



# Medicine Beyond Borders

## A Call to Action: Providing Care via Forensic Examinations and Legal Referrals

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### Background

There are more migrants worldwide fleeing war and systematic discrimination since immediately post-World War II.<sup>1</sup>

However, US asylum seekers have no legal right to court-appointed attorneys in their immigration proceedings, nor medical/mental health forensic examinations, and, in fact, the vast majority have neither. As such, national asylum grant rates range from 23-37.5%.<sup>3,4</sup> With the addition of legal representation, one study demonstrated that asylum grant rates increase from 24% to 41% (N=746);<sup>5</sup> add to legal representation medical/mental health forensic examinations, and the grant rate increases to 85-89%.<sup>3-5</sup>

With these significant disparities in asylum grant rates, human rights clinics have been established to provide pro bono medical/mental health forensic examinations and legal services for asylum seekers. Two examples of human rights clinics are the Denver Health Human Rights Clinic (HRC) in Colorado and the Yale Center for Asylum Medicine in Connecticut. The HRC works with the Rocky Mountain Immigrant Advocacy Network (RMIAN) and other immigration legal partners in order to ensure that individuals receive appropriate evaluation and representation for their asylum cases. Additionally, the HRC trains clinicians to identify patients with possible asylum-eligible histories and refers them to legal services for further evaluation. The Yale Center for Asylum Medicine conducts forensic medical interviews and examinations for asylum seekers who have been referred to the center and teaches health care trainees to perform these evaluations.



This brief provides information to help medical and mental health providers better identify eligible cases and refer asylum seekers to legal services through local agencies and to increase access to medical/mental health forensic examinations by increasing the number of trained clinicians.

By understanding asylum and other legal status options, providers can improve health outcomes in the following ways:

- 1 **Learn how to identify immigrants who may qualify for asylum and other legal statuses**
- 2 **Refer to legal resources and advocates**
- 3 **Learn how to perform medical or mental health forensic examinations**

## Understand legal status: how to determine if referral to a legal agency is warranted

Understanding the basics of legal status options allow health care providers to make referrals for legal services as needed. Asylum may only be claimed within one year of US arrival. In rare cases, one-year rule exceptions may be claimed, but legal representation is needed in these cases.

### Eligibility criteria for asylum and other legal status options

Status Type	Eligibility Criteria
Asylum*	<ul style="list-style-type: none"><li>• Fears or suffered persecution (extreme harm including beatings, torture, rape, forced underage marriage, female genital cutting) on account of race, religion, nationality, membership in a particular social group, or political opinion.</li><li>• Must generally apply within one year of arrival unless certain exceptions apply.</li><li>• Can include children or spouse as derivative.</li></ul>
Special Immigrant Juvenile Status (SIJS)	<p>Only for youth who are unmarried and under 21 years of age;</p> <ul style="list-style-type: none"><li>• Declared dependent on a juvenile court or placed under the custody of a state department or agency or an individual guardian or custodian;</li><li>• Reunification with one or both of the child's parents is not viable due to abuse, abandonment, neglect, or a "similar basis" under State law</li><li>• Not in child's best interest to be returned to home country</li></ul>
U Visa	<ul style="list-style-type: none"><li>• Victim of certain serious crimes that occur on US soil (such as domestic violence, sexual assault, and many others);</li><li>• Victim must be helpful or likely to be helpful in the investigation or prosecution of the crime</li><li>• Can include immediate family as derivatives</li><li>• Parents may qualify as indirect victims of crime against a child, even if child is a US citizen</li></ul>
Trafficking (T) Visa	<ul style="list-style-type: none"><li>• Victim of a severe form of trafficking in persons (i.e., sex or labor trafficking)</li><li>• Can include immediate family as derivatives</li></ul>
Violence Against Women Act (VAWA)	<ul style="list-style-type: none"><li>• Spouse - The abused spouse of a US Citizen or Legal Permanent Resident (LPR).</li><li>• Child/Step-child - The abused child/step-child of a US Citizen or LPR.</li><li>• Parents – The abused parent of a US Citizen</li><li>• Can include children as derivatives.</li></ul>

Consider patient safety: Discussing legal status may be frightening for patients. These conversations should be initiated after establishing rapport and explaining the reasons they are being discussed. It is not recommended to document such discussions in the patient's medical chart.



