

NATIONAL  
IMMIGRANT  
JUSTICE CENTER

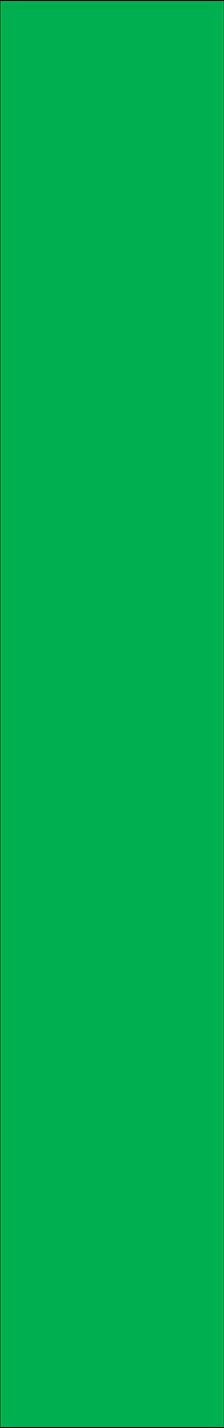
A HEARTLAND ALLIANCE PROGRAM

# Representing Asylum Seekers

*Pro Bono* Training

Greenberg Traurig, LLP  
February 2, 2017

[www.immigrantjustice.org](http://www.immigrantjustice.org)



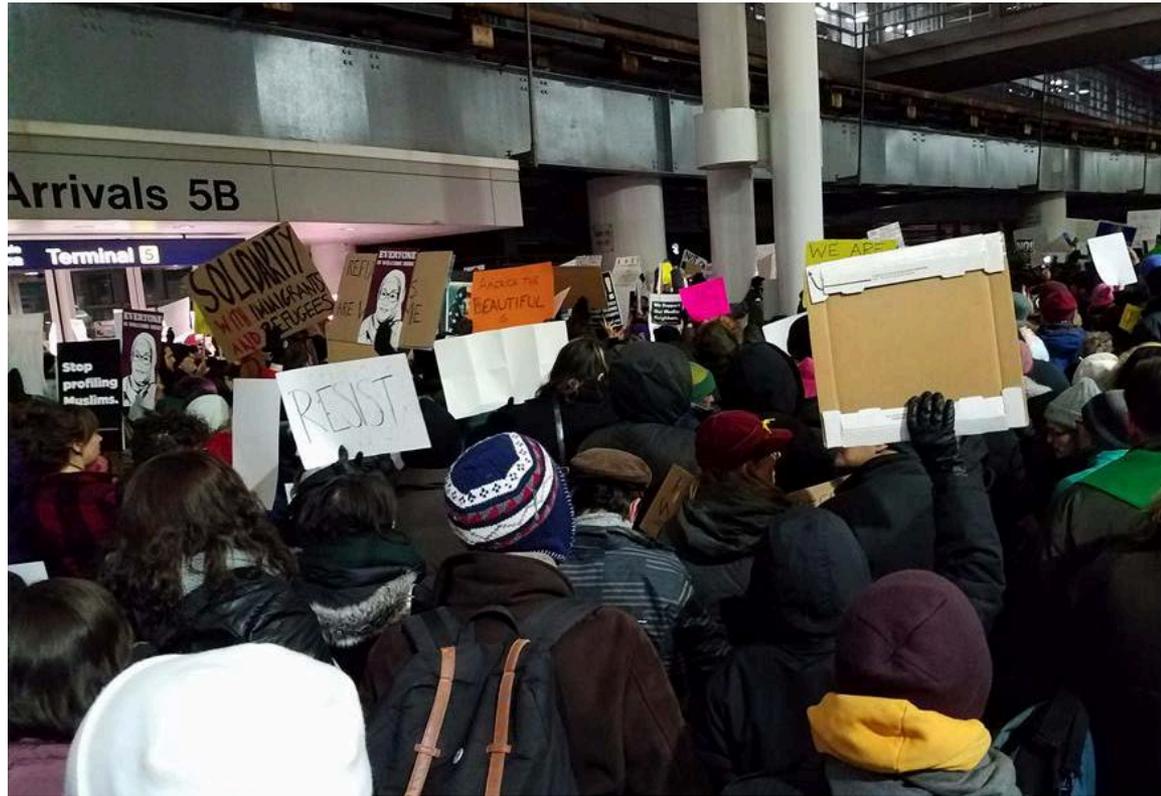
# Welcome

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Ashley Huebner,  
Managing Attorney  
National Immigrant Justice Center

# Executive Order Update

- Three orders directly impact immigrants:
  - Interior
  - Border
  - Country/  
refugee bans



See NIJC's website for annotated versions of the executive orders  
(with our analysis and resources)

# Supporting Immigrants under the New Administration

- Who is an immigrant? Share your client stories with friends, family, colleagues, and neighbors.
- Take an NIJC pro bono case (and encourage your colleagues to do so) to allow NIJC's in-house resources to focus on the fight ahead.
- Prepare strong case records in anticipation of litigation.
- Donate!

# National Immigrant Justice Center (NIJC)

- **Defends the human rights of immigrants at the individual and systemic level**
- **Provides legal services to 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**

# Why are *Pro Bono* Attorneys Important for Immigrants?

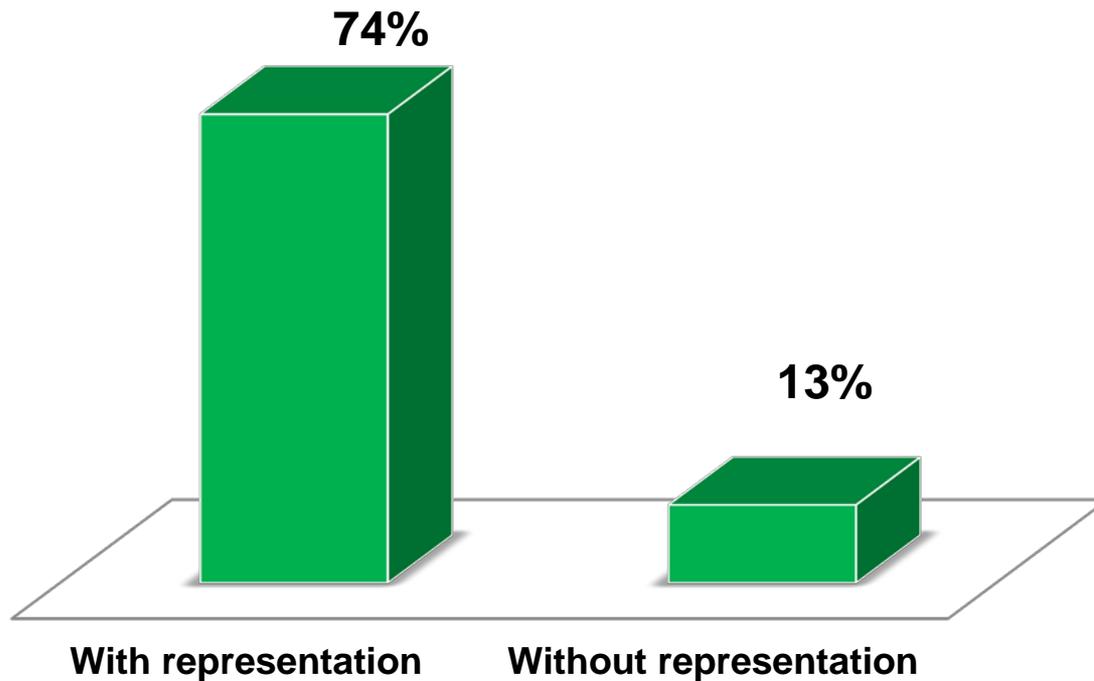
Non-citizens do not have the right to appointed counsel, even when they are

