
**SPECIAL CONSIDERATIONS WHEN
REPRESENTING DETAINED
APPLICANTS
FOR ASYLUM, WITHHOLDING OF REMOVAL
AND RELIEF UNDER THE CONVENTION
AGAINST TORTURE**

A Supplement to NIJC's Basic Procedural Manual for
Asylum Representation

August 2019

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A **HEARTLAND ALLIANCE** PROGRAM

224 S Michigan Ave
Suite 600
Chicago, Illinois 60604
Phone 312-660-1370
Fax 312-660-1505
www.immigrantjustice.org

Please Note:

This document is a brief guide to asylum practice in the detained context and is a supplement to NIJC's Basic Procedural Manual for Asylum Representation Affirmatively and in Removal Proceedings.

This supplement does not purport to discuss all aspects of immigration practice related to asylum proceedings. Additional sources should be consulted when more complex questions regarding current law and procedure arise. Many of these resources are referenced in NIJC's Basic Procedural Manual.

NIJC's Basic Procedural Manual for Asylum Representation is available for download at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>

2019 Heartland Alliance for Human Needs & Human Rights
National Immigrant Justice Center

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ACRONYMS

AG	Attorney General
AGFEL	Aggravated felony
BIA	Board of Immigration Appeals
CIMT	Crime Involving Moral Turpitude
CFI	Credible Fear Interview
DHS	Department of Homeland Security
DO	Deportation Officer
DOJ	Department of Justice
ERO	Office of Enforcement and Removal Operations
EOIR	Executive Office for Immigration Review
FARO	Final Administrative Removal Order
FOIA	Freedom of Information Act
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IJ	Immigration Judge
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
LPR	Lawful Permanent Resident
NTA	Notice to Appear
OCC	Office of Chief Counsel (<i>see also</i> TA)
RFI	Reasonable Fear Interview
SDDO	Supervisory Detention and Deportation Officer
TA	Trial Attorney
USC	United States Citizen
USCIS	United States Citizenship & Immigration Services

INFORMATION ON NIJC'S ASYLUM *PRO BONO* PROGRAM

The National Immigrant Justice Center

The National Immigrant Justice Center (NIJC) 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's asylum *pro bono* program relies almost entirely on volunteer attorneys, the great majority of whom have no previous experience in immigration or asylum law. NIJC assists its *pro bono* partners by providing training, materials, support services, and consultations. Largely as a result of the efforts of its *pro bono* partners, NIJC has helped thousands of asylum seekers from more than 60 nations begin new lives in the United States.

There are three different projects within NIJC that provide *pro bono* asylum representation through volunteer attorneys. NIJC's asylum project represents asylum seekers who are not in immigration detention, while NIJC's adult detention project represents asylum seekers who are in the custody of the Department of Homeland Security (as well as other detained noncitizens). NIJC's LGBT Immigrant Rights Initiative represents individuals who are seeking asylum based on their sexual orientation or gender identity, both in and out of custody.

For more information visit www.immigrantjustice.org.

NIJC's Clients

NIJC's asylum clients are men, women, and children who have fled civil wars, violence, and persecution around the globe. Many have survived state-sponsored torture and other persecution. Other clients have been subjected to severe human rights abuses by non-state agents such as guerilla groups and private citizens whom the government in the country of origin is unwilling or unable to control. Through NIJC's asylum *pro bono* program, *pro bono* attorneys have saved the lives of thousands of clients fearing political, racial, ethnic and religious persecution, gender-based violence, and abuse based on sexual orientation.

When To Use This Supplement

This supplement is intended as a brief guide to asylum practice in the detained context and is a supplement to NIJC's Basic Procedural Manual for Asylum Representation Affirmatively and in

NIJC Projects Serving Asylum Seekers



Asylum Project: Serving non-detained families, children, and adults seeking asylum.



LGBT Immigrant Rights Initiative: Serving detained & non-detained adults & youth seeking asylum based on sexual orientation or gender identity.



Detention Project: Serving detained adult asylum seekers.

Removal Proceeding. NIJC's Basic Procedural Manual for Asylum Representation and other materials related to asylum representation are available on NIJC's website [here](#).

For additional questions about:

- Representing detained asylum seekers: Jesse Johnson, jejohnson@heartlandalliance.org
- Representing LGBT asylum seekers: Michelle Velazquez, MiVelazquez@heartlandalliance.org



IMMIGRATION DETENTION AND REMOVAL OVERVIEW

Who Are Detained Immigrants?

On any given day in the U.S., the government detains more than 50,000 people in immigration custody.¹ The U.S. government detains non-citizens of various backgrounds, including:

- Newly-arrived undocumented individuals
- Undocumented individuals who have lived and worked in the United States for years
- Long-term lawful permanent residents
- Asylum seekers² who have been harmed/tortured or who fear harm/torture in their countries of origin

Federal law provides that individuals who have suffered or fear persecution in their home countries based on their race, religion, nationality, political opinion, or social group can apply for asylum in the United States. To qualify for asylum, the applicant must be physically present in the United States. Many individuals may petition for asylum while detained and as a defense to removal or deportation.

While more information on asylum in general can be found in NIJC's Basic Procedural Manual for Asylum Representation, <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>, this supplement is intended to highlight the unique issues involved in the *pro bono* representation of detained asylum seekers.

How Do Asylum Seekers End Up In Immigration Detention?

Non-citizens in immigration detention come from a wide range of backgrounds and are in detention for a variety of reasons.

