Practice Advisory:

Fighting for a Day in Court: Understanding and Responding to Pretermission of Asylum Applications[1]

July 25, 2025

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I. Introduction

As the Executive Office for Immigration Review (EOIR) continues to face millions of pending cases, the Trump administration's EOIR has opened the door for its adjudicators to pretermit asylum cases—deny applications without a hearing—as a purported solution to the growing backlog. Immigration Judges (IJs) are pretermitting cases by misinterpreting the recent precedential Board of Immigration Appeals (BIA or Board) decision, *Matter of C-A-R-R-*,[2] issued on March 17, 2025, and EOIR has encouraged its adjudicators to pretermit cases through a Policy Memorandum (PM) titled Pretermission of Legally Insufficient Applications for Asylum issued on April 11, 2025 (Pretermission Memo or PM 25-28).[3] However, *Matter of C-A-R-R-* does not support pretermitting cases, the PM is not supported by the authority on which it claims to rely, and pretermission violates long-standing law and practice.

This practice advisory first discusses the substance of *Matter of C-A-R-R-* and the Pretermission Memo. It then describes what practitioners have been experiencing in immigration court as a result of these directives. The practice advisory then describes the rights that asylum seekers have under statute, regulations, and case law, which directly conflict with these directives.

[2] 29 I&N Dec. 13 (BIA 2025).
[3] Sirce E. Owen, EOIR, PM 25-28, Pretermission of Legally Insufficient Applications for Asylum (Apr. 11, 2025) https://www.justice.gov/eoir/media/1396411/dl?inline.

Finally, the practice advisory gives practical tips to practitioners, first on how to prepare asylum applications that comply with the directives going forward, next on what to do with applications that have already been filed, and finally discusses steps practitioners should take if their clients' asylum applications have been pretermitted.

II. *Matter of C-A-R-R-* and I-589 Completeness

In *Matter of C-A-R-R-*, 29 I&N Dec. 13 (BIA 2025), the BIA addressed the issue of incomplete asylum applications and the consequences of not filing a declaration with the I-589. While the Board held that an asylum application could not be dismissed for failing to file a declaration, the decision may give IJs fodder to reject asylum applications that they deem incomplete.

The BIA first addressed the completeness of the I-589. The IJ had determined that the first three I-589 applications filed by the respondent were incomplete and then, while finding the fourth I-589 complete, nonetheless deemed the application abandoned for failure to provide a proper translation certificate for an attached declaration. While the BIA noted that each of the first three I-589s filed were "missing answers," it did not explain which questions on the form were left unanswered. Nor did the decision explain what level of detail was included in the fourth I-589 which the Board did find to be adequate. To the extent that the decision purports to give guidance to practitioners about the importance of filing "complete" I-589s, the decision did little to explain what is legally required.

The decision also did little to explain what qualifies as a substantive answer on an I-589. For the questions that are relevant to the merits of the asylum applicant, the BIA stated only, "A complete Form I-589 requires a specific substantive answer to every question on the form."[4] Importantly, the BIA only requires "a specific substantive answer" to each question; it does not direct the applicant to write an exegesis or even to include every incident in their case in each answer. Indeed, the BIA found that Mr. C-A-R-R-'s fourth application which "included substantive answers to all the questions on the Form I-589,"[5] was legally sufficient, even though the IJ had found that that application "still lacked sufficient details."[6]

The authors of this advisory have obtained redacted copies of the I-589s underlying the *Matter of C-A-R-R-* decision from counsel on the case.[7] The information included in the fourth I-589, which the BIA accepted as legally sufficient, was relatively minimal. The answer to the question regarding past harm described two threats the applicant had suffered. The response did not give the date of the threats. The response also included the line, "I will explain further in a declaration." By way of contrast, the earlier versions of the I-589 which the IJ had rejected as being legally insufficient had very barebones answers. The answer to the feared harm question only stated, "Gangs are after me. They have machetes to kill me."[8]

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[4] 29 I&N Dec. at 16.
[5] *Id.*
[6] *Id.* at 14.
[7] Portions of the redacted third and fourth I-589s can be found in the appendix. The first three I-589s contained the same answers to the narrative questions.
[8] *See* redacted sections of *C-A-R-R-* I-589s attached as appendices to this practice advisory.

Helpfully, footnote 2 of the BIA decision clarifies that the need to fully answer the questions on the I-589 does not mean that an asylum seeker must complete every box on the form if the question is not relevant to the applicant. "For example, excess spaces to provide personal information regarding an applicant's children need not be used if the applicant has no children or has fewer than may be included on the form."[9] This clear repudiation of the "no blank space" rejection rule that the Department of Homeland Security (DHS) imposed under the first Trump administration[10] is a welcome aspect of the decision.

Matter of C-A-R-R- also addresses the role of declarations in asylum cases. The BIA found that it was improper for the IJ to deem the application abandoned for the asylum seeker's failure to file a proper declaration and remanded the case, holding that a declaration is not a "constituent" component of the application for asylum, withholding, and Convention against Torture (CAT) protection.[11] The BIA held that because the I-589 instructions do not require a declaration, an application without a declaration cannot be deemed abandoned on that ground alone.[12] However, the BIA went on to explain that an IJ has authority to order an asylum seeker to file a declaration and that the asylum seeker must comply with the IJ's order and any deadline.[13] While the BIA stated that the asylum application cannot be deemed abandoned for failing to file a declaration because the declaration is not a "constituent part" of the asylum application, it also stated that the IJ's remedy for an asylum seeker's failure to comply with a court directive is to exclude the declaration from evidence.[14] The BIA explained that the "absence of the respondent's declaration can then be considered in assessing the applicant's burden of proof."[15] The Board compares the potential lack of a declaration in the record to the lack of corroborating documents, but, of course, the declaration lays out the applicant's own narrative. Nothing in the BIA decision stated that the asylum seeker would be barred from testifying to the information that was included in the declaration. That being said, at least where the declaration itself is excluded from evidence, as it was in *Matter of C-A-R-R-,* the answers on the I-589 will have to fully state a claim for relief, particularly after the Pretermission Memo discussed below.

Ultimately, *Matter of C-A-R-R-* raises as many questions as it answers about declarations: they are not required unless an IJ orders one (and then they must be signed and accompanied by a certificate of translation) and an applicant must file a declaration if an IJ orders the applicant to do so (though if they do not comply with the order the application cannot be pretermitted, but the declaration will be excluded from evidence). While *Matter of C-A-R-R-* clarified that a declaration is not required, it is important to understand, however, that nothing in *Matter of C-A-R-R-* suggests that an IJ can ignore a properly filed declaration when determining whether the application as a whole states a claim for asylum and related protections.

