

I'm Afraid to Go Back

A Guide to Asylum, Withholding of Removal, and The Convention Against Torture

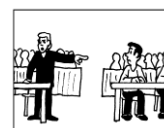


The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. To see our guides, go to: www.firrp.org. This guide is not intended to provide legal advice. It is not a substitute for legal counsel. This guide is copyright protected but you can share and distribute it widely to help immigrants around the country. If you adapt the information in this guide into your own publication, please credit the Florence Project.

Important Words to Know

Immigration law has many technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

- **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or “removed” from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.
- **Government Attorney:** The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and also talks to the judge. Usually they ask the judge to order you deported.
- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings. ICE is part of the Department of Homeland Security, or *DHS*.
- **Immigration Judge (judge):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should consider the facts of your case and apply the law fairly. Judges do not work for ICE.



Who Should Read this Guide?

If you are afraid to return to your home country because your government may harm you, the United States has laws to help. But different rules apply to different types of cases. Read this guide from the Florence Project to learn the basics about these laws and how you might be able to use them to stop your deportation.

The guide will tell you how to apply for asylum, withholding of removal, and protection under the Convention Against Torture. It also explains what evidence you need to present a strong case. The following laws let people stay in the United States:

- **Asylum**
- **Withholding of Removal, or**
- **Withholding or Deferral of Removal Under the Convention Against Torture (or CAT for short).**

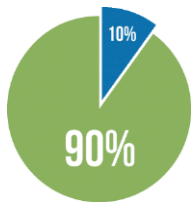
You use the same form to apply for help under any of these laws.

What Is Asylum?

Asylum is a way to stop your deportation (removal) and become a refugee. You must apply for asylum within 1 year after you enter the United States. If you win asylum, you will 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 may also be able to become refugees and permanent residents. But not everyone can apply for asylum. For example, if you have been deported before, you will not be able to apply.

Can You Apply for Asylum?

To win an asylum case, **you must show that there is at least a 10% chance that the government in your home country will harm you.**



Look at the chart. The blue section represents the chance of harm that is required to show for asylum cases — 10%. In other words, you must show that there is serious chance that you will be harmed, but you do not need to show that it will surely happen.

You must apply for asylum within 1 year after you enter the United States. If more than 1 year has passed since you entered, you can try to show that something prevented you from applying or that the circumstances in your home country have changed recently.

To win your case, you must be able to show that:

- **You would face or have faced serious harm in your home country.** The legal term for that harm is *persecution*. *Serious harm* means you have been beaten, kidnapped, or threatened, or your family members or people like you were beaten, kidnapped, threatened, or killed. You must prove that harm.
- **The government itself or someone who the government cannot control will harm you.** The *government* is the police, the army, or any official who will harm you as part of their job. You could also show that the government cannot or will not 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 not help you.
- **People are harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** For example, it is not enough that a police officer hit you. You must show that the officer did it because of your race, religion, nationality, political opinion, or membership in a “particular social group.”



What is a *particular social group*? It is a group that is recognized in your home community. The members must have things in common that they cannot change. Some examples of particular social groups are: *gay Mexican men, young Albanian women who live alone; witnesses who testify against gang members, people with HIV or AIDS, former military officers, or Lari ethnic group of Kongo tribe in the Republic of Congo.*

This area of the law is very complicated. **You should try to talk to a lawyer about any “particular social groups” you may want to use in your case.**

Judges may be reluctant to grant asylum or withholding if people who do not work for your country's government, such as gang members, persecuted you in the past or you fear that they will persecute you in the future. Instead, focus on why those people targeted you and what social group you are part of that made the gang members single you out.

- **You would not be able to move to another part of your home country where you would be safe.** The judge will ask if you can move to avoid the people who want to harm you. When you prepare your case, think about reasons you could not move, including the cost, where your family is living, and where you could get a job.
- **You have not been deported in the past.** If you have been deported, you cannot apply for asylum. (Remember, voluntary departures are not deportations.)
- **You have not committed an aggravated felony.** Certain criminal convictions complicate your application for asylum or make it impossible for you to apply.
- **You are not subject to other bars.** Asylum law is very complicated and can change quickly. If you have a fear of return to your country of origin, try to talk to an immigration attorney. Make sure to tell the judge that you are afraid of return to your country and ask if you can apply for asylum.

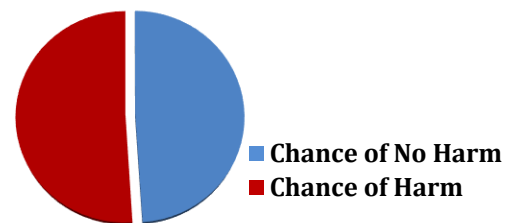
What Is Withholding of Removal?

