



# ASYLUM 101

The Law

The Legal Ecosystem & Agencies Involved

Form I-589 & the Application Process



## Asylum Law Basis

The history of the program; eligibility basics; bars to receiving asylum

01



## Agencies Involved

How to apply for asylum depending upon if you are in immigration proceedings or not

02



## Form I-589

The basics of the form itself: biographical information, the claim, and other pitfalls

03



## Packet Review & What to Send

How to know if you have a packet ready to mail to the appropriate agency

04



# THE HISTORY OF ASYLUM

Emerging out of the horrors of the Second World War and the holocaust, the global refugee system was formed to deal with the massive number of displaced peoples. Whereas the refugee system was international in scope, asylum systems are domestic in scope.



## 1951 Convention

Defines refugee status and state obligations under international law. First global agreement relating to the status of refugees in modern history.

01



## 1967 Protocol

Broadened the original definition of refugees and expanded the number of states who were members to the original treaty – notably the United States.

02



## 1980 Refugee Act

Brought U.S. domestic law in line with international law and created the modern asylum system that we have today, at least in framework.

03



## Present Day

A product of many revisions, sources of law, and agencies. A notable alteration came in 1996 which is largely still in effect today.

04



# SOURCES OF LAW FOR ASYLUM

Asylum law is not simply one set of rules written in one source. It is a complex nebula of multiple, interacting sources of law





## A “REFUGEE” UNDER THE LAWS OF THE U.S.

“any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

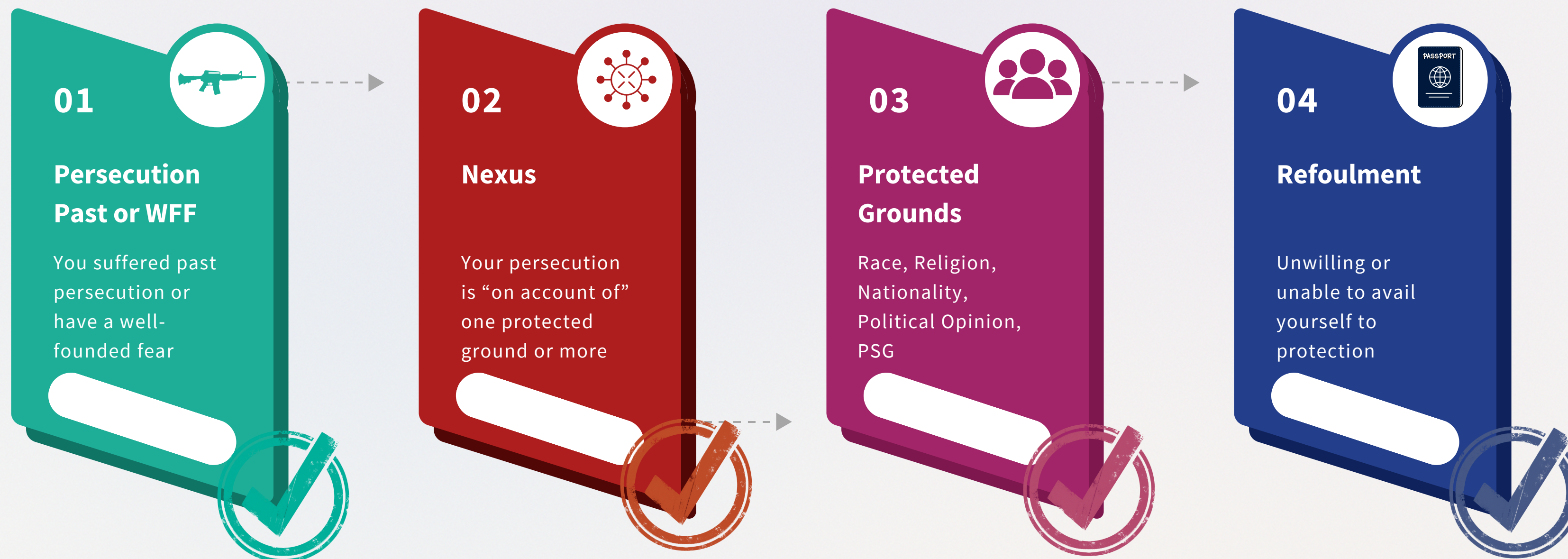
INA §101(a)(42)(A)