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[9] 29 I&N Dec. 13 at 16, n. 2.
[10] Geneva Sands and Priscilla Alvarez, *Biden Administration Announces End to Trump-Era Rule That Rejected Certain Immigration Applications with Blank Spaces*, CNN, Apr. 1, 2021, https://www.cnn.com/2021/04/01/politics/blank-spaces-immigration-applications.
[11] 29 I&N Dec. at 16-17.
[12] *Id.* at 16-17.
[13] *Id.* at 17.
[14] *Id.*
[15] *Id.*

Likewise, concerning the I-589 itself, *Matter of C-A-R-R-* directs that every substantive question must be answered completely, but gives no indication of the level of detail an IJ could require to deem an application complete. The BIA actually disagreed with the IJ in this case, finding that Mr. C-A-R-R-'s fourth I-589 was sufficiently completed, but does not tell the reader why the IJ found it insufficient or why the BIA found that it was complete. What is clear, however, declarations and substantive questions on the I-589 aside, is that the applicant has the right to testify about the information in the declaration.

While the decision is favorable to noncitizens in that it prevents IJs from pretermitting an I-589 based on failure to include a declaration in the asylum filing, and includes a helpful footnote on what comprises a complete I-589, IJs seem emboldened by the EOIR Pretermission Memo, discussed below, to misuse the decision against asylum seekers. The Board's conclusion that a "'response to each of the questions,' for purposes of both the regulation and the form's instructions, means each question requires a specific, responsive answer,"[16] gives little guidance to practitioners and may give IJs license to find that information provided on the I-589 is not "specific" and "responsive."

III. The EOIR Pretermission Memo

Acting Director of EOIR, Sirce E. Owen, issued a Policy Memorandum, PM 25-28,[17] on April 11, 2025, encouraging immigration judges to "pretermit" asylum applications in immigration court. The Pretermission Memo encourages IJs to deny asylum applications without a hearing. "EOIR's interpretation of applicable law is that adjudicators may pretermit legally deficient asylum applications without a hearing."[18] While the Pretermission Memo states that it "provides guidance to adjudicators who encounter legally insufficient asylum applications,"[19] it, in fact, does not define what makes an asylum application deficient nor does it specify what procedure, if any, IJs must afford asylum seekers to correct the perceived deficiency in their application.[20] Yet the regulations and another policy memorandum provide a specific process for IJs to follow when faced with an incomplete application.

Under 8 C.F.R. § 1208.3(c)(3),[21] an asylum application is incomplete if it does not include a response to each of the questions contained in Form I-589, is unsigned, or is unaccompanied by the required materials. Nonetheless, the regulations specify that an incomplete application must

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[16] *Id.* at 16

[17] Sirce E. Owen, EOIR, Pretermission of Legally Insufficient Applications for Asylum (Apr. 11, 2025) https://www.justice.gov/eoir/media/1396411/dl?inline.

[18] *Id.* at 1.

[19] *Id.*

[20] The Pretermission Memo does not cite *Matter of C-A-R-R-*, even though it addresses similar issues (though the Pretermission Memo does not mention declarations), likely because the BIA decision highlights certain rights that asylum seekers have, whereas the PM seeks to strip the right to a hearing from asylum seekers.

[21] Several asylum regulations issued under the first Trump administration, including 8 C.F.R. § 1208.3, were enjoined and never went into effect. Since they were published, official websites, including government websites, currently include the text of the enjoined regulations. *Matter of C-A-R-R-* acknowledges this issue and cites the older version of the regulation which is in effect now. *See* 29 I&N Dec. at 15, n. 1. This resource lists enjoined asylum regulations and where to find the version which is currently in effect. National Immigration Project, *Enjoined Asylum Regulations "Cheat Sheet*" (Feb. 3, 2023) https://nipnlg.org/work/resources/enjoined-asylum-regulations-cheat-sheet.

be returned to the applicant and "[a]n application returned to the applicant as incomplete shall be resubmitted by the applicant with the additional information if he or she wishes to have the application considered."[22] Even more significantly, 8 C.F.R. § 1208.3(c)(3) goes on to say, "[i]f the Service has not mailed the incomplete application back to the applicant within 30 days, *it shall be deemed complete.*"[23] (Emphasis added). The Pretermission Memo does not cite this regulation at all and *Matter of C-A-R-R-*, which does cite the regulation including this language, does not discuss the "deemed complete" section of the regulation.[24]

The Pretermission Memo further contradicts another policy memorandum, PM 21-06, "Asylum Processing," which EOIR recently reinstated[25] from the first Trump administration which addresses asylum applications.[26] That memo, like the regulations, requires incomplete applications to be returned to the asylum applicant so they can complete them:

> For asylum applications submitted in open court at a hearing, the Immigration Judge presiding over that hearing is responsible for determining whether the application is complete. For asylum applications submitted outside of a hearing—e.g. by mail, at the window, or electronically—an Assistant Chief Immigration Judge (ACIJ), through oversight and delegation as appropriate, will ensure that the application is complete. All asylum applications should be reviewed for completeness within 30 calendar days of submission. To the maximum extent practicable, an application that is incomplete should be returned to the applicant within five business days of that determination.[27]

The reimplemented "Asylum Processing" PM says nothing about pretermission. Although the regulations and the "Asylum Processing" PM directly address the process that IJs should follow when faced with an incomplete application, the Pretermission Memo does not mention or even cite them. By omitting these sources of authority, the Pretermission Memo erroneously suggests to IJs that they may pretermit the I-589 without providing the respondent any opportunity to rectify the alleged legal sufficiency.

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[22] While the promulgation of 8 C.F.R. § 1208.3 predates ECAS and discusses mail, there is nothing in the regulation to suggest that incomplete applications can be pretermitted unless the application is first returned to the applicant who must be given an opportunity to resubmit the application. This process is more commonly employed by United States Citizenship and Immigration Services (USCIS) than by EOIR, but the regulations at 8 C.F.R. § 1208.3 apply to EOIR.

[23] *Id.*

[24] 29 I&N Dec. at 15.

[25] *See* Sirce E. Owen, EOIR, PM 25-17, Cancellation of Director's Memorandum 22-05 and Reinstatement of Policy Memoranda 19-05, 21-06, And 21-13 (Feb. 3, 2025) https://www.justice.gov/eoir/media/1388056/dl?inline.

[26] James McHenry, EOIR, PM 21-06, Asylum Processing (Dec. 4, 2020). https://www.justice.gov/eoir/page/file/1343191/dl?inline=. (PM 21-06)

[27] *Id.* at 3.

