

“I’m Afraid to Go Back:” A Guide to Asylum, Withholding of Removal, and the Convention Against Torture



This guide was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: www.firrp.org. We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.

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1. Introduction: What are Asylum, Withholding of Removal, and the Convention Against Torture?



The United States has created laws to help people who are afraid to return to their home countries because their government may harm them. These laws are called

- Asylum
- Withholding of Removal
- The Convention Against Torture, or “CAT” for short.

a. What is “Asylum?”

“Asylum” is a way to stop your deportation and become a refugee. If you win “Asylum,” you’ll also have the chance to eventually become a permanent resident in the U.S. If you include your spouse or children on your application, they can also have the chance to become refugees and permanent residents through you. To win an “Asylum” case, **you need to show that there’s at least a ten percent chance that the government will harm you in your home country.**

These are the other important requirements to win a case for “Asylum:”



- **You must show that the harm you would face or have faced in your home country is very serious.** The legal term for that harm is “persecution.” Serious harm includes being beaten, kidnapped, threatened, or killed, or having family members who were harmed that way. You’ll need to get proof of that harm.

- **You need to show that the government itself or people the government can’t or won’t control will harm you.** The government is the police, the army, or any official harming you as part of his job. You could also show that the government can’t or won’t protect you from the people harming you. For example, you might be able to show that you reported the harm to the

police and they did nothing to help you.

- **You must show that these people are harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** It’s not enough that a police officer hit you, for example. You need to show that the police officer did it because of your **race, religion, nationality, political opinion, or membership in a “particular social group.”**
- **Let’s slow down for a minute. You may be wondering, “What is a particular social group?”** That’s a legal term to describe a group that’s recognized in your home community. The members must have things in common that they can’t change.
- **You need to show that you would not be able to move to another part of your home country where you would be safe.** The Judge will want to know if you could move and avoid the people who want to harm you. Think about reasons why you could not move, including the cost, where your family is living, and where you could get a job.
- **You must apply for “Asylum” within one year of entering the United States.** You can also try

to show that it was impossible for you to apply within one year of entering the United States. Maybe you were sick or the circumstances in your home country have changed recently.

- **You must show that you have not been deported in the past.** If you have been deported, you will not be able to apply for “Asylum.” (Remember, voluntary departures are different than deportations.)
- **You must show that you don’t have an aggravated felony.** Certain criminal convictions can complicate your application for “Asylum” or make it impossible for you to apply.

b. What is “Withholding of Removal?”

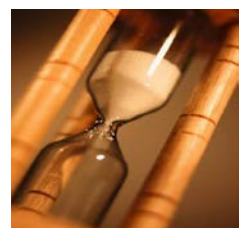
Withholding of Removal is similar to “Asylum.” You’ll still need to show the Judge that you’re at risk of serious harm if you go back to your home country for one of the same five reasons listed above. The BIG difference is that the risk of harm that you’ll need to show is much higher than it is for “Asylum.” You’ll have to show that it is **“more likely than not”** that you’ll be harmed in your home country. **That means that there’s at least a 51% chance that the government will harm you.**

Some of the requirements for “Withholding of Removal” are similar to “Asylum:”

- **You must show that there’s a risk that you’ll be harmed by the government in your home country.** Remember, for “Withholding of Removal,” that risk must be “more likely than not,” or a 51% chance.
- **You must show that the harm you would face or have faced in your home country is very serious.** The legal term for that harm is “persecution.” Serious harm includes being beaten, put in jail kidnapped, threatened, or killed, or having family members who were harmed that way. You’ll need to gather proof of that harm.
- **You must show that the government is harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** Again, it’s not enough that a police officer hit you, for example. You need to show that the police officer did it because of your **race, religion, nationality, political opinion, or membership in a “particular social group.”**

However, there are some **big differences** between “Asylum” and “Withholding of Removal:”

- **You will not be able to get permanent residency (a green card) through “Withholding of Removal.”** Winning a case for “Withholding of Removal” only means that the U.S. government will not send you back to your home country. If there is another country that is willing to accept you, ICE may try to send you there.
- **You cannot apply for your family to receive “Withholding of Removal” through your application.**
- **You can apply for “Withholding of Removal” even if it’s been more than one year since you entered the United States**
- **You can apply for “Withholding of Removal” even if you have a previous deportation order.**



- You **sometimes** can apply for “Withholding of Removal” even if you have a criminal history. Really serious criminal convictions could stop you from applying.

c. What is the “Convention Against Torture,” or “CAT?”