# ELEMENTS OF THE DEFINITION

You are outside of your home country of nationality AND:





“Persecution” is not a defined term in the immigration law written by Congress (the “INA”). Because of that, we must look at the definition courts have come up with themselves to know what it means and to know what kind of harm qualifies as persecution. Different courts use slightly different definitions, but a general definition of persecution is that it is “extreme harm” that is regarded as “offensive” by society.

Very strong examples of “persecution” could include torture, attempted murder, rape or sexual assault, kidnapping, violent assaults, being held hostage, etc.

This is not to say that less severe harm you have suffered in the past should not be included – ***you should be over-inclusive in what you put in your asylum application rather than under-inclusive.*** If you suffered a harm that caused you a lot of physical, mental, emotional, or economic pain -- include it in your story.

“Persecution” is not looked at by the courts or USCIS on a one-by-one basis; instead, they look at the **total harms you have suffered as a collection** and decide if it is enough as a whole.



## Persecution

What counts as persecution and what is a well-founded fear?

WFF  
10%

If you have not yet suffered past harms serious enough to be called persecution, you can also win asylum by making an argument for why you think you might suffer serious harm in the future.

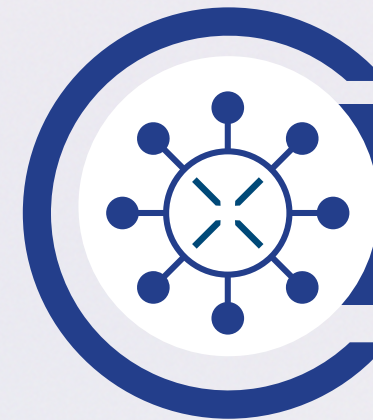
If this is your case, you have to show the court or USCIS that your fear of future harm is “well-founded” – meaning that it is more than 10% likely to happen. You can make your case for having a “well-founded” fear by explaining (1) why you believe you are at risk for future harm, and (2) by pointing to news articles or other sources which show your fear to be reasonable because what you are describing has been documented as happening before.



# ONE CENTRAL REASON

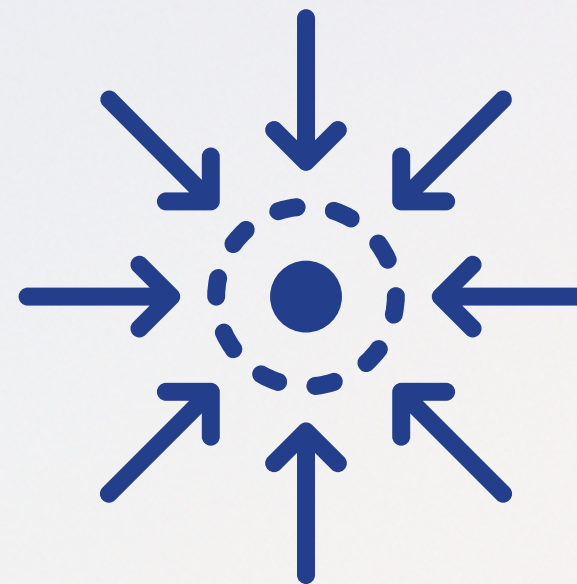
It is not enough to just show that you have suffered past persecution or that you have a well-founded fear of future persecution. You must also show that the past or future persecution will happen to you because of your race, religion, nationality, political views, or social group. General or random street violence does not count. Being a victim of random violence or being a victim of a regular crime in your home country is not enough, by itself, to qualify for asylum. The motive of the crime matters.