IV. Fallout from the BIA Decision and Pretermission Memo

Since the BIA issued *Matter of C-A-R-R-* and EOIR issued PM 25-28, practitioners have begun to see a wide range of actions taken by IJs across the country. These actions include:[28]

- IJ sending an asylum seeker's counsel notice that the I-589 is deficient and must be updated to include more information; (in one case this notice included requiring an updated I-589, personal statement, and corroborating evidence);
- IJ reviewing each I-589 at a master calendar hearing and either deeming the I-589 sufficient or giving counsel 60 days to include a declaration and add information to the I-589;
- IJ ordering a pro se minor removed after the asylum seeker did not comply with an oral order the minor did not understand, to file an identity document and written statement in support of their I-589;
- IJ approaching the Pretermission Memo as presenting an opportunity for summary judgment, giving both parties the opportunity to provide all evidence to determine whether an evidentiary hearing is required;
- IJ *sua sponte* issuing a removal order prior to a scheduled hearing, along with a notice stating that the I-589 has been pretermitted;
- IJ granting a written motion to pretermit filed by the DHS Office of the Principal Legal Advisor (OPLA) attorney which argued that the asylum application was incomplete pursuant to *Matter of C-A-R-R-* because it referenced an attached declaration rather than filling in the information on the I-589 form (the IJ's order granting the motion also stated that the IJ would issue a separate removal order);
- IJ pretermitting an asylum application at a master calendar hearing and ordering removal where the IJ found that the I-589 was insufficient even though counsel sought a brief continuance from the IJ to supplement the I-589.

This significant variety of approaches by IJs has made it difficult for practitioners who are already confronting rapid changes in immigration law and procedures to determine what documents need to be filed to avoid summary removal. The number of asylum seekers who have been unable to secure counsel for full representation has exacerbated the challenges created by this memo. The list of examples above come from practitioners but it is easy to imagine that this PM will lead to large-scale pretermissions for asylum seekers who are pro se, who have completed barebones applications at legal clinics, or whose applications have been completed by non-attorney "*notarios*." Without counsel, it is unlikely that pro se asylum seekers will know how to respond to a pretermission order. Furthermore, as OPLA has recently been moving to reopen administratively closed cases,[29] practitioners will need to reconnect with clients whose cases may have been dormant for many months or even years to potentially supplement their applications for asylum.

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[28] The authors have heard of these examples either through direct communication with other practitioners, through listserv discussions, or through calls for examples.

[29] Cody Copeland, *ICE Push For Deportations Could See Nearly 400,000 Cases Added to Court Dockets*, Fort Worth Star-Telegram (June 27, 2025) https://www.star-telegram.com/news/politics-government/article309502975.html#storylink=cpy.

V. Pretermission Violates the Law and Longstanding Practice

Pretermission as a practice likely violates the U.S. Constitution, the Immigration and Nationality Act (INA), regulations, and binding precedent which require EOIR to allow asylum seekers to testify in support of their applications. Practitioners can use the explanation below of how these new directives contradict existing law and practice to challenge pretermission before IJs and, if necessary, on appeal.

A. Constitutional Fifth Amendment Right to Due Process

For over 100 years, the Supreme Court has recognized the special considerations in deportation cases and the need for due process. "[Deportation] may result also in loss of both property and life, or of all that makes life worth living. Against the danger of such deprivation without the sanction afforded by judicial proceedings, the Fifth Amendment affords protection in its guarantee of due process of law."[30] The right to due process of law in immigration proceedings is enshrined in the Fifth Amendment of the U.S. Constitution.[31] "The essence of due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'"[32] Thus, the Fifth Amendment requires that noncitizens in immigration proceedings receive "a full and fair hearing" and have a "reasonable opportunity to present evidence on [their behalf]."[33]

IJs' decisions to pretermit asylum applications violate the due process rights of asylum seekers in several ways. First, for those IJs who are pretermitting the I-589 and ordering removal, asylum seekers have no "notice" that their claim is going to be pretermitted. Whether or not the asylum seeker has counsel, IJs are not meeting minimal due process requirements when they pretermit applications without giving respondents any notice of their intent to do so. However, pro se asylum seekers are especially prejudiced because they will likely receive the order pretermitting their asylum application, and potentially ordering them removed, in the mail and they will not understand what it means or what their next step should be. By the time pro se asylum seekers obtain legal counsel to explain the meaning of the pretermission order, the 30-day motion to reconsider deadline, as well as the 30-day notice of appeal deadline (if there is a removal order) will have likely passed. Further, as discussed below, the newly implemented $1010 fee for appeals or $1045 fee for motions to reconsider may make it impossible for noncitizens to fight these removal orders.[34]

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[30] *Ng Fung Ho v. White*, 259 U.S. 276, 284–85 (1922).
[31] *Reno v. Flores*, 507 U.S. 292, 306 (1993).
[32] *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).
[33] *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000); *see also Mekhoukh v. Ashcroft*, 358 F.3d 118, 128 (1st Cir. 2004); *Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020). *See, e.g., Arevalo Quintero v. Garland*, 998 F.3d 612, 623–24 (4th Cir. 2021); *Arteaga-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020); *Mendoza-Garcia v. Barr*, 918 F.3d 498, 504–05 (6th Cir. 2019); *Alhuay v. U.S. Att'y Gen.*, 661 F.3d 534, 548 (11th Cir. 2011); *Al Khouri v. Ashcroft*, 362 F.3d 461, 464–65 (8th Cir. 2004); *Mekhoukh v. Ashcroft*, 358 F.3d 118, 129 (1st Cir. 2004); *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002).
[34] National Immigration Project, *Comparison Chart of the Immigration-Related Fee Changes Brought by H.R.1 the So-Called One Big Beautiful Bill Act* (July 22, 2025) https://nipnlg.org/work/resources/comparison-chart-immigration-related-fee-changes-brought-hr1-so-called-one-big.

Second, the PM deprives asylum seekers of their due process right to notice by applying a new legal standard retroactively to asylum applications that were filed before issuance of the Pretermission Memo. The Supreme Court has made it clear that even statutory changes should generally not be enforced retroactively.[35] The Pretermission Memo raises similar concerns in that asylum seekers and their counsel who filed "barebones" I-589s in the past had no reason to believe that the asylum seeker might never get a day in court as a result—especially when regulations and PM 21-06, as reinstated by PM 25-17 are directly on point and state that incomplete asylum applications must be returned or deemed complete. In particular, the regulations require that the IJ determine within a certain amount of time whether the I-589 is complete and, if the I-589 is deemed incomplete, that the asylum applicant be given an opportunity to complete the asylum application.

