

NATIONAL
IMMIGRANT
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Representing Asylum Seekers

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

October 21, 2020

www.immigrantjustice.org

Asylum Program – Pro Bono Support Team

Training Presenters

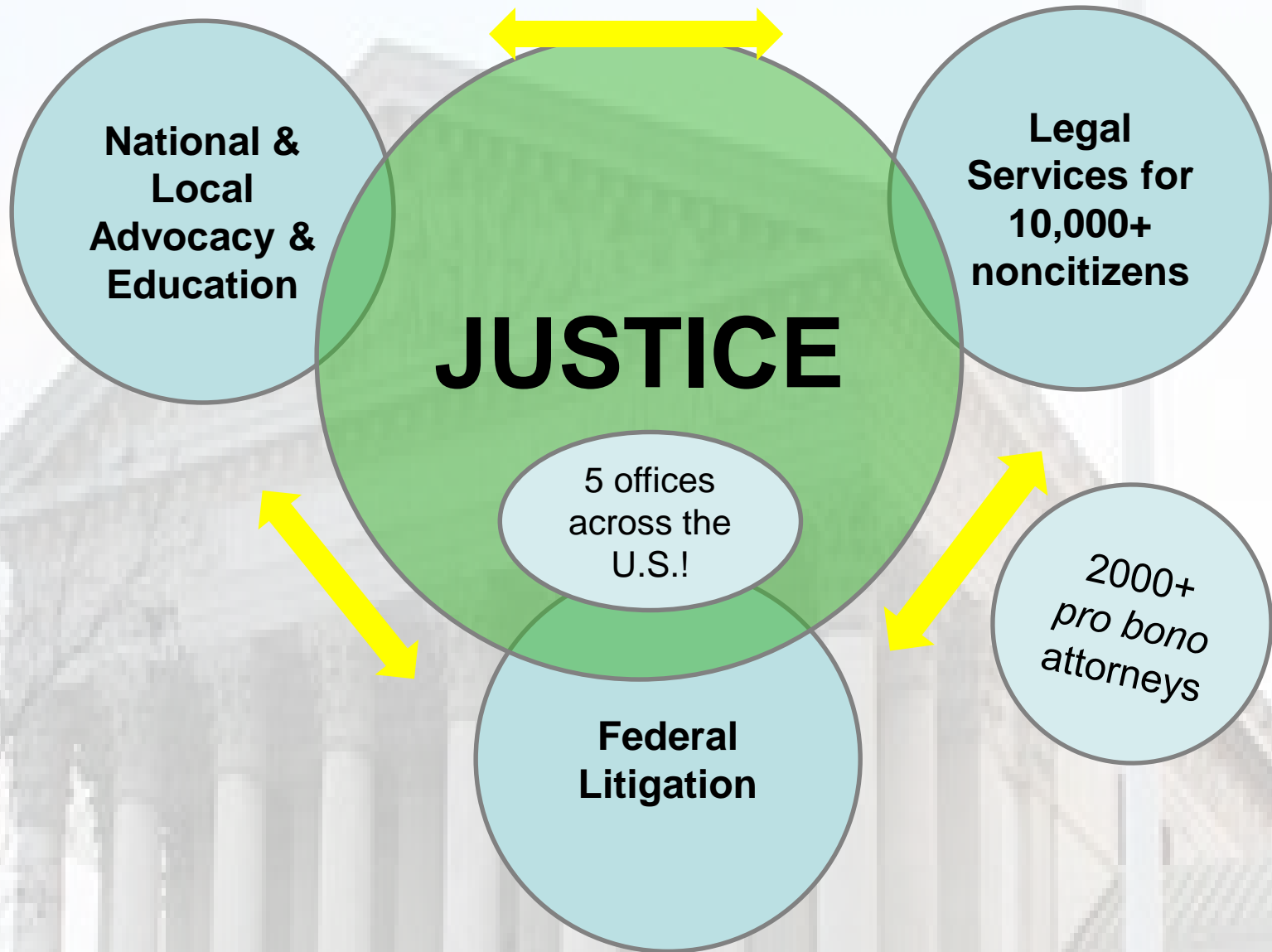
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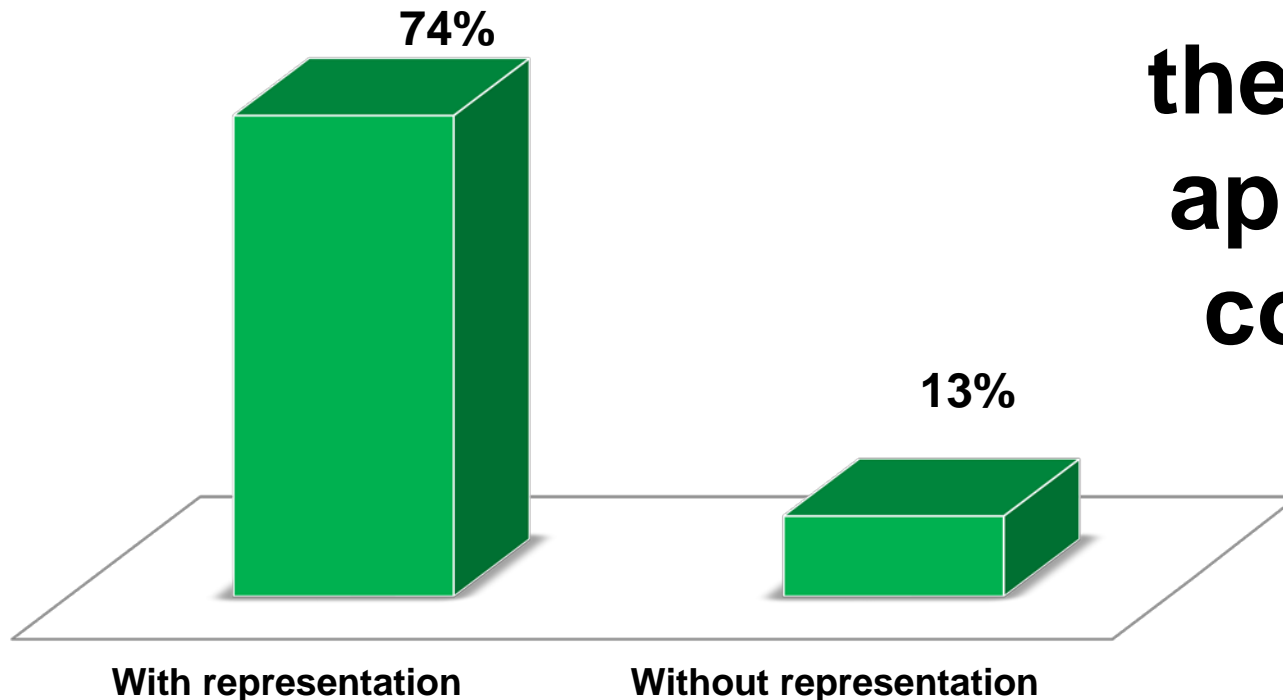
National Immigrant Justice Center (NIJC)