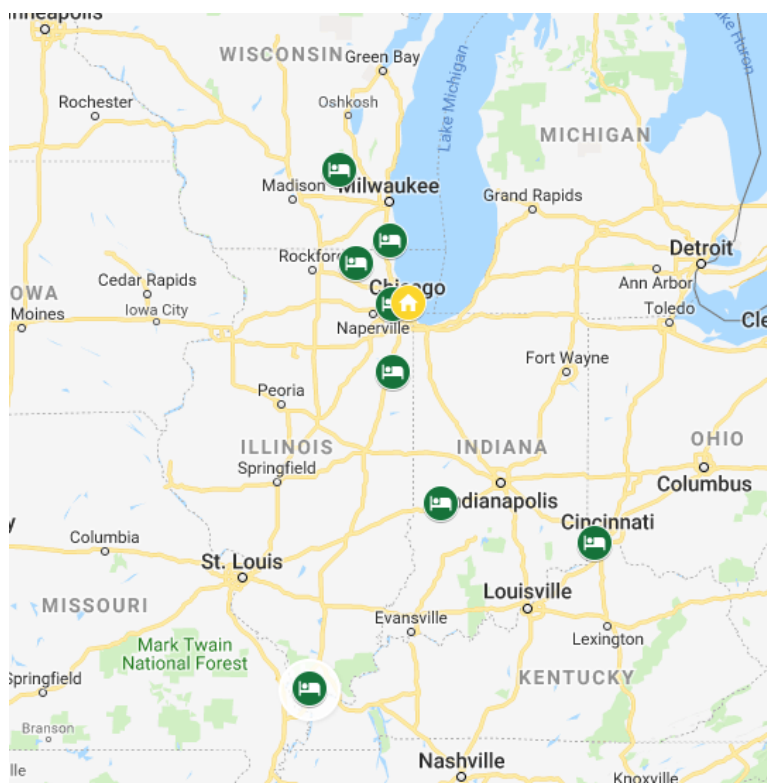
- Asylum seekers who request protection at or near a U.S. port of entry are mandatorily detained and cannot be released from detention until they pass a credible fear interview. INA § 235(b)(1)(B)(iii)(IV).
- Other asylum seekers are detained because of a criminal conviction, even though they have already served their sentence for that conviction. Some asylum seekers with criminal histories may be eligible for release from immigration detention on bond. Many criminal convictions result in mandatory custody, meaning the asylum seeker must be detained throughout the duration of her case.
- Other asylum seekers end up in immigration detention, even though they have no criminal history, because they were brought to the attention of ICE during a routine traffic stop or an immigration raid.
- Finally, some asylum seekers end up in immigration detention because they were previously ordered removed from the United States but reentered the country without inspection and later found themselves back in immigration custody.

¹See: ICE, *Detention Management*, <https://www.ice.gov/detention-management#tab2>

² For simplicity's sake, this document will refer to all non-citizens seeking protection in the United States as "asylum seekers," even if many of these individuals are not eligible for asylum itself.

Where Are Asylum Seekers Detained?

The Department of Homeland Security (DHS) manages the largest immigration detention system in the world and spends more on immigration enforcement than Congress allocates for the FBI, the Drug Enforcement Administration, the Secret Service, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives combined.³ Immigrant detainees, including asylum seekers, are primarily detained in three types of facilities: Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs). SPCs are owned and operated by ICE. CDFs are operated by private companies under contract with ICE. IGSAs house most immigrant detainees and are facilities like county jails that ICE uses under contract with state or local governments. ICE contracts with more than 200 local jails and in 2019 is funded to maintain more than 50,000 beds for detained immigrants.⁴



Although immigration detention is considered civil detention, it is rooted in correctional practices. According to Dr. Dora Schriro, former director, DHS Office of Detention Policy, “the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards . . . and on correctional principles of care, custody and control.”⁵

The Chicago Enforcement and Removal Operations Field Office covers 26 facilities across Illinois, Wisconsin, Indiana, Kentucky, Missouri, and Kansas. The Chicago and Kansas City Immigration Courts adjudicate proceedings for immigrants and

asylum seekers detained in these states.⁶ Of these facilities, the six largest detention centers – McHenry County Jail (Illinois), Dodge County Detention Center (Wisconsin), Pulaski County Detention Center (Illinois), Kenosha County Detention Center (Wisconsin), Jerome Combs Detention

³ “Banking on Detention: lock up quotas & the immigrant dragnet,” Detention Watch Network, Center for Constitutional Rights (2015); “Immigration Enforcement in the United States: The Rise of a Formidable Machinery” Migration Policy Institute, (Jan. 2013).

⁴ “Banking on Detention: lock up quotas & the immigrant dragnet,” Detention Watch Network, Center for Constitutional Rights (2015); J. Rachel Reyes, Immigration Detention: Recent Trends and Scholarship, Center for Migration Studies (2019); Spencer Ackerman, ICE is Detaining 50,000 People, A New All time High, The Daily Beast (Mar. 8, 2019)

⁵ Dr. Dora Schriro, former director of U.S. Dep’t of Homeland Security’s (DHS) Office of Detention Policy and Planning, *Immigration Detention Overviews and Recommendations*, 2 (2009).

⁶ NIJC primarily represents detained individuals with cases before the Chicago Immigration Court.

