

NATIONAL
IMMIGRANT
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Representing Asylum Seekers

Pro Bono Training

Winston & Strawn LLP

November 16, 2017

www.immigrantjustice.org

Welcome

Ashley Huebner,
Asylum Project
National Immigrant Justice Center

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?

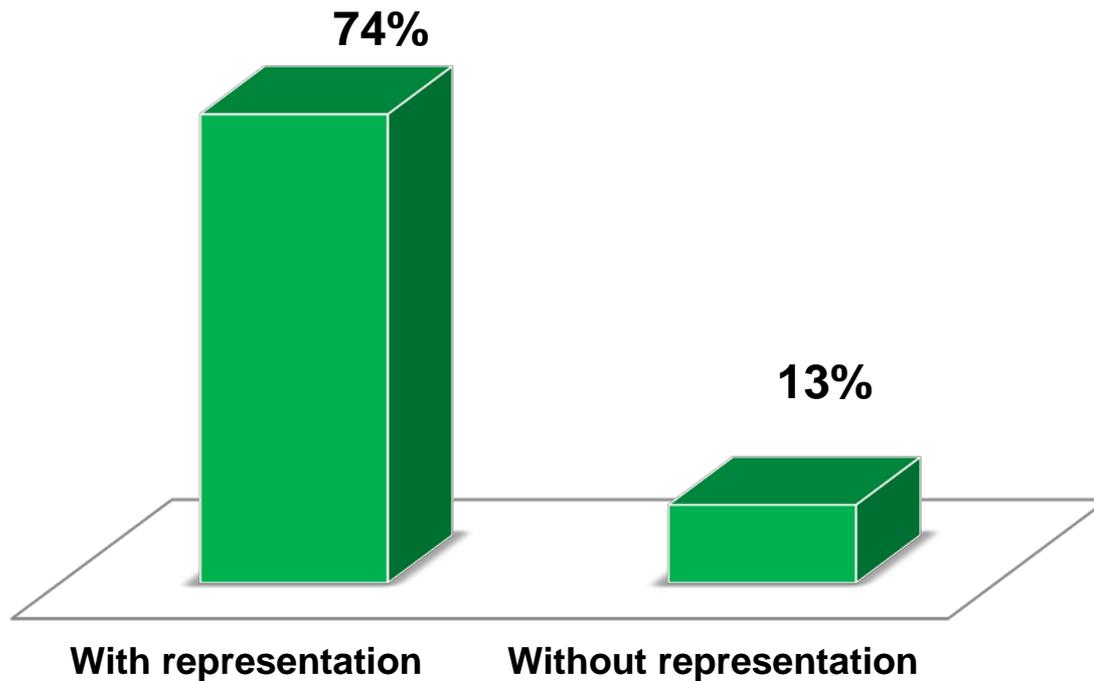
Non-citizens do not have the right to appointed counsel, even when they are

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



Lawyers Make the Difference

**Percent of cases where
immigrants obtained relief¹**
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

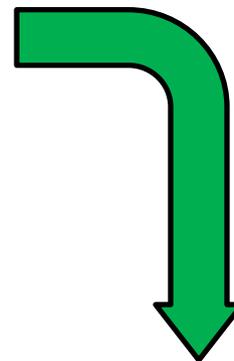
How NIJC's *Pro Bono* Programs Work



An immigrant contacts NIJC and needs an attorney



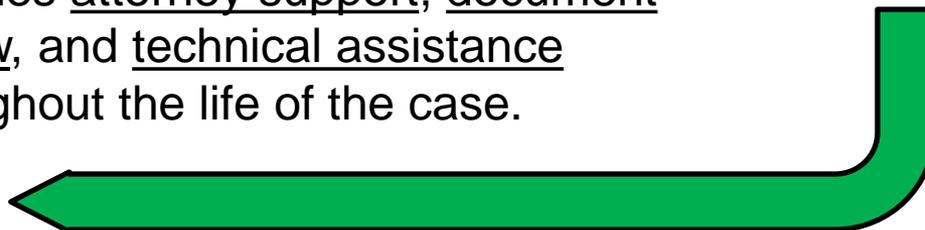
NIJC staff conduct an in-depth case screening and assessment



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.

