



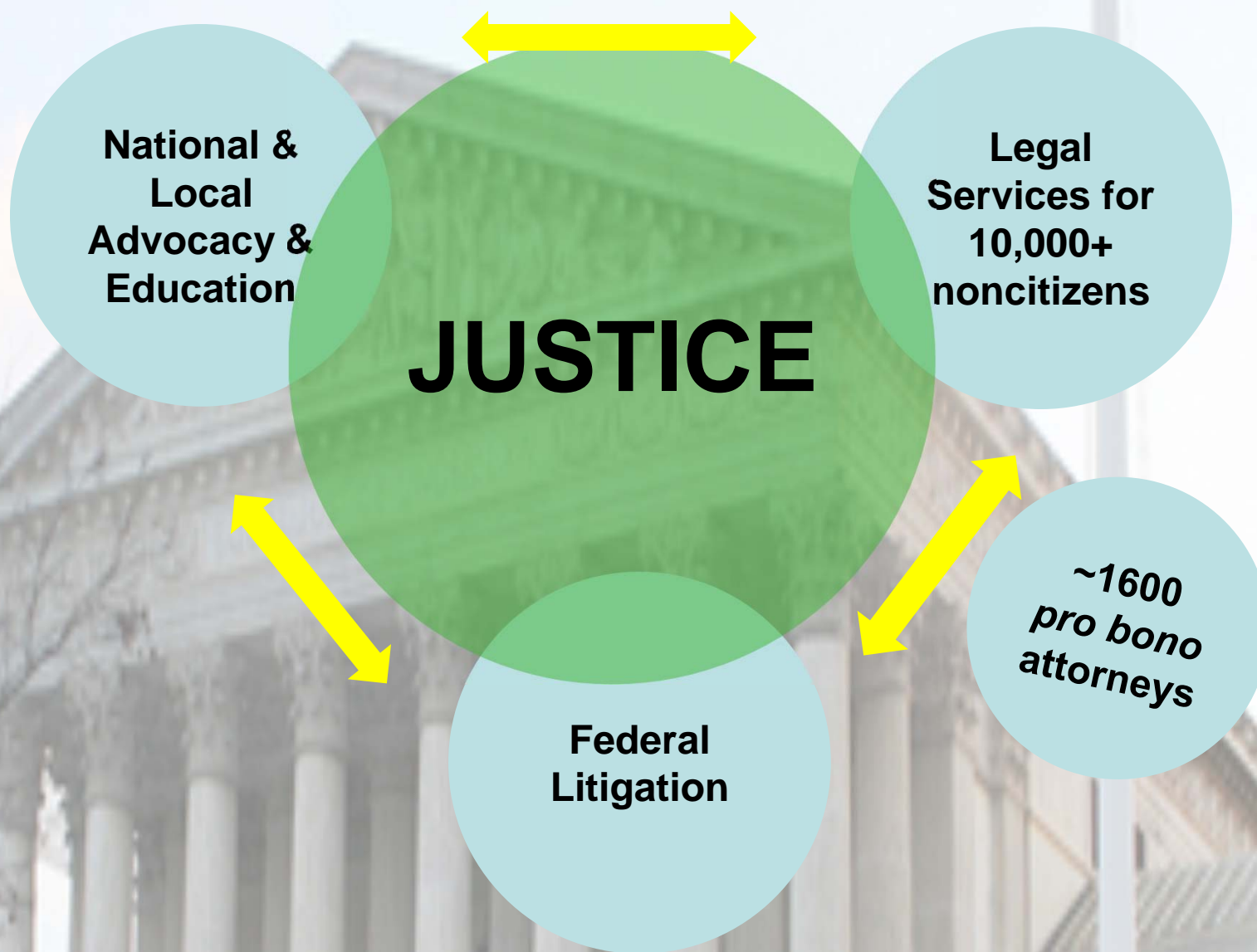
Representing Asylum Seekers

Pro Bono Training

Faegre Drinker Biddle & Reath LLP
February 27, 2020

www.immigrantjustice.org

National Immigrant Justice Center (NIJC)



Pro Bono Opportunities at NIJC



Asylum

- Adults
- Families
- Kids
- Detained immigrants



CLINICS:

- DACA
- Naturalization
- Asylee/Refugee Family Petitions
- Asylee/Refugee Adjustment



Special Immigrant Juvenile Status Predicate Orders



VAWA and U Visa Relief

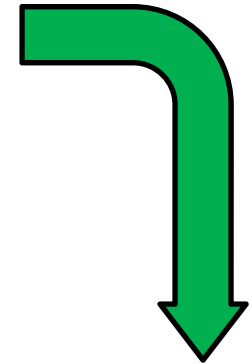
How NIJC's *Pro Bono* Programs Work



An immigrant
contacts NIJC and
needs an attorney



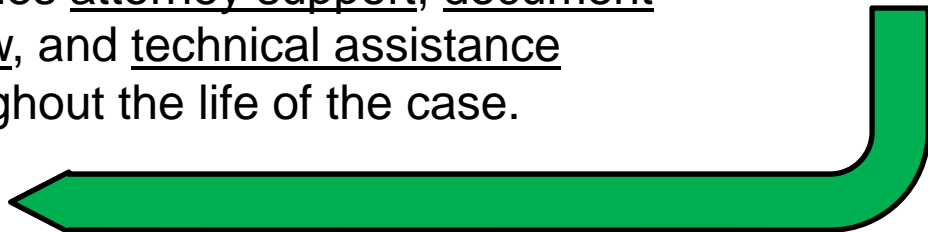
NIJC staff conduct an
in-depth case screening
and assessment



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.





