

NATIONAL
IMMIGRANT
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Representing Asylum Seekers

Part I: Asylum Law & Procedure 101

October 19, 2020

www.immigrantjustice.org

Asylum Program – Pro Bono Support Team

Training Presenters

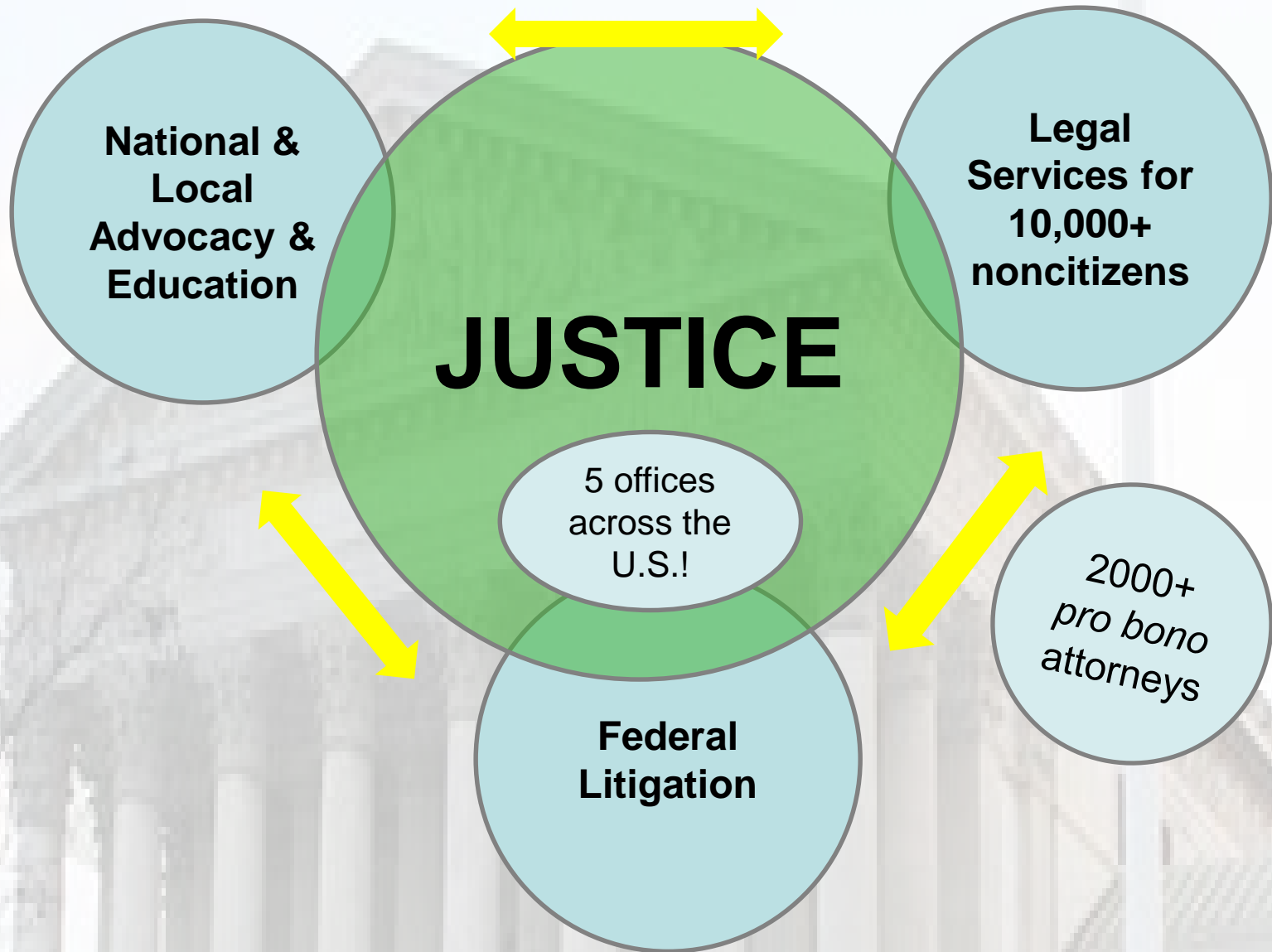
- **Ashley Huebner**,
Associate Director of
Legal Services
- **Dalia Fuleihan**,
Staff Attorney