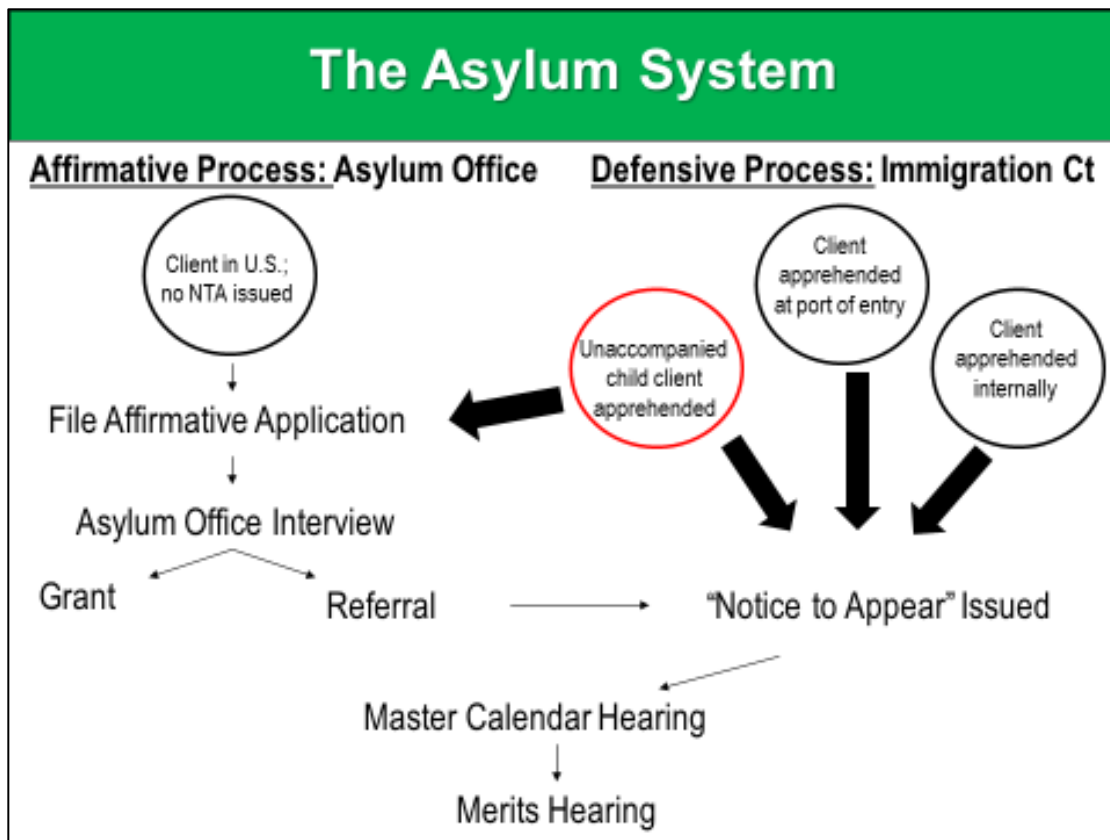
Center (Illinois), and Boone County Jail (Kentucky) – each hold between 100 and 300 individuals daily.⁷

NIJC representation is not strictly limited to the Mid-West. NIJC also represents clients in detention facilities across the United States, mostly along the Southern border in California, New Mexico, and Texas.

Who is Involved in a Detained Asylum Case?

Most of the entities involved in the asylum process for a detained asylum seeker are the same as in the process for a non-detained asylum seeker. All detained asylum seekers seek asylum as a defense to deportation (with an exception for certain asylum seekers who filed for asylum while they were designated as unaccompanied immigrant children). This means the individual will present her case before an immigration judge (IJ).

Note: Some individuals are referred to immigration court without a “Notice to Appear” for withholding-only proceedings. This usually occurs when the person has a prior removal order, reenters the United States without permission, and ICE reinstates their prior removal order.



⁷ “Not too Late for Reform: A Report from the Midwest,” National Immigrant Justice Center (Dec. 2011) at 4.

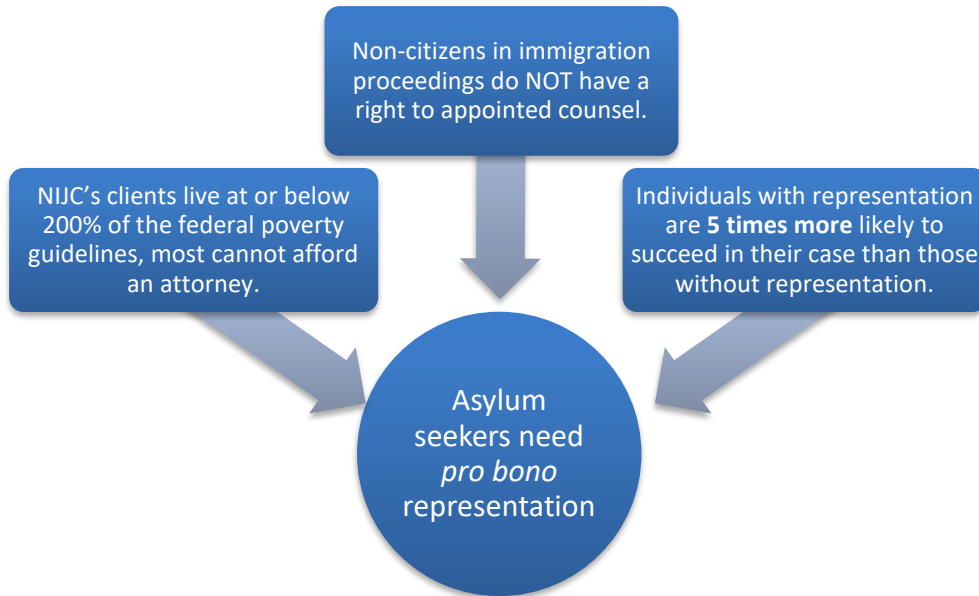
Entities Involved in a Detained Immigration Case		
Client	Department of Homeland Security (DHS)	Department of Justice (DOJ)
<ul style="list-style-type: none"> • Client • Client’s family and friends 	<ul style="list-style-type: none"> • Immigration & Customs Enforcement (ICE) <ul style="list-style-type: none"> ○ Enforcement & Removal Operations (ERO) ○ Office of Chief Counsel (OCC) • Customs & Border Protection (CBP) • U.S. Citizenship & Immigration Services (USCIS) 	<ul style="list-style-type: none"> • Executive Office for Immigration Review (EOIR) <ul style="list-style-type: none"> ○ Immigration Court ○ Board of Immigration Appeals (BIA)

Entities Involved in an Immigrant’s Detention	
Detention Facility Staff	ICE-ERO
<p>Detention facility staff (guards, wardens, medical, etc).</p> <ul style="list-style-type: none"> • Detention facility staff do not work directly for ICE or DHS. • Attorneys should not ask the detention staff about the client’s case 	<p>Deportation Officers (DO): responsible for detainees in ICE custody. Every detainee has an assigned DO. In the Chicago area of responsibility, DOs work out of the Chicago ICE office and are not present in the detention facilities.</p>

WORKING WITH DETAINED CLIENTS

Why Is *Pro Bono* Representation Important?

