



RESOURCES RELATING TO:

# REASONABLE FEAR

This guide was compiled by the staff of Rocky Mountain Immigrant Advocacy Network and was written for detained immigrants in Colorado 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. RMIAN is a nonprofit legal services organization and does not charge for its services to detained immigrants in Colorado. This guide can be shared and distributed widely to assist indigent immigrants around the country.

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## REASONABLE FEAR

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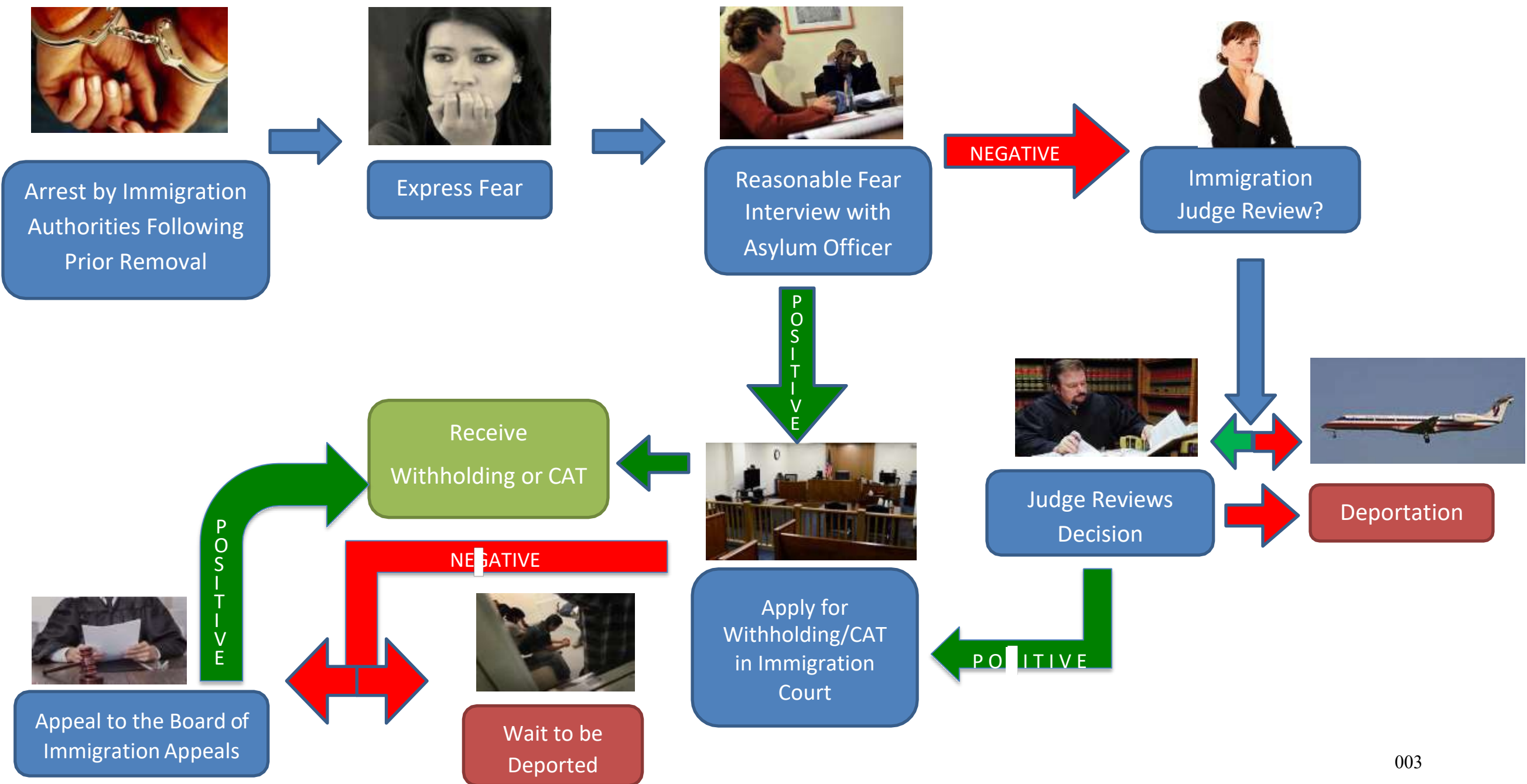
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# The Reasonable Fear Process

Prepared by the Rocky Mountain Immigrant Advocacy Network



# DO YOU FEAR RETURNING TO YOUR HOME COUNTRY?



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, and The Convention Against Torture**, or “CAT” for short.

