



PRACTICE POINTER:

**ETHICAL AND REGULATORY  
BOUNDARIES FOR PARTIALLY  
ACCREDITED DOJ REPRESENTATIVES  
ASSISTING NONCITIZENS IN  
IMMIGRATION COURT**



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# Introduction

As demand for affordable immigration legal services continues to outweigh capacity, nonprofit providers are increasingly called upon to assist noncitizens in removal proceedings. To address the large demand, *pro se* assistance has become a popular service delivery model. This practice pointer addresses the assistance that partially accredited representatives can provide to noncitizens in removal proceedings under the federal immigration regulations.

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# Definitions

The boundaries or limitations of partially accredited representatives' interactions with noncitizens in removal proceedings before the Executive Office for Immigration Review ("EOIR" or "immigration court") are determined by the definitions outlined below. Familiarity with these definitions will facilitate a practical understanding of how partially accredited representatives may be able to legally and ethically assist noncitizens who are appearing in immigration court.

## Practice

To practice means exercising professional judgment to provide legal advice or legal services related to any matter before EOIR. Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing legal advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on applicable facts and law; or appearing on behalf of another person in any matter before EOIR. 8 C.F.R. § 1001.1(i).

## Preparation

The term preparation means the act or acts consisting solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, where such acts do not include the exercise of professional judgment to provide legal advice or legal services. When this act is performed by someone other than a practitioner, the fee for filling in blank spaces on printed forms, if any, must be nominal, and the noncitizen may not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure. 8 C.F.R. § 1001.1(k).

## Document Assistance

"Document assistance" is the drafting, completing, or filling in of blank spaces of any motion, brief, form, or other document or set of documents intended to be filed with the immigration court or BIA. 8 C.F.R. §§ 1003.17(b), 1003.38(g)(2). Document assistance includes assistance that may be considered "practice" as defined at 8 C.F.R. § 1001.1(i) or "preparation" as defined at 8 C.F.R. § 1001.1(k).

## Practitioner

The term practitioner means an attorney as defined in paragraph (f) of [section 1001.1 of the regulations] who does not represent the Federal Government, or a representative as defined in paragraph (j) [section 1001.1 of the regulations]

- Paragraph (j) of section 1001.1 and section 1292.1(a) provide that only fully accredited representatives are "practitioners."

# Limitations on Assisting Noncitizens in Removal Proceedings Before the Executive Office for Immigration Review (EOIR)

When working with noncitizens on any matter that is pending before the immigration court, partially accredited representatives are limited to only helping the applicant fill in the blank spaces on the preprinted forms. This limitation is particularly pertinent for noncitizens seeking assistance with applications for asylum and withholding of removal, as partially accredited representatives often have comprehensive knowledge of asylum law from practicing in the affirmative context. Partially accredited representatives, however, are prohibited from providing any legal analysis or advice on strategies to asylum seekers in removal defense.

Under the regulations, a partially accredited representative is authorized only to represent clients before the Department of Homeland Security (DHS). 8 CFR § 1292.1(4). Partially accredited representatives cannot engage in any conduct that would fall under the definition of “**practice**” before the Executive Office for Immigration Review (EOIR). **Practice** before EOIR means “exercising professional judgment to provide legal advice or legal services related to any matter before EOIR.” 8 CFR § 1001.1(i).

More specifically, **practice** includes:

- Determining available forms of relief from removal or protection;
- Providing advice regarding legal strategies;
- Drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or
- Appearing on behalf of another person in any matter before EOIR. 8 CFR § 1001.1(i).

Partially accredited representatives may ethically assist noncitizens in proceedings before EOIR only in a very limited way. The only permissible help by partially accredited representatives in removal proceedings is filling out blank spaces on a form without using legal knowledge to analyze facts or law (i.e., without “**practicing**”). This form of “**document assistance**” falls under the definition of “**preparation**” in the regulations.

