

ASYLUM PART 1

Esperanza Immigrant Rights Project

Agenda



- Your rights in immigration court.
- The hearing process (or at court).
- What asylum consists of.
- Instructions to fill out the I-589 form.

*THE COURT
PROCESS*

Rights

- If you have a deportation case in immigration court, you have the following rights:



- To contact a lawyer with your own resources.
- If you cannot find a lawyer, you have the right to defend yourself in court.
- To have a proper process: notification and fair trial.

Rights



- To have an interpreter in court.
- To present evidence and witnesses that support your case.
- To counter the evidence that the government presents against you.
- To appeal the decision if you think the judge committed a legal error

What does “deportation procedures” mean?



- The United States government believes that you are deportable because:
 - You entered the United States without permission,
 - Your visa expired, or
 - You are a legal permanent resident and you committed a crime.

Notice to Appear

- You will receive a document called Notice to Appear.
- This document includes your basic information and the charges brought against you.
- It is very important that you review this document because it can contain errors.

U.S. Department of Homeland Security **Notice to Appear**
In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 285175357 **FIN #** : File No. 000-000-000
DOB: 08/11/1994 **Event No** :

In the Matter of:
Respondent: Contreras, Jose currently residing at:
CARRIZO AVENUE 224 N. WILLOW WAY. , PULMONO CALIFORNIA 91871
(Number, street, city and ZIP code) (Area code and phone number)

1. You are an arriving alien.
 2. You are an alien present in the United States who has not been admitted or paroled.
 3. You have been admitted to the United States, but are removable for the reason stated below.

The Department of Homeland Security alleges that you:
1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You entered the United States at or near Nogales, Arizona, on or about July 30, 2010;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 214(b)(1) order was vacated pursuant to: ICFR 208.30(f)(2) ICFR 235.30(c)(5)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
626 South Olive Street, 15 Floor Los Angeles California 90014

On September 28, 2010 at Los Angeles, CA (City) (State) (Complete Address of Immigration Court, including Room Number, if any)
at 9:00 AM on the 28th day of September, 2010, to show why you should not be removed from the United States based on the charge(s) set forth above. (Time) (Date and Time of Hearing) (Signature and Title of Hearing Officer)

Date: September 28, 2010 LOS ANGELES, CA. (Date and Time)
This Notice to Appear supersedes the Notice to Appear issued on August 7, 2010. (Date and Time)

See reverse for important information. Form I-862 (Rev. 08/01/07)

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 285175357

FIN #:

File No: 000-000-000

DOB: 08/11/1994

Event No:

In the Matter of:

Respondent: Gonzalez, Jose

currently residing at:

CRITTENTON SERVICES 600 N. HARBOR BLVD. , FULLERTON CALIFORNIA 92832

(Number, street, city and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

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4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(f)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
606 South Olive Street, 15 Floor Los Angeles CALIFORNIA US 90014

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the

charge(s) set forth above.

Date: September 28, 2010


LOS ANGELES, CA.

(Signature and Title of Issuing Officer)

This Notice to Appear supersedes the Notice to Appear issued on August 7, 2010 (City and State)

See reverse for important information

Charges for New Arrivals

- Common Charges
 - You are not a citizen of the United States.
 - You were born in another country and are a citizen of another country.
 - You entered the United States on such date, such place.
 - You entered the United States without being inspected and admitted, which means, without a visa or permission to enter.
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Charges for Legal Permanent Residents



- Common Charges
 - You are not a citizen of the United States.
 - You were born in another country and are a citizen of another country.
 - You became a legal permanent resident of the United States on such date and place.
 - You committed a crime on such date that makes you deportable.

Deny or Admit the Charges



- The judge will speak about your notice to appear at your hearing.
- If all the charges are true, the government can prove that you are deportable.
- You have the right to deny the charges the government has brought against you.

The Importance of Attending your Hearing



- It is an opportunity to fight your case.
- Order of removal in absentia
- Hearing Notice
- 1-800-898-7180

Who will be in court?



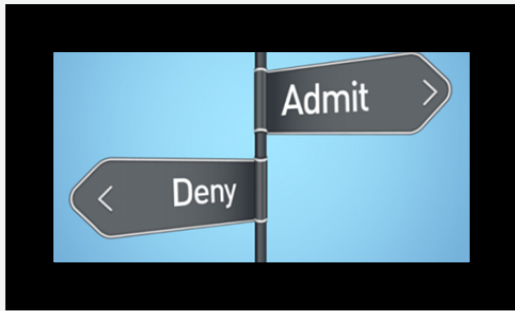
- On the day of your hearing, the following people will be present:
 - The Judge
 - A government lawyer who represents Immigration and Customs Enforcement
 - An interpreter

