

IMMIGRATION **JUSTICE** CAMPAIGN



Immigration Justice Campaign: Limited Scope Assistance

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07-13-2023

Agenda

- Introduction
- About the Justice Campaign
 - Where We Work
 - How We Work
- Background
- Bite-size/Limited Scope
- How You Can Help

Our Model

- Joint project of AILA and American Immigration Council
- We partner with local nonprofit service providers around the country that refer cases to us
- We recruit, train, support and mentor pro bono attorneys on detained and non-detained cases

Where We Work



■ Clients in post-“Remain in Mexico” program

■ Clients in detention

▨ Clients in Afghan asylum program

■ Clients in all three programs

■ Clients in detention; clients in post-“Remain in Mexico” program

■ Clients in Afghan asylum; clients in post-“Remain in Mexico” program

■ Detention centers where we have clients

Work We Support

- Release from detention (bond & parole)
- Detained & non-detained merits hearings (asylum, cancellation of removal)
- BIA, federal Circuit Court appeals & motions to reopen
- Affirmative asylum cases
- Limited scope work
- Work authorization applications
- Adjustment of status applications

Support We Provide

- Training and practice resources to help pro bono attorneys through every part of their case
 - Samples, templates, and more
- Expert mentoring
 - Group mentoring for merits cases
 - “Office hours” for parole and bond cases
 - Review of draft filings

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BACKGROUND

Overview of the border & coming to the US

- Previously at the border: MPP
- Today at the border: [End of Title 42](#)
 - [CBP One](#)
 - [Asylum ban](#)
 - [PACR/HARP 2.0](#) - or “[phone booth asylum](#)”
- What happens once in the US
 - Detention
 - Release
 - ICE Checkins
 - Court

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THE NEED

Post-MPP Clients

- Living conditions in Mexico between 2019-2022
- Client-volunteer contact/hotline process
- Current realities and needs for most of our clients

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LIMITED SCOPE ASSISTANCE TO ASYLUM-SEEKERS

Overview

- Who needs assistance?
- Overview of asylum law and procedures
- What do we mean by "limited scope?"

Who needs assistance?

- Asylum seekers in removal proceedings
- Detained vs non-detained timelines
- Immigration Court backlogs
- No guarantee of representation in deportation proceedings
- "Death penalty cases in a traffic court setting"

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ASYLUM LAW AND PROCEDURES

Sources of Asylum Law

- Statute: 8 USC §1158 & 8 USC §1101(a)(42); INA §208 & §101(a)(42)
- Regulations: 8 CFR §208 & 8 CFR §1208
- Board of Immigration Appeals Decisions
- Supreme Court and Circuit Court of Appeals Decisions
- 1951 U.N. Convention on the Status of Refugees & the 1967 Protocol

What is Asylum?

- A form of legal protection for people fleeing harm in their home countries
- Granted to those inside, or at the border of, the US (unlike refugee status, which is granted to applicants outside the US)
- If asylum is granted, the person is protected from deportation and can remain in the US
- Generous post-grant benefits: green card, cash and medical assistance, and derivative status

Refugee Definition

- Someone “who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, [his or her] 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.”

Persecution - not defined by statute

May be persecution

- Infliction of serious bodily harm
- Severe beatings
- Prolonged extrajudicial detention
- Rape
- Female genital mutilation
- Credible death threats

Not persecution

- Prosecution
- Relatively minor physical harm
- Brief extrajudicial detention
- Harassment
- Discrimination

Persecutor

- Persecutor could be governmental or nongovernmental forces;
- If nongovernmental force, government must be unable or unwilling to control it;
- Persecution must be country-wide (applicant cannot internally relocate). 8 CFR 1208.13(b)(b)(ii)
- Key: Identify groups or likely groups the persecutor belongs to and motives for persecution, but don't need names of individuals if applicant doesn't know. Not all harm is persecution.