*The table below has a brief explanation of each form of relief. You can find detailed information about each in the rest of this packet.*

## ASYLUM

Asylum is a protection granted to a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.” An individual in the reasonable fear process does not qualify to apply for asylum due to having a prior removal order.

## WITHHOLDING OF REMOVAL

Withholding of removal is a special type of order issued by an immigration judge to a person who demonstrates more than a 50% chance that they will be persecuted in their home country on account of their race, religion, nationality, membership in a particular social group, or political opinion. Like asylum, withholding of removal protects a person from being deported to a country where they fear persecution. However, withholding of removal provides more limited benefits than a grant of asylum.

## CONVENTION AGAINST TORTURE (CAT)

Convention against Torture relief, commonly called CAT, is an extremely rare grant of protection from deportation that an immigration judge grants for individuals who fear torture in their home country. To qualify for CAT, an applicant must demonstrate a clear probability (more than a 50% chance) that they will be tortured either directly by or with the acquiescence of the government of their country of origin.

# WITHHOLDING OF REMOVAL

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**WITHHOLDING OF REMOVAL** – “Withholding of Removal” is a way to stop your deportation. It is similar to asylum, HOWEVER you must show that it is “**more likely than not**” that you will be harmed in your home country. The following is a *brief overview* of the Withholding of Removal eligibility, requirements, and benefits. For more detailed information, please express interest and we (RMIAN) will provide a detailed packet.

## Who is eligible to apply for Withholding of Removal?

- You must be physically present in the US or present yourself at a US port of entry.
- You can apply for “Withholding of Removal” even if it has been more than one year since you entered the United States. (Unlike asylum).
- You can apply for “Withholding of Removal” even if you have a prior removal order.
- Some individuals can still apply for “Withholding of Removal” even if they have a criminal history.

## What must you prove (with evidence) in order to possibly receive Withholding of Removal?

- HARM** - You must show that the harm you would face or have faced in your home country is very serious.
  - Serious “persecution” includes being beaten, kidnapped, threatened, or killed, or having family members who were harmed in that way. You will need to get proof of that harm.
- UNPROTECTED** - You need to show that the government itself OR people the government cannot control will harm you.
- MOTIVATION OF PERSECUTOR** - You must show that these people are harming you **because of** your race, religion, nationality, political opinion, or membership in a “particular social group”.
  - A particular social group** is 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. For example: being a part of the LGBTQ+ community.
- NO FAMILIAR PLACE TO SEEK REFUGE** - You need to show that you would not be able to move to another part of your home country where you would be safe.
- CHANCE OF HARM** - You must show that there is more than a fifty percent (50%) chance the government will harm you in your home country OR another entity will harm you and the government will be unable or unwilling to protect you.

## The result of being granted Withholding of Removal?

- Those who are granted Withholding of Removal are protected from being deported to their home country.
- However, if there is another country that is willing to accept the applicant, an immigration judge may order them removed to that country.
- Those who are granted Withholding of Removal will NOT be able to get permanent residency (green card) through “Withholding of Removal”.
- Those who are granted Withholding of Removal can apply to receive a work permit and social security number to work legally in the United States.
- Those who are granted Withholding of Removal will be the only ones to receive it. This means that the applicant CANNOT apply for their family members to receive “Withholding of Removal” through their individual application.

# CONVENTION AGAINST TORTURE (CAT)

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**CONVENTION AGAINST TORTURE (CAT)** – The “Convention against Torture” is a way to stop your deportation. You must show that it is more likely than not that the government **will torture or kill you** in your home country. The following is a **brief overview** of the CAT eligibility, requirements, and benefits. For more detailed information, please express interest and we (RMIAN) will provide a detailed packet.

## Who is eligible to apply for CAT?

- You must be physically present in the US or present yourself at a US port of entry.
- You can apply for “CAT” even if it has been more than one year since you entered the United States (unlike asylum)
- Criminal convictions can affect whether you can apply for “CAT.”
  - o People with very serious criminal histories may only be eligible for one part of CAT called deferral under CAT.

## What must you prove (with evidence) in order to possibly receive CAT?

- TORTURE** - You must show that you will be tortured, not just harmed.
  - o Torture means that someone uses intentional unlawful infliction of severe (physical or mental) suffering or pain to force you to do something or to punish you.
- UNPROTECTED** - You need to show that the government itself OR people the government cannot control will torture you.
- MOTIVATION OF PERSECUTOR** - You DO NOT have to show that these people are torturing you because of your race, religion, nationality, political opinion, or membership in a “particular social group”.
  - o You just need to prove that a government official or someone the government cannot control will torture you.
- NO FAMILIAR PLACE TO SEEK REFUGE** – You need to show that you would not be able to get away from your torturer, even if you move to another area in your home country.