Types of Hearings



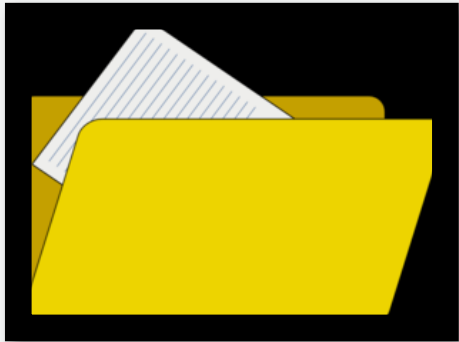
- In immigration court, there are two types of hearings:
 - Master Calendar Hearing
 - Individual or Merits Hearing

Master Calendar Hearings



- The judge will ask you if you need more time to hire a lawyer (in case, you do not have one).
- They judge will look over your file and ask you if you would like to deny or admit the charges brought against you.

Master Calendar Hearings



- The judge will ask you questions to determine if you qualify for a defense against deportation.
- You will receive a form that corresponds to the defense that you qualify for.
- The judge will give you a date for a final hearing so you can present your case.



Master Calendar Hearings



- If you decide to not fight your case, you will have the opportunity to ask for voluntary departure (if you qualify) or an order of deportation.

Individual or Merit Hearings



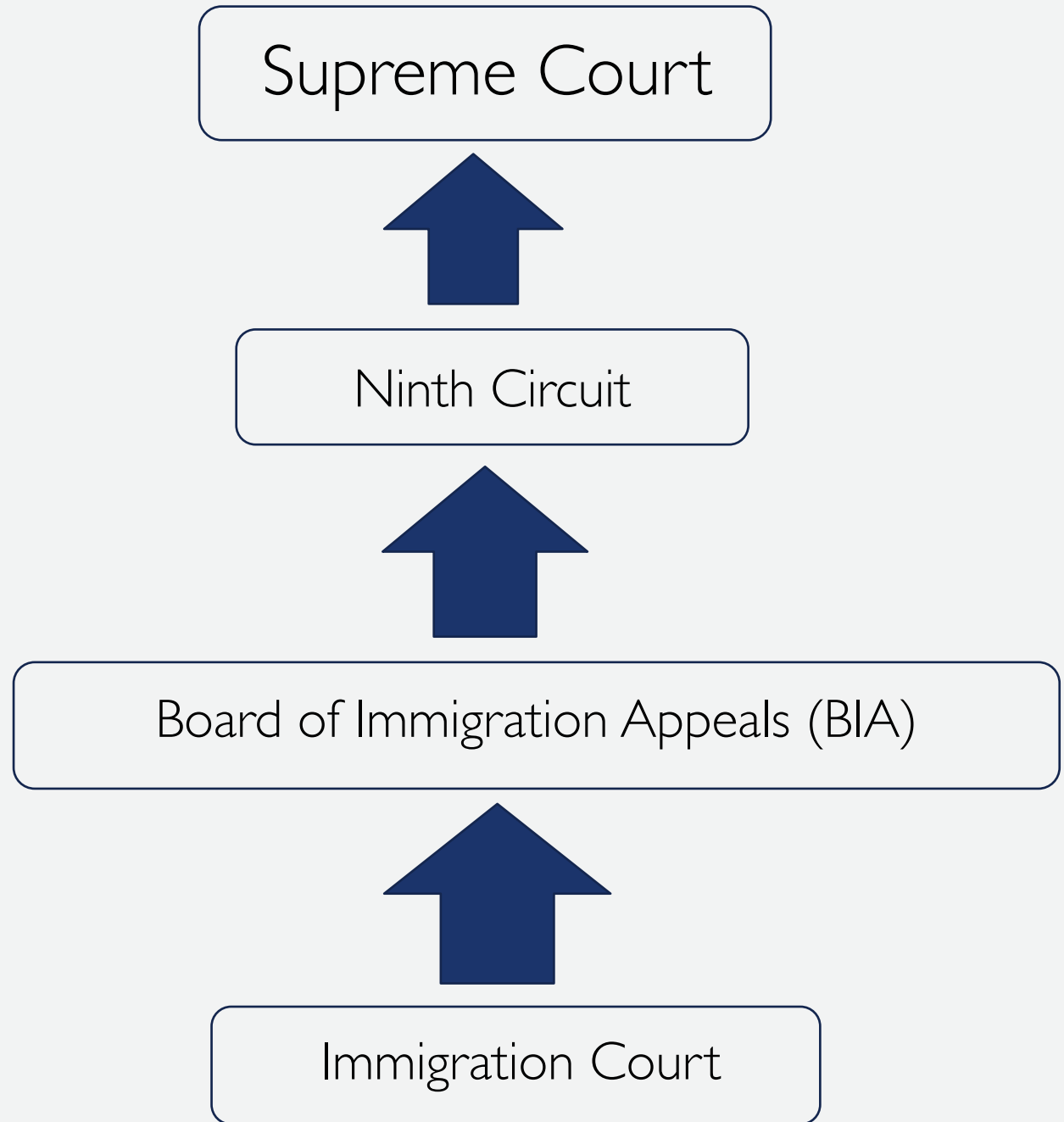
- This is your opportunity to present your case to the judge.
- You will testify, present evidence, and formulate arguments in favor of your case.
- You must always bring copies of any document that you will present.

