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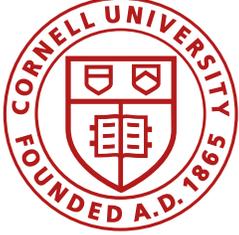
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December 02, 2016

Gabriella Lifsec



Susan Coutin is a professor of Criminology, Law and Society and Anthropology at the University of California, Irvine. Her most recent books [*Exiled Home: Transnational Youth in the Aftermath of Violence*](#) and [*Nations Of Emigrants: Shifting Boundaries Of Citizenship In El Salvador And The United States*](#) explore legal and sociocultural issues faced by immigrants and refugees from El Salvador.

As a trained sociocultural anthropologist, how did you split your time doing ethnographic work between the U.S. and El Salvador?

I have done ethnographic work in both countries. While I have spent more of my time doing ethnographic work in Southern California, I've also done work in El Salvador. For family reasons it is harder for me to go for long period of time and stay there like some other anthropologists do. What I've done instead is made repeated trips and checked in with some of the same people and organizations over a period of time. I might make several trips in a matter of a couple of years, instead of staying for six months at a time and doing the study all at once. When you are studying transnational processes, they play out transnationally. The policies that impact those in El Salvador, also play out in the U.S. and vice versa.

In your second book you talk about how Salvadoran immigrants negotiated their legal identities under immigration reform in the 1990s. How did this affect the Salvadoran immigrants already within the U.S.?

It affected them in a number of ways. To understand, we have to push back the clock to the early 1990s, and what was going on in the U.S. and with legal advocacy groups that were working on behalf of Salvadorans. A lot of organizations had spent the 1980s advocating for asylum or some sort of temporary status for living in the U.S. for both Salvadorans and Guatemalans due to the civil wars occurring in their countries. Therefore, a decade of advocacy had gone on. In the early 1990s, remedies were created through a class action lawsuit called [American Baptist Churches v Thornburgh](#). It was settled out of court in 1991 and said that Salvadorans and Guatemalans in the U.S. had the right to apply or reapply for asylum.

If they had already applied and their cases were in court, they could reopen their cases under rules that were designed to ensure that their cases would be heard fairly and that political consideration would not influence the outcome of their cases. That remedy occurred in the early 1990s. In addition, due to the civil war in El Salvador, Salvadorans were given the opportunity to apply for Temporary Protected Status through the 1990 Immigration Act. Then peace accords were signed in El Salvador and Guatemala, so all this work to get this remedy for individuals that focused on asylum, was jeopardized by the fact that the civil war officially ended, even though there was a lot of on the ground uncertainty about safety issues.

By that time, many individuals had lived in the U.S. for five years, ten years, or more, and had they originally been granted asylum when they first entered the country, they would have been able to adjust their status as a lawful permanent resident. While they did set down roots in this country, there was no mechanism for them to change their status.

Individuals began to think that they would apply for suspension of deportation, which you could apply for if you had lived in the U.S. for at least seven years, you could prove that your deportation would be an extreme hardship, and that you had good moral character. People were planning to apply for that, but when the immigration reform occurred in 1996, this suspension of deportation was eliminated by this law, and was replaced by something else called 'Cancellation of Removal' which was similar, but there were some key differences. One was that there was a cap of 4,000 individuals per year who could qualify for cancellation of removal, another was that the standard that one had to meet changed. So you had to demonstrate not just that it would be an extreme hardship, but an 'extreme and exceptional hardship,' so the standard became more difficult to meet.

In addition, the hardship had to be on a U.S. citizen or lawful permanent resident spouse, parent or child of the applicant. So if you didn't have one of these qualifying relatives, you couldn't qualify for cancellation of removal. The remedy that people were planning to apply for if they couldn't get asylum, disappeared. At the same time, the law created other things that challenged legalization. One was a rule that if you were in the U.S. without status for at least 6 months and left the country, you faced a three-year bar on returning to the country. And if you were in the U.S. without status for at least a year, you faced a ten-year bar on returning.

The penalties associated with any criminal convictions expanded so that the definition of an aggravated felony for immigration purposes expanded, detention was made mandatory for many individuals who were in proceedings, and also the discretion that judges previously had to waive deportation was eliminated or reduced depending on what kinds of cases individuals had. So, all of these together made it more difficult for people to regularize their status, which subjected some people to removal, and basically made the situation very dire.

Has Salvadoran immigration to the U.S. gotten easier or harder with the violence there today? When they are applying for asylum shouldn't it be easier for Salvadorans now since there is so much violence in their country?

Basically, in order to apply for asylum, you have to demonstrate that you have a well founded fear of persecution. The persecution is categorized on the basis of your race, religion, nationality, political opinion or membership in a certain group. The challenge that individuals who are fleeing violence in El Salvador face right now is that the courts have resisted recognition of criminal or gang related violence as fitting one of those five grounds.

You could argue that people who have resisted gang recruitment are a social group, and there are cases where people are trying to make that argument, but it is a tough argument to make. One thing that I have analyzed, in an article

called "[Falling Outside](#)," is that no matter what violence Central Americans were experiencing, U.S. officials often defined it as outside the sort of violence from which people could seek protection through asylum.

