

# A Lawyer's Role in Supporting Client Safety

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Pro Bono Network Webinar  
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TAHIRIH  
JUSTICE  
CENTER®



# *Today's Presenters*

## **Tahirih National Office**

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# *A Reflection on Justice*

Justice requires three things:

The truth be told.

The harm be repaired to the greatest extent possible.

The conditions that gave rise to the violence be eradicated.

- Archbishop Desmond Tutu

# Agenda

**Welcome** Introductions

**Legal Updates** Proposed asylum regulations, case law updates

**COVID-19 Updates** Agency updates, guidance, practice tips

**A Lawyer's Role in Supporting Client Safety**

What is safety? Why do lawyers have a role?

Practical strategies for supporting safety

**Questions**

# LEGAL UPDATES

# *Proposed Asylum Regulations*

## **Key Take-Aways**

- Comments due July 15
- A robust and all-angle assault on asylum protections, particularly gender-based and gang-based asylum
  - We are analyzing for case strategies, but **not yet** in effect.
- Tahirih has an advocacy and communications campaign, and is working in partnership with a broad coalition
- Your voice and contributions matter to the urgent advocacy effort.
  - Submit an individual comment, use examples if you have helped or worked with an asylum-seeker.
  - Your voice and contributions matter to the urgent advocacy effort.

# *Proposed Asylum Regulations*

## **On Particular Social Groups**

- Codifies immutability, particularity, social distinction
- Codifies broad definition of what's circular
- Laundry list of what doesn't qualify, including "interpersonal disputes," "private criminal acts," "generalized violence or a high crime rate"

## **On Political Opinion**

- Very narrow definition: beliefs "in support of the furtherance of a discrete cause related to political control of a state or a unit thereof"

# *Proposed Asylum Regulations*

## **On Persecution**

- Restrictive definition
- Excludes, among other things:
  - "generalized harm" from civil/military/criminal strife
  - "Intermittent harassment"
  - Threats not carried out
  - Infrequently enforced laws/policies

## **On Nexus**

- A list of what doesn't qualify
  - "Gender"
  - "Personal animus"
  - Persecution where other group members not targeted
  - Gang affiliation/recruitment
  - Criminal activity



# *Proposed Asylum Regulations*

## **On Internal Relocation & Firm Resettlement**

- Shifts burden of proof for internal relocation where government not the persecutor
- Firm resettlement redefined to include voluntary physical presence for 1 year and ability to seek status in country transited through en route to U.S.

## **On CAT Claims**

- Torture must be under color of law, not by rogue officials
- Acquiescence is only actual knowledge/willful blindness
- Acquiescence requires mandatory duty that could have been, but was not, fulfilled

# *Proposed Asylum Regulations*

## **Discretionary bars**

- 11 effectively complete bars, from transit to taxes to missed interviews
- Three "significantly adverse" factors—unlawful entry, failure to seek asylum elsewhere, fraudulent documents

## **Credible Fear Interviews**

- New, higher standard for withholding/CAT claims
- Bars to asylum/internal relocation must be considered
- Must affirmatively request IJ review
- If pass, asylum-only proceedings

# *Proposed Asylum Regulations*

## **Frivolous Applications & Pretermission**

- "Frivolous" redefined to include barred by precedent
- "Knowingly" frivolous includes willful blindness
- If frivolous, AO can refer to proceedings
- Can decide without hearing if no prima facie case made on I-589

## **Confidentiality**

- For the first time, allows broad governmental use of information on I-589 for any immigration case/federal proceeding

# *Supreme Court Update*

## ***U.S. v. California***

- The Court denied the government's petition for certiorari on June 15.
- California's state sanctuary laws is upheld.



# Supreme Court Update

## ***Nasrallah v. Barr* (June 1, 2020)**

- The Court, in a 7-2 [opinion](#) by Kavanaugh (with Thomas and Alito dissenting), holds that federal courts have jurisdiction to review factual challenges to denials of CAT relief despite the jurisdiction-stripping language of 1252(a)(2)(C).
- This reverses the contrary holding of the Eleventh Circuit, which had also been adopted by (among others) the Fourth and Fifth Circuits. And the consensus seems to be that the Court's reasoning extends to orders denying withholding of removal, too.



