

**NATIONAL  
IMMIGRANT  
JUSTICE CENTER**

A HEARTLAND **ALLIANCE** PROGRAM

# Representing Asylum Seekers

*Pro Bono Training*

Latham & Watkins LLP,  
May 12, 2016

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

# Welcome

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Ashley Huebner,  
Managing Attorney  
National Immigrant Justice Center

# About the National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.

NIJC serves more than 10,000 immigrants annually with the support of a professional legal staff and a network of nearly 1,500 *pro bono* attorneys.

# NIJC's *Pro Bono* Programs

- NIJC's *pro bono* opportunities:
  - Asylum
  - VAWA
  - U Visa
  - Deferred Action for Childhood Arrivals
- NIJC's *pro bono* programs
  - Conduct in-depth case screening, assessment and acceptance
  - Place cases with *pro bono* attorneys
  - Provide case management, attorney support and technical assistance
  - Represent clients through *pro bono* attorneys at law firms in Illinois, Wisconsin, and Indiana.

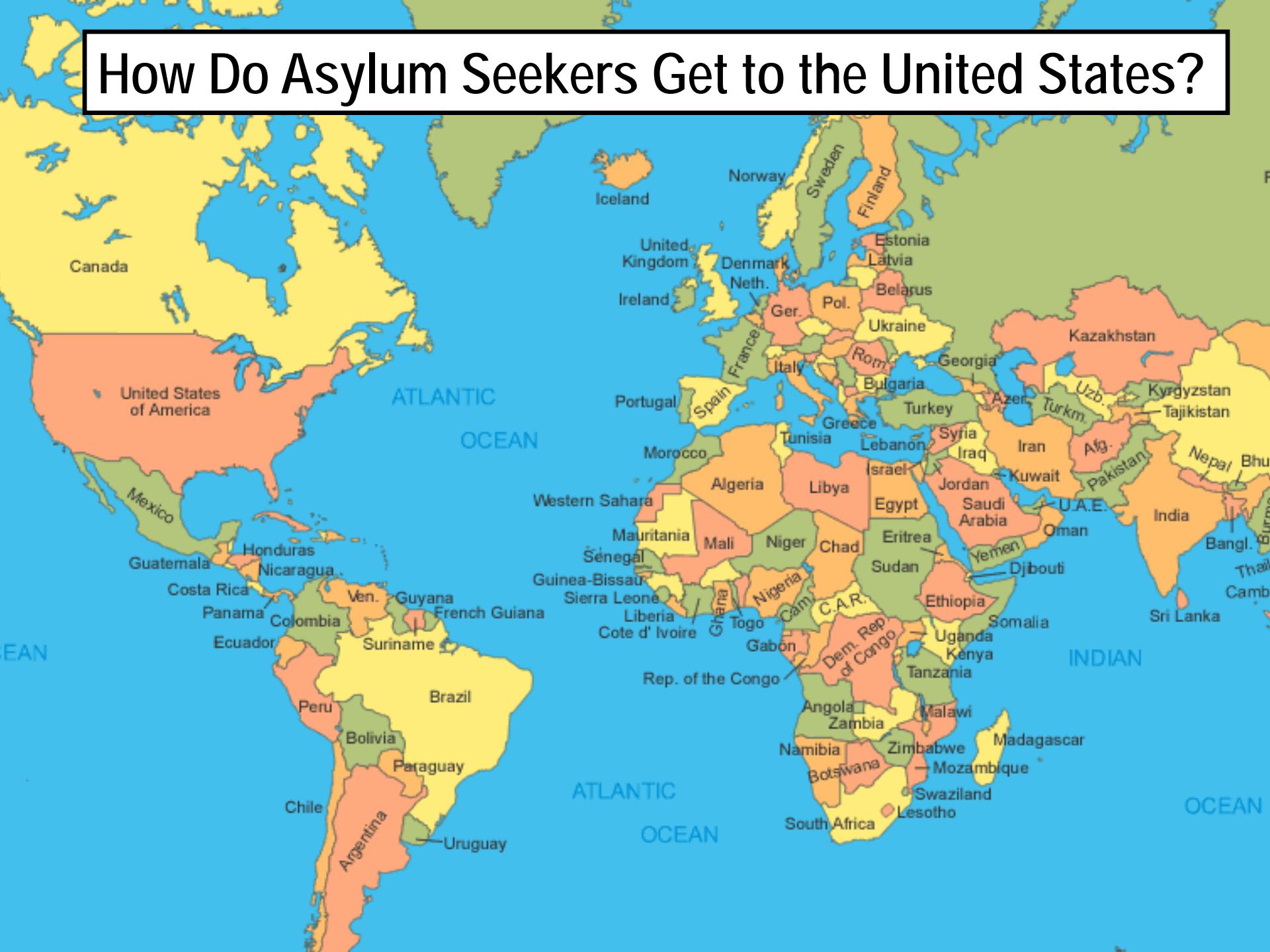
# NIJC Asylum Statistics

- Asylum cases open today: > 250
- Asylum approval rate:
  - NIJC = 90%
  - Nationwide: ~30 % (between the court and the asylum office)
- NIJC clients who obtained protection in FY2015: > 60
- Main countries of origin: Eritrea, Ethiopia, both Congos, Cameroon, and Mexico/Central America
- Main reasons NIJC clients fear persecution: political activities, gender, sexual orientation, gang resistance, or family membership.

# **The Basics of Asylum Law**

Ashley Huebner  
National Immigrant Justice Center

# How Do Asylum Seekers Get to the United States?



# United States Asylum Process

## Asylum Office/Affirmative Process

Client in US; not in system



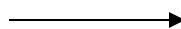
File Affirmative Application



Asylum Office Interview

Grant

Referral

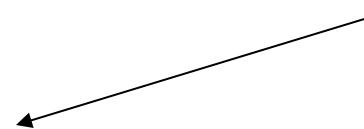


## Immigration Ct/Defensive Process

Client in DHS system  
(apprehended by  
immigration)



"Notice to Appear" Issues



Master Calendar Hearing



Merits Hearing

# Asylum: Law

- Statute: Immigration and Nationality Act (INA)
  - Section 208: asylum standards
- Regulations: 8 CFR § 208 (DHS/Asylum Office) and 8 CFR § 1208 (DOJ/Immigration Court)
- U.S. Court of Appeals case law (stick to the 7th)
- Board of Immigration Appeals (unless overruled by the 7th)
- Immigration court decisions are not published and should generally not be cited.

# 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: 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!

# “Well-Founded Fear” Cont.

- Past persecution (with all other elements) = legal presumption of future persecution. 8 CFR § 208.13.
  - DHS can only rebut with proof of changed circumstances or reasonableness of safe internal relocation
- Future fear only claim: objective and subjective components
  - Subjective: genuine fear of all asylum elements
  - Objective: fear (of all elements) must be reasonable, i.e., “well-founded”