Detained asylum seekers, like all immigrants in removal proceedings, do not have the right to appointed counsel. Thus, they have three options: paying for an attorney, obtaining *pro bono* representation, or proceeding *pro se*.



Pro bono representation is particularly critical for detained immigrants because of the nature of immigration detention:

- ICE frequently detains immigrants and asylum seekers in remote detention facilities far from their families, social service providers, and attorneys.
- Phone access in and out of immigration detention centers is frequently limited or nonexistent. Detained immigrants thus face significant challenges in even contacting potential counsel.
- The Immigration Court in Chicago covers remote locations. For example, Pulaski County Detention Center is located 350 miles from Chicago. There is no way to reach the jail by public transportation due to its remote location.
- Given the high volume of cases and the logistical complications of representing detained individuals, without *pro bono* support NIJC is unable to ensure that detained asylum-seekers with strong claims are able to obtain legal services.

How Does Detention Affect Asylum Seekers?

The nature of immigration detention frequently creates and exacerbates stress, anxiety, and mental health symptoms such as post-traumatic stress disorder (PTSD) for all detained non-citizens for a number of reasons:

- Communication is difficult, expensive and not private.
- Detained non-citizens have limited access to information, documentation, and people outside of detention.
- Detained non-citizens are frequently transferred to remote facilities, far from family, without notice, and without knowing their location within the United States.
- Immigration detention systematically deprives an individual of autonomy and control over her life. A detained non-citizen's inability to know what will happen in her case, when it could happen, and what is happening with family outside of detention is emotionally taxing.

These experiences are typically amplified for asylum seekers. Being detained has an exceptionally high emotional toll on asylum seekers for a variety of reasons:

- Many asylum seekers struggled with symptoms of PTSD before being detained and lack access to medication and therapy in detention;
- Immigration detention may resemble the type of mistreatment the asylum seekers endured in their home country; and
- Asylum seekers who crossed the border with partners or family are frequently separated from them and end up in different parts of the United States, creating further stress and anxiety for the asylum seeker, who does not know about the well-being of her family members.

What can attorneys do to **PREVENT** and **RESPOND** to client stress in detention?



PREVENT!

- **Orient the client:** Describe the timeline, court process and next steps during each call. You may be the client's *only* information source. Ask if they have questions.
- **Confidentiality:** Explain confidentiality in simple terms. For each call, check to see if they feel comfortable speaking with you – are there guards or other inmates around who can hear them speak?
- **Give your client choices:** Do they want to have a call with you in the morning or the afternoon? Do they want to write down their experiences and send them to you? Do they want copies of what you are filing?
- **Follow through:** This is very important for someone who lacks autonomy and control. If you can't do something when your client would like, that's okay. **Setting boundaries** is also important. But when you set a deadline, meet it. This will help **build trust**.
- **Make a plan together:** Tell them what you're going to work on (affidavit, testimony prep, etc.), how long it will take, and offer to take breaks.

RESPOND!

- **Check on detention conditions every time:** Ask them how they are, whether they've had any problems with guards or other inmates at the jail since you talked to them last. **Acknowledge problems that arise** and whether you can help or will try to help.
- **Affirm the difficulty of their experiences.** If they tell you a family member died, it is okay to express sympathy, while also acknowledging that you cannot imagine what their situation feels like. And if they say they can't sleep because the TVs in the jail are too loud, acknowledge the difficulty of that too.
- **Recognize the client's authority** regarding their case and encourage self-determination, while inquiring about underlying reasons, especially if they change their minds about something important or suddenly decide to stop fighting their case. For example, if a client suddenly states that she wants to give up her asylum case, talking through the consequences of returning to her home country may help her sort through her goals and fears. Remind your client that you are there to advocate on their behalf and that you will fight for them.

Communicating With Detained Clients

In NIJC's local service area,⁸ ICE contracts with county jails to detain immigrants and asylum seekers. While individuals in immigration custody are in civil detention, the facilities are intended for individuals in criminal custody, and many of the facilities also house criminal inmates.

The staff at detention facilities do NOT work directly for DHS or ICE. Attorneys should not ask the staff at the detention facilities any questions about a client's case. If a client has temporarily or permanently been transferred out of a facility, jail staff is unlikely to know why or where a client has gone.

Options to communicate with a detained client include:

- Telephone
- In-person visits to the detention facility
- Video tele-conferencing
- Written communication via fax (at some facilities) or mail.

NIJC has established agreements with Chicago ICE so that certain facilities allow private attorney conference calls between attorneys and clients. Some facilities also allow faxing between clients and their attorneys. Each facility has a separate and different procedure for arranging attorney calls and in-person visits and for fax requests (where allowed). Video-teleconferencing (VTC) is not available at all facilities, is generally not private, and is expensive.

Phone calls:

Schedule in advance.

Some facilities require 48-hour notice.

Plan for limitations.

Certain facilities limit phone calls.

Confirm if the line is secured.

Not all detention lines are confidential; attorney lines are supposed to be confidential.



The staff at detention facilities do NOT work directly for DHS or ICE. Attorneys should not ask the staff at the detention facilities any questions about a client's case.

NIJC has a document describing each facility's procedures for communication with detained clients; this information will be shared with *pro bono* attorneys at the time of case acceptance.

Scheduling Communication

It is very difficult for detained clients to reach their attorneys from detention, so it is important that *pro bono* attorneys schedule times to directly contact them and establish a communication plan soon after case acceptance.

- For example, *pro bono* attorneys might tell the client that they will call several times at the beginning to prepare the case and then every week after that, at a fixed time.
- Establish a fixed time for attorney calls to ease the client's anxiety about being in detention.

