

**NATIONAL IMMIGRANT JUSTICE CENTER**  
A HEARTLAND ALLIANCE PROGRAM

## Representing Asylum Seekers

*Pro Bono Training*

Seyfarth Shaw LLP  
August 21, 2019  
[www.immigrantjustice.org](http://www.immigrantjustice.org)

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### National Immigrant Justice Center (NIJC)

- Defends the human rights of immigrants at the individual and systemic level
- Provides legal services to more than 10,000 immigrants, refugees, and asylum seekers each year with the support of nearly 1,500 *pro bono* attorneys
- Challenges laws, policies, and practices that violate human rights through federal litigation
- Advocates for reform with members of Congress and the White House

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### Pro Bono Opportunities at NIJC

 <p><b>Asylum</b> - Adults - Families - Kids - Detained immigrants</p>	 <p><b>CLINICS:</b> - DACA - Naturalization - Asylee/Refugee Family Petitions - Asylee/Refugee Adjustment</p>	 <p><b>Special Immigrant Juvenile Status Predicate Orders</b></p>	 <p><b>VAWA and U Visa Relief</b></p>
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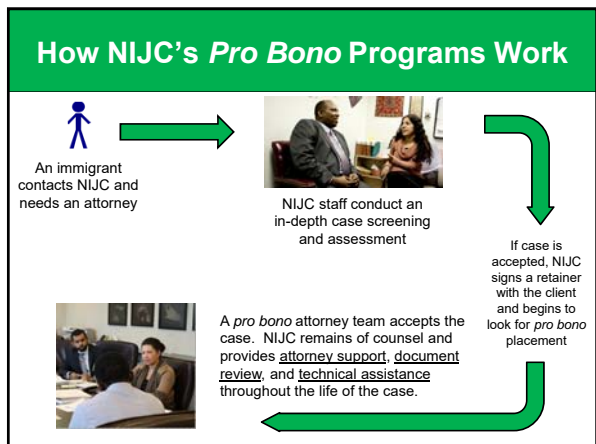
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Reuters/Jorge Duenes

### WHAT EVERY ATTORNEY SHOULD KNOW ABOUT ASYLUM REPRESENTATION TODAY

Ashley Huebner, Associate Director of Legal Services

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### Asylum Seekers' Experiences are Human Experiences

- Memories can be faulty
- Discussing violence can be difficult
- Immediate needs can seem more important
- Family dynamics are complicated

Photo by Trocaire from Ireland (DSC\_0871 (Sylvia 1, Emergencies 6)) (CC BY 2.0 (http://creativecommons.org/licenses/by/2.0)), via Wikimedia Commons

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True or False: Asylum Developments	
Changes in Asylum Law and Procedure	True/False & Current Status
<ul style="list-style-type: none"> <li>The Asylum Ban has eliminated asylum protection for most asylum seekers who came across the U.S.-Mexico border</li> </ul>	<p><b>FALSE</b> for Ban #1 (manner of entry)</p> <ul style="list-style-type: none"> <li>Vacated: O.A. – NIJC</li> <li>Injunction: <i>East Bay</i> – ACLU</li> </ul> <p><b>TRUE AND FALSE</b> for Ban #2 (3<sup>rd</sup> country transit)</p> <ul style="list-style-type: none"> <li>Injunction: <i>East Bay</i> – ACLU (Also does not apply to people in the United States before 7/16/19)</li> </ul>
<ul style="list-style-type: none"> <li>Asylum seekers must now wait in Mexico while their asylum claim is adjudicated in the U.S.</li> </ul>	<p><b>TRUE AND FALSE</b> (depends on place of entry, but does not apply to people already in the U.S.)</p>
<ul style="list-style-type: none"> <li><i>Matter of A-B-</i> and <i>Matter of L-E-A-</i> ended asylum based on domestic or gang violence, or violence based on family membership</li> </ul>	<p><b>FALSE</b></p>

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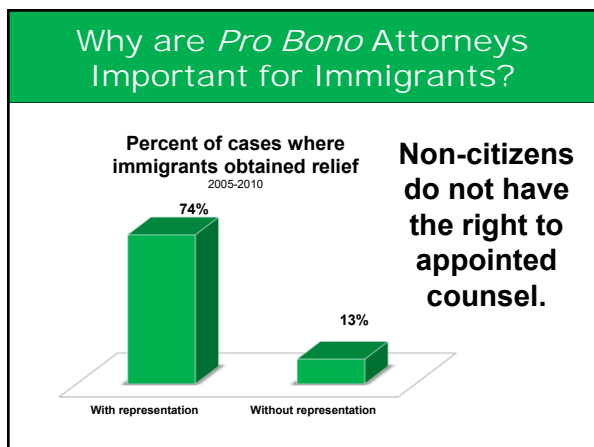
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### Representing an Asylum Seeker through NIJC Helps More than Just Your Client

"DO WE SECURE FOR OURSELVES... CARELESS AND UNCERTAIN... IT IS SECURED FOR ALL OF US AND SHARED INTO OUR COMMON LIFE."

