpful for thinking about the relationship between social interactions and the value of individuals’ citizenship. However, my concept of “rhetorical precedent” offers a way to better understand the relationship between institutional discourses, rhetorical performances, and the social imaginary. All three function in relation to one another as, for example, social imaginaries influence the writing of legislation and decisions rendered in court cases. These institutional discourses in turn impact the identity performances of those whose lives are most directly impacted by these discourses. The cycle of influence continues here, as these performances shape understandings in the social imaginary, and again shape institutional discourses. Tracing the decision in *Toboso-Alfonso* and its establishment as legal precedent allows us to see the performances that are then expected of this population and the call to develop new institutional

⁴⁰⁶ Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 82, 508; Robert Hariman and John Lucaites *No Caption Needed: Iconic Photographs, Public Culture, and Liberal Democracy* (Chicago: University of Chicago Press, 2011), 16, emphasis in original.

discourses (like the RAIO training module) as the collective understanding of LGBTI people evolves.

In the third chapter I looked to the RAIO training module released twenty-two years after *Toboso-Alfonso*, which reflects efforts by the USCIS to negotiate competing demands for progress toward sexual equality and the maintenance of a safe, sovereign United States. This analysis uncovered the system through which national heteronormativity and homonationalism is upheld by efforts to incorporate certain people (particularly transgender people) and the ways the efforts were burdened by a limited understanding of sexual orientation and gender identity. In the final chapter I looked to the ways the rhetorical precedent facing LGBTI asylum seekers resulted in a pattern of circulated images that upheld certain normative understandings of LGBTI identity. By placing these images in the genre of refugee photography to which they technically belong, I uncovered the difficulty facing representations of transitional populations, and the struggle to allow refugees to be humanized individuals who are also in need. By considering the place of LGBTI refugees within the social imaginary, I uncover the ways rhetorical precedent shaped the demands placed on this population both in the courtroom and in their visual depictions outside of the courtroom.

Through this analysis I offer a way to think about citizenship and civic identity as concomitantly identified, exclusionary, and imagined through attention to the material consequences of these processes. This project makes an ethical/political contribution to the field of rhetorical studies because it reminds us that to deny or ignore sexual identity in our discussions about civic identity is to reinforce national heteronormativity. Our sexual and civic identities are inextricably linked, but for LGBTI asylum seekers, the institution that has the power to grant citizenship mandates the persistence of that linkage in more obvious ways. My

analysis of LGBTI asylum seekers in the United States immigration system provides a means for reflection of the ways in which the institution of citizenship cannot be fully rejected merely because it is exclusionary or because it remains an institution tied up with a series of privileges. There is potential within the system of U.S. citizenship for progress that does incorporate different bodies, and this case study of LGBTI asylum helps show the ways in which this progress could occur. This reflection also requires us to consider the ways in which the privileges of citizenship are always bound to civic and sexual identity, and that in denying or ignoring that fact, we serve to perpetuate the system of exclusions – one that is most often combined in this project with the terms homonationalism and heteronormativity.

The process through which LGBTI asylum seekers are adjudicated helps to uphold a system of national heteronormativity and homonationalism in which room is made for certain bodies and identities within the citizenry under the guise of progress while other bodies and identities are foreclosed. However, the system through which homonationalism and heteronormativity operate is not monolithic or universally oppressive. There exists the possibility that homonationalism in particular could even be desirable to some – it offers a way to thrive in the United States while embracing the benefits of citizenship while maintaining a minoritized sexual orientation. Further, as the efforts to incorporate different bodies and identities are articulated in the RAIO training module and beyond, there does appear to be a concerted effort to include all LGBTI people who are suffering. The United States may ultimately seek these inclusions while at the same time engaging in a project of orientalism that demonizes other cultures. However, there does exist an effort to work against this perspective through documents and regulations that account for the different permutations of sexual orientation and gender identity as it is articulated around the world. Thus, the very system that created and upheld

national heteronormativity and homonationalism may be slowly, unwittingly eroding it. Future versions of this project will seek to understand how this erosion might happen and/or consider the ways LGBTI asylum seekers in the social imaginary may both exist within these systems of oppression while concomitantly working aslant them.

5.2 Queering citizenship?

To queer is to destabilize, to upheave, overthrow, or rupture. Queering something does not necessarily eliminate it. Queering is a beginning, not an end. It is an embodied, multiply transitive, both/and. In this dissertation, I began with a broadly optimistic premise that the paradox of LGBTI asylum in which access to legal citizenship predicated on the embodiment of an impaired or denounced cultural citizenship might hold the potential to queer the institution of citizenship in the United States. The granting of LGBTI asylum seemed, at least, to rupture the inherent and embedded heteronormativity of U.S. citizenship. After considering the ways in which LGBTI asylum emerged, was regulated, and was represented, one conclusion is that both institutional and cultural discourses of LGBTI asylum cannot queer citizenship. Yes, these discourses can make known heteronormativity and can erode it, but ultimately, they serve only to extend and codify normative identity practices in a way that regulates bodies and ensures both national heteronormativity and homonationalism persist.

Throughout the history of LGBTI asylum, the construction of LGBTI refugees and asylum seekers in the social imaginary has more often drawn boundaries around acceptable identities than it has penetrated or eliminated those boundaries. Institutional discourses have an interest in structure, labels, known quantities, and categorization. Thus, institutional discourse will inevitably resist rupture. In setting *Toboso-Alfonso* as precedent, the U.S. government sought to give structure to a new form of asylum that was not receiving consistent adjudication

across the United States. One of the outcomes of structuring that type of asylum around a case like *Toboso-Alfonso* is a system that is most effective in dealing with LGBTI asylum claims in which the applicant embodies immigration officers' assumptions about what a (gay) migrant looks or sounds like, and for whom persecution is well-documented and easy to understand as persecution. The RAIO training module created to ensure consistent, fair adjudication of LGBTI asylum claims ultimately defined LGBTI people in a way that ensured only the most legible gay bodies could be incorporated into the citizenry. The full elimination of "queer" identities and the enforcement of the immutability standard enforced a straight, American perspective of LGBTI identity and self-identification in a way that ignores the variety of ways in which sexual orientation and gender identity might be expressed. Both *Toboso-Alfonso* and the RAIO training module create as much exclusion as they do inclusion.

Through the visual representations of LGBTI asylum in photojournalism, the norms that contribute to homonationalism are further codified despite originating from media institutions. Just as norms emerging from legislation and government documents enforce certain exclusions and ultimately reinforce our understanding of our own citizenship, photojournalism allows us to look at individual LGBTI asylum seekers and decide for ourselves whether they can and do fit in our own social imaginaries of the United States. Ultimately, photographs of LGBTI asylum seekers come closest to rupturing heteronormativity and homonationalism, but in isolating LGBTI asylum seekers into portraits, they lack the clear standing as members of our collective. They are distanced and strange in the same ways the subjects of large-scale refugee crisis photographs keep us from making sense of their place in our world.

This dissertation serves as a reminder that our efforts toward progressive queer politics in U.S. global human rights policy will always exist in tension with the structured, institutionalized

heteronormative and homonationalist politics that continue to find ways to impose legal regulations on LGBTI people. Our efforts as a nation to improve the lives of LGBTI people abroad can sometimes distract from the ways in which we continue to deny LGBTI people in the United States both legal and cultural citizenship.

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