## What is Withholding of Removal under CAT?

- Withholding of Removal under CAT is available to those who are NOT barred from the traditional Withholding of Removal and who can demonstrate a substantial likelihood that they would be tortured if returned to their home countries.

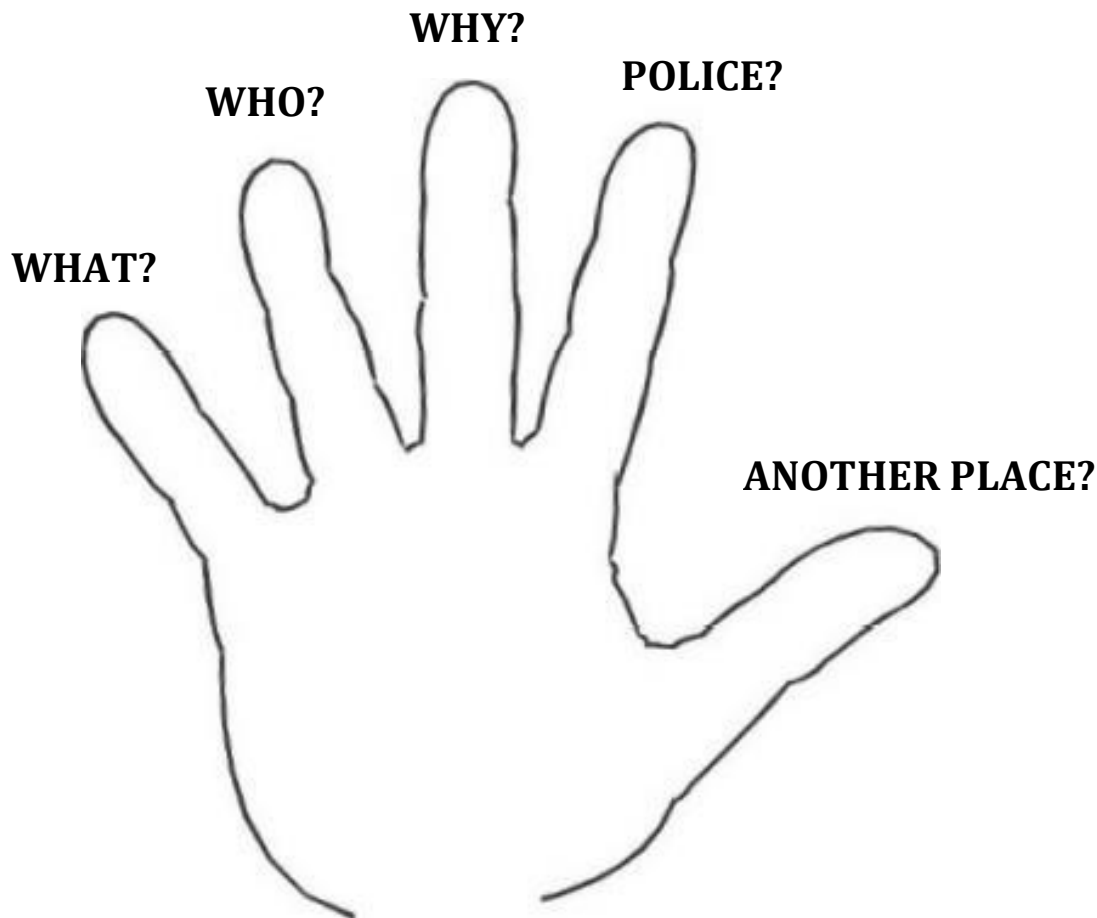
## What is “Deferral of Removal” under CAT?

- Deferral of Removal under CAT is available to those who are barred from the traditional Withholding of Removal (for example, due to criminal convictions) but who can demonstrate a substantial likelihood that they would be tortured if returned to their home countries.

## The result of being granted CAT?

- Those who are granted CAT are protected from being deported to their home country.
  - o However, if there is another country that is willing to accept the applicant, an immigration judge may order them removed to that country.
  - o However, if the applicant is given “Deferral of Removal” under CAT and conditions in their country change, ICE may try and deport them later.
- Those who are granted CAT will NOT be able to get permanent residency (green card) through “CAT”

# YOUR ASYLUM CASE IS IN YOUR HANDS



## **WHAT?**

What happened to you? If you had to return to your country, what do you think would happen to you?

## **WHO?**

Who hurt you? Does he/she belong to a group? How do you know them?