- **One for One:** Representing an NIJC asylum client allows us to accept new asylum cases for representation.
- **Reuniting families:** Asylees can petition for family members and are on the road to permanent status

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**WORKING WITH LGBT CLIENTS**

Keren Zwick,  
Associate Director of Litigation

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**Talking To LGBT Clients**

**WORDS MATTER!!**

More so than in many other asylum cases, the words you use to speak to your client and about the case will affect his/her willingness to open up and trust you.

**WHY?**

Your client's claim of persecution probably involves being teased and called derogatory names, so it is important for you to be sensitive as to the words you use so that you don't repeat some of the very treatment she's fleeing

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**Talking To LGBT Clients**

**Rule 1: Take cues from your client.**

- Use the same vocabulary that your client uses.
  - If a client says "I am gay"
  - Do not respond with, "how long have you been a homosexual."
- If your client is transgender, ask what name (s)he prefers to use as a first name and use it.
- Refer to your client using the pronoun that corresponds to his or her gender identity. If you are unsure, ask, but be respectful.
  - NOT: "What are you?"
  - INSTEAD: "Do you identify as male or female?"

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## Talking To LGBT Clients

**Rule 2: Familiarize yourself with the relevant vocabulary.**

The terminology that is used to refer to individuals who identify as lesbian, gay, bisexual or transgender is frequently changing, so spend some time making sure you're referring to your client in a manner that s/he will respond to favorably.

For a comprehensive glossary check out:  
[USCIS's Training Manual for LGBT Asylum Cases](#)

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## Terminology

### The Gender Unicorn

Graphic by TSER

To learn more, go to: [www.transstudent.org/gender](http://www.transstudent.org/gender)

Design by Landryn Pan and Anna Moore

**Terms to avoid:**

- transgendered,
- transvestite,
- hermaphrodite,
- cross-dresser,
- tranny

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## Talking To Your Client

**Rule 3: Account for cultural differences.**

- We just discussed terms that are used in the American LGBT community. Your client may use different words or phrases.
- Examples:
  - *Travesti*: This Spanish term is commonly used to refer to transgender individuals but it translates to "transvestite."
  - *Sexual Preference*: Some Spanish speakers will refer to their sexual orientation as their "sexual preference"
- To accommodate these differences:
  - Use the terms your client uses when speaking to your client.
  - But use the terms that would be used in the U.S. when writing your brief.

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## THE BASICS OF ASYLUM LAW

Ashley Huebner, Associate Dir. Of Legal Services

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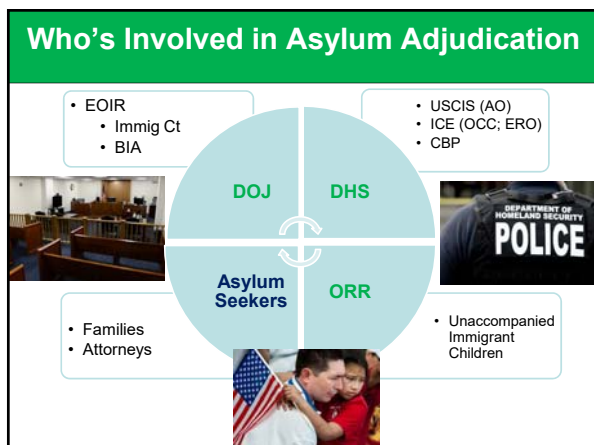
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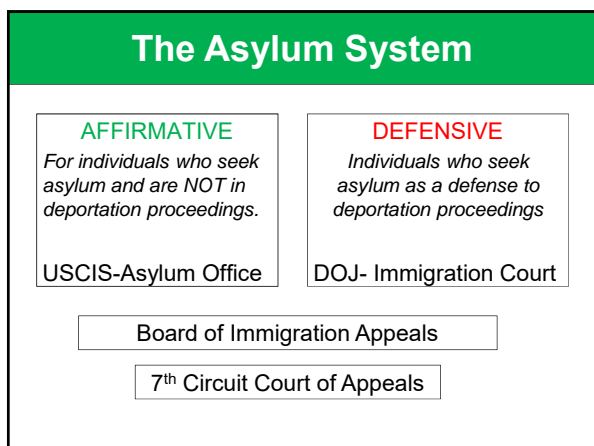
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## Asylum: Definition

- An individual is eligible for asylum if she meets the definition of a refugee.
  - Immigration & Nationality Act (INA) § 208(b)(1)(A).
  