You may think that is clear-cut because of the 1980s civil war, but if you were fleeing because your village was bombed and you were seeking safety, or you were fleeing because people you knew were getting picked up by death squads, that was often defined as generalized violence during the 1980s. You were perceived as no more at risk than the general population, so the U.S. was reluctant to grant asylum to asylum seekers back then too.

Is there any type of mechanism in place in El Salvador for gaining refugee status?

Yes, there is a program that the U.S. created for children because of the issue of unaccompanied minors seeking refuge in the U.S and fleeing from the Northern Triangle countries. That program so far has generated long backlog and delays, so people who have applied for that remedy have had to remain waiting in El Salvador for a long time. If their lives are in danger, then they are still at risk during that wait. So far, it has not proven to be a remedy for many people.

Have you done research on unaccompanied minors in the past or do you research them currently?

I have two answers to that question. I did not do research on the new arrivals, but I have done volunteer work accompanying a non-profit organization, the Central American Resource Center, that went to Artesia, New Mexico. I spent a week with them providing legal assistance to women and children who were in a detention facility. That was one of the so-called 'family residences' for detainees. I also just published a [book manuscript](#) that looks at the experience of what are called '1.5 generation Salvadorans,' who were born in El Salvador and who were raised in the U.S. The people who I interviewed came to the U.S. in a variety of ways. Some travelled with their families, while others traveled without their family members and were unaccompanied.

I know you have done a lot of research with immigrants coming and going from the U.S., which you speak about in your third and fourth books. Since I am doing a piece on mass deportation, could you speak about the deportation process as described by people from El Salvador?

That was an issue I addressed in my third and fourth books, and in my fourth book, I even expanded on it because when I did interviews with people who were 1.5 generation Salvadoran, I interviewed people in the U.S. as well as people who had grown up in the U.S. and then been deported to El Salvador. I interviewed 41 people for the newest book, so that is probably even more up to date. For many people that I interviewed in El Salvador in 2008, when they described the process through which they were apprehended, placed in detention and then deported, it came as a shock to many of them that they were in removal proceedings and at risk of deportation. Many of them had already obtained lawful permanent residency, or temporary protected status, or they had a pending application for asylum or something that generated a work permit for them. Some had family members like parents who had naturalized, say their mother had married a U.S. citizen.

A few people that I interviewed actually believed that they had become U.S. citizens, and were not at risk of deportation. The first point to make is that some people experienced complete shock. They had grown up in the U.S., many had acquired some temporary legal status, and they did not expect to be at risk of deportation. Some people were apprehended at traffic stop, or because they had a prior immigration case and when they had an interview with an asylum official, they were taken into custody. Other people had been convicted of a crime and were serving time in prison for that crime, and when their prison sentence was completed, instead of being released, an ICE hold was placed on them and they were transferred to detention facilities. Some people described to me that that came as a complete shock. They were expecting to be released and they were just left there.

A second point to make is that for the time that they spent in detention, some people described that as being worse than prison, which I think is telling and striking. One difference is that they didn't know how long they were going to be in detention, unlike prison where you have a sentence. In detention, you were being held there pending the outcome of your immigration case. Any time they appealed their case meant that they had to stay in detention longer.

They became very frustrated and described being subjected to frequent transfers, which meant they never knew where they were going to be and when. They considered this constant movement to be a tactic to make them feel uncomfortable and encourage them to stop fighting their case. As you mentioned, the issue of legal representation was challenging for many because if they didn't have the resources to hire their own attorney, they didn't have legal representation.

And then of course, meeting with your attorney in a detention facility is more difficult, especially when you were being transferred. They also described how guards would tell them very discouraging things like 'just give up,' 'there's no point fighting your case.' Some actually decided that they would stop fighting their case and go back to their country of origin and thought they could more effectively fight their case from there, which was not true. Once you have actually been deported, it becomes that much more difficult to fight your case.

A great person to talk to would be Daniel Kanstroom, who has done a post deportation release project, and he can tell you the legal vehicles available for people after deportation. He writes in his book about certain supreme court cases where there is a ruling that would benefit people who have already been deported, but currently, there is no mechanism for them to claim that remedy. If you are already deported, how can you come back and say "Oh I was erroneously deported, look there is new case law." But in this situation, you have already been deported.

Is there any way to get these detained people representation without major immigration reform? If not, what kind of reform is needed to get these immigrants and asylum seekers representation in court?

What would be needed would be some kind of ruling that would allow undocumented immigrants who are living in the United States to have legal representation at the state's expense during removal proceedings, which is what occurs during criminal cases. Some people have argued for that, saying deportation is a severe punishment, but legally it is not considered a punishment for people to get deported. Given the high stakes for individuals and the outcomes of their case, it would be worthwhile for them to get legal representation.

Another strategy that is being adopted in some places is cities, counties or states are considering or providing representation to people in detention facilities, which would provide representation for everyone. Even if you are going to lose your case, if you have representation, you may know upfront from someone trustworthy whether or not it is worthwhile to fight your case. For those that have relief, you might not even know you have relief, you might not know how to pursue it if you do not have an attorney to represent you. Certainly, for very vulnerable groups like children and people with disabilities, the argument for representation at public expense is even stronger.

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