To win a “Convention Against Torture” or “CAT” case, you must show that it is more likely than not that the government **will torture or kill you** in your home country.

In some ways, a “CAT” case is similar to “Asylum” and “Withholding of Removal:”

- You must show that the government will torture or kill you or that the government will ignore it if someone else tries to torture or kill you. You’ll need to show that the person who will harm you is a government – someone in the police, army, or working as an official. You can also show that the government will ignore it if people want to hurt you.
- Like “Withholding of Removal,” you’ll have to show a 51% chance of torture, or that it’s “more likely than not” to happen.
- Criminal convictions can affect whether you can apply for “CAT.” If you have very serious criminal history, you’ll only be able to apply for one part of the “CAT” called “deferral of removal.”

A “CAT” case is different from “Asylum” and “Withholding of Removal” in some ways:

- You’ll need to show that you’ll be tortured, not just harmed. Torture means that someone uses horrible mental or physical pain to force you to do something or to punish you.



- Like “Withholding of Removal,” winning a “CAT” case doesn’t mean you’ll get permanent residency. It’s just a guarantee that ICE won’t send you back to your home country. If there’s another country that will accept you, ICE may try and send you there. Also, if you are given “Deferral of Removal” under CAT and conditions in your country change, ICE may try and deport you later.

- You **don’t** need to show that you’ll be tortured because of your race, religion, nationality, political opinion, or particular social group. You need to prove is that you’ll be tortured by a government official, but you don’t need to show why that person will torture you.

2. How Can I Apply for “Asylum,” “Withholding of Removal,” or the “Convention Against Torture?”

a. Your first court hearings

First, let’s talk about the basics of immigration court. If you feel confused about court, you’re not alone! Immigration law is complicated, even for lawyers. Let’s figure out who is going to in court and what’s going to happen in your first hearings.

- The **Judge** will be at the front of the room and will ask you questions. The Judge will be making the

decision about your case so it's important to be respectful, polite, and prepared.

- A **government attorney**. When you go to court, a lawyer representing ICE will be there. He's called the government attorney. His job is to enforce the immigration laws, which may result in an order of deportation against you.
- An **interpreter**. Don't worry if you don't speak English—an interpreter will be there in person or over the phone. Just make sure you speak up and tell the Judge that you don't speak or understand English well and need an interpreter.



When you go to court, the Judge will ask you if you want time to get an attorney. But, there are no public defenders and it can be a challenge to find a free lawyer.

Next, the Judge will take a look at your file and ask you if you want to admit or deny the charges against you. That means that the Judge wants to know if you want to force government to prove the charges against you. If the

government attorney says that you should be deported because of your criminal convictions, making him prove the charges against you can be an important step.



To learn more about how to deny the charges against you, read the Florence Project's guide on that topic. Certain types of criminal convictions can make it impossible for you to apply for "Asylum," "Withholding of Removal," and "CAT," so it's very important to be careful before admitting anything about your criminal record.

b. Eligibility for "Asylum," "Withholding of Removal," and "CAT"

If the Judge decides that at least some of the charges against you are correct, she'll then ask you if you are afraid of returning to your country. **It is very important to tell her that you are afraid of returning home. If you don't, you may miss your chance to apply for "Asylum," "Withholding of Removal," or "CAT."**

The Judge will ask questions to make sure you meet the requirements to apply for "Asylum," "Withholding of Removal," and "CAT." The IJ will then give you a copy of the **I-589 form**, which is what you'll use to apply. You will use the same form to apply for "Asylum," "Withholding of Removal," and "CAT."