# *The Courts of Appeals*

## ***Cook County v. Wolf (7th Cir. No. 19-3169)***

- Upholds preliminary injunction against public charge rule in Illinois
- No immediate effect, because of Supreme Court stay

## ***Int'l Refugee Assistance Project v. Trump (4th Cir. No. 19-1990)***

- Following Supreme Court decision broadly upholding travel ban, admin moved to dismiss all claims
- District Court denied motion, but Fourth Circuit reverses



# *The Courts of Appeals*

## ***Martinez de Artiga v. Barr* (2d Cir. No. 17-2898)**

- CAT claim based on MS-13 conduct, including credible death threats
- Court holds claim not precluded simply because person successfully flees before harm inflicted
- Claim also not precluded simply because no evidence that persecutors harmed others "for precisely the same reason"

## ***Matter of F-S-N-, 28 I&N Dec. 1 (BIA June 12,2020).***

- To prevail on a motion to reopen alleging changed country conditions where the persecution claim was previously denied based on an adverse credibility finding in the underlying proceedings, the respondent must either overcome the prior determination or show that the new claim is independent of the evidence that was found to be not credible.



# COVID-19 UPDATES

# *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	Postponed through <b>July 2</b> (except Boston, Buffalo, Dallas, Hartford, Las Vegas, Memphis, New Orleans)
USCIS	Re-opened (most) June 4.
ICE ERO	Suspended or Telephonic
State	Routine Visa Interviews Suspended

# *USCIS Re-Opening*

## **Visitors may not enter if:**

- Have any symptoms of COVID-19, including cough, fever or difficulty breathing;
- Have been in close contact with anyone known or suspected to have COVID-19 in the last 14 days; or
- Have been individually directed to self-quarantine or self-isolate by a health care provider or public health official within the last 14 days.

# *USCIS Re-Opening*

## **Other requirements:**

- Visitors may not enter the facility more than 15 minutes prior to their appointment (30 minutes for naturalization ceremonies).
- Hand sanitizer will be provided for visitors at entry points.
- Members of the public must wear facial coverings that cover both the mouth and nose when entering facilities. If they do not have one, USCIS may provide one or the visitor will be asked to reschedule their appointment.
- There will be markings and physical barriers in the facility; visitors should pay close attention to these signs to ensure they follow social distancing guidelines.
- Individuals may also have to answer health screening questions before entering a facility.
- Individuals are encouraged to bring their own black or blue ink pens.

# *USCIS Re-Opening*

## **We're also hearing:**

- Limitations on number of people in waiting room, with sections for applicants, attorneys, and interpreters.
- Asylum interview participants (officer, attorney, interpreter, applicant) in different rooms and interview conducted by videoconferencing platform
- Supplemental documents required in advance of interview (72 hours at least, in some offices)
- Liberal rescheduling policies
- Check with your Tahirih mentor on local practices

# *EOIR Re-Opening*

## **EOIR 20-13 OPM:**

- Comply with relevant laws or policies governing the facility.
- Face covering required, except under age 2 or with a medical conditions that prevent wearing a face covering.
- Observe applicable social distancing “to maximum extent practicable”
- Denied entrance if within previous 14 days:
  - Positive COVID-19 test or diagnosis, one or more COVID-19 symptoms, request to self-quarantine related to COVID-19 by a medical provider/health authority, or close contact with someone with a positive diagnosis or exhibiting one or more symptoms.
- Discontinued e-mail filings within 60 days of reopening

# *EOIR Re-Opening*

## **EOIR 20-13 OPM:**

- Judges may waive presence of represented respondents
- Continuances upon good cause
- May allow limitations on number of attendance at a hearing
- Judges may exclude symptomatic persons from courtroom on case by case basis
- Judges may issue standing orders consistent with Immigration Court Practice Manual
- Judges may conduct any hearing by VTC where operationally feasible.
- Judges may conduct merits hearing by telephone if respondent consents after advisal of rights.