Phone calls:

⁸ NIJC's local service area for detained clients is Illinois, Indiana, Wisconsin, and Kentucky.

- Several of the facilities limit the duration of calls, generally to half an hour. If you would like to schedule an hour-long call, make this clear in your request.
- Some jails respond to call requests to confirm or suggest a rescheduled time, while others do not. If you have not received confirmation of your call, call the jail to confirm.

Please review the specific procedures for your client's facility when scheduling a call or visit.

In-person visits:

- Attorneys can arrange in-person attorney visits and should call the facility at least 48 hours in advance to do so.
- Attorneys must bring proper identification, a bar card, and a copy of the signed G-28 (attorney notice of appearance form).
- Non-attorneys (paralegals/interpreters) will also need a form of ID and some facilities require a letter from the attorney. Review the specific procedures for the facility for details.
- Facilities have different rules regarding whether interpreters can enter the facility with attorneys. Attorneys who plan to bring an interpreter should clarify the facility's rules in advance of the visit.

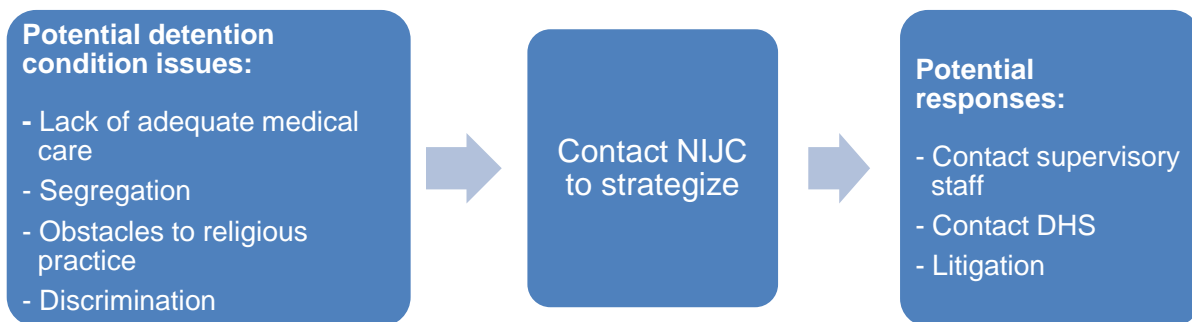
If an attorney encounters any problems communicating with a detained client or with staff at one of the detention facilities, the attorney should contact NIJC.

Detention Transfers

Pro bono attorneys should be aware that ICE may move individuals between facilities without warning, usually due to concerns regarding bed space. If ICE has moved a client or an attorney cannot find a client at the facility where she was previously detained, the attorney can try to locate her through the ICE Online Detainee locator System at <https://locator.ice.gov>. Attorneys can also call the deportation officer assigned to their client, who should be able to advise the attorney regarding the client's location. Please check with your NIJC contact to find out which deportation officer is assigned to your client.

Detention Conditions

As it is common for detained asylum seekers to experience problems with conditions in detention, it is important that *pro bono* attorneys maintain regular communication with their clients so they are aware of any issues their clients are having with detention conditions.



Pro bono attorneys must affirmatively ask the client questions about detention conditions while preparing for the case and notify NIJC of any issues. Unfortunately, NIJC cannot guarantee that we

will be able to advocate or address every concern that arises. We do, however, work to educate members of Congress and other decision makers about human rights violations in detention. The issues faced by your client are largely the basis of these education efforts and larger policy actions.

OPTIONS FOR DETENTION RELEASE

Can A Detained Asylum Seeker Be Released While His Case Is Pending?

The answer will depend on several factors. Below is an overview of options for release from detention while a case is pending. NIJC will identify whether a detained asylum seeker is eligible for release at the time the *pro bono* attorney accepts the case for representation.

Parole

Individuals who present themselves at a port of entry, such as an airport or bridge between the United States and Mexico, may be eligible for parole. To be eligible for parole, an individual must (1) pass their credible fear interview, (2) establish their identity to ICE's satisfaction, and (3) establish they are not a flight risk or danger to the community.

NOTE! Parole in the immigration context is different than in the criminal context!

Unfortunately, at present, Chicago ICE denies nearly all parole applications, even where applicants meet the requirements described above. If NIJC recommends that a *pro bono* attorney nonetheless attempt to seek parole for an NIJC client, the attorney should continually manage the client's expectations regarding his chance of ultimately obtaining parole.

Bond

Individuals are eligible for bond if they have been apprehended in the interior of the United States, do not have a prior removal order, and do not have certain criminal convictions.⁹ In addition, individuals who entered the U.S. between ports of entry, were apprehended near the border soon *after* crossing into the U.S., and have passed credible fear interviews, have also historically been eligible for bond. (By contrast, and counterintuitively, people who enter the United States by presenting themselves at a port of entry are not eligible for bond).

However, in April 2019, the Attorney General issued a decision, *Matter of M-S-*, restricting bond for asylum seekers. Specifically, under that ruling, recently arrived asylum seekers who entered the United States without being inspected at a port of entry and passed credible fear interviews can no longer seek release on bond and will only be eligible for release on parole, which, as noted above, is generally difficult to obtain. The Attorney General's ruling is currently being challenged in the federal courts. If your client is an asylum seeker who entered the United States on or after July 15, and passed a credible fear interview, please check with NIJC for the current status of the litigation.

If an individual is eligible for bond, an immigration judge will consider two main factors when determining whether to grant bond: (1) whether the individual is a flight risk, and (2) whether the individual is a danger to the community or security risk. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Judges often find that newly-arrived asylum seekers are flight risks and set high bonds for this reason. Additionally, a criminal record that reflects that the person might cause harm to another person, such as a DUI or domestic battery, will affect a judge's decision on bond.

⁹ See INA § 236(c) for a list of mandatory custody grounds. The list is very broad and includes offenses such as simple drug possession.

