2023 AILA Fall Conference Asylum Track

Where Are the Asylees? How to Navigate a Preclusionary U.S. Asylum System

Protects for asylum seekers in the United States continue to be dismantled. Initially, there was hope for a rejuvenation of this essential pillar of American democracy with a new Administration, but presently, the U.S. asylum system is riddled with new preclusionary regulatory provisions and devastating backlogs. Practitioners must navigate increasingly convoluted policies in today's U.S. asylum system, leverage changes to benefit asylum seekers, and prepare cases in anticipation of potential future restrictive rules.

The accomplished faculty for this intermediate to advanced conference will provide expert guidance on a wide range of asylum claims and issues, from an overview of the recent regulations preventing access to asylum in the United States, to important procedural updates, to how best to overcome the newest roadblocks to asylum. The faculty will also provide attendees with best practices to ethically represent and counsel asylum seekers in a system increasingly designed to thwart access.

September 29, 2023
The Westin Kierland Resort & Spa
Scottsdale, AZ

Times listed on the Program are Pacific Time (PT)

Friday, September 29, 2023

7:00 am – 5:55 pm  Registration and Exhibits

7:30 am – 7:40 am  Welcome and Greetings
Leah L. Chavarria, Fall Conference Asylum Track Chair, ICE Liaison Committee, San Diego, CA

7:40 am – 8:40 am  “What Now?!” Does Asylum Still Exist at the Border? Navigating New Policies, Technology, and Black Holes
Considering the end of Title 42 and a renewed enhanced expedited removal, the use of credible fear interviews (CFIs) conducted in the black hole of U.S.
Customs and Border Protection (CBP) holding facilities, the Circumvention of Lawful Pathways Final Rule (i.e., new third-country asylum ban), and the use of the CBPOne app, is asylum even available anymore? The panelists will discuss how to navigate assisting clients in enhanced expedited removal (the Administration’s latest enforcement tool) and those attempting to come in lawfully through the CBPOne app, as well as litigation challenging these policies.

- CBPOne app: Who can use it, does it work, and how?
- Enhanced expedited removal: CFIs in CBP custody, how it works and right to counsel, and the immigration judge (IJ) review process in CBP custody
- Advocating for counsel’s ability to access clients throughout border processing and advising clients on the practicalities of a release on parole at the border
- Circumvention of lawful pathways: requirements, exceptions, and how attorneys can help clients get around it
- What is actually happening at the border under this new rule?
- Litigation challenging these policies

Faculty:
Constance R. Wannamaker (DL), Conference Program Committee, El Paso, TX
Margaret Cargioli, AILA Asylum and Refugee Committee, Los Angeles, CA
Priscilla J. Orta, Brownsville, TX

8:40 am – 9:10 am
Networking Break

9:10 am – 10:10 am
Cracking the Code: The Keys to Mastering the Complexities of Asylum Law
Asylum law is complicated, and even experienced practitioners can get lost in the labyrinth of the Immigration and Nationality Act (INA), regulations, and ever-changing case law. Trying to fit clients’ lived experiences into those complicated and narrow requirements can sometimes feel like a lost cause. Our expert panelists will walk you through strategies to overcome some of the more challenging legal roadblocks and offer tips to avoid missed arguments and build a strong record for appeal.

- Persecutor woes! Non-state actor issues—including the inconsistent interpretation and application of the “unable or unwilling to control” standard—and how to overcome them
- Keeping up with particular social groups (PSGs): Board of Immigration Appeals (BIA) and circuit case law surrounding cognizable PSGs, including strategies to use on existing cases
- Alternatives to PSGs: determine if your client has other protected characteristics that may have motivated the persecutor
- Don’t forget the nexus! Proving your client’s protected characteristic is at least “one central reason” for the harm
- Change happens: challenging or overcoming a rebutted presumption of “well-founded fear” based on internal relocation or changed circumstances
10:10 am – 10:40 am Networking Break

10:40 am – 11:40 am Practicalities of Affirmative Asylum Representation: Dealing with Delays, Delays, Delays

Any attorney practicing in the humanitarian ring of the immigration law circus knows that the last five years have only made it more difficult to represent affirmative asylum seekers. Delays caused by lack of resources, holdover policies from unfriendly administrations, and the impact of new border policies mean that affirmative asylum applications could now take as long as a decade to process. Our expert panelists will share their best strategies for dealing with these delays and setting client expectations over the lifetime of an affirmative asylum case. This is a must-attend panel for all affirmative asylum practitioners!

