

**ASYLUM ADVOCACY IN THE  
AGE OF 'THE DONALD':  
ONCE MORE UNTO THE  
BREACH, DEAR FRIENDS**

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# Tengo Miedo!



CBP systematically ignores outcries of fear by those seeking asylum and withholding. What can you do?

- File a complaint against CBP
- Find out where your client is being detained and if they were recently picked up near the border
- Find out if they have been removed before
- Submit your G-28!
- Find out when the CFI/RFI will be scheduled – BE PERSISTENT!

# CFI/RFI



- Prep your client for the CFI/RFI because you might not be able to sit in on the interview -
  - Last minute scheduling by AO
  - AO limits your participation in the interview
- Alien bears BOP to establish a credible fear of persecution or torture. However, AOs have an affirmative duty to elicit all information relevant to the legal determination. Credible testimony can be enough.
- If the AO determines there's a "significant possibility" – as defined at 8 CFR §§ 235(b)(1)(B)(v) and 208.30(e)(3) – that she or he can establish eligibility for asylum or withholding of removal must initiate removal proceedings under INA § 240

# CFI/RFI



- Mandatory bars do not affect the credible fear determination. 8 CFR § 208.30(e)(5).
- Once credible fear is established, a Notice to Appear should be filed with the immigration court, initiating removal proceedings under INA § 240. These are “normal” proceedings, in which the alien can apply for release from DHS custody.
- If the AO determines that the alien does not have a credible fear of persecution, the officer “shall” order the alien removed without further hearing or review, but the alien can request review by IJ – done b/w 24 hours and 7 days.
- No appeal or review of IJ concurrence with AO, but DHS may reconsider its finding.

# Release from Detention



- **Flores Settlement Agreement**
  - Still before 9<sup>th</sup> Circuit
  - Should be used to challenge long term detention of children and families now
  - ATD use by DHS now at Karnes and Dilley in response to FSA
- **ICE Parental Interest Directive applies to all parents and guardians involved with ICE, with particular attention to:**
  - Primary caretakers of minor children of any immigration status;
  - Parents or legal guardians who have a direct interest in a family court proceeding involving a minor or child welfare proceedings. This includes both dependency and private custody cases; and
  - Parents, both custodial and non-custodial, and legal guardians of U.S. citizen or lawful permanent resident (LPR) minor children.

# Release from Detention



## **ATD:**

- **Requirements:**

- A positive decision at your credible fear or reasonable fear interview
- A valid ID from your country of origin
- A telephone number of a contact for release so ICE can coordinate departure
- The release contact will have to provide travel ticket(s) to an ICE official

- **Post Release requirements:**

- In addition to attending all hearings with the immigration judge, the individual will have check in appointments with an ICE agent in the area where she will be going to live
- Must to report to the local ICE office in the city where the individual is going to live within 10 days of release. ICE will give the individual the date and address so that the individual will know when and where to report.
- ICE will determine whether the ankle monitor will be removed or how much longer it will remain on the individual on a case by case basis

# Release from Detention



## **Parole:**

- **Requirements:**

- Must obtain a positive decision at your credible fear interview
- Must present a valid ID from your country of origin
- Make sure to highlight any important discretionary factors for release, such as the Parental Interests Directive
- No eligible for custody review before the IJ because charged as an arriving alien.

## **Bond**

- **Requirements**

- Must have community ties and demonstrate a place where you can be released (to a USC/LPR)
- Cannot be a danger to the community
- Cannot have been charged with certain crimes
- Must have a valid ID from your country of origin
- Cannot have been paroled from a port of entry

# EOIR Priority Docket



- **Unaccompanied Children (UCs) – Priority:**

Beginning on February 8, 2016, UC cases will be scheduled for an initial master calendar hearing (MCH) no earlier than 30 days and no more than 90 days from the Immigration Court's receipt of the Notice to Appear (NTA). If the 90th day falls on a Saturday, Sunday, or legal holiday, the MCH will be scheduled no later than the last business day before the Saturday, Sunday, or legal holiday.

- **Adults with Children/Detained (AWC/D) – Priority**

A WC/D cases in which the Respondents are released from custody continue to be a priority. If a case must be referred to Citizenship and Immigration Services (CIS) for adjudication of potential substantive relief (e.g., pending I-360, asylum, special immigrant juvenile status), the case should be administratively closed pursuant to *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).