Finally, when the IJ pretermits the asylum application, the respondent is denied the opportunity to be heard, that is to present evidence in support of their case. As discussed below, immigration regulations and the I-589 instructions give asylum seekers the right to testify in their asylum proceedings. Moreover, federal courts have found that IJs have a duty to develop the record—a duty that cannot be complied with in cases where the asylum seeker is prevented from testifying. The due process right to be heard must include an asylum seeker's ability to actually present their claim to an adjudicator and cannot be satisfied merely by completing an application form which an IJ is free to reject.

B. Statutory Right to a Hearing on the Asylum Claim

The INA entitles noncitizens in immigration proceedings to present testimony and other evidence on their behalf.[36] INA § 240(b)(4)(B) states that the noncitizen "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government." When presenting evidence, the Fifth Amendment right to due process[37] gives respondents the right to present evidence that is "probative and its admission is fundamentally fair.[38]Courts of appeals have therefore found that the agency committed legal error when IJs did not allow full questioning.[39]

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[35] *I.N.S. v. St. Cyr*, 533 U.S. 289, 316 (2001) ("[This] presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.")

[36] *See* INA § 240(b)(I) (IJs shall receive evidence).

[37] *See Flores,* 507 U.S. at 306 (1993) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.").

[38] *Matter of Y-S-L-C-*, 26 I&N Dec. 688, 690 (BIA 2015); *see also Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995) (citing *Trias-Hernandez v. INS*, 528 F.2d 366, 369 (9th Cir. 1975)). Some courts of appeals have defined "fundamental fairness" as meaning that the removal proceedings must be conducted in accordance with the reasonable opportunity to present evidence on one's behalf as afforded by INA § 240(b)(4)(B). *See, e.g., Hassan v. Gonzales*, 403 F.3d 429, 435 (6th Cir. 2005) ("[W]e review evidentiary rulings by IJs only to determine whether such rulings have resulted in a violation of due process." (internal citations and quotations omitted)); *Doumbia v. Gonzales*, 472 F.3d 957, 961-62 (7th Cir. 2007).

[39] *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) ("The statutory and regulatory regime also protects [a noncitizen's] right to present evidence and testimony on his behalf in removal proceedings, including his own testimony.").

Multiple courts of appeals, the Board of Immigration Appeals, and the attorney general agree that the IJ has a duty to develop the record.[40] The BIA has recognized "the shared responsibility of parties and the IJ to assure that relevant evidence is included [in] the record."[41] The BIA has held that while an IJ must not take on the role of advocate for the respondent, "[i]t is appropriate for [IJs] to aid in the development of the record, and directly question witnesses, particularly where [a noncitizen] appears pro se and may be unschooled in the deportation process . . ."[42] Because pro se applicants "often lack the knowledge to navigate their way successfully through the morass of immigration law"[43] or "may not possess the legal knowledge to fully appreciate which facts are relevant[,]" the IJ is in a better position to draw out the relevant facts for determining an applicant's eligibility for relief.[44] Indeed, "it is critical that the IJ scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts"[45] and adequately explain hearing procedures, including what the respondent must prove to establish eligibility for relief. While an IJ's duty to develop the record is well recognized in the context of pro se respondents, the Fourth Circuit has held that "[IJs] are charged with a duty to fully develop the record in *all* cases before them," not only pro se cases.[46]

Those same courts of appeals, BIA, and attorney general decisions that have recognized that IJs have a duty to develop the record have relied on INA § 240(b)(1) as the source of that duty. That provision states that the IJ "shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the [noncitizen] and any witnesses." Of course, oaths, interrogation, examination, and cross-examination are possible only in hearing settings. Meanwhile, receiving evidence applies to both documentary evidence submitted prior to a hearing and testimony during a hearing offered in support of an application for relief.

Yet the Pretermission Memo cites the statute in a way that appears to be intentionally misleading. The PM states, "Section 240(b)(1) of the INA authorizes immigration judges to 'interrogate, examine, and cross-examine the [noncitizen] and any witnesses' but does not establish a

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[40] *See, e.g., Arevalo Quintero*, 998 F.3d at 622–23; *see also Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (IJ's "obligation [to develop the record] is founded on his statutory duty" under § 1229a(b)(1)); *Hasanaj v. Ashcroft*, 385 F.3d 780, 783 (7th Cir. 2004) (citing § 1229a(b)(1) as basis for the duty to develop the record); *Mekhoukh*, 358 F.3d at 129 n.14 (same); *Costanza-Martinez v. Holder*, 739 F.3d 1000, 1102–03 (8th Cir. 2014) (same); ; *Matter of J-F-F-*, 23 I&N Dec. 912, 922 (A.G. 2006) (citing § 1229a(b)(1) as basis for rule that "[i]t is appropriate for [IJs] to aid in the development of the record, and directly question witnesses, particularly where [the] [noncitizen] appears pro se and may be unschooled in the deportation process. . . ."); *Matter of S-H-*, 23 I&N Dec. 462, 464 (BIA 2002) (emphasizing that for an IJ's decisions to be reviewable, they must include clear and complete findings of fact). *See also* 8 C.F.R. § 1003.10(b) (restating 8 U.S.C. § 1229a, INA § 240(b)(1)).

[41] *Matter of Y-L-*, 24 I&N Dec. 151, 161-62 (BIA 2007), citing *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997) (en banc).

[42] *Matter of J-F-F-,* 23 I&N Dec. 912, 922 (A.G. 2006); *see, e.g., Ortiz-Ortiz v. Sessions*, 698 Fed. Appx. 868, 871 (9th Cir. 2017) (unpublished) (failure to ask about key events mentioned in respondents' I-589 violated due process and was prejudicial).

[43] *Agyeman*, 296 F.3d at 877; *see also Arevalo Quintero*, 998 F.3d at 627 (quoting *Rusu v. INS*, 296 F.3d 316, 321 n.7 (4th Cir. 2002)) ("in light of the significant challenges *pro se* individuals in removal proceedings face, such individuals have a particularly strong need for procedural protections, without which they would not be able to 'receive[] a meaningful hearing.'").

[44] *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000).

[45] *Agyeman*, 296 F.3d at 877 (internal quotation marks and citation omitted).