Primary Points of Contact

- **General Client & Procedural Questions:**
Anna Sears, Asylum Project Coordinator
ansears@heartlandalliance.org
- **Legal, Procedural, & Strategy Questions:**
Rachel Milos, Senior Attorney
ramilos@heartlandalliance.org

Dalia Fuleihan, Staff Attorney
dfuleihan@heartlandalliance.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

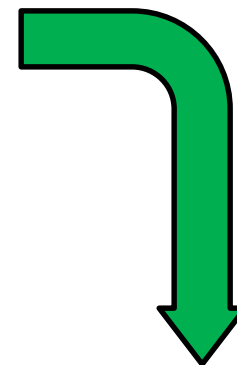
How NIJC's *Pro Bono* Programs Work



An immigrant contacts NIJC and needs an attorney



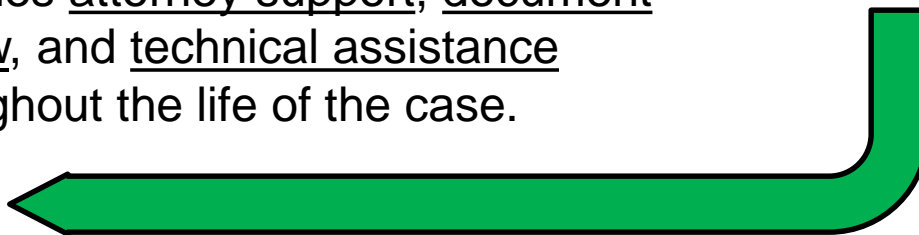
NIJC staff conduct an in-depth case screening and assessment



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



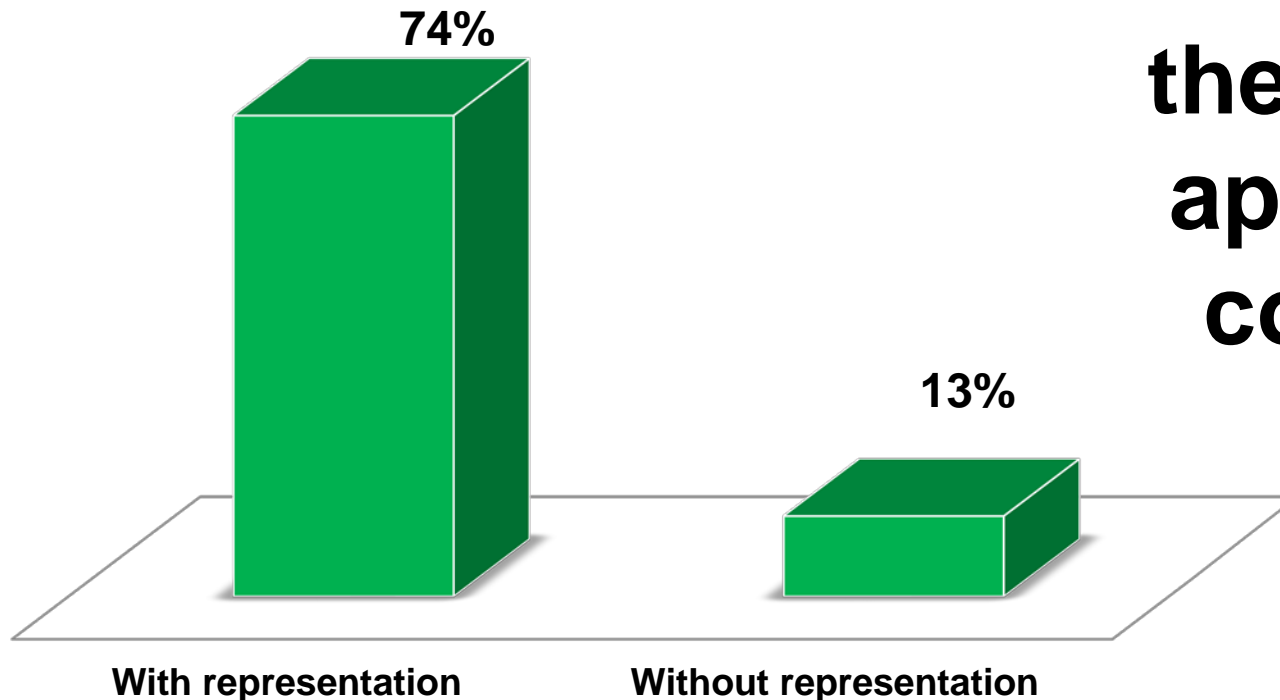
A *pro bono* attorney team accepts the case. NIJC remains of counsel and provides attorney support, document review, and technical assistance throughout the life of the case.