- Facing deportation
- Asylum seekers
- Mentally ill
- Detained
- Children



# Lawyers Make the Difference

**Percent of cases where  
immigrants obtained relief<sup>1</sup>**  
2005-2010



# **NIJC *Pro Bono* Lawyers Make a HUGE Difference**

**NIJC's *pro bono* attorneys provide legal representation to  
people fleeing persecution and torture**

**> 90%**

**NIJC's asylum approval rate**

**45%**

**the nationwide asylum approval rate**

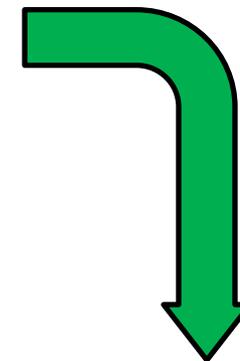
# How NIJC's *Pro Bono* Programs Work



An immigrant contacts NIJC and needs an attorney



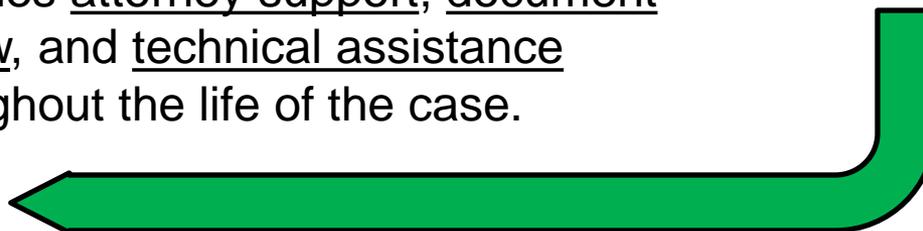
NIJC staff conduct an in-depth case screening and assessment



If case is accepted, NIJC signs a retainer with the client and begins to look for *pro bono* placement



A *pro bono* attorney team accepts the case. NIJC remains of counsel and provides attorney support, document review, and technical assistance throughout the life of the case.



# NIJC Resources for Pro Bono Attorneys

## BASIC PROCEDURAL MANUAL FOR ASYLUM REPRESENTATION AFFIRMATIVELY AND IN REMOVAL PROCEEDINGS

November 2016

NATIONAL  
IMMIGRANT  
JUSTICE CENTER  
A HEARTLAND ALLIANCE PROGRAM

208 South LaSalle Street  
Suite 1300  
Chicago, Illinois 60604  
Phone 312-660-1370  
Fax 312-660-1505  
www.immigrantjustice.org

NATIONAL  
IMMIGRANT  
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### Particular Social Group Applying for Asylum After *Matter of*

#### I. The Starting Point: *Matter of Acosta*

To qualify for asylum, an individual must demonstrate 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). In *Matter of Acosta*, the Board of Immigration Appeals (BIA) established a rule for determining whether a particular social group demonstrated membership in a particular social group. *ejusdem generis*, “of the same kind,” the BIA concluded that the commonality of the protected grounds within the refugee definition (like political opinion). The BIA concluded that the commonality of the protected grounds (like political opinion) should not be required to change (like religion or political opinion) if the protected ground then, PSG membership can be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised woman). See *id.* (listing gender as an immutable characteristic); see also *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990) (recognizing homosexuality as an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) (recognizing the status of being an uncircumcised woman as a characteristic one should not be required to change).

Below Are Links To Training Materials  
And Government Memos *Pro Bono*  
Representing Asylum Seekers. Also  
Legal Materials Page. *Pro Bono*  
Administrative Policy Updates  
Changes In Immigration

#### Asylum Training Materials

- Basic Procedural Manual for Asylum Representation
- Appendices to the Basic Procedural Manual for Asylum Representation
- Information for Attorneys Representing Detained Asylum Seekers

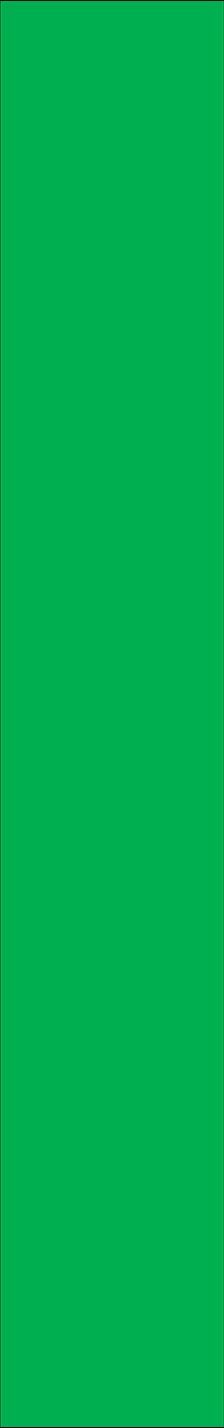
#### Immigration Court Guidelines and Manuals

- EOIR Practice Manual
- Guidelines for Facilitating Pro Bono Legal Services

#### Particular Social Group Claims

- Particular Social Group Practice Advisory: Applying for Asylum After *M-E-V-G and W-G-R*  
\*\*Updated January 2016
- Supporting documents from NIJC's March 2014 report: *Particular Social Group After M-E-V-G and W-G-R*
- Resources for Asylum Claims Based on Membership in a Particular Social Group
- Resources for Gender-Based Asylum Claims