[46] *Quintero v. Garland*, 998 F.3d 612, 627 (4th Cir. 2021) (emphasis added).

mandatory requirement for them to do so in every case on every application or issue."[47] By truncating the full sentence in the statute, the Pretermission Memo has selectively edited the statute to leave out three key terms: first, the mandatory verb "shall," second, the phrase "administer oaths," which clearly demonstrates that Congress contemplated that testimony would be taken in removal proceedings, and third, "receive evidence," again indicating Congress's intent that removal proceedings would result in full evidentiary hearings. As the statutory language suggests, the duty to develop the record is premised on the understanding that immigration court litigants, including asylum seekers, have a right to have their cases fully heard by the IJ and, particularly for *pro se* respondents, this right requires the IJ to play an active role in their cases. Furthermore, it is nonsensical to imagine courts of appeals recognizing a duty for the IJ to ensure that respondents' testimony is fully developed if there is not a corresponding right for the asylum seeker to testify.

In addition to the rights afforded to all litigants in INA § 240 proceedings, INA § 208(a)(1) provides further rights to asylum seekers. It specifies that, "[a]ny [noncitizen] who is physically present in the United States or who arrives in the United States [. . .] irrespective of such [noncitizen's] status, may apply for asylum in accordance with this section or, where applicable, section [235(b)] of this title."[48] Thus, an asylum seeker has the right to apply for asylum and, to do that, needs a forum where they can present their application. However, the Pretermission Memo deprives asylum seekers of any forum where they can meaningfully pursue their asylum claim, especially if they are ordered removed without a day in court. In that situation, an asylum seeker's only recourse is to file a motion to reopen, which, as discussed below, now carries a $1045 fee unless the IJ grants a fee waiver. The Ninth Circuit struck down a ban on asylum eligibility in the first Trump administration where the government argued that an asylum ban was lawful if it allowed asylum seekers to *apply* for asylum, even if they could not win by the ban's own terms.[49] Similarly, the Pretermission Memo allows asylum seekers to *apply* for asylum but encourages IJs to order them removed without ever considering their claim for asylum. If the IJ pretermits the I-589 and issues an order of removal, the asylum seeker is deprived of a forum for pursuing asylum: they cannot proceed before the IJ unless they prevail on a motion to reconsider or a motion to reopen, which is now prohibitively costly, as discussed below, and they cannot proceed before USCIS because a removal order places jurisdiction with EOIR. Practitioners could therefore argue that such a result runs directly afoul of the right to seek asylum under the INA.

Additionally, INA § 208 provides asylum seekers with the right to testify, specifying that credible testimony alone may be sufficient to meet an asylum seeker's burden of proof in their case. "The *testimony* of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee."[50] The Pretermission Memo does not reference section 208 of the INA—the section that governs asylum applications—at all. Instead, the PM references only INA§ 240's general rule on burdens of proof.

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[47] PM 25-28 at 2.
[48] *See also* INA § 208(a)(1).
[49] *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 670 (9th Cir. 2021).
[50] INA § 208(b)(1)(B)(ii) (emphasis added).

Perhaps the PM avoided a discussion of INA § 208 because BIA precedent supports requiring a hearing for the asylum seeker to be afforded an opportunity to meet their burden of proof. *Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015) discusses the corroboration requirements under the REAL ID Act, which was codified at INA § 208. "[D]uring the merits hearing, witness testimony and other evidence is presented, the Immigration Judge makes factual findings and legal conclusions, and any applications for relief are resolved."[51] To the extent that the REAL ID Act requires asylum seekers to provide corroborating evidence or explain its absence, the BIA clarified the requirement for testimony on the issue:

> At the merits hearing, in circumstances where the Immigration Judge determines that specific corroborating evidence should have been submitted, the applicant should be given an opportunity to explain why he could not reasonably obtain such evidence. *See, e.g., Chukwu v. Att'y Gen. of U.S.* 484 F.3d 185, 192−93 (3d Cir. 2007). The Immigration Judge must also ensure that the applicant's explanation is included in the record and should clearly state for the record whether the explanation is sufficient.[52]

Likewise in *Matter of Interiano-Rosa*,[53] a case cited favorably in *Matter of C-A-R-R-*, the BIA held, similarly to the *C-A-R-R-* holding, that the result of counsel's failure to meet a filing deadline for supplementary evidence would be to exclude that evidence—not to pretermit the application and order removal. Nevertheless, the BIA remanded the case, directing that the "respondent should have been given an opportunity to proceed to a merits hearing *with his testimony* and the documentary evidence that was properly submitted."[54] (Emphasis added.) Indeed, the fact that asylum seekers have a right to testify is so fundamental, that BIA decisions do not generally discuss the right, but rather accept this right as a given.

C. Regulatory Protections for Asylum Seekers' Rights

Practitioners should cite favorable regulations and argue that an internal Policy Memo cannot impede rights established pursuant to regulations. It is well settled that agency "guidelines cannot 'trump' the language of a regulation when the regulation is clear on its face."[55] While federal courts generally may generally afford less deference to agency decisions following *Loper Bright Enterprises v. Raimondo*[56] than they did in the past, the Supreme Court has made it clear that in the hierarchy of deference "interpretations contained in policy statements, agency manuals, and enforcement guidelines, . . . lack the force of law . . ." and are afforded less deference than notice and comment rulemaking.[57]

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[51] 26 I&N Dec. at 520.
[52] *Matter of S-M-J-,* 21 I&N Dec. at 724. *Matter of Interiano-Rosa* 26 I&N Dec. at 520-21.
[53] 25 I&N Dec. 264 (BIA 2010).
[54] 25 I&N Dec. at 266.
[55] *Dialysis Clinic, Inc. v. Leavitt,* 518 F. Supp. 2d 197, 203 (D.D.C. 2007).
[56] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
[57] *Christensen v. Harris Cnty*., 529 U.S. 576, 587, (2000), including the string cite, "*See, e.g., Reno v. Koray*, 515 U.S. 50, 61, (1995) (internal agency guideline, which is not 'subject to the rigors of the Administrative Procedur[e] Act, including public notice and comment,' entitled only to 'some deference' (internal quotation marks omitted)) *EEOC v. Arabian* *1663; American Oil Co., 499 U.S. 244, 256–258, (1991) (interpretative guidelines do not receive *Chevron* deference); *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 157, (1991)

1. **Timely Notice of and Opportunity to Cure an Incomplete I-589**

As discussed above, 8 C.F.R. § 1208.3(c)(3) requires that an asylum applicant have 30 days to cure a deficient I-589.[58] Under that provision, if an asylum seeker submits an incomplete asylum application, meaning the application "does not include a response to each of the questions contained in the Form I-589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a) of this section," and the court rejects it for legal deficiency, the court must give the applicant 30 days to cure the deficiency.[59] The regulation further states, "[i]f the Service has not mailed the incomplete application back to the applicant within 30 days, *it shall be deemed complete*."[60] (Emphasis added.) The Pretermission Memo does not cite to 8 C.F.R. § 1208.3 at all. And while *Matter of C-A-R-R-* does discuss the regulation, it only discusses the requirement to resubmit a returned application; it quotes but does not discuss the provision that applications which are not returned as incomplete are deemed complete after 30 days.