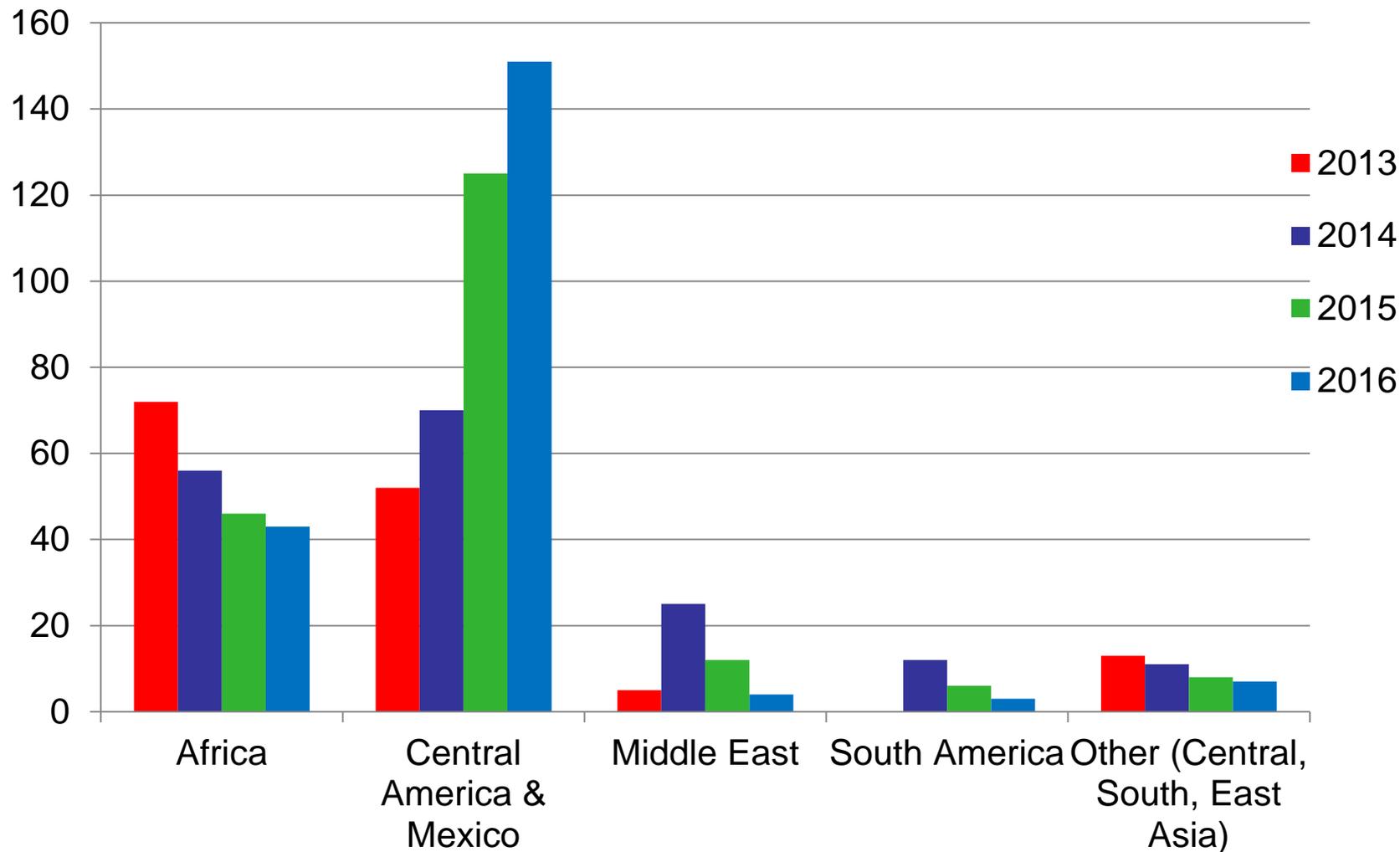




The Basics of Asylum Law

Ashley Huebner
National Immigrant Justice Center

Who are NIJC's Asylum Clients?



