

CALIFORNIA COLLABORATIVE FOR IMMIGRANT JUSTICE:

ASYLUM, WITHHOLDING OF REMOVAL & THE CONVENTION AGAINST TORTURE

WHAT IS IN THIS PACKET?

- A** – Information about Asylum, Withholding of Removal, and the Convention Against Torture
- B** – Checklist for My Asylum Case
- C** – Frequently Asked Questions about Form I-589
- D** – How to Write a Declaration
- E** – Preparing for Your Individual Hearing

WHAT IS ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE?

Asylum, Withholding of Removal, and protection under the Convention Against Torture are three forms of relief from removal or deportation for people who are afraid to return to their home countries. The forms of relief have different requirements and different benefits.

ASYLUM

Asylum is one form of relief available to people who are afraid to return to their home countries.

If the judge grants you asylum, you will be released, have permission to work immediately and be eligible for permanent residency one year from the date asylum is granted. You will be able to apply for travel documents. You can eventually become a U.S. citizen.

You must be able to check all of the following boxes in order to apply for asylum:

- ☐ **You are applying within the one-year deadline.**
 - You must apply within one year of your most recent arrival in the United States, or
 - You must apply within a reasonable time after establishing that there are:
 - Changed circumstances that make you eligible for asylum when you weren't eligible before (e.g., a new government is now in control in your home country and is hostile toward your religion), or
 - Extraordinary circumstances that prevented you from applying within your first year of residence in the United States (e.g., you arrived in the US as an unaccompanied minor child or you have been in the United States with authorization before now).
- ☐ If you arrived to the United States southern land border after traveling through countries other than your country of origin, you will only qualify for asylum if you are able to comply with one of the following exceptions:
 - You are Mexican;

- You arrived to the U.S. border to request asylum before July 16, 2019 (even if you had to wait in Mexico to approach the Port of Entry due to the wait list or metering system);
 - You applied for protection from persecution or torture in at least one country that you traveled through and you received a decision denying the protection (or you only traveled through countries that are not part of the 1951 UN Refugee Convention¹); or
 - You are the victim of severe trafficking in persons.
- ☐ **You have been harmed in the past, and/OR you fear harm in the future.** You must show that you have been persecuted in the past, or that there is at least a 10% chance you will be persecuted if returned to your home country. The following are examples of persecution:
- Serious physical harm,
 - Serious threats or attempts to harm ,
 - Coercive medical or psychological treatment,
 - Overly harsh punishment by police or government,
 - Very severe discrimination and economic persecution, or
 - Severe criminal extortion or robbery.
- ☐ **The persecution you fear is on account of one of the five protected grounds.** You must show that the abuse has been, or would be, because of your:
- Race or ethnicity,
 - Religion,
 - Nationality,
 - Political opinion, or
 - Membership in a particular social group (for example, if you would be killed because of domestic violence, your sexual orientation, or because of your family).
- ☐ **The government of your home country is responsible for the abuse, or cannot or will not help you.** You must show that the abuse has been, or would be, inflicted by the government or by a group the government is unable or unwilling to control.
- ☐ **You do not have an aggravated felony or “particularly serious crime”.** If you have been convicted of an aggravated felony, you are not eligible to apply for asylum. (See instead the section on Withholding of Removal. See the “Guide for Detained Immigrants” for information on crimes that are considered aggravated felonies.)
- ☐ **You can show you deserve to receive asylum because of your good character.**

¹ NOTE: El Salvador, Guatemala, Honduras, and Mexico are part of the 1951 UN Refugee Convention.

WITHHOLDING OF REMOVAL

Withholding of Removal (WOR) is harder to win than asylum, and it also does not give you as many rights in the United States.

WOR will not make you eligible for permanent residency or citizenship. Instead, you will be technically ordered deported, but the United States will not deport you to the country where you fear being persecuted. However, it is possible that you may be deported to a third country you may have ties with. After this relief is granted, you cannot return to the U.S. if you leave.

With WOR you can receive permission to work in the United States, and will not be deported unless the government re-opens your case and shows that you are no longer likely to be persecuted in your home country.