There is simply no way to reconcile the Pretermission Memo with this clear regulatory language—any I-589 that was accepted by the immigration court and not returned to the asylum seeker is deemed complete. It defies logic that "incomplete" applications, including applications with no written response to a substantive question, must be accepted as "complete" if not returned within 30 days, whereas applications that include minimal substantive responses can be pretermitted.

2. **Asylum Seekers Have a Regulatory Right to Testify**

Several regulations underscore asylum seekers' right to testify in support of their I-589 at an individual hearing. 8 C.F.R. § 1208.13(a) states that the burden of proof is on the asylum seeker to establish that they are a refugee as defined in INA § 101(a)(42). This regulation, which adopts the *Mogharrabi* standard,[61] specifies that the "testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration."[62] The specific mention of testimony suggests that a hearing is required where the asylum applicant will attempt to meet their burden of proof.

Likewise, 8 C.F.R. § 1240.11(c)(3) states that applications for asylum and withholding of removal are to be adjudicated by the IJ "after an evidentiary hearing to resolve factual issues in dispute." The Pretermission Memo notes that the regulation also states that no further evidentiary hearing is necessary once an IJ determines certain grounds for mandatory denial apply.[63] However, the remaining text of 8 C.F.R. § 1240.11(c)(3) states that "[a]n evidentiary hearing *extending beyond* issues related to the basis for a mandatory denial of the application pursuant to § 1208.14 or § 1208.16 of this chapter is not necessary once the immigration judge has

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(interpretative rules and enforcement guidelines are 'not entitled to the same deference as norms that derive from the exercise of the Secretary's delegated lawmaking powers'" [Internal citations cleaned up.)

[58] *See*, *supra* note 21 for information on where to find the correct version of this regulation.

[59] 8 C.F.R. § 1208.3(c)(3); *see*, *supra* note 21 for information on where to find the correct version of this regulation.

[60] *Id.*

[61] *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

[62] 8 C.F.R. § 1208.13(a).

[63] PM 25-28 at 2.

determined that such a denial is required." (Emphasis added.) A determination that a mandatory bar precludes asylum after an IJ has already taken evidence on the issue of the bar, is very different from pretermitting an asylum application entirely based on the content of the submitted form. Moreover, if an asylum seeker is also pursuing deferral of removal under CAT, there are no mandatory denials and the IJ would have to continue to conduct a hearing to determine CAT eligibility even if the IJ determines that the respondent is barred from asylum. Finally, the instructions to the I-589 form, which underwent a notice and comment rulemaking process and thus have the force of regulations,[64] mention "testimony" from witnesses three times.[65]

VI. Misrepresentations in the Pretermission Memo

In addition to omitting material legal authority, the Pretermission Memo misrepresents the state of BIA precedent specifically related to pretermission of asylum applications.[66]

A. The Pretermission Memo Misrepresents the Ongoing Precedential Value of *Matter of Fefe*

First, the Pretermission Memo seeks to call into question the precedential value of a case on which adjudicators have relied for 35 years: *Matter of Fefe*.[67] In *Matter of Fefe*, the BIA addressed a Haitian asylum seeker's I-589 filed with a two-page addendum detailing his fear of persecution in Haiti.[68] The attorney for the applicant rested on the submission and the attorney for the government waived cross-examination before making a closing argument raising issues with the information in the addendum.[69] The IJ then denied the application citing the applicant's "self-serving" written statement and lack of corroboration as part of the decision.[70] On appeal, the Board directly addressed the role of testimony in asylum cases and remanded the case back to the IJ for failing to comply with regulations governing asylum hearings.[71]

The Pretermission Memo tries to undermine *Matter of Fefe* by claiming that the decision referenced regulations which have since been superseded.[72] However, the regulations which are

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[64] *See* USCIS Policy Manual, Chapter 3, in the context of adjustment of status, stating "The form instructions have the same force as a regulation and provide detailed information an applicant must follow," and citing 8 C.F.R. § 103.2(a)(1) ("Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions.").

[65] Instructions for Application for Asylum and Withholding of Removal at 8, 11 (Jan. 20, 2025) https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf.

[66] Pretermission Memo at 1.

[67] 20 I&N Dec. 116 (BIA 1989).

[68] *Id*. at 117.

[69] *Id.*

[70] *Id.* Penalizing an asylum applicant for lack of corroborative evidence, without providing the opportunity to testify as to why it was unavailable or testify to demonstrate credibility, is a glaring example of pretermission's incompatibility with asylum applications.

[71] *Id.* at 117.

[72] 8 C.F.R. § 208.6 (1988); 8 C.F.R. § 236.3(a)(2) (1988). The specific regulatory language *Matter of Fefe* cites is that an "'applicant shall be examined in person by an immigration officer or judge prior to the adjudication of the asylum application.'" 8 C.F.R. § 208.6 (1988) and that when an applicant requests asylum in exclusion proceedings, he "'shall be examined under oath on his application and may present evidence on his behalf.'" 8 C.F.R. § 236.3(a)(2) (1988). *See also*, *Lopez-Reyes v. Garland*, 2023 WL 8919744, at *3 (4th Cir. Dec. 27, 2023) (citing

currently in effect contain substantially similar language to those discussed in the *Fefe* decision. Specifically, 8 C.F.R. § 1240.11(c)(3)(iii) says "[d]uring the removal hearing, the [noncitizen] shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf."[73] The Pretermission Memo stops short of stating that *Matter of Fefe* is no longer good law; only the BIA or attorney general can overturn BIA precedent. Yet even if the BIA or attorney general overturn *Matter of Fefe*, 8 C.F.R. § 1240.11(c)(3)(iii) would remain. Overall, the Pretermission Memo seems to target *Matter of Fefe* because this long-standing precedent provides asylum seekers with important protections. Thus, practitioners should be familiar with these protections and argue that BIA precedent carries more weight than a Policy Memo.

In *Matter of Fefe,* the BIA held that in "the ordinary course, however, we consider the full examination of an applicant to be an essential aspect of the asylum adjudication process for reasons related to fairness to the parties and to the integrity of the asylum process itself."[74] The Board explained the significance of oral testimony, both for the IJ to potentially detect "fabricated" claims and to provide the noncitizen with the opportunity to "demonstrate eligibility for asylum."[75] While the IJ can render a decision if both sides stipulate to facts, the Board concluded the "immigration judge should not, however, proceed to adjudicate a written application for asylum if no oral testimony has been offered in support of that application."[76]

In reaching this conclusion, *Matter of Fefe* cited *Matter of Mogharrabi*, a foundational asylum decision which established that the noncitizen's "own testimony may in some cases be the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear."[77] Clearly, for an applicant to meet their burden through testimony they must be permitted to testify. The Pretermission Memo does not discuss *Mogharrabi* at all.

