



2021 AILA ASYLUM VIRTUAL CONFERENCE

A New World? Moving from Asylum Restrictions to the Possibility of Greater Protections

The U.S. asylum system was a focus of intense, unrelenting animus by the prior administration, and the effectiveness of that administration's attempts to dismantle it has left the system in shambles. The new administration has offered hope for a rejuvenation of this essential pillar of American democracy, but also has created many questions as to how best to move forward. Practitioners must determine which aspects of the asylum system have stayed the same, what has changed, how to leverage these changes to benefit asylum clients, and how to prepare cases in anticipation of potential future attempts to restrict asylum.

The accomplished faculty for this intermediate- to advanced-level conference will provide expert guidance on a wide range of asylum claims and issues, from an overview of the current state of the system, to important procedural updates, to best practices when representing unaccompanied children and LGBTQI+ asylum seekers. The faculty also will impart to attendees cutting-edge strategies for successfully representing asylum seekers in a system that has much to do to rebuild and fully recover, but also presents new and exciting opportunities for humanitarian protections.



*The need for fearless legal counsel in removal proceedings has never been greater. This program is presented as part of AILA's **Fearless Lawyering** programming, which empowers the removal defense bar with the latest tactics, tools, and strategies.*

August 19, 2021

AILA National Virtual Conference

“All Times Indicated Below Are Eastern Time”

9:30 am–9:45 am

MEDITATION

(DL) = Discussion Leader

* = invited, not confirmed

Note: All sessions and events are subject to change without notice.

Get your day off to a balanced start with a brief Mindfulness meditation—a practice that can allow us to live more purposefully and less reactively in the midst of challenging circumstances or difficult situations.

Guide: Danielle Polen, AILA Editorial Director and Yoga and Mindfulness Instructor, Washington, DC

9:55 am–10:00 am

WELCOME AND GREETINGS

Ashley Huebner, AILA EOIR-ICE Joint Committee, Conference Program Chair, Chicago, IL

10:00 am–11:00 am

Attendees can choose to attend either panel offered at this time and will have access to the full set of recordings.

PANEL I:

SHIFTING SANDS AND THE CURRENT STATE OF PLAY

The Trump administration made asylum a specific target of its anti-immigrant platform, and over the course of its four years engaged in a systematic, multi-pronged attack on the system and those who sought to access it. By the end of its term, the administration had issued a dizzying array of regulations, executive orders, policy memoranda, and administrative opinions, all aimed at dismantling the asylum system, preventing foreign nationals from accessing it, and limiting substantive eligibility to the dwindling few who were able to apply. Our panel of experts will discuss the current state of those policies and rules.

- Proposed, Enacted, Vacated, Repealed? The Current State of the Regulations, Attorney General Opinions, and Policy Memoranda
- Accessing the Asylum System: The Migrant Protection Protocols (MPP), Title 42, and the Asylum Cooperative Agreements
- Pending Litigation: What Is on the Horizon?

Faculty:

Ilana Etkin Greenstein (DL), Conference Program Committee, Senior Attorney, Immigration Justice Campaign, Boston, MA

Melissa Crow, Washington, DC

Bardis Vakili, San Diego, CA

Caroline Walters, Senior Attorney, American Immigration Council, Washington, DC

PANEL II:

BURNOUT: SOLUTIONS BEYOND SELF-CARE, MOVING TOWARDS COMMUNITY CARE

Humanitarian practitioners often overlook the need for self-care, despite the fact that advocating for asylum seekers effectively also requires refined mental acuity, self-awareness, and a healthy and sustainable work-life balance.

Achieving these things, however, is easier said than done. The panelists will

(DL) = Discussion Leader

** = invited, not confirmed*

Note: All sessions and events are subject to change without notice.

focus on moving beyond individual self-care practices and discuss how we can work together as an immigration law community, within and across institutions, to support those joining the profession and those trying to sustain practices.