You might be able to apply for WOR even if you have an aggravated felony. You can also apply at any time, not just within your first year of living in the United States. Finally, you don't have to show the judge you deserve WOR – if the judge finds that you meet the requirements below, she must grant.

You must be able to check all of the following boxes in order to apply for WOR:

- ☐ **You are more likely than not to be harmed in the future.** You must show that there is at least a 50% chance you will be persecuted if returned to your home country. The following are examples of persecution:
 - Serious physical harm,
 - Serious threats or attempts to harm ,
 - Coercive medical or psychological treatment,
 - Overly harsh punishment by police or government,
 - Severe discrimination and economic persecution, or
 - Severe criminal extortion or robbery.
- ☐ **The persecution you fear is on account of one of the five protected grounds.** You must show that the abuse has been, or would be, because of your:
 - Race or ethnicity,
 - Religion,
 - Nationality
 - Political opinion, or
 - Membership in a particular social group.
- ☐ **The government of your home country is responsible for the abuse, or cannot or will not help you.** You must show that the abuse has been, or would be, inflicted by the government or by a group the government is unable or unwilling to control.
- ☐ **You do not have a “particularly serious crime” and have not persecuted others.** If you have been convicted of an aggravated felony and sentenced to 5 years or more, or a drug trafficking offense, you are probably not eligible for WOR.

CONVENTION AGAINST TORTURE

Protection under the Convention Against Torture (CAT) requires proof that it is **more likely than not** you will be tortured upon return to your home country by the government of that country or if the government knows and allows the torture. Torture is defined as “an extreme form of cruel and inhuman punishment” that “must cause severe pain or suffering.” Unlike asylum or WOR, there are no criminal bars to applying for protection under CAT.

HOW DO I APPLY FOR ASYLUM, WOR AND/OR CAT?

You need to submit the following at your master calendar hearing:

- ☐ Form I-589 (the application for asylum, WOR, and CAT)

Then you should work on and be ready to submit the following at your individual hearing:

- ☐ A declaration, telling the judge about any past persecution you have suffered and/or why you fear future persecution. If you are applying more than one year after entering the United States, you should also include an explanation of the changed circumstances that now make you eligible for asylum or the extraordinary circumstances that prevented you from filing within the first year. Look at the “My Declaration” guide, Document C, for a more detailed explanation.
- ☐ In addition to the application and your declaration, you should submit any **supporting documentation**: (See Checklist – Document B for more details). The more documentation you have, the stronger your case will be.

Once you have written your declaration, and received any supporting documents, write out the table of contents and make two copies of the entire package. Be prepared to give the **original** to the court and also be sure to keep a copy for yourself.

CHECKLIST FOR MY ASYLUM CASE

STEP 1: FIGURE OUT IF YOU QUALIFY

✓	I read Document A , Information about Asylum, Withholding of Removal, and Convention Against Torture.
	I suffered persecution in my country or fear persecution in the future.
	The persecution I suffered or that I fear suffering was account of my race, religion, nationality, political opinion or membership in a particular social group.
	These people: _____ will do this to me: _____ because of: _____. (For example: "The Christians will kill me because I am a Muslim". Or: "The MS gang will kill me because I testified against a gang leader.")

STEP 2: FILL OUT THE APPLICATION

	I have filled out the Form I-589 in English.
	I have reviewed Document C , Frequently Asked Questions about Form I-589.
	I have reviewed Document D , Information about Declarations.
	I have written my declaration in English or had it translated in English, and the declaration provides details about my story and why I am afraid to go back to my country.

STEP 3: SUBMIT THE APPLICATION IN COURT

	I brought my completed I-589 to my court hearing.
	I submitted the application to the Judge.