Remember, just because the Judge says that you are eligible for "Asylum," "Withholding of Removal," and "CAT" does not mean that you've won your case! It means that the Judge thinks that you've met the basic requirements and is enough to give you a chance to show her evidence that you would be harmed if you went home.

c. Filling out and turning in the application

Before your final hearing, you'll come back to court for one more "master calendar" hearing to turn in your application for "Asylum," "Withholding of Removal," and "CAT." It's important that you fill out the application completely so that the Judge will accept it and schedule a final hearing for you to present all your evidence. **You can type your application or use a pen to fill it out. Don't use pencil!**

There is a more detailed section on how to fill out your application at the end of this packet. Take a look there if you have questions about parts of the application. **When you've completed the application,**

make three extra copies and bring them to court with you. The original and one copy will go to the Judge. Another copy will go to the government attorney and you'll keep a copy for yourself. This is important, so don't forget!

Once you turn in your application, the judge will give you a date for a final hearing. At this hearing, you'll appear without a group of detainees. The hearing will last a few hours. This hearing will be your opportunity to present your case to the Judge.

3. Building Your Case for "Asylum," "Withholding of Removal," and "CAT."

Building your case for "Asylum," "Withholding of Removal," and "CAT" is a lot like building a house. You'll need the right tools, a good plan, and a strong foundation. This section will help you get all your tools and materials organized and start building.

What's in My Toolbox?

Your "Declaration"

Let's start by talking about your "declaration." A declaration is your story in writing that tells the Judge why you're afraid to return to your country. A written declaration lets you tell your entire story of what happened in your home country and why you fear returning. In court the judge might ask you many questions or you might feel like you don't have the chance to explain everything. The declaration is your chance to say everything without being interrupted

- **What should my "declaration" look like?** You can handwrite your declaration on paper or you can type or print it. It needs to be long enough to hold all the important information about your case. If you use blank sheets of paper, put your name, A-number, the date, and your signature on each page. Also, write "Declaration" at the top. You should include it at the end of your I-589 application.
- **What should be in your "declaration?"**
 - ✓ **The truth.** The most important thing to put in your declaration is the truth. If you lie in the declaration, the Judge will likely find out and will reject your application. If you can't remember a detail, use phrases like, "to the best of my memory," or "it happened around..."
 - ✓ **The reasons why you should win your case for "Asylum," "Withholding of Removal," and "CAT."** Your job is to make the Judge understand why you are afraid to return to your home country and why she should grant your application for "Asylum," "Withholding of Removal," and "CAT." Think about the requirements for each type of case before you start writing your declaration! Remember, you can always use the worksheet at the end of this packet called "Thinking About Your Claim" to organize your thoughts.
 - ✓ **As much detail as possible.** The Judge needs to understand what you fear will happen to you. Try to use descriptive words. The Judge doesn't know anything about you and probably has never been to your country. When you describe an important event in your life – for example, a time when you were threatened, detained, tortured or hurt or that someone made you feel afraid – you want to make the Judge feel, see, smell, and hear what you saw, smelled and heard.



At the end of this guide, you'll find a short worksheet to help you prepare your declaration. Give it a try as

best you can, then try writing your declaration.

Supporting Evidence

It is very important to collect other evidence to show the Judge that what you're saying in your application and declaration is true. Each person asking for "Asylum," "Withholding of Removal," and "CAT" has a different case, so the evidence you'll be looking for depends on your own case.



We know that it's really hard to gather evidence if you're detained and the documents are in another country. Ask to a trusted friend or family member to get the documents for you. **Ask that person to mail you copies of the evidence and keep the original with her.**

It's also important to plan ahead and begin gathering evidence as soon as you decide you want to apply for "Asylum," "Withholding of Removal," and "CAT." That way, you'll have enough time to find all the documents you need.

Below are some examples of documents that could be helpful. Remember, the kinds of evidence you'll gather depend on your individual case:

- **Police reports** (if you reported an incident to the police)
- **Medical records** (if you were injured and treated at a hospital or clinic)
- **Birth or death certificates** (if somebody in your family was killed by the people you are afraid of)
- **Letters** from people who can support your claim of why you're afraid to return to your country. Did someone in your family see people threaten you or beat you? If so, a letter from that person will help you prove your claim.
- **Photographs** that help prove your story (for example, pictures of you with people who have been killed, or pictures of you participating in groups or activities that put you in danger). Remember that you will need to be able to prove who the people in the pictures are.
- **Newspaper articles** about the issue that makes you afraid to return to your country, or about things that have happened to people you know
- **Reports** from national and international human rights organizations (such as Human Rights Watch or Amnesty International)

Remember, all the documents you submit need to be in English. If you receive documents in another language, you can translate them. Just put your translation in with the original letter and attach a signed copy of the "Certificate of Translation" that's at the end of this packet.