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

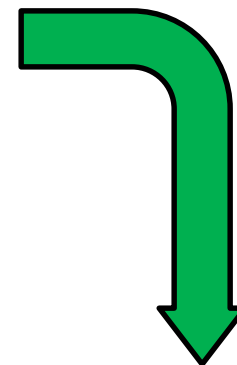
How NIJC's *Pro Bono* Programs Work



An immigrant contacts NIJC and needs an attorney



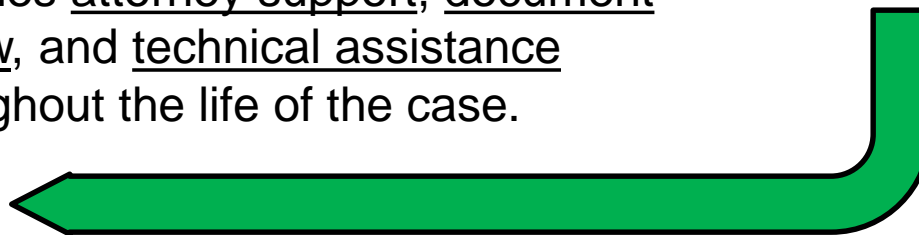
NIJC staff conduct an in-depth case screening and assessment

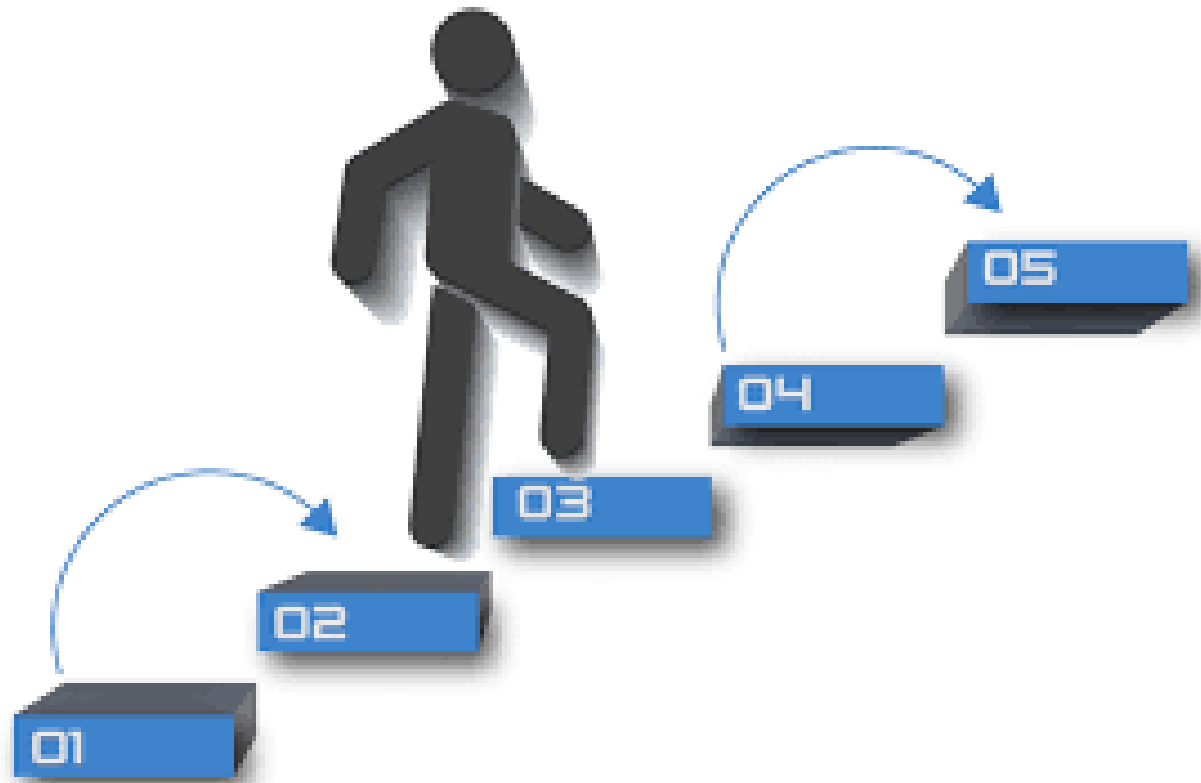


If case is accepted, NIJC signs a retainer with the client and begins to look for *pro bono* placement



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.





PREPARING YOUR CASE

Rachel Milos, Senior Attorney

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



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: 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!

What to File

Asylum Office (Nebraska Service Center)

- Appearance form: [G-28](#)
- TVPRA Instruction Sheet (unaccompanied children only)
- Asylum App (I-589) and 1 passport photo
- Two copies, plus an one copy for each deriv.

