

# COMMON DEFENSES FOR DETAINED ADULTS IN REMOVAL PROCEEDINGS REFERRED FOR PRO BONO REPRESENTATION BY CAIR COALITION

DEFENSES BASED ON FEAR				
	ASYLUM	WITHHOLDING UNDER INA § 241(b)(3)	CONVENTION AGAINST TORTURE	
			<i>Withholding</i>	<i>Deferral</i>
<b>REQUIREMENTS</b> <i>Applicant has to show:</i>	<ol style="list-style-type: none"> <li>Well-founded fear (10% chance)</li> <li>of Persecution</li> <li>on Account (Nexus)</li> <li>of a Protected Ground                             <ol style="list-style-type: none"> <li>Race</li> <li>Religion</li> <li>Nationality</li> <li>Political Opinion</li> <li>Particular Social Group (e.g. – sexual orientation)</li> </ol> </li> <li>By the government or someone the government cannot or will not control</li> <li>A person who merits discretion</li> </ol>	<ol style="list-style-type: none"> <li>More likely than not (51% chance)</li> <li>of Persecution</li> <li>on Account (Nexus)</li> <li>of a Protected Ground                             <ol style="list-style-type: none"> <li>Race</li> <li>Religion</li> <li>Nationality</li> <li>Political Opinion</li> <li>Particular Social Group (e.g. – sexual orientation)</li> </ol> </li> <li>By the government or someone the government cannot or will not control</li> </ol>	<ol style="list-style-type: none"> <li>More likely than not possibility (51% chance)</li> <li>of being intentionally Tortured</li> <li>by the Government or by someone acting at the Acquiescence of the Government</li> </ol>	<ol style="list-style-type: none"> <li>More likely than not possibility (51% chance)</li> <li>of being intentionally Tortured</li> <li>by the Government or by someone acting at the Acquiescence of the Government</li> </ol>
<b>BARS</b> <i>Applicant should not have...</i>	<ol style="list-style-type: none"> <li>Failed to file within 1 year of last entry into the U.S.</li> <li>Firmly Resettled in another country prior to coming</li> <li>Committed a serious nonpolitical crime outside the United States</li> <li>Was convicted of a Particularly Serious Crime (aggravated felony)</li> <li>Persecuted others</li> <li>Provided material support to a terrorist organization (TRIG)</li> </ol>	<ol style="list-style-type: none"> <li>Was convicted of a Particularly Serious Crime (aggravated felony with 5 year sentence or more)</li> <li>Persecuted others</li> <li>Provided material support to a terrorist organization (TRIG)</li> </ol>	<ol style="list-style-type: none"> <li>Was convicted of a Particularly Serious Crime (aggravated felony with 5 year sentence or more)</li> <li>Persecuted others</li> <li>Provided material support to a terrorist organization (TRIG)</li> </ol>	NONE
<b>WHAT DOES THE PERSON GET?</b>	<ol style="list-style-type: none"> <li>Asylee status</li> <li>Resettlement benefit assistance (time sensitive)</li> <li>Can apply for derivative status for spouse and/or child/ren in U.S. or abroad</li> <li>Can apply to adjust to a lawful permanent resident after 1 year of continuous presence</li> <li>Eventual path to citizenship</li> </ol>	<ol style="list-style-type: none"> <li>Ordered removed with simultaneous order withholding removal to <u>specific country</u></li> <li>Eligible for employment authorization</li> <li>May qualify for some Medicare/Medicaid assistance</li> </ol>	<ol style="list-style-type: none"> <li>Ordered removed with simultaneous order withholding removal to <u>specific country</u></li> <li>Eligible for employment authorization</li> <li>May qualify for some Medicare/Medicaid assistance</li> </ol>	<ol style="list-style-type: none"> <li>Ordered removed with simultaneous order withholding removal to <u>specific country</u></li> <li>Eligible for employment authorization if economic need is proven</li> </ol>
<b>LOGISTICAL DIFFICULTIES POST GRANT OF RELIEF</b>	<ol style="list-style-type: none"> <li>Cannot travel to country that the person claimed asylum from or use country passport</li> </ol>	<ol style="list-style-type: none"> <li>Cannot travel outside the U.S. (will lose status if so)</li> <li>Cannot apply for derivative status for family members</li> <li>Can be detained for up to 6 months while ICE locates a safe third country for removal</li> <li>In some states may not be eligible for state issued ID or driver's license</li> </ol>	<ol style="list-style-type: none"> <li>Cannot travel outside the U.S. (will lose status if so)</li> <li>Cannot apply for derivative status for family members</li> <li>Can be detained for up to 6 months while ICE locates any safe third country for removal</li> <li>In some states may not be eligible for state issued ID or driver's license</li> </ol>	<ol style="list-style-type: none"> <li>Cannot travel outside the U.S. (will lose status if so)</li> <li>Cannot apply for derivative status for family members</li> <li>Can be detained for up to 6 months while ICE locates a safe third country for removal</li> <li>In some states may not be eligible for state issued ID or driver's license</li> <li>May be detained beyond 6 months if <u>deemed a danger to the community</u></li> </ol>