- A refugee is “any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”
  - INA § 101(a)(42)(A)
  - Definition based on international law: UN Protocol Relating to the Status of Refugees, Art I(2)

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## Asylum Legal Sources:



INA	8 CFR	CASE LAW
<ul style="list-style-type: none"> <li>• § 208</li> <li>• §101(a)(42)</li> </ul>	<ul style="list-style-type: none"> <li>• § 208: AO</li> <li>• §1208: EOIR</li> </ul>	<ul style="list-style-type: none"> <li>• BIA binding unless 7COA rejected</li> <li>• 7COA has rejected A LOT</li> <li>• 7COA is your friend; avoid other COA law</li> </ul>

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## BREAKING IT DOWN: THE ELEMENTS OF ASYLUM

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**Asylum: Elements**

1. "Well-Founded Fear"
2. of "Persecution"
3. Perpetrated by the government or an entity the government cannot/will not control
4. "On account of"
5.
  - Race
  - Religion
  - Nationality
  - Political Opinion
  - Membership in a Particular Social Group

**These elements are SEPARATE!**

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**1. "Well-Founded Fear"**

<p style="text-align: center;"><b>Burden of Proof</b></p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Reasonable possibility</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">"One in ten" chance of persecution <i>(INS v. Cardoza-Fonseca, 480 U.S. 421 at 431)</i></p>	<p style="text-align: center;"><b>Established two ways:</b></p> <ol style="list-style-type: none"> <li>1. All asylum elements as to past harm</li> <li>2. Reasonable possibility that all asylum elements will occur in the future</li> </ol> <p style="text-align: center;"><b><i>Argue both whenever possible!</i></b></p>
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**1. Well-Founded Fear Based on Past Persecution**

Past persecution

+ All other asylum elements

Rebuttable presumption of future persecution

↓

changed circumstances

Rebutted by

↓

safe, reasonable internal relocation

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### 1. Well-Founded Fear Based on Future Fear Only

**Subjectively** genuine fear

**Objectively** reasonable fear (w/all elements)  
 + No safe, reasonable internal relocation  
**Well-founded fear of future persecution**

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### Asylum on a Humanitarian Basis

Past persecution + all asylum elements

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Severity of Past Persecution

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Possibility of Other Serious Harm (No Nexus!)

Check the regs and case law  
 (Matter of Chen; Matter of L-S-; Kholiyavskiy).

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### 2. "Persecution": Look to Case Law

- *Stanojkova v. Holder*, 645 F.3d 943 (7th Cir. 2011)
  - Three types
    1. *Significant* physical force against a person's body,
    2. the infliction of comparable physical harm without direct application of force . . . , or
    3. nonphysical harm of equal gravity.
- Harm constituting persecution can be less for a child than an adult.  
 See USCIS Guidelines and 7th Circuit law.
- Must be considered cumulatively.  
*Nzeve v. Holder*, 582 F.3d 678 (7th Cir. 2009).

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### 3. The Persecutor

<u>Governmental Entity</u>	<u>Entity the Government is Unable OR Unwilling to Control</u>
<ul style="list-style-type: none"> <li>Police</li> <li>Military</li> <li>Security Forces</li> <li>Presidential Guard</li> <li>Mayor</li> <li>Village Chief</li> <li>Paramilitary?</li> <li>Gangs?</li> </ul>	<ul style="list-style-type: none"> <li>Gangs</li> <li>Paramilitary</li> <li>Guerrilla Group</li> <li>Family Members</li> <li>Vigilante Group</li> <li>Opposing Political Party</li> <li>Others?</li> </ul>

\*\*The persecutor does Not have to be the State\*\*

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### 4. "On Account of" a Protected Ground

**Persecution**

**Protected Ground**

- Race
- Religion
- Nationality
- Membership in a PSG
- Political Opinion

Keep all 3 Elements Separate!

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### 4. Burden of Proof for Nexus

- Protected ground must be "at least one central reason" for the persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007)
- Persecutor can still have mixed motives. *J-B-N- & S-M-*, 24 I&N Dec. at 211; *Shaikh v. Holder*, 702 F.3d 897 (7th Cir. 2012).
- Circumstantial evidence can be sufficient to establish the persecutor's motives. *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010)

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## 5. POLITICAL ASYLUM

1. Race:
  - Broad meaning (Congolese Tutsis)
2. Religion
  - (Christian, Atheist)
3. Nationality:
  - Not just citizenship; can include ethnic or linguistic group.
4. Political Opinion:
  - Actual or Imputed (e.g. child of political activist, man who criticizes government's military policy)
5. Membership in a Particular Social Group:
  - One of the most common and most complex bases for asylum



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## 5. What is a Particular Social Group?

Based on a **“common, immutable characteristic”** that **“members of the group either cannot change, or should not be required to change.”**

- *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985)

BIA Case Law	Seventh Circuit Case Law
• Can't be overly broad	• Breadth is irrelevant
• Must be considered a group by society	• No social distinction test
• “Former” status/past experience is not enough	• “Former” status/past experience is enough
• Groups can't be overly diverse	• Diversity not an issue

See NIJC's [Particular Social Group Practice Advisory](http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers) at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>

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## 5. Common Social Groups

- Gender/family violence claims:
  - [Nationality] females [women; girls]
  - Immediate members of the X family/children of X\*
  - [Nationality] women in intimate relationships they are unable to leave\*
  - [Nationality] women who have disobeyed gender norms
- Witness/opposition to gang claims:
  - [Nationality] who have opposed [resisted/disrespected] gangs
- Witness-related claims:
  - [Nationality] who have witnessed [and reported] gang activities
- Family-related claims\*: immediate family members of X; immediate family members of former gang members

