

Volunteering with Families Detained at Berks County Family Detention Center

Training presented to Vermont Law School on September 22, 2017

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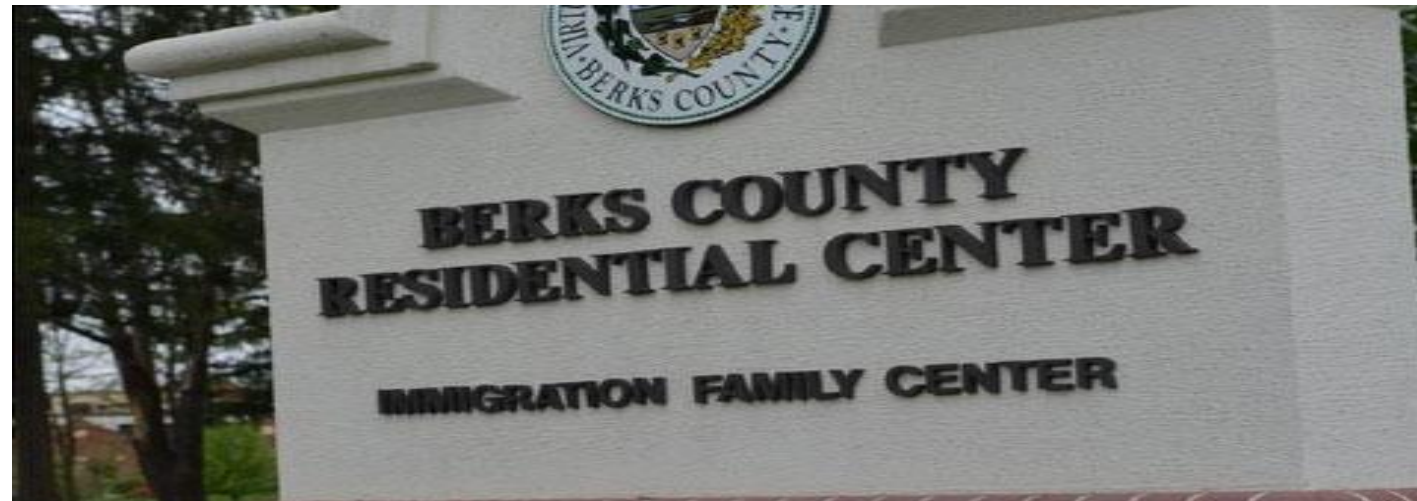
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The need at Berks

- 85 bed capacity, facility can house double the people
- Majority of families from Central America Northern Triangle
- Berks is the only family detention center to detain adult women with their children AND men with their children



What will you help with?

Remote observation of fear interviews with the
Asylum Office

Who are the families detained at Berks?

- Vast majority of families are fleeing crisis in Northern Triangle region of Central America – Guatemala, Honduras, and El Salvador
- Increased numbers of Haitians fleeing humanitarian situation in Haiti and conditions for Haitians who have lived in Brazil
- Other families come from other countries occasionally including, Hungary, Romania, Brazil, and elsewhere.

Helpful reminder

- High levels of trauma among asylum seekers, including high incidence of PTSD leads to avoidance of speaking about traumatic events
- Highly personal and humiliating nature of gender-based violence for women and girls, which often involves rape and sexual degradation, strongly contributes to reluctance to disclose

How to establish eligibility for asylum/withholding?

- **Past persecution OR well-founded fear of persecution**
- **Nexus** (“on account of”)
- **Protected Ground**
 - Race, Religion, Nationality, Membership in a particular social group (PSG), or Political opinion
- Committed **by government** OR someone the **government is unwilling or unable** to control
- **Internal relocation** in-country not reasonable
- No **bars** to eligibility

Persecution

- If a person can prove past persecution (past harm, which can be in the form of physical, psychological or sometimes even economic harm), then the applicant will also have a rebuttable presumption of future persecution.
- Most common forms of persecution seen by families at Berks:
 - Extortion and/or physical/sexual violence by gang members
 - Violence in a domestic context (can include to children by parent, romantic partner or individual who acted as if they were the woman's partner, other family members)

