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# Duke Afghan Asylum Project

# Agenda

- Understanding the Current Situation/Context
- Definition of a Refugee, Eligibility for Asylum, and Asking the Right Question
- Form I-589
- Professional Conduct Obligations
- Cultural Humility

# Current Context



# Eligibility for Asylum

# Marks of a Good Question?

- Ask broad, open-ended questions
  - Move from broad questions to narrow ones
- Ask both what the client knows and how the client knows it
- Ask about other sources of information (and for documents)
- Ask the client to return to the scene in their mind.
  - Asking questions about senses can be a helpful way to trigger memory.
- Ask about emotions.
- Ask about facts to tell a compelling story
- Ask questions “opposing counsel” or the AO will want to know

# Refugee Convention

- Article 1- The term refugee shall apply to any person who:
  - ... owing to well-founded fear of being persecuted
  - for reasons of race, religion, nationality, membership of a particular social group or political opinion,
  - is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...



# U.S. Definition of Refugee

A refugee is defined in INA § 101(a)(42) as one who is:

- Unable or unwilling to avail herself of the protection of one's country of nationality
- Because of [past] persecution or a well-founded fear of [future] persecution
- On account of race, religion, nationality, particular social group, or political opinion.



# Nationality

- Nationality is the lens through which the rest of the claim is viewed:
  - Where risk of harm is located
  - Where persecutor is usually located
- Statelessness
- Dual nationality
- State protection





# Sufficiency of Harm

- Harm must be sufficiently severe to rise to the level of persecution such as threats to life or freedom.
- Mere harassment does not constitute persecution.
- Harm must be viewed cumulatively.

# Nexus: “On Account Of”

- The persecution must be based “on account of” one of the five protected grounds (i.e., a protected characteristic must be at least one central reason for the harm)
- 5 grounds (actual or imputed)
  - Race
  - Religion
  - Nationality
  - Political opinion
  - Membership in a particular social group (PSG)

# Brief Overview of PSG

- Acosta Immutability Test
- Post-Acosta: immutability + visibility
- Recent Developments: immutability + visibility/distinction + particularity

# Nonstate Persecutors

- If the persecutor is a non-governmental actor, the applicant must show the government is “unable or unwilling” to control the persecutor.
- The meaning of that unable-or-unwilling requirement is the subject of intense debate and litigation.
- A few rules:
  - Unable-or-unwilling does not apply when persecutor is the state
  - Unable-or-unwilling is a disjunctive requirement
  - State must provide more than token assistance
  - No per se reporting requirement where it would be futile or dangerous

# Persecution's Presumption

Past persecution creates presumption of a well-founded fear. 8 C.F.R. § 208.13(b)(1)

- Burden switches to government to show:
  - A reasonable internal relocation option, or
  - A fundamental change in circumstances such that the applicant no longer has a well-founded fear.
- An applicant with no well-founded fear can still be granted asylum if:
  - She suffered severe past persecution, or
  - There is a reasonable possibility she will face other serious harm upon removal.

# Fear of Future Persecution

- To have a well-founded fear of persecution, an applicant must show a “reasonable possibility” of suffering persecution in her country.
- The Supreme Court has noted that even a one in ten chance of future persecution would produce a well-founded fear in a reasonable person. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987).

# Fear of Future Persecution

A well-founded fear exists where:

There is a pattern or practice of persecution of similarly situated individuals,

**OR**

- The applicant possesses a characteristic the persecutor seeks to overcome,
- The persecutor is (or could become) aware she possesses the characteristic,
- The persecutor is capable of persecuting her, AND
- The persecutor is inclined to persecute her.

# Internal Relocation

- If the applicant has established past persecution, or the feared persecutor is the government, there is a rebuttable presumption that the applicant cannot reasonably relocate within her country.
- Absent a presumption, reasonable internal location factors to consider are:
  - Ongoing civil strife
  - Administrative, economic, or judicial infrastructure
  - Geographical limitations
  - Social and cultural constraints, including age, gender, health, and social/family ties