\*Evolving Case Law – Review NIJC Practice Advisories

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## 5. LGBT Based Social Groups

- Gender Identity based groups:
  - Transgender women from [Country]
  - Gender nonconforming people from [Country]
  - Gay man with female sexual identity.
  - Transgender woman who is perceived as gay in [Country]
- Sexual Orientation based groups:
  - Gay men/Lesbians from [Country]
  - Bisexual men/women from [Country]
  - Persons perceived of as members of the LGBT Community
- HIV/Health Related social groups

\* See Case Appendix\*

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## OTHER CONSIDERATIONS

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## Other Issues That May Impact the Case

**New Options!** Certain events in the client's life may make her eligible for other relief

- Marriage, victim of a crime, etc
- Your client should not file applications for any other immigration benefits without consulting you first.

**RED FLAGS!** Other life changes may compromise eligibility

- Travel
- Marriage (in some cases)
- Crimes (even un-convicted crimes) here or abroad

**EXTERNAL Factors!** Policy changes...

*Contact NIJC immediately if there are changes in your client's life or if you think your client might be eligible for other relief!*

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Bars to Relief			
	Bars Asylum?	Bars Withholding/Withholding under CAT?	Bars Deferral under CAT?
One-Year Filing Deadline - INA § 208(a)(2)(B)	Yes	No	No
Firm Resettlement - INA §208(b)(2)(A)(v)	Yes	No	No
Persecutor - INA § 208(b)(2)(A)(i)	Yes	Yes	No
Terrorism - INA § 208(b)(2)(A)(v)	Yes	Yes	No
Particularly Serious Crime - INA § 208(b)(2)(A)(ii)	Yes	Yes, but PSC definition for withholding differs from definition for asylum	No
Conviction of an Aggravated Felony as Defined in INA § 101(a)(43)	Yes - is a PSC	Yes, if the aggregate sentence was at least 1 year for other crimes may be PSC, notwithstanding	No
Serious Non-Political Crime Outside the U.S. - INA § 208(b)(2)(A)(iii)	Yes		
Danger to the Security of the U.S. - INA § 208(b)(2)(A)(iv)	Yes	Yes	

**BE AWARE of any previous encounters with police/immigration authorities!**

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Other Protection-Based Relief (Request All!)						
	Discretion?	Test	Burden of Proof	Petition for Family?	FASFA? Travel Abroad?	Become a Citizen?
<b>Asylum</b>	Yes	Persecution on account of a protected ground by gov/govt is unable or unwilling to control	Reasonable possibility (≥ 10%)	Yes	Yes	Yes
<b>W/holding</b>	No	Same as asylum	More Likely than Not (>50%)	No	No	No
<b>Relief under the Convention Against Torture</b>	No	Torture by the gov't or w/the gov't's acquiescence	More Likely than Not (>50%)	No	No	No

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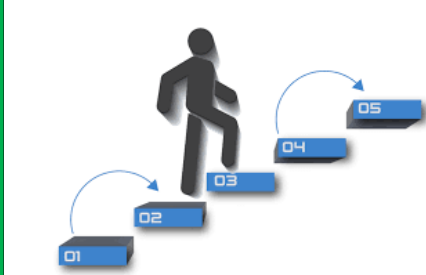
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PREPARING YOUR CASE

Aneesha Gandhi, Managing Attorney  
Keren Zwick, Associate Director of Litigation

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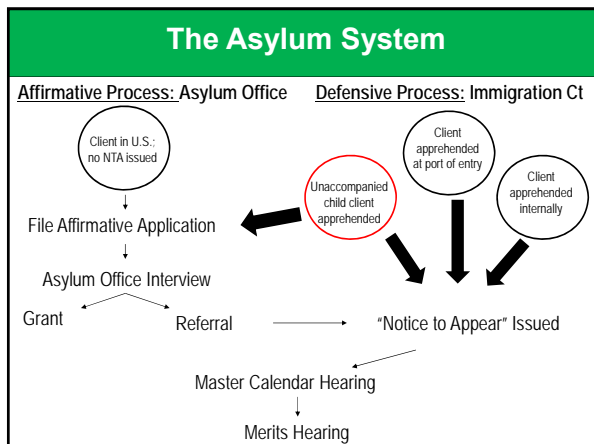
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### How Do I Know if My Client is in Removal Proceedings?