Showing that your harm was “because of” (“on account of”) you belonging to a group means showing that one central reason for why you were harmed was because you are in that protected group.



## Nexus

“On Account Of” in practice





|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Race</b>                          | Ethnicity; Skin Color; Physical racial attributes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Religion</b>                      | Sect; Level of Religious devotion (being too religious, not being religious enough, being an atheist, being part of a different religion, marrying someone from a different religion)                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Nationality</b>                   | Being from a particular country; being part of a specific tribe, clan, or national sub-group; (often very inter-related with race, above)                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Political Opinion</b>             | Being part of the opposition; being “anti” a specific political agenda or idea; being “pro” a specific agenda or idea; being part of a specific political movement or party; participating in political activism                                                                                                                                                                                                                                                                                                                                                                |
| <b>Particular Social Group (PSG)</b> | In order to show that the “particular social group” (PSG) you are asking the court or USCIS to consider qualifies, you must show that it meets three criteria: The fact that you belong to this group is “immutable” to you – meaning that you cannot change the fact that you are in this group – either you were born this way or it is part of your identity or it is something that happened in the past that you cannot change. You can define the group with “particularity” – meaning there are clear lines between who is “in” the group and who is “not in” the group. |

REAL & IMPUTED\*



**Protected Grounds**

Race, Religion, Nationality, Political Opinion,  
Membership within a Particular Social Group

**IMMUTABLE  
PARTICULAR  
SOCIALY DISTINCT**



A government may be “unable” to stop the persecution against you because (1) they are not an effective government that has the power to stop the harms, (2) they are not as powerful as the group hurting you in the region you are from, or (3) the government is too corrupt to hold its own corrupt officers accountable.

A government might be “unwilling” to protect you if (1) they are the ones who are hurting you, (2) they have a long history of targeting your group, or (3) they are corrupt and working with the bad groups who have been hurting you.

Showing evidence that you tried to report your past harms to the government for help can be useful to your case. If you did not report the past harms to the government because you knew the government was corrupt or incapable of helping you, though, then provide evidence of how you knew that they were corrupt or incapable.



**CAN'T STOP OR  
WON'T**



### Avail Oneself to Protection

Refusal to avail oneself to the protection of your country of nationality



## Safe Third Country

Countries that have STC agreements only (likely again under Trump)

## Prior Denial

Without changed circumstances, you only get one shot

## Firm Resettlement

Did you already find shelter and safety in another place before the U.S.?

# BARS TO ASYLUM ELIGIBILITY

## Persecution of Others

If you are the basis for someone else's asylum claim, you are not eligible yourself

## Serious Crimes

Certain violent crimes, drug crimes, weapons charges, or other non-political crimes

## Security Reasons

Affiliated with dangerous groups or terrorist organizations



# ONE YEAR BAR

365 days from last entry.

## EXTRAORDINARY CIRCUMSTANCES

- Serious illness or injury
- legal disability (age / institutionalization)
- Ineffective assistance of counsel
- Maintaining lawful status (TPS, parole, etc.)
- Curing of prior filing defect
- Death or incapacity of close family member

\*Reasonable time after



## CHANGED CIRCUMSTANCES

- Changes to You
- Changes within your home country

What matters is that your eligibility for asylum has been impacted and your fear of return is newly valid.

\*Reasonable time after





# AGENCIES INVOLVED IN ASYLUM

Article II Agencies + Article III Courts  
Affirmative Processes & Defensive Processes

EXECUTIVE BRANCH



## USCIS (DHS)

In charge of benefit requests, naturalization, work permits, biometrics, as well as AFFIRMATIVE asylum (+ asylum for UACs)



## ICE (DHS)

The police who are responsible for removing people who are not authorized to remain in the United States. Represented by OPLA in Court.



## EOIR (DoJ)

The Immigration Courts (and Board of Immigration Appeals) housed within the Department of Justice.  
Executive office for immigration review.  
Article II court.