B. The Pretermission Memo Highlights That *Matter of E-F-H-L-* Has Been Vacated

Second, the Pretermission Memo reminds adjudicators that another BIA decision that addressed the importance of testimony in asylum hearings, *Matter of E-F-H-L-*,[78] has been vacated. Under the first Trump administration, the Department of Justice took steps similar to those being taken through the Pretermission Memo, to try to reduce the rights of asylum seekers in removal proceedings. In 2018, the attorney general issued a precedential decision vacating *Matter of*

Matter of Fefe and finding that "the current procedural regulations regarding asylum and withholding of removal contain substantially similar language" to those cited in the decision.)

[73] *Matter of Fefe* cites the regulation it is interpreting as follows, "The regulations further provide at 8 C.F.R. § 236.3(a)(2) (1988) that when an applicant requests asylum in exclusion proceedings, he "shall be examined under oath on his application and may present evidence on his behalf." 20 I&N Dec. at 117. As discussed below, in *Matter of E-F-H-L,* 26 I&N Dec. 319, 323 (BIA 2014), *vacated on other grounds*, 27 I&N Dec. 226 (AG 2018), the BIA acknowledged the similarity of the newer regulations to those in existence at the time of *Matter of Fefe*.

[74] 20 I&N Dec. at 118.

[75] *Id*.

[76] *Id.*

[77] *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

[78] *Matter of E-F-H-L-,* 26 I&N Dec. 319 (BIA 2014), vacated on other grounds, 27 I&N Dec. 226 (AG 2018).

E-F-H-L-,[79] a 2014 BIA decision which had guaranteed asylum seekers the right to a hearing on their applications. The attorney general did not include any reasoning to support a conclusion that asylum seekers should not have a right to testify; instead he vacated the decision on a procedural ground, finding that the decision should no longer be precedential because the asylum seeker had withdrawn his asylum application and moved for administrative closure to proceed on an immigrant visa instead.[80] The attorney general thus found that the prior decision on pretermission of the asylum application was "effectively mooted."[81] While practitioners may argue that the fact that the attorney general considered the case moot for a reason completely unrelated to the BIA's holding, should not undermine the persuasiveness of the BIA's interpretation of INA § 240, EOIR adjudicators will not afford *Matter of E-F-H-L-* precedential value. The Pretermission Memo underscores for adjudicators that they should not rely on this decision.

C. The Pretermission Memo Misrepresents Other Caselaw

In addition to seeking to undermine the holdings of two leading BIA decisions on the importance of testimony in asylum cases, the Pretermission Memo also makes the sweeping statement that caselaw bolsters the PM's conclusion that EOIR adjudicators can pretermit asylum applications.[82] In claiming that "caselaw" justifies the PM's conclusions, it cites two unpublished federal court decisions and two other BIA decisions. None of the cases it cites, however, justify the PM's encouragement of IJs to pretermit asylum cases with no notice based on the purported insufficiency of the I-589.

The first case the Pretermission Memo cites is *Valencia v. Garland*,[83] an unpublished Ninth Circuit decision that addressed an asylum application's lack of nexus and failure to meet the one-year filing deadline. Although the Ninth Circuit uses the word "pretermit" in connection with the agency's decision that Mr. Valencia's asylum application was untimely filed and he was therefore barred from asylum, the Ninth Circuit's review of the nexus issue demonstrates that the Ninth Circuit's use of the word "pretermit" did not mean that the IJ denied the application without testimony. In fact, from the Ninth Circuit's brief discussion of the agency's finding of no nexus, it is clear that Mr. Valencia did testify. The Ninth Circuit explained that "Valencia *testified* that there was nothing 'special' about him and that drug traffickers approached him because he was always 'with a group of boys.'"[84] Because this decision is unpublished, the fact section is short, but there is no question that the asylum seeker exercised his right to testify in support of his application.

While the second unpublished decision cited, *Bo Yu Zhu v. Gonzales*,[85] did involve a case where the asylum seeker's application was pretermitted without the opportunity to testify, it is not a direct appeal but rather an appeal of a denied motion to reconsider. Further, the IJ provided Mr.

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[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] PM 25-28 at 2.
[83] *Valencia v. Garland*, No. 21-731, 2023 WL 8449194, at *1 (9th Cir. Dec. 6, 2023).
[84] *Id*.
[85] *Bo Yu Zhu v. Gonzales*, 218 F. App'x 21(2d Cir. 2007).

Zhu notice of the possible legal deficiency and the opportunity to cure the application, yet Mr. Zhu submitted nothing in response to a court order.[86] Specifically, the IJ alerted the respondent that the application could be pretermitted if he did not demonstrate a nexus to a protected ground and gave him 30 days to submit a brief. After Mr. Zhu failed to respond with either a brief or any further evidence, 60 days later, the IJ pretermitted the asylum application; the BIA and Second Circuit upheld that decision.[87] In this case, Mr. Zhu's lack of opportunity to testify in support of his asylum application was due to his failure to abide by the IJ's briefing schedule, not the IJ's failure to provide notice of a deficient I-589 and the opportunity to cure the application. This decision, which includes almost no facts because it is unpublished, gives no analysis of pretermission and instead makes clear that litigants must comply with court-ordered briefing or face potentially severe consequences.

The remaining two BIA decisions the Pretermission Memo cites also have no bearing on whether IJs are required to take testimony in asylum cases. *Matter of Moreno-Escobosa*,[88] which PM 25-28 cites for no legal rule but rather merely as a parenthetical, "pretermission of application for a waiver of inadmissibility under former section 212(c) of the Immigration and Nationality Act," did not uphold pretermission. In fact, *Matter of Moreno-Escobosa* is the rare BIA decision that sustains the noncitizen's appeal without remand, finding both that the IJ pretermitted "erroneously" and that the respondent was eligible for relief.[89] Contrary to what the Pretermission Memo intimates, the case concerns a waiver, not asylum, and the BIA does not discuss a legal standard for pretermission or when testimony is required in immigration court.