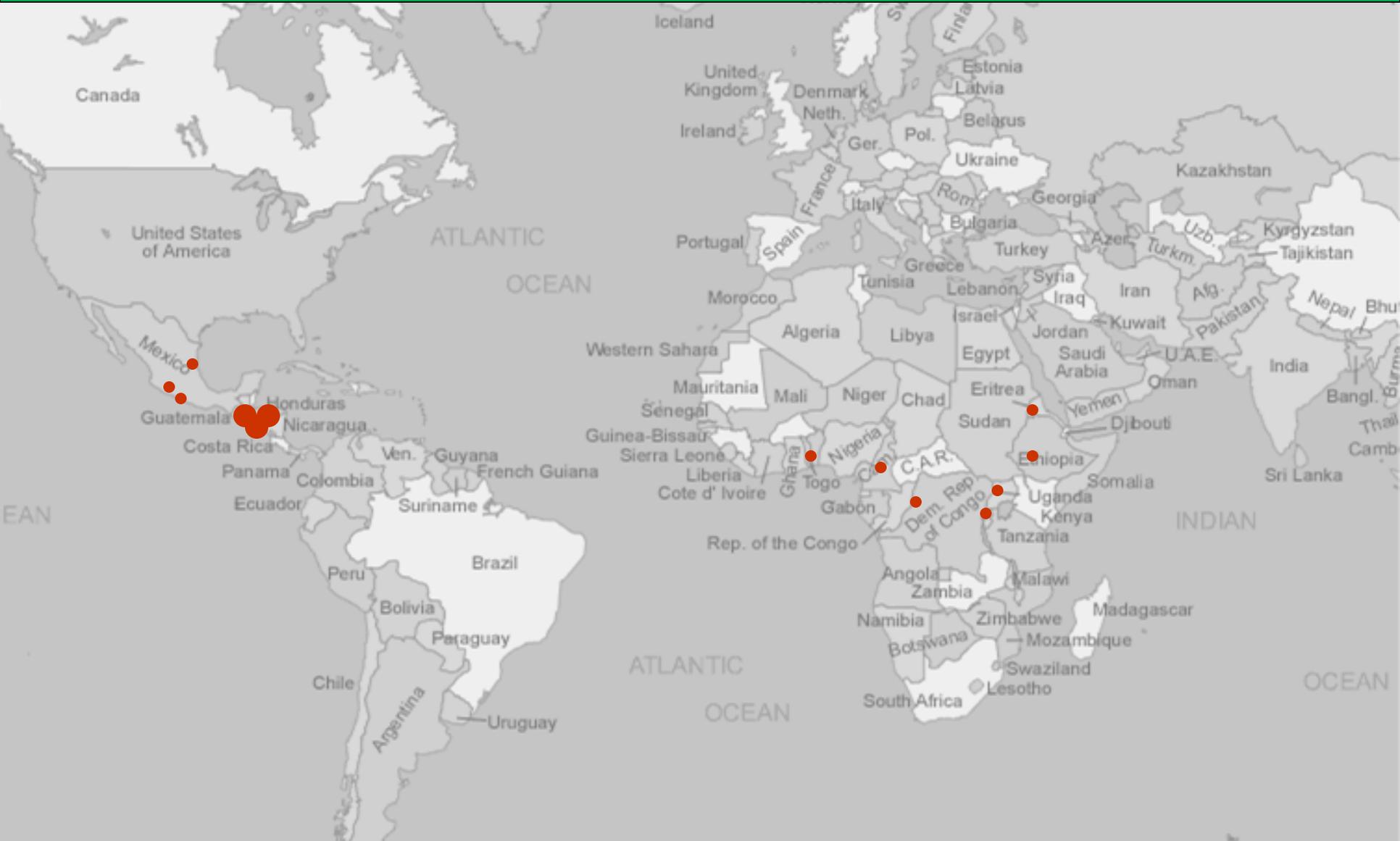




# **The Basics of Asylum Law**

Ashley Huebner  
National Immigrant Justice Center

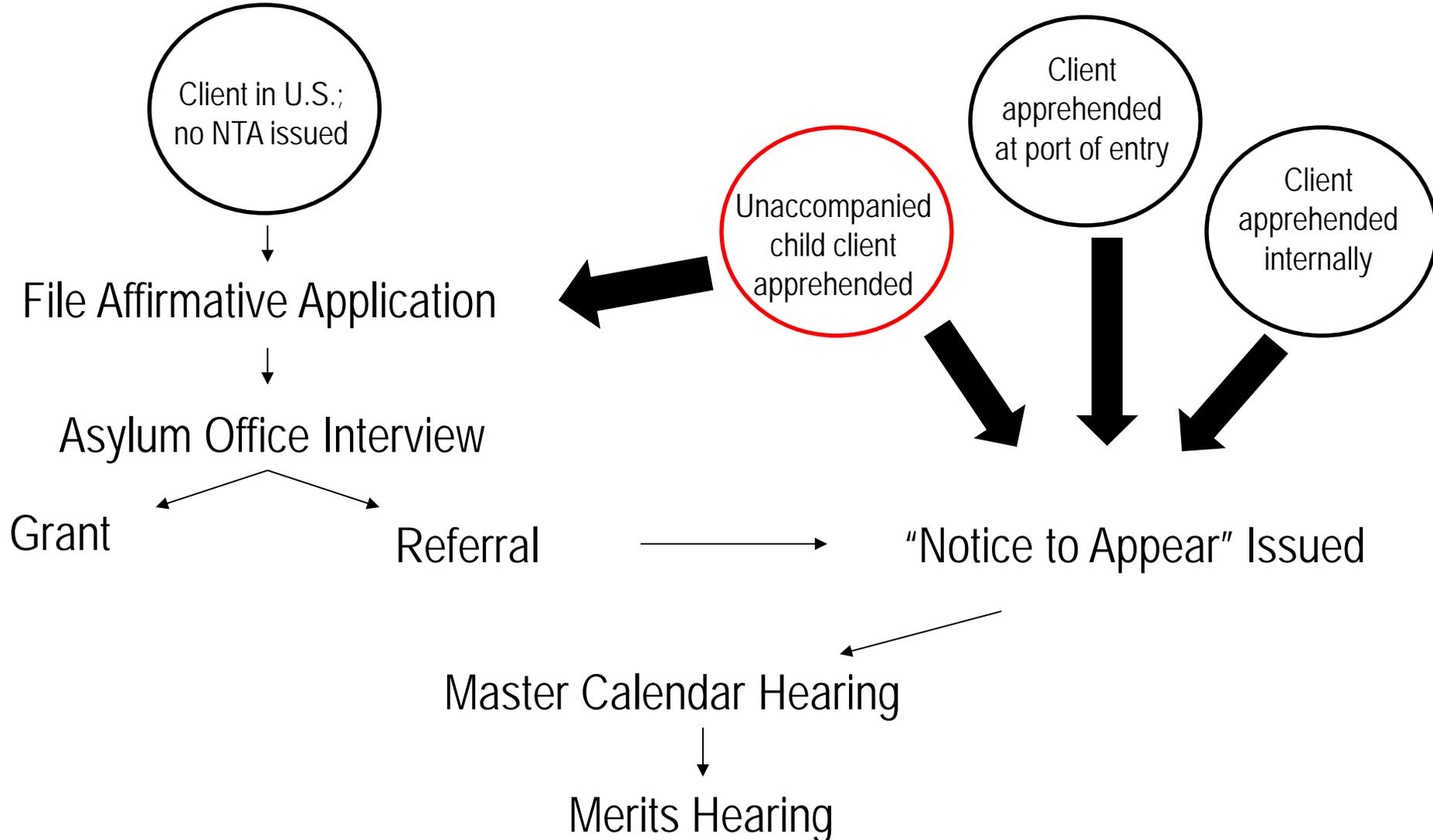
# Who are NIJC's Asylum Clients?



# The Asylum System

## Asylum Office/Affirmative Process

## Immigration Ct/Defensive Process



# 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)

# Asylum Legal Sources: INA

## INA: ACT 208 - ASYLUM 4/

### Sec. 208. (a) Authority to Apply for Asylum.-

(1) In general. - Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

### (2) Exceptions. -

(A) Safe third country. - Pursuant to a bilateral or multilateral agreement with respect to the nationality, the country of the origin, the religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(B) Time limit. - Subject to section 208(b), the applicant must apply for asylum as soon as practicable after the applicant has been admitted to the United States, or, if the applicant is already in the United States, as soon as practicable after the applicant has been granted a right to apply for asylum.

### (B) 4/ BURDEN OF PROOF-

(i) IN GENERAL- The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) SUSTAINING BURDEN- The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) CREDIBILITY DETERMINATION- Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the

# Asylum Legal Sources: 8 CFR

## § Sec. 208.4 Filing the application.

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) Prohibitions on filing. Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information ~~hearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of~~ making determinations under section 208.

## § Sec. 208.13 Establishing asylum eligibility

(1) Authority. Only an asylum officer or an immigration judge, in a hearing, shall determine whether an applicant is eligible for asylum under section 208 of the Act regarding the prohibitions contained in section 208(a)(2) of the Act.