# “Persecution”: look to case law

- Three types  
*Stanojkova v. Holder*, 645 F.3d 943 (7th Cir. 2011)
  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).

# Persecution: Examples

- Imminent, credible threats
- Deprivation of certain fundamental rights
- Observing harm to a family member
- Physical, sexual, mental, verbal abuse

# “Government Actor”

- The persecution suffered or feared must be inflicted by the government
  - police, soldiers (interpret broadly)

OR

- Entity the government can't/won't control
  - Gangs/Guerilla/rebel/paramilitary groups
  - Abusive spouses

# “On Account Of” a Protected Ground

- Must establish nexus between the persecution suffered/feared and ...
- ...at least one of the five protected grounds
  - Race
  - Religion
  - Nationality
  - Political Opinion
  - Membership in a Particular Social Group
- These are two DISTINCT elements that require SEPARATE analyses.

# Protected Grounds

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.

# Membership in 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)
- The characteristic may be a former association with a controversial group. *Escobar v. Holder*, 657 F.3d 537, 546 (7th Cir. 2011)
- It can include “a shared past experience or status that has imparted some knowledge or labeling that cannot be undone.” *Cece v. Holder*, 733 F.3d 662, 670 (7th Cir. 2013).

# Particular Social Group Cont.

- Complicated case law and a circuit/BIA split

## BIA

- Can't be overly broad
- Must be considered a group by society
- "Former" status/past experience is not enough
- Groups can't be overly diverse

## Seventh Circuit

- Breadth is irrelevant
- No social distinction test
- "Former" status/past experience can form the basis of a social group, without more
- Diversity not an issue

**Please contact NIJC to strategize the best way to formulate the social group definition - the definition you choose can make or break your case!**

## Example 1: El Salvador

Wendy is a woman from El Salvador who lived near the dividing line between M18 and MS territory. While she was a teenager, an M18 member regularly asked her to be his girlfriend. Later, he began trying to extort her and force her to help the gang target MS members. The gang threatened to harm her family if she didn't comply. After Wendy fled to the United States, the gang continued to harass her mother about Wendy's location.

## Examples 2: Kenya

Mary is a woman from Kenya. Throughout her childhood, her father abuse her, her mother, and her brother. Eventually, her mother divorced her father and gained custody of Mary and her brother. She didn't see her father again until college when he began approaching her at school because he wanted her to undergo FGM and get married. She also learned that her father had joined the Mungiki, a quasi-criminal/religious group that promotes the subjugation of women. Mary fled to the United States soon afterwards.