Decision and Appeal



- In some cases, the judge will present the decision and reasoning at the end of the hearing. In other cases, they will send you a decision through the mail.
- If the judge denies your case and you would like to appeal the decision, you should inform him.
- The judge will give you documents that you should send to the Board of Immigration appeals within the following 30 days.

Decision and Appeal

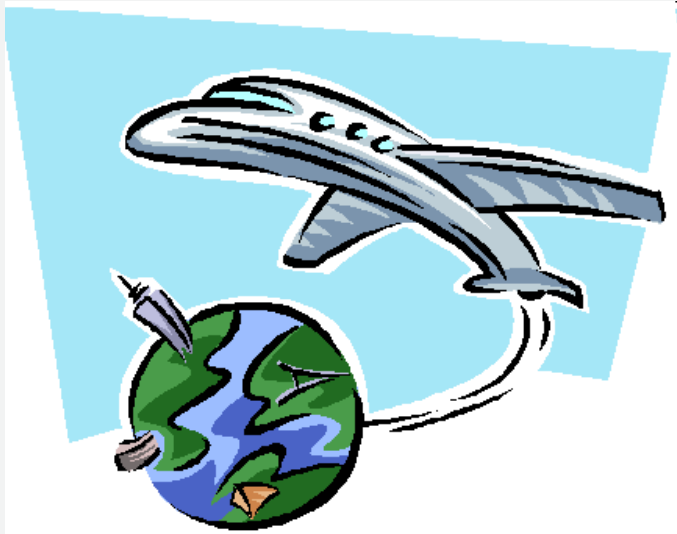


Voluntary Departure



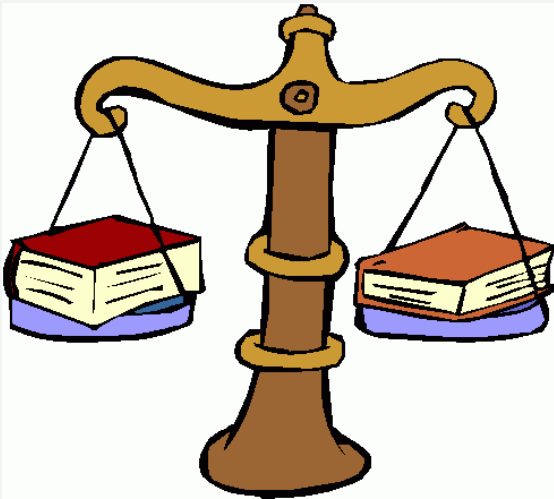
- If you qualify, you may ask for voluntary departure.
 - You will pay for your own flight.
- They will not give you the 10 year bar.
- If you do not leave on time or return to the United States without permission after you obtained voluntary departure, the order becomes an order of deportation.

Deportation



- If you do not qualify for voluntary departure and/or lose your case, the judge will give you an order of deportation.
- You will receive the 10 year bar with the exception of a pardon.
- If you return within those 10 years without permission, you will possibly receive a bar of 20 years, will not see a judge, will be given a fine, and they can charge you with a crime.

Fighting Against Deportation



- Unfortunately, the judge will not give you permission to stay in the United States for any reason.
- There are certain ways to convince the judge to give you permission to stay here.
- Examples of defenses include: Asylum, U Visa, family petition

*WHAT IS
ASYLUM?*



What is asylum?



- It is a legal mechanism to **fight deportation**.
- If you fear returning to your country because you believe someone will hurt or mistreat you there, you possibly may be able to ask for asylum.

Obstacles to apply for asylum



- Having been in the United States more than one year without applying for asylum.
- Aggravated felonies include homicide, drug trafficking crimes, rape, etc.
- Having obtained a deportation order in the past.

Basic Elements for Asylum



- Well founded fear that you will suffer
- Persecution (past or future)
- By the government or people that the government cannot control, and
- The central reason for persecution is based on you being part of a protected category

Well Founded Fear



- The fear cannot be just any fear. It has to be a well founded fear.
 - Past persecution can establish your fear.
 - If there is no past persecution, you must establish the reasonable probability of future harm.
 - That probability must be at least 10%.