# Completing the I-589

Department of Homeland Security U.S. Citizenship and Immigration Services U.S. Department of Justice Executive Office for Immigration Review		OMB No. 1615-0067; Expires 07/31/2022 <b>I-589, Application for Asylum and for Withholding of Removal</b>	
<b>START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is no filing fee for this application.</b>			
NOTE: <input type="checkbox"/> Check this box if you also want to apply for withholding of removal under the Convention Against Torture.			
<b>Part A.I. Information About You</b>			
1. Alien Registration Number(s) (A-Number) (if any)		2. U.S. Social Security Number (if any)	
3. USCIS Online Account Number (if any)			
4. Complete Last Name		5. First Name	6. Middle Name
7. What other names have you used (include maiden name and aliases)?			
8. Residence in the U.S. (where you physically reside)			
Street Number and Name		Apt. Number	
City	State	Zip Code	Telephone Number ( )
9. Mailing Address in the U.S. (if different than the address in Item Number 8)			
In Care Of (if applicable):		Telephone Number ( )	
Street Number and Name		Apt. Number	
City	State	Zip Code	
10. Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		11. Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
12. Date of Birth (mm/dd/yyyy)		13. City and Country of Birth	
14. Present Nationality (Citizenship)		15. Nationality at Birth	16. Race, Ethnic, or Tribal Group
		17. Religion	
18. Check the box, a through c, that applies: a. <input type="checkbox"/> I have never been in Immigration Court proceedings.			
b. <input type="checkbox"/> I am now in Immigration Court proceedings. c. <input type="checkbox"/> I am <b>not</b> now in Immigration Court proceedings, but I have been in the past.			



# Rules of Professional Conduct

- Confidentiality
- Conflicts of Interest
- Diligence
- Don't engage in the Unauthorized Practice of Law
- Duty of Candor

# Cultural Humility

- Greetings and professionalism
- Navigating cultural norms regarding gender
- Religious sensitivity
- Differences in naming convention
- Dates

**Questions?**



# **Duke Afghan Asylum Project Training (Part II)**

# Agenda

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- Grounds of Ineligibility and Statutory Bars
- Finishing the Form I-589
- Current Conditions in Afghanistan
- Interview Structure and Working with Interpreters
- Trauma-informed Lawyering
- Tips and Tricks for Declarations
- Logistics and Next Steps

# Asylum Ineligibility under INA

## INA 208(a)(2)

- One-year filing deadline
  - The asylum application must be submitted within one year of the last date of entry.
  - Exceptions:
    - Changed circumstances
    - Extraordinary circumstances
- Safe third country (in which to seek asylum)
- Previous denial

# Other Asylum Bars

## INA 208(b)(2) and new regulatory bars

- Persecutor (duress defense?)
- Particularly serious crime conviction
- Committed serious nonpolitical crime (outside of the U.S.)
- Danger to security of U.S.
- Terrorist related inadmissibility grounds (TRIG)
- Firm resettlement



# Material Support TRIG Bar

## INA 212(a)(3)(B)(iv)(VI)

“(VI) To **commit an act** that the actor knows, or reasonably should know, **affords material support**...

- (bb) to any individual who the [applicant] knows or reasonably should know, has committed or plans to commit a terrorist activity;
- (cc) to a [designated] terrorist organization ... or to a member of a [designated] organization; or
- (dd) to an [undesigned] terrorist organization ... or to any member of such an organization, **unless** the [applicant] can demonstrate by **clear and convincing evidence** that [they] **did not know and should not reasonably have known** that the organization was a terrorist organization.

# Questions to Ask

- **Past membership** in **any** formal or informal armed group
  - Receive any military type training from this group?
  - Use a weapon as part of this group?
  - Took up arms against the Taliban? Fought the Soviet invasion in the 1980s?
- **Material support** to the Taliban or any other formal or informal armed group
  - Gave money or anything else to get through a checkpoint?
  - Paid a ransom or gave anything else to secure release of a relative who was kidnapped?
  - Had any commercial transactions with these groups (e.g., groceries)?
  - Hosted anyone at home who was a member of these groups?
  - Voluntarily or forced to work for these groups (carrying weapons, cooking, cleaning, etc.)?
  - Recruited anyone to join these groups?
  - Solicited funds for these groups?
- **Currently** the spouse or child of someone who would be inadmissible under any of the terrorism bars?

**Part B. Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States (including for an immigration law violation)?

☐ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

- 3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No ☐ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

- 3.B. Do you or your family members continue to participate in any way in these organizations or groups?

☐ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☐ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

# Finishing the I-589



### Part C. Additional Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☐ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response.

If you were previously denied asylum by USCIS, an immigration judge, or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

- 2.A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☐ No ☐ Yes

- 2.B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☐ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☐ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.

# Page 7 of the I-589



**Part C. Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

☐ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No ☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see **Instructions, Part 1. Filing Instructions, Section V. Completing the Form, Part C.**

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation)?

☐ No ☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release.

If you have been arrested in the United States, you must submit a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents.

# Page 8 of the I-589



# Page 9 of the I-589

## Part D. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

**WARNING:** Applicants who are in the United States unlawfully are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name.	Write your name in your native alphabet.
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Did your spouse, parent, or child(ren) assist you in completing this application? ☐ No ☐ Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
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Did someone other than your spouse, parent, or child(ren) prepare this application? ☐ No ☐ Yes (If "Yes," complete Part E.)