(a) Burden of proof. The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The fact that the applicant previously established a credible fear of persecution for purposes of section 235(b)(1)(B) of the Act does not relieve the alien of the additional burden of establishing eligibility for asylum.

(2) One-year filing deadline.

(b) Eligibility. The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution. (Amended effective 1/5/01; 65 FR 76121 )

(i) For purposes of section 208.

(1) Past persecution. An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

(A) By clear and convincing evidence. States, or

(i) Discretionary referral or denial. Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

# Asylum Legal Sources: Case Law

**Stick to  
7th Cir.  
Law**

**BIA Binding  
Unless 7<sup>th</sup>  
Rejected**

In the  
**United States Court of Appeals  
For the Seventh Circuit**

No. 11-2706

N.L.A., H.O.P.M., and S.L.P.L.,

Cite as 26 I&N Dec. 388 (BIA 2014)

**Matter of A-R-C-G- et al., Respondent.**

*Decided August 26, 2014*

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

ERIC H. HOLDER, JR.,  
Attorney General of the United States

v.

Depending on the facts and evidence in an individual case, “married women in Guatemala who are unable to leave their relationship” can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3) (2012).

FOR RESPONDENT: Roy Petty, Esquire, Rogers, Arkansas

FOR THE DEPARTMENT OF HOMELAND SECURITY: George R. Martin, Appellate Counsel

MICI CURIAE: American Immigration Lawyers Association,<sup>1</sup> Center for Gender Refugee Studies,<sup>2</sup> Federation for American Immigration Reform,<sup>3</sup> National Immigrant Justice Center,<sup>4</sup> United Nations High Commissioner for Refugees,<sup>5</sup> and Williams & Connolly, LLP<sup>6</sup>

BEFORE: Board Panel: ADKINS-BLANCH, Vice-Chairman; MILLER and GREER, Board Members.

ADKINS-BLANCH, Vice Chairman:

**7COA Case  
Law Better  
than BIA**

In the  
**United States Court of Appeals  
For the Seventh Circuit**

No. 11-1989

JOHANA CECE,

v.

ERIC H. HOLDER, JR., Attorney General  
of the United States,

Petition for Review of an Order of  
Board of Immigration Appeals.  
No. A096 158 857

ARGUED OCTOBER 5, 2011 — DECIDED FEBRUARY 6, 2012

REARGUED EN BANC SEPTEMBER 27, 2012

DECIDED AUGUST 9, 2013

# 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!**

# “Well-Founded Fear”

Burden of Proof: reasonable possibility

- “One in ten” chance of persecution (*INS v. Cardoza-Fonseca*, 480 U.S. 421 at 431)

Established two ways:

1. Past persecution
2. Fear of future persecution

Argue both whenever possible!

# Past Persecution

Past persecution

+all other asylum elements

Rebuttable presumption of future persecution

Rebutted by



changed circumstances



safe, reasonable  
internal relocation

# Future Fear Only

Reasonable  
Possibility

Credibility

Subjectively genuine fear  
objectively reasonable fear (w/all elements)  
+no safe, reasonable internal relocation  
**Well-founded fear of future persecution**

# Asylum on a Humanitarian Basis

Past persecution + all asylum elements



Severity of Past  
Persecution



Possibility of Other  
Serious Harm  
(No Nexus!)

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

# “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).

# The Persecutor Does Not Have to be the State

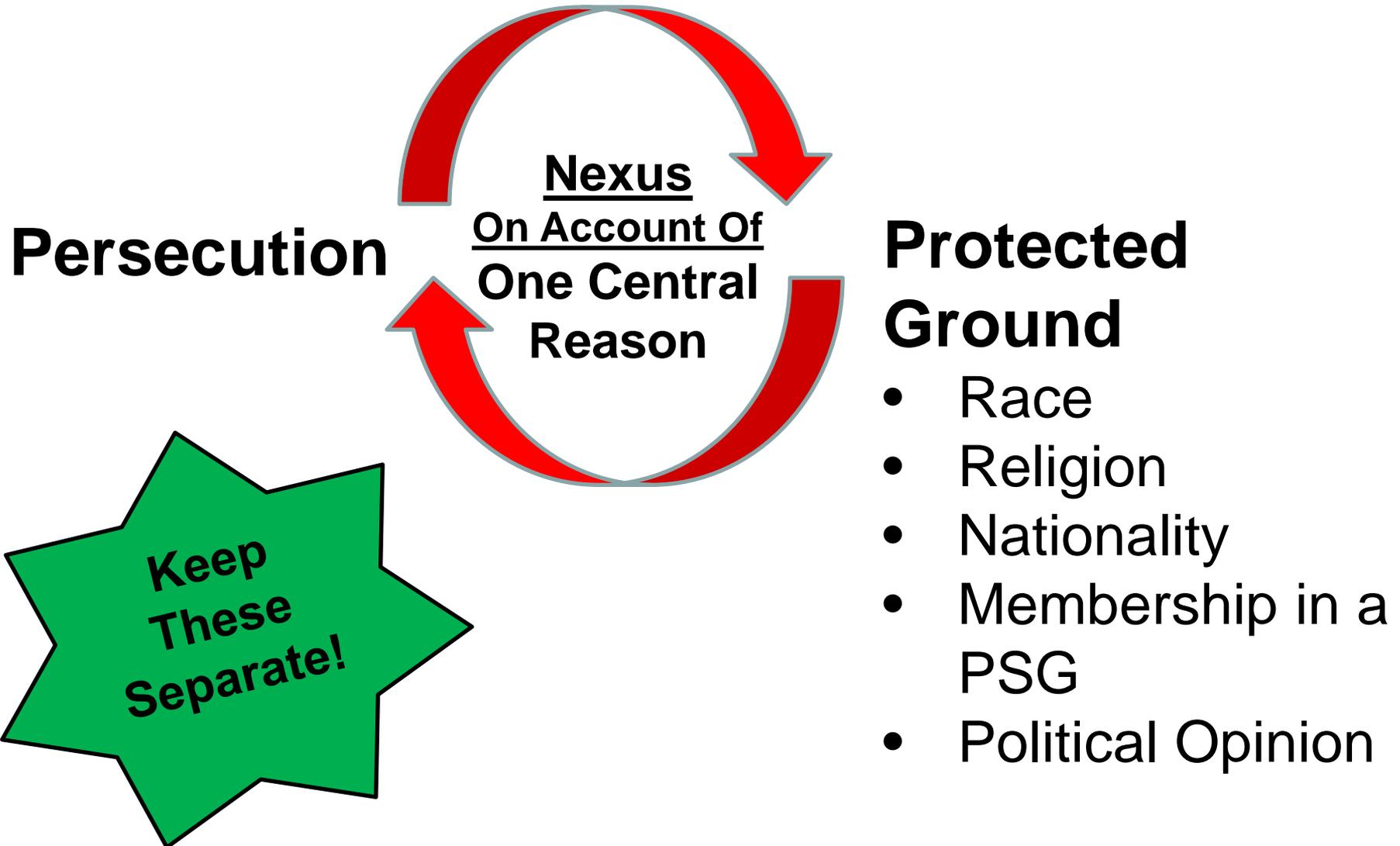
## Governmental Entity

- Police
- Military
- Security Forces
- Presidential Guard
- Mayor
- Village Chief
- Paramilitary?
- Gangs?