Is There Any Reason a Detained Asylum Seeker Should Remain Detained?

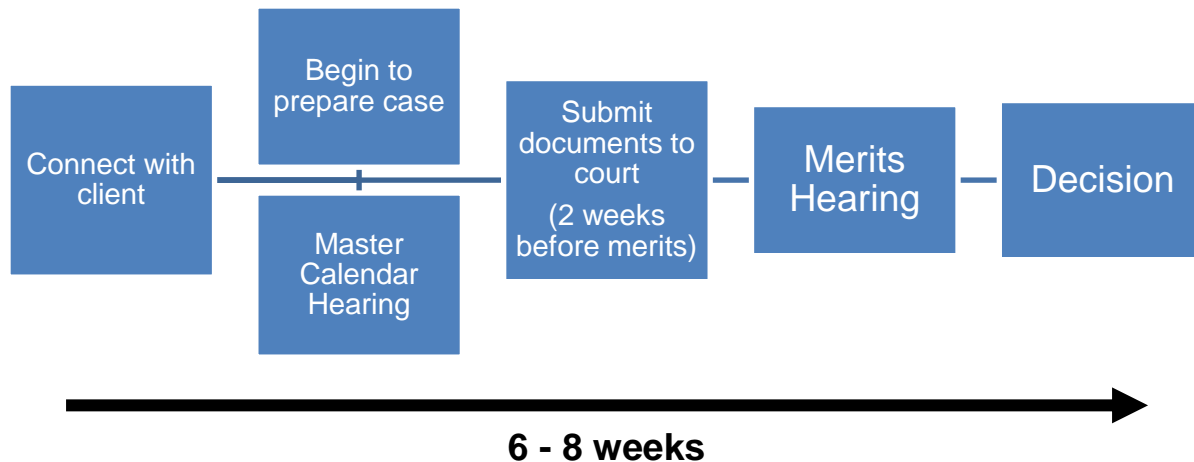
It may seem obvious that *pro bono* attorneys should try to get their clients out of custody, particularly if the client is struggling in detention or has a case that is likely to go up on appeal and result in prolonged detention. However, there is one significant reason why some asylum seekers may opt to remain in custody until their asylum claim is adjudicated by the immigration judge: detained cases are adjudicated much more quickly than non-detained cases. For example, most detained asylum seekers have a merits hearing within a matter of a few months, whereas most non-detained asylum seekers must wait three or more years for a merits hearing. On the other hand, remaining in detention also risks a quicker deportation or prolonged detention if the asylum seeker loses his case. If NIJC advises that a client is eligible for release, the attorney will want to discuss the pros and cons carefully with the client, in conjunction with NIJC, so the client can decide how he would like to proceed.

PRACTICE TIPS FOR REPRESENTING A DETAINED ASYLUM SEEKER

Prepare For A Fast-Paced Case

Unlike non-detained asylum cases, cases that are on the detained docket move much more quickly, usually resolving about two months after the initial master calendar hearing.

To accommodate this pace, *pro bono* attorneys need to minimize the initial start-up time for a case. Attorneys should therefore ask their firms to address the issues surrounding conflicts and opening a new matter on an expedited basis.



First Steps

NIJC recommends *pro bono* attorneys take the following steps upon receipt of a detained asylum case:

Review NIJC's Asylum Manual. The Basic Procedural Manual for Asylum Representation Affirmatively and in Removal Proceedings, is available on NIJC's website at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>.

Contact the client. NIJC advises the client when her case has been assigned to a *pro bono* attorney, but the attorney should also contact the client directly (and quickly) after accepting a case. The attorney will be responsible for arranging most, if not all communication because detained individuals are limited in their ability to make outgoing calls. (For more information, review the section above on communicating with detained clients.)

Enter an appearance with both the immigration court (DOJ-EOIR) and with the Office of Enforcement and Removal Operations (DHS-ERO).¹⁰

EOIR: To practice before the immigration court, attorneys must first register with EOIR's E-Registry system. All attorneys currently practicing before EOIR must complete the E-Registry process immediately or risk suspension before EOIR until the registration process has been completed. For information about the E-Registry system and the identification verification process, please see <http://www.justice.gov/eoir/engage/eRegistration.htm> and NIJC's Asylum Manual.

Attorneys should complete the registration process as soon as possible after accepting a defensive asylum applicant for representation so they can file their appearance with the court and begin to receive any court correspondence. All attorneys representing a client in court must file an E-28 appearance form with the Court electronically or on paper (the court prefers green paper for E-28s) and serve a copy electronically or via mail on the trial attorney.

ERO: *Pro bono* attorneys should send their client a Form G-28¹¹ at the detention facility to sign and return as soon as possible.¹²

ERO: Form G-28
EOIR: Form E-28

After the client sends the signed G-28 back to the attorney, the attorney should sign it and then fax it to the deportation officer assigned to the client's case, along with a fax cover sheet stating that the attorney is the attorney of record and requesting that the deportation officer notify them of matters regarding their client. The attorney should save the fax confirmation as proof that she has entered her appearance with ERO.

Review the file in full. In addition to reviewing the file that NIJC provided to the *pro bono* attorney, the attorney should request to review the immigration court file as soon as possible. The form required for requesting a file review can be found at Appendix C of NIJC's Basic Procedural Manual for Asylum Representation.

If the client previously appeared in court *pro se* or with a non-NIJC attorney, the *pro bono* attorney should also request a copy of the DAR (Digital Audio Recording) and listen to those recordings to hear what was discussed at prior hearings.

Review the Notice to Appear and any documents already in the court file. When NIJC refers a detained asylum case to a *pro bono* attorney, the client is already in immigration court proceedings and the Immigration and Customs Enforcement (ICE) trial attorney will have already filed documents, including the charging document known as the Notice to Appear (NTA), with the Court. If the client did not already plead to his NTA while *pro se*, the judge will require a response to the NTA at the initial hearing.¹³

Carefully review the allegations and charges on the NTA with the client to ensure accuracy. Errors on the NTA can be extremely detrimental and should be discussed with the trial attorney and the judge at the hearing. Consult with NIJC prior to pleading.