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☐ No ☐ Yes

Signature of Applicant (The person in Part A.1.)  
➔ [ ]  
Sign your name so it all appears within the brackets  
Date of signature (mm/dd/yyyy)

## Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer	
Daytime Telephone Number ( )		Address of Preparer: Street Number and Name	
Apt. Number	City	State	Zip Code
<input type="checkbox"/> To be completed by an attorney or accredited representative (if any).		Attorney State Bar Number (if applicable) [ ]	Attorney or Accredited Representative USCIS Online Account Number (if any) [ ]





# Afghan Country Conditions



# Structure of Interview

- **Opening:**
  - Explain Roles, Goals, and Professional Obligations
  - Working With an Interpreter (next slide)
  - Road Mapping
- **Fact-gathering**
  - Select An Organizational Method to Group Your Questions
  - Ask Open-ended Questions
  - Follow Up With Probing Questions
  - Reflect Back What You Have Heard and Solicit Corrections
- **Closing**
  - Go Over Any Homework
  - Talk About What To Expect Next Time



# Working with Interpreters

- Confirm client and interpreter can understand one another
- Reaffirm confidentiality
- Explain expectations:
  - Use short sentences
  - Word-for-word interpretation
  - No side conversations
  - Speak in first person
  - Avoid terms of art
  - Ask interpreter to shred notes at the end

# Trauma-informed Interviewing

- **How Trauma Might Show Up:**
  - Trouble recalling or recounting story due to avoidance
  - Traumatic memories stored differently (as sensory fragments)
  - Client may disassociate, which can cause client to recall information with an altered sense of time (or inconsistently)
  - Client may associate interview with past trauma and experience the fight-or-flight reflex
- **Strategies for Addressing these Challenges**
  - The importance of trust
  - Acknowledge the difficulty of recalling painful experiences and explain why it is important
  - Discuss specific goals for meeting, but give the client as much control as possible
  - Avoid unnecessary re-traumatizing (don't repeat question unnecessarily)
  - Use grounding exercises
  - Helping with recall: segmenting and chaining

# Tips for Declaration Drafting

- Logos: Recount the narrative in a logical, coherent, and organized manner.
  - Let the elements of the claim focus your content.
  - Stick with your organizational structure.
- Pathos: Tell an emotionally compelling story.
  - Engage the reader and pull them in.
  - Make them want to grant relief.
- Ethos: Speak with credibility and candor.
  - Credible testimony is specific, consistent (internally and externally), plausible, and direct (non-evasive).
  - Candor involves addressing bad facts with the good.

# Logistics and Next Steps

- Phase 1: Fact-gathering and Forms Completion (Feb)
  - You will receive your family's Box folder with pre-screening information
  - Work with Jalali to make contact with client to start scheduling meetings (interpreter info will be provided)
  - Complete I-589 and first draft of declaration
  - Collect electronic copies of supporting documents
- Phase 2: Corroboration and Legal Writing (Mar)
  - Compile copies of supporting documents
  - Select and adapt template country conditions
  - Modify template legal cover letter
- Final Internal Review
- Referral to Pro Bono Counsel (April-July)

**Questions?**

### **Duke Afghan Asylum Protocol and Deadlines for DIRP Volunteers:**

1. Complete volunteer confidentiality form and return it to \_\_\_\_ (email) **ASAP**.
2. Receive information regarding your family from \_\_\_\_\_.

#### **Phase One:**

3. Work with \_\_\_\_\_ to set up date/time of interview and determine the client's preferred method of communications (phone/WhatsApp/Zoom)
  - a. Plan for at least three to four interviews to complete the I-589 and prepare the declaration:
    - i. This could take 2-3 hours on Zoom or WhatsApp for each interview
  - b. **Deadline for contacting your client to schedule your initial meeting: February 19**
  - c. Prior to the first scheduled interview with the client, your team should have a brief meeting with \_\_\_\_\_ and Prof. Ellison to review your plan for the meeting and to answer any last-minute questions. Please also put thought into how you would like to divide the work among the members of your team prior to that team meeting.
4. At the scheduled client interview, call interpreter first and then connect with the client using their preferred method:
  - a. Interpreter Info:
    - i. Interpreter number to dial is \_\_\_\_\_.
    - ii. The PIN is \_\_\_\_\_
  - b. If clients prefer Zoom or WhatsApp, you can have your phone on speaker with the interpreter, and place your phone next to the computer.
  - c. Please also be prepared to record the meeting. The voice memo app on a spare phone/iPad works well for this. Otherwise, you can record using Zoom.
5. At the Interview:
  - a. Follow Template Interview Plan (saved in Box) to introduce yourselves, the project, review confidentiality, and get permission to record.
  - b. Review the limited representation agreement (also saved in Box) and confirm the applicant's agreement and consent to provide /s/ signature on the agreement.
    - i. You should email an electronically signed version of the agreement to clients after the interview.
    - ii. If they wish to take time to review the document for themselves before signing, that is completely fine too.
    - iii. A Dari version of the limited scope agreement exists in your client's Box folder.
  - c. Prof. Ellison or \_\_\_\_\_ will send out identity or other documents for translation. Please notify them ASAP as soon as you identify any new documents that need to be translated.
    - i. **Deadline for family to provide documents for translation: February 25 (earlier is better!)**
  - d. The template interview plan is broken into questions for completing the I-589 and questions for purposes of drafting the declaration.
    - i. You should aim to complete the I-589 first and only move on the Question Bank for purposes of drafting the declaration once the I-589 is done.