The Notice to Appear (NTA)

- This is the charging document that places an individual in removal proceedings.
- An individual is only placed into removal proceedings when the NTA is filed with the immigration court.
- Some people have an NTA, but it has not yet been filed with the court, so they are not in removal proceedings

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### What to File

<p><b>Asylum Office (Nebraska Service Center)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Appearance form: <a href="#">G-28</a></li> <li><input type="checkbox"/> TV/PRA Instruction Sheet (for unaccompanied children only)</li> <li><input type="checkbox"/> Asylum App (I-589) and 1 passport photo</li> <li><input type="checkbox"/> Two copies, plus an one copy for each deriv.</li> <li><input type="checkbox"/> No filing fees</li> </ul> <p><b>One week before the interview, file (with the Chicago Asylum Office)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Legal memo</li> <li><input type="checkbox"/> Client affidavit/declaration</li> <li><input type="checkbox"/> Annotated index</li> <li><input type="checkbox"/> Supporting documentation, including identity documents, expert affidavits, and other corroboration</li> </ul>	<p><b>Immigration Court</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Appearance form: <a href="#">E-28</a></li> <li><input type="checkbox"/> Asylum App (I-589) and 1 passport photo</li> <li><input type="checkbox"/> Serve one copy of the I589 on DHS</li> <li><input type="checkbox"/> No filing fees</li> </ul> <p><b>Prior to the merits hearing, file:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Brief</li> <li><input type="checkbox"/> Client affidavit/declaration</li> <li><input type="checkbox"/> Annotated index</li> <li><input type="checkbox"/> Supporting documentation, including identity documents, expert affidavits, and other corroboration</li> </ul> <p><i>Anytime you file anything with the Court, you must</i></p>
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### Immediate Steps

- 1) Review NIJC's file
- 2) File your appearance:
 

If...	...Then
<i>Your client is in removal proceedings</i>	Complete e-registry and file form <b>E28</b> with the court
<i>Your client has a pending asylum application with USCIS</i>	File form <b>G28</b> with the Chicago Asylum Office
- 2) **Calendar all deadlines:**
  - Employment authorization, Court hearings, One year filing deadline
- 3) **Check the EOIR info line (1-800-898-7180)**
  - Check every other week if your client has an NTA, but it has not been filed with the court.

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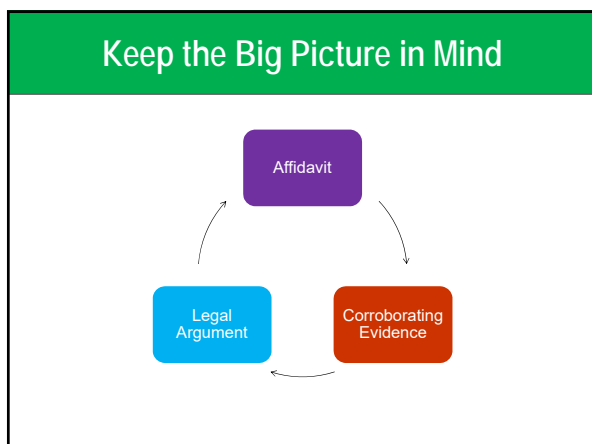
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## Step 1: The First Client Meeting

**Build rapport!**

1. Introductions and small talk
  - Explain roles and confidentiality
  - Meet family as necessary, but then ask family to step out
  - Start getting to know your client and her life in the United States
2. Make a plan for communication, meetings, and transportation
3. Discuss a roadmap and ask about any questions
4. Explain engagement letter in simple terms
5. Sign forms (G28; FOIA)

**DO NOT TALK ABOUT THE CLAIM UNLESS YOUR CLIENT EXPLICITLY ASKS TO DO SO!**

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## Step 2: Obtain Your Client's Immigration History

- There is no discovery in immigration proceedings.
- File a USCIS FOIA
  - Expedited processing if in removal proceedings – request Track 3 processing
- Client in removal proceedings: review the court file/hearing tapes
- Unaccompanied child: request the ORR file

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## Step 3: The Skeletal Asylum Application

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
U.S. Department of Justice  
Executive Office for Immigration Review

OMB No. 1615-0067  
**I-589, Application for Asylum and for Withholding of Removal**

**START HERE** - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

**Part A. I. Information About You**

1. Alien Registration Number(s) (A-Number) (if any)  2. U.S. Social Security Number (if any)   
(or a self-declarative statement; applicants generally don't have one; definitive applicants do)  (if any)

3. Complete Last Name  4. First Name  5. Middle Name

CLIENT

6. What other basis for asylum or withholding of removal based on:  
 Race  Political opinion  
 Religion  Membership in a particular social group  
 Nationality  Torture Convention

7. Residence

Street No.   
 123 4 Street

8. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?  
 No  Yes

If "Yes," explain in detail:  
 1. What happened?  
 2. When the harm or mistreatment or threats occurred.  
 3. Who caused the harm or mistreatment or threats, and  
 4. Why you believe the harm or mistreatment or threats occurred.

(For the past few years, Maria Sabotucha (MS-1) repeatedly threatened my brother and I and tried to kill us because we refused to join them. Please see affidavit for more information.)