REFUGEE WAIVER FOR PERSONS IN REFUGEE OR ASYLEE STATUS WHO HAVE COMMITTED REMOVABLE OFFENSES		
	PERSON WITH REFUGEE STATUS	PERSON WITH ASYLEE STATUS
<b>REQUIREMENTS</b> <i>Applicant must show:</i>	<ol style="list-style-type: none"> <li>Admitted as a refugee, whose status has not been terminated</li> <li>Physically present in U.S. for at least one year after entry</li> <li>No medical exam required – proof of vaccination is required</li> <li>Waiver is proper for humanitarian purposes, to assure family unity, or it is in the public interest</li> <li>Merits discretion</li> </ol>	<ol style="list-style-type: none"> <li>Physically present in U.S. for at least one year after obtaining asylum</li> <li>Continues to meet the definition of a refugee</li> <li>Has completed a medical exam</li> <li>Has not firmly resettled in any other foreign country</li> <li>Waiver is proper for humanitarian purposes, to assure family unity, or it is in the public interest</li> <li>Merits discretion</li> </ol>
<b>WHAT DOES IT WAIVE?</b>	<b>ANY</b> inadmissibility described in INA § 212(a) <b>EXCEPT:</b> <ol style="list-style-type: none"> <li>INA §212(a)(2)(C) – drug trafficking</li> <li>INA §212(a)(3)(A) – espionage, overthrow of government</li> <li>INA §212(a)(3)(B) – terrorist activities (very broad and includes “reasonable ground to believe” applicant will engage in terrorist activity)</li> <li>INA §212(a)(3)(C) – adverse foreign policy consequences</li> <li>INA §212(a)(3)(E) – participants in Nazi persecution, genocide</li> </ol>	
<b>WHAT DOES THE PERSON GET?</b>	<ol style="list-style-type: none"> <li>Gets a green card</li> <li>Cannot ever apply for adjustment using a refugee waiver again</li> <li>Citizenship may NOT be possible if offenses waived might also be considered aggravated felonies</li> </ol>	<ol style="list-style-type: none"> <li>Gets a green card</li> <li>Citizenship may NOT be possible if offenses waived might also be considered aggravated felonies</li> </ol>

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DEFENSES WHERE A PERSON GETS A GREEN CARD OR KEEPS THEIR GREEN CARD				
	CANCELLATION FOR CERTAIN LAWFUL PERMANENT RESIDENTS	ADJUSTMENT OF STATUS	212(H) WAIVER – PERSON NEVER ENTERED AS GREEN CARD HOLDER OR GREEN CARD HOLDER COMING FROM TRIP ABROAD	212(H) WAIVER – FOR CURRENT GREEN CARD HOLDER WHO ENTERED AS GREEN CARD HOLDER
<b>REQUIREMENTS</b> <i>Applicant has to show:</i>	<ol style="list-style-type: none"> <li>Has had green card for at least <u>5 years</u> before removal proceedings began</li> <li>Accrued 7 years of continuous physical presence before committing the first offense that made them removable (See Stop Time Rule at INA § 240A(d)(1))</li> <li>Does <u>NOT</u> have an aggravated felony conviction</li> <li>Merits discretion</li> </ol>	<ol style="list-style-type: none"> <li>Has been inspected and admitted; or grandfathered under INA § 245(i) if entered unlawfully</li> <li>Has a visa immediately available to him/her</li> <li>Otherwise admissible</li> <li>Merits discretion</li> </ol>	<ol style="list-style-type: none"> <li>Has committed a waivable offense(s) deemed :                             <ol style="list-style-type: none"> <li>A single offense related to simple possession of less than 30 grams of marijuana</li> <li>A crime involving moral turpitude</li> <li>Multiple offenses where sentence is 5 years or more in the aggregate</li> <li>Involving prostitution or commercial vice</li> <li>Offense involving grant of immunity</li> </ol> </li> <li>Has a spouse, parent, son or daughter who is a green card holder or U.S. citizen</li> <li>The denial of the waiver would cause extreme hardship to the qualifying family member</li> <li>Merits discretion</li> </ol>	<ol style="list-style-type: none"> <li>Accrued 7 years of continuous physical presence before removal proceedings began</li> </ol>
<b>BARS</b> <i>Applicant should not have...</i>	<ol style="list-style-type: none"> <li>Been previously granted cancellation</li> <li>Aggravated felony conviction</li> <li>Persecuted others</li> <li>Provided material support to a terrorist organization (TRIG)</li> </ol>	Subject to inadmissibility(ies) under INA § 212(a) - various waivers provided for some inadmissibilities	Subject to any other inadmissibilities that are not waivable (e.g. persecution of others, material support to terrorist organization)	<ol style="list-style-type: none"> <li>Offenses are deemed aggravated felonies</li> <li>Be subject to any other inadmissibilities that are not waivable (e.g. persecution of others, material support to terrorist organization)</li> </ol>
<b>WHAT DOES THE PERSON GET?</b>	<ol style="list-style-type: none"> <li>Keeps their green card</li> <li>Cannot ever apply for cancellation again</li> <li>Citizenship may be possible but person may need to wait 5 or more years to apply</li> </ol>	<ol style="list-style-type: none"> <li>Gets a green card</li> <li>Citizenship may be possible but person may need to wait 5 or more years to apply</li> </ol>	<ol style="list-style-type: none"> <li>If person is adjusting the person gets a green card</li> <li>If person is a green card holder the person gets to keep their green card</li> <li>Citizenship may NOT be possible if offenses waived might also be considered aggravated felonies</li> </ol>	<ol style="list-style-type: none"> <li>The person gets to keep their green card</li> <li>Citizenship may be possible but person may need to wait 5 or more years to apply</li> </ol>