NEXUS or “on account of” a protected ground

- Negative outcomes on a fear screening are almost invariably because the AO found no NEXUS, or connection, between the harm and a protected refugee ground.
- Daniel has been beaten, robbed, and falsely incarcerated a bunch of times by other in his village (past persecution established!).
 - Danny cannot say *why* he has been hurt. He thinks other people are just envious of him = no **nexus** to a protected ground, therefore NEGATIVE fear finding
- compared with*
 - Danny says he was hurt because he is an Evangelical. The people who have hurt him are of a different religion and they do not tolerate evangelicals. Danny has been hurt **on account of** his religion = positive fear finding

PARTICULAR SOCIAL GROUP (PSG)

- Immutable characteristic (e.g. innate such “as sex, color, or kinship ties”)
- Past shared experience “such as former military leadership or land ownership.” *Matter of Acosta*, 19 I.&N. Dec. 439 (B.I.A. 1985)
- Social distinction -*Matter of M-E-V-G-* 26 I. & N. Dec 227 (2014) and particularity
 - --*Matter of A-M-E & J-G-U*, I. & N. Dec. 69 (B.I.A. 2007)

For an awesome, yet brief analysis of the evolution of PSGs, case law, etc, please check out

<https://www.immigrantjustice.org/sites/default/files/PSG%2520Practice%2520Advisory%2520and%2520Appendices-Final-1.22.16.pdf>

POLITICAL OPINION

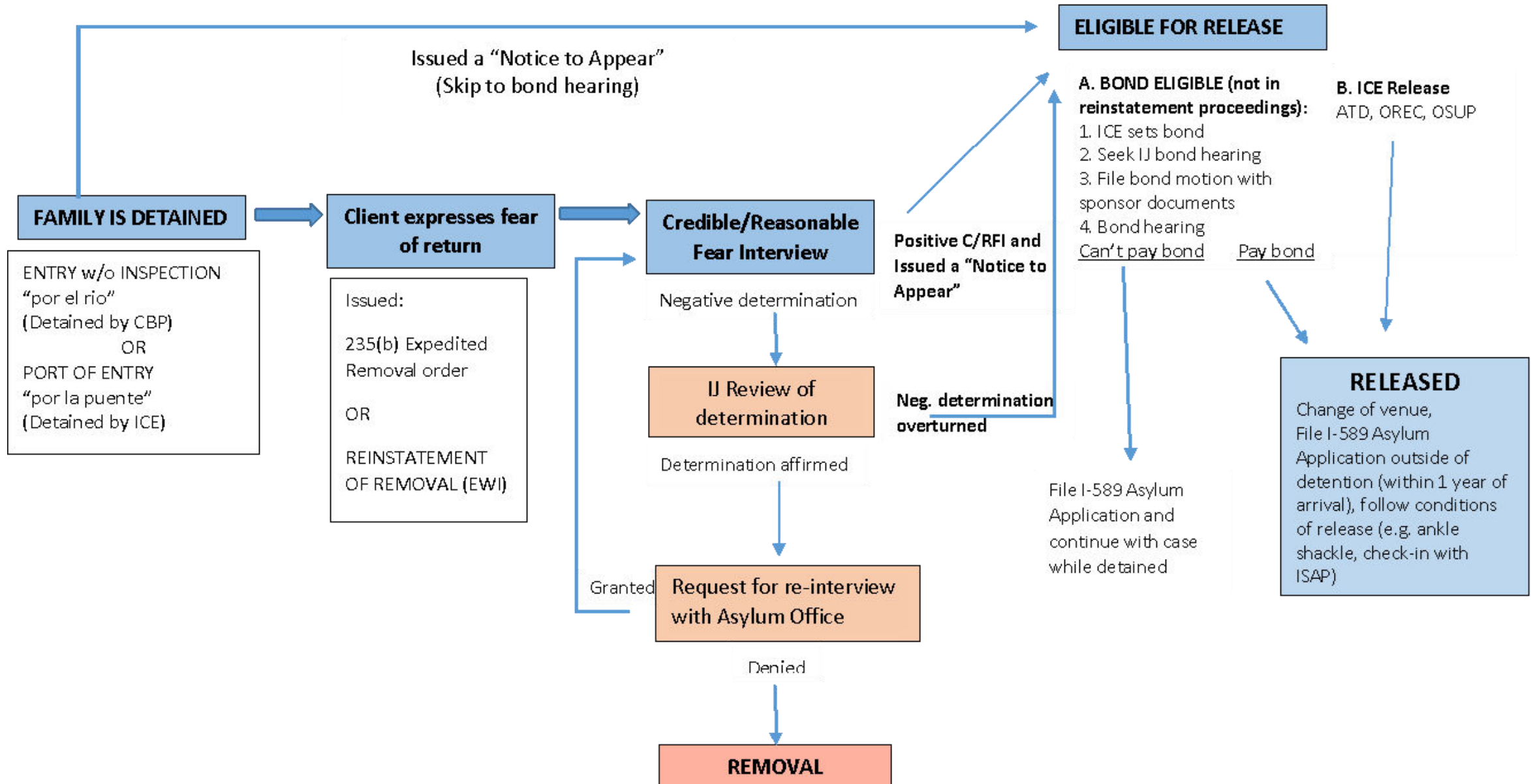
“Political opinion” does not refer just to party membership, not just for elites: “instinctive or spontaneous reaction to oppression equally valid as educated opinions”