# *EOIR Re-Opening*

## **EOIR 20-13 OPM:**

- Resolution of case through written pleadings, stipulations, joint motions is favored.
- MCH solely for filing by represented respondent, scheduling of merits is disfavored.
- Hearing for represented respondent on contested issue of removability which is purely legal issue is disfavored.
- Judges encouraged to adjudicate motions to dismiss, terminate or pretermite on written filings and via written decision.
- Hearings amenable to VTC or telephonic appearances should be conducted through those mediums to maximum extent practicable and in accordance with the law.



# **A LAWYER'S ROLE IN SUPPORTING CLIENT SAFETY**

# *Learning Objectives*

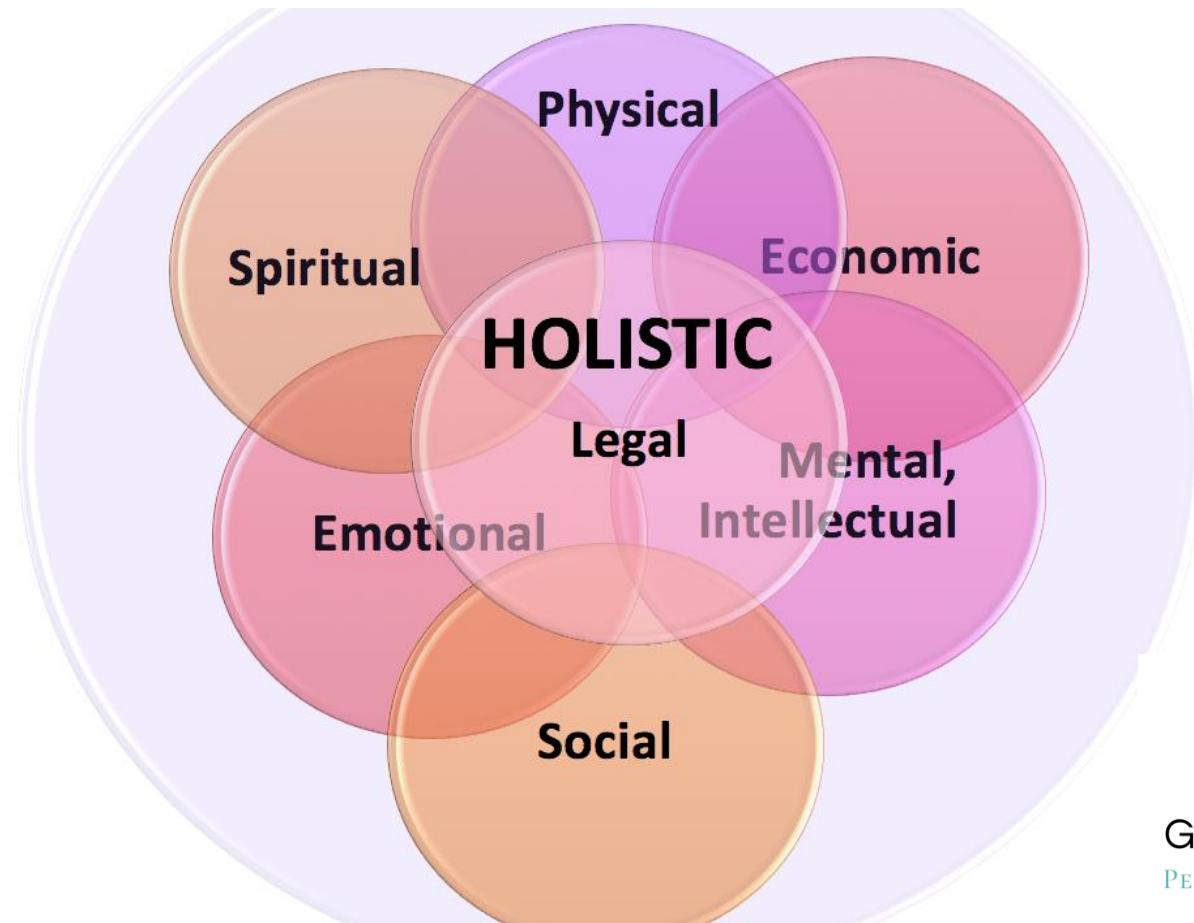
## **TODAY'S OBJECTIVES:**

- Recognize definitions of safety beyond physical (bodily) safety
- Identify a lawyer's ethical duties in supporting client safety
- Implement at least one practical strategy for supporting safety with an immigrant survivor you are representing.



# *Understanding Safety*

**SUPPORTING  
SAFETY ≠  
SAVIORDOM**



GBV Consulting  
PERSONAL <-> POLITICAL

# *Understanding Safety*

## **SAFETY**

Physical safety – being free of threats to a person's physical wellbeing - is the easiest to understand because it is concrete and tangible.

But physical safety alone does not constitute a safe environment.

Breaches to physical safety "generally do not occur until ... other forms of safety have already been violated."

Sandra Bloom, The Sanctuary Model (2013)

# *Beyond Physical Safety*

## **Psychological Safety:**

"[t]he ability to be safe within oneself, to rely on one's ability to self-protect and keep oneself out of harm's way."

## **Social Safety:**

"The sense of feeling safe with other people ...There are so many traumatized people that there will never be enough individual therapists to treat them. We must begin to create naturally occurring, healing environments that provide some of the corrective experiences that are vital for recovery."

**Bloom (2013)**

# *Beyond Physical Safety*

## **Moral Safety:**

An environment where a person is able to do their work with a sense of integrity because their sense of what is right is supported by the organization within which they work and the people who directly supervise them.

# *Ignoring Safety is not Justice*



Attending to holistic safety is essential to full humanity. As advocates working with survivors of gender-based violence, listening and supporting harm reduction and strategies to improve or build safety that is survivor-led is one piece of the collaborative work to counteract the disempowerment and violence that survivors have experienced.