Reuters/Jorge Duenes

WHAT EVERY ATTORNEY SHOULD KNOW ABOUT ASYLUM REPRESENTATION TODAY

Ashley Huebner,
Associate Director of Legal Services

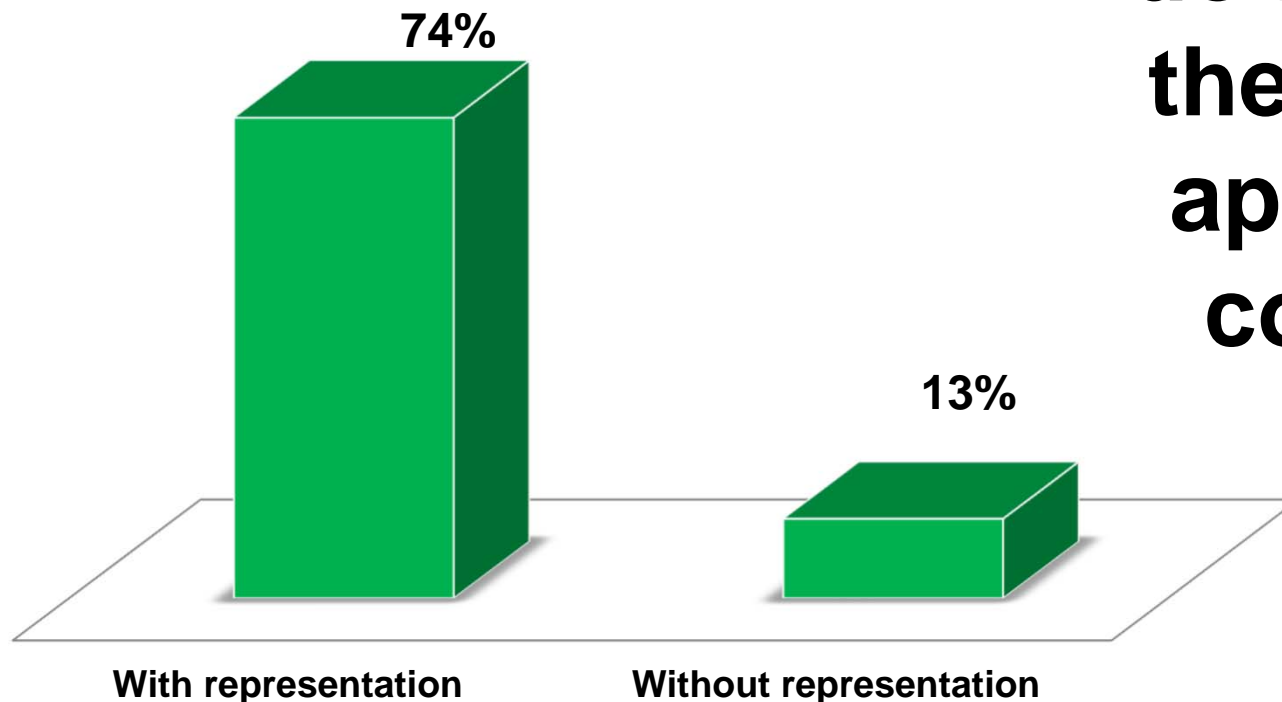
Asylum Seekers' Experiences are Human Experiences

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



Why are *Pro Bono* Attorneys Important for Immigrants?

**Percent of cases where
immigrants obtained relief**
2005-2010



**Non-citizens
do not have
the right to
appointed
counsel.**

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



➤ **One for One:**
Representing an NIJC asylum client allows us to accept new asylum cases for representation.

➤ **Reuniting families:** Asylees can petition for family members and are on the road to permanent status



THE BASICS OF ASYLUM LAW

Ashley Huebner

Who's Involved in Asylum Adjudication

- EOIR
 - Immig Ct
 - BIA

- USCIS (AO)
- ICE (OCC; ERO)
- CBP



DOJ

DHS

Asylum Seekers

ORR

- Families
- Attorneys

- Unaccompanied Immigrant Children



The Asylum System

AFFIRMATIVE

For individuals who seek asylum and are NOT in deportation proceedings.

USCIS-Asylum Office

DEFENSIVE

Individuals who seek asylum as a defense to deportation proceedings

DOJ- Immigration Court

Board of Immigration Appeals

7th Circuit Court of Appeals

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

- § 208
- §101(a)(42)

8 CFR

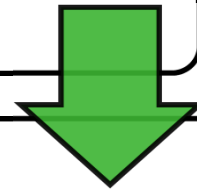
- § 208: AO
- §1208: EOIR

CASE LAW

- BIA binding unless 7COA rejected
- 7COA has rejected A LOT
- 7COA is your friend; avoid other COA law

When Does BIA Case Law Apply?

Congress delegates the administration of a statute to an agency



The statutory provision is ambiguous



The agency's interpretation is based on a permissible construction of the statute

= CHEVRON DEFERENCE

Statutory Withholding: Definition

➤ INA § 241(b)(3)(A):

“[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.”

Convention Against Torture: Definition

8 C.F.R. § 1208.16(c): The burden of proof is on the applicant . . . to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.

8 C.F.R. § 1208.18(a)(1): Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Protection-Based Relief Comparison (Request All!)

| | Discretion? | Burden of Proof | Petition for Family? | FASFA? Travel Abroad? | Become a Citizen? |
|-------------------|--------------------|--|-----------------------------|------------------------------|--------------------------|
| Asylum | Yes | Reasonable possibility ($\geq 10\%$) | Yes | Yes | Yes |
| W/Holding | No | More Likely than Not ($>50\%$) | No | No | No |
| CAT Relief | No | More Likely than Not ($>50\%$) | No | No | No |



BREAKING IT DOWN: THE ELEMENTS OF ASYLUM

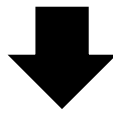
Asylum: Elements

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!

1. “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. All asylum elements
as to past harm
2. Reasonable
possibility that all
asylum elements will
occur in the future