When you've gotten all your evidence together, attach a signed and dated copy of "Certificate of Service" at the end of this packet to the last page of all your evidence. Then make two copies of all your evidence.



Just like the application, the original will go to the Judge, a copy will go to the government attorney and you'll keep a copy for yourself. If you want to send the documents to the court before your final court date, put a cover sheet with your name and A-number on top. Then put the packets in envelopes. One should say "To the Immigration Judge" and the other should say "To ICE Litigation." Ask detention staff to make sure they are delivered or put them in the detention center's mailboxes that are delivered to the court and to ICE.

4. Preparing Your Testimony

At your final hearing, you'll have an opportunity to tell the Judge why you're afraid to return to your home country and you think you should stay in the United States. It's important to practice your testimony in the weeks before your hearing so that you can hit the nail on the head! Keep these tips in mind when practicing your testimony:

- **Be prepared.** Write a list of the specific reasons why you are afraid to return to your home country. Don't just say things like "I think that someone will hurt me" or "I don't want to go back." Give the Judge examples of the harm you've suffered in the past and the harm you're afraid of. Tell her as much as you can. It is sometimes difficult to talk to strangers about very personal experiences. However, it's important that the Judge knows as much about your case as possible---even if it's scary, embarrassing, or painful to talk about it.



- **Speak from the heart.** Judges see a lot of people every day. You can make your testimony stand out by speaking sincerely. Think of examples of what you're afraid of in your home country. Practice telling those examples to a friend or family member and write them down on a piece of paper so you don't forget. Don't worry if you become nervous or emotional in court—it happens to most people. If you need to take a break, just tell the Judge.

- **Be honest.** If you have criminal convictions and the Judge asks you about them, tell her what happened. Lying will just make things worse, and the Judge and the government attorney often have ways to figure out if you are lying. If you have gone to rehabilitation classes like NA or AA, make sure to tell the Judge about that. Also tell the Judge how you will avoid any criminal trouble in the future.
- **Ask your family members or another witness to testify in court.** If you have a family member who thinks that you will be harmed in your home country, or another witness who supports your case, ask that person to testify in court.
- **Answer the Judge's questions.** The Judge may want to ask you some specific questions. Listen to the Judge's question and try to answer it the best you can. Remember, be respectful when the judge speaks. Refer to the Judge as "Your Honor," "Ma'am," or "Sir."

5. Weighing the Evidence: The Judge's Decision

In some cases, the Judge will give you her final decision at the end of your hearing. She will tell you why she is going to approve or deny your case. **If the Judge denies your case and you want to appeal that decision, you need to tell the Judge that you want to appeal. She'll give you some paperwork that needs to be mailed to the Board of Immigration Appeals within 30 days. To file an appeal, you can check out the Florence Project's guide on appealing your case.**

In **many** "Asylum," "Withholding of Removal," and "CAT" cases, the Judge will want to give you a written decision after your final hearing. If that's the case, you should receive it the decision through the detention center mail a few weeks after the hearing. The decision will explain the reasons why the Judge is approving or denying your case.

Appendix 1. Filling Out Your Application

These are questions to watch out for on your I-589 application and the G-325A:

I-589

Part A

Mailing address in the United States

- If you are currently detained, for your mailing address, use the address for the detention center.

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.

Nationality and citizenship at birth

- If you have moved to another country permanently and received citizenship, your nationality at birth may be different than your nationality now.

Your Ethnic or Tribal Group

- Do you belong to a certain cultural group in your home country? For example, people from Iran may be Assyrian or people from Guatemala may be Quiche.

Your religion

- Do you practice a religion? If so, list it in the box that asks about your religious identity. 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 Coptic Christian).

Removal proceedings

- You are now in deportation proceedings, which are also called removal proceedings. Check that box that says yes. If you've ever been in deportation proceedings before now, list that too.