DEFENSES BASED ON VICTIMIZATION AND COOPERATION WITH LAW ENFORCEMENT		
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<b>REQUIREMENTS</b> <i>Applicant must show:</i>	<ol style="list-style-type: none"> <li>Was a victim of certain violent crimes (See 8 CFR § 214.14(a)(9) for a complete list)</li> <li>Who suffered substantial physical or mental abuse as a result</li> <li>Possesses information about the crime</li> <li>Is/will be/has been helpful in the investigation or prosecution of the crime</li> </ol>	<ol style="list-style-type: none"> <li>Was the victim of “severe trafficking” in persons (See 8 CFR § 213.11(a) for definition)</li> <li>Is physically in the U.S. due to trafficking</li> <li>Agrees to assist law enforcement in any reasonable request to investigate or prosecute trafficking (unless under 18 years of age)</li> <li>Would suffer “extreme hardship involving unusual and severe harm” upon removal from the U.S.</li> </ol>
<b>CHALLENGES</b> <i>Applicant may be denied if s/he is found to be ...</i>	<ol style="list-style-type: none"> <li>A lawful permanent resident (immigrant cannot be a non-immigrant)</li> <li>Inadmissible (See INA § 212(a) - e.g. various criminal convictions, smuggling, working without authorization, entering the U.S. illegally, etc.)</li> </ol>	<ol style="list-style-type: none"> <li>A lawful permanent resident (immigrant cannot be a non-immigrant)</li> <li>Inadmissible (See INA § 212(a) - e.g. various criminal convictions, smuggling, working without authorization, entering the U.S. illegally, etc.)</li> </ol>
<b>WAIVER AVAILABLE?</b> <i>Inadmissibility can be overcome if...</i>	Yes – See INA § 212(d)(14) <ol style="list-style-type: none"> <li>If it is in the public or national interest to do so; and</li> <li>The person merits discretion</li> </ol> <p><b>EXCEPT:</b> If the person is a Nazis, perpetrator of genocide, torture, or extrajudicial killings, is involved in espionage, child abduction, or who provided material support to terrorist organizations.</p>	Yes – See INA 212(d)(13) <ol style="list-style-type: none"> <li>If it is in the national interest to do so</li> <li>The person’s activities making him/her inadmissible “were caused by, or were incident to, the victimization” (nexus with crime); and</li> <li>The person merits discretion</li> </ol> <p><b>EXCEPT:</b> If the person is a Nazis, perpetrator of genocide, torture, or extrajudicial killings, is involved in espionage, child abduction, or who provided material support to terrorist organizations.</p>
<b>WHAT DOES THE PERSON GET?</b>	<ol style="list-style-type: none"> <li>Non-immigrant U status for 4 years</li> <li>Ability to travel outside the U.S.</li> <li>Ability to adjust status to a lawful permanent resident after the 3rd year in U Status</li> <li>Employment Authorization</li> <li>Can apply for derivative status for certain family members</li> </ol>	<ol style="list-style-type: none"> <li>Non-immigrant T status for 4 years</li> <li>Access to social assistance</li> <li>Ability to travel outside the U.S.</li> <li>Ability to adjust status to a lawful permanent resident after the 3rd year in T Status</li> <li>Employment Authorization</li> <li>Can apply for derivative status for certain family members</li> </ol>