## **WHY?**

Why did they threaten or hurt you specially? Why you and not another person?

## **POLICE?**

Was it the police? If not, why? If it was the police, what did they do?

## **ANOTHER PLACE?**

Is it possible to be safe in another part in your country? Why?

## I Received a Negative Reasonable Fear Decision... Now What?

*Receiving a negative decision from the asylum office is difficult, and we are sorry this is happening to you.*

When the Asylum Office called to tell you about your negative decision, the officer should have asked if you wanted to accept the negative decision or whether you want to see the Immigration Judge.

Option 1: Decide you **do not** want to see the Judge

- If you said you didn't want to see the judge, your reasonable fear process is over, and you are now waiting to be removed (deported). The deportation process can take anywhere from a few days to several weeks, depending on where you are from.

Option 2: Decide you **do** want to see the Judge

- If you asked to see the judge, you will have one more chance to show that you have a reasonable fear of returning to your country. You will have a hearing before the immigration judge and during the interview the judge will decide whether he agrees with the asylum officer, or if he thinks you have a reasonable fear and should be able to fight your case. **The judge's decision is final**, so it is very important to be prepared for your hearing. The judges are supposed to give you this hearing **within 7 days** of the Asylum Office's final decision.

***Here are some steps you can take to get ready for your hearing with the Immigration Judge:***

1. Understanding Why You are Received a Negative Decision
2. How to Prepare for the Hearing
3. What to Expect during the Hearing
4. What Happens at the End of the Hearing

### Understanding Why You Received a Negative Decision

1. Try to understand **why the asylum officer gave you a negative decision** – Did the officer think you were lying? Did the officer believe that you do not qualify for withholding of removal or protection under the Convention Against Torture?
  - a. **Read the Asylum Officer's decision very carefully.** The officer's reason for making the negative decision should be included.

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- i. Because the decision is written in English and it is usually long, we know this can be hard. Sometimes a representative from our office can meet with people to help them understand what the asylum officer's decision says; you can call us and leave a message explaining that you need help with this. Another option is asking a trusted friend who speaks English to read the decision to you.
    - b. Remember also that **a negative decision does not necessarily mean that the asylum officer thought that you were lying.** Asylum officers *can and do* make negative determinations if they do not believe a person's story is true, and if this is the case, the decision should explain this. But asylum officers can also make a negative decision even if they find someone "reasonable" – in other words, it is possible for the asylum officer to believe that everything a person said is 100% true, but to decide that the person still does not qualify for withholding of removal or CAT because he doesn't meet the legal requirements.
  2. As you read the decision, **look for mistakes and things you do not agree with.**
    - a. You can make a list of the mistakes you find. For each one, explain what is wrong and why you think the mistake happened.
      - i. For example, if you notice that a date is wrong, maybe it is wrong because the asylum officer misunderstood what you said, or maybe the interpreter made a mistake, or maybe you gave the wrong date because you were nervous.
      - ii. If you left something important out of your story when you talked to the asylum officer, write this down as well. You can use this information as you prepare for your hearing with the judge.
  3. If the officer gave you a negative decision because you did not qualify for withholding of removal or CAT it will be important to **understand the basics of the law** so you can show the judge that you do qualify for those protections. The law is complicated, but in order to show the judge that you have a reasonable fear, it is important that you understand what the judge is looking for.

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**Withholding of Removal:** In order to qualify for Withholding of Removal, you must show that it is “more likely than not” that you will be harmed in your home country **because of:**

- a. Your Race
- b. Your Religion
- c. Your Nationality
- d. Your Political Opinions, **OR**
- e. Because you are member of a particular Social Group
  - i. For example, “gay men” or “women who are victims of domestic violence and cannot leave their abusers”

You have to show that the person you are afraid of is part of the government of your country or is someone who the government is unwilling or unable to control.

- It is possible that the asylum officer believes that you really are afraid of harm, but that the officer does not think that someone would try to hurt you **because of** your race, your religion, your nationality, your political opinions, or because you are a member of a particular social group.
- It is possible that the officer believes that someone might want to harm you for one of those five reasons, **but** the officer decides that the person or group is not part of the government of your country, and that your government could protect you from harm.

**Convention Against Torture:** In order to qualify for protection under the Convention Against Torture, you have to show:

- You more likely than not would be tortured if returned to your home country. You have to show that the torture you fear would be committed by your government or with the permission of the government and that there is nowhere in your country where you could go and be safe.
  - i. If the officer believes that you fear being tortured by your government or with the permission of your government, he must find your fear credible, regardless of the reason you believe you will be tortured.
  - ii. It is possible that the officer believes that you may be tortured, but does not think you have shown that it will be by the government or with the government’s permission or he thinks that there are parts of your country where you could live and be safe.

