

NATIONAL  
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A HEARTLAND ALLIANCE PROGRAM

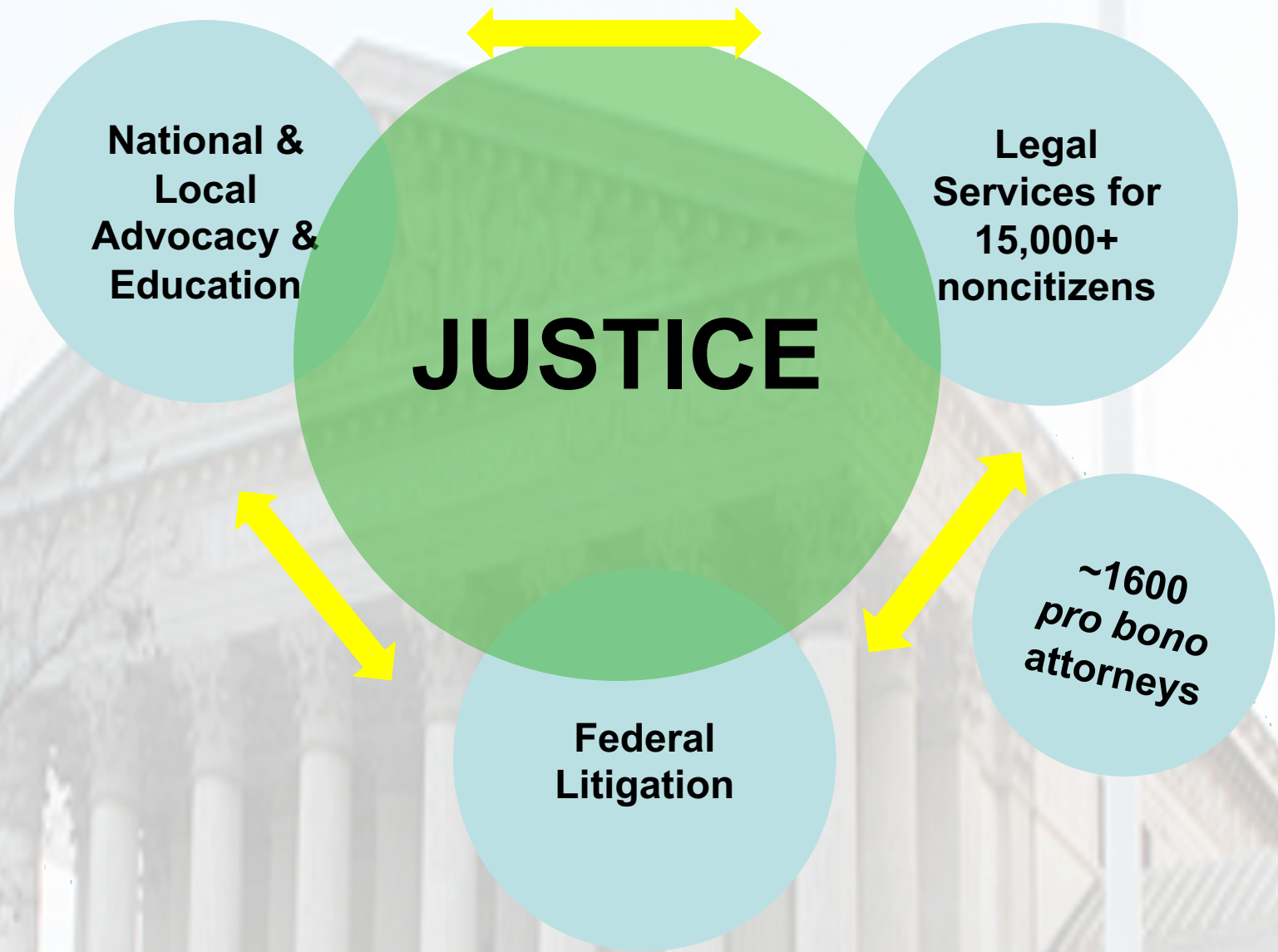
# MHRC Mentorship Training

*Part 2: Effective Mental Health Evaluations – a Case Study*

June 5, 2020

[www.immigrantjustice.org](http://www.immigrantjustice.org)

