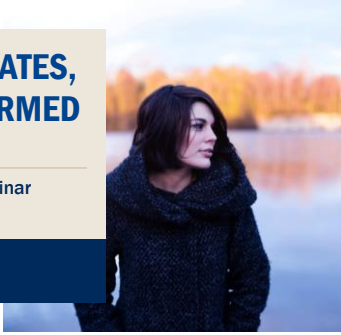


# COVID-19 UPDATES, TRAUMA-INFORMED ADVOCACY

Pro Bono Network Webinar  
April 15, 2020



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## Agenda

- **Welcome** Introductions
- **COVID-19 Updates** Agency updates, guidance, practice tips
- **Other Legal Updates** Case law, administrative, litigation
- **Trauma-Informed Advocacy**
- **Cross-Cultural Work**
- **Questions**

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## Today's Presenters

### Tahirih National Office

Kursten Phelps  
Director of Legal & Social Services  
Richard Caldarone  
Litigation Counsel

### Tahirih San Francisco Bay Area Office

Chriselle Raguro  
Pro Bono Network Coordinating Attorney  
Alexandra Richardson  
Social Services Program Manager

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# Learning Objectives

### TODAY'S OBJECTIVES:

- Identify and employ key practice strategies for continued legal advocacy with clients during the COVID-19 pandemic
- Recognize opportunities to incorporate trauma-informed care into your representation
- Implement at least one best practice for effective cross-cultural work with clients



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# COVID-19 Updates



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# Tahirih Virtual Event

### Tahirih Virtual Gala

- The DC/Baltimore/National and San Francisco galas are now combined into one virtual event, held on Friday, April 24<sup>th</sup> at 4:00 p.m. PDT/7:00 p.m. EDT. Even though our events have gone virtual, the pandemic's impact on our clients and programs remain real.
- To join, please register at [www.tahirih.org/tahirihvirtualevent](http://www.tahirih.org/tahirihvirtualevent)



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## Agency Operating Status

Tahirih updates its Pro Bono e-Library every day when there is a relevant agency update.

Agency	Status
EOIR- Detained Hearings	Open
EOIR- Non-detained & MPP	Postponed through <b>May 1</b>
USCIS	Closed through <b>May 3</b> for in-person appearances. Filings continue.
ICE ERO	Suspended or Telephonic
State	Routine Visa Interviews Suspended

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## Immigration Courts

### Signatures

- Digital and electronic signatures allowed on all documents filed with it, regardless of how filed.
- Must clearly display signer's name or a reproduction of signer's handwritten signature. Signature should also include a printed version of signer's name below or adjacent to signature if it is not provided in the digital or electronic signature.

### E-Filing

- Temporary email accounts to facilitate electronic filing for all parties while the rollout of the EOIR Court & Appeals System (ECAS) is delayed due to COVID-19. Those who have already opted-in to ECAS should continue to use ECAS where it is available.
- Generally the address convention is [Location.Immigration.Court@usdoj.gov](mailto:Location.Immigration.Court@usdoj.gov), but check the above link.

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## Board of Immigration Appeals

### E-filing:

- Two temporary email accounts
- Only for briefs, motions to accept a late filed brief, motion for summary affirmation, or EOIR-27 courtesy copies on pending filed appeals
- Subject Line Convention: Item – A# - Detained/Non-Detained (e.g. Brief – 123456789 – Non-Detained)
- Rejection notices will still be by mail. Be sure to follow [guidelines](#) to avoid rejection.
  - [BJA.Detained.Briefs@usdoj.gov](mailto:BJA.Detained.Briefs@usdoj.gov)
  - [BJA.Nondetained.Briefs@usdoj.gov](mailto:BJA.Nondetained.Briefs@usdoj.gov)

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# USCIS

## RFE, NOID Deadlines Extended

- For applicants and petitioners who receive an RFE or NOID dated between March 1 and May 1, 2020, any responses submitted within 60 calendar days after the response deadline set forth in the RFE or NOID will be considered by USCIS before any action is taken.

## AAO Appeals Deadlines Extended

- USCIS will consider as timely filed any I-290Bs received with 60 calendar days of decisions dated March 1, 2020-May 1, 2020, inclusive.

Latest Updates | [tahirih.org](http://tahirih.org)



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# ICE/ERO

## REVISED PRIORITIES

As of March 18, 2020, ICE (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate.