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

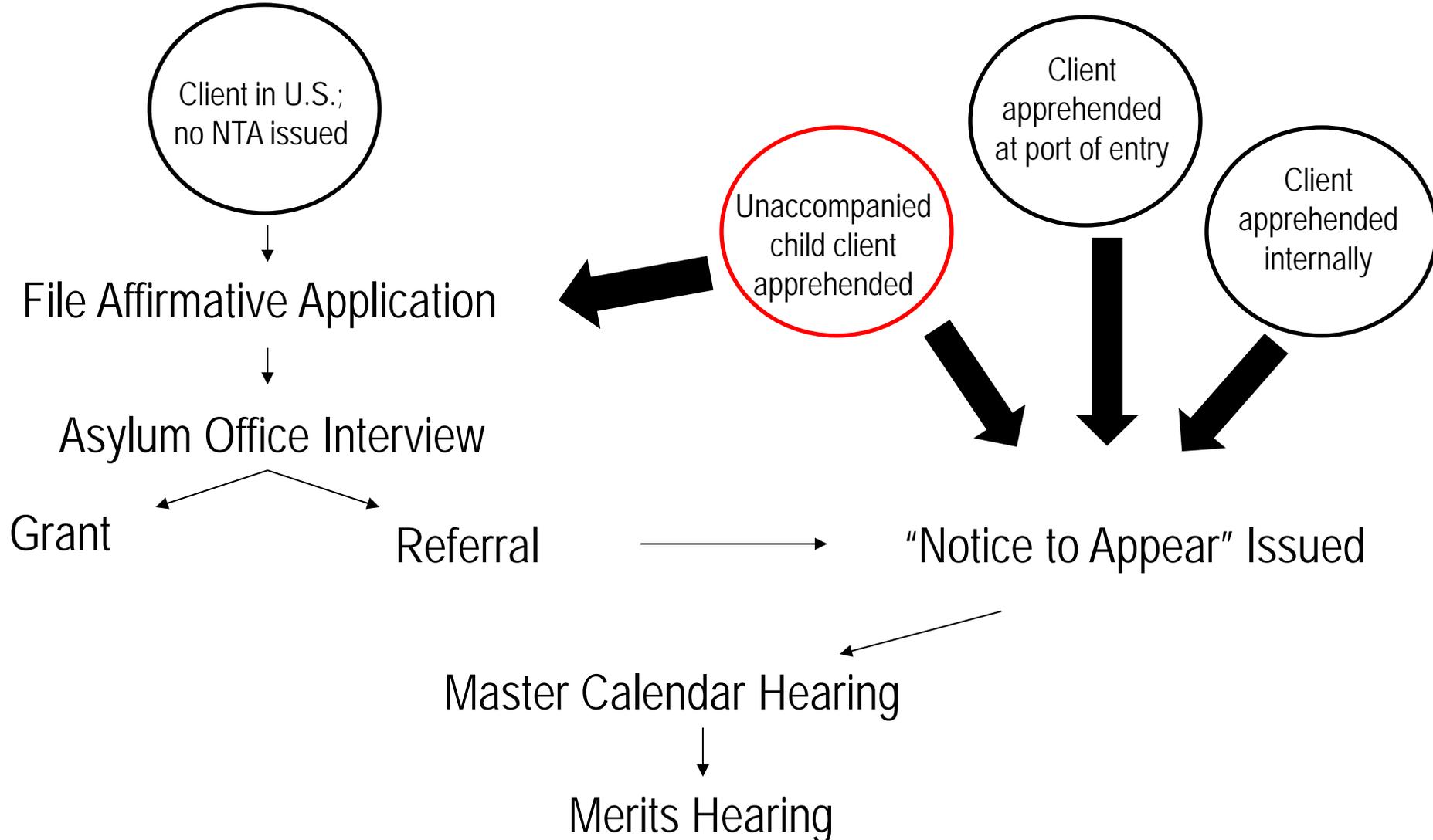


Office of Refugee Resettlement (ORR): part of HHS; responsible for the care/custody of UICs until they can be reunified with a family member or sponsor.

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 the country of the alien's nationality, the country of the alien's religion, nationality, membership in a particular social group, or political opinion, the procedure for determining a country is safe for the alien to receive asylum.

(B) Time limit. - Subject to the provisions of this section, the applicant must submit convincing evidence that the

(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

(1) Authority. Only an asylum officer regarding the prohibitions contained

(2) One-year filing deadline.

(i) For purposes of section 208

(A) By clear and convincing evidence States, or

§ Sec. 208.13 Establishing asylum eligibility

(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.

(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)

(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.

(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 7th
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,¹ Center for Gender Refugee Studies,² Federation for American Immigration Reform,³ National Immigrant Justice Center,⁴ United Nations High Commissioner for Refugees,⁵ and Williams & Connolly, LLP⁶

