

PREPARING FOR YOUR FINAL COURT HEARING

BEFORE COURT

Sleep and eat well so that you have a good amount of energy and can pay careful attention to questions in court.

Review all your documents, especially letters from family and friends and other personal documents.



Review your asylum application. If there are any changes to make to your asylum application make sure to tell the judge *before* you sign the application on page 10 in court (you signed page 9 when you prepared the application, you always sign page 10 in front of the judge; if you've already signed page 10 at a previous court hearing it is still a good idea to tell the judge about the mistakes you've found). There are three ways to make amendments, depending on how many amendments you have and your judge's preference:

- Tell the judge what you want to change (good if you only have 1-2 changes)
- Write the judge a list of what you want to change (good if you have 5-10 changes)
- Give the judge a new copy of the asylum application, highlighting the parts you'd like to change (good if you have many changes)

Look for a lawyer: You have the right to have a lawyer present if you hire one. Whether you have a lawyer or not, you have all the same rights.

Ask for more time: You can write to the judge to ask for another court date if you need more time, for example because your evidence hasn't arrived yet, or if you are not feeling well.

FIRST STEPS IN COURT

The first 20-30 minutes of court are for everyone to get organized.

Asylum Application

If you have not already signed your asylum application on page 10 in front of the judge at a previous court hearing you will be asked to do so now. See above for ways to make changes.

Evidence

The judge will review the evidence that you and the government lawyer have submitted. You can make objections to any of the government lawyer's evidence that you believe is not trustworthy or accurate. The government lawyer can also make objections to your evidence. For example:

- You may want to object if there are big problems with the border interview or the asylum interview.
- The government lawyer may want to object if one of your testimony letters was not signed under oath or if it was not written by the person who signed it.



You can give the judge additional evidence but you will likely need to explain why you were unable to give it to the judge by the deadline he/she gave you (if the judge did not give you a deadline you needed to give him/her everything 15 days before your final court).

The government lawyer can also submit new evidence in court if he or she has a good reason that it is late or to contradict something you say.

You or the government lawyer can object to the evidence if it is filed late. You or the government can also ask for time to review the new evidence: you can ask for a short break, the hearing to be reset to another day, or to take testimony but for the decision to be withheld until the documents arrive.

If you do not have a piece of evidence in your case, be prepared to explain why you do not have it as you are required by law to give the judge all reasonably available evidence. For example, if you have family or friends who know about your problems they should write a testimony letter and/or testify in court unless there is a good reason they cannot do so.

Witnesses

You can also have people who know about your case come to court in person to testify or, if it is too expensive or difficult for them to make the journey, you can ask the judge to call that person for free (the judge will also call people internationally if you pay for the phone call). Having witnesses supporting you generally makes your case stronger, but be sure to tell them how to prepare for court.



QUESTIONS AND FINAL STATEMENTS

First there will be questions from your lawyer, or from the Judge if you do not have a lawyer.

Next the government lawyer will ask you questions as he or she has the right to cross-examine you and any other witnesses you present. You also have the right to cross exam any government witness.

Right to object: if you believe that a question asked was not an appropriate question, you can object to that question (example: relevancy, asked and answered, badgering the witness). The judge will decide if the question is appropriate. Generally you do not want to object too much but you can and should do so if the government lawyer is not being fair.

After the government lawyer is done asking you questions, your lawyer or the judge may choose to ask final questions to clarify anything that the government lawyer talked about with you. If you do not have a lawyer you can ask the judge to clarify anything or add anything that you think is important at this stage.

If the government lawyer has more to say they can do so, then you will be given another opportunity to respond, then they will have a chance to respond to what you said, and so on until

everyone's done discussing the case. Make sure that you have had an opportunity to explain everything. Ask to add anything at the end that the judge/attorney has not thought to ask you about.

Note: The judge can interrupt you, your lawyer or the government lawyer at any time. This is usually to clarify something or if the judge thinks someone is going off topic.

Lastly, the lawyers – and you if you do not have a lawyer – have an opportunity to give a final statement explaining what the judge should decide and why. You may want to summarize why you are asking for protection in the U.S.

DECISION AND APPEAL

The judge may make a decision immediately, after a 30-60 min break, or on a later day either in person or in writing.

If You Lose

You have the right to appeal. It is always a good idea to “reserve your right” to appeal and then decide later what you want to do after thinking about it and talking to a lawyer, otherwise you lose this right and it is difficult to appeal if you change your mind. If you decide not to appeal later you can write the judge or wait the 30 days without doing anything, then you will be scheduled for deportation.