Withholding of Removal is similar to asylum, but the requirements are somewhat different and harder to meet. For Withholding of Removal, you must still show the judge that you are at risk of serious harm if you go back to your home country because of your race, religion, nationality, political opinion, or membership in a “particular social group.” But the BIG difference is that the risk of harm that you must show is much higher than it is for asylum.

You must show that it is “**more likely than not**” that you will be harmed in your home country. **That means that there is at least a 51% chance that the government will harm you.**

To win Withholding, you must show a large risk that you will be harmed

Look at the chart. The red area represents the risk of harm you must show the judge. The red area here is much bigger than it is for an asylum application — 51%. That means that you must show the judge that you will probably be harmed in your home country.



To win your case for Withholding of Removal, you must be able to show that:

- **There is a great risk that the government in your home country will harm you.** Remember, for Withholding of Removal, that risk must be “more likely than not,” or a 51% chance.
- **The harm you would face or have faced in your home country is very serious.** That harm is called *persecution*. *Serious harm* means that you will be beaten, put in jail, kidnapped, threatened, or killed, or that you have family members or people like you who were harmed that way. You must prove that harm.

- **The government is harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** It is not enough to say that a police officer hit you. You must show that the police officer hit you because of your *race, religion, nationality, political opinion, or membership in a “particular social group.”*

How Are Asylum and Withholding of Removal Different?

Asylum and Withholding of Removal are different in several important ways:

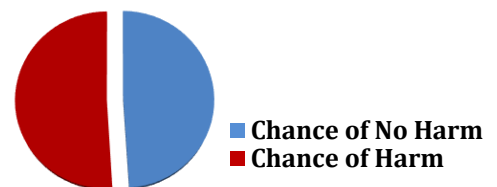
- Through Withholding of Removal, **you cannot get permanent residency.** That means you cannot get a green card. Winning a case for Withholding of Removal only means that the U.S. government will not send you back to your home country. But if another country is willing to accept you, Immigration and Customs Enforcement (ICE) may send you there.
- For Withholding of Removal, **your application is only for you. You cannot apply for your family.** If you win your case, you win only for yourself. Your family members must apply for themselves.
- **Even if more than 1 year has passed since you entered the United States, you can apply for Withholding of Removal.** This is different from asylum. With an asylum claim you must apply within 1 year after you enter the U.S.
- **If you have a previous deportation order you can still apply for Withholding of Removal.**
- **If you have a criminal history you MAY be able to apply for Withholding of Removal.** But usually you cannot apply if you have been convicted of a really serious crime.

What Is the Convention Against Torture, or CAT?

Protection Under the Convention Against Torture (CAT) is for extremely serious cases. 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 must show that the person who will harm you is a government official — someone in the police, the army, or who works as a public official. You can also show that the government will ignore it if people want to hurt you.
- Like Withholding of Removal, **you will have to show a 51% chance that you will be tortured,** or that it is “more likely than not” to happen.
- **Criminal convictions can affect whether you can apply for CAT.** If you have a very serious criminal history, you will only be eligible for one part of the CAT called *deferral of removal*.

To win a CAT case, you must show a large risk that you will be harmed



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

- **You must show that you will be tortured, not just seriously harmed.** *Torture* means that someone uses horrible mental or physical pain to punish you or to force you to do something.
- Winning a CAT case only means that **the U.S. government will not send you back to your home country.** But if another country is willing to accept you or conditions in your country change, **ICE may try to deport you there instead.**
- **You must show that you will be tortured by a government official, but not why that person will torture you.** You do not need to show that you will be tortured because of your race, religion, nationality, political opinion, or particular social group.

How Can You Apply for Asylum or Withholding of Removal?

First, learn the basics about immigration court so that you know who will be in court and what will happen in your first hearings.

- **The judge will be at the front of the room and will ask you questions.** The judge will decide your case. Be respectful, polite, and prepared.
- **A lawyer representing ICE will be there.** This lawyer is the government attorney who is usually trying to get you deported.
- Do not worry if you do not speak English. **An interpreter will be there in person or on the phone.** Just make sure you speak up. Tell the judge that you do not speak or understand English well and need an interpreter.

When you go to your first court hearing, the judge will ask you if you want time to get a lawyer. Remember that immigration law is complex. You have a right to have your own lawyer at an asylum interview and during immigration proceedings. **But there are no public defenders and almost NO FREE LAWYERS in immigration court.**

Next, the judge will 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 the government attorney to prove the charges against you.

If the government attorney says that you should be deported because of your criminal history, asking the attorney to prove the charges against you can be an important step. Certain types of criminal convictions, even for minor crimes, may prevent you from applying for Asylum, Withholding of Removal, and CAT.