Well Founded Fear



- You must demonstrate that your fear is real and that a reasonable person in your place would feel that same fear.
- This is done through evidence (ex. documents, police reports, pictures, letters, medical reports).

Persecution



- Physical violence in any form such as domestic violence, torture, physical wounds.
- Threats of serious physical harm such as death or kidnapping.
- Emotional or psychological harm.
- Severe discrimination.
- A serious lack of economic resources that puts that person's life and liberty at risk.

Persecution



- This does not constitute persecution:
 - Anonymous threats
 - Personal property damage
 - Efforts by law enforcement to detain you for legal causes
 - Generalized poverty or simply an unfavorable economic situation

Persecution



- Past persecution serves as proof of future persecution.
- The persecution does not necessarily have to have happened in the past. A well founded fear of future persecution is sufficient, even though it is more difficult to prove.

Persecution



- The suffering or harm has to be more than simple harassment (not only on one occasion).
- The judge will look at all the harm and the frequency that one suffered the harm to see if you qualify for asylum.

Incapacity by the government



- To apply for asylum, the persecution must come from:
 - Government: police, military, teacher or any other official that harmed you in their official capacity.

Incapacity by the government



– People who the government cannot or does not want to control such as:

- Paramilitary Groups
- Gangs
- Drug Traffickers
- Domestic Violence Perpetrators

Incapacity by the government



You must prove that:

- You reported the abuse to the police, but they did nothing, or
- If you did not report it, it was because:
 - The authorities would not do anything to protect you and/or
 - It was dangerous because your abuser would harm you in retaliation, or the authorities would harm you for reporting it.

“Cause of” Protected Categories



- The protected categories under the law of asylum are:
 - Race
 - Nationality
 - Religion
 - Political opinion
 - Membership in a particular social group

“Cause of” Protected Categories



- You must prove that at least of one these five reasons is the “main reason” and without it you would not have been persecuted
- Without the link, the asylum case does not exist

*PROTECTED
CATEGORIES*



Race or Nationality



- The persecution may be motivated by race, nationality, or for being part of an ethnic group such as being part of an indigenous community.
- For example, if someone tried to take away your land by force for being indigenous.

Religion



- The persecution caused by religion can include:
 - Prohibition for being a member of a religious congregation or from participating in worship, whether it be public or private, or from receiving or providing religious instruction.
 - Serious measures of discrimination are imposed on people for practicing their religion or belonging to a particular religious community.

Political Opinion

- You must prove that you have (or your persecutors believe you have) a particular political opinion.
- Also, you must prove that you were a victim of persecution (or will be) because of your political opinion.



Membership in a Particular Social Group



- A particular social group is a group that is:
 - Composed of members who share a common characteristic that they cannot or should not change.
 - Particularly defined.
 - Recognized by the community that you belong to.

Membership in a Particular Social Group




- Examples include:
 - Family
 - Sexual orientation
 - Past associations or experiences
 - Informants

Relocation




- You must prove that you cannot go to another part of your country of origin where you will be safe or it would be unreasonable for you to go to another area.
- Think of reasons why you cannot leave including the cost and where your families lives.


Withholding of Removal

- Withholding of Removal is similar to asylum but the BIG difference is that the risk of harm that you have to prove is much higher (51%).
 - This is for people who do not qualify for asylum because they committed a serious crime, or they applied for asylum after one year of entering the country, or they were deported in the past.
- 


Withholding of Removal

- You will be not be able to obtain a legal permanent resident card (green card).
 - Winning your withholding of removal case only means that the government will not return you back to your country and they will give you work authorization.
 - You may not petition for your family.
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Convention Against Torture (CAT)

- To win your case under the “Convention Against Torture” or “CAT,” you must prove that it is very likely the government in your country of origin will torture or kill you.
 - You must prove that there is a 51% probability of torture.
 - You do not need to prove a reason for the torture.
- 

Convention Against Torture (CAT)

- Like Withholding of Removal, winning a CAT case does not mean you will be able to obtain permanent residency. It only means that ICE will not send you back to your country.
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Asylum

- **You must prove a reason.**
- It allows you to stay and look for employment.
- Legal status for your children under 21 years old.
- Permanent Residency and, in due time, American Citizenship.

Convention Against Torture (CAT)

- **You do not need to prove a reason.**
- **51%** possibility of persecution.
- **It will not make you eligible for permanent residency.**
- **The protection may be terminated** if you are no longer at risk of torture in your country of origin.

Withholding of Removal

- **It will not make you eligible for permanent residency.**
- **You must prove a reason.**
- **51%** possibility of being persecuted.
- **The protection can be terminated.**
- Your children will not receive protection.