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

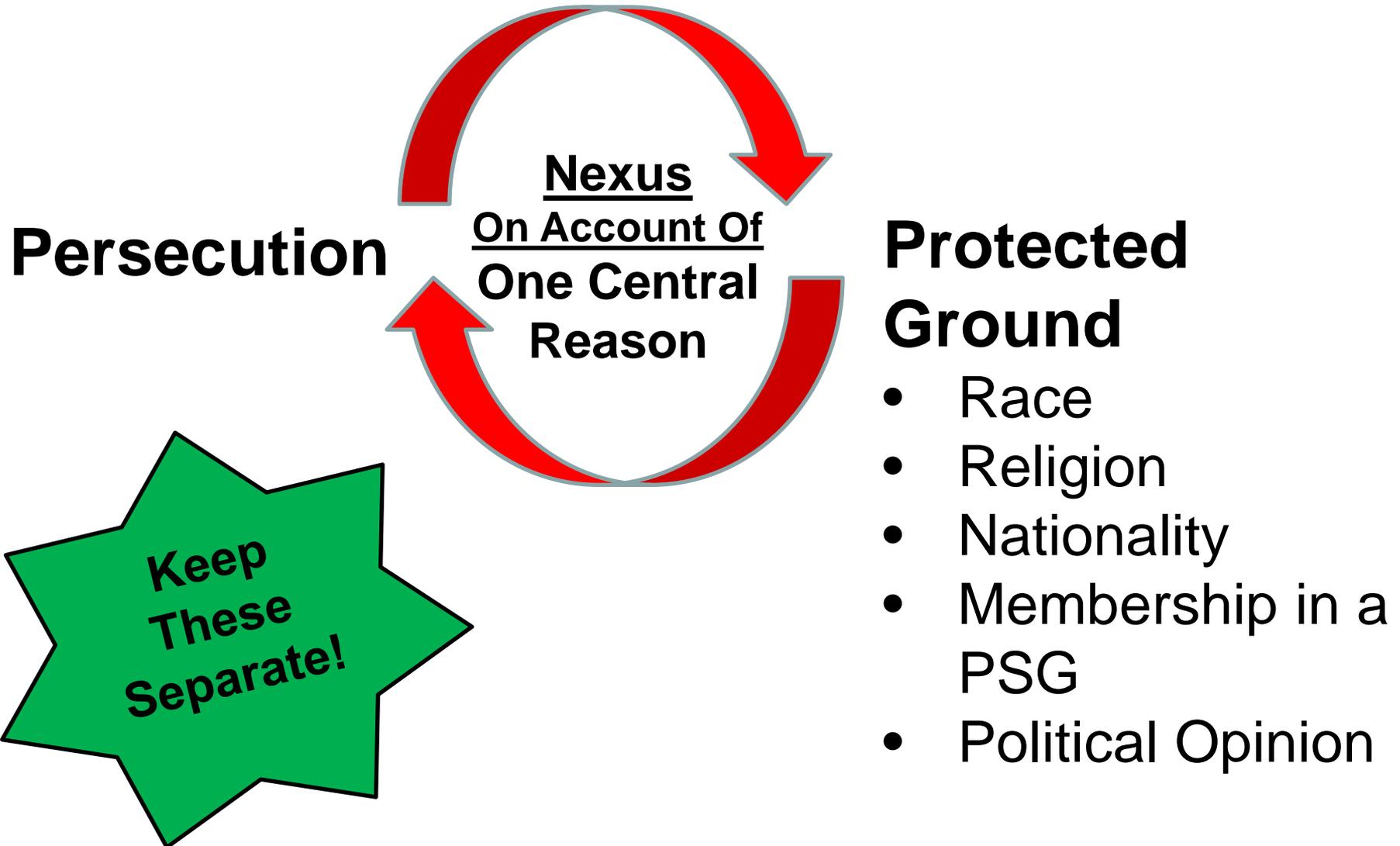
Governmental Entity

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

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

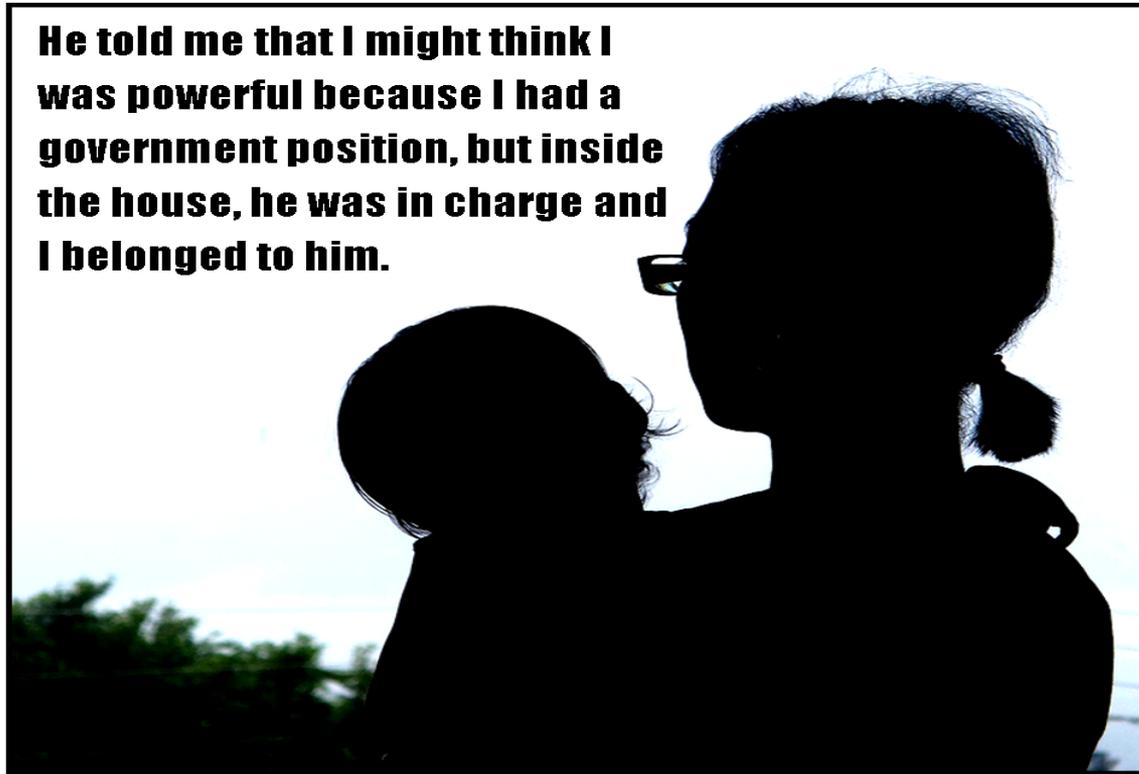
He told me that I might think I was powerful because I had a government position, but inside the house, he was in charge and I belonged to him.