# *"But I'm Just the Lawyer"*

## **Ethical Duties Compel Us:**

- Competence includes knowledge and/or duty to partner and learn
  - Applicable law
  - Dynamics of domestic violence (or other forms of gender violence)
  - Culture
- Diligence
  - Awareness and connection
  - Collaboration across roles and disciplines





# *How to Start Supporting Safety*

## **SAFETY PLANNING**

- An individualized plan that people facing any kind of harm develop to reduce the risks they and their children face. They implement it and adjust it on an ongoing basis.
- Safety planning is a process, not a box to check.
- Forms and tools can be helpful to inform the process, as a means to the end, not as the end itself.
- Accessibility is key (literacy, language use and choice, other accessibility needs)

# *Survivor-Led Safety Planning*

## **The survivor is the expert**

- And the survivor is human.
- Survivors seldom overestimate danger.
- Survivors sometimes underestimate danger.
- Your role is not to tell a survivor they're wrong, but to ask questions and engage in dialogue.



# *Safety Planning Process*

**Type and Source of Harm** Is it an individual? A system?

**Who is being harmed?**

**What area(s) of life are being harmed?**

**What is the client's goal? What does safety look like?**

**What strategies are available?** How have they already been keeping themselves safer? What's working? What's not

# *Safety Planning Process*



**What's your role?** Listen & bear witness? Hold space? take action?



**Checking in** What needs adjustment? New strategies? New risks?



**Center empathy and humanity**



**Self-care** Unpacking/debriefing and redirecting vicarious trauma and/or moral injury

# *Fundamental principles*



- Frame why you're asking questions about safety, and what your duties are.
  - "I have some questions that I want to ask to help us have a better understand of safety risks and potential resources that could be helpful, but know you don't have to give me a lot of details."
- Ask questions, and if appropriate, identify concerns you have and ask the client how they are feeling
- Center the survivor's expertise, even when you have questions
- Use affirming language
  - "I want you to remember that you are an incredible person who has just taken some very big steps to be safe. It takes a lot of bravery to share these personal details, you are courageous."