To learn more about denying the charges against you, read the Florence Project's guide on that topic. Go to <https://firrp.org/resources/prose/>

The judge will figure out if you can apply for Asylum, Withholding of Removal, or CAT

If the judge decides that at least some of the charges against you are correct, the judge will ask you if you are afraid to return to your country. **It is very important to tell the judge that you are afraid of returning home.** If you do not say that, you may not be able 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. If the judge agrees that you may apply, the judge will give you a copy of the form called an *I-589, Application for Asylum and for Withholding of Removal*.



You will use the same form to apply for Asylum, Withholding of Removal, or CAT. You may file this application if you are physically present in the United States and you are not a U.S. citizen.

Just because the judge says that you may apply does not mean that you won your case! It means that the judge thinks that you have met the basic requirements. You have a chance to show the judge that you would be harmed if you went home.

You will fill out and turn in the application

Before your final hearing, you will return to court to turn in your application for Asylum, Withholding of Removal, and protection under the Convention Against Torture. It is important that you fill out the application completely, including checking the box for CAT, so that the judge can accept it and schedule a final hearing, where you will present all of your proof. You can submit evidence with your application, as described below.

How Can You Build Your Case?

Building your case for Asylum, Withholding of Removal, and CAT takes time and planning. You should start gathering evidence as soon as possible. First, fill out this worksheet to help prepare your application and declaration.

The Reasons You Are Seeking Asylum, Withholding, or Convention Against Torture:	
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 and mistreating now? Are they people like you (For example, are they the same race, religion, nationality, particular social group, or do they share a political opinion?) How do you know this?	

Put Your Declaration Together

Many people who apply for asylum submit a written story about what happened to them, called a *declaration*. It is your story in writing that tells the judge why you are afraid to return to your country. If you submit a declaration to the judge, the judge will still ask you to testify and will compare your testimony with your declaration. The judge may think that differences between your declaration and your testimony suggest that you cannot be believed and may deny your case.

What should your declaration look like?

- You can handwrite or print your declaration or you can type it. It must 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.

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 cannot remember a detail, use phrases like, “to the best of my memory,” or “it happened around....”
- **The reasons you should win your case.** Your job is to make the judge understand why you are afraid of returning to your home country.
- **Include as much detail as possible.** The judge needs to understand what you fear will happen to you. Try to use descriptive words in your declaration.

What Proof Should You Gather?

Start gathering your proof to show the judge that what you are saying in your application and declaration is true. The evidence you will collect depends on your specific case.



Many documents will take time for your family to find and to mail to you. Ask a trusted family member or friend to help you gather these documents. Make sure that this person mails you **copies of these documents, not originals**.

Below are some ideas of the types of proof you can gather. Remember, these are examples. You do not need to gather all of them to win your case.

- **Letters from people who can support your claim** of why you are afraid to return to your country. Did someone see people threaten you or beat you? If so, a letter from that person will help you prove it.
- **Police reports** (if you reported an incident to the police)
- **Medical records** (if you were injured and treated at a hospital or clinic or by a doctor)
- **Birth or death certificates** (if the people you are afraid of killed other people)

- **Photographs that help prove your story** (pictures of you with people who have been killed or pictures of you participating in activities that put you in danger)
- **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)

Once you have all your documents together, organize them. Make a list of everything you have and then put that list on top. Attach a signed and dated copy of the *Certificate of Service* to the last page of your evidence. A certificate of service looks like this:

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:

Then make 3 copies of all your evidence. The original and one copy will go to the judge with your completed I-589 application form, a copy will go to the government attorney. Keep a copy for yourself.

All the documents you submit must be in English. If you receive documents in another language, you can translate them. Just attach your translation to the original letter with a signed copy of the *Certificate of Translation*. A certificate of translation looks like this:

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:

Filling Out Your Application

The judge can give you a copy of the application or you can get one at <https://www.uscis.gov/i-589>. You should fill out an application for each of your family members in immigration proceedings with you.

- **You must use a black pen or typewriter to fill out the form.** Do not use a pencil.
- **Your answers must be in English.** They will not accept your form if you answer in another language.
- **Answer all of the questions. If you do not know how to answer a question, do not worry.** If you do not know an answer, write, *unknown* or that you may have missing or incorrect information. If a question does not apply to you, write *None* or *N/A*.
- **If you do not have enough room to answer completely, just continue your answer on another piece of paper with your name, A-number, the date, signature, and the number of the question you are answering.** Your written statements should include events, dates, and details. Be sure to attach those papers to your form.

The application has a separate document of instructions available at <https://uscis.gov/i-589>. Make sure to review and follow those instructions before filing your application. The tips on the following pages explain key parts of the I-589 application. Note that the form may have been updated since we published this guide.