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

Which Asylum Seekers Have Viable Claims?

- 1) Christopher is a teenager from Venezuela. Police beat him and held a gun to his head after seeing him leave a neighborhood where an anti-government protest was ongoing. After he reported the attack to a police station, pro-government militias spray-painted “traitor” on his home and stalked him when he went to school. Christopher’s mother sent him to the United States fearing things would worsen if he remained.
- 2) Norma grew up in an abusive home in El Salvador. When she was 14, she moved in with a 30-year-old man named Carlos who said he would take care of her. She became pregnant at 15 and Carlos began to abuse her. Norma had no means to support herself and depended entirely on Carlos for money. When Norma tried to leave Carlos, he threatened to take their child. When she was 25, Carlos witnessed a gang murder and the gang started threatening him, Sandra, and their child. They fled the country soon after.

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

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

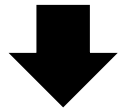
Asylum: Elements

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



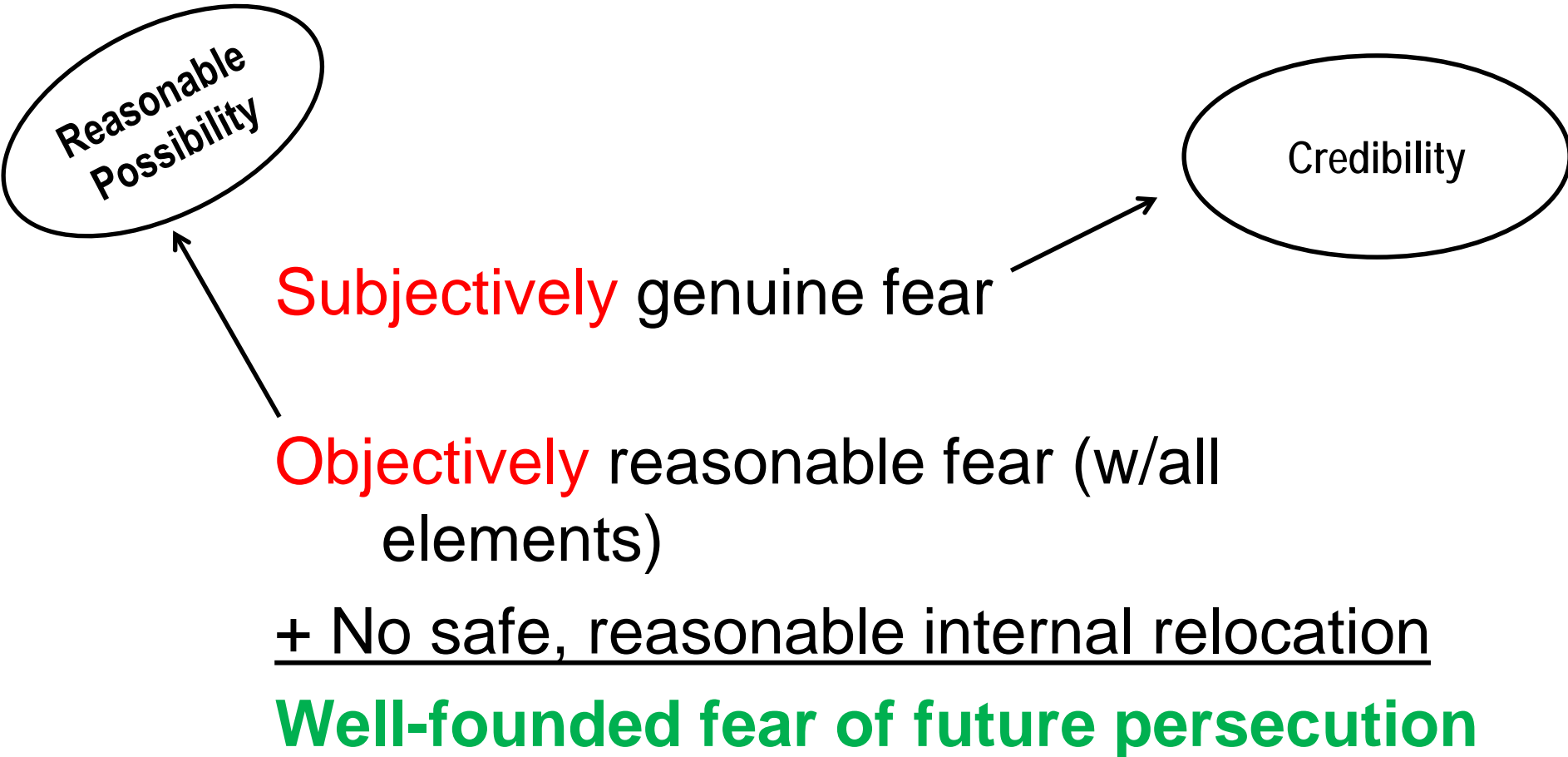
Rebutted by



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).

2. “Persecution”: What Facts are Important

- 1) Christopher is a teenager from Venezuela. Police beat him and held a gun to his head after seeing him leave a neighborhood where an anti-government protest was ongoing. After he reported the attack to a police station, pro-government militias spray-painted “traitor” on his home and stalked him when he went to school. Christopher’s mother sent him to the United States fearing things would worsen if he remained.
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3. The Persecutor

Governmental Entity

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

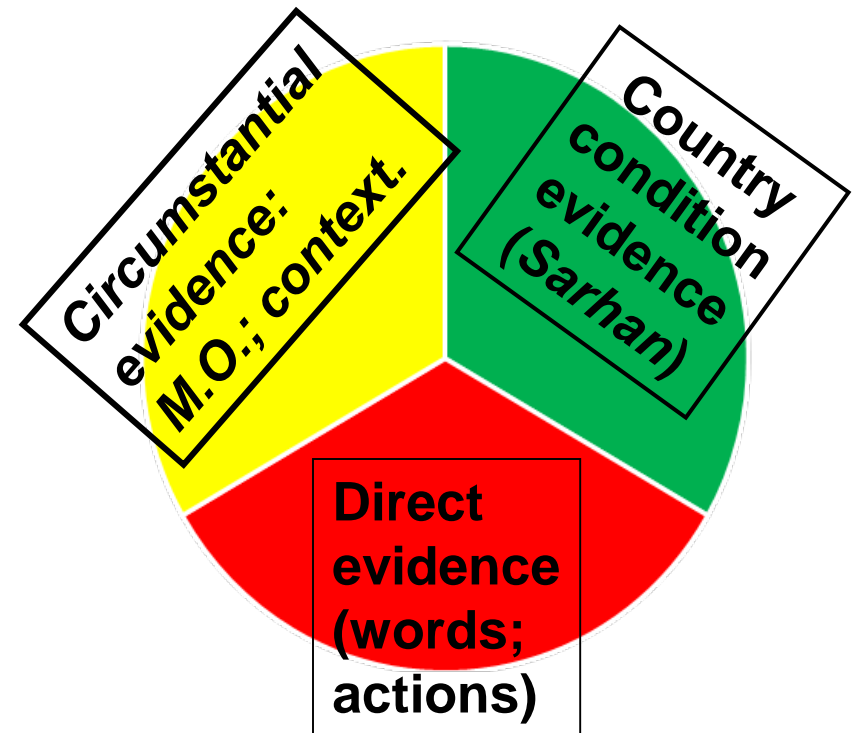
Entity the Government is Unable OR Unwilling to Control