## How to Prepare for the Hearing

1. **Prepare for Discrepancies** – Read the notes from your interview with the asylum officer. Any time that you think you would answer differently in court than you did in the interview, make sure to think about and prepare an explanation for why your answer is different.
2. **Share Missing Information** – If you forgot to tell the asylum officer something important about your story, or you left something out because you did not feel comfortable telling the asylum officer about it, it is important to tell the judge about the information you left out. But you should also be prepared to explain **why** you left out that information – the judge or the trial attorney (the attorney for the government) may think that the fact you didn't tell the asylum officer some important things means that you are not telling the truth about your story.
3. **Link the Mistakes to the Incorrect Decision** – Also remember that even though it is important to point out mistakes in the asylum officer's notes and decision, pointing out these mistakes may not be enough to convince the Immigration Judge that the whole decision is wrong. You will have to show that the mistakes were the reason the asylum officer made a bad decision.
4. **Explain Why You Qualify for Withholding of Removal or CAT** – Make sure you understand why the asylum officer denied your reasonable fear interview and why you think that decision was wrong. In other words, you should be able to tell the judge why you do qualify for withholding of removal or CAT. Remember, even if the judge thinks you are telling the truth, he will deny your reasonable fear hearing if he does not think you qualify for withholding of removal or CAT. You must show the judge that you are afraid of returning home because you fear persecution based on one of the reasons mentioned above OR you are afraid that you will be tortured by the government.
5. **Gather Evidence** – Gather as much documentation and proof as you can. You will not be able to leave detention before your interview with the judge, but you may call your friends or family members or use the detention center's library to try and gather proof that you will be harmed if you are forced to return home.
  - a. Gather things like death certificates, police reports, medical records, newspaper articles, country conditions reports, and letters from family and friends can all be helpful during your hearing.
  - b. If you are able to make copies you should take three copies of all of your

documents to your hearing. You will keep one copy for yourself, give one to the judge, and one to the trial attorney.

- a. Practice What You Will Say to The Judge
  - a. It can be helpful to write down the important points you want to make sure to tell the judge. These may include mistakes in the interview transcript, evidence that you want to show the judge, and the specific reason that makes you qualify for withholding of removal or CAT. Even if you think you will remember everything, it is a good idea to write it down because you never know how you will react when you are in court talking to the judge.

### What to Expect during the Hearing

*Remember that you have the right to hire a lawyer to be present at the hearing with you.*

1. The judge will put you under oath (ask you to swear that you are going to tell the truth) and you must answer all questions truthfully.
2. If you do not speak English, the court will provide an interpreter to help you talk to the judge.
3. The trial attorney (the attorney who represents the government and is like the “prosecutor” in Immigration Court) will be in court with you. The trial attorney will likely point out any differences between what you say to the judge and what you said during your interview with the asylum officer. For that reason, it is important to know ahead of time what you said in your interview and be prepared to tell the judge why you are answering differently at the hearing.
4. **The judge’s decision is final**, so it is very important to gather any documents before your hearing that can show the judge why you are afraid to return home. However, the law says that the judge *can, but does not have to*, take and look at your evidence.

### What Happens at the End of the Hearing?

- Result 1: Judge decides the “Negative Reasonable Fear” determination was **INCORRECT**
  - a. If the judge finds that the asylum officer was wrong and that you do have a reasonable fear, you will be placed in removal proceedings and you will be able to file an asylum application with the court. **This does NOT mean you have won withholding of removal or CAT** but does allow you to apply. Sometimes you may request a bond or parole and may be released from detention while your case is

pending.

- Result 2: Judge decides the “Negative Reasonable Fear” determination was CORRECT
  - a. If the judge agrees with the asylum office that you do not have a reasonable fear, the immigration officers will begin the process of deporting you to your home country.

*Casa de Paz* 



# CASA DE PAZ OFFERS HELP AFTER YOU ARE RELEASED FROM IMMIGRANT DETENTION

OUR **FREE** SERVICES INCLUDE:

- Housing
- Meals
- Telephone, computer and WIFI
- Clothing
- Transportation to airport or bus station

You are welcome to stay at Casa de Paz (House of Peace)  
as you make travel arrangements to get home.

If you would like to stay at Casa de Paz please wait in the lobby.

Everyday we send volunteers to pick up people around 6pm  
and bring you to our home. We offer everything at no cost to you.