***Argue both
whenever possible!***

1. Well-Founded Fear Based on Past Persecution

Past persecution

+ All other asylum elements

Rebuttable presumption of future persecution



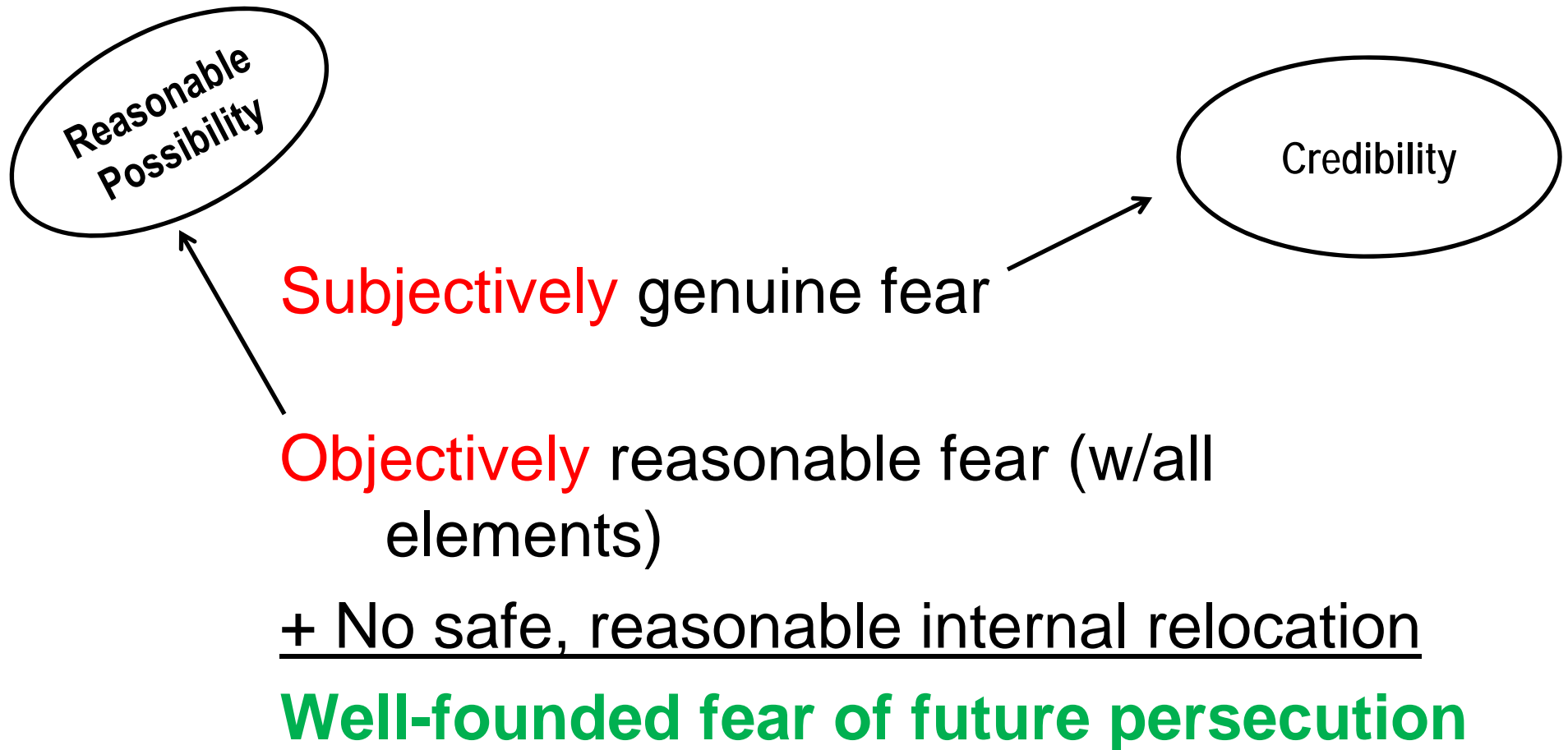
Rebutted by



changed circumstances

safe, reasonable
internal relocation

1. Well-Founded Fear Based on Future Fear Only



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*).

2. “Persecution”: Look to Case Law

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

3. The Persecutor

Governmental Entity

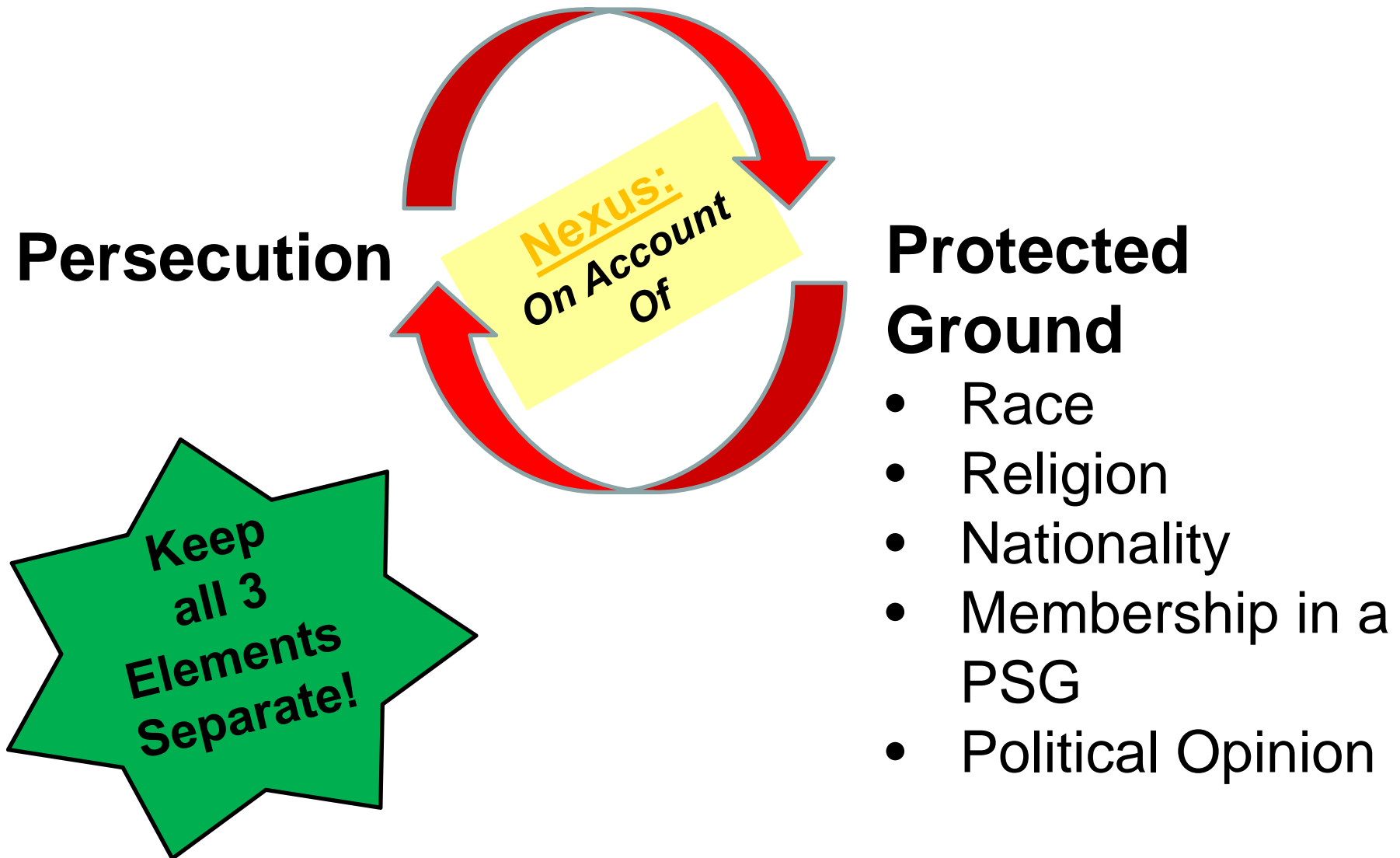
- Police
- Military
- Security Forces
- Presidential Guard
- Mayor
- Village Chief
- Paramilitary?
- Gangs?

Entity the Government is Unable OR Unwilling to Control

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

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

4. “On Account of” a Protected Ground



4. Burden of Proof for Nexus

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

5. ~~POLITICAL~~ ASYLUM

1. Race:

- Broad meaning (Congolese Tutsis)

2. Religion

- (Christian, Atheist)

3. Nationality:

- Not just citizenship;
can include ethnic or linguistic group.

4. Political Opinion:

- Actual or Imputed (e.g. child of political activist, man who criticizes government's military policy)

5. Membership in a Particular Social Group:

- One of the most common and most complex bases for asylum



5. What is a Particular Social Group?

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

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

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

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

5. Common Social Groups

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



OTHER CONSIDERATIONS

Other Issues That May Impact the Case

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

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

RED FLAGS! Other life changes may compromise eligibility

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

EXTERNAL Factors! Policy changes...