**ii. Please complete all three interviews by March 4.**

6. After the Interviews:

- a. You can save the recordings of your interviews in the designated folder within your clients Box file.
- b. As questions arise during the course of conducting your interviews, please email \_\_\_\_\_ and Professor Ellison.
- c. Please upload into Box the completed I-589 and draft declaration in support **by March 7.**

7. Review Meeting for Phase One:

- a. After you have uploaded these documents to your Box folder, arrange a meeting with Professor Ellison and \_\_\_\_\_ to review and will share resources to launch you into Phase Two.

**i. Deadline for Phase One Review Meeting: March 11**

8. Prof. Ellison will review and confirm that application and declaration are complete or will ask for additional clarification.

- a. **All edits to be complete by March 18**

**Phase Two:**

9. Compile gathered information and begin corroboration and legal writing.

- a. We will have a subfolder in Box in which you can save corroborating Supporting Documents (e.g., passport, I-94, Tazkera, marriage certificates, birth certificates, and any other specific evidence you collected in Phase One).
- b. You will then begin adapting the template Country Conditions Packet and Legal Cover Letter that we share with you to tailor those resources to your family's claim.
- c. Once you have completed the Supporting Documents List, the Country Conditions Packet, and the Legal Cover letter, you will upload these documents to Box.

**i. The deadline for uploading these documents is April 1.**

- d. After you have uploaded your work product into Box, arrange to meet with Professor Ellison and \_\_\_\_\_ to schedule the Phase Two review meeting **prior to April 8.**

10. Review Meeting for Phase Two:

- a. At this meeting, Professor Ellison and \_\_\_\_\_ will review the materials you completed during Phase Two and make requests for revisions as appropriate.
- b. At that meeting, we will also review the close out procedures and you will certify that all confidential information has been removed from all electronic devices by completing a certification we will provide you in advance of that meeting.

**i. Deadline to complete close out procedures is April 14.**

## LIMITED SCOPE LEGAL ASSISTANCE AGREEMENT

This Agreement is made between: \_\_\_\_\_ [APPLICANT'S NAME] and the Duke Immigrant Right Clinic at Duke University School of Law (Duke School of Law). I understand that law students at the Duke School of Law will provide me with legal assistance in preparing my asylum case for purposes of referring my case to a pro bono lawyer that does not work for Duke School of Law. All work will be supervised and reviewed by Charles Shane Ellison, Supervising Attorney in the Immigrant Right Clinic, or by another licensed attorney affiliated with Duke School of Law.

I understand that Duke School of Law is a nonprofit offering this limited legal service and consultation in accordance with the North Carolina Rules of Professional Conduct for assisting pro se litigants and with the 2019 settlement in *Northwest Immigrant Rights Project v. Sessions* case, permitting pro bono attorneys and nonprofit organizations to provide limited assistance and legal advice to persons without entering an appearance in those proceedings. I understand that Duke School of Law has not agreed to provide me with assistance beyond the above-listed matter(s) and that Duke School of Law does not agree to represent me in any other way in my immigration case or in any other legal matter. Any additional assistance will require a new signed agreement.

I understand that the assistance provided to me under this agreement includes the following:

- a. Assistance filling out the I-589 asylum application, drafting a declaration in support of my application, and completing a legal cover letter, and
- b. Referral to a pro bono lawyer for continued representation before the Arlington Asylum Office.

I understand that I have the responsibility:

- a. to ensure that the information I provide is true and complete.
- b. to ensure that the information on any documents and forms prepared by Duke School of Law is true and complete.
- c. to respond to communications from the students and attorneys at Duke School of Law in a timely manner.
- d. to provide all relevant documents and information requested by Duke School of Law complete this assistance.
- e. to submit any application that is prepared as soon as possible.
- f. to seek further legal assistance with my immigration case from other attorneys or organizations after the conclusion of this agreement.