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**Where and How**  
**Do I File the Skeletal Asylum Application?**

Category of Client	Where to file:
Adults who are <i>not</i> in removal proceedings	USCIS (Nebraska Service Center)
Adults who are in removal proceedings	Immigration court window or in open court at a hearing Obtain a date-stamped copy for your records (important!)
Unaccompanied children	USCIS (Nebraska Service Center)

- ✓ Review filing procedures and NIJC check list to ensure sufficient copies and format
- ✓ Consider filing early to make your client eligible for a work permit. Talk to NIJC about consequences.

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**Step 4:**  
**Drafting the Affidavit or Declaration**

- Credibility is the most important part of any asylum case
- Can be based on demeanor, candor, inherent plausibility, consistency of statements (made any time/any circumstance)
- The adjudicator's credibility determination will be based primarily on the client's affidavit and testimony, so...

**YOUR CLIENT'S AFFIDAVIT IS THE MOST  
IMPORTANT EVIDENCE IN YOUR CASE.**

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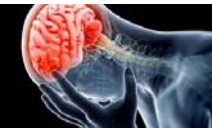
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**Affidavit Interviews with Trauma Survivors**

**REMEMBER:** working with trauma survivors requires new skills.  
**Prepare and do your homework before you meet!**

- Meet frequently and for a limited duration
- Provide empowerment through choices
- Explain the objective of your questions: why you need the information and what you intend to do (and Not do) with it
- Ask short questions
- Do not expect chronological or complete consistency
- Bookend the interview




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### Affidavit Interviews with LGBT Clients

1. Remember status v. conduct. Just because your client has had no sexual partners, that does not mean he is not in fact gay. It will make it harder to prove it, but that does not mean he is not a credible witness.
2. Conversely, just because he has had partners of the opposite sex (or even MARRIED someone of the opposite sex), that does not mean he's not gay.
3. Be respectful in your questioning your client about sex.
  - Although it is within bounds to ask about previous partners, don't go overboard and keep in mind WHY you need that information.
  - You're looking for potential avenues of corroboration. You don't need to know the graphic details of your client's sex life.

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### Considerations for Preparing the Affidavit

The bulk of your prep time will be here: meet early and often

- Maintain the client's voice
- Craft the events in chronological order
- Cover the 5 Ws + H
- Balance detail
- Consider length

For more tips on drafting an asylum affidavit, see NIJC's 11/18/16 webinar: "Telling Your Client's Story: Affidavit Writing 101," at <http://immigrantjustice.org/training-webcasts>

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LANGUAGE: Client Affidavit/Declaration Cont.		
Not In Client's Voice	Too Much Legalese	Too Much Detail
<i>I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave.</i>	<i>When I told them I did not want to join their gang they became more menacing...This triggered a melee with the whole group involved in kicking me...Some police belatedly came to ostensibly "investigate" but their investigation was cursory and superficial and no arrests were made. (See Tab P, DOS Human Rights Report.)</i>	<i>On May 1, 2010, three gang members stopped me after school and threatened me</i>

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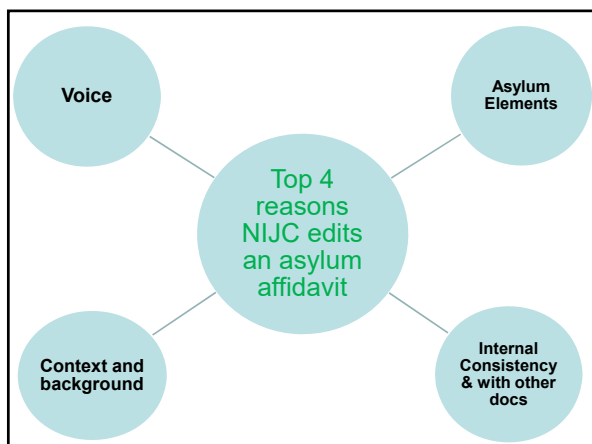
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### Step 5: Corroborating Your Case

**Corroboration is the second most important part of an asylum case. Don't leave it until the end!**

- Required “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”
- But, “[t]he testimony of the application, if credible, may be sufficient to sustain the burden of proof without corroboration.” 8 C.F.R. §1208.13(a)
- Corroborate each asylum element OR show why your client cannot reasonably obtain corroboration.

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### Obtaining Corroboration

Everything Matters!

Country Conditions	Client-Specific	Past Persecution	Future Persecution
State Dept Human Rights Reports	Facts: dates, times, flights, DATE OF ENTRY, IDENTITY	Forensic Medical Evaluation	Evidence of past incidents that may not rise to persecution
Amnesty Intl & Human Rights Watch	Physical Evidence: pictures, police reports, receipts	Mental Health Evaluation	Affidavits from similarly situated individuals who have suffered harm
UNHCR Refworld <a href="http://www.unhcr.org/refworld">www.unhcr.org/refworld</a>	Witness Affidavits	Medical Reports	Expert Affidavits (especially for court cases)
Domestic and Foreign News Sources	Google Earth, Hand Drawn Maps	Pictures	Country Conditions

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## Practice Pointers for Obtaining Corroborating Evidence

- Work with your client
- Establish chain of custody.
  - Ask you client how he/she obtained the document
  - Provide evidence of the document's origin (e.g. copy of the envelope containing the postmark from the country of origin)
- If you doubt the authenticity of a document, leave it out.
- All foreign documents must be translated into English.