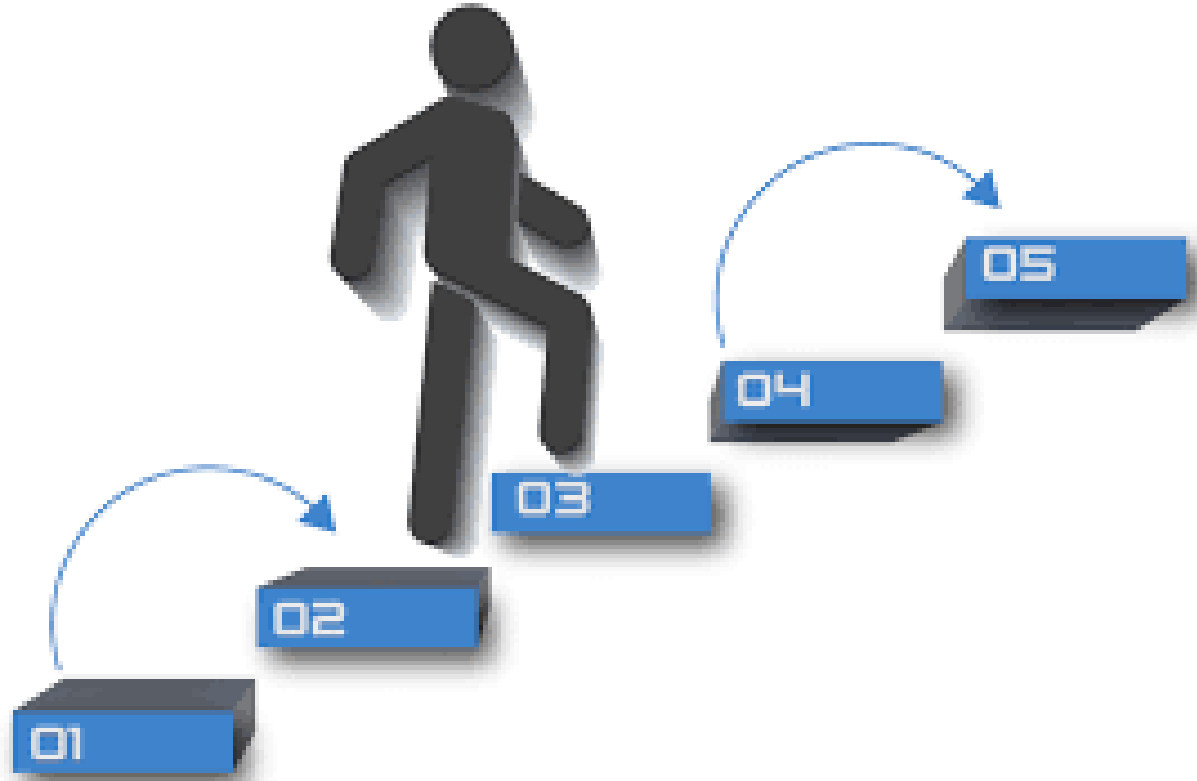
Contact NIJC immediately if there are changes in your client's life or if you think your client might be eligible for other relief!

Myths and Developments in Asylum Policy

| MYTH/LEGAL DEVELOPMENT | TRUE/FALSE & CURRENT STATUS |
|---|--|
| <ul style="list-style-type: none"> The Asylum Ban has eliminated asylum protection for most asylum seekers who came across the U.S.-Mexico border (Asylum Ban #1) | <p>FALSE</p> <ul style="list-style-type: none"> <i>O.A. v. Trump</i> – NIJC: Vacated <i>East Bay v. Trump</i> – ACLU: Enjoined |
| <ul style="list-style-type: none"> Central America asylum seekers are required to first seek asylum in Mexico before requesting asylum in the U.S. (Asylum Ban #2 – Transit Ban) | <p>PARTLY TRUE - applies if you:</p> <ul style="list-style-type: none"> Crossed southern land border on or after July 16, 2019 Transited through 1+ countries other than country of citizenship Did not apply for protection-based relief in one of those countries and receive a final denial of that request |

Myths and Developments in Asylum Policy

| MYTH/LEGAL DEVELOPMENT | TRUE/FALSE & CURRENT STATUS |
|--|---|
| <ul style="list-style-type: none">Asylum seekers must now wait in Mexico while their asylum claim is adjudicated in the U.S. | PARTLY TRUE Depends on place of entry and not for people already in the United States |
| <ul style="list-style-type: none"><i>Matter of A-B-</i> ended asylum based on domestic violence or gang violence | FALSE See NIJC's Practice Advisory |
| <ul style="list-style-type: none"><i>Matter of L-E-A-</i> ended asylum for family-based claims | FALSE See NIJC's Practice Advisory |