I understand that information shared with Duke School of Law is confidential to the fullest extent permitted by the law and required by lawyers' ethical rules.

I understand that I will not be charged for this legal assistance.



I understand that Duke School of Law does not recommend any specific course of action in my immigration case. I also understand that this assistance does not guarantee any particular outcome or that the documents I submit will be accepted or approved.

I agree that any changes to this agreement must be in writing and must be signed by both parties. I agree that my electronic signature will be treated the same as my original written signature on this document.

Any relationship created by this limited scope legal assistance agreement expires upon completion of the above-mentioned assistance. Duke School of Law will provide a closing letter upon completion and will provide me with a full copy of any records at that time.

I understand that the Immigrant Rights Clinic will provide these services without regard to race, color, religion, national origin, age, sex, disability, sexual orientation, or other basis prohibited by law.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### **Student Volunteers**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

### **Supervising Attorney**

\_\_\_\_\_  
Charles Shane Ellison  
Immigrant Rights Clinic, Duke School of Law

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Afghan Asylum Project Pre-screening Tool:

1. Personal information:
  - a. First Name
  - b. Last name
  - c. Current address
  - d. Contact information
  - e. Level of English proficiency
2. Employment history
  - a. What organization were you working with in Afghanistan?
  - b. Did your employer have any relationship with the US government/military?
    - i. What relationship did your employer have with US government/military?
  - c. Did your employer have any relationship with Afghan government/military?
    - i. What relationship did your employer have with Afghan government/military?
  - d. In what capacity did you work there?
  - e. How long did you work there? (Share dates)
  - f. When did you stop working there?
  - g. Why did you stop working with your employer?
3. Family members:
  - a. Do you have a spouse or children?
    - i. Where are they currently?
  - b. Have your spouse worked with US government, international forces or Afghan government/military?
    - i. If yes, for how long?
  - c. Do your spouse, parents, or children have any legal status in the US?
    - i. If yes, what kind of status and when did they obtain it?
  - d. Do you have any nuclear family members (spouse, parent, child, sibling) who we have not talked about already who was associated with the U.S. or Afghan government/military?
    - i. If yes, what was that relationship, how long did it exist, etc.
4. Coming to US
  - a. When did you come to US?
  - b. How did you come to US?
    - i. Through Operation Allies Welcome?
    - ii. Or another way?
  - c. Have you ever filed an asylum/refugee status application?
  - d. If yes to c, when and what documents have you submitted?
  - e. What documents do you have about your immigration status?
  - f. Do you have your evidence of entry with parole? (e.g., I-94)?
  - g. Do you have your EAD? If yes, what is the expiration of that document?
5. Asylum Application
  - a. Were you threatened while you were in Afghanistan?
    - i. If yes, who threatened you?
    - ii. When did you receive those threats?

- iii. Where were you threatened?
    - iv. Why were you threatened?
    - v. Do you have evidence of those threats?
  - b. Did any of your immediate family members receive threats in Afghanistan?
    - i. If yes, who made the threats? (Taliban, ISIS, others)
    - ii. How many threats?
    - iii. When were they made?
    - iv. Why were they made?
    - v. How were they made?
    - vi. Do you have evidence of those threats?
  - c. Do you think you can go back to Afghanistan?
    - i. If not, why?
  - d. When would you like to apply for asylum?
    - i. Do you have immediate family members who need assistance in applying for asylum?
    - ii. Do you have any other request for benefits pending?
- 6. Relationship/Support with Taliban/ISIS or similar groups?
  - a. Have you ever given money to Taliban/ISIS?
  - b. Have you offered food, medication, or other aid or support to the Taliban/ISIS?
  - c. Have you offered any kind of food or money assistance to another group you know that supports the Taliban or otherwise engages in terrorism?
  - d. Have you given money or anything else to get through a checkpoint?
  - e. Have you paid a ransom or given anything else to secure release of a relative who were kidnapped?
  - f. Have you had any commercial transactions with these groups?
  - g. Have you hosted anyone at home who was a member of these groups?
  - h. Have you voluntarily or been forced to work for these groups (carrying weapons, cooking, cleaning, etc.)?
  - i. Have you recruited anyone to join these groups?
  - j. Have you solicited funds for these groups?