- Asylum Office jurisdictional issues: Knowing where and how to file your client’s I-589, including for J.O.P. v. DHS class members, those with an unfiled NTA, and others required to file through the Asylum Vetting Center
- Causes of interview delays, including the “last in, first out” (LIFO) policy, current scheduling priorities, and the impact of asylum officers being sent to the border
- Explaining delays to clients and managing expectations over the years that the case will be pending, including:
  - Issues and solutions around obtaining Employment Authorization Documents (EADs) (including tricks for handling receipt notice delays), tapping into Rosario class benefits, and rescheduling problems
- The benefits of mandamus/Administrative Procedure Act (APA) actions for clients who cannot wait any longer
- Advising clients on potential outcomes and risk of removal proceedings

Faculty:
Cori A. Hash (DL), AILA Asylum and Refugee Committee, Austin, TX
Sarah Pitney, Conference Program Committee, Washington, D.C.
Ally Bolour, Los Angeles, CA

11:40 am – 12:40 pm Lunch Break
12:40 pm – 1:40 pm  **Defensive Driving in Removal Proceedings: Get Clients Safely across the Asylum Finish Line**

It is crucial for attorneys to zealously represent asylum seekers in removal proceedings, which can be challenging because often the record begins to develop before representation starts. Learn from our panel of experts about strategic considerations ranging from maintaining the client’s credibility when there are inconsistent statements in the record, to dealing with EAD clock and biometric gathering delays and advocating for the client in and out of the courtroom.

- When the EAD clock is on the line: strategic considerations
- Complying with the biometrics requirement in proceedings: overcoming practical roadblocks
- Building a strong evidentiary record even when the client is detained, and challenging the U.S. Department of Homeland Security’s (DHS) attempts to introduce evidence improperly
- Utilizing pre-hearing conferences, prosecutorial discretion (PD), and pre-hearing filings to narrow the issues
- Inconsistent statements made by the client or incorrectly recorded by DHS officers: framing the record
- Dealing with difficult IJs: best practices

**Faculty:**

Elizabeth M. Barna (DL), Conference Program Committee Vice Chair, New York, NY

Susan G. Roy, AILA Removal Defense Section Steering Committee, Princeton Junction, NJ

Breanna Cary, Edmond, OK

Peter Isbister, Decatur, GA

1:40 pm – 2:05 pm  **Networking Break**

2:05 pm – 3:05 pm  **Barred from Protection: Strategies for Pushing Back**

The Biden Administration’s ongoing efforts to discourage people from seeking asylum in the United States and to ease the agencies’ burgeoning adjudication backlogs have had myriad repercussions for asylum practice, both substantive and procedural. At the same time, the shifting demographics of asylum seekers have raised new issues and added new layers of complexity. The panelists will address some of the evolving issues relating to statutory bars to asylum and withholding of removal.