**Preparation** means “the act or acts consisting solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, where such acts do not include the exercise of professional judgment to provide legal advice or legal services.” 8 CFR § 1001.1(k).

It is difficult for an accredited representative to limit their interactions to **preparation** because the regulations state that an individual providing **preparation** “may not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.” 8 CFR § 1001.1(k). Partially accredited representatives, of course, possess broad knowledge of immigration law, and many even represent clients before the U.S. Citizenship and Immigration Services (USCIS) asylum office.

Therefore, for partially accredited representatives to assist noncitizens in removal proceedings ethically and according to the regulations, they must be diligent in separating themselves from the **practice** of law in this setting. This means they can only provide **preparation** assistance by filling in the fields of published forms according to the answers the noncitizen provides and not provide any legal advice or counsel on strategy.

Given the difficulty in requiring partially accredited representatives to set aside their legal knowledge to avoid **practice**, organizations should avoid having partially accredited representatives participate in **preparation** assistance for noncitizens in removal proceedings.

## Hypothetical Scenarios

### Scenario 1: What is the basis for the asylum claim?



A partially accredited representative is providing document assistance to an asylum seeker in removal proceedings. While recording the applicant's answers on the Form I-589, Application for Asylum and for Withholding of Removal, they reach part B, question 1, which asks why the applicant is applying for asylum or removal and requires that the applicant select one of five boxes representing the protected grounds for asylum. After hearing the partially accredited representative read the question and the answer options, they are unsure about which of the five protected grounds applies to the persecution they fear. The *pro se* applicant asks the partially accredited representative to explain the protected grounds and asks what box they think should be checked.

The partially accredited representative providing document assistance should proceed with caution and avoid providing any analysis. Advising on protected grounds would cross the line from document preparation into practice because it involves applying facts to law regarding a matter before the immigration court. To avoid the unauthorized practice of law, the partially accredited representative must explain that they can't give advice and can only assist by transcribing the answer the applicant wishes to submit. Because of the risk of crossing the line into unauthorized practice of law, organizations should generally refrain from having partially accredited representatives assist asylum seekers in this way.

### Scenario 2: What is the definition of torture?



While a partially accredited representative is providing document assistance to a *pro se* asylum applicant by filling in the blank spaces on the printed I-589, they reach question 4 in Part B, which reads "Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?" The applicant states that they do not know exactly what "torture" means but proceeds to tell the partially accredited representative about a time they were severely beaten. The applicant says that they fear they will be beaten again in the same way as before, or worse, but does not know how to answer the question and asks the representative whether the harm they've described meets the definition of "torture."

The regulations implementing the U.S.'s obligations under the United Nations Convention Against Torture provide a specific legal standard for adjudicators to decide whether someone warrants protection under the Convention or not. Understandably, noncitizens in removal proceedings are often unsure what this term means and whether the harm they suffered or fear they will suffer amounts to torture under the Convention. When providing document assistance to a noncitizen seeking asylum and protection under the Convention, the partially accredited representative should proceed with caution and avoid providing analysis of whether certain facts rise to the definition of torture. Instead, to remain within their ethical and regulatory boundaries, the partially accredited representative should advise the applicant that they cannot provide any advice or apply the facts of the applicant's case to the law. To facilitate the applicant's ability to understand, the partially accredited representative can point the applicant to page 3 of the I-589 instructions, which provides the definition of torture, and simply record the applicant's answer. Organizations should generally refrain from having partially accredited representatives assist asylum seekers in this way to avoid crossing the line into the unauthorized practice of law.

## Assisting Noncitizens in Removal Proceedings With Change of Address Forms

At times, partially accredited representatives may be called upon to help noncitizens update their address with the immigration court. A partially accredited representative can assist the noncitizen in completing the Form EOIR-33, Change of Address, as long as the assistance is truly limited to filling out the form. The partially accredited

representative must be careful to avoid performing any legal analysis or providing advice on legal strategy and should keep in mind that any assistance requiring professional judgment is off limits.