## Template Interview Plan/Instructions

### Pre-interview:

- Work with \_\_\_\_\_ to set up date/time of interview and a preferred method of communication (phone, WhatsApp, Zoom) and to confirm needed language.
- At the scheduled time, call interpreter first and then connect with the client using their preferred method:
  - Interpreter number to dial is \_\_\_\_\_.
  - The PIN is \_\_\_\_\_.
  - If clients prefer Zoom or WhatsApp, you can use your phone to call the interpreter next to a phone/computer connecting you and your teammates.
  - Please also arrange to record the meeting (after getting clients permission). The voice memo app on a spare phone/iPad works well for this.

### Introduction and Road Map:

- Greetings:
  - Introduce yourselves to your clients and explain that you are the law students that will be working with them as part of the Duke Afghan Asylum Project. The purpose of this project is to help them apply for asylum.
  - Ask clients what name they prefer (take note of name pronunciation and confirm you are saying it correctly).
- Interpreter:
  - Confirm that clients can understand the interpreter and that the interpreter can understand clients.
  - Explain the interpretation process and how it works:
    - Use short sentences and pause to allow the interpreter to interpret.
    - Explain that the interpreter will translate word for word exactly what clients and you say. For example, if you say "I went to the store." The interpreter will not say, "He went to the store," the interpreter will say "I went to the store."
    - We ask the interpreter not to have a side conversation and only translate what clients or you say.
    - The interpreter knows that everything discussed will be kept confidential and is covered by the attorney client privilege.
- Confidentiality:
  - You can explain that the rule of confidentiality means that we will not share any information to anyone outside of the legal team without their permission unless required to do so by the rules of professional conduct that governs attorneys.
- Duke Afghan Asylum Project:
  - Explain that while you are a law student, all of your work will be reviewed and supervised by a licensed attorney, Professor Ellison.
  - Because you are not yet a lawyer, you will be careful to not give legal advice, but you will take down any questions that call for the provision of legal advice and will confirm the answer and get back to the client.

- Eventually, only with their permission, we will share client's prepared asylum application with a lawyer that will represent them pro bono before the Arlington Asylum Office. That will happen later in the year.
- The services we provide are free of charge and clients will not be asked to pay for help from us or from the pro bono lawyer that accompanies them to the interview.
- We have a limited representation agreement that describes our relationship that we will ask clients to sign (electronically by assenting to adding their name to the agreement with the /s/). We can confirm their email address is a good way to contact them and to share that agreement (in English and Dari) with them.
- Questions and Flow of Interview:
  - Explain that you will be asking a lot of questions. It is important that if clients don't understand the question that they say so. If they don't know the answer to the question, the best answer is to say "I don't know." The most important thing is that they tell us the truth so that we can understand their case.
  - Some things we will ask about may be difficult to talk about. Make sure clients know that if they need a break that they can ask at any time.
  - Explain that all of the questions you will be asking relate to eligibility for asylum and that it is important for them to be as detailed as possible in providing answers.
- Recording:
  - To help us focus on their interview answers, we would like to record. Make sure to get their permission before starting the recording.
  - (You can record using the voice memo app on your phone or iPad and then upload the recording to the appropriate Box folder specific to the client).
- Questions for us:
  - Before moving on to more substantive questions, see if clients have any questions for us.
  - If they ask about any of the process you described above or logistics for working with you, you can answer.
  - If they pose a question that calls for legal advice (i.e., they are give you facts that requires application of law to answer), politely let them know you cannot give legal advice, but that you will write down their question and will get an answer back to them as soon as possible. \_\_\_\_\_ can help with providing follow up answers.

#### Questions for Completing the I-589:

- Ask questions on pages 1-4 of the I-589:
  - Feel free to hand write or type in the answer to the form as you work your way through.
  - Remember not to leave any blank spaces and thus put "none" or "NA" for any questions where that is the best answer (unless the person does not have a middle name, in which case you should leave that blank).
- For questions on Page 5 of I-589:
  - **Part B. 1. A**
    - Have you, your family, or close friends or colleagues ever experienced harm, mistreatment, or threats in the past by anyone?
      - Because this is a compound question, break this up into:

**Commented [A1]:** Remember the marks of a good question:

#### Guidelines:

- Ask broad, open-ended questions first. Move from broad questions to narrow ones.
- Ask both what the client knows and how the client knows it.
- Ask about other sources of information (and for documents).
- Ask the client to return to the scene in their mind.
- Ask questions about senses (sight, smell, sound etc.); this can be a helpful way to trigger memory.
- Ask about emotions.
- Ask about facts to tell a compelling story.
- Ask questions "opposing counsel" or the AO will want to know.

#### Pitfalls to Avoid:

- Don't lead.
- Don't ask compound questions.
- Don't suggest an answer in the form of a question.
- Don't assume a fact in the question.
- Don't typically ask a question with a yes or no answer without following up to get additional detail.