- Ethics, Burnout, and Secondary Trauma
- Self-Care and Why It Matters When Working with Asylum Seekers
- Sharing Best Practices and Recommendations for Practice Management
- Community Care: Ideas for Institutions, Employers, and Other Entities to Support Resilience and Sustainability in Asylum Practice

Faculty:

Lindsay M. Harris (DL), AILA Asylum and Refugee Committee Vice Chair, Conference Program Committee, Washington, DC

K. Craig Dobson, AILA Ethics Committee Chair, New York, NY

Leora Hudak, Staff Wellbeing & Mental Health Specialist, The Center for Victims of Torture, St. Paul, MN

11:00 am–11:20 am

VIRTUAL COFFEE BREAK

11:20 am–12:20 pm

Attendees can choose to attend either of the two panels being offered at this time and will have access to the full set of recordings.

PANEL I:

THROUGH THE EYES OF A CHILD: GUIDING UNACCOMPANIED CHILDREN THROUGH THE ASYLUM LABYRINTH

With rising numbers of unaccompanied children (UCs) seeking asylum at the U.S. southern border, it is vital to understand the critical protections under law this group possesses. A keen awareness of the distinct challenges involved in representing minor asylum seekers also is essential: the web of laws that bear on substantive asylum eligibility, important jurisdictional and procedural considerations, and the necessity of appreciating the impact of trauma on children make these claims uniquely difficult. The panelists will explain the latest legal developments regarding UCs, and they will advise on strategies for effectively representing them in their claims for asylum.

- Brief Overview of the Substantive and Procedural Protections for UCs Under Asylum Law
- Latest Developments and Trends for UCs in Office of Refugee Resettlement Custody
- Current Strategies for Presenting UC Asylum Claims
- Managing the Unique Complexities of Working with Child Clients

Faculty:

Kristen Jackson (DL), Los Angeles, CA

Bradley Jenkins, AILA Editor, Representing Clients in Immigration Court, 5th Ed., Silver Spring, MD

Liana E. Montecinos, Silver Spring, MD

(DL) = Discussion Leader

** = invited, not confirmed*

Note: All sessions and events are subject to change without notice.

*Sarah Valdes, Director of Released Unaccompanied Children Services,
Refugee and Immigrant Center for Education and Legal Services,
Austin, TX*

PANEL II:

PROTECTING LGBTQI+ LIVES: CURRENT CHALLENGES AND OPPORTUNITIES FOR SUCCESS

Protection claims based on sexual orientation or gender identity are often seen as more straightforward than other asylum claims. These cases can face unique challenges, however, including racial and gender bias. Panelists will discuss specific obstacles impacting the claims of LGBTQI+ asylum seekers that occur in their home countries, in the United States, and before immigration adjudicators.

- “Who Do You Believe?” How to Establish Credibility and Respond to Biased Credibility Assessments
- “It’s Not Personal”: Avoiding Nexus Findings That Harm Is Only Personal and Not on Account of a Protected Ground
- Barred from Protection: LGBTQI+ Claims and the One-Year Deadline, the Firm Resettlement Bar, and Criminal Bars

Faculty:

Sarah B. Pitney (DL), AILA USCIS Field Ops Committee, Washington, DC

Denise Hunter, Oakland, CA

John A. Nechman, Houston, TX

Maite Garcia, Phoenix, AZ

12:20 pm–12:55 pm

VIRTUAL LUNCH / COFFEE BREAK

12:55 pm–1:55 pm

MENTAL HEALTH CLAIMS AND CONSIDERATIONS: ENSURING PROTECTIONS AND DUE PROCESS FOR YOUR CLIENT

Mental illness and disabilities impact asylum claims in many ways. Some asylum seekers flee harm they experienced based on a mental illness or disability, while others face challenges presenting their claims on account of their mental health or disability. More often than not, those with mental health issues or developmental disabilities face higher hurdles to effectively argue their asylum claims. The panelists will discuss strategies to advocate effectively for your asylum clients with all the necessary safeguards in place, and advise on how best to ensure that their due process is not denied.