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# COVID-related litigation

## Cases seeking release from detention

- Individual successes;
- Modest results in system-wide cases, mostly rulings requiring compliance with CDC guidance rather than release

## Cases challenging COVID policies

- Ongoing against EOIR, USCIS
- No major rulings yet
- Litigation contemplated re: border closure

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## Impact on Clients



- Many employed clients have lost jobs.
- Food and housing insecurity among clients has spiked.
- Access to internet varies and accessible devices varies among Tahirih clients.
- CARES Act stimulus credits exclude clients who lack SSN and/or didn't file 2018 or 2019 taxes.
  - <https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here>
- Unemployment insurance excludes non-work-authorized. CARES Act UI eligibility unclear.

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## Advocacy in the Time of Covid



- Stay in touch with your clients.
- Document safe and preferred modes of communication and virtual meetings for client.
- Keep your case notes and virtual files up to date (and copy your mentor attorney) to be prepared in the event you become sick or unable to work on case.
- Discuss with clients options of pursuing continuances or telephonic appearances and know ethics rules and treatment for attorney-client disagreements.

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## Advocacy in the Time of Covid



- Do not assume tolling of deadlines unless there is direct announcements from the agency or judge.
- Keep community resources lists on hand. Tahirih social services advocates are triaging needs.
- If possible, cover filing fees (litigation expenses).
- Spread the word about support for Tahirih's [Client Fund](#).

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# Latest Updates in Immigration Law & Policy



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## Immigration Law & Policy Updates

**Case updates:**

- Lots of positive developments in the federal courts...
- ...and another decision from the BIA narrowing eligibility for asylum.
- Plus, a new Tahirih case.

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## Supreme Court Update

**Guerrero-Lasparilla v. Barr**

- Useful whenever government says judicial review of a decision is not available because (1) it's a discretionary decision under the INA; or (2) the client has committed a crime that forecloses review.
- Review of questions of law still available
- SCOTUS holds that application of standard of review to uncontested/established facts is a question of law for this purpose



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## The Ninth Circuit

### ***Padilla v. ICE*(No. 19-35565)**

- Asylum seekers who pass credible fear interviews have a constitutional right to bond hearings
- Specific remedy to be determined by the district court on remand

### ***Lopez-Angel v. Barr*(No. 16-72246)**

- Motion to reopen/reconsider denial is pending, then client is involuntarily removed
- Government can't argue that the removal means the client "withdrew" the appeal (under 8 C.F.R. 1003.4)

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## The Third Circuit

### ***Meigas Orellana v. Attorney General*(No. 19-2404)**

- Persecution by gang members based on LGBTQIA status
- IJ/BIA say just a victim of gang violence, cite to *Matter of A-B*
- Third Circuit vacates for analysis of sexual violence & evidence of nexus
- Unfortunately unpublished

### ***Sumaila v. Attorney General*(No. 18-1342)**

- Death threats/assaults on account of sexual orientation, IJ/BIA deny relief, government says death threats not imminent because unfulfilled
- Court reverses, holds that the asylum seeker eligible for asylum

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## Other Courts

### **Courts of Appeals**

- First Circuit strikes down anti-sanctuary policies (*City of Providence v. Barr*, No. 19-1802)
- Fifth Circuit holds that 2009 coup in Honduras, which led to removal of anti-GBV laws & saw the rate of femicide double, constitutes changed country conditions sufficient to reopen GBV-based asylum case (*Inestroza-Antonelli v. Barr*, No. 18-60236)

### **BIA - *Matter of K-S-E*, 27 I&N Dec. 818**

- Firm resettlement bar applies even if asylum seeker unwilling to satisfy terms of offer to apply for permanent residence in a third country
- Language teeing up civil penalties for failure to depart after final order of removal

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## Tahirih Litigation Update

### **A.B.-B. v. Morgan (D.D.C. No. 20-cv-846):**

- Challenges use of CBP officers to conduct credible fear interviews on behalf of mothers and children detained in Dilley, Texas
- Raises claims under the INA but also challenges the appointment of Morgan to head CBP
- Briefing on a preliminary injunction ongoing

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## Migration & Trauma



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## Types of Trauma

### **Different types of trauma can lead to different trauma responses.**

- Acute - single incident
- Chronic - ongoing exposure
- Trauma often has comorbidity with other types of trauma, violence, or harm including substance use disorders, past abuse or neglect, unresolved childhood trauma, homelessness, poverty, and societal oppression

Migration & Trauma | [tahirih.org](http://tahirih.org)



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## Types of Trauma

### Different types of trauma can lead to different trauma responses.

- Individual – overwhelms an individual's ability to cope
- Results from an event or series of events
- Has lasting effects on functioning and well-being
- Collective trauma – psychological reactions to traumatic events that impact a group of people
- Tragedy is represented in the collective memory
- Collective coping – collectivism is important for coping

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## Scenario - Fiona



Fiona is from Country X. Two years ago, Fiona learned that a local gang was looking for her abusive husband, she fled to a friend's home over 200 miles away, taking her two children with her. She found out that her husband is looking for her so she decided to flee to the US with her children. She is afraid that her husband will call the police and say that she has kidnapped the children; she is also afraid that her children may be abducted by gang members.