PREPARING YOUR CASE

Rachel Milos, Senior Attorney

Reminder: Who's Involved

- EOIR
 - Immig Ct
 - BIA

- USCIS (AO)
- ICE (OCC; ERO)
- CBP



DOJ

DHS

**Asylum
Seekers**

ORR

- Families
- Attorneys

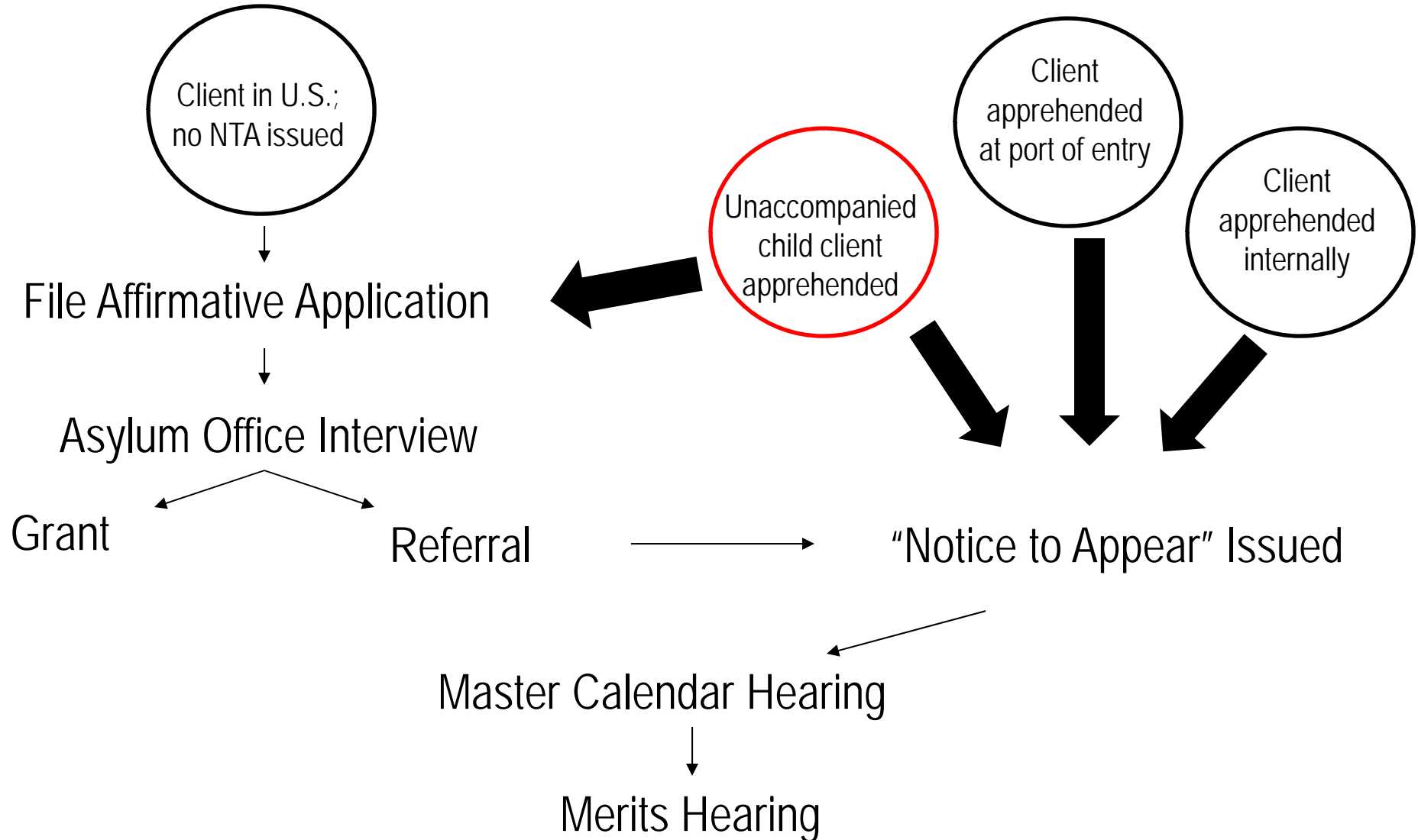
- Unaccompanied
Immigrant
Children



The Asylum System

Affirmative Process: Asylum Office

Defensive Process: Immigration Ct



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: WSX0123456780

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 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 HARLINGEN, TEXAS
(City and State)

See reverse for important information

The Notice to Appear (NTA)

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

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

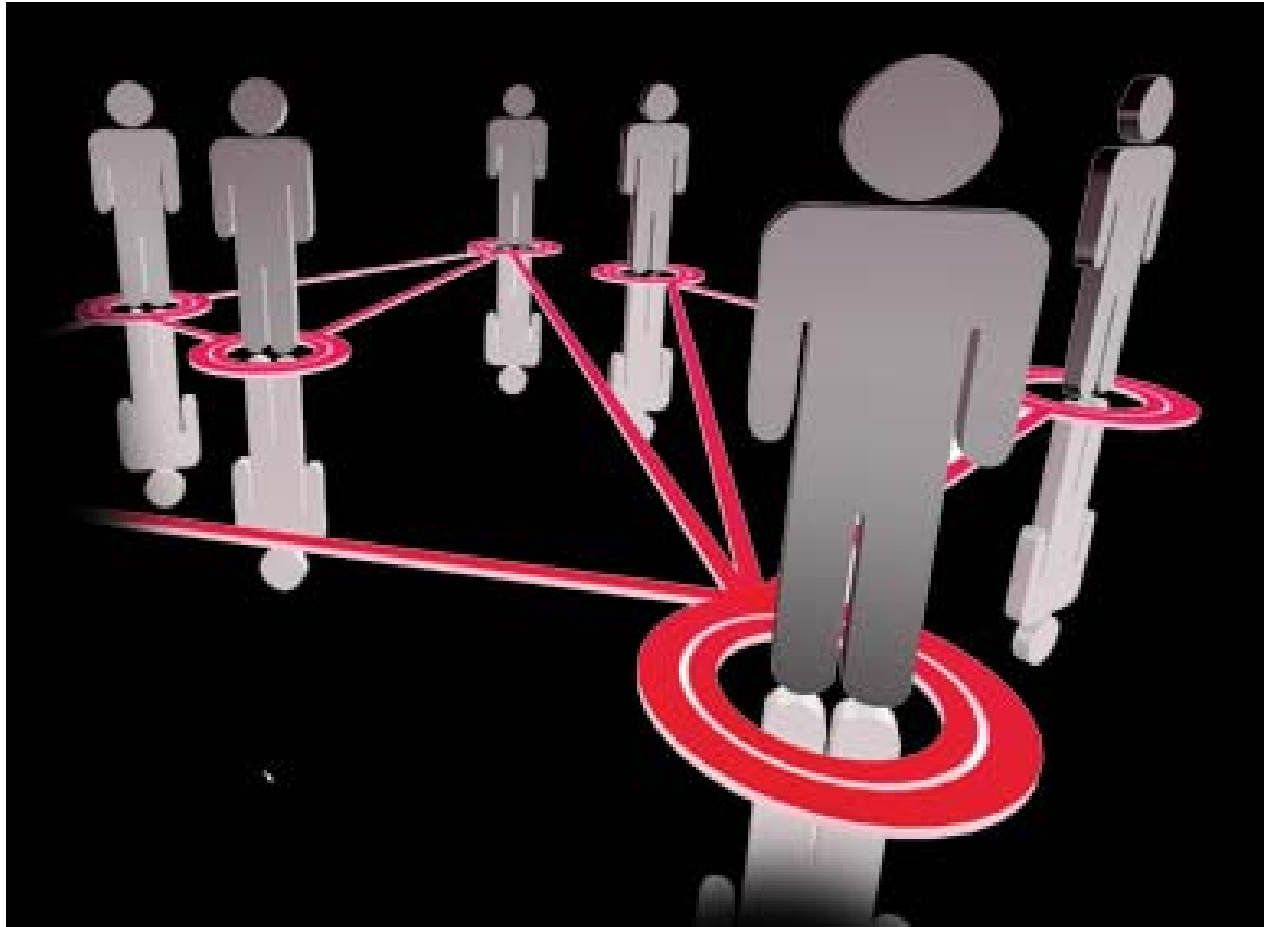
- ☐ Appearance form: [E-28](#)
- ☐ Asylum App (I-589) and 1 passport photo
- ☐ Serve one copy of the I589 on DHS

- ☐ 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



WORKING WITH YOUR CLIENT

Immediate Steps

1) Review NIJC's file

2) File your appearance:

| If... | ...Then |
|--|---|
| <i>Your client is in removal proceedings</i> | Complete e-registry and file form E28 with the court |
| <i>Your client has a pending asylum application with USCIS</i> | File form G28 with the Chicago Asylum Office |