- Particular Social Group: Formulating a Winning “Membership in a Particular Social Group” that Survives Judicial Scrutiny
- *Matter of M–A–M–*: Safeguards for Your Client in Removal Proceedings Prior to Asserting a Claim
- Particularly Serious Crimes: Advocating for the Court’s Consideration of Mental Health in Evaluating Particularly Serious Crime Determinations
- U.N. Convention Against Torture and the Intent to Harm (by the Government): Countering Arguments of Specific Intent in Torture
 - How Government-Run Facilities Are the Proxy of Government Abuse

(DL) = Discussion Leader

** = invited, not confirmed*

Note: All sessions and events are subject to change without notice.

- *Matter of J–R–R–A–*: Using the Case to Argue That Your Client’s Credibility Is Unquestioned

Faculty:

Tammy Lin (DL), Conference Program Committee, San Diego, CA

Veronica Barba, Los Angeles, CA

Laura P. Lunn, Westminster, CO

Benjamin Hooper, York, PA

1:55 pm–2:30 pm

VIRTUAL LUNCH / COFFEE BREAK

2:30 pm–3:30 pm

NEXUS: EFFECTIVELY PRESENTING YOUR ARGUMENT WITHOUT DISSECTING THE MIND OF THE PERSECUTOR

During acts of violence, persecutors usually do not announce the reasons why they are harming their victims. Yet, increasingly, adjudicators seem reluctant to find nexus to a protected ground without such a clear indicator that harm is “on account of” the victim’s race, religion, nationality, membership in a particular social group, or political opinion. So, what can practitioners do to draw these connections clearly and effectively for adjudicators? Our panel of experts will take a deep dive into the nexus requirement, provide a practical “how to” guide for developing and presenting theories, and address recent changes and challenges.

- Identifying Evidence of Nexus: Direct and Circumstantial
- Preparing Clients to Effectively Communicate Nexus Arguments
- Anticipating and Addressing Common Nexus Counterarguments
- Demonstrating Nexus in the Face of Evolving Board of Immigration Appeals Case Law

Faculty:

Dree K. Collopy (DL), AILA Asylum and Refugee Committee Chair, AILA

Author, AILA’s Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure, 8th Ed., Conference Program Committee, Washington, DC

Denise Gilman, AILA Federal Court Litigation Section Steering Committee, Austin, TX

Maria E. Andrade, AILA Asylum and Refugee Committee, Boise, ID

Sabrineh Ardan, Cambridge, MA

3:30 pm–3:55 pm

VIRTUAL COFFEE BREAK

3:55 pm–4:55 pm

UN(AVAIL)ABLE PROTECTION: PREPARING ASYLUM CLAIMS FOR APPLICANTS FLEEING NONSTATE PERSECUTORS

Traditionally, establishing asylum only required an applicant to show that persecutory harm was inflicted either by a government or by those a government is “unable or unwilling to control.” While that test is consistent with both international guidelines and the earliest iterations of U.S. law, the former administration and several U.S. courts of appeals have attempted to reframe the evaluation as a requirement to show that an applicant’s country either

(DL) = Discussion Leader

* = invited, not confirmed

Note: All sessions and events are subject to change without notice.

“condoned” their persecution or demonstrated a “complete helplessness” to stop it. The panelists will take a close look at the nonstate actor element of the refugee definition, its recent developments, and offer suggestions for how to present such asylum claims moving forward.

- The Status of the Law Today
- How to Measure the Effectiveness of State Protection
- Identifying Evidence and Arguments to Show Sufficiently Inadequate State Protection
- Anticipating Counterarguments
 - What to Do When Your Client Did Not Report the Violence to the Police Before Fleeing
 - How to Address Evidence of Some (Albeit Ineffective) State Effort to Protect
- Strategies for Satisfying the Nonstate Actor Element and Preserving Issues for Appeal

Faculty:

C. Shane Ellison (DL), AILA Amicus Committee, Conference Program Committee, Durham, NC

Blaine Meredith Bookey, San Francisco, CA

Gabriela Brito, Silver Spring, MD

Zachary A. Albus, Cambridge, MA

4:55 pm–5:15 pm

VIRTUAL COFFEE BREAK

5:15 pm–6:15 pm

Attendees can choose to attend either of the two panels being offered at this time and will have access to the full set of recordings.