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## Migration & Trauma Response

### Migration complicates trauma response

Disrupts a person's need for:

- Safety and security
- Social and familial connections
- Ability to perform one's role in the family and community
- Freedom to create meaning in life via religion, politics, and culture

### Fiona's experience

- Fiona traveled from country X. She doesn't remember how many weeks she traveled, but she still has injuries and pain from the journey.
- Fiona calls her country in family X every night. She is concerned about being able to pay for her next phone bill.
- Fiona was heavily involved in her local religious community. She has been unable to find people who practice her beliefs, which makes her feel very alone.

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# Neurobiology of Trauma



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## Neurobiology of Trauma

- When we lose functioning in our prefrontal cortex (executive functioning), it makes it difficult to perform basic reasoning, access working memory, focus, follow directions, regulate our emotions, and control our inhibitions.
- During trauma, the pre-frontal cortex shuts down and the amygdala (reptile brain) takes over.
- When this happens, our brain believes it is under attack and goes into fight, flight, freeze, or fawn.

Neurobiology of Trauma | [tahirih.org](http://tahirih.org)



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## Neurobiology of Trauma

- Interaction goes from a normal, expected scenario to an unexpected perceived attack
- Fear-based responses are habitual behaviors appropriate to the scenario that's been left behind, not necessarily the situation they find themselves in now
- Old responses to trauma
- May dissociate – blank or space out, disconnect from body, float, autopilot

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## Scenario - Fiona



- Last week, Fiona forgot her daughter's birthday.
- She has been having issues with standing for a long time and walking. She was recently fired from her job because she had to keep taking breaks and sitting down.
- Fiona has been having trouble sleeping lately and is having recurring nightmares.
- Yesterday, her son slammed the door really loudly and she had a panic attack.

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## Myth or Fact?



- It's helpful for Fiona and all other survivors to talk about her traumatic experiences.
- If Fiona can't remember the details of an event, she is probably lying about it.
- Fiona's trauma symptoms will be evident immediately after the event.
- Invisible and chronic pain can be a symptom of trauma.
- New memories about trauma may resurface many years after the initial event.

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## Trauma-Informed Care



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## Trauma-Informed Care

### TRAUMA-INFORMED CARE

To be informed of a client's trauma means to take into consideration their reality and view things that may otherwise appear confusing or frustrating in the context of a person who is simply attempting to survive

Empathy and compassion for a client's individual and unique experience

Trauma informed care practices humility, empowerment, healing, and is culturally responsive.

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## Possible Impacts on Your Work



- Fiona doesn't show up for your first appointment.
- She doesn't return your phone call for over a week.
- You reschedule and she shows up late and doesn't seem to be able to focus on the legal paperwork you need to file before a deadline.
- You have to ask questions about the trauma she experienced, but she's hesitant to answer your questions. She appears paranoid and doesn't want to reveal any information to you.

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## Possible Impacts on Client Services

- Client may appear uncooperative
- Client doesn't show up on time to appointments:
  - Afraid of interview
  - Depleted capacity
- Client doesn't show up at all
  - Cannot face interviews
  - Is not ready to re-live past experiences
- Client is reluctant to give information
  - Difficulty trusting
  - Talking means re-living trauma for days or weeks

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# Cross-Cultural Work



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## What is Culture?



**Culture is the abstract, learned, shared rules and standards for generating behavior and understanding experience.**



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## Key Components of Culture

**Culture is the abstract, learned, shared rules and standards for generating behavior and understanding experience.**

- Abstraction means that culture is ideas in people's heads, not physical objects.
- Culture is **learned**, not genetically programmed.
- Culture is **shared and social**, not personal and individual.
- Culture is **rules and patterns**, whether conscious or unconsciously followed.
- People decide how to **behave** using their culture's rules and patterns.
- People **understand** the world through their culture's patterns of belief.



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# Iceberg Concept of Culture



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# Iceberg Concept of Culture



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# Iceberg Concept of Culture

Fiona from Country X.

### Surface Culture

- Language
- Dress
- Food



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# Iceberg Concept of Culture

Fiona from Country X.