- Have you ever experienced harm or threats in your country in the past?
    - Has your family experienced harm or threats in your country?
    - Have your close friends experienced harm or threats?
  - Can you elaborate on what happened?
  - Are you able to remember when the harm or threats occurred?
  - Can you tell us who caused the harm or threats?
  - Why do you believe the harm or threats occurred?
- **Part B. 1. B**
  - Do you fear harm or mistreatment if you return to your home country?
    - Can you tell us what harm or mistreatment you fear?
    - Who do you believe would harm or mistreat you?
    - Why do you believe you would or could be harmed or mistreated?
- For Page 6 of I-589:
  - **PART B. 2.** Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted, sentenced, or imprisoned in any country other than the United States (including for an immigration law violation)?
    - Break up the question and first ask about the individual before asking about their family. For example, you can ask:
      - Have you ever been accused of a crime?
      - Have you have ever been arrested or detained by anyone for any reason?
      - Have you ever been convicted of a crime? Have you ever been put in jail?
      - If yes, could you explain the circumstances?
      - What about your family? Has anyone in your family ever been accused of a crime? Etc.
  - **PART B. 3.A.** Have you or your family members ever belonged to or been associated with any organizations or group in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media? Again, break up the question. For example, you can ask:
    - Have you ever been part of any groups in Afghanistan?
      - Political?
      - Student?
      - Labor?
      - Religious groups?
      - Press or media?
      - Military?
      - Any other kind of group?
    - What about your family. Have they ever been part of any groups like this?

- If yes, could you describe the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity?
  - **PART B.3. B.** If yes, do you or your family members continue to participate in any way in these organizations or groups?
  - **PART B. 4.** Have you ever been tortured?
    - Who tortured you?
    - Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?
    - If yes, explain why you are afraid.
    - Could you also describe the nature of the torture you fear, by whom, and why it would be inflicted?
- For page 7 of I-589:
  - **PART C:** Have you, your spouse, your children, your parents, or your siblings ever applied to the US government for (or been granted) refugee status, asylum, or any other similar status? Remember to break up question.
    - If yes, explain the decision and what happened.
    - Were you included in parent's/spouse's application?
    - If so, what's your parent's or spouse's A-number?
  - After you left Afghanistan, what countries did you travel through before entering the U.S.?
  - Have you, your spouse, your children or other family members such as your parents or siblings, ever applied for or received any lawful status in any country other than the U.S.? Remember to break up question.
    - If yes,
      - Name of each country
      - Length of stay
      - The person's status while there
      - The reasons for leaving
      - Whether or not the person is entitled to return lawfully
      - Whether the person applied for refugee status or for asylum while there
        - If not, why did you not do so.
  - Have you, your spouse, or children ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person for any reason?
    - If yes, please describe.
- For page 8 of I-589:
  - **PART C:** Since coming to the U.S., have you returned to Afghanistan?
  - Have you or any member of your family ever committed any crime or been arrested, charged, convicted, or sentenced for any crimes in the United States?
    - If yes, state what occurred, the dates, length of sentence received, location, the duration of detention, any formal charges lodged against you, and the reasons for your release.
- For pages 11 and 12, it is acceptable to leave blank. These pages are designed to include any additional information that would not fit into the relevant part of the earlier sections of the form. Use only if necessary.

Question Bank related to Eligibility, Bars, and Drafting the Declaration:

- Other than Afghanistan, are you a citizen of any other countries? If so, which countries?
  - o Are there any other countries where you have legal status? Do you still have status in those countries? Can you live and work there? If not, why not?
  - o Do you have documents regarding that status? Do you have a national ID or travel document issued by any other countries?
  - o Have you ever lived in another country (other than the U.S. and Afghanistan) for an any period of time? When? For how long?
- Has the Taliban (or anyone else) ever personally harmed you? Your family? Your co-workers?
  - o If so, who was the person that harmed you? Can you describe that person? How many times? When? How long ago? How old were you? What did they do? Why did they harm you? What did they say? How has this affected you (physically, emotionally, and psychologically)?
  - o Did you report the harm to the police or other authorities? If no, why not? If so, what happened?
    - Was anyone ever held accountable?
    - Did they go to jail? For how long?
    - Were they prosecuted?
    - Would protection be available against them in the future?
  - o What was the worst thing that happened to you in Afghanistan? Can you please describe? How did it begin? What happened next?
- Why did you leave Afghanistan? Or why are you afraid to return to Afghanistan?
  - o How would you describe your ethnicity, tribe, or clan?
  - o What is your religion?
    - If Islam, what is your sect? (Sunni, Shia, etc.)
  - o Do you think the Taliban would be interested in harming you because of your religion? Your ethnicity? The color of your skin? Your tribe or clan? If yes, why do you think that?
  - o Do you think the Taliban would be interested in harming you because of your political opinion? If yes, why do you think that?
    - Did you ever speak out against the Taliban? If so, how?
    - Did you ever work against the Taliban? If so, how?
    - Did you oppose the Taliban? If so, how?
  - o Do you have any family members that have worked against the Taliban that might put you at risk? Who? Why do you think you are at risk because of your family member?
  - o Do you fear the Taliban would harm you for any other reason we have not already talked about? (e.g., gender, gender identity, sexual orientation, group membership, etc.)