# *Identifying (together) the harm*



- What is the harm, barrier, danger, crisis, or risk?
- Remember that perceptions can be different. The survivor may underestimate it or may be viewing it as less or more of a risk based on other risks or dangers that are more acute for them.
- Sources of harm or danger could include
  - Individual (“perpetrator”)
  - Family member, friend, support system
  - A system
  - Oppression (racism, sexism, ableism)
  - Themselves
  - You

# *Who is being harmed?*



- Your client
- Their family member
- Another loved one
- Someone else

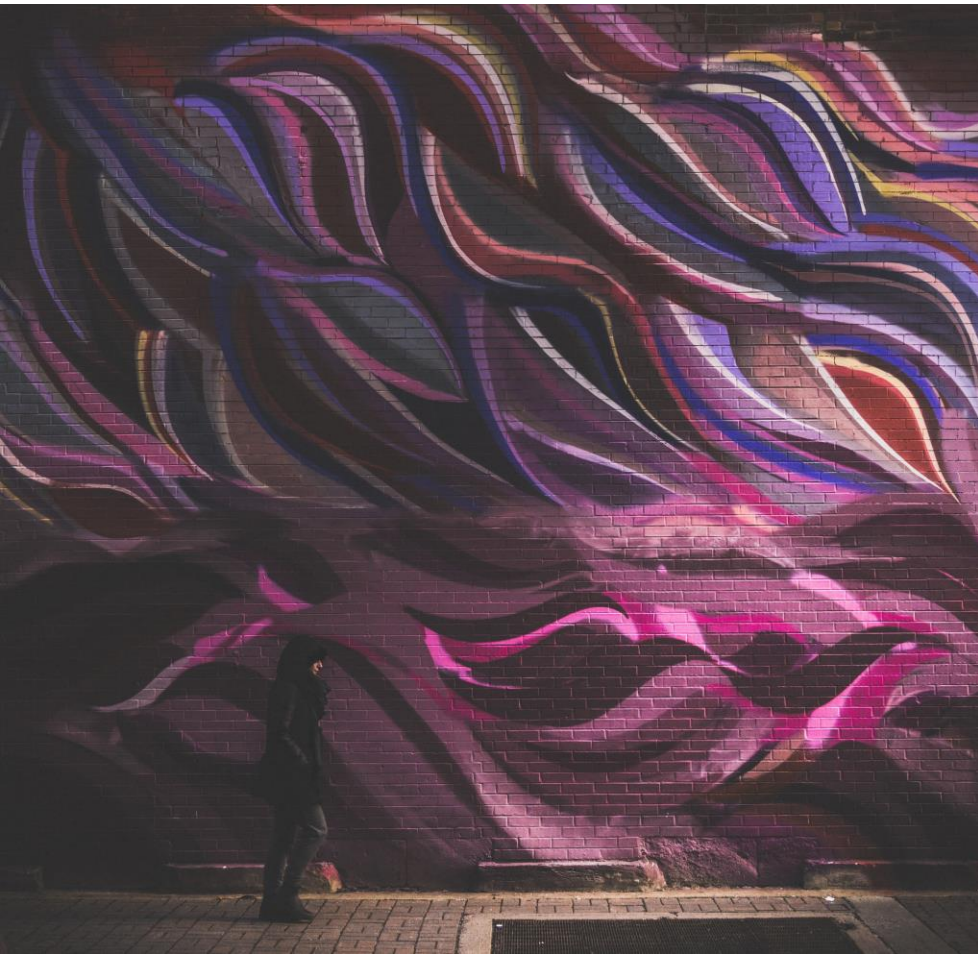
# *Uncovering the harm*



- Area(s) of life being harmed
- Think holistically, even if you as the attorney don't have the answers
- Listen to the survivor, be authentically, not exploitatively curious in your conversations.
- Build upon rapport to identify together the harms, even if you or the system you are helping your client navigate is the source of the harm.