Being a witness

Sexual orientation and gender identity

Resisting a criminal group

Family relationship or status



Common Social Groups

- Child abuse/domestic violence claims:
 - Children in the X family/children of X
 - [Nationality] children who lack parental protection
 - [Nationality] women in intimate relationships they are unable to leave
- Gender violence claims:
 - [Nationality] females [women; girls]
 - [Nationality] females in relationships they are unable to leave
 - [Nationality] females who lack parental/male protection
- Gang-related claims:
 - [Nationality] youth who have opposed [resisted/disrespected] gangs
 - [Nationality] who have witnessed [and reported] gang activities

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 un-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?
Asylum	Yes	Persecution on account of a protected ground by govt/govt is unable or unwilling to control	Reasonable possibility ($\geq 10\%$)	Yes	Yes	Yes
W/Holding	No	Same as asylum	More Likely than Not ($>50\%$)	No	No	No
Relief under the Convention Against Torture	No	Torture by the govt or w/the govt's acquiescence	More Likely than Not ($>50\%$)	No	No	No

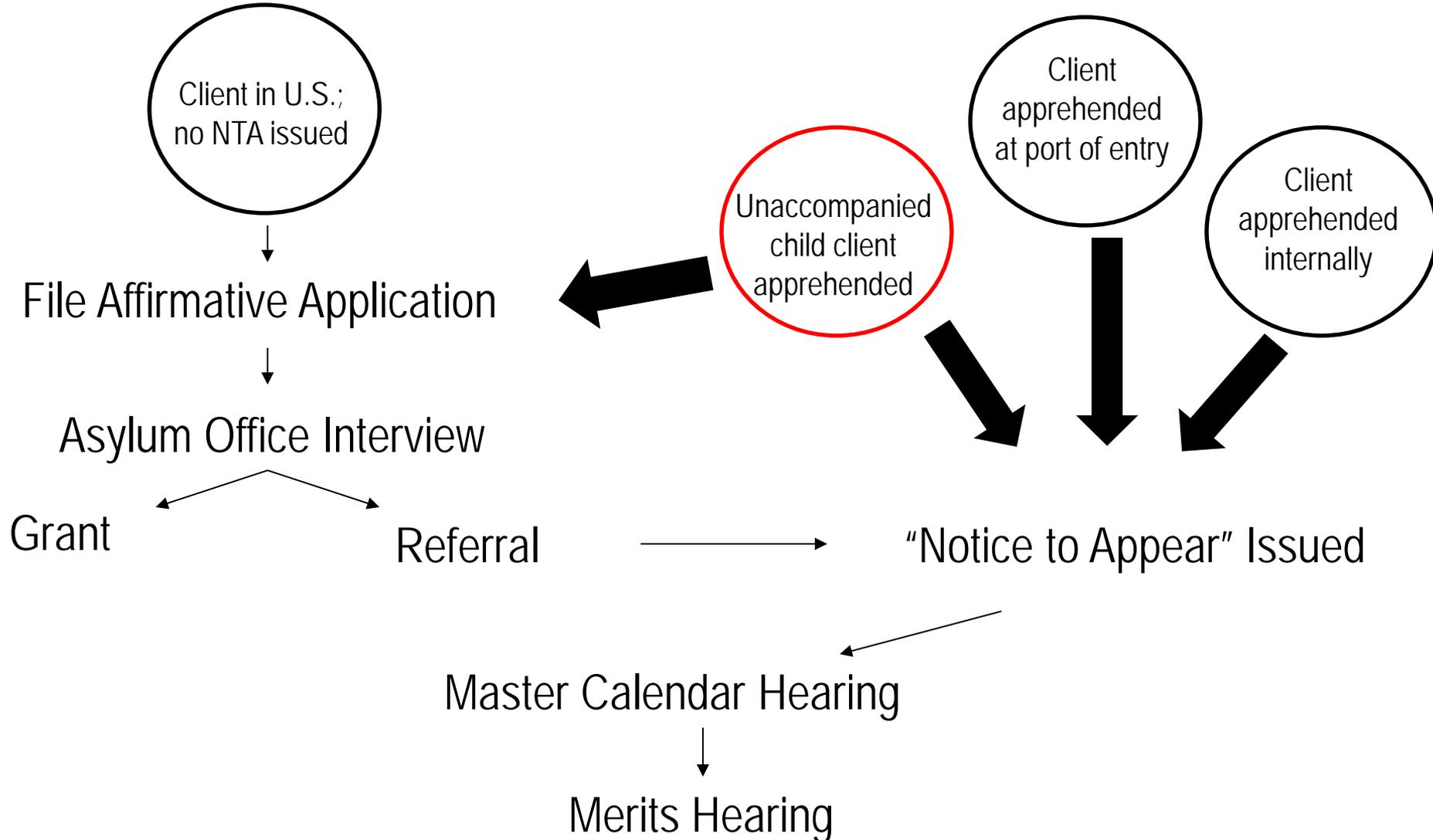
Preparing Your Case: Initial Logistics

Keren Zwick,
LGBT Immigrant Rights Initiative
National Immigrant Justice Center

The Asylum System

Asylum Office/Affirmative Process

Immigration Ct/Defensive Process



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



Office of Refugee Resettlement (ORR): part of HHS; responsible for the care/custody of UICs until they can be reunified with a family member or sponsor.

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

This is not a real Notice to Appear. This person does not exist.

U.S. Department of Homeland Security **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act:
Subject ID: 123456789 FINS #: 0123456789 File No: A123 456 789
DOB: 01/01/1999 Event No: WSK0123456780

In the Matter of:
Respondent: JUAN CARLOS HERNANDEZ-GONZALEZ currently residing at:

(Number, street, city and ZIP code) (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 removable for the reasons stated below.