### SAMPLE PATIENT CONVERSATIONS

As I am learning about your history of injuries, abuse, abandonment, neglect, etc. It sounds like you may be eligible to apply for legal status. I have not documented any legal status information in your chart but would like to refer you to a free lawyer who can review your case. May I do that? My job is to assure that you receive appropriate health care and this is one way for me to help.

I see you do not have health insurance. I want to provide the best care possible for you. Your history of trauma and neglect in your home country concern me. If you need help navigating immigration status, I can link you to a free immigration lawyer to help review your case.

## Identify legal supports and make referrals

The US Department of Justice Executive Office of Immigration Review maintains a list of pro bono legal service providers by state: <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>.

An additional resource is the [National Immigration Legal Services Directory \(https://www.immigrationadvocates.org/nonprofit/legaldirectory/\)](https://www.immigrationadvocates.org/nonprofit/legaldirectory/); this tool can be used to search for free or low-cost Legal Service Providers by state, county, or detention facility.



### Colorado Spotlight

RMIAN is the only nonprofit organization that provides free immigration legal services to low-income immigrant children and adults in immigration detention in Colorado. In addition to providing legal services, RMIAN conducts individual intakes, “know-your-rights” presentations, and self-help workshops to assist detained individuals. RMIAN has partnered with the HRC to ensure that asylum seekers receive appropriate evaluation and representation for their asylum cases via a bi-directional medical-legal network.

“Unlike defendants in the criminal justice system, individuals in immigration proceedings do not have a right to free legal representation. Even children are often forced to represent themselves.”<sup>7</sup> RMIAN currently works to provide access to justice via the following programs: Detention Program, Children’s Program, Volunteer Lawyer Training, Advocacy & Education, Human Trafficking Project, Social Service Project, and the DACA Project.

In 2019, RMIAN staff attorneys directly represented 497 clients and conducted 2,354 individual legal intakes.<sup>7</sup> They have demonstrated an impact in the Colorado immigrant community and it can be seen through their countless testimonials such as this one by a RMIAN Detention Program Client, “RMIAN won me my freedom. Without my legal status, all my dreams and the future of my children would not have been possible.”<sup>7</sup>

## Learn how to do forensic exams

As highlighted by Physicians for Human Rights, “survivors of torture, domestic abuse, trafficking, and other forms of persecution often have nothing more than their own words to substantiate their claims to asylum. A physician can provide critical help by conducting a forensic medical evaluation of an asylum seeker that can document compelling evidence of physical and psychological trauma. When submitted with an application for asylum, these evaluations can make the difference between a person being granted safe haven in the United States and being forcibly returned to the very country where they were persecuted or harmed.”<sup>6</sup>

Medical providers can learn how to conduct medical or mental health forensic evaluations via trainings provided by the Yale Center for Asylum Medicine and Physicians for Human Rights: <https://bit.ly/33zU3BM>



### Connecticut Spotlight

The trained physicians at the [Yale Center for Asylum Medicine \(YCAM\)](#) perform forensic medical interviews and examinations “to document psychological and physical scars and functional impairments.”<sup>8</sup> A medical-legal affidavit is written and shared with the client’s attorney to be included as part of their immigration case. Physician and other health professional trainees learn to perform evaluations with faculty mentors. They participate in examinations at either the Yale Medical School or a detention facility. A formal training course is offered which prepares them to conduct these evaluations independently after becoming licensed.<sup>8</sup>

## References

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## Suggested Citation

Shah P, Young J, Wong S. *Medicine Beyond Borders – A Call to Action: Providing Care via Forensic Examinations and Legal Referrals*. September 2020. Available at: [farleyhealthpolicycenter.org](http://farleyhealthpolicycenter.org)



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The Human Rights Clinic (HRC) at Denver Health was founded by a core group of Denver Health providers from representative specialties—pediatrics, internal medicine, gynecology, infectious disease, family medicine and clinical psychology—to address the acute issues faced by some immigrants. Prior to its inception, there was no coordinated mechanism for conducting forensic exams for asylum seekers in Colorado.