- The one-year filing deadline: unfiled Notices to Appear (NTAs), terminated removal proceedings, and the wind-down of the *Mendez-Rojas* litigation
- Persecutor of others and terrorism-related inadmissibility grounds (TRIG): exceptions and exemptions in the wake of *Matter of Negusie*
- Particularly serious crimes: litigation on the burden of proof

(DL) = Discussion Leader

* = invited, not confirmed

Note: All sessions and events are subject to change without notice.
• Border practices and the Circumvention of Lawful Pathways presumption
• Firm resettlement: parameters and exceptions

Faculty:
Paul O’Dwyer (DL), New York, NY
Ilana Etkin Greenstein, Senior Managing Attorney, American Immigration Council, Washington, D.C.
*Anita P. Sharma, Boston, MA

3:05 pm – 3:30 pm  Networking Break

3:30 pm – 4:30 pm  Holding Adjudicators Accountable: Appellate Review of Denials of Asylum and Withholding of Removal
Thorough representation of those seeking refuge within the United States frequently involves appellate review before the BIA and the U.S. Circuit Courts of Appeals. Representation in this space has always been complex, but due to recent case law, it is even more challenging today. The panelists will address several important developments and key strategic considerations in current appellate practice, covering what attorneys need to know even if they have little experience with appellate litigation.

• Exhaustion, motions to reconsider, and judicial review following Santos-Zacaria v. Garland
• Timing to seek judicial review of reasonable fear and withholding-only proceedings in the wake of Nasrallah v. Barr and Johnson v. Guzman Chavez (addressing the Bhaktibhai-Patel v. Garland problem)
• Navigating venue and choice of law considerations after Matter of Garcia
• Advocating for the most favorable appellate standard of review

Faculty:
C. Shane Ellison (DL), Conference Program Committee, AILA Amicus Committee, Durham, NC
Ben Winograd, Alexandria, VA
*TBD

4:30 pm – 4:55 pm  Networking Break

4:55 pm – 5:55 pm  Defining the Relationship: Ethical Considerations from Pro Se Practice to Dealing with Dismissal
How do recent Executive Office for Immigration Review (EOIR) initiatives to facilitate limited representation of pro se litigants, such as Friend of the Court and limited appearance for document preparation, interact with attorneys’ ethical obligations? How can practitioners ethically navigate new physical setups like border patrol processing facilities where asylum seekers subject to the Circumvention of Lawful Pathways rule are detained? Moreover, as the Office for the Principal Legal Advisor (OPLA) dismisses defensive asylum cases—

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sometimes over a respondent’s objection—how can practitioners adhere to ethical obligations when advising clients on next steps? Panelists will cover considerations raised by recently introduced programs with a special focus on defining the scope of representation, maintaining ethical communication, and navigating ethical conflicts.

- Limited-scope representation in defensive asylum cases, including the benefits and drawbacks of these approaches: ethical considerations
- Ethics of providing pro se assistance to affirmative asylum seekers
- Counseling clients considering accepting PD dismissal and their post-dismissal options: ethical issues
  - Diligence as an ethical obligation, even in anticipation of DHS unilaterally moving for termination
- Thoughtfully communicating with clients: cultural sensitivities, individuals experiencing a measure of diminished capacity
- Providing client-centered warnings around frivolous applications

Faculty:
Gregory Fay (DL), Conference Program Committee, AILA Asylum and Refugee Committee, Phoenix, AZ
Jacqueline L. Watson, AILA Treasurer, Austin, TX
Maria Chavez, AILA Diversity, Equity, and Inclusion Committee, San Diego, CA
Brenda L. Hunt, Seatac, WA

5:55 pm  Conference Concludes

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**Fall Conference Asylum Track Program Committee**

Leah L. Chavarria, Fall Conference Asylum Track Chair, ICE Liaison Committee, San Diego, CA
Elizabeth M. Barna, Fall Conference Asylum Track Vice Chair, New York, NY
C. Shane Ellison, AILA Amicus Committee, Durham, NC
Gregory Fay, AILA Asylum and Refugee Committee, Phoenix, AZ
Katie H. Meyer, AILA Asylum and Refugee Committee, St. Louis, MO
Sarah Pitney, Washington, DC
Constance R. Wannamaker, El Paso, TX
Ilana Etkin Greenstein, Senior Managing Attorney, American Immigration Council, Washington, D.C.

JJ Area, AILA Education Program Manager, Washington, D.C.