The Department of Homeland Security alleges that you:
1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR ;
3. You arrived in the United States at or near Hidalgo, TEXAS, on or about August 1, 2014;
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:
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(f)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
AT A PLACE TO BE SET

(Complete Address of Immigration Court, including Room Number, if any)

on _____ at _____ a date to be set at a time to be set to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above. JUAN PEREZ ACTING PATROL AGENT IN CHARGE
(Signature and Title of Issuing Officer)

Date: August 13, 2014 DALLAS, TEXAS
(City and State)

See reverse for important information

- The Notice to Appear (NTA) 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

First Steps

1) Review NIJC's file

2) File your appearance if

- Your client is in removal proceedings
 - Complete [e-registry](#) and file form E28 with the court
- Your client has a pending asylum application with USCIS
 - File form G28 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) every other week if your client has an NTA, but it has not been filed with the court.

Preparing Your Case: Working with Your Client

NIJC Panelists:

- Keren Zwick,
LGBT Immigrant Rights Initiative
- Amanda Crews Slezak,
Asylum Project

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

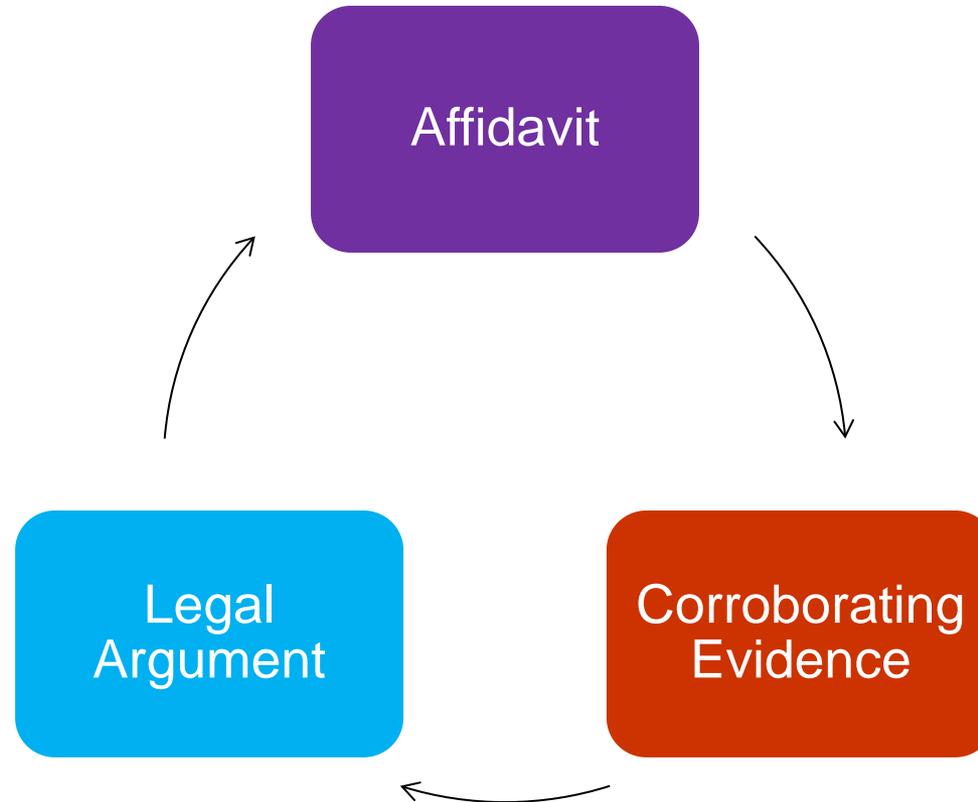
- No filing fee!

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: Meeting with Your Client

- Be prepared for questions beyond the scope of the case
- Empower your client and promote independence, no matter their age
- Expect inconsistencies and missing information
- Be aware of the interpreter's role
- Remember: interacting with asylum seekers may require a very different skill set from other client interaction

The First Client Meeting

DO

- Meet w/o other family/friends (even w/young children)
- Build rapport before getting into the details of the claim
- Explain legal documents in simple, non-legal language before asking for a signature
- Explain roles: who you are, who you are not, and what is expected from your client
- Provide a roadmap for how you'll prepare the case

DON'T

- Forget about confidentiality or assume a client's family/ friends know about her case
- Ask your client to talk about past harm in the first meeting
- Hand your engagement letter or other documents to your client and tell her to sign it
- Expect your client to understand how you differ from others she has encountered in the process
- Start case preparation without explaining who/what/when/why

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

Step 3: 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) 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:

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Political opinion |
| <input type="checkbox"/> Religion | <input checked="" type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> 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.

Where and How

Do I File the Skeletal Asylum Application?

- Adults who are not 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.

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.

Affidavit Interviews with Trauma Survivors

- Meet frequently and for limited duration
- Explain why you are asking what information you're asking
- Ask short questions
- Be comfortable with silence
- Provide empowerment through choices
- Bookend the interview

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, see NIJC's 11/18/16 webinar: "Telling Your Client's Story: Affidavit Writing 101,"

at <http://immigrantjustice.org/training-webcasts>

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.