STEP 4: GATHER EVIDENCE

	<p>I have DOCUMENTS TO PROVE MY IDENTITY. For example:</p> <ul style="list-style-type: none"> • Passport • Driver's License/State ID • ID from my country (for example, a Mexican matricula consular or a consular ID card) • Birth Certificate
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	<p>I have GENERAL HUMAN RIGHTS REPORTS. For example:</p> <ul style="list-style-type: none"> • Reports from Human Rights Organizations like Amnesty International, the United Nations, Human Rights Watch or others that address the persecution to people in my situation. • Report from an expert on the conditions in my country of origin.
	<p>I have OFFICIAL DOCUMENTS. For example:</p> <ul style="list-style-type: none"> • Death Certificates of people in my situation who have died because of the persecution. • Hospital Reports showing the injuries from the persecution. • Police Reports that document the persecution and show that the police were asked to protect me or people in my situation. • Real membership cards from the groups that I am a part of that are being persecuted (for example, a church, a political party or a human rights organization).
	<p>I have NEWSPAPER ARTICLES AND PHOTOGRAPHS. For example:</p> <ul style="list-style-type: none"> • Newspaper articles that describe the persecution to me or my friend and family. • Newspaper articles that describe the conditions or other examples of persecution happening to other people in my situation. • Photographs demonstrating the injuries or persecution I suffered. • Photographs showing that I am a member of the group I'm claiming to be a member of (for example, photos of me in a uniform, or at a political rally).
	<p>I have AFFIDAVITS or LETTERS OF SUPPORT. For example:</p> <ul style="list-style-type: none"> • Affidavits from people in my country describing what happened to me and what would happen to me if I had to go back. • Affidavits from people not in my home country describing what happened to me and what would happen to me if I had to go back. • Affidavits from people describing what happens to people in my specific situation.

STEP 5: PREPARE FOR THE INDIVIDUAL HEARING

	I filled out the Respondent's Supporting Documents sheet with all of the evidence I could get.
	I made two copies of my supporting documents, one for the judge and the ICE attorney.
	I have arranged for any witnesses to come to court or testify by phone.

ABOUT FORM I-589

PART A.I

#8: For your mailing address, use the address for the detention center:

#14: This question asks you about your present nationality. Your nationality and citizenship are usually the same, but if you don't think this is true for you, you should make this clear in the application.

#15: This question asks you about your nationality/citizenship at birth. If you have moved to another country permanently and received citizenship, it may be different than #14.

#16: Some people belong to specific ethnic or tribal groups within their country. For example, people from Guatemala may be Mayan and of a specific ethnic group. If you do not have a distinct tribal group, the answer to this may be "Latino," "White/Caucasian," or another racial background.

#17: This question asks you about both your main religion (such as Jewish, Christian, Buddhist, Muslim, etc.) and also any particular part of that religion you belong to (such as Orthodox, or Catholic).

#18: You are now in removal proceedings, and need to check box "b". Also indicate if you have ever been in immigration proceedings before.

#19 a-c: These questions request information about your most recent departure from your country and entry into the U.S., as well as previous entries. If you entered without permission or illegally, write "N/A" where it asks for "I-94 number" and "no inspection" or "none" for the Status.

#23-25: You may speak several languages. #23 asks for the language you speak best, and you should also note any specific dialect within that language. In #24, only check yes if you are 100% comfortable speaking to the Judge in English. In #25, only list other languages that you speak fluently.

PART A.II

Only fill this part out if you are currently married and/or have children. If there is not enough room on the form for all of your children, you can use "Supplemental Form A" at back of application or a blank piece of paper with your name, A number, signature and date and "Continuation of I-589, Part A.II."

If your spouse or children are not to be included in the application because they already have legal status, (for example, they are U.S. citizens or legal permanent residents), then mark "no".

PART A.III

#1-4: For all of these sections, always start with the most recent information, and work your way back.

#5: If one or both of your parents are deceased, you still need to list them. In the "location" part write, "deceased."

PART B

This is the most important part of the application. Before doing this part, you should try to write out your claim on a separate paper as a Declaration (see the sheet "My Declaration", Document C, for more information.) Also read the packet called "Information About Asylum, Withholding Of Removal, And The Convention Against Torture", Document A.

If you write a separate Declaration, then answer questions in this section with a short summary and write "Please see Declaration."

#1: Mark the boxes that correspond to why you or your family are afraid to return to your country. Remember to identify which of the ground or grounds on which your fear is based; race, religion, nationality, political opinion or social group, and/or Convention Against Torture. Your claim may be based on several different or related grounds.

#2: This question asks you to discuss any time you were arrested, interrogated, convicted, imprisoned, etc. both in your home country in any country other than the United States. You should include both specific problems you had (related to mistreatment you suffered), as well as any criminal history.