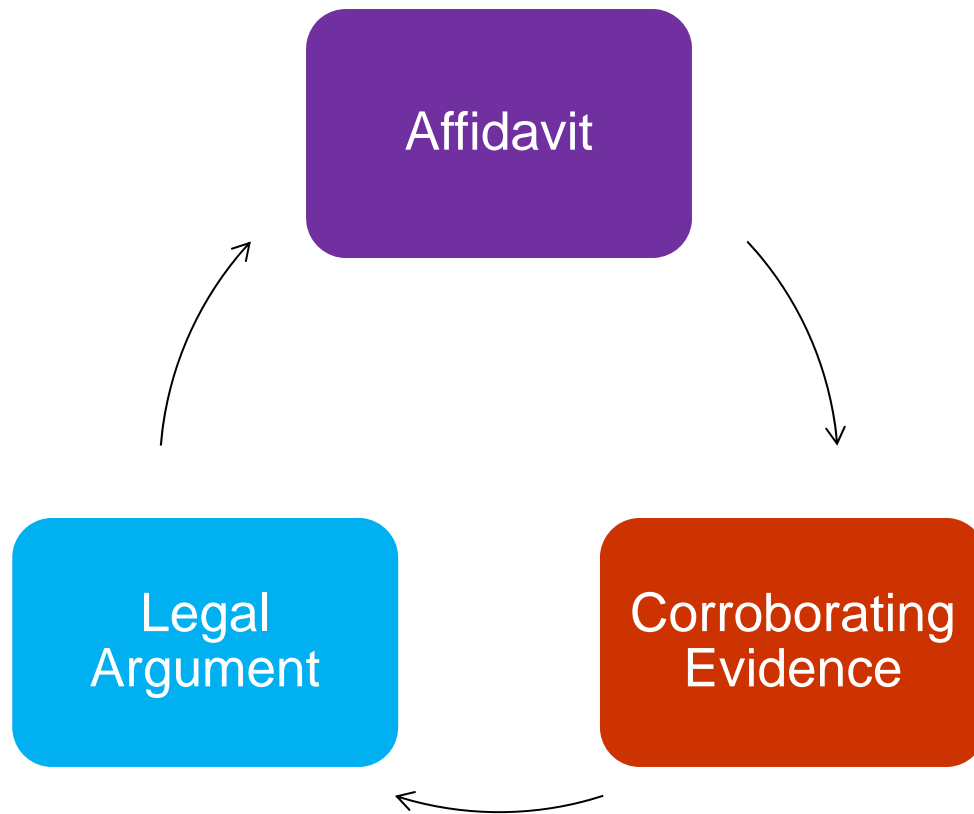
2) Calendar all deadlines:

- Employment authorization, Court hearings, One year filing deadline

3) Check the EOIR info line (1-800-898-7180)

- Check every other week if your client has an NTA, but it has not been filed with the court

Keep the Big Picture in Mind



Step 1: The First Client Meeting

Build rapport!

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

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

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. <input checked="" type="checkbox"/> | | | |
| 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 | 5. Middle Name | |
| 6. What other basis for asylum or withholding of removal? n/a | <div style="margin-bottom: 10px;">I am seeking asylum or withholding of removal based on:</div> <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Race</div><div><input type="checkbox"/> Political opinion</div></div> <div><input type="checkbox"/> Religion</div> <div><input checked="" type="checkbox"/> Membership in a particular social group</div> <div><input type="checkbox"/> Nationality</div> <div><input checked="" type="checkbox"/> Torture Convention</div> | | |
| 7. Residence Street Number 123 4 Street | | | |
| <div style="margin-bottom: 10px;">A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?</div> <div style="display: flex; justify-content: center; gap: 20px;"><input type="checkbox"/> No</div> <div style="display: flex; justify-content: center; gap: 20px;"><input checked="" type="checkbox"/> Yes</div> <div style="margin-top: 10px;">If "Yes," explain in detail:</div> <div style="margin-top: 5px;">1. What happened;</div> <div style="margin-top: 5px;">2. When the harm or mistreatment or threats occurred;</div> <div style="margin-top: 5px;">3. Who caused the harm or mistreatment or threats; and</div> <div style="margin-top: 5px;">4. Why you believe the harm or mistreatment or threats occurred.</div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">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.</div> | | | |

Where and How

Do I File the Skeletal Asylum Application?

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

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

Step 4: Drafting the Affidavit or Declaration

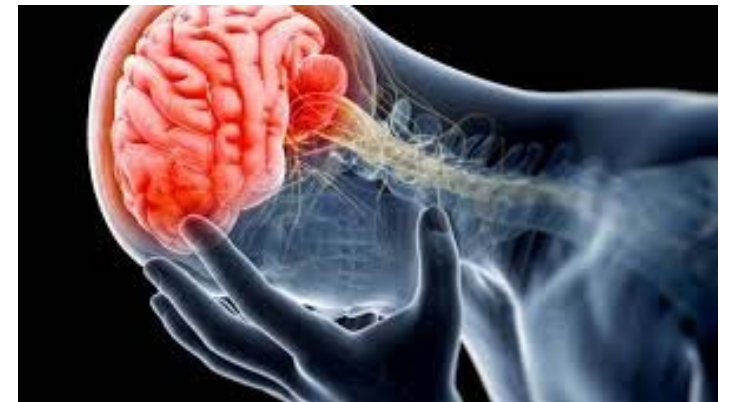
- Credibility is the most important part of any asylum case
- Can be based on demeanor, candor, inherent plausibility, consistency of statements (made any time/any circumstance)
- The adjudicator's credibility determination will be based primarily on the client's affidavit and testimony, so...

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

Affidavit Interviews with Trauma Survivors

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

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



Considerations for Preparing the Affidavit

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

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

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

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.

LANGUAGE: Client Affidavit/Declaration Cont.