## Example 3: Mexico

Ana is a woman from Mexico. Her partner began verbally abusing and controlling her before their son was born, but after his birth, her partner began to regularly beat her. He also threatened to take their son if she reported him to the police. Shortly before she fled to the United States, her partner tried to kill her and her son by burning down their house. Ana reported this incident to the police, but they did not take any action.

# Examples of Particular Social Groups

- Gay Honduran males;
- Women in relationships they are unable to leave;
- Former government employees;
- Witnesses to gang crimes;
- Honduran males who have opposed gang recruitment;
- Landowners from X country;
- Immediate members of the X family

# 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)
- Be sure to separate nexus element from protected ground

# Presumption of a Future Fear

- Rebuttable presumption of future persecution if all asylum elements established for past persecution
- Govt can only rebut by showing
  1. Internal relocation would make applicant safe AND is reasonable. 8 C.F.R. § 208.13(b)(3). *Oryakhil v. Mukasey*, 528 F.3d 993 (7th Cir. 2008)
    - Relocation presumed unreasonable if the govt is the persecutor. 8 C.F.R. § 208.13(b)(3)(i)-(ii).
  2. Changed circumstances so fear no longer exists

# Future Fear Only & Relocation

- Applicant's burden to establish relocation would not make her safe and is not reasonable
- Unless the government is the persecutor = relocation presumed unreasonable. 8 C.F.R. § 208.13(b)(3)(i)-(ii).

# Asylum Benefits

- Automatically eligible to work (*pro bono* attorney can assist with SSN and I-94 card)
- Asylee benefits (refer back to NIJC)
- Able to petition for lawful spouse and children (under 21 at time of filing)
- Apply for permanent residency (green card) after one year (refer back to NIJC)

# 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!**

# Withholding of Removal

- Automatically apply for withholding when file asylum application
- Alternative remedy; INA § 241(b)(3)(A)
- Same basic, statutory definition as asylum except no subjective prong and no “humanitarian” option
- Heightened burden of proof: “more likely than not” (>50%)
- Available if applicant faces certain asylum bars (including 1-year filing deadline bar)
- Non-discretionary, but no pathway to residency and no derivative benefits for spouse, children

# UN Convention Against Torture (CAT)

- 8 C.F.R. § 1208.16 - Apply by checking box on asylum application.
- Two forms of CAT relief (withholding under CAT and deferral under CAT) – BE SURE TO REQUEST BOTH
- Different definition
  - torture v. persecution; no nexus requirement, govt/govt acquiescence
- Burden of proof: More likely than not" (>50%)
- Non-discretionary, but no pathway to residency and no derivative benefits

# **Preparing Your Case**

Keren Zwick,  
Managing Attorney  
National Immigrant Justice Center

# Who is Involved?

The Agencies	The Parties
<ul style="list-style-type: none"><li>➤ Department of Justice (DOJ)<ul style="list-style-type: none"><li>• Executive Office for Immigration Review (EOIR)<ul style="list-style-type: none"><li>- Immigration Courts</li><li>- Board of Immigration Appeals</li></ul></li></ul></li><li>➤ Department of Homeland Security (DHS)<ul style="list-style-type: none"><li>• Immigration and Customs Enforcement (ICE)<ul style="list-style-type: none"><li>- Office of the Chief Counsel (OCC)</li><li>= the trial attorneys</li><li>- Enforcement &amp; Removal Operations</li></ul></li><li>• Citizenship and Immigration Services (USCIS)</li><li>• Customs and Border Patrol (CBP)</li></ul></li></ul>	<ul style="list-style-type: none"><li>➤ ADJUDICATOR<ul style="list-style-type: none"><li>• USCIS Asylum Office</li><li>• EOIR (Immigration Judge/Board of Immigration Appeals)</li></ul></li><li>➤ "US"<ul style="list-style-type: none"><li>• "Applicant" before USCIS</li><li>• "Respondent" before EOIR</li></ul></li><li>➤ "THEM"<ul style="list-style-type: none"><li>• Non-adversarial before USCIS</li><li>• ICE trial attorneys before EOIR</li></ul></li></ul>

# 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*

**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) ( <i>if any</i> ) n/a (affirmative asylum applicants generally don't have one; defensive applicants do)	2. U.S. Social Security Number ( <i>if any</i> ) n/a
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3. Complete Last Name CLIENT	4. First Name Client	5. Middle Name Client
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6. What other names have you used ( <i>include maiden name and aliases</i> )? n/a
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7. Residence in the U.S. ( <i>where you physically reside</i> )  Street Number and Name 123 4 Street	Telephone Number ( 123 ) 445-6789
---	--------------------------------------

City Chicago	State IL	Apt. Number 5
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8. Mailing Address in the U.S. ( <i>if different than the address in No. 7</i> )	n/a (do not put attorney's address here)	Zip Code 60604
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Telephone Number

# Credibility

- 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 client's case.