# *Your client's priorities*



- Safety planning is a dialogue to find harm reduction/mitigation strategies and build safety.
- The priorities or goals are the survivor's to decide.
- As a partner you can help brainstorm strategies for harm reduction, starting with what the survivor has or is already doing.
  - What was helpful or harmful about what they've tried?
  - Offer information on strategies you know of, if they haven't named it, and if they would like it.
- The decision on what steps to take is the survivors. Always.
- You can help with documenting and distilling concrete actions the survivor decides to take to help them memorize or remember.

# *Practical Tools to Start*

Tools and resources already out there can help you build your base-line knowledge of safety risks and questions you can build into your ongoing representation.

## **DV Danger Assessments**

Questions help assess level of physical safety risk, including lethality risk. You may already need to ask similar questions for legal case.

## **Living with Abuser**

National Coalition Against Domestic Violence template for personalized safety plan:  
<https://ncadv.org/personalized-safety-plan>

## **National DV Hotline**

Confidential, 24/7, 365 support  
Online safety tips:  
<https://www.thehotline.org/help/path-to-safety/>

## **Love is Respect**

Interactive safety plan:  
<https://www.loveisrespect.org/for-yourself/safety-planning/>.

## **Tech Safety**

NNEDV Safety Net Project for tech and app safety resources, and DocuSAFE documentation and evidence collection app: <https://nnedv.org/technology-resources/>

## **Tahirih**

Webinars, e-library resources, and your Tahirih mentor(s) are good resources when something seems awry but you're not sure what, if anything, to do.

# *Your role as an attorney*



- You are an advocate for their legal case and a partner in identifying what stands in the way of their pursuit of legal justice.
- You are not a therapist.
- You can ask the questions, listen, bear witness, validate.
- You can build trust and reinforce emotional safety.
- If you have advanced safety planning skills (technology, high-lethality violence, trafficking, relocation, suicidality), use them. If not, know who (Tahirih or others) you can collaborate with to support ongoing safety planning.
- You can continue to check in and see how things are working, whether it is a safety planning strategy you, the survivor, or someone else working with the survivor developed.



# *What you can always do*



- Practice non-judgment
- Interrogate your (and your organization's) default settings
  - Assumptions around availability, who is in contact with the client, modes of contact, emotional safety and rapport in staffing changes, assumptions in the engagement letter and what is required of the client
  - Confidentiality
- Operate from a place of connection and humanity, but not saviorism
- Normalize checking in and incorporating awareness and dialogue on all types of safety as part of your representation.

# References

- Bloom, Sandra, *Creating Sanctuary: Toward the Evolution of Sane Societies* (2013). See also <http://sanctuaryweb.com/Home.aspx>.
- ABA Standards of Practice for Civil Representation of Victims of Domestic and Sexual Violence, Commission on Domestic and Sexual Violence, available at [https://www.americanbar.org/groups/domestic\\_violence/Initiatives/standards-of-practice/](https://www.americanbar.org/groups/domestic_violence/Initiatives/standards-of-practice/).
- Safety Planning with Adult Sexual Assault Survivors: A Guide for Advocates and Attorneys, Victim Rights Law Center, available at <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/safety-planning-with-adult-sa-survivors.pdf>.
- Carrion, Nicole, *A best practices guide for attorneys representing victims of domestic violence*, available at <https://www.isba.org/committees/women/newsletter/2008/03/abestpracticesguideforattorneysrepr>

# *Questions?*

## **After the webinar, contact**

- Your Tahirih mentor attorney
- Kursten Phelps, [kurstenp@tahirih.org](mailto:kurstenp@tahirih.org)



# *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, VAWA, 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 [research](#) 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](#).



# Contact Us



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