Your most recent departure from your country and entry into the U.S

- If you entered without permission or illegally, write "no inspection" and put "N/A" where it asks for "I-94 number". You also need to list all the other times that you've entered the US, like when you've taken trips to other countries. If you can't remember exact dates, put "approx." to let the Judge know that you're not sure.

Which language you speak best

- If you speak several languages, list which one you speak and understand best. If you speak a particular dialect of your language, note that too. Only list English if you're 100% comfortable speaking to the judge in English.

Parents' location

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

Part B

Spouse and children's names

- Only fill this part out if you are 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, and signature.

- If your spouse or children are not included in the application because they already have legal status, (that is, they are U.S. citizens or legal permanent residents), then mark “other reasons” and explain in the box.

Part C

This is the most important part of your application. Before filling out this part, you might want to look at the answers to the questions that you wrote in the section of this packet called “Thinking About Your Claim.” Also, you might want to write out your story separately as a declaration. If you write a separate declaration, then answer questions in Part C with a short summary and write “Please see declaration” so that the Judge knows that your whole story is in the declaration.

Fear of Return

- Say why you are afraid to return to your country. Remember to say if you are afraid because of your race, religion, nationality, political opinion or social group.

Arrests in your home country and the US

- You should include both specific problems you had in your home country (the mistreatment or abuse you suffered), as well as any criminal history you have in the U.S.

Your fear of return

- Identify specifically what you are afraid of and what will happen to you if you return to your home country.

Legal status in another country

- If you received permanent refugee status in another country, you need to list it here.

Part D

- These questions seek information about your eligibility for “Asylum,” “Withholding of Removal,” and “CAT”. Answer all of them fully.

Part E

- This is where you sign and swear that everything you wrote is true and correct. Remember, if know you’re turning in an application with lies, you will not be eligible for any kind of relief from deportation.

Part F

- 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

G-325A

- If you’ve never been married before, just list N/A
- List your addresses from the most recent to the least recent. If you’re currently detained, use the detention center’s address
- If you can’t remember exactly when you lived someplace, use the abbreviation “apprx” or “+/-” to show that you’re making an estimation
- List your previous jobs from most recent to least recent
- Check the box to indicate that the form is filed along with an application to be a Permanent Resident.

Appendix 2: Thinking About Your Claim

The Reasons Why I am Seeking Asylum, Withholding, or Convention Against Torture:

Why did I leave my home country?

Who am I afraid of?

Why am I afraid of them? Why do they want to harm me or others like me?

What do I think they will do to me if I return?

How do I think they will know that I am back?

Who else are they threatening & mistreating now? Are they people like me (in race, religion, nationality, etc?) How do I know this?

My experiences in the past

The most effective way to explain your story to the Judge is to give him examples of what has happened to you. Think about specific experiences that you have had that are related to your claim, for example, specific times that you were attacked or threatened by a particular person or group of people. If you have had many experiences of persecution, think of the worst ones, or the times that you most want the Judge to know about. Now, ask yourself the following questions about your previous experiences to help you answer the Judge's questions with detailed information.

Experience 1:

Date: _____ Place: _____

What happened to you?

Who did it to you? (for example, the government, police, rebels, religious groups, etc...) How can you identify them?

Why were they threatening or mistreating you?

What did they say when they were threatening or hurting you?

How do you know they were specifically targeting you

For which of the five reasons did they target you? Circle any that apply: race / religion / nationality / social group / political opinion How do you know?

Who else did they threaten or mistreat, if anyone?

*answer the same questions for Experience 2, Experience 3, and so forth.

Appendix 3. Certificate of Service

Use the following certificate if you will give the documents to the ICE attorney and the judge in court.

I, _____ (your name here), hereby certify that I hand-delivered a copy of this document to a representative of ICE Litigation on the date below.

Signed:

Date:

Use the following certificate if you will mail the documents to the ICE attorney and judge before the hearing.

I, _____ (your name here), hereby certify that I placed a copy of this document in the mail to ICE Litigation at

(list address for the ICE office at the detention center where you are staying) on the date below.

Signed:

Date:

Appendix 4. Sample Certificate of Translation

I, _____ (name of translator), certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Signature of translator

Date