# Client Affidavit/Declaration

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

See NIJC's one-hour *pro bono* powerpoint: "Client Counseling and Affidavit Preparation," available at <http://immigrantjustice.org/nijc-pro-bono-seminars>, for more tips on drafting an asylum affidavit.

# 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!

# Corroborating Evidence

- can be required “unless the applicant does not have the evidence and cannot reasonably obtain the evidence”
  - finding of fact (non-reviewable)
- Also remember...
  - 8 C.F.R. §1208.13(a): “The testimony of the application, if credible, may be sufficient to sustain the burden of proof without corroboration.”
- Corroborate each element of the asylum claim or provide evidence as to why your client cannot reasonably obtain corroboration.

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

<b>Tab</b>	<b>Exhibit</b>	<b>Page</b>
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><u>Identity Documents</u></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><u>Background Information Regarding Mr. CLIENT's Asylum Claim</u></b>		
E	<p>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]</p> <p>“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. “</p>	30
F	<p>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]</p> <p>“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.”</p>	36

# 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 <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

# Corroboration: Examples

- Mary is afraid her father, a member of the Mungiki, will subject her to FGM and a forced marriage.
- Wendy is afraid the M18 gang will punish her for disobeying them and will target her to be a gang girlfriend.
- Roger is a gay man from Cameroon who was arrested and tortured by police after they raided the apartment where he lived with his boyfriend.
- Ana is a woman from Mexico. Her partner regularly abused her and threatened to take away her son if she reported him to the police.

# Obtaining Documents

- Always verify document authenticity with your client.
- Establish chain of custody.
  - Ask your 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.

# Obtaining Your Client's Immigration History

- There is no discovery in immigration proceedings.
- If your client is in court proceedings, know the history of your case:
  - Review court file/hearing tapes
  - File FOIA request right away
    - Request Track 3 (expedited) processing
    - Include NTA and Hearing Notice
- Unaccompanied children: request the ORR file (see NIJC's website)

# The Brief/Legal Memo

- Keep it brief
  - Legal Brief (for cases before EOIR) < 30 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

# United States Asylum Process

## Asylum Office/Affirmative Process

Client in US; not in system



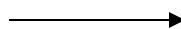
File Affirmative Application



Asylum Office Interview

Grant

Referral

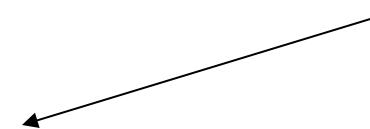


## Immigration Ct/Defensive Process

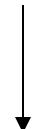
Client in DHS system  
(apprehended by  
immigration)



"Notice to Appear" Issues



Master Calendar Hearing



Merits Hearing

# Asylum Office: Case 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
Day 20-30: Receive interview notice approx. 2 weeks before the interview date	2-3 years later: Receive interview notice approx. 2 weeks before the interview date (currently interviewing June 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)
- File a work authorization application for your client when s/he is eligible and track the timing for renewals

# Work Authorization

- Difficult to obtain - depends on the “asylum clock”
- Clock begins to run when the asylum application is filed for
  - Affirmative Cases with USCIS, or
  - Defensive Cases either by “lodging” at Court Window or filing in open court.
- 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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National Immigrant Justice Center

# Entering 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 the Asylum Application

- Can only be “**filed**” in open court BUT if you need to submit the application earlier to
  - 1) Meet the one-year deadline, or
  - 2) Start the asylum clock to obtain an EAD  
you can “**LODGE**” the application
- Lodging = getting your I-589 asylum application date stamped by the court clerk.
- After you lodge, you must still file the asylum application at the next master calendar hearing.

*See NIJC’s Asylum Manual for more information*

# 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).

# 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.

# 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

In Matter of: \_\_\_\_\_

File No: A\_\_\_\_\_

Respondent: \_\_\_\_\_ currently residing at: \_\_\_\_\_  
(Number, street, city, state, 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 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.

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: MAR 12 2002

See reverse for important information

Form I-863( 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

# 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

## ➤ Oral Testimony

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

# Opening Statements

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 Witness

- 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 Examination

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

# Closing Statements

- 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 Coordinator  
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.

# 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.

# Common 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?

# THANK YOU!

For more information contact  
Carolina Ramazzina Van Moorsel  
312-660-1307

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

## **Other ways to support NIJC:**

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