## Entity the Government is Unable OR Unwilling to Control

- Gangs
- Paramilitary
- Guerrilla Group
- Family Members
- Vigilante Group
- Opposing Political Party
- Others?

# “On Account of a Protected Ground



# 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)

# ~~POLITICAL~~ ASYLUM

## 1. Race:

- Broad meaning (Congolese Tutsis)

## 2. Religion

- (Christian, Atheist)

## 3. Nationality:

- Not just citizenship; can include ethnic or linguistic group. May overlap with race

## 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

# 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  |
|---|---|
| <ul style="list-style-type: none"><li>• Can't be overly broad</li></ul>                         | <ul style="list-style-type: none"><li>• Breadth is irrelevant</li></ul>                     |
| <ul style="list-style-type: none"><li>• Must be considered a group by society</li></ul>         | <ul style="list-style-type: none"><li>• No social distinction test</li></ul>                |
| <ul style="list-style-type: none"><li>• “Former” status/past experience is not enough</li></ul> | <ul style="list-style-type: none"><li>• “Former” status/past experience is enough</li></ul> |
| <ul style="list-style-type: none"><li>• Groups can't be overly diverse</li></ul>                | <ul style="list-style-type: none"><li>• Diversity not an issue</li></ul>                    |

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

# What Can Form a Particular Social Group?

**“A former association with a group”**  
**-Escobar v. Holder**

**Former Employees**

**“A shared past experience or status”**  
**-Cece v. Holder**

**Gender**

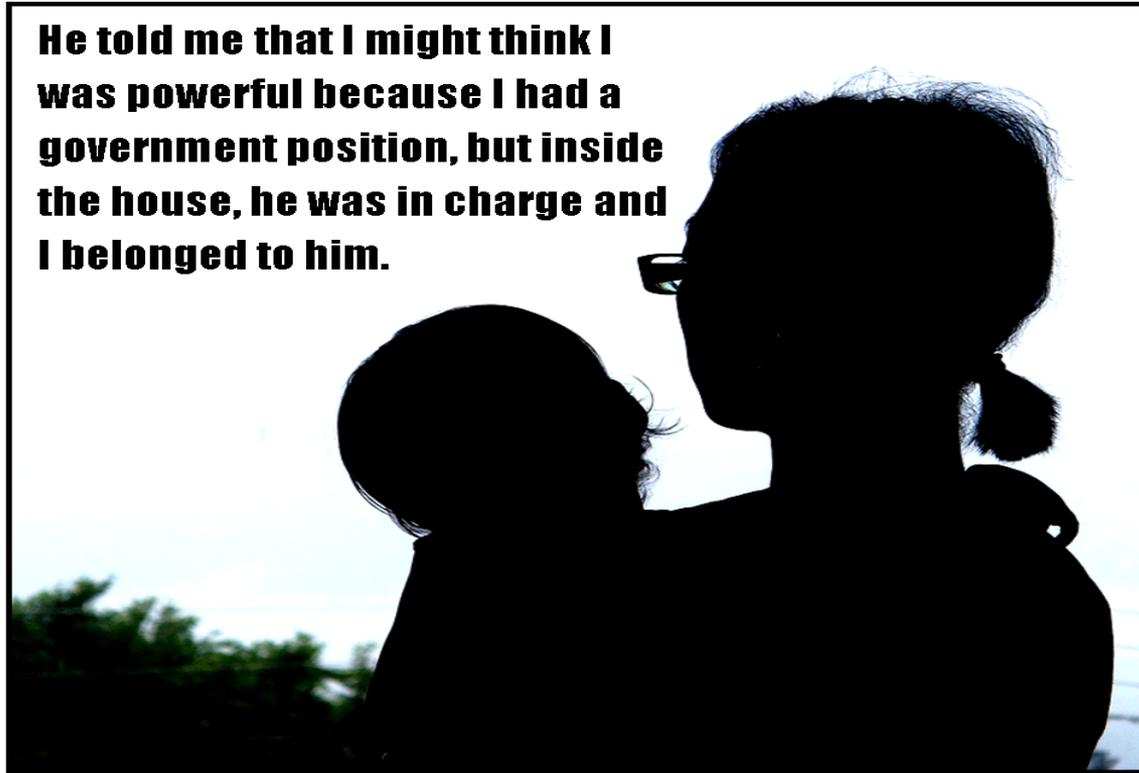
**He told me that I might think I was powerful because I had a government position, but inside the house, he was in charge and I belonged to him.**

**Being a witness**

**Sexual orientation and gender identity**

**Resisting a criminal group**

**Family relationship or status**



# What Bars 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)(vi)                              | 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 term of imprisonment sentenced was at least five years it is a PSC. <i>But other crimes may also be found to constitute a PSC, notwithstanding the prison sentence.</i> | No                       |
| Serious Non-Political Crime Outside the U.S. - INA § 208(b)(2)(A)(iii) | Yes            | Yes   | No                       |
| Danger to the Security of the U.S. - INA § 208(b)(2)(A)(iv)            | Yes            | Yes   | No                       |

# Other Issues That May Impact the Case

- Certain events in the client's life may make her eligible for other relief
  - Marriage
  - Victim of a crime
  - Your client should not file applications for any other immigration benefits without consulting you first.
  
- Other life changes may compromise eligibility
  - Travel
  - Marriage (in some cases)
  - Crimes (even convicted crimes) here or abroad

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

# 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 govt/govt is unable or unwilling to control | Reasonable possibility ( $\geq 10\%$ ) | 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 govt or w/the govt's acquiescence  | More Likely than Not ( $>50\%$ )       | No                   | No                    | No                |



# **Preparing Your Case**

Lisa Koop,  
Associate Director of Legal Services  
National Immigrant Justice Center

# Who's Involved: The Agencies

## The Department of Homeland Security



- Immigration & Customs Enforcement (ICE)
  - Office of Chief Counsel (OCC)
  - Enforcement & Removal Operations (ERO)
- U.S. Citizenship & Immigration Services (USCIS)
  - Asylum Office
- Customs & Border Protection (CBP)

## The Department of Justice

- Executive Office for Immigration Review (EOIR)
  - Board of Immigration Appeals (BIA)
  - Immigration Courts



# What to File

## Asylum Office (Nebraska Service Center)

- Appearance form: G-28
- TVPRA Instruction Sheet (for unaccompanied children only)
- Asylum App (I-589) and 1 passport photo
- Two copies, plus an one copy for each deriv.
- No filing fee!