## Article III Courts

Responsible for appeals beyond the scope of the agency. They always have jurisdiction over constitutional issues, but limited review of agency discretion.

JUDICIAL BRANCH



USCIS PROCESS

# AFFIRMATIVE & DEFENSIVE ASYLUM CASES

Your posture determines your process

## 1 Apply with USCIS

Send your application and evidence as a complete packet to USCIS

1

## 2 Get a Receipt

Wait for USCIS to confirm receipt of your application (2-3 months)

2

## 3 Do Biometrics

Have your fingerprints taken & photograph taken at the field office

3

## 4 Attend Your Interview

Validate your story with credible testimony at the USCIS office

4



LOSING HERE MEANS DEFENSIVE PROCESS



EOIR PROCESS

# AFFIRMATIVE & DEFENSIVE ASYLUM CASES

Your posture determines your process

## Get NTA'd by ICE

Either get NTA'd to start, or be referred by USCIS

1

## Submit your Application

If EOIR does not have your I-589, submit one along with required evidence

2

## Present Your Case at EOIR

Attend your merit hearing and present testimony in court and face questioning by OPLA

3

## Win or Appeal

If you win, you're all done! You are one step closer to residency. If you lose, you have 30 days to appeal to the BIA.

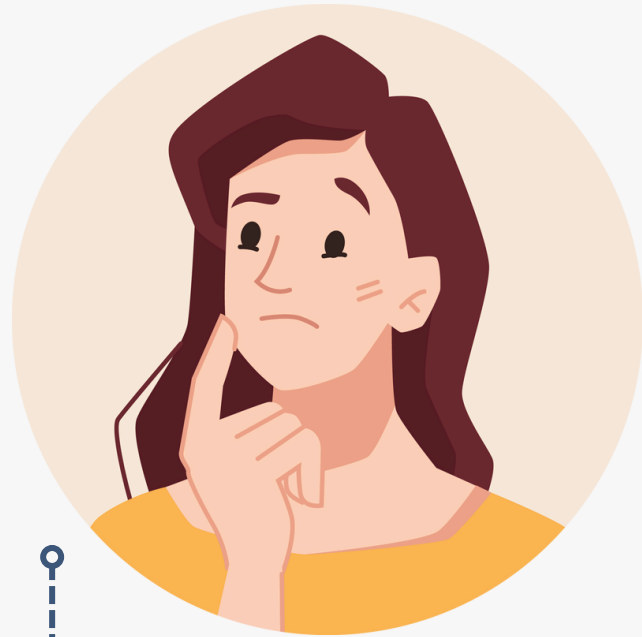
4

LOSING HERE MEANS REMOVAL OR APPEAL





# HOW DO I KNOW WHICH PROCESS I'M IN?



**If you have never been issued an NTA or interacted with ICE, then you're most likely in an affirmative process.**

If applying for asylum is your first contact with immigration, or if your prior contact with immigration has been non-adversarial, you might be able to get asylum with USCIS and avoid court altogether.



**The fastest way to know if you are in proceedings is to look up your A Number online**

Use the EOIR Automated Portal to check if you have a court date set and if your case is active with an immigration court. Unless you are a UAC, you have to file with EOIR if you are in court.



**If you have been detained before, removed before, or interacted with ICE, you may be in proceedings**

Do you have an A Number? Have you been caught by ICE and they took your prints? Have you been denied by USCIS before? Did you enter the country as an unaccompanied minor? These are all questions we need to know.



# THE FORM TO USE: FORM I-589

Application for Asylum and Withholding of Removal  
(& protection under the Convention Against Torture)



## Include Corroborating Evidence

If it helps your case, include it!

## Always Use the Most Current Form Version



## No Filing Fee

For the application as well as for the first work permit based on asylum (C)(8)

## Tell your Whole Story

Make sure your form is complete, accurate, and giving specific, responsive answers

