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Immigrant Health Equity
and Legal Partnerships

MEDICAL-LEGAL PARTNERSHIPS AND THE UTILITY OF UNIVERSAL DECLARATIONS

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Overview

- Background on Universal Declarations and Use in Asylum, Withholding of Removal, and Convention Against Torture Cases
- Collaborative Development of Universal Declarations and Reports
- Outcomes: Utilizing Universal Declarations in Individual Cases
- Q&A



Immigrant Health Equity and Legal Partnerships (ImmHELP)

UCSF Health and Human Rights Initiative



Center for Gender & Refugee Studies



UCSF Weill Institute for Neurosciences

Department of Psychiatry and Behavioral Sciences



UCSF Department of Pediatrics



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Background on Universal Declarations and Use in Asylum, Withholding of Removal & Convention Against Torture Claims



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Universal vs. Individual Expert Declarations

Universal

- Developed to be used in many cases
- Specific to topic, issue, country
- No individual interviews
- Efficiency
- Timeline to prepare case

Individualized

- Specific to an individual
- Review client declaration and other relevant background documents
- Interview individual to make assessment and provide evaluation
- Resource-intensive



Purpose of Health Expert's Universal Expert Declaration

- Educate adjudicator as to how age, developmental stage, trauma history, medical/mental health history, etc. impact:
 - Memory
 - Credibility
 - Testimony
 - Ability to recount experiences
 - Decision-making
 - Substance abuse
 - Other issues
- Submitted as evidence to bolster the legal theory of the case



Utilizing Universal Declarations

- **Credibility**
 - Providing consistent testimony about trauma
 - Memory/recall
 - Expressions or tone when talking about traumatic event(s)
- **Decision-making**
 - Juvenile delinquency, conflicts with the law, or other acts with negative impact
 - Decisions made in a state of panic (at the border for example)
 - Missing a court date/*in absentia* removal orders
- **Foundational**
 - Instead of or to supplement individualized evaluation



Collaborative Development of Universal Declarations



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Collaborative Declaration Development

- Interdisciplinary approaches to case hypotheticals demonstrates need for universal declarations
 - Case examples raised in group calls
 - Space for questions from medical professionals
 - Opportunity to explain legal relief elements, requirements, trends
 - Health impact of past, cumulative, ongoing trauma
- Immigration policy and legal changes



Distinguishing Universal Declaration (#1) and Consensus Report (#2)

- In conversations around #1, decision-making surfaced
- Decision-making focused on a smaller subgroup on cases
- Led to #2 consensus report re decision-making
- More specific declarations needed to address specific hypos raised by legal advocates
- Why not one universal document?
 - Specific topic easier to read for the adjudicator
 - Avoid introducing irrelevant themes into the case/record
 - Streamlining evidence to strengthen arguments



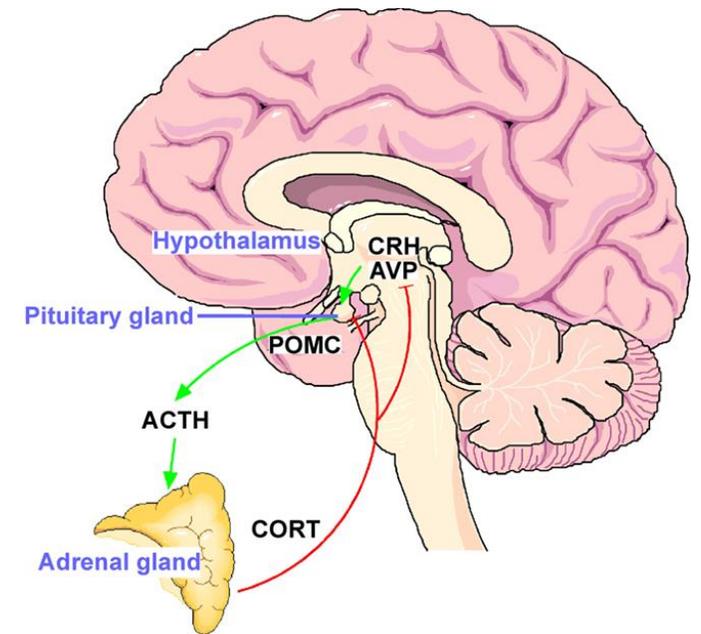
Why a Consensus Report?