Not In Client's Voice

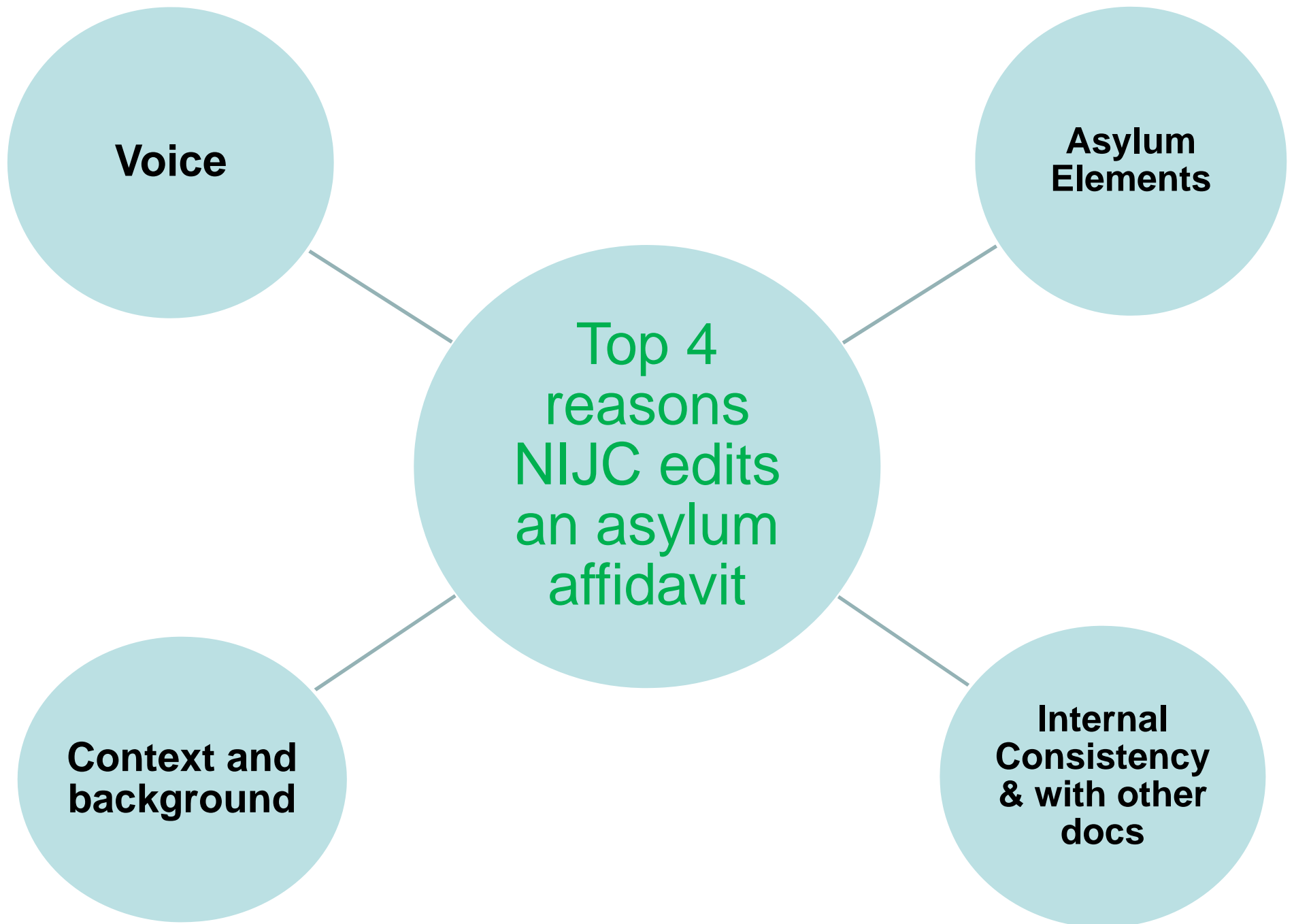
I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave.

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.)

Too Much Detail

On May 1, 2010, three gang members stopped me after school and threatened me



Step 5: Corroborating Your Case

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

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

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 | <p>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]</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: http://www.state.gov/documents/organization/186397.pdf [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 |

Step 6: Drafting the Legal Memo or Brief

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

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

Filing Format

- ❑ Follow the Immigration Court Practice Manual
- ❑ Annotate index and highlight important info in country condition reports
- ❑ Alphabetical tabs on the right and consecutively paginate
- ❑ Affirmative (AO): File supporting docs directly with the Chicago Asylum Office (two copies + additional for derivative)
- ❑ Defensive (court): File supporting doc at court window; court may reject if filing requirements are not met
 - ❑ All filings must include a cert. of service and a copy must be submitted to OCC