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

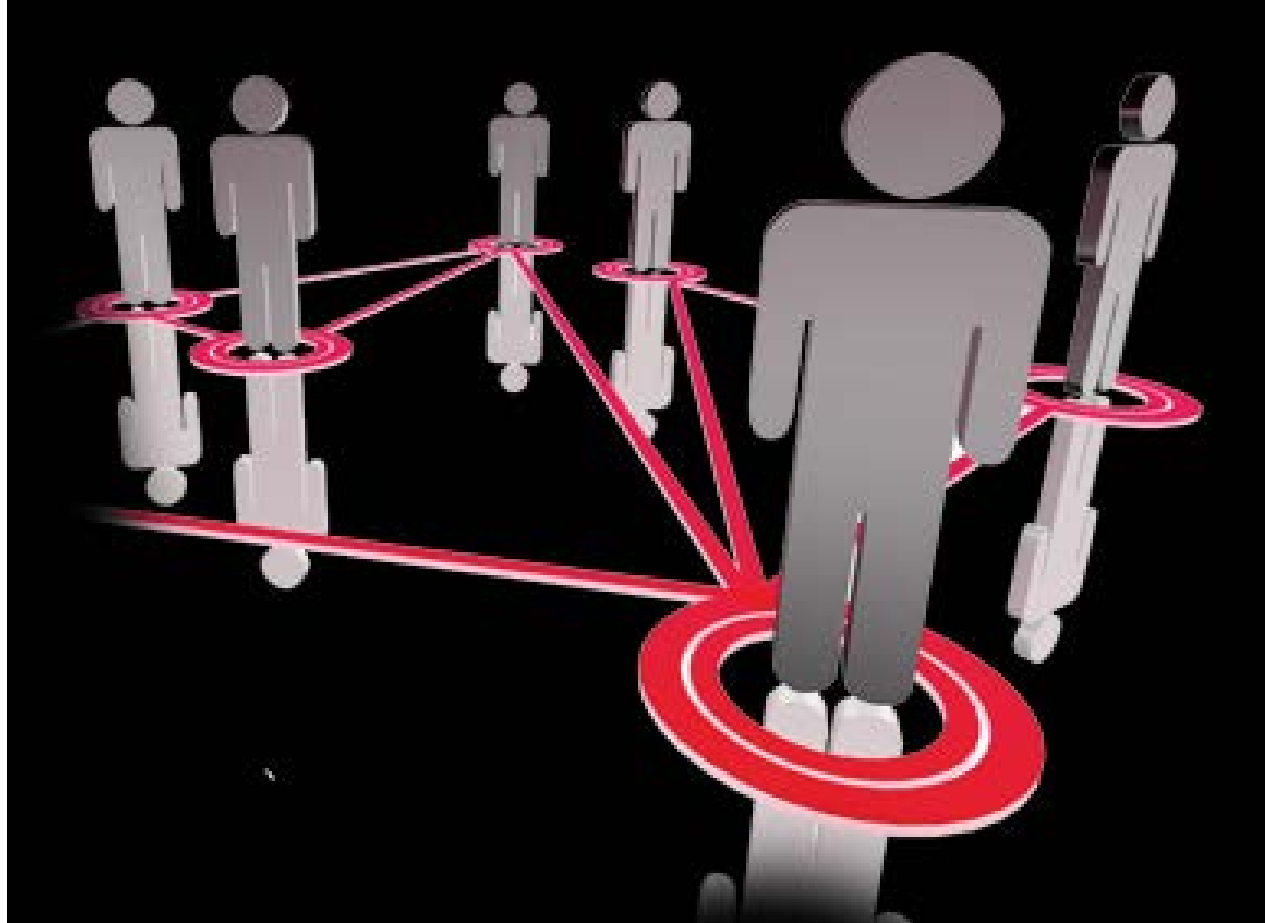
Immigration Court

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

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

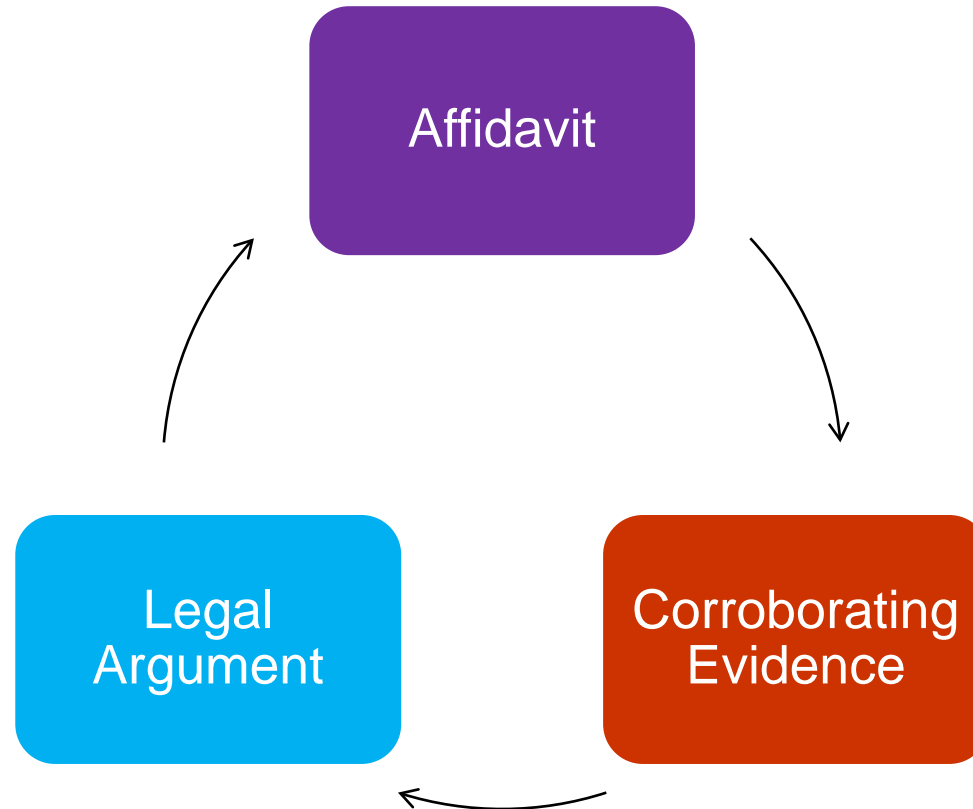
2) **Calendar all deadlines:**

- 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.

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	
3. Complete Last Name CLIENT	4. First Name	5. Middle Name	

6. What other
n/a

7. Residence

Street Number
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?

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.

Where Should They File for Asylum?

- 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. Christopher was designated as an unaccompanied child and placed in removal proceedings.
- 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, Norma, and their child. They fled the country soon after. Norma and her child have an immigration court hearing in two months.

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 and provide necessary background information
- Cover the 5 Ws + H
- Cover all of the asylum elements
- Consider length and detail and check for consistency with other documents

*For more tips on drafting an asylum affidavit, see NIJC's 11/18/16 webinar:
at <http://immigrantjustice.org/training-webcasts>*

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 States with my children on DATE, because the Congolese military beat us and tried to kill us. The military targeted us because my former partner, two daughters, was involved in a suit against the government for the disappearance of my 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 gave 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 diploma as 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 groups, and different leaders taking power. Most of the recent violence in the Congo has been between the north and the south fighting each other. My family was never involved in the violence. We are reserved and tend to keep to ourselves. Even though my family was not involved in politics, it did not cause any violence, we learned, like all Congolese citizens, about the 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 things like freedom of speech and the ability to criticize the government, 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