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## Presenting Corroborating Evidence

Tab	Exhibit	Page
A	Affidavit of Mr. CLIENT	1
B	Letter in support of Mr. CLIENT's asylum application from his wife -- dated September 1, 2012, with translation and copy of the envelope in which the letter arrived	20
<b>Identity Documents</b>		
C	Copy of the biographic page of Mr. CLIENT's passport	27
D	Copy of Mr. CLIENT's B1/B2 Visa and I-94 card, establishing date of entry as DATE	28
<b>Background Information Regarding Mr. CLIENT's Asylum Claim</b>		
E	United States Department of State, <i>Background Note: Republic of the Congo</i> (January 3, 2012), available at <a href="http://www.state.gov/countries/regions/congo/congo.html#192657.htm">http://www.state.gov/countries/regions/congo/congo.html#192657.htm</a> [last accessed September 19, 2012]  "The Republic of the Congo is slightly larger than New Mexico, but vast areas in the north include jungles that are virtually unaccessible. . . Congo is one of the most urbanized countries in Africa, with 70% of its total population living in Brazzaville, Pointe-Noire, or along the 332-mile railway that connects them. Its modern road, water, industrial and commercial activity suffered as a consequence of the civil war in the late 1990s."	30
F	United States Department of State, <i>2011 Country Reports on Human Rights Practices: Republic of the Congo</i> (May 24, 2012), available at <a href="http://www.state.gov/documents/organization/110127.pdf">http://www.state.gov/documents/organization/110127.pdf</a> [last accessed September 19, 2012]  "Denis Sasson-Nguesso was reelected president in 2009 with 78 percent of the vote, but the validity of these figures is questioned. The 2009 election was peaceful, and the African Union declared the election to have been free and fair. However, opposition candidates and human rights organizations (NGOs) raised allegations."	34

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## Step 6: Drafting the Legal Memo or Brief

- Keep it brief
  - Legal Brief (for cases before EOIR) < 30 pages
  - Legal Memo (for cases before the AO) < 10 pages
- Follow the elements & don't conflate them.
- Case law – focus on the Seventh Circuit
  - BIA precedent decisions (as necessary)
- Send to NIJC for review 5 business days before filing
- Preserve all arguments and claims to relief
 

For more tips, see NIJC's webinar: "Gathering Evidence and Presenting Claims before EOIR and USCIS," at <http://immigrantjustice.org/training-webcasts>

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## Waiting for Adjudication

Aneesha Gandhi, Managing Attorney

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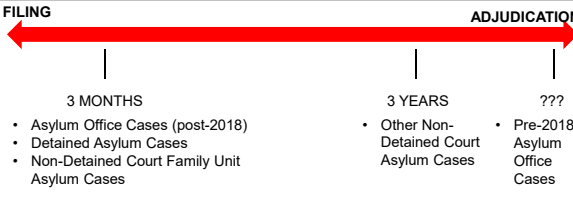
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## Timing is Everything

**FILING** **ADJUDICATION**



<p>3 MONTHS</p> <ul style="list-style-type: none"> <li>• Asylum Office Cases (post-2018)</li> <li>• Detained Asylum Cases</li> <li>• Non-Detained Court Family Unit Asylum Cases</li> </ul>	<p>3 YEARS</p> <ul style="list-style-type: none"> <li>• Other Non-Detained Court Asylum Cases</li> </ul>	<p>???</p> <ul style="list-style-type: none"> <li>• Pre-2018 Asylum Office Cases</li> </ul>
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**"I compare the immigration courts to traffic courts and the cases that we hear - they are death penalty cases."**  
Judge Dana Leigh Marks

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## Asylum Office Timing

- AO interview timing for pre-2018 filings is unknown
- No matter when you filed, you will only receive two weeks notice of the interview

2 weeks before the interview	Receiving an interview notice
1 week before the interview	File supporting documents
2 weeks after notice	Interview
~10 days – 6 months later	Decision

**NOTE:** Timing is difficult. Changes of policies and practices at USCIS may alter this timing.

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### Immigration Court Timing

Varies tremendously depending on the type of case and the judge.

Fiscal Year	Pending Cases
'98	100,000
'99	100,000
'00	100,000
'01	100,000
'02	100,000
'03	100,000
'04	100,000
'05	100,000
'06	100,000
'07	100,000
'08	100,000
'09	100,000
'10	100,000
'11	100,000
'12	100,000
'13	100,000
'14	100,000
'15	100,000
'16	100,000
'17	100,000
'18	100,000

Please consult NIJC for a case-specific estimated timeline and to discuss the consequences of accepting or declining an expedited date.