U.S. Citizenship
and Immigration
Services



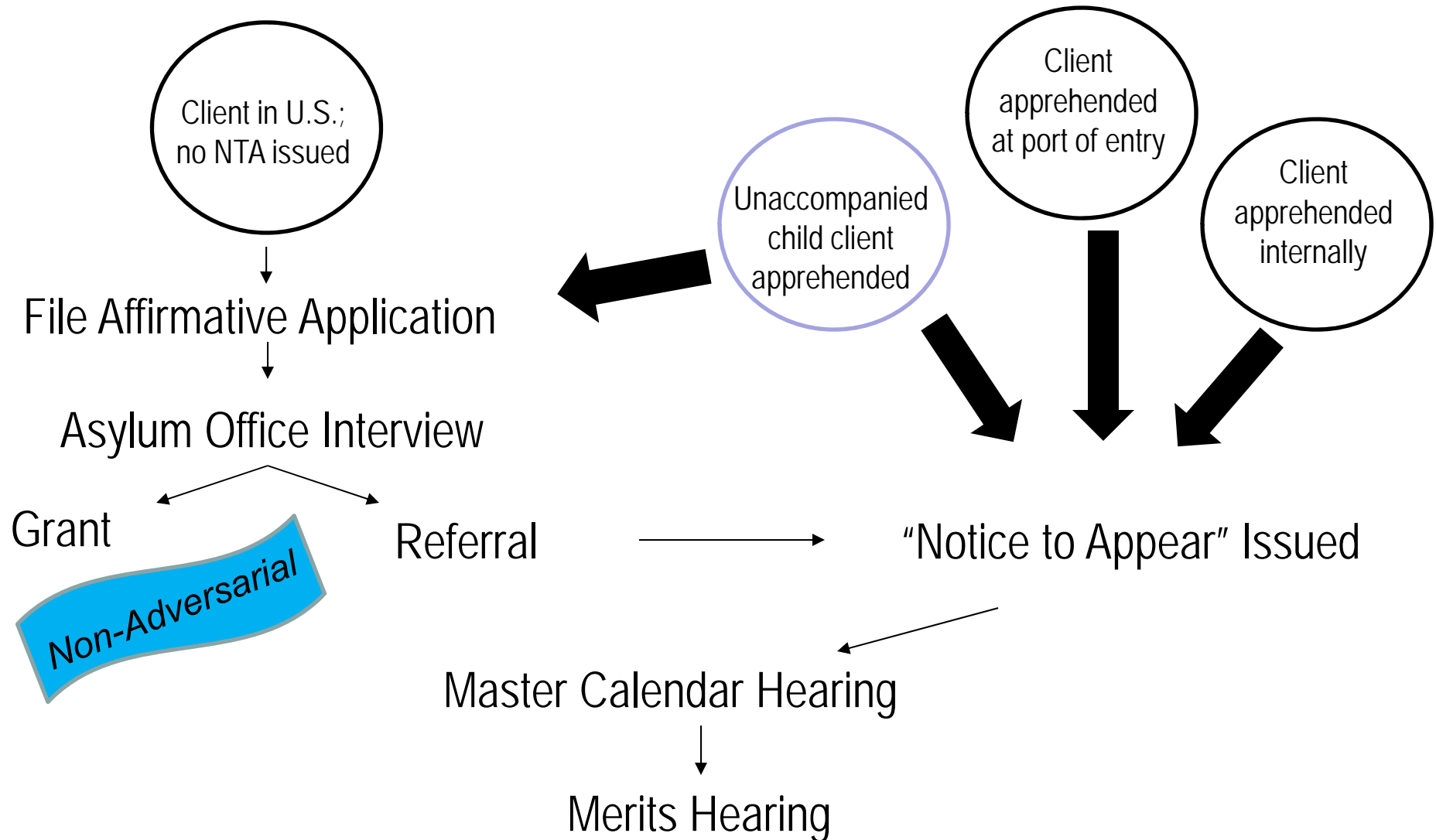
Presenting Your Case

Ashley Huebner

The Asylum System

Asylum Office/Affirmative Process

Immigration Ct/Defensive Process



Asylum Office Timing

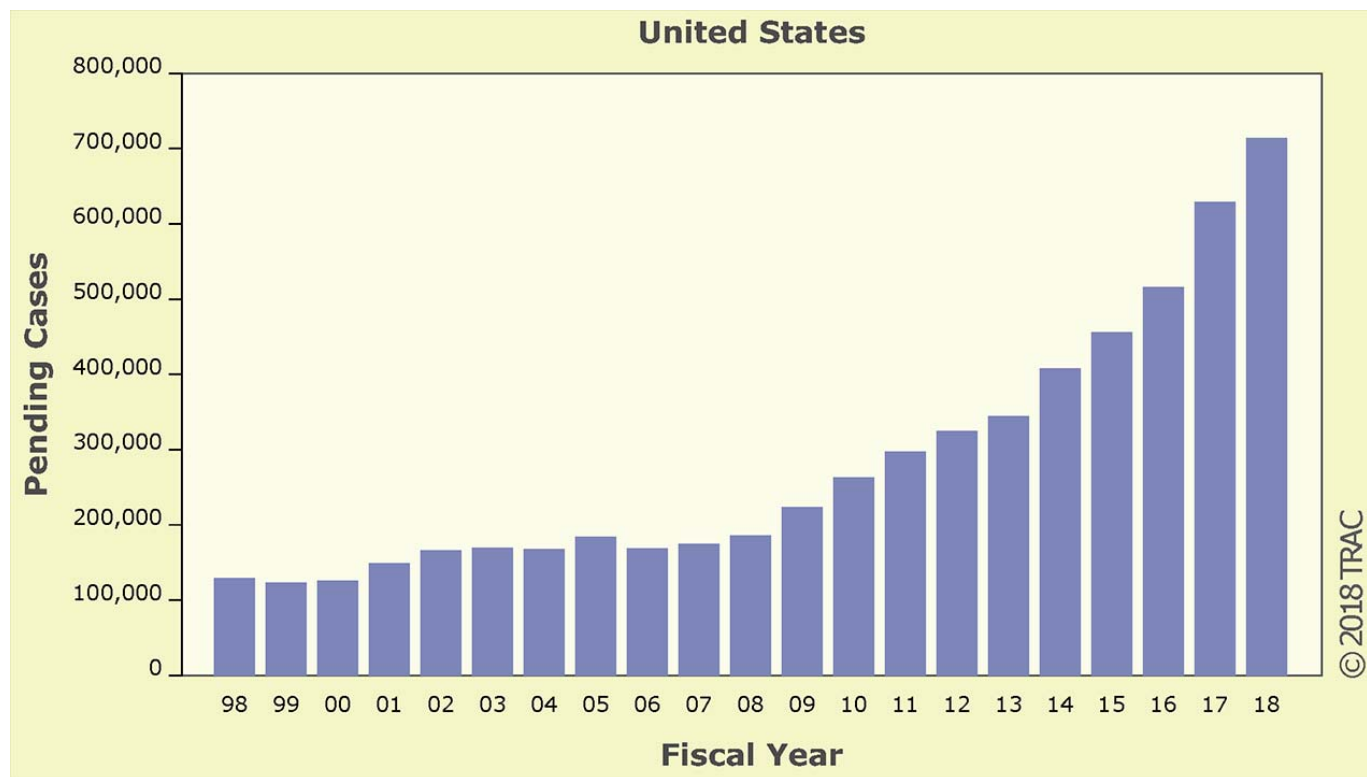
- AO interview timing for pre-2018 filings is unknown
- No matter when you filed, you will only receive two weeks notice of the interview

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

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

Immigration Court: Case Timing

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



Consult with NIJC Before Your Master Calendar Hearing and Let NIJC Know Immediately When a Merits Date is Scheduled or Rescheduled

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

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

Work Authorization

➤ Depends on the “asylum clock”:

***Regulatory changes are likely in the works*

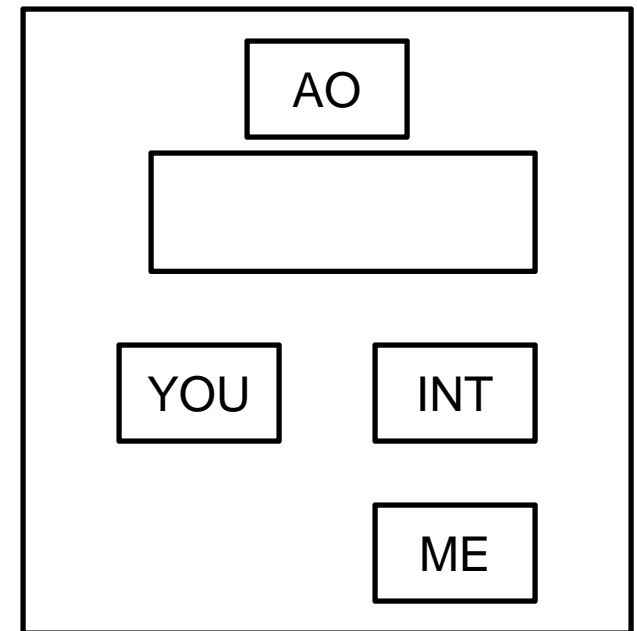
- Clock begins to run when the asylum application is filed (received) by USCIS (for asylum office cases)
 - Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
 - Clock stops if the applicant causes a delay
- If your clients already have EADs – you MUST renew 180 days before the EAD expires to avoid gaps in employment authorization

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

Prepping Your Client for the AO Interview or Merits Hearing

Try for 3 preps: (1) full prep; (2) tough; (3) confidence builder

- ✓ Explain the process and practice accordingly
 - AO = interview – you provide the interpreter!
 - Merits = trial
- ✓ Prep with open-ended questions.
- ✓ Make sure your client has a good understanding of the elements, what she needs to prove and how you see the case
- ✓ Explain possible results and manage expectations
- ✓ Empower your client (I don't know; I don't understand; please repeat)



After the Asylum Office Decision

ASYLUM GRANTED!!

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



ASYLUM NOT GRANTED...

- 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
- Notify NIJC immediately and consult re: timing and next steps.



After the Merits Hearing

ASYLUM GRANTED!!

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



ASYLUM DENIED...

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



KEEP
CALM
AND
KEEP
FIGHTING

AFTER YOUR CASE IS OVER

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



THANK YOU!

For more information contact

Anna Sears

312-660-1307

ansears@heartlandalliance.org

Other ways to support NIJC:

- NIJC Annual Appeal
- Twitter: @NIJC
- Facebook: facebook.com/immigrantjustice