Past Persecution

- If past persecution is established, there is a rebuttable presumption of future persecution. 8 CFR §§ 208.13(b)(1)(i), 1208(b)(1)(i)
- Burden shifts to the US Government to show, by a preponderance of the evidence, that:
- Country conditions have changed OR applicant can avoid harm by relocating to another part of his or her country. CFR §§ 208.13(b)(1)(ii), 1208(b)(1)(ii)

Well-Founded Fear

- A separate basis for asylum (even if no past harm)
- Genuine objective and subjective fear of future harm
- Persecution must be a "**reasonable possibility**" -- not a probability. §§ 208(b)(2), 1208(b)(2). *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)
- No need to be "singled out" for persecution, if there is a pattern or practice of harm to people similarly situated. 8 C.F.R. §§ 208(b)(2), 1208(b)(2)

Well-Founded Fear

- **Subjective Component**
- Person is afraid to return to country of origin because of protected ground
- Shown by testimony, affidavits, and proof of persecution

- **Objective Component**
- Any reasonable person in a similar situation would be afraid (reasonable possibility, not probability)
- Shown by country condition documentation or country expert

On Account of - Nexus to a Protected Ground

- Race
- Religion
- Nationality
- Membership in a Particular Social Group
- Political Opinion

Nexus is often the most difficult element to establish and to prove

Particular Social Groups

- Must be a “common, immutable characteristic” that the members of the group cannot or should not be required to change.
- Particularity
- Social visibility/distinction (not ocular visibility)
- Generally cognizable groups: Family units, ethnic groups, sexual orientation/gender identity

Bars to Asylum

- One year (but, there are exceptions!)
- Firm resettlement
- Internal relocation
- Particularly serious crimes
- Material support to a terrorist organization
- Security threat to the US
- Serious non-political crimes (committed anywhere in the world)
- Persecutor of others
- **CBP One/Transit ban 2.0**
- Safe third country
- Previously filed asylum application

Credibility

- **Inconsistencies** without regard to whether they go to the heart of the claim
- Inaccuracies or falsehoods
- Demeanor
- Candor
- Responsiveness
- Plausibility
- "Or any other relevant factor"

Corroboration

Credible testimony standing alone may be sufficient to meet the applicant's burden of proof. But when corroborating evidence exists, the IJ may find that the applicant has not met her burden of proof if she does not either come forward with that evidence or explain why she cannot reasonably obtain it.

INA §208(b)(1)(B)(ii)

What do we mean by "limited scope?"

- I-589 only (to preserve remedies and meet deadlines)
- I-589 + supporting documents
 - Declaration
 - Corroborating evidence
 - Lay and expert witness statements
 - Country conditions
 - (Pre-hearing brief?)

What do we mean by “limited scope?”

- Asylum-adjacent issues
 - FOIA and file requests
 - Change of venue
 - Motions to terminate

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HOW CAN I HELP?

Take a Case!

- Two step process:
 1. Sign up on our [website](#)
 2. Fill out a [volunteer application](#)
- After you sign up on our website, review [Current Volunteer Opportunities](#) and email probonocoordinator@immcouncil.org to take a case (must be logged into website)

Cases

Mr. RD

Relief Sought: Change of Venue (COV) and Asylum

Location: Kentucky

Country of Origin: Cuba

Language: Spanish

Next Hearing: Pending

Mr. RD is a man in his early 40s from Cuba who most recently arrived in the United States in 2020. He fears returning to Cuba after he began receiving threats from a military official that he worked for after a discussion. He fled to Nicaragua and traveled north. While in Mexico, he was threatened and had cars run into his by people associated with the Cuban government. Mr. RD was part of the Migrant Protection Protocols (MPP) and now lives in Kentucky. His case is currently venued in Texas, so he needs a Change of Venue (COV). Mr. RD seeks limited scope pro bono assistance, including a COV, with his asylum case so that he may remain safely in the United States.

Mr. JTN

Relief Sought: Asylum

Location: Florida (Orlando Immigration Court)

Country of Origin: Venezuela

Language: Spanish

Next Hearing: November 16, 2023 (Master Calendar Hearing)

Mr. JTN is a man in his early 20's from Venezuela who most recently arrived in the United States last year. In 2019, he was involved in student protests at which "colectivos" arrived and started beating protesters. Threats and harassment continued to the point where he feared leaving his home. Mr. JTN was a part of the Migrant Protection Protocols (MPP) and now lives in Florida where his case is venued. He seeks limited scope pro bono representation in his asylum case so that he may remain safely in the United States.

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Questions?

www.immigrationjustice.us

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