As explained above, a partially accredited representative may engage in **preparation**, but may not **practice** when it comes to matters before EOIR. Recall that **practice** means exercising professional judgment to provide legal advice or legal services on matters before EOIR, while **preparation** means filling in blank spaces on printed forms. Filling out a change of address form does not require giving advice on legal strategy or providing analysis of fact and law, so this type of assistance is generally allowable under the regulations.

Partially accredited representatives must be aware, however, that the unrepresented noncitizen who needs assistance with a change of address form will likely also have many questions regarding the substance of their case as well as law and procedure. Partially accredited representatives cannot ethically assist with this portion of their case.

Partially accredited representatives should also be aware that failing to properly and timely file a change of address form in immigration court can result in the noncitizen being ordered removed (deported) in absentia (in their absence).

It is generally difficult to provide **document assistance** that is truly limited to only **preparation** without sharing legal knowledge (which could amount to providing legal advice and would constitute **practice**). However, given the simplicity of filing an EOIR-33, as well as the importance of a noncitizen keeping their address up to date, this may be an area where a partially accredited representative can feel comfortable assisting. Again, their assistance must truly be limited to filling in the blank spaces on forms.

### Hypothetical Scenarios:



**Scenario 1:** A noncitizen in removal proceedings asks a partially accredited representative for assistance in updating their address with the immigration court. The representative fills out the blank spaces on the Form AR-11, Alien’s Change of Address Card Online, but fails to file the EOIR-33 Change of Address/Contact Information Form for Immigration Court. Since the AR-11 is meant for USCIS and the update is not shared with EOIR, the Immigration Court was not provided the noncitizen’s new address and resulted in the hearing notice being sent to the prior address on file. The noncitizen, unaware of the scheduled hearing, does not appear in immigration court and the immigration judge issues an order of removal in absentia against the noncitizen.

Because of the serious implications of failing to timely and correctly update the noncitizen’s address with the immigration court, anyone assisting in this capacity should be cautious to avoid mistakes.



**Scenario 2:** A partially accredited representative meets a noncitizen in removal proceedings who needs assistance updating their address with the immigration court. The partially accredited representative helps to complete the online EOIR-33, Change of Address/Contact Information Form for Immigration Court, through the respondent’s portal, filling in the blank spaces based on the noncitizen’s answers to the questions on the form. The partially accredited representative makes a copy for the noncitizen to mail to the Department of Homeland Security Office of the Principal Legal Advisor. The noncitizen has many questions about whether their asylum claim is strong and if they should request a continuance before their upcoming individual merits hearing. The partially accredited representative advises that they are unable provide advice about strategy for a matter before the court and encourages the noncitizen to seek advice from an experienced immigration attorney or fully accredited representative.

Since the partially accredited representative limited their interactions to preparing the EOIR-33 and avoided giving legal advice, they are not “**practicing**” before the immigration court and may assist in this way.

## Assistance With Motions to Change Venue, Motions to Continue, or Other Similar Motions

Partially accredited representatives can only engage in **preparation**, which is limited to filling in blank spaces on printed forms with information provided by the applicant. Since motions require drafting a unique document, **preparation** is not possible. Any **document assistance** of this nature (where no form is printed for a particular request or application), therefore, is elevated to the **practice** of law.

Additionally, drafting and submitting court motions almost always involves professional judgment amounting to the **practice** of law, which, as previously noted, is prohibited for partially accredited representatives for any matters pending before the immigration court.

For instance, filing a motion to change venue necessitates a discussion with the noncitizen about the consequences of causing delays in removal proceedings, as well as whether submission of written pleadings as part of the motion is required. Such advice regarding legal strategy constitutes **practice** relating to a matter before the immigration court, which is prohibited for partially accredited representatives.

Further, filing a motion to continue requires legal analysis, or applying facts to applicable law, to justify the request. Under the regulations, such analysis constitutes **practice** relating to a matter before the immigration court, which is prohibited for partially accredited representatives.