**One week before the interview, file** (with the Chicago Asylum Office)

- Legal memo
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

## Immigration Court

- Appearance form: E-28
- Asylum App (I-589) and 1 passport photo
- Serve one copy of the I589 on DHS

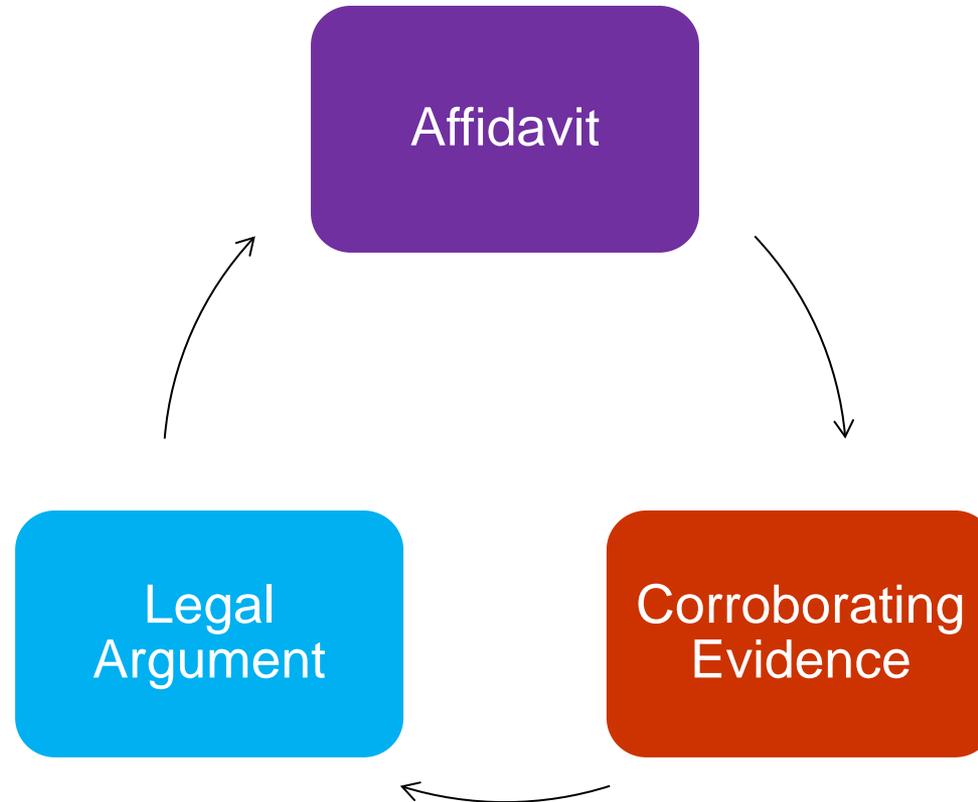
- No filing fee!

**Prior to the merits hearing, file:**

- Brief
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

*Anytime you file anything with the Court, you must serve a copy on the government*

# Keep the Big Picture in Mind



# Step 1:

## 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

# Step 2: The Skeletal Asylum Application

Department of Homeland Security  
U.S. Citizenship and Immigration Services

OMB No. 1615-0067

U.S. Department of Justice  
Executive Office for Immigration Review

## 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)

n/a (affirmative asylum applicants generally don't have one; defensive applicants do)

2. U.S. Social Security Number (if any)

n/a

3. Complete Last Name

CLIENT

4. First Name

Client

5. Middle Name

Client

6. What other name(s) do you use?

n/a

7. Residence in the United States

Street Number and Name

123 4 Street

I am seeking asylum or withholding of removal based on:

Race

Religion

Nationality

Political opinion

Membership in a particular social group

Torture Convention

A. 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, Mara Salvatrucha (MS-13) repeatedly threatened my brother and I and tried to kill us because we refused to join them. Please see affidavit for more information.

# Step 3:

## 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.

# Affidavit Best Practices

- The most important document
- Statement of the client in his/her own voice
- Balancing detail
- Chronological
- Bulk of your prep time will be here: meet early and often
- Cover the 5 Ws + H
- Consider length

For more tips on drafting an asylum affidavit, register for NIJC's 11/18/16 webinar: "Telling Your Client's Story: Affidavit Writing 101," at <http://immigrantjustice.org/calendar/webinar-series-telling-your-client%E2%80%99s-story-affidavit-writing-101>

# SAMPLES AVAILABLE ON NIJC'S WEBSITE

Affidavit of CLIENT  
In Support of Her Application for Asylum,  
Withholding of Removal and Relief under the Convention Against Torture

1. My name is CLIENT. I am a citizen of the Republic of the Congo. I fled to the United States with my children on DATE, because the Congolese military beat us, threatened us and tried to kill us. The military targeted us because my former partner, the father of my two daughters, was involved in a suit against the government for the disappearance of his brother during the Disappearance at the Beach in 1999.

## My Background

2. I was born on DATE, in Brazzaville, the capital of the Republic of the Congo. I had a fairly happy childhood. I am an only child and my parents loved me and were able to give me what I needed, even though we were not rich. I graduated from high school and then attended and graduated from technical college, where I received a degree to become a secretary.
3. While my family life was happy at home, the political situation in my country was unstable throughout my childhood. There was always violence between different ethnic groups, and different leaders taking power. Most of the recent violence in the Republic of the Congo has been between the north and the south fighting each other to rule the country. My family was never involved in the violence. We are reserved people who tend to keep to ourselves. Even though my family was not involved in politics and did not cause any violence, we learned, like all Congolese citizens, about the government's corruption and the violence that came to people who opposed or questioned the government. I learned as a child that even though we say our citizens have "rights" to things like freedom of speech and the ability to criticize the government, the reality is that people are frequently hurt or worse if they try to oppose the government.

# Client Affidavit/Declaration Cont.

- “On May 1, 2010, three police officers invaded my home and arrested me” → too much detail
- “In early May, 2010, several police officers invaded my home and arrested me.” → good!
- “I am applying for asylum because I have a well-founded fear of persecution on account of my political opinion.” → too much legalese
- “I am applying for asylum because I am afraid the government will beat, torture, or kill me because of my work with a group that opposed the government.” → good!

# Step 4: Corroborating Your Case



# How Much Corroboration is Necessary?

- Corroboration is the second most important part of an asylum case.

**Don't leave it until the end!**

- Can be 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.

# Obtaining Corroboration

## Everything Matters!

| <b>Country Conditions</b>  | <b>Client-Specific</b>                                | <b>Past Persecution</b>     | <b>Future Persecution</b>   |
|--|---|-----------------------------|---|
| 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<br><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  |

# 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.

# Presenting Corroborating Evidence

## Index of Documents in Support of CLIENT's Application for Asylum, Withholding of Removal, and Relief under the Convention Against Torture

| 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/outofdate/bgn/congobrazzaville/193657.htm">http://www.state.gov/outofdate/bgn/congobrazzaville/193657.htm</a> [last accessed September 19, 2012]<br><br>"The Republic of the Congo is slightly larger than New Mexico, but vast areas in the north include jungles that are virtually uninhabited. . . . 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. In southern rural areas, industrial and commercial activity suffered as a consequence of the civil wars 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/186397.pdf">http://www.state.gov/documents/organization/186397.pdf</a> [last accessed September 19, 2012]<br><br>"Denis Sassou-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 elections to have been free and fair; however, <b>opposition candidates and nongovernmental organizations (NGOs) cited irregularities.</b> "  | 36   |

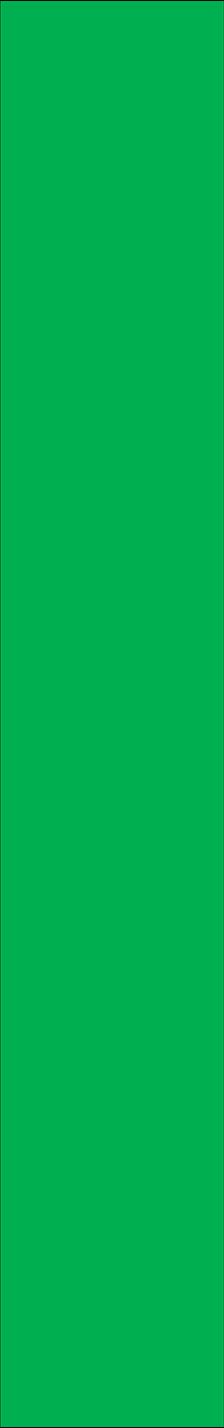
# Step 5: Drafting the Legal Memo or Brief