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

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

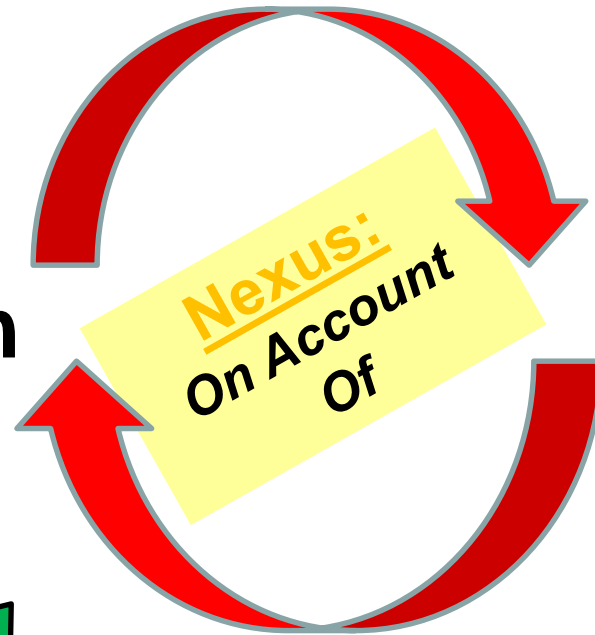
4. Burden of Proof for Nexus

- 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)



4. “On Account of” a Protected Ground

Persecution



**Protected
Ground**

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

**Keep
all 3
Elements
Separate!**

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 |
|---|---|
| <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](http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers) at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>

5. Protected Grounds: Which Apply?

- 1) Christopher is a teenager from Venezuela. Police beat him and held a gun to his head after seeing him leave a neighborhood where an anti-government protest was ongoing. After he reported the attack to a police station, pro-government militias spray-painted “traitor” on his home and stalked him when he went to school. Christopher’s mother sent him to the United States fearing things would worsen if he remained.
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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