**Commented [A2]:** Some of these questions overlap with questions from the I-589. If you feel that your client has been asked a question in this section already, do not repeat it unnecessarily. Instead, you might say something like this:

"We understand from our previous meeting that .... Is that correct? Okay. We had a couple of follow up questions about that."



- Do you fear any other groups would harm you for any other reason? If so, what group? What is that reason? Why do you think they would go after you for that reason?
- Has the Taliban ever harmed anyone in a similar situation to you?
  - Can you share those details?
- Has the Taliban ever threatened you? Your family? Your co-workers? Anyone in a similar situation to you?
  - Can you share those details?
  - What specifically did they threaten to do? Why? Did you judge the threat to be credible? Why?
- What do you fear would happen if you had to return to Afghanistan now?
  - Why do you think that would happen to you?
  - How would they know about your [insert relevant protected characteristic: race, tribe, clan, religion, political opinion, family relationship, former work history, etc.]
  - How likely do you think it is that [the feared persecutor] would be able to find you? How likely is it that they would be able to harm you?
  - Is there any safe place you could go in Afghanistan? If not, why not?
    - What would keep you from being able to relocate within Afghanistan?
      - Poverty, fighting, civil strife, geographic limitations, health limitations, family ties, cultural restraints?
  - How have things changed, if at all, since you left Afghanistan?
  - Since you left, do you know of others like you who have been harmed? What happened?
- How has living through this [insert relevant harm] impacted you?
  - Do you have nightmares? Do your kids/spouse have nightmares?
    - If so, how often?
  - How is your family back in Afghanistan? Are they in danger? What other struggles are they experiencing right now?
  - How does it make you feel to think about what is happening in Afghanistan right now?
- Were you ever involved in the Afghan military or other armed group?
  - If yes, what group?
  - If yes, did you ever receive any military type training from this group?
  - If yes, did you ever have to harm anyone, did you have weapons, did you ever use your weapons?
  - Did you ever take up arms against the Taliban?
- Did you ever work for the Taliban?
  - Did you fight during the Soviet invasion in the 1980s (if age appropriate to ask)?
  - Have you supported them in the past?
- Have you ever been forced to give money to the Taliban?
  - Did you have to bribe the Taliban?
  - Did you ever have to give them money to get through a checkpoint?

- Did you ever have to pay a ransom or give anything of value to secure the release of someone who was kidnapped?
- Did you ever give money to any other organization that is not the Taliban that uses violence to further its objectives?
  - o Have you ever had any commercial transactions with any such group?
  - o Have you ever hosted anyone who was a member of such group in your home?
  - o Were you ever forced to help any such group in any way?
  - o Did you ever recruit anyone to join any such group?
  - o Did you ever solicit funds for any such group?
  - o Did your spouse or parent ever do any of the foregoing?

If not already answered:

- Have you ever worked for the United States government?
  - o If yes – for how long? Continuously? What were the years?
- Have you ever worked for a program or project that was funded by the United States?
- Have you ever worked for a United States based media organization or a nongovernmental organization?
- Have you worked as an employee of contractors for the United States?
- Have you ever worked as an interpreter or translator for the United States government?
- Remember to ask about pieces of paper.
  - o Do you have any documents that describe any of the things we have talked about today?
  - o Letters, photos, texts, emails, identification documents, employment badges, newspaper articles, death certificates, etc.?
  - o Do we have all of their identity documents (passports, birth certificates, Tazkeras, employment authorization documents, marriage certificates)?

End of interview

- See what questions they have for us or if there is anything else they think we should know.
- Remember to not end the interview on traumatic materials. Ask about plans for that evening or weekend. Ask about lighthearted items like what they like to do for fun? Or what are their dreams and goals while they are living in the U.S.?
- If you marked any homework for them or for yourselves, be sure to remind them of that. This could include documents you identified during the course of the interview and talking through the process of getting those documents.
- Make sure to confirm the next time you wish to meet with the client to continue preparing.
- Remind interpreter to shred notes at the end.
- Thank them for their time.