If the client does not have a copy of the NTA, the attorney can obtain a copy of this document and conduct a file review at the immigration court. But remember that if the client is in withholding-only proceedings, the client will not have an NTA.

¹¹ Attorneys can download Form G-28 from www.uscis.gov and Form E-28 from www.usdoj.gov/eoir.

¹² See Appendix C for templates of fax cover pages for detention facilities.

¹³ For more information on the NTA please see the General Asylum Manual.

Review any pre-existing asylum applications. If the client has had one or more hearings already, she may have already filed an asylum application with the court, perhaps with the help of another detained individual. Language barriers and the absence of counsel may have resulted in the inclusion of erroneous information in the first application. The immigration court record will contain any previously filed asylum application, and errors in the application may generate problems in the court adjudication.

Minor corrections can be made to the application in the form of written or oral amendments. If the original application contains significant errors, the *pro bono* attorney may wish to request leave from the court to file a superseding application. Bear in mind that any inconsistent information contained in a previous application will need to be explained to the court and may be included in the judge's credibility assessment.

Determine needed resources and begin collecting documents. Obtaining documents for a detained individual can be complicated. NIJC attempts to obtain relevant documentation from clients prior to case acceptance and will share these documents when assigning a case to a *pro bono* attorney. However the documents NIJC provides with the case file should not be considered exhaustive.

Pro bono attorneys should start brainstorming with the client right away about potential corroboration and get permission to contact friends and family to obtain this evidence as soon as possible.

Upon review of the file, *pro bono* attorneys will likely identify additional documents that would be useful in supporting the protection claim. **Remember that the burden is on the asylum seeker to corroborate all aspects of her case or establish that corroboration is not reasonably obtainable.** INA § 208(b)(1)(B)(ii). Corroborating evidence in the form of affidavits and documentary evidence will be critical to proving a case.

The process of getting documents is often complicated by the client's detention and the speed of the detained docket. Detained clients will have little ability to obtain evidence themselves. *Pro bono* attorneys should plan to take over this task.

Pro bono attorneys should start brainstorming with the client right away about potential corroboration and get permission to contact friends and family to obtain this evidence.

Requests for affidavits from country experts should be made quickly.

If an attorney believes a mental health or medical evaluation would benefit the client's case, the attorney should contact NIJC immediately to determine if an evaluation will be possible.

For more information on how to prepare an application, including a list of documents, please see NIJC's Asylum Manual.

Hearings with Detained Clients

Video Conferencing (VTC)

Most master calendar hearings for detained immigrants are conducted via Video Conferencing (VTC): the judge, ICE attorney and *pro bono* attorney appear in the court, and the client appears on camera from the detention center's VTC room. If the client requires an interpreter, the court-provided interpreter may be in the courtroom or may participate by telephone.

Some merits (individual) hearings may also be held via VTC unless the respondent or the attorney request otherwise. Attorneys should contact the Chicago Immigration Court to ascertain whether their client's hearing will be in person or via VTC.

If a detained client's merits hearing is scheduled to occur via VTC, the *pro bono* attorney should file a Motion for an In-Person Hearing.¹⁴ After filing the motion and prior to the hearing, the attorney should follow up with the court clerk to confirm that their client will be brought in-person for the hearing. NIJC will notify the *pro bono* attorney of any special issues regarding the client's detention center that might prevent ICE from bringing the client for an in-person hearing.

In some cases, the client will appear in-person, but the judge will appear via VTC from another immigration court location. This generally happens when the court schedules the client's hearing with a "visiting judge" sitting in another location; it is not common on the detained docket currently.

NOTE! If scheduled for a VTC hearing, always check in with the client *at the beginning* of the hearing to confirm that she can hear properly through the VTC equipment.

Ask the judge to turn the camera towards you so that you can say hello to your

In Chicago:

- VTC hearings occur at the Chicago Detained Immigration Court, 536 S Clark Street, 3rd Floor, Chicago, IL 60605.
- All in-person hearings for detained individuals are held at the Chicago Detained Immigration Court at 536 S Clark Street, Basement,
- Regardless of where the hearing is held, all documents for detained hearings should be filed at the Chicago Detained Immigration Court, 536 S Clark Street, 3rd floor, with a copy served on the ICE trial attorneys at 525 W. Van Buren, Suite 701, Chicago, IL, 60607.
- If an attorney is unsure whether a client's hearing will occur in-person or via VTC, the attorney can call the Chicago Immigration Court at 312-697-8400.

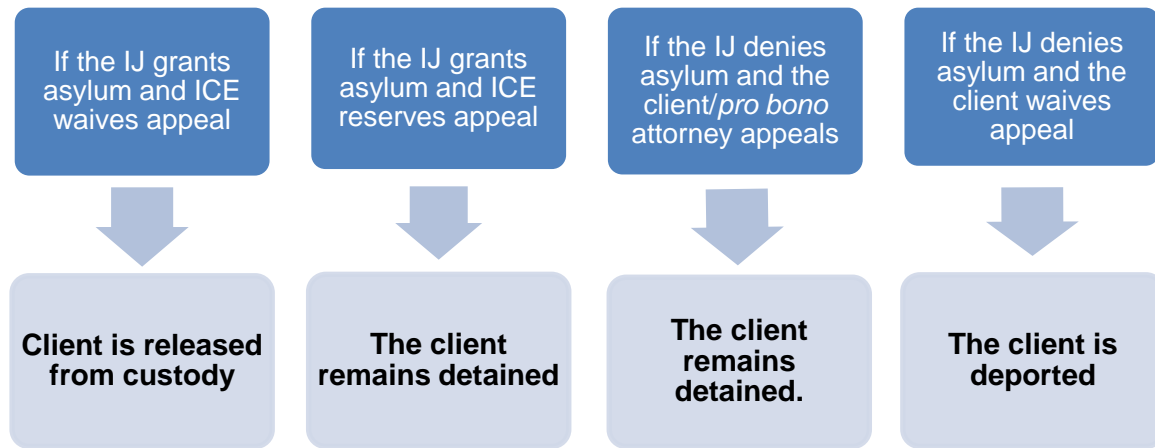
¹⁴ A sample Motion to Hold an In-Person Merits Hearing can be downloaded at, <http://immigrantjustice.org/attorney-resources>.