- After you have said you do not want to continue fighting your case the government will try to deport you. If the government cannot deport you within 90 days they will review your case for release. If you are still detained after 180 days you will have another review of your case for release and may file a petition for “habeas corpus” or unlawful detention.
- You can request an audio copy of the Record of Proceedings – everything that was said in court – on CD so that a lawyer can review your case more quickly (after you send in your appeal, you will be given a printout of the hearing written in English but this takes time and doesn't help if there were interpretation problems). You request the CD by writing a letter to the judge. You can also tell the judge to send your CD to a lawyer if you provide the name and address of the lawyer.
- You have 30 days for your notice of appeal to be *received* by the Board of Immigration Appeals (BIA).

If You Win

- You should be released in 1-2 weekdays unless the government lawyer reserves appeal *and* decides you're a security risk. If you've won your case and are still detained after 3-4 weekdays contact a lawyer.
- If you need temporary housing, there is an immigrant shelter in Austin called Casa Marianella that may be able to house you for a short period of time.
- You can get an I-94 identity document from immigration when you leave the detention center, a work permit which you request from USCIS (this helps you get a job since



employers often don't know that asylees can work legally in the US), an "unrestricted" social security card, and social benefits like health care, food stamps and rent assistance for several months.

- As an asylee you have two years to petition for your spouse and children.
- After 1 year you can apply to get a green card, which makes you an LPR (Legal Permanent Resident). This allows you to travel outside the United States (except it is not recommended that you go back to the country from which you fled from without first speaking with a lawyer). If you need to travel outside the United States before or after you become an LPR you can request a Refugee Travel Document. This document operates like a passport as you should not use the passport – and claim protection – from the country that you fled.

COMMON QUESTIONS AT AN ASYLUM / WITHHOLDING HEARING

Asylum is a process for people who are afraid of returning to their country. Unfortunately, asylum doesn't protect everyone who has problems in their country. It protects people who *cannot find protection* in their country and who are afraid because someone will *seriously hurt* them *because of their*:



1. *race,*
2. *religion,*
3. *nationality,*
4. *political opinion, and/or*
5. *“particular social group”*, which is the legal way of saying that their society views them, and others like them, as different in a way they cannot, or should not need to, change. This could include being a homosexual, a victim of domestic violence, a member of a particular tribe, etc.

Common Questions

- **Motive**
 - Who were the person(s) that threatened/harmed you? (Even if you don't know their names you can give their aliases or other information about who you think they are and why you think they are that person/group.)
 - Why did they target you?
 - Have other family members, friends, acquaintances been harmed? If so, why?
- **Level of Harm**
 - How many times did they threaten/harm you?
 - For what period of time did they threaten/harm you? (first, worst, last incident)
 - What (specifically) do you fear will happen if you're forced to return? Why will this happen?
- **Safety in Your Country**
 - Can the police protect you? Why or why not? (If you have evidence of a complaint, you can tell the judge.)
 - Can you live safely in another part of your country?

There is also protection for people who are afraid of their government, which includes the police, a private actor like a gang that is working with the police/government, or when the government knows what is happening and does nothing to protect you. When the government is responsible for the harm you suffered/will suffer you may qualify for protection under the United Nations Convention Against Torture.



Don't assume that the judge understands what your culture is like. It is your responsibility to explain. This is your chance at protection in the U.S. so explain everything about your fear of return. The judge is required to keep all the information he/she hears confidential.

TIPS FOR TESTIFYING IN COURT

The judge will already know some about your case when your final hearing starts. The judge wants to have a conversation with you to get to know you and to hear how you tell your story. Remember, you know your story better than anyone, so try to not worry too much. Here are some general tips:

Avoid confusion:

- Don't be afraid to ask the judge questions about how court works or anything else. For example, ask for clarification if you do not understand a question. For example, if you were in prison twice and the judge asks you "Were you beaten in prison?" you can respond by saying "Would you like to know about the first time or the second time I was in prison?" Alternatively, you can clarify in your answer by saying "The first time I was in prison I was not beaten but the second time I was in prison I was beaten 3-4 times."
- Give your answer in a complete sentence to avoid possible confusion. For example, if you are asked "How many siblings do you have?" instead of saying "5," you can say "I have 5 siblings, 3 brothers and 2 sisters."
- Don't be afraid to correct the interpreter, judge, government lawyer or your lawyer. For example, if you had a leg injury and are asked "Were you bleeding a lot from your arm?" you may want to say "yes" because you were bleeding a lot, but if your injury was actually on your leg you need to say "no" and correct the misunderstanding.
- Say if there is a problem so you can fix it immediately and avoid confusion. Also, as everything you say in court is recorded, if you explain the problem in court there will be a record of it and it will be easier to fix later if the judge denies your case because of the misunderstanding.



Be truthful. This is usually the best way of avoiding problems in your case. It is important that the judge feels you are trustworthy.