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### AFFIRMATIVE or DEFENSIVE: While Your Case is Pending

- **Maintain contact:** Develop rapport with your client
- Determine what evidence is important and available and begin to gather it, especially from abroad (remember that you must corroborate everything!)
- Connect your client with a therapist and/or medical doctor for evaluations, if appropriate (NIJC can help!)
- File a work authorization application for your client when s/he is eligible and track the timing for renewals

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### AFFIRMATIVE or DEFENSIVE: While Your Case is Pending

- **Meet early and often with your client!**
  - Finalize drafts of your client's affidavit and witness affidavits early and supplement later as needed
  - Send drafts to NIJC review
  - Gather your corroborating evidence early and supplement later as needed
  - Discuss your draft index with NIJC

**Remember: immigration court scheduling is unpredictable – your hearing date could move forward or backwards!**

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## Work Authorization

*\*\*Regulatory changes are likely in the works*

- Depends on the date the asylum application was filed and whether any delays were caused by the applicant
  - See NIJC's Asylum Manual and EAD FAQ for more information
- If your clients already have EADs – you MUST renew 180 days before the EAD expires to avoid gaps in employment authorization

**Work authorization is a life changer for your client and his/her family**

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## Presenting Your Case

Aneesha Gandhi, Managing Attorney

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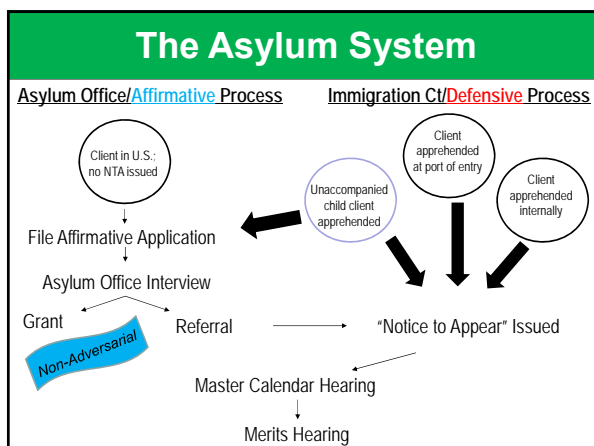
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## Asylum Office Advocacy

**Before the Interview:**

- Obtain an interpreter and PRACTICE with interpreter & client
- Prep client with open-ended questions
- Explain the interview process and clarify the non-adversarial nature of the interview.

**At the interview**

- Attend interview with your client
- Expect informal setting
- **YOU MUST PROVIDE AN INTERPRETER**
- Take cues from the asylum officer
- Prepare a closing, but be flexible
- No same-day answer

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## After the Asylum Office Decision

<p style="color: green; font-weight: bold;">ASYLUM GRANTED!!</p> <ul style="list-style-type: none"> <li>• Let NIJC know immediately (30-day deadline for benefits)</li> <li>• Next steps: Work Authorization, Social Security Card &amp; Benefits</li> <li>• Advise client to contact NIJC to apply for derivative family members</li> </ul> 	<p style="color: red; font-weight: bold;">ASYLUM NOT GRANTED...</p> <ul style="list-style-type: none"> <li>• Referral to the immigration court for de novo review</li> <li>• DHS issues Notice to Appear (NTA) placing client in removal proceedings</li> <li>• Client is now seeking asylum as a defense to removal</li> <li>• Notify NIJC immediately and consult re: timing and next steps.</li> </ul> 
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## Pre-Merits Hearing Issues

- Filing Deadlines:
  - 15-day filing deadline for non-detained cases (unless the IJ tells you otherwise)
- Judge's practice and preferences (contact NIJC)
- Contact ICE Office of Chief Counsel Trial Attorney
- Fingerprint appt: It is YOUR responsibility unless
  - Client is detained or
  - Has previously been fingerprinted for her asylum application

If your client has not been printed, the judge can deny the case!

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### Merits Hearing

A merits hearing is a trial, it requires:

- Open and closing statements
- Direct and cross examinations



- When scheduled – or rescheduled for a merits hearing, notify NIJC immediately.
- Consult with NIJC regarding strategy and practice
- Calendar deadlines for biometrics, documents to NIJC for review, and filing deadline

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### After the Merits Hearing


**ASYLUM GRANTED!!**



- Let NIJC know immediately (30-day deadline for benefits)
- Obtain client's I-94
- Work Authorization, Social Security Card & Benefits
- Refer client to NIJC to apply for derivative family members

**ASYLUM DENIED...**

- Reserve right to appeal
- Let NIJC know immediately
- Appeal to BIA



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### AFTER YOUR CASE IS OVER

- CELEBRATE!
- TAKE ANOTHER CASE!
- RECRUIT YOUR COLLEAGUES!
- ADVOCATE for access to justice for IMMIGRANTS!
- DONATE!




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**THANK YOU!**

For more information contact

Anna Sears

312-660-1307

[ansears@heartlandalliance.org](mailto:ansears@heartlandalliance.org)

**Other ways to support NIJC:**

- NIJC Annual Appeal
- Twitter: @NIJC
- Facebook: [facebook.com/immigrantjustice](https://facebook.com/immigrantjustice)

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