### Hypothetical Scenarios:



**Scenario 1:** A noncitizen approaches a partially accredited representative to assist with a change of venue from Texas to Maryland where they currently reside. The noncitizen also wants to know how moving their case will affect their application for a work permit. The partially accredited representative declines to assist, knowing that filing such a motion and advising the client about matters related to the work permit crosses the line into the **practice** of law. Instead, the partially accredited representative refers the noncitizen to attorneys and fully accredited representatives for consultation about the change of venue.

This is the correct course of action because a partially accredited representative drafting a motion for which a printed form does not exist, as well as giving advice about the motion's implications, would be engaging in the practice of law for matters before the immigration court, which is prohibited by the regulations.



**Scenario 2:** A noncitizen in removal approaches a partially accredited representative to ask for help in submitting a motion for continuance in immigration court. The noncitizen has already submitted an asylum application but needs more time because they were recently assaulted and want to file an I-918, Petition for U Nonimmigrant Status. The partially accredited representative finds a template motion to continue online and a practice advisory that explains what information should be included in the motion. The partially accredited representative reads in the practice advisory that the court should consider whether the noncitizen has been diligent in pursuing the U-Visa. The accredited representative asks the noncitizen for information about when the assault occurred, when the police report was filed, and when the I-918 application was submitted. Based on the noncitizen's answers, the accredited representative writes a paragraph into the motion concluding that the noncitizen has been diligent and should be granted a continuance.

Even though the partially accredited representative gives the completed motion for the noncitizen to file themselves, the partially accredited representative has applied the facts of the noncitizen's case to the law and has therefore engaged in unauthorized **practice** before the court.

## Assistance to Noncitizens in Removal Proceedings Under the Supervision of a Licensed Attorney or Fully Accredited Representative

With the supervision of an attorney or fully accredited representative authorized to practice before the immigration court, partially accredited representatives can assist with the preparation of any documents or motions for matters before the court. Even under appropriate supervision, partially accredited representatives should still be careful to avoid giving legal advice or counsel and should direct the noncitizen's questions about the law and strategy to the attorney or fully accredited representative.

The supervising attorney or fully accredited representative must sign the applicable forms as the preparer and must file Form EOIR-61, Notice of Entry of Appearance for Document Assistance Before the Immigration Court, as explained further below.

### Form EOIR-61

On Nov. 14, 2022, EOIR implemented a new rule titled “Professional Conduct for Practitioners-Rules and Procedures, and Representation and Appearances.” 87 F.R. 56247. The new rule requires practitioners (individuals who are authorized to practice before EOIR) to submit Form EOIR-61 whenever they provide **document assistance** to *pro se* respondents.

Since partially accredited representatives are not authorized to practice before EOIR, they do not meet the definition of practitioner in this context and should not submit an EOIR-61.

Any attorney or fully accredited representative supervising the work of partially accredited representatives (or any non-practitioner) in filling out forms or motions for submission to the immigration court must file an EOIR-61. The regulations require attorneys and fully accredited representatives (practitioners) to file e EOIR-61 for any type of **document assistance**, regardless of whether it would constitute **preparation** or **practice**.

## Representing Asylum Seekers Who Have Been Issued a Notice to Appear (NTA) That Has Not Been Filed With the Immigration Court

Partially accredited representatives are authorized to represent asylum seekers before the USCIS Asylum Office. In cases where a Notice to Appear (NTA) has been issued, but has not been filed with the immigration court, USCIS retains jurisdiction over the asylum application.

When representing an asylum seeker before USCIS, the partially accredited representative is not “**practicing**” before the immigration court because the matter is not before the immigration court until the NTA is properly filed. Because of the likelihood that the NTA will eventually be filed, however, the representative should clearly define the scope of the representation so the client is aware they will no longer be able to continue representation if jurisdiction transfers to the immigration court.

