



MIGRATION IS AN ACT OF COURAGE

U.S. Asylum Law



Immigration
and
Nationality
Act Section
208(b)(1)

Refugee/Asylum Seeker = Any person outside her country of origin who is unable or unwilling to return to her country of origin *and* is unable or unwilling to avail herself of the protection of that country *because of persecution on account of.....*

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- ▶ Race
- ▶ Religion
- ▶ Nationality
- ▶ political opinion
- ▶ or membership in a particular social group.

Courts have interpreted this to require:

Past persecution or well-founded fear of future persecution

- Experience must be severe enough to rise to the level of “persecution”

On account of

- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group

Government unwilling or unable to protect

- Has historically included private actors like DV abusers and gangs

Particular Social Group (PSG) Requirements



Immutable = all members must share innate characteristics



Particular = group can't be too broad or diffuse; must have discrete boundaries



Socially Distinct = must be a group that is recognized as such by the applicant's home culture/society.

Evidentiary Issues

- ▶ REAL ID Act: An adjudicator may grant asylum on testimony of the applicant alone but only where the testimony “is credible, is persuasive, and refers to **specific facts sufficient to demonstrate** that the applicant is a refugee.

Can anyone guess which protected category was argued in Soledad's case?

- ▶ Race
- ▶ Religion
- ▶ Nationality
- ▶ political opinion
- ▶ particular social group?

protected grounds that were argued in Soledad's case:

IMPUTED POLITICAL OPINION:

- Anti-gang imputed political opinion
- Anti-Sexual violence against females

PSG:

- girls/young women who take concrete action to oppose gang atrocities
- girls/young women formerly enslaved by gangs
- girls/young women who are viewed as gang property

Bars to Asylum

People barred from obtaining asylum are people who:

- ▶ have assisted in the persecution of others
- ▶ have committed certain crimes (agfel)
- ▶ are threats to U.S. safety or security
- ▶ are already "firmly resettled" in another country (granted some sort of status)
- ▶ have previously applied for and been denied asylum
- ▶ applied for asylum more than one year after entering the United States
- ▶ Terrorism Related Inadmissibility Grounds (TRIG) Bar (extremely broad, no duress exception)
- ▶ Etc....

Immigration Courts and Judges



- ▶ Lack of independence of immigration courts and judges
- ▶ Relationship to the Attorney General

<https://trac.syr.edu/immigration/reports/judge2021/denialrates.html>

Detention



Aug. 2015. Tucson facility; men sitting and lying on concrete floor and benches, wrapped in Mylar sheets in crowded cell. (P.I. Ex. 185) VTCC000016A

A federal judge in Tucson ruled that conditions in detention facilities operated by Customs and Border Protection violate immigrants' rights. Here, a security camera images inside a CBP short-term immigration detention facility in Tucson. Men being held by CBP are wrapped in Mylar blankets in a crowded cell. The photo was among those used in the federal lawsuit.



Legal Representation



PIMA COUNTY JUSTICE FOR ALL is asking our community to support a **2022 ballot initiative** that gives Pima County, Arizona residents who are facing detention or deportation access to a public defender.

» **our mission and more about us**



Photo by Brooke Anderson | @movementphotographer

U.S. Asylum Law under the Trump Administration

That inevitable Monday morning immigration policy change be like...



Asylum-specific Trump reforms:

- ▶ **Attorney General Certification Power:**
 - ▶ Matter of A-B- tried to make it nearly impossible for women who are victims of persecution by private actors to claim asylum
 - ▶ Matter of L-E-A- severely limited Family-based PSGs (previously recognized by courts as a “quintessential” particular social group). Said that the applicant has to show that their particular family is well known and recognized in that society as a particular social group (like, say, the Kardashians).
 - ▶ These were both rescinded by current Attorney General Merrick Garland
- ▶ **Asylum Ban:** policy that attempted to ban asylum unless applied for at official POEs
- ▶ **Transit Ban** (July 2019): Required all persons who had traveled through a third country (Mexico, Guatemala, Honduras) to apply for asylum in those countries first
- ▶ Countless others

Policies started during Trump era that have continued into Biden era

- ▶ Remain in Mexico/“Migrant Protection Protocol”
- ▶ Title 42

What's next?

“everything worthwhile is done with others” (Mariame Kaba)

“care is the antidote to violence” (Saidiya Hartman)