### Deep Culture

- Courtesy
- Contextual conversational patterns
- Concept of time
- Body language, eye contact, touching
- Patterns of handling emotions
- Notions of modesty
- Ideals of childrearing
- Patterns of decision making
- Roles in relations to age, sex, class, occupation



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# Culturally Responsive Practice

### Cultural Knowledge

- Cultural characteristics

### Cultural Awareness

- Changing cultural attitudes

### Cultural Sensitivity

- Not assigning values to cultural differences

### Cultural Humility

- Addressing power imbalances

### Cultural Competence

- Work effectively across difference

### Cultural Consciousness

- Ongoing and dynamic developmental process

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# Best Practices for Cross-Cultural Work



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## Personal Bias and Our Work

### How does our personal bias impact our work with clients?

- Be mindful of your own biases and privilege
- Recognize the positive and negative consequences of historically-included and historically-excluded experiences
- Recognize the power dynamic between yourself and client
- Do not assume what a client will want, need, or do
- Check before assuming that a resource does not exist
- Ask clarifying questions
- Keep in mind your professional role and boundaries

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## Language Access



- Language assistance that results in accurate, timely, and effective communication at no cost to the client
- Meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals
- Consider & discuss various terms for sex used in different cultures and/or languages
- Establish words to be used for terms of sexual coercion

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## Working with Interpreters

- Speak to the interpreter about the goal of the meeting
  - Which relationship is most important in a meeting?
  - Outside of a meeting?
  - How should we sit?
  - How should we direct our faces?
  - Who should focus on whom?
- Explain to the client the role of the interpreter
  - Establish rules for interpretation
- Anticipate challenges
  - Legal terms
  - Dialectical differences



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## Scenario



- Fiona requested an interpreter for her meeting with the pro bono attorney.
- During the first meeting, the interpreter realized that although Fiona speaks Spanish, her primary language is Mam and Fiona does not understand the legal terminology nor the concepts related to asylum in the U.S.

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## Meeting with a Client

### Establish a relationship based on mutuality and respect

- Introduce yourself
- Inform the client of your role and limitations
- Build a relationship with the client
- Prepare client to feel confident asking for clarification of questions asked
- Allow the client to guide and/or end the conversation
- Be transparent with your client about what you do and don't know
- Listen non-judgmentally
- Use comforting language and tone of voice
- Keep client informed of process and choices

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## Intersectionality



### Understand Intersectionality

- Trauma arises not only as an experience of isolated violence, but also from systemic oppression, discrimination, and significant hardships that survivors face
- Do not assume that their immigration case is the most pressing need of the client
- Do not expect client to leave all other issues at the doorstep of your office
- Honor that the client may be facing multiple challenges (trauma, concerns about families overseas, worries about health care, unemployment, child welfare, law enforcement, immigration authorities)
- Be ready to challenge your assumptions. Be aware of diversity within communities and avoid making generalizations

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## Scenario



- During a virtual meeting with Fiona, her pro bono attorney and the interpreter, she apologized and mentioned that she cannot speak for very long.
- In the background, her son could be heard crying with the television on.
- Fiona mentioned that she is available to speak again that evening.

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## Client's Resilience

- Understand the origins of trauma including historical, collective, and inter-generational transmission of trauma
- Do not minimize the resiliency, wisdom, and strength of the client
- Clients have much to teach us on how to heal from trauma



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## References

- Azzopardi & McNeill, 2016
- Fisher-Borne, Cain & Martin, 2014
- Hopper, 2016
- Hirschberger, 2018
- Kuo, 2012
- Hall, 1976
- Asian Pacific Institute on Gender-Based Violence
- National Latino Network
- Georgetown University Center for Child and Human Development
- Center for Substance Abuse Treatment: Improving Cultural Competence
- Community Tool Box

References | tahirih.org



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## Questions?

### After the webinar, contact

- Your Tahirih mentor attorney
- Kursten Phelps, kurstenp@tahirih.org



Questions | [tahirih.org](http://tahirih.org)



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## How You Can Help

Our work is amplified by the power of many. As Pro Bono Network members, there are many ways to contribute your time, resources, and expertise.

### CO-COUNSEL

Directly represent, with Tahirih mentorship, an immigrant survivor in their asylum, WIVA, T, U Visa, or Special Immigrant Juvenile Status immigration matters.

### IMPACT LITIGATION

Work with Tahirih on federal litigation, amicus briefs, and other impact litigation opportunities.

### ADVOCATE

Respond to our advocacy alerts to submit comments or engage in other advocacy on behalf of immigrant survivors.

### RESEARCH

Help Tahirih with [policy](#) and analyze legal questions or research country conditions evidence to help immigrant survivors seeking asylum and other forms of relief.

### DONATE

Tahirih's Client Fund is a pool of money that we may use to provide immediate and critical support to survivors of gender-based violence who are currently in crisis.

### SPREAD THE WORD

Encourage a colleague to join Tahirih's Pro Bono Network.

How You Can Help | [tahirih.org](http://tahirih.org)



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## Contact Us



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Contact Us | [tahirih.org](http://tahirih.org)



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