- Expert declaration: one individual swearing under penalty of perjury
- Requirement to qualify expert
- This report had multiple authors; co-authoring more common
- Rather a declaration, it was titled a consensus report
- Assessing how courts treat this report



Declaration #1 (Universal)

- Purpose
 - Psychological impact of trauma on children and adolescents
 - ☐ Differential response to impact on adults
- Issue
 - Credibility
- Topics
 - Complex trauma: Pre-migration, en route, post migration
 - Neurodevelopmental response
 - ☐ Young children vs. adolescents
 - ☐ Pubertal timing
 - Mental health risk
 - ☐ e.g., PTSD, depression, anxiety
 - Impact on memory and decision-making



Declaration #2 (Consensus)

- Purpose
 - Factors influencing decision-making in children and adolescents
 - ☐ Adjudicators need to consider trauma when making decisions based on past behavior of immigrant youths
- Issue
 - Conflicts with the law and permanency of behaviors
- Topics
 - Neurodevelopmental impacts of trauma
 - ☐ Particularly on decision-making
 - Increased risk for risk-taking behaviors



Outcomes Analysis: Utilizing Universal Declarations in Individual Cases



Outcomes – Declaration #1 (Impact of Trauma)

September 2020 (disseminated 4800+)

- Completed in June 2018

- Process

- Universal/One Author vs. Consensus/Organizational and/or Multiple Authors

- Need for decision-making declaration



Outcomes – Declaration #2 (Decision-Making; Consensus)

(<https://humanrights.stanford.edu/programs/human-rights-trauma-mental-health/expert-trial-reports>)