DECLARATION OF [REDACTED]
IN SUPPORT OF HIS APPLICATION FOR ASYLUM

I, [REDACTED] hereby swear under penalty of perjury that the following statement is true and correct to the best of my knowledge:

I am applying for asylum because I am scared that I will be hurt by my aunt, father, and men from the gangs if I return to Honduras. First, my aunt in Honduras hurt me badly and a lot when I lived with her. Also, my mom told me that my father said that he would hurt me and my sister to take his revenge on my mom if he was ever deported. I have learned that my dad did not treat my mom well when they were both living in the United States and that he was deported. I am scared that he might harm me if I return back to Honduras. Finally, I am scared that if I return to Honduras, gang members will hurt me.

Family Background

1. I am Honduran. I was born on [REDACTED], in San Pedro Sula, Honduras. I am [REDACTED] years-old.
2. I have two brothers and a sister. My older brother [REDACTED] is almost [REDACTED] years-old. My sister, [REDACTED] is [REDACTED]. [REDACTED] and [REDACTED] were born in Honduras. My youngest brother, [REDACTED] is [REDACTED]. He was born in [REDACTED], North Carolina.
3. When I was maybe two years old, my mom left for the United States to join my father, who was already here. She left my sister, [REDACTED] and me with my aunt, [REDACTED]. Aunt [REDACTED] is my father's sister. [REDACTED] and I lived with [REDACTED] until I was nine years old.
4. My mom's mom lived in [REDACTED], which I believe is about an hour from [REDACTED]. My grandparents could not take care of me and my sister because my grandmother was sick and she was very old. She and my grandfather, [REDACTED] had a farm with a lot of cows, chickens, and pigs to take care of. They were too old to take care of all of us. Because [REDACTED] was older and easier to care for, they took only him.

My aunt, [REDACTED] abuse

5. Aunt [REDACTED] hit me and [REDACTED] and mistreated us. She would smoke a lot every day, and would drink alcohol out of a big bottle. She would get dizzy, her face would get red, and it looked like she was going to fall on the floor. Her breath would smell like alcohol and there would be bottles of alcohol in our living room. She would hit me most of the time when she was drunk, but would also hit me when she was not drunk.

Client Affidavit/Declaration Cont.

- *On May 1, 2010, three gang members stopped me after school and threatened me → too much detail*
- *I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave. → too much legalese*
- *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, for evidence of government complicity in gang activity.) → not in client's voice*

Step 5: 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!

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 www.unhcr.org/refworld	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
Identity Documents		
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
Background Information Regarding Mr. CLIENT's Asylum Claim		
E	United States Department of State, <i>Background Note: Republic of the Congo</i> (January 3, 2012), available at: http://www.state.gov/outofdate/bgn/congobrazzaville/193657.htm [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 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: http://www.state.gov/documents/organization/186397.pdf [last accessed September 19, 2012] "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, opposition candidates and nongovernmental organizations (NGOs) cited irregularities. "	36

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:
 - 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
- For more tips on presenting your evidence and claim, see NIJC's 10/13/16 webinar: "Gathering Evidence and Presenting Claims before EOIR and USCIS," at <http://immigrantjustice.org/training-webcasts>

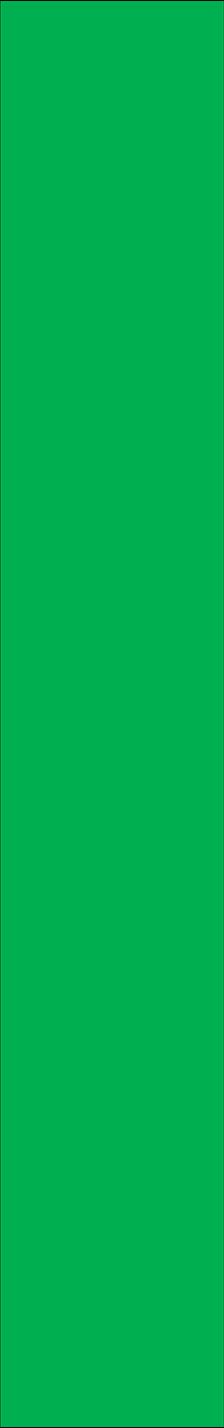
Filing Format

Asylum Office

- Follow the Immigration Court Practice Manual
- Annotate index and highlight important info in country condition reports
- File supporting docs directly with the Chicago Asylum Office (two copies + additional for derivative)

Immigration Court

- Follow the Immigration Court Practice Manual
- Annotate index and highlight important info in country condition reports
- Court may reject if filing requirements are not met (tabs, two-hole punch, certificate of service, etc.).
- Copy of all filings must be submitted to OCC