PANEL I:

ALL BUT THE I-589: NUTS AND BOLTS FOR ASYLUM SEEKERS AND ASYLEES

There are so many forms, applications, and steps ancillary to the asylum application. The panelists will help you better prepare your clients to navigate these processes. They will focus on employment authorization, travel, and family reunification.

- Employment Authorization Documents: While Seeking Asylum Pursuant to *Casa de Maryland v. Wolf*, Post-Grant, and Pending Litigation on Trump-Era Regulations
- Family Reunification: I-730s, Adjudication, Delays, Expediting, and Consular Processing
- Travel: I-131, Refugee Travel Documents
- Adjustment of Status: Best Practices Around Asylee Adjustments, Interviews, and Medical Examinations
- Asylee Benefits: Where to Send Your Client, What They May Be Eligible For

Faculty:

Lindsey Wilkes (DL), Washington, DC

William E. Graves Jr., Boston, MA

(DL) = Discussion Leader

** = invited, not confirmed*

Note: All sessions and events are subject to change without notice.

*Hiroko Kusuda, New Orleans, LA
Anam Rahman, Fairfax, VA*

PANEL II:

THE END OF “DEATH BY MEMO”

The frequency and breadth of the prior administration’s changes to EOIR operations as it pertained to asylum seekers was unprecedented. The new administration has slowly begun to rescind the Trump era EOIR policy memoranda and other regulations that stymied asylum seekers from being able to enter the United States or present a claim. Our expert panelists will advise on best practices for navigating today’s very fluid EOIR and USCIS systems. Specifically, they will discuss the practicalities of representing asylum seekers in the current climate, including issues unique to individuals previously subject to the Migrant Protection Protocols (MPP) and the Transit Ban, the Mendez Rojas requirements/deadline, and possible variations of an Office of the Principal Legal Advisor (OPLA) memorandum process.

- Responding to Clients Previously Subject to MPP or the Transit Ban
- *Mendez Rojas*: Class Description, Best Practices for Asserting Class Membership, Deadline to Assert Membership
- OPLA Memorandum: Pilot Programs, How Generously Prosecutorial Discretion Will Be Applied, Best Practices to Request Case Review

Faculty:

Elizabeth M. Mendoza (DL), AILA Southern Border Taskforce, Conference Program Committee, Houston, TX

Jeremy L. McKinney, AILA President-Elect, Greensboro, NC

Leah LaVerne Chavarria, AILA San Diego Chapter Chair, San Diego, CA

Emma D. Wells, AILA USCIS Case Assistance Committee, Phoenix, AZ

6:15 pm

CONFERENCE CONCLUDES

*(DL) = Discussion Leader
* = invited, not confirmed*

Note: All sessions and events are subject to change without notice.

CONFERENCE PROGRAM COMMITTEE

Ashley Huebner, AILA EOIR-ICE Joint Committee, Conference Program Chair, Chicago, IL
*Dree K. Collopy, AILA Asylum and Refugee Committee Chair, AILA Author, AILA's Asylum Primer:
A Practical Guide to U.S. Asylum Law and Procedure, 8th Ed., Washington, DC*
Lindsay Muir Harris, AILA Asylum and Refugee Committee Vice Chair, Washington DC
C. Shane Ellison, AILA Amicus Committee, Durham, NC
Elizabeth M. Mendoza, AILA Southern Border Taskforce, Houston, TX
Tammy Lin, San Diego, CA
Ilana Etkin Greenstein, Senior Attorney, Immigration Justice Campaign, Boston, MA

JJ Area, AILA Education Program Manager, Washington, DC

(DL) = Discussion Leader

** = invited, not confirmed*

Note: All sessions and events are subject to change without notice.