- 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:
  - Supreme Court
  - Federal Circuit Court of Appeals
    - **Stick to the Seventh Circuit**
  - Board of Immigration Appeals (BIA) precedent decisions
- Preserve all arguments and claims to relief

# Filing Format

- Follow the Immigration Court Practice Manual
- If filing requirements are not met (tabs, pagination, two-hole punch, certificate of service, etc.), the Court may reject your filing.
- Check notes from the status hearing for other requirements
- Copy of all filings must be submitted to DHS (use the OCC email address for e-filings)

Be sure to annotate your index and highlight important information in country condition reports



# **Presenting Your Case: the Asylum Office**

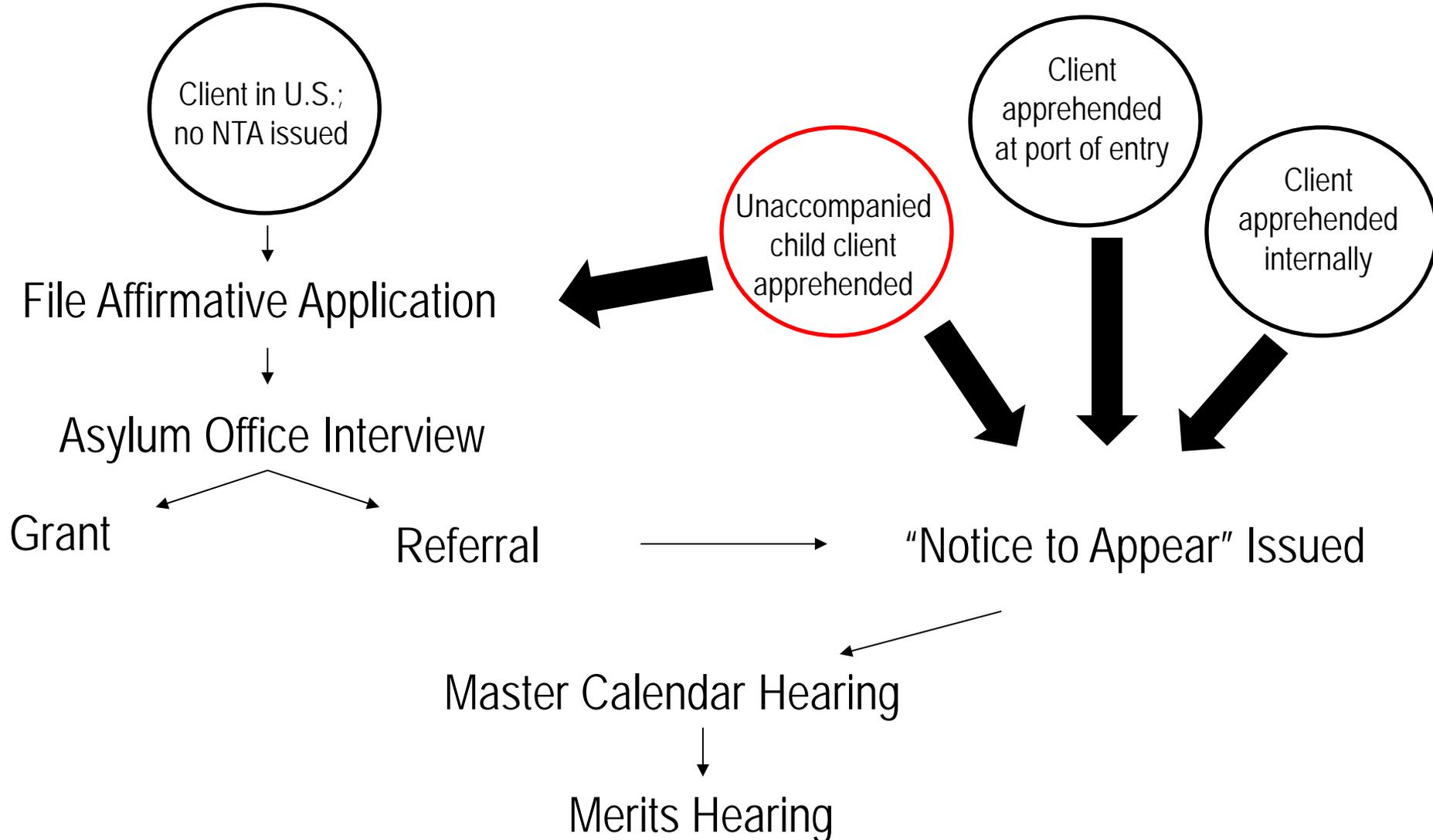
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Ashley Huebner,  
National Immigrant Justice Center

# The Asylum System

## Asylum Office/Affirmative Process

## Immigration Ct/Defensive Process



# Asylum Office Timing

|            |   |
|------------|---|
| Day 1:     | Asylum application received by Nebraska Service Center (Clock starts to run). |
| Day 10-20: | Receipt and biometrics notice issued  |

| Unaccompanied Children  | All Other Applicants  |
|---|---|
| 8+ months later (?): Receive interview notice approx. 2 weeks before the interview date | ~3 years later: Receive interview notice approx. 2 weeks before the interview date (currently interviewing ~December 2013 applicants) |

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

# While Your Case is Pending

- Develop rapport with your client
- Maintain contact
- 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

# Work Authorization

- Can be difficult to obtain - depends on the “asylum clock”
- Clock begins to run when the asylum application is filed (received)
  - By USCIS for asylum office cases (affirmative asylum)
  - By the immigration court for court cases (defensive)

**\*Note Policy New Change!**
- Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
- Clock stops if the applicant causes a delay
  - Declines an expedited hearing date
  - Requests a continuance or a change of venue
- Clock begins to run again when delay has stopped

# 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

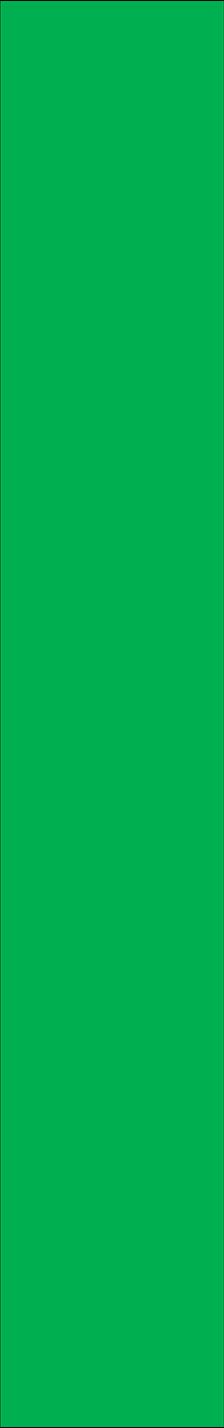
# After the Asylum Office Decision

## ➤ If you win:

- Let NIJC know immediately (30-day deadline for benefits)
- Work Authorization, Social Security Card & Benefits
- Advise client to contact NIJC to apply for derivative family members

## ➤ If you lose, the case is not over:

- Referral to the immigration court for de novo review
- DHS issues Notice to Appear (NTA) placing client in removal proceedings
- Client is now seeking asylum as a defense to removal
- Let NIJC know immediately and consult with NIJC re: timing and next steps



# **Presenting Your Case: the Immigration Court**

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Lisa Koop,  
National Immigrant Justice Center

# Filing Your Appearance in Court

- E-28 appearance form: file as soon as possible
  - Can file electronically once registered or in paper format
- E-Registry
  - All attorneys appearing before the immigration court and Board of Immigration Appeals (BIA) MUST register with the Executive Office for Immigration Review's E-Registry system in order to appear before the Court or BIA.
  - E-Registry contains both an electronic and an in-person identification component.
  - See <http://www.justice.gov/eoir/engage/eRegistration.htm> for more information.