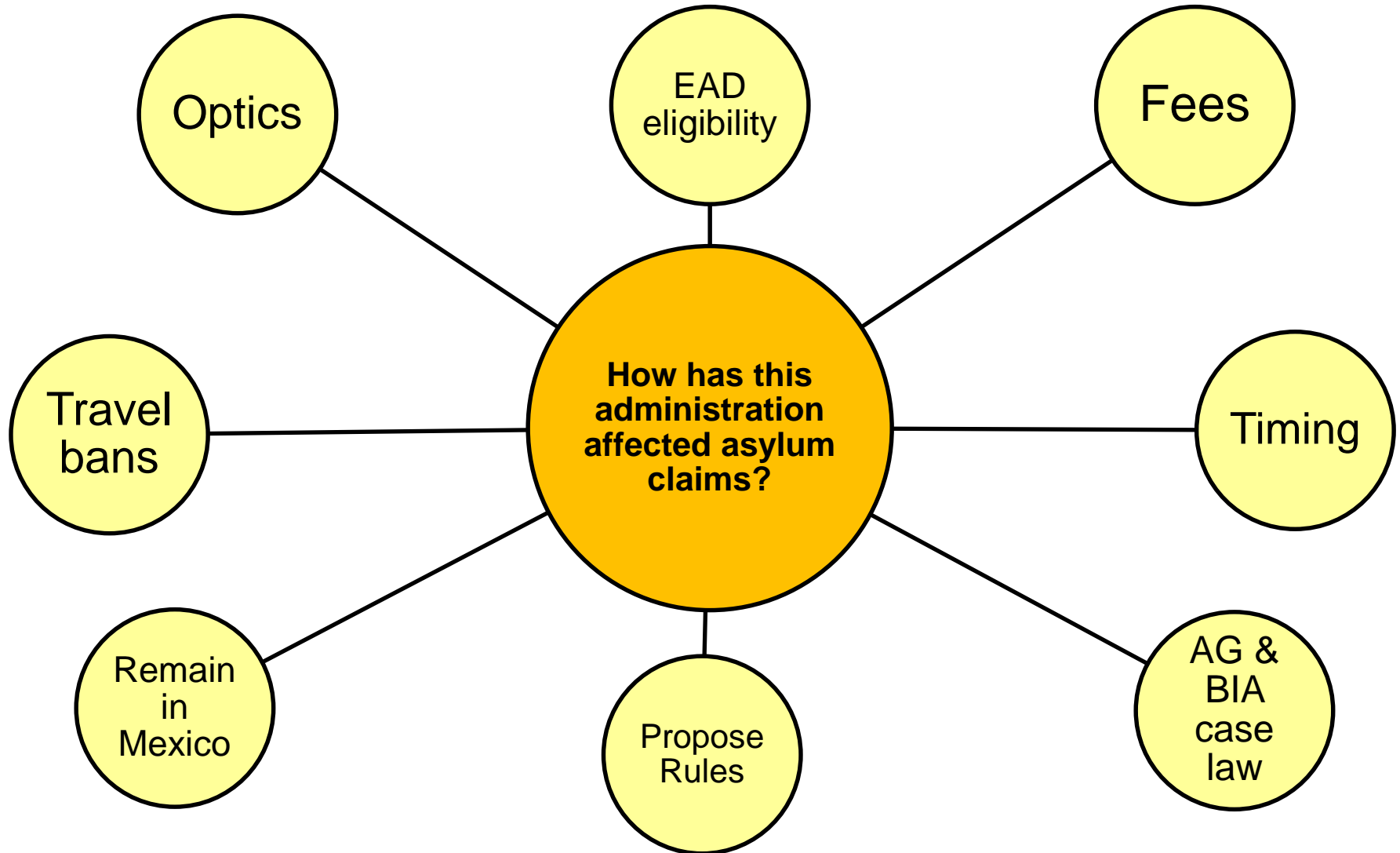
- Marriage, victim of a crime, etc
- Your client should not file applications for any other immigration benefits without consulting you first.