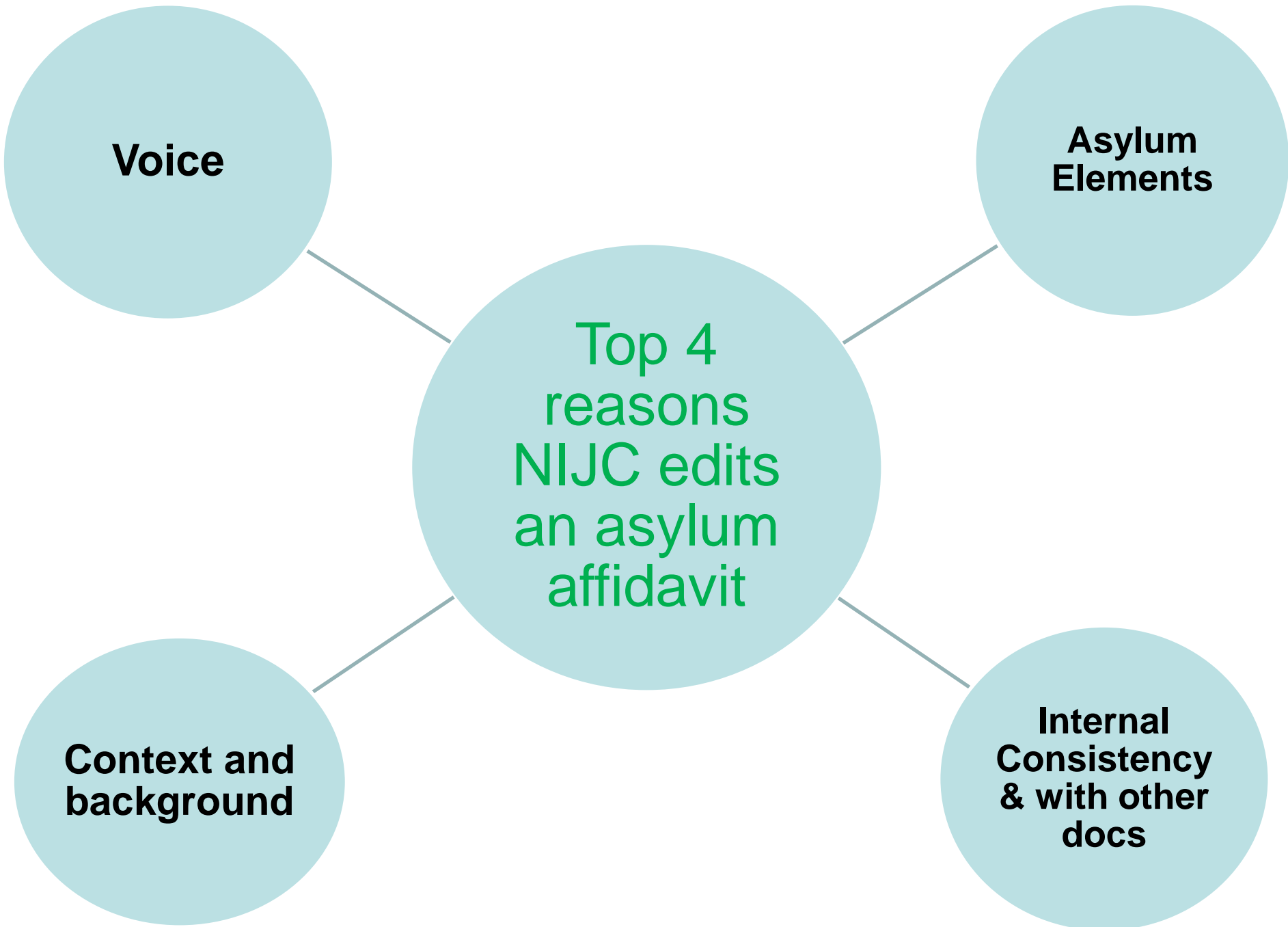
1. I am Honduran. I was born on [REDACTED], in San Pedro Sula, Honduras. I am [REDACTED] years-old.
2. I have two brothers and a sister. My older brother [REDACTED] is almost [REDACTED] years-old. My sister, [REDACTED] is [REDACTED] years-old. [REDACTED] and [REDACTED] were born in Honduras. My youngest brother, [REDACTED] is [REDACTED] years-old. 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.

I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave. My problems began on May 1, 2010, when three gang members driving black motorcycles accosted and harassed me while I was walking in the street.



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

What Corroboration Should You Obtain?

- 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, Norma, and their child. They fled the country soon after.

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
- The Federal Rules of Evidence do not apply – be creative!
- All foreign documents must be translated into English.