# EOIR Priority Docket



- **Adults with Children Released on Alternatives to Detention (AWC/ATD) – No longer a priority if no longer enrolled in the ATD program:**

Beginning on March 1, 2016, AWC/ATD cases in which the AWC/ATD priority code designation has been removed from CASE because the individual is no longer in the ATD program will no longer be a docketing priority, even if DHS previously marked the NTA with the AWC/ATD designation. There may be pending cases involving adults with children in which only one family member's case continues to be identified with the AWC/ ATD priority code designation in the CASE system. In those cases, Judges should consolidate the cases of these family members, where appropriate, and schedule them according to existing docketing standards for A WC/ATD cases. If the case remains on the AWC/ATD priority docket, then the initial MCH must be scheduled within 28 days of the Immigration Court's receipt of the NTA.

# One Year Deadline Issues



- **With the current state of the EOIR dockets, this filing deadline can be problematic for:**
  - Individuals who may have been issued an NTA, that has not yet been filed with the Immigration Court, or
  - Individuals who have been issued an NTA and have an initial MCH scheduled outside of the one year filing deadline.
- **What can you do to file within the one year deadline:**
  - Lodge your application
  - File a Motion to Advance
  - NTA not yet filed with Court – file affirmatively with appropriate service center

# Getting your EAD



## **Asylum Seekers:**

Per the *ABT* Settlement Agreement:

- 1) Respondent lodges a completed I-589 at the filing window;
- 2) Court stamps as “lodged not filed” and returns the application *without starting their EAD clock*; and
- 3) 150 days later, the applicant may file an application for work authorization under 8 C.F.R. § 274a.12(c)(8), enclosing a copy of the I-589 bearing the lodged-not-filed stamp.

# Getting your EAD



## **Withholding Only Applicants:**

- Catch-22 for Withholding Applicants
- File in Federal District court. Here's how:
  - File Form I-765 and await its denial;
  - Appeal that “arbitrary, capricious,” abusive, and otherwise not-in-accordance-with-the-law denial to federal district court under the Administrative Procedures Act, 5 U.S.C. § 706(2)(A);
  - Discuss CIS’ regulatory violation with the agency’s bemused counsel; and
  - Move to dismiss the appeal as moot once work authorization is issued under 8 C.F.R. § 274a.12(c)(8).
  - For a template, email [pzoltan@zoltanlaw.com](mailto:pzoltan@zoltanlaw.com)

# Recent Developments in PSG



- Ignoring guidance from the United Nations High Commissioner for Refugees (as well as humanity and common sense), Board of Immigration Appeals has built an obstacle course for any proposed PSG:
  - Groups that are too big or “amorphous” fail the Board’s made-up “particularity” requirement for PSGs; but
  - Narrowly defined PSGs fail the “social distinctness” (formerly “visibility”) requirement because, unlike the other four protected grounds, the existence of a PSG must be recognized by a society *as a whole*.
- “Guidance Note on Refugee Claims Relating to Victims of Organized Gangs,” UNHCR (March 2010):  
<http://www.refworld.org/pdfid/4bb21fa02.pdf>

# Recent Developments in PSG



Family as a PSG - March 2016 the Board solicited amicus briefs to resolve the circuit split on this precise issue:

*Where an asylum applicant has demonstrated persecution because of his or her membership in a particular social group comprised of the applicant's family, has he or she satisfied the nexus requirement without further analysis? Or does the family constitute a particular social group only if the defining family member also was targeted on account of another protected ground?*

# Other Circuits and Family as PSG



- *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011): Every circuit to have considered the question has held that family ties can provide a basis for asylum.
- *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009): Membership in the same family is widely recognized by the caselaw.
- *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993): There can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family.
- *Aldana-Ramos v. Holder*, 757 F.3d 9, 15 (1st Cir. 2014): A nuclear family can constitute a particular social group based on common, identifiable, and immutable characteristics.
- *Crespin-Valladares v. Holder*, 632 F.3d 117, 125-126 (4th Cir. 2011): A particular social group based on a family that was targeted by gangs is immutable because of family bonds—especially because of the limited size of the family—and socially distinct because the family relationship was easily recognizable.
- *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015): The Fourth Circuit concluded that the applicant’s “relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join” the gang. The court ruled that her familial relationship to her son was at least one central reason for her persecution and that she had successfully established a nexus to a protected ground



Questions?