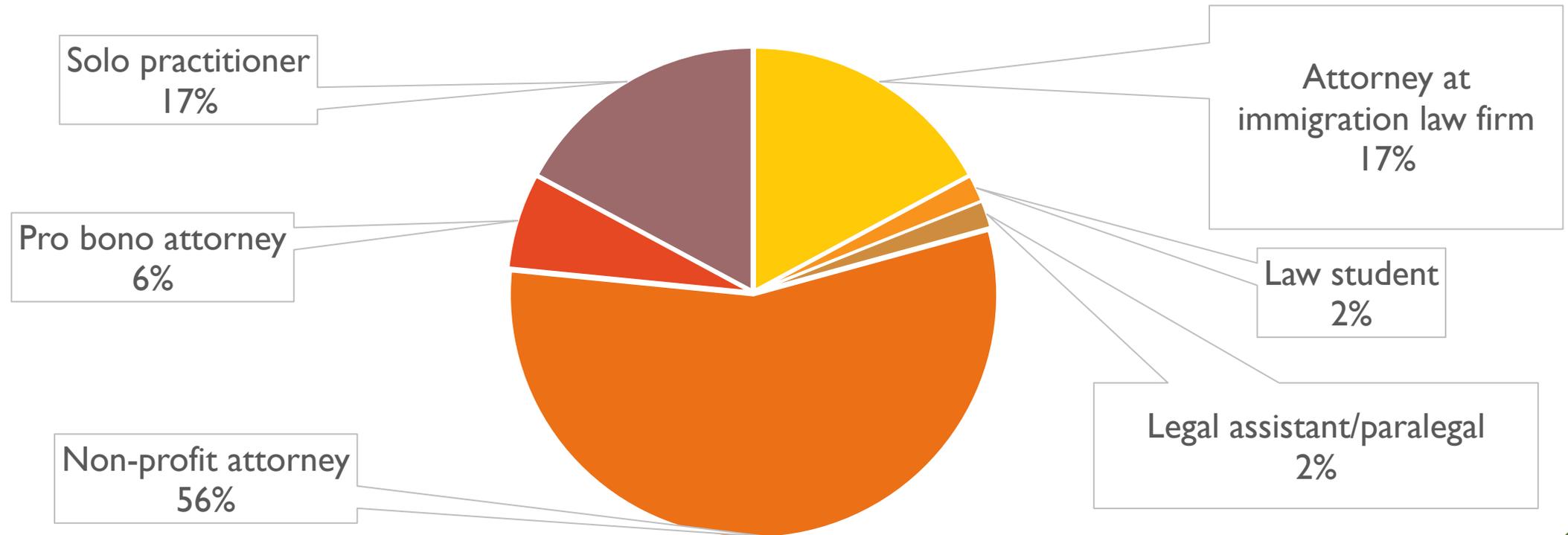
Data and Outcomes

- User access and outcome survey (n=64 since July 2020)
 - Case characteristics
 - ☐ Case type: 80% asylum, 9% T-Visa, 14% U-Visa, 30% SIJS/VAWA, 5% CoR, 3% in absentia, 11% other
 - ☐ Age: 10% <6, 11% 6-11, 42% 12-17, 44% 18-25, 11% >25
 - ☐ Gender: 52% male, 40% female, 6% other
 - ☐ Unaccompanied minor: 58%
 - ☐ Persecution type: 52% gang violence, 38% DV, 32% gender/ethnic identity discrimination, 11% political affiliation, 9% religious affiliation, 8% sexual orientation, 11% trafficking/exploitation, 6% disability status



CGRS Universal Expert Declaration Survey: Demographics

In what capacity do you work on asylum cases?



Procedural Stage of Submission

Declaration	AO	CFI/RFI	IJ	BIA
Stuart Lustig: Non-Disclosure of Trauma at Border	3		17	
Stuart Lustig: Trauma and Memory	10	1	38	2
William Martinez: Childhood Trauma and Child Neurodevelopment	3		7	

AO – Asylum Office

CFI – Credible Fear Interview

Appeals

RFI – Reasonable Fear Interview

IJ – Immigration Judge

BIA – Board of Immigration



General or Expert Evidence?

Declaration submitted as:	General evidence	Expert evidence
Stuart Lustig: Non-Disclosure of Trauma at Border	11	6
Stuart Lustig: Trauma and Memory	28	11
William Martinez: Childhood Trauma and Child Neurodevelopment	6	1



Submitted with Individualized Declaration

Declaration	Yes	No
Stuart Lustig: Non-Disclosure of Trauma at Border		18
Stuart Lustig: Trauma and Memory	12	28
William Martinez: Childhood Trauma and Child Neurodevelopment	2	4



Universal Declaration Survey Takeaways

- Cost effective for clients who cannot afford individualized declaration
- Many attorneys haven't submitted universal declarations as expert evidence; challenges met by some who have
- Some IJs cite to universal decs in their decisions
- Helps build the record/preserve arguments for appeal
- Demand for additional topics

Common Objections & Grounds for Exclusion/Limited Weight	
DHS Objections to Admission	IJ Bases for Exclusion/Limited Weight
<ul style="list-style-type: none"> • Expert not available for cross examination • Expert lacks qualifications or expertise • Biased witness • Declaration not probative/tailored to specific client/claim • Conclusory/unsupported by facts or authority 	<ul style="list-style-type: none"> • Admission without cross-examination is not fundamentally fair • Expert lacks relevant expertise or qualifications • Declaration not probative/tailored to specific client/claim • Declaration accorded diminished weight (due to, e.g., lack of support, out of date, lack of recent work in field, etc.) • Declaration makes legal conclusion(s) in IJ's purview



CGRS Practice Advisory

Litigation Strategies for Presenting Universal Expert Declarations in Fear-of- Return Claims

CGRS Practice Advisory
December 2021



Center for Gender & Refugee Studies

Vera INSTITUTE
OF JUSTICE

- I. Overview and Use of Universal Declarations
 - II. The Legal Framework for Admission of Expert Evidence
 - III. Strategies for Overcoming Common Challenges by DHS and IJs
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- *Available through CGRS for the Technical Assistance Library for any case registered at: <https://cgrs.uchastings.edu/assistance/request> or by email CGRS-TA@uchastings.edu if not case-specific.



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Q&A



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