U.S. Citizenship
and Immigration
Services



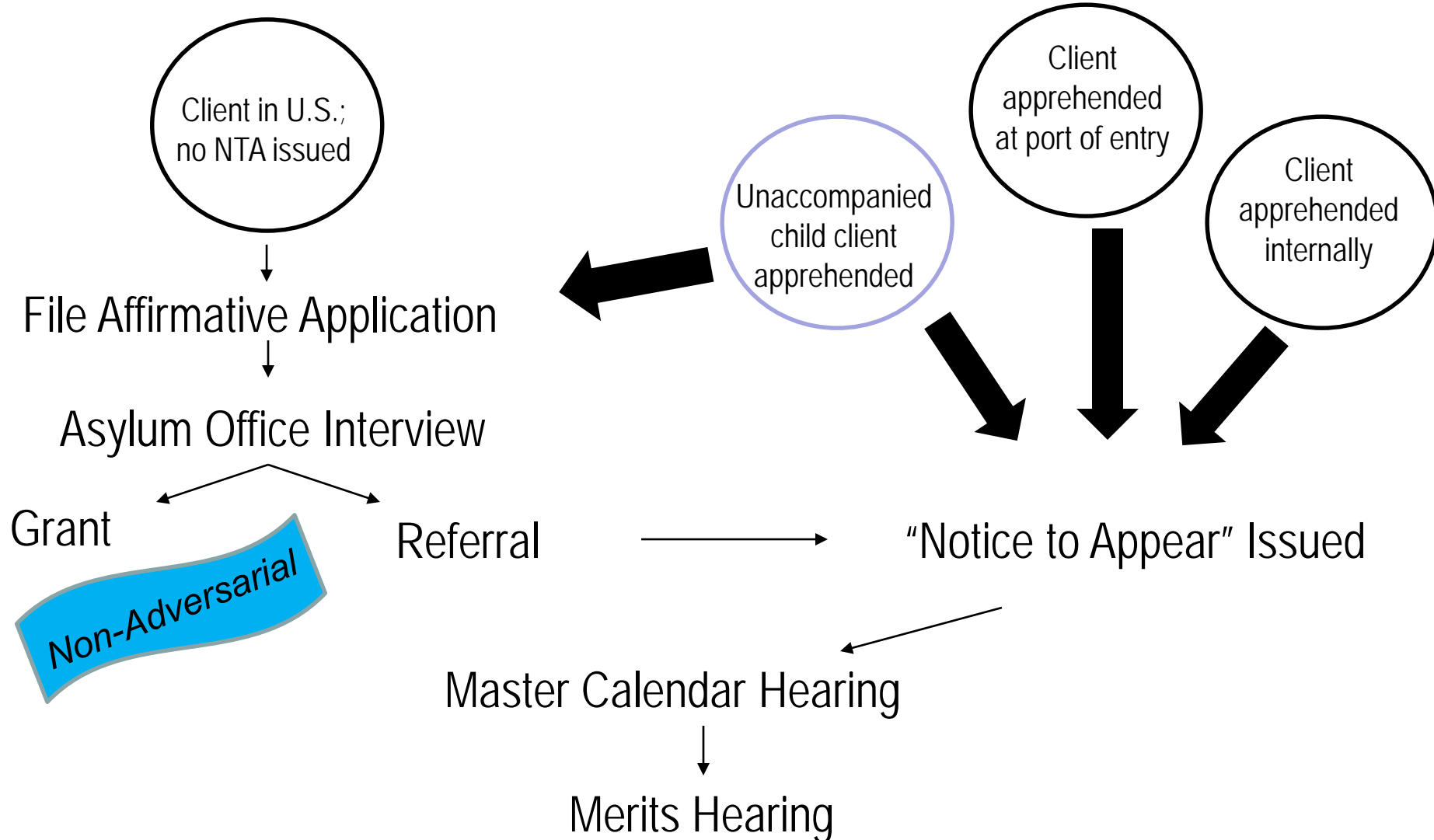
Presenting Your Case

Dalia Fuleihan

The Asylum System

Asylum Office/Affirmative Process

Immigration Ct/Defensive Process



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) = 25 page limit!
 - Legal Memo (for cases before the AO) < 10 pages
- Follow the elements & don't conflate them.
- Case law – focus on the Seventh Circuit
- 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; a copy must be submitted to OCC



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

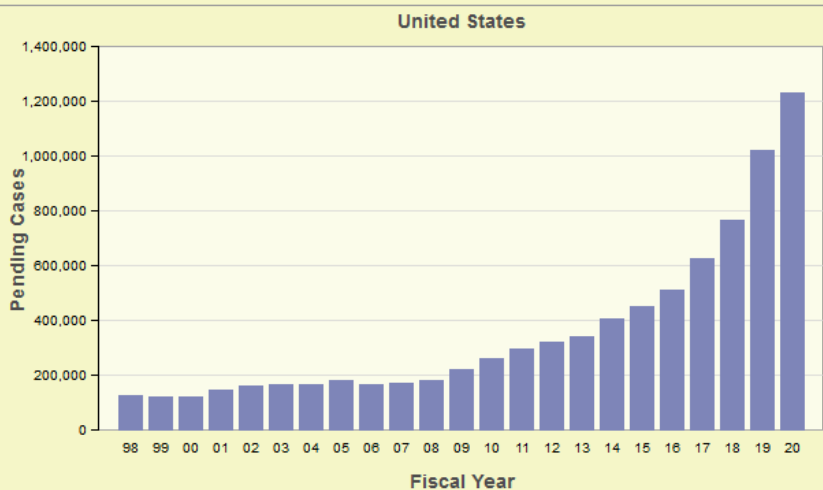
2 weeks before the interview	Receiving an interview notice
1 week before the interview	File supporting documents
2 weeks after notice	Interview
~10 days – 6 months later	Decision