### Tip: Communicating Limited Scope

“Since you are in removal proceedings, you should consult with an attorney or fully accredited representative as soon as possible. Even though I’m helping you with this application, I cannot practice in immigration court and can’t advise you about strategy. There are a lot of deadlines for applications in immigration court, so you should seek assistance right away.”

Filing an asylum application with the incorrect agency can have dire consequences for the asylum seeker, and the partially accredited representative must ensure that the case is not before the immigration court before filing with the asylum office. To check the status (or existence) of a case before the court, the partially accredited representative can visit the court's [automated case information](#) tool.

While it is important for the partially accredited representative to advise of the probability that the case could be referred to immigration court, the representative should be careful to avoid answering questions about immigration court proceedings. Instead, the best practice would be for the representative to remind the client of the scope of their relationship and to advise that they consult with an attorney or fully accredited representative who has experience representing asylum seekers in removal proceedings.

## Representing Noncitizens in Matters Before USCIS When the Noncitizen Is Also in Removal Proceedings in Immigration Court

Partially accredited representatives may represent noncitizen in matters before DHS, even if they are in removal proceedings but cannot advise on matters that are “before the immigration court.” This means that the partially accredited representative must be able to competently discern whether jurisdiction rests with the court or with USCIS for a particular matter, which can be a complicated question in some cases.

To avoid any confusion or impression that the representative is also handling the removal portion of the client’s representation, partially accredited representatives should clearly communicate the limited scope of the relationship and should document these conversations through the client services agreement or engagement letter. They should also communicate the scope of the representation verbally to the client in the client’s best language or through an interpreter.

Additionally, partially accredited representatives should advise noncitizens in removal proceedings that they should promptly seek consultation and representation.

### Hypothetical Scenarios:



**Scenario 1:** A Cuban national who is in removal proceedings approaches a partially accredited representative for assistance with an adjustment of status application under the Cuban Adjustment Act. The representative correctly determined that USCIS has jurisdiction over the application, despite the applicant being in removal proceedings, because they were designated as an “arriving alien” upon entry to the United States. The accredited representative only discusses the adjustment of status application, believing that they are not authorized to mention the removal proceedings because of their partial accreditation. As such, the accredited representative does not explain the scope of the representation, and the retainer agreement does not have a section clearly explaining the scope. The noncitizen mistakenly thinks that because the accredited representative is handling the adjustment application, they will also appear in court. Because the noncitizen was not instructed to find separate representation for matters in immigration court, they think the accredited representative has taken care of the court proceedings and fails to file any other applications for relief for which they might be eligible. Consequently, the noncitizen misses the one-year filing deadline to submit an asylum application.

Because of the strong likelihood a client may assume the partially accredited representative is handling all aspects of their representation, it is extremely important that the limited scope be communicated clearly to ensure the client understands the need to seek separate representation in removal proceedings.



**Scenario 2:** A partially accredited representative works with a noncitizen on submission of a U visa to USCIS. The noncitizen is in removal proceedings. The partially accredited representative clearly explains that the scope of their representation is limited to the U visa and advises the noncitizen to seek counsel for representation in immigration court. The noncitizen signs a written retainer agreement that makes the scope of representation clear. The noncitizen follows the partially accredited representative’s advice and retains a fully accredited representative for representation in court. The noncitizen signs a confidentiality waiver authorizing the partially accredited representative to share the U visa file, as necessary, with the fully accredited representative.

Clear communication about limiting the scope of representation allows the partially accredited representative to handle the U visa without jeopardizing the noncitizen’s ability to meet their responsibilities in immigration court.

## Conclusion

It is vital for partially accredited representatives to carefully approach interactions with noncitizens in removal proceedings in order to ensure ethical practice and avoid discipline. CLINIC encourages practitioners assisting noncitizens in removal proceedings to pursue full accreditation. CLINIC Affiliates who have questions about the Department of Justice Recognition and Accreditation program or any other questions relating to program management are encouraged to reach out via CLINIC’s [Affiliate Support Form](#).