# Filing Your Asylum Application in Court

- Can be filed at the court window or in open court
- Review filing procedures to ensure sufficient copies and format
- Obtain a date-stamped copy for your own records (very important!)
- File early to potentially make your client eligible for a work permit. Talk to NIJC about consequences.

# Master Calendar Hearing

- What it is: a status hearing:
- Hearing procedures:
  - Arrive Early! YOUR CLIENT MUST APPEAR!
  - File appearance form (E-28) if you haven't already
  - Admit/deny charges; concede removability
  - Decline to designate country for removal
  - Relief sought (asylum, withholding, CAT)
  - Request interpreter, with specific dialect
  - Accept/decline expedited hearing date (remember EAD consequences).

# Court Proceedings: Notice to Appear

U.S. Department of Justice  
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A 888

In Matter of:  
Respondent: [REDACTED] currently residing at:  
[REDACTED] (Number, street, city, state, and ZIP code) [REDACTED] (Area code and phone number)

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of ALBANIA and a citizen of ALBANIA;
- 3) You entered the United States at or near DETROIT, MI(MAY-OCT) on or about January 14, 2001;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
Section 212 (a) (6) (A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
55 EAST MONROE ST., SUITE 1900, CHICAGO, IL 60603-0000  
(Complete Address of Immigration Court, Including Room Number, if any)

on April 2, 2002 at 10:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.  
(Date) (Time)

[Signature]  
(Signature and Title of Issuing Officer)

Date: MAR 12 2002 CHICAGO, IL  
(City and State)

See reverse for important information Form I-862(-4-1-97)

The Notice to Appear (NTA) is the charging document that places an individual in removal proceedings.

← Allegations: correct with IJ if necessary; admit

← Charge(s): correct with IJ if necessary; concede charge/removability

# Immigration Court: Case Timing

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

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

# Pre-Merits Hearing Issues

- Know your judge's practice and preferences (contact NIJC)
- Filing Deadlines:
  - 15-day filing deadline for non-detained cases (unless the IJ tells you otherwise)
  - Review the Court's file
  - Review the Immigration Court Practice Manual
- Contact ICE Office of Chief Counsel Trial Attorney
  - Not assigned until the month of the merits hearing. Contact ICE-OCC to find one which attorney will be handling your case.

# Pre-Merits Hearing Issues: Fingerprints

- It is YOUR responsibility to obtain a fingerprint appointment for clients in court proceedings unless your client is detained or has previously been fingerprinted at an application support center.
- Fingerprints taken at the border do not count.
- If no fingerprints - NO RELIEF!  
IJ cannot grant relief and could deny the application for abandonment.
- See NIJC's asylum manual and fingerprint FAQ for instructions

# Evidence in Immigration Court

## ➤ Written:

- Trial Brief
- Supporting Documents
- FRE do not apply (but will give more weight)

## ➤ Oral Testimony

- Applicant
- Fact witnesses, especially to corroborate identity
- Experts

# Opening Statement

BE BRIEF: no more than about one to three minutes

- Offer a concise “roadmap”
- Brief review of the facts
  - Solomon is an Eritrean man
  - Persecuted for leaving the country without permission and evading forced conscription in the military
  - Perceived as a traitor
  - Country condition documentation
  - Letters from family members
- Brief mention of other major issues

# Direct Examination of Witnesses

- Key issue is credibility
- Don'ts
  - Don't script answers
  - Don't ask leading questions
  - Don't waste time on irrelevant matters
- Do's
  - Do follow a chronological story; use declaration as guide
  - Do draw the story out
  - Consider using visual aids, particularly maps
  - **Make your record**

# Preparing Your Client for Cross

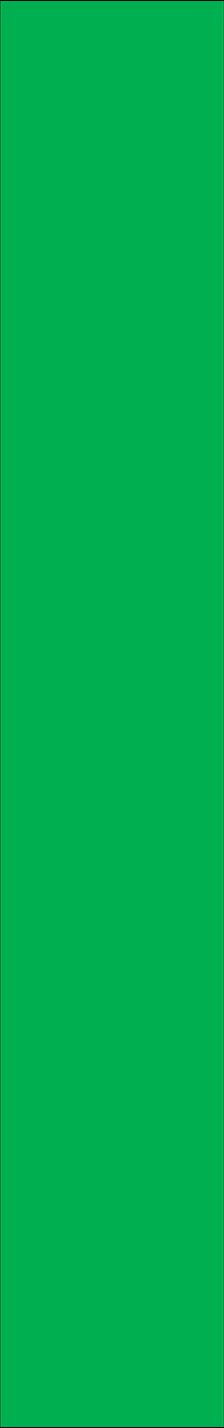
- Anticipate questions
- Prepare client for leading questions
- Expect questions from judge
- Empower client, BUT remind client to maintain demeanor
- Remember cultural obstacles
- PRACTICE, PRACTICE, PRATICE!

# Closing Statement

- Take cues from the judge
- Make the legal argument
- Make the record
- Respond to issues

# After the Merits Hearing

- If you win:
  - Let NIJC know immediately (30-day deadline)
  - For Court Cases, Need to get Client's I-94
  - Work Authorization, Social Security Card & Benefits
  - Refer client to NIJC to apply for derivative family members
  
- If you lose, the case is not over:
  - **Reserve right to appeal**
  - Let NIJC know immediately
  - Appeal to BIA



# **Working With Your Client**

Carolina Ramazzina Van Moorsel,  
Asylum and *Pro Bono* Projects Supervisor  
National Immigrant Justice Center

# The First Meeting With Your Client

- Establish trust first! Don't just jump into the case.
- Explain your relationship with NIJC and your role in the process.
- Set up a regular communication and an emergency plan.
- Go through a road map of what you'll discuss in the meeting.
- Go through a road map of what will happen on his/her case.

# Common First Questions

- What are my chances? Remind client of:
  - NIJC's screening process
  - Joint effort between attorney and client to achieve best possible result
  - Unpredictable immigration system
  
- When will I get a decision?
  
- Can I work?      When?
  
- When can I bring my family here?

# Other Client Meetings

- Explain the purpose of the documents you are preparing.
- When preparing your affidavit keep in mind:
  - Clients endured trauma, they might have a hard time explaining what happened and remembering details.
  - Different people tell their stories in different ways – you might need to help them with developing a timeline.
  - Don't try to get it all out in one day.
- Encourage your client to go to counseling. If they aren't yet connected with services, contact us. NIJC can help you with referrals.

# Important Tips

- Be prepared for questions beyond the scope of the case.
- Empower your client and promote independence.
- Manage expectations on decision timing.

# THANK YOU!

For more information contact  
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## **Other ways to support NIJC:**

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