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

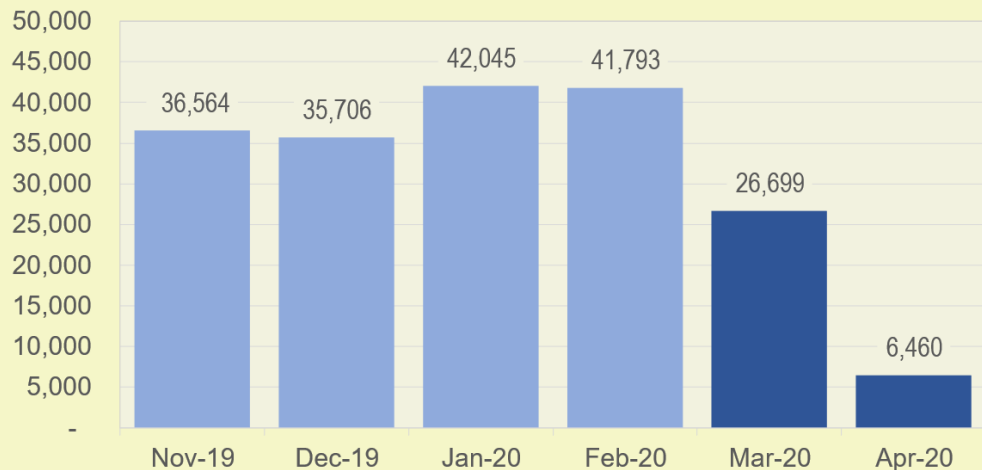
Immigration Court: Case Timing

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

Backlog of Pending Cases in Immigration Courts as of July 2020



Immigration Court Case Completions Drop After COVID-19 Closures



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

Work authorization eligibility is in flux!

- Before 8/25/2020: depended on the “asylum clock”
 - Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
 - Clock stops if the applicant causes a delay
- After 8/25/2020: 365-day eligibility requirement and other bars. Partially enjoined.

See NIJC's [Employment Authorization FAQ](#)

Work Authorization

We will give you more information on your client's eligibility for work authorization in the case file.

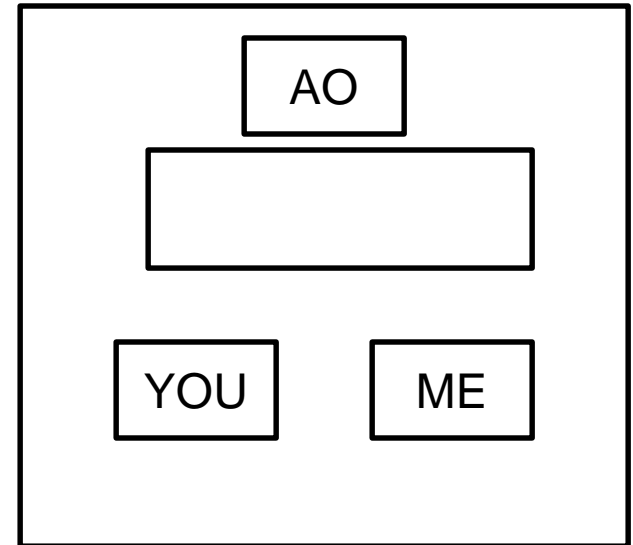
If your client may be eligible, contact NIJC for more information on how to proceed.

Work authorization is a life changer for your client and his/her family. Don't forget about it!

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 – USCIS is providing all interpreters due to COVID restrictions.
 - Merits = trial
- ✓ Prep with open-ended questions.
- ✓ Make sure your client understands the elements, what she needs to prove & how you see the case
- ✓ Manage expectations and 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:

- 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.