E.g.: Refusing extortion; refusing to join a gang in Central America

Expedited removal

- No hearing before an immigration judge for most people, but explicit protections for asylum seekers.
- If individual expresses a fear of return to home country, cannot simply be deported. Instead, immigration officer must refer these individuals for a **credible fear interview** conducted by asylum officers with United States Citizenship and Immigration Services (USCIS)
- Individuals found to have a “credible fear” are then referred to an immigration judge under the Executive Office for Immigration Review (EOIR) for a hearing
 - If a person is found not to have a credible fear, she may contest that finding and request review of the negative decision in a hearing before an immigration judge.
- Individuals who pass their credible fear interviews can apply for asylum, withholding of removal, and CAT protection in their hearing before an immigration judge

FAMILY DETENTION



Credible Fear Standard

There is a significant possibility, taking into account the credibility of the statements made by the alien and facts known to the officer, that the alien could establish eligibility for asylum, withholding or removal or deferral of removal under the Convention Against Torture.

Reinstatement: Reasonable Fear Standard

There is a reasonable possibility, taking into account the credibility of the statements made by the alien and facts known to the officer, that the alien could establish eligibility for withholding or removal or deferral of removal under the Convention Against Torture.

- “Reasonable fear” is higher than the “credible fear” standard of proof but lower than the “more likely than not” standard for withholding

Credible or Reasonable Fear Interview

Most denials are not based on lack of credibility, but on a lack of a nexus between the harm feared and the five protected grounds.

Essential that clients understand how to articulate their experiences

C/RFI continued...

Questioning procedure and your role

- If the applicant establishes a significant possibility that she might be a refugee, the AO will elicit information about her fear of torture, but AO does not need to fully explore the torture claim.
- The AO must evaluate credibility, but is not making a final credibility determination.
- The AO is determining if there is a significant possibility that the assertions underlying the alien's claim could be found credible in a full IJ hearing.
- Attorney cannot respond for applicant, but will most of the time be allowed to suggest questions or make a final statement at the end.

C/RFI continued...

Credibility considerations

- Demeanor, candor, responsiveness
- Inherent plausibility of the applicant's account
- Consistency between applicant's written and oral statements in the file
- Consistency of statements with other evidence of the record such as country conditions
- Inaccuracies or falsehoods in such statements without regard to whether an inconsistency, inaccuracy, falsehood goes to the heart of the claim
- Asylum Officer must make applicant aware of any credibility concerns during interview & give opportunity to address each concern

C/RFI continued...