#4: This question is most important for those seeking relief under the Convention against Torture, however, all people should answer it.

PART C

#1-2: This question asks for information to determine whether you ever applied for or received protection in the past in the United States or a third country. If you received permanent refugee status or any other status in the past in any part of the world, you need to list it here. If you received some sort of temporary status, list it and explain.

#4-6: These questions seek information about your eligibility for asylum, withholding, and the Convention against Torture. Answer all of them fully.

PART D

This is where you sign and swear that everything you wrote is true and correct. If you intentionally submit an application with false information, you will not be eligible for any kind of relief from deportation.

PART E

Only fill out this part if someone else helped you complete the Application.

PART G

This part will be completed in front of the Judge.

HOW TO WRITE A DECLARATION

Write the story of your life, concentrating on why you are afraid to return to your country. Please do your best to include details such as full names, dates, time of day, how you know facts (such as who people are), description of threats or harm.

Try to answer the following questions in writing your declaration:

- ☐ **What** is the past harm that you or other people like you suffered? Be specific and detailed.
- ☐ **Why** were you harmed in the past or why do you fear harm in the future? What was this persecution based on? Was it because of your race, religion, nationality, membership in a particular social group, or political opinion? How do you know that was why the persecution happened?
- ☐ **When** and **How** were you threatened, harmed or tortured (what specifically happened to you)?
- ☐ **Who** specifically was doing this to you? Were they part of the government or other group? How did you know it was them (were they in uniform, did they identify themselves, what, if anything, did they say to you)?
- ☐ **Why** do you fear return to your country now? Is there a threat of future harm to you? How do you know this? Remember be specific!

It should end with a statement that if you returned to your home country, you will be harmed, mistreated, tortured and/or killed (or whatever your circumstances would be).

The Declaration does not need to be notarized.

NOTES:

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PREPARING FOR THE INDIVIDUAL

This worksheet will help you prepare for your individual hearing. Remember that the purpose of the individual hearing is for the Immigration Judge to decide whether or not it is too dangerous for you to return to your country. You also need to explain to the judge *why* you are afraid to return to your country.

HOMework

Ask yourself these general questions about why you are afraid to return to your home country. Try to answer them with as much detail as possible so that you will be prepared to explain your story to the Judge.

- Why did you leave your home country?
- Who are you afraid of?
- Why are you afraid of them?
 - Why do they want to harm you or others like you?
- What do you think they will do to you if you return?
- How do you think they will know that you are back?
- Who else are they threatening & mistreating now?
 - Are the people they are abusing similar to you?
 - How are they similar to you?
 - Are they similar to you because of race, religion, nationality, political opinion or membership in a social group?
 - How do you know that these people are still being harmed?



QUESTIONS THAT THE GOVERNMENT ATTORNEY MIGHT ASK

At your individual hearing, the lawyer for ICE (the government) may ask questions to try to convince the Judge that you should **not** get protection in the United States. The lawyer may want to show that it is safe for you to return to your country, or that you are not eligible to win protection for some other reason.

Ask yourself the following questions to help you answer the lawyer's questions in court.

- Can you identify those who harmed you?
 - What were their names? Rank? Profession?
 - Would you recognize them again?
 - Would they recognize you?
- Do you have proof that it is still unsafe for you to return home? (for example, newspaper articles, death certificates, etc.)
- Could you go somewhere in the country where you would be safe? Why or why not? (This could be asked for any country, but especially for large countries with different regions.)

- Have the conditions in your country changed since you left it?
 - If yes, would this make it safe for you to return? More dangerous? (Is there is a new political regime in power? Has a war ended? Has a rebel movement been defeated? Have there been democratic elections? Has there been a coup?)
- If you were mistreated previously, was it for a reason NOT related to one of the five grounds?
 - (Remember, the five grounds are race, religion, political opinion, nationality, membership in a particular social group.)
 - For example, was it because of a civil war generally, was it due to poverty? Was it a personal vendetta? These may not be grounds for asylum.
- Have you ever returned to your home country since you left it?
 - If so, how were you able to stay safe when you went back? Could you stay safe again?
- Have you ever received permanent residency or protective status in another country? Could you return there now?
- Have you ever threatened or mistreated **others** for reasons related to one of the five grounds?