I-589, Application for Asylum and for Withholding of Removal

Part A.I. Information About You

- **Questions 8 and 9. Mailing address in the U.S.:** If you are currently detained, use the address for the detention center.
- **Question 14. Present nationality:** Your nationality and citizenship are usually the same, but if you do not think this is true for you, you should make this clear in the application.
- **Question 15. Nationality at birth:** If you have moved to another country permanently and received citizenship, your nationality at birth may be different from your nationality now.
- **Question 16. Race, 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 K'iche.
- **Question 17: Religion:** Do you practice a religion? If so, write it here. This question asks you about both your main religion (such as Jewish, Christian, Buddhist, Muslim, Hindu, etc.) and also any particular part of that religion you belong to (such as Orthodox, or Coptic Christian).
- **Question 18. Immigration Court proceedings:** Check one box. If you are in immigration proceedings for the first time, check box "b." If you have been in immigration proceedings in the past, check box "c."
- **Question 19. Exits and Entries to the U.S.:** If you entered without permission or illegally, write *no inspection* and put *N/A* where it asks for "I-94 number." List all the other times that you entered the U.S. If you cannot remember exact dates, put *approx. (for approximately)* to tell the judge that you are not sure.
- **Questions 23-25. Languages you speak:** If you speak a particular dialect of your language, note that. Only if you are 100% comfortable speaking to the judge in English should you check *Yes* on Question 24.

Part A.II. Information About Your Spouse and Children

- Only fill out this part if you are married or if you have children.
- If you do not have enough room to list all of your children, use *Supplemental Form A, Form I-589* at the end of the application or use a blank piece of paper with your name, A number, date, and signature.

Part B. Information About Your Application

This is the most important part of your application. This part asks specific questions to decide if you are eligible for Asylum, Withholding of Removal, or protection under the Convention Against Torture. Before filling out this part, review your declaration and the answers from the worksheet in this packet.

- **Question 1B. Fear of Return:** Explain why you are afraid to return to your home country. Remember to say if you are afraid because of your race, religion, nationality, political opinion or particular social group.
- **Question 2. Arrests in your home country:** List any arrests by the police, including those that were part of any police abuse or harassment against you.
- **Question 4. Fear of Torture:** Identify specifically what and who you are afraid of and what will happen to you if you return to your home country.

Part D. Your Signature

- This is where you sign and swear that everything you wrote is true and correct. Remember, if you knowingly lie on your application, you will not have any kind of relief from deportation.
- **Review your application to make sure that it is complete.**
- **Sign your application and indicate if anyone helped you fill out your application.**

After you complete the application, make 3 extra copies. Bring the copies of your application and evidence to court with you. Give the original and 1 copy to the judge. Give another copy to the government attorney. Keep the last copy for yourself. **This is important, so do not forget!**

Once you turn in your application, the judge will give you a date for a final hearing. This hearing will be your opportunity to present your case to the judge.

How Should You Prepare for Your Testimony?

- Think of the specific reasons you or your family will suffer harm or persecution. Do not just say things like, “I think that someone will hurt me” or “I don’t want to go back.” That will not help very much —almost all people applying for asylum feel that way. **Explain specifically why you suffered or will suffer harm in your country to the judge.**
- **Start gathering evidence early to help support your case.** Give the judge as much evidence as possible to think about.
- Judges see a lot of people every day. **Speak sincerely** to make your testimony stand out.
- **Think about examples that will show what you are afraid of in your home country.** Practice telling those examples to a friend or family member.
- **Do not 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.
- **Tell the judge about your life.** If you have criminal convictions and the judge asks you about them, tell the judge what happened. Do not lie. Lying will just make things worse. The judge and government attorney often have ways to figure out if you are lying.
- **Do not be defensive. If you had a problem with drugs and alcohol in the past, explain how you have overcome those problems.** For example, did you go to AA meetings? Did you complete a rehabilitation program?
- **Admit if you made mistakes,** even if that mistake was just coming to the U.S. without the proper documentation. It can show the judge that you are sorry and will not repeat those mistakes in the future.
- **Bring witnesses. Your family can come and tell the judge about the reasons you should stay in the United States.** Your witnesses can tell the judge why they think you would be harmed in your home country.
- **The judge may want to ask you some specific questions.** Remember, be respectful when the judge speaks. Refer to the judge as, “Your Honor,” “Ma’am,” or “Sir.”



How Will the Judge Weigh the Evidence?

In some cases, the judge will tell you if your application is approved or denied at the end of your hearing. In other cases, the judge will mail you a written decision after the hearing. If you disagree with the judge’s decision, you can appeal it to the Board of Immigration Appeals by filing a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, within 30 days of the judge’s decision. See the Florence Project’s guide about appealing your case at: <https://firrp.org/resources/prose/>.