AFTER THE IMMIGRATION JUDGE DECISION

Post-Decision Scenarios

The *pro bono* attorney should immediately notify NIJC when the immigration judge issues a decision in the client's case so that NIJC can advise on next steps.

There are a number of potential scenarios that can occur in a detained asylum case after an immigration judge issues a decision.



If the Immigration Judge Grants Asylum and ICE Waives Appeal

The client should be released directly following the hearing. Before the attorney leaves the courtroom, the attorney should confirm with the ICE officer present and/or the ICE trial attorney that the client's deportation officer is being alerted as to the win and will process out the client. Unless a family member or friend is present and able to pick up the client, the attorney should plan to wait in the basement at 536 S. Clark for the client to be released. Clients are generally released within half an hour but it can sometimes take longer.

It is critical that attorneys discuss a release plan with clients in the event the case is granted. The Interfaith Committee for Detained Immigrants (ICDI) is available to help. Their hotline is 312-985-7740. If the client does not have family or friends in the Chicago area with whom he can stay, NIJC recommends the *pro bono* attorney contact ICDI prior to the merits hearing in the event ICE releases the client the day of the hearing. ICDI volunteers will then be available to assist if the client is released.

Note: If the IJ grants withholding of removal or protection under the Convention Against Torture rather than asylum, the client will *not* immediately be released. He will likely remain in ICE custody for an additional 90 days, though at times ICE agrees to release people sooner. The *pro bono* attorney

should prepare the client for a 90-day wait but discuss with NIJC whether to advocate for a quicker release.

Once the client has been granted asylum, celebrate! Please notify NIJC of the victory right away, so we can advise regarding next steps and ensure the client can access certain post-asylum benefits. Then, share the good news with colleagues and take another case!

See NIJC FAQs:

- Post-Win Asylum
- Working with Detained Clients

For information on advising the client after asylum is granted, please see **NIJC's Basic Procedural Manual for Asylum Representation**.

If the Immigration Judge Grants Asylum and ICE Reserves Appeal

ICE has 30 days to decide whether to appeal the IJ's decision but usually decides much more quickly in detained cases. Trial attorneys often waive appeal within a few days of the IJ's decision, even if they initially reserved appeal. They will notify the client's DO but may not notify the *pro bono* attorney, resulting in the client's unexpected release. The attorney should make sure the client has a way to contact the attorney if he is brought downtown for release, and be ready to jump in as needed. The *pro bono* attorney may want to contact the trial attorney two to three days after the hearing to ask whether ICE plans to appeal, so that the attorney can better plan for the client's release. On the other hand, if the trial attorney was particularly adversarial, the *pro bono* attorney may want to avoid contacting the trial attorney until the appeal period has lapsed.

If ICE does appeal the IJ's decision to the Board of Immigration Appeals, the client's detention may be extended for at least three more months, and potentially longer, while the appeal is pending. If the client is struggling in detention, the *pro bono* attorney should contact NIJC to discuss whether there are any options to get the client out of detention.

If the Immigration Judge Denies Asylum and the Client Reserves Appeal

If the IJ denies asylum, the *pro bono* attorney should reserve appeal to preserve the client's options and then contact NIJC as soon as possible after the hearing to discuss the hearing and a potential appeal to the BIA. Next, schedule a call with the client to discuss his options and determine whether he wants to appeal.

Because respondents in removal proceedings have a right to appeal, NIJC considers the scope of *pro bono* representation to continue through the length of an appeal, if the client wishes to pursue one. Thus, if the client wants to appeal the IJ's decision, NIJC expects that the *pro bono* attorney will continue representation throughout the BIA appeal.

If the Immigration Judge Denies Asylum and the Client Declines to Pursue an Appeal

If the IJ denies asylum, the client may opt to be deported instead of remaining detained and pursuing an appeal. Ultimately, it is the client's decision whether or not to pursue an appeal. However, the *pro bono* attorney should discuss the pros and cons of declining the appeal and ensure the client understands the consequences of foregoing an appeal and accepting deportation. NIJC can assist the attorney with this conversation.

Once the client has a final removal order (either at the IJ or BIA level), ICE can remove him at any time. Deportations to Mexico are fairly quick and occur within a few weeks, while deportations to Central America generally occur within two to four weeks. Removals to other countries may take longer.

If the client has not been deported within 90 days following his removal order, ICE will conduct a Post-Order Custody Review (POCR). If ICE believes that the client will be deported soon, ICE will continue to hold him. Per the Supreme Court's decision in *Zadvydas v. Davis*, ICE has up to six months to hold someone if removal appears foreseeable.

INDEX OF INFORMATION AND DOCUMENTS RELATED

Manuals

- Immigration Court Practice [Manual](#)
- Board Of Immigration Appeals Practice [Manual](#)

NIJC Resources for *Pro Bono* Attorneys

- NIJC's Basic Procedural Manual for Asylum Representation is available for download at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>
- FAQs: See our [website](#)
 - Working With Detained Clients;
 - Post-Win Information for Asylees and *Pro Bono* Attorneys;
 - Employment Authorization for Asylum Applicants and the Asylum Clock.
- Contact Information for Chicago ICE Detention Facilities

Please see additional sample documents are available on NIJC's [website](#)