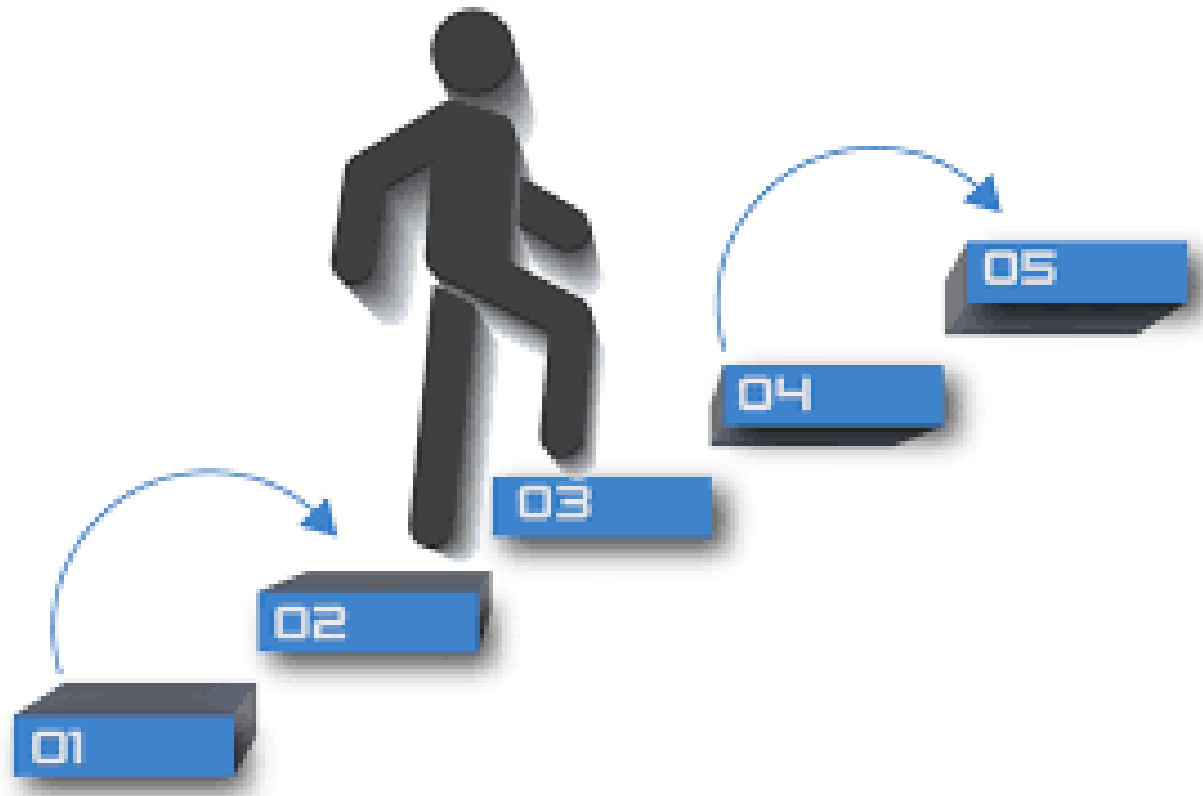
RED FLAGS! Other life changes may compromise eligibility

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

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

Regulatory and Policy Changes





GETTING STARTED

Dalia Fuleihan

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

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



First Steps

1) Review NIJC's file: look for

- Procedural posture
- Deadlines
- Forms to 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 |

First Steps

- 3) Calendar all deadlines:
 - Employment authorization, Court hearings
- 4) Check the EOIR automated system every other week to verify status: 1-800-898-7180/
<https://portal.eoir.justice.gov/InfoSystem>
- 5) File a USCIS FOIA
- 6) **Call your client and get started!**

Thinking Through Case Preparation

- Brief
- Client affidavit/declaration
- Annotated index

Supporting documentation:

- Identity documents; proof of organizational or political membership; proof of prior employment as relevant to claim; police reports; etc.
- Witness (1st and 2nd hand) statements
- Country condition evidence
- Expert affidavits

COVID-19 & the Immigration System

June 2020

**Asylum Office
Resumes
Interviews**

Covid restrictions in
place

July 2020

**Non-Detained In-
person Merits
Resume in
Chicago**

Covid restrictions in
place

No master (status)
hearings

Present

- Still no master
(status) hearings

- EOIR HQ restricts
communication

- Hearings cancelled
with little notice

- Backlog increases

Coming Up...

Thursday: Part II: Working with Your Asylum Client and Presenting Your Case

- What to file for a successful asylum case
- Working with asylum seekers
- Best practices for case preparation during COVID-19
- What to expect at the immigration court and asylum office during the next year

THANK YOU!

For more information, contact

Anna Sears

312-660-1307

ansears@heartlandalliance.org

Other ways to support NIJC:

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



We love feedback!
Use your phone to scan this QR code and complete a short evaluation regarding this training.