- Look people in the eyes – it's a sign of truth and is not disrespectful in the U.S.
- Be realistic – nobody is perfect and it is better to be truthful and explain your situation to the judge than try to hide something that you think makes you look bad. If the judge thinks you are trying to hide something the judge may think it is really bad when it is not actually that bad.
- Be precise – if the judge thinks you are lying about something, the judge may think you are lying about everything.
 - Give as much detail as you can but it is ok, and better, to say you don't know something if you don't than make it up. If you do not know the answer, you can say you don't know but do try to give an approximate answer if you can. For example, if the question is "How many people live in your town?" you can say "about 10,000" or "I don't know, maybe between 8,000 and 12,000".
 - Don't exaggerate – trying to make your case sound better than it is may make the judge think that you're lying about everything.

- Don't let others change your answer – the government lawyer might try to trap you by making you think you should respond a certain way, and then turn your response against you if it's inconsistent with anything else you said or anything written in your documents.

Respond first to the question, and then explain and/or add anything else you think is important. For example, if the question is “Where is your wife?” don't say “We don't live together” as that doesn't answer the question of where she is. Instead you can say “I don't know, we don't live together anymore” or “The last I heard she was in Honduras but we separated two years ago and we're not in contact anymore so I'm not sure.”



It's ok to show emotion about what happened to you but be respectful and don't get angry at the judge, government lawyer, interpreter, or anyone else. Be “hard on the issue, soft on the people”.

Ask for a break if you need one.

The government lawyer or the judge might look like they're not paying attention – don't worry, they may be reading your case documents. Even if they're not focused on your case, what you say is still being recording so if someone later says they didn't hear you say something, you have proof that you did say it.

How to Work with an Interpreter

You have the right to have everything said at your asylum interview and/or court hearing accurately translated. This Tip Sheet is designed to help you prevent confusion and misunderstandings that can occur when working with an interpreter either during your asylum interview or in court.

As a general rule it is a good idea to speak slowly, clearly, and loudly, as well as make sure to pause after each sentence or idea to give the interpreter a chance to interpret before they forget what you said. If you have not finished your answer to the question and someone interrupts just say “please, I’d like to finish my answer to the question”.



1. Ask for clarification if you do not understand a question.



Example: Say you do not understand and ask that the asylum officer or judge repeat the question or rephrase the question.

Example: Say something like “If I understand you correctly, you are asking if the government police ever...” followed by “Is that correct?” or “If you are asking whether the police ever... than the answer is...”

2. Repeat the question in your answer to avoid confusion.

Example: If you are asked “Did you last *see* your mother in 2011?” but the interpreter says “talked to” instead of “see” and you only answer “yes”, then it is thought that you are saying yes to the question asked in English, in other words that you “saw” your mother, not “talked to her. Instead, respond with a complete sentence like “The last time I *talked* to my mother was in 2011.” In this example, the individual lost asylum in part because there was a confusion between the words “see” and “talked” and the judge thought the person had changed their story and was lying.

3. Provide extra, clarifying detail.

Example: In the example above, the individual could have said “The last time I talked to my mother *on the phone*...” instead of “The last time I talked to my mother...”

4. Do not guess! Always say the truth. If you are not sure about something it is ok to say so. You should, however, explain what you think and why you think that.

Example: “I am not sure who the men were who attacked me but I believe they were Al Shabaab because they were dressed like Al Shabaab and they threatened to kill me if I continued to work for the government.”

5. Do not use absolutes like “always”, “never”, “everyone”, “no one”, specific days or times, or specific numbers unless you are *absolutely* sure. The government can sometimes show that it is not always true and make you look like you are lying.

Example: Instead of “I left my country on August 6, 2016” say “I left my country around the first week of August” if you are not sure. In this example, the government lawyer had a passport with an exit stamp showing that the person left his country on August 8 and not on August 6. This makes the judge doubt other things you say during your case that may important.

Requirements for Asylum, Withholding, and Torture Convention Protection

Burden on Applicant: It is your job to prove you need protection

Harm can be either Physical or Emotional / Mental

You can qualify for asylum if you show Past or Future Harm

	Asylum	Withholding of Removal	Convention Against Torture
Harm	Persecution	Persecution	Torture
Why	5 reasons	5 reasons	Many reasons
Government or Non-State Actor If:	Unwilling or unable to control	Unwilling or unable to control	Instigation, consent, acquiescence
Probability	~10%	Over 50%	Over 50%
Discretionary?	Yes	No	No
Legal Status	Permanent	Temporary	Temporary

You are ineligible if:

You can move somewhere else in your country and be safe (Internal Relocation)

You have permanent legal status in another country (Firm Resettlement)

The conditions in your country have fundamentally changed for the better

Humanitarian asylum: if you have suffered past persecution and 1. face other serious harm or 2. the severity of the past persecution was so extreme you should not be required to go back.