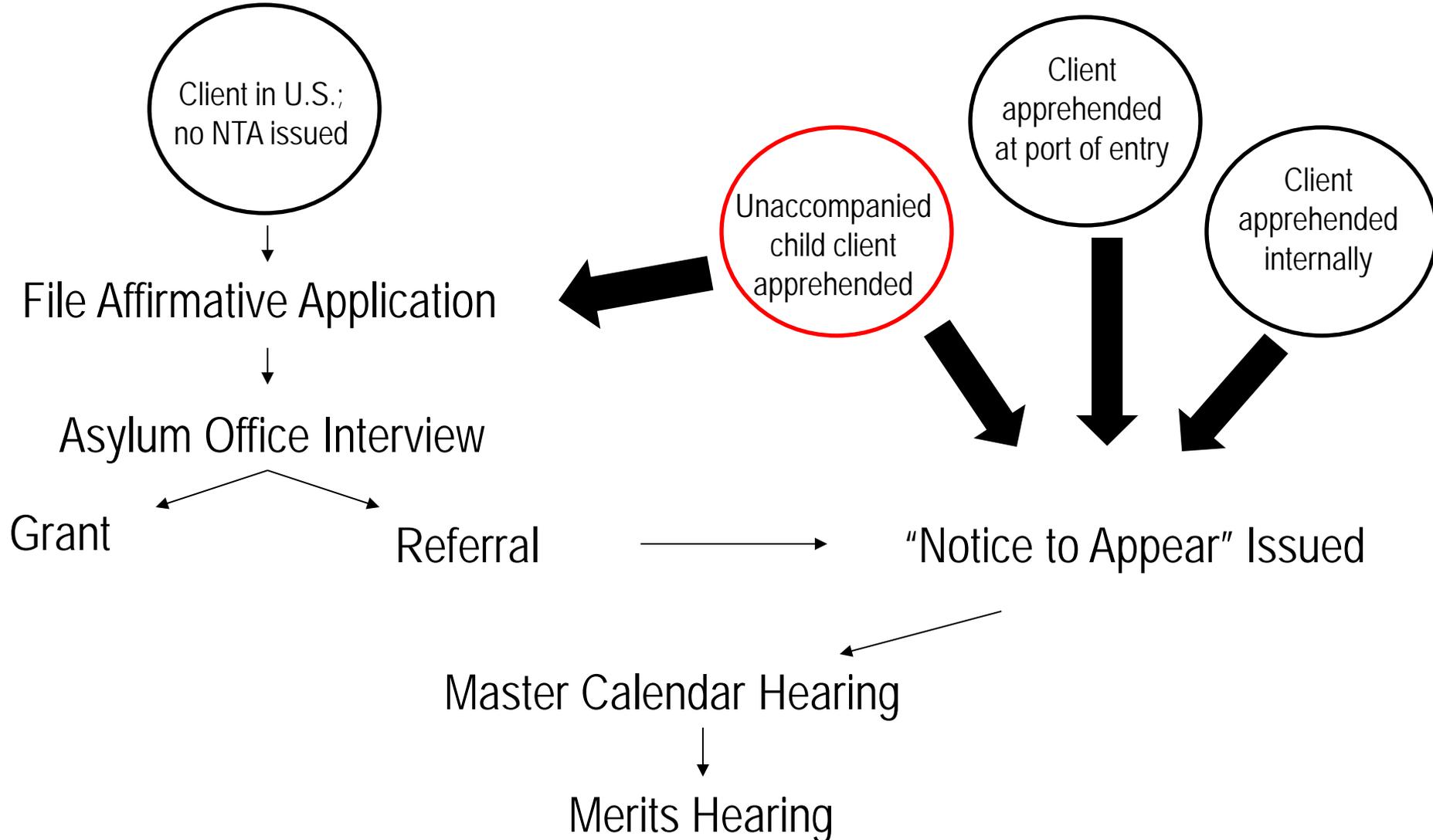
Presenting Your Case: the Asylum Office

Keren Zwick,
LGBT Immigrant Rights Initiative
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
~5 months later (?): Receive interview notice approx. 2 weeks before the interview date	~2.5 years later: Receive interview notice approx. 2 weeks before the interview date (currently interviewing ~August 2015 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)
- 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

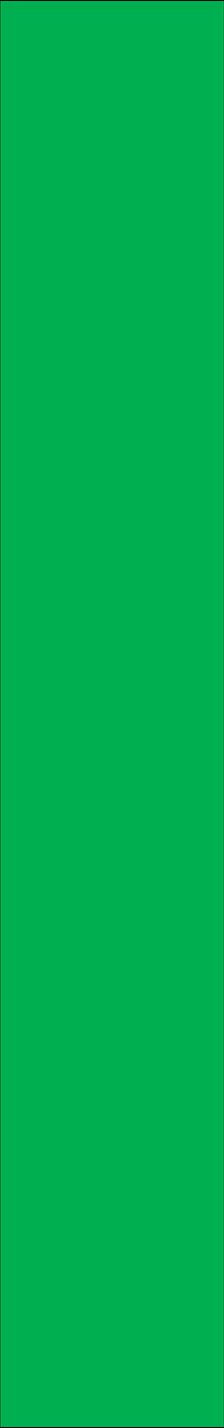
After the Asylum Office Decision

➤ 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

Keren Zwick,
LGBT Immigrant Rights Initiative
National Immigrant Justice Center

Master Calendar Hearing

- What it is: a status hearing:
- Hearing procedures:
 - Arrive Early! YOUR CLIENT MUST APPEAR!
 - E-registry must have been completed ahead of time
 - Plead
 - Schedule the merits hearing
 - **Review NIJC's asylum manual for specific steps and talk to NIJC prior to the hearing**

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
 - Client is detained or
 - Has previously been fingerprinted for her asylum application
- 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

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

THANK YOU!

For more information contact

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312-660-1307

ansears@heartlandalliance.org

Other ways to support NIJC:

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