Relocation and Bars

Relocation: Generally, irrelevant however, if evidence that an applicant could relocate within the country is so substantial that there is no significant possibility that the applicant could establish eligibility in a full hearing, a negative credible fear determination may be appropriate

Bars: Do not apply to C/RFI eligibility determination, should be explored in questions and can be noted in an adverse information memo by AO

C/RFI Preparation - we prepare the Client for you!

- Typically should answer questions “yes” or “no”
 - Q: Are you afraid to return to your country?
 - A: “Yes.” vs. “I am afraid because the gangs killed my brother because he owed them money and then tried to force me to work for them to pay them back.”
- Opportunity to explain and clean record after initial interview with CBP
- Be specific
 - e.g. “He hit me” Vs. “He hit me with his belt on my face and face swelled for two days where he hit me and there was a red imprint of the belt where it opened my skin.”
- Avoid general phrases or words: “gangs” vs. “the gang *Mara Salvatrucha*”
- If the Client forgot to say something during the interview, last question is opportunity to state what they forgot. Or, if you felt they were not given enough time to tell the story in detail, the Client has the opportunity to say so, and you have the opportunity to ask the asylum officer for more time to expand or clarify on a point.

C/RFI continued...

Relationship between crime and persecution

Not every victim of crime can seek asylum in the United States.

Follow-up questions with Client:

- If client was extorted, did more than this happen?
- Did they call the police? If not, why not?
- Do you think the police has the ability to protect you? Why not? If they can, why don't they do so?

YOU ARE NOT EXPECTED TO BE A PSG EXPERT

- Typically, the OTG team will identify the most viable particular social group applicable to the family. Time permitting, we can discuss this.
- If the family member raises additional facts in the interview that appear to give rise to a different, additional PSG, do not be shy about suggesting that to the Asylum Officer at the end of the interview. Often times these clients are traumatized and have not had the time and space to fully detail their experiences of persecution before they have their interview, so they may discuss an event for the first time in their interview.
- Most of the PSGs we have for Berks cases are based on their family ties, indigenous ethnicity, gang violence, or women fleeing domestic violence.

Next steps...

1. You will be added to remote volunteer email list.
2. Whenever there is a C/RFI upcoming, an email will be sent to list and whomever responds first will be assigned.
3. Berks OTG sends the AO your phone number.
4. Berks OTG sends you (the volunteer assigned) prep notes and logistics info. Prep notes will include a basic summary of the theory of the case.
5. The asylum office will call your number directly at the time scheduled to make sure you're ready and then loop you in with the client and interpreter. You do not have to call in yourself.
6. It is helpful to have notes of the call highlighting the main points and any issues you noticed.

Volunteers, whether attorneys or otherwise, will participate as volunteer advocates representing ALDEA. ALDEA attorneys submit the G-28 Notice of Appearance.

Helpful Resources

- **UNHCR**, Representing Women from Central America: Leveraging International Law to Strengthen Asylum Claims (March 10, 2017): <https://www.youtube.com/watch?v=z2mn3OeYgao>
- **USCIS**, Refugee, Asylum and International Operations (RAIO) Combined Training Lesson Plans: <https://tinyurl.com/yax3z9pu>
- **American Immigration Council**, Asylum in the United States: <https://www.americanimmigrationcouncil.org/research/asylum-united-states>
- **Human Rights First**, Family Detention in Berks County, Pennsylvania (August 2015): <http://www.humanrightsfirst.org/sites/default/files/HRF-Family-Det-Penn-rep-final.pdf>
- Amicus Brief in Berks Licensing Case: <https://www.humanrightsfirst.org/sites/default/files/hrf-berks-amicus-brief-psychologists.pdf>

Thank you!



Any questions? Email us at berksotg@berksprobono.org, bridget.cambria@cambriaklinelaw.com, or barnardrobyn@uchastings.edu