# National Immigrant Justice Center (NIJC)



# The Asylum System

## AFFIRMATIVE

*For individuals who seek asylum and are NOT in deportation proceedings.*

USCIS-Asylum Office

## DEFENSIVE

*Individuals who seek asylum as a defense to deportation proceedings*

DOJ- Immigration Court

Board of Immigration Appeals

7<sup>th</sup> Circuit Court of Appeals

# Asylum: Elements

1. “Well-Founded Fear”
2. of “Persecution”
3. Perpetrated by the government or an entity the government cannot/will not control
4. “On account of”
5. – Race
  - Religion
  - Nationality
  - Political Opinion
  - Membership in a Particular Social Group



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# EVALUATIONS FOR “UNACCOMPANIED” CHILDREN

# Unaccompanied Immigrant Child

- Also known as unaccompanied alien child/minor (discouraged)
- Children are designated as UICs if they are
  - Under 18
  - Without lawful status
  - Without a parent or guardian available to provide care and custody
- BUT
  - Most UICs come to the United States intending to reunite with a parent or family member and do reunite with them.
- Encountering a child under age 12 who needs an evaluation and is not residing with a parent/guardian or for whom a parent/guardian cannot be accessed is extremely rare.



## **MENTAL HEALTH EVALUATION CASE STUDY: FERNANDO**

# BACKGROUND

## ➤ Demographics:

- Mexican citizen in his early 30s
- Has a U.S. citizen ex-wife and children
- **Currently homeless**

## ➤ Immigration history:

- Multiple entries/deportations since a teenager
- Most recent entry occurred after being **tortured by Mexican police**
- In 2014, arrested and detained by ICE in California
- Released after one year of detention; lives in Midwest and in removal proceedings in Chicago
- **Only eligible for protection-based relief (asylum, withholding; CAT)**

## ➤ Mental health background

- An immigration judge **found him incompetent** while he was detained and appointed a qualified representative
- ICE psych diagnosed with major depressive disorder and PTSD, but asserts F. exaggerates symptoms
- Reports hearing voices and having suicidal ideation



# Why a Mental Health Evaluation?

## ➤ Safeguards

*Matter of M-A-M-*: If an immigration judge determines that a noncitizen lacks sufficient competency to proceed with the hearing, the judge **“shall prescribe safeguards to protect the rights and privileges of the alien.”**

## ➤ Credibility and consistency

## ➤ Corroboration

Cite as 25 I&N Dec. 474 (BIA 2011)

Interim Decision #3711

*Matter of M-A-M-*, Respondent

*Decided May 4, 2011*

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

- (1) Aliens in immigration proceedings are presumed to be competent and, if there are no indicia of incompetency in a case, no further inquiry regarding competency is required.
- (2) The test for determining whether an alien is competent to participate in immigration proceedings is whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney or representative if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses.
- (3) If there are indicia of incompetency, the Immigration Judge must make further inquiry to determine whether the alien is competent for purposes of immigration proceedings.
- (4) If the alien lacks sufficient competency to proceed, the Immigration Judge will evaluate appropriate safeguards.
- (5) Immigration Judges must articulate the rationale for their decisions regarding competency issues.

# Safeguards

## ➤ Examples:

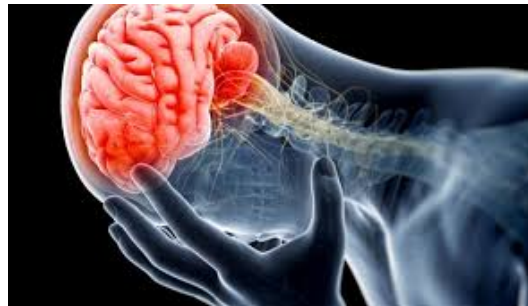
- Refusing to accept an admission of removability
- Identification of a family member or friend who can assist the respondent and provide the court with information
- Waiving the respondent's appearance
- Actively aiding in the development of testimony, including on direct and cross-examination

## ➤ Ideal safeguards for Fernando:

- Waiver of testimony
- Stipulating to the contents of the affidavit and mental health evaluation

# Credibility and Corroboration

- Establishing that
  - Inconsistencies should be expected;
  - Fernando needs substantial time to testify responsively to questions asked;
  - Fernando's demeanor in court and out of court is consistent with or related to his diagnosis/mental health
  - Fernando's specific psychological symptoms and diagnosis are consistent with the harm he asserts to have suffered



# THANK YOU!

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