Finally, the Pretermission memo cites *Matter of J-G-P-,*[90] a case in which the BIA pretermitted the respondent's application for cancellation of removal due to statutory ineligibility. *Matter of J-G-P-* highlights the correct use of "pretermission," in contrast to what PM 25-28 encourages IJs to do. In *Matter of J-G-P-*, there was no possibility that testimony could render the respondent eligible for relief. In that decision, the BIA spent six pages analyzing the respondent's crime under the categorical approach.[91] By definition, the application of the categorical approach does not require testimony from the respondent because the legal determination is made entirely by comparing the elements of the state statute to the comparable federal statute—not by analyzing the actual facts of the alleged criminal activity. The application of the categorical approach to criminal analysis is in no way analogous to an asylum seeker testifying about their fear of return to their home country. While the BIA also upheld the IJ's denial of asylum, withholding, and CAT, there is no indication in the decision that the IJ did not allow testimony before denying asylum and withholding. Instead, the language of the decision suggests that the respondent did testify in support of those protection applications, given that the BIA uses the ordinary appellate language of "denial" and "the Immigration Judge's factual finding"[92] that refers to an IJ decision after a hearing. If the IJ had pretermitted the respondent's asylum, withholding, and CAT applications, the BIA presumably would have said so, just as it did earlier in the decision regarding the cancellation application.

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[86] *Id.* at 23.
[87] *Id.*
[88] *Matter of Moreno-Escobosa,* 25 I&N Dec. 114 (BIA 2009).
[89] *Id.* at 117.
[90] 27 I&N Dec. 642 (BIA 2019).
[91] *Id.* at 644-50.
[92] *Id.* at 651.

VII. Practical Steps to Prevent Pretermission

It is difficult to suggest a one-size-fits-all approach for practitioners to address *Matter of C-A-R-R-* and the Pretermission Memo, given how differently IJs are applying these directives and how quickly practices are changing in courtrooms. Nonetheless, practitioners must adjust their asylum practice to the new reality of filing for asylum in immigration court under this decision and PM. Practitioners can break down the effect of the directives into two categories: how to ensure newly filed cases comply with the directives and how to ensure existing applications meet the newly articulated standard under the memo and are not pretermitted.

A. Steps to Take for New Filings

Practitioners should ensure that newly filed I-589 applications strictly comply with the Pretermission Memo and with *Matter of C-A-R-R-*. Practitioners can accomplish this compliance by first obtaining guidance on the record from the IJ about what the IJ deems to be a legally sufficient I-589 and by closely reading the Pretermission Memo and BIA precedent.

1. Request Clarification from the IJ at a Master Calendar Hearing or Case Conference

For cases that have upcoming master calendar hearings where the IJ did not send a scheduling order, the practitioner should ask the IJ on the record what the asylum seeker must file to meet the IJ's standard for legal sufficiency. Having the IJ state on the record, for example, whether a declaration is required, will assist the practitioner to understand how the particular IJ defines legal sufficiency. If the IJ requires or permits a declaration, the practitioner should clarify with the IJ whether the I-589 can incorporate the declaration by reference, such as through language like, "see attached declaration for a more detailed explanation" or whether the IJ requires the entire asylum narrative to be written on the I-589.

If the practitioner knows that the IJ who is presiding over the case has been pretermitting other I-589s, the practitioner might consider making a motion for a pre-hearing conference pursuant to the Immigration Court Practice Manual (ICPM) § 4.18. According to that section, "[p]re-hearing conferences are held between the parties and the Immigration Judge to narrow issues, obtain stipulations between the parties, exchange information voluntarily, and otherwise simplify and organize the proceeding." Thus, it would be logical for a practitioner who was not sure what an IJ required for a sufficient filing to go on the record and ask the IJ for clarification. Of course, the practitioner should request the pre-hearing conference well before the one-year filing deadline to be able to timely file the I-589 after obtaining guidance from the IJ.

2. Include Required Attachments

Some of the notices practitioners have received from IJs refer to the instructions which accompany the I-589; practitioners should carefully read that entire 12-page form.[93] In addition to some information in those instructions about how to respond to each question, page 8 of the instructions contains a list of required documents, including: a passport (if the applicant has one); U.S. immigration documents; other identification documents; and proof of relationship to family members included in the application. This section of the instructions also specifies that the I-589 must be signed and that all documents must be translated.[94] Since some IJs appear to be looking for ways to pretermit I-589s, it is important to include all required documents since the IJ may not give the applicant a second chance to submit them.

3. "Legally Sufficient" Answers

The Pretermission Memo does not explain what constitutes "legally sufficient" answers to the questions on the I-589. *Matter of C-A-R-R-*, also does not provide much guidance on legal sufficiency, instead stating, circularly, "[a] 'response to each of the questions,' for purposes of both the regulation and the form's instructions, means each question requires a specific, responsive answer."[95] So, each "response" must be "specific" and "responsive" but the decision does not define these terms.

Matter of C-A-R-R- states that the rejected I-589s had "missing answers," rather than answers that were not "specific,"[96] implying that some of the substantive questions on the rejected I-589s had no answer whatsoever. Thus, if a practitioner must argue that a specific answer on their client's I-589 was legally sufficient, the practitioner could note that *Matter of C-A-R-R-* determined an I-589 with "missing answers" was inadequate but does not address what makes an answer to a question sufficient or insufficient.[97]

Practitioners could also argue that the amount of detail that the BIA determined to be legally sufficient in *Matter of C-A-R-R-* was less than what was included in their client's I-589. As noted above, the information included in the fourth I-589, which the BIA accepted as legally sufficient, was minimal. The answer to the question on past harm included a short description of two threats the applicant had suffered and the line, "I will explain further in a declaration."[98]

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[93] USCIS, Instructions for Application for Asylum and for Withholding of Removal (last updated Jan. 20, 2025) https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf. It is worth noting that this instruction form, like many forms that have been issued since the start of the Trump administration, is backdated to the first day of his presidency. Practitioners are advised to always check the instructions in the event that there is an unannounced change to the instructions.
[94] *Id.* at 8.
[95] 29 I&N Dec. at 16.
[96] *Id.* at 13.
[97] In fact, some of the rejected versions of the I-589s in *C-A-R-R-* left some answers blank while others did not leave any of the narrative questions blank, but the answers were very short and vague, *see C-A-R-R-* I-589s at Appendix.
[98] *See C-A-R-R-* I-589s at Appendix.

Given that *Matter of C-A-R-R-* references the I-589 instructions,[99] it is helpful to look at those instructions for further guidance. While the I-589 instructions do advise applicants to "[c]learly describe any of your experiences or those of family members or others who have had similar experiences that may show that you are a refugee," the instructions go on to say:

> If you have experienced harm that is difficult for you to write down and express, you must be aware that these experiences may be very important to the decision-making process regarding your request to remain in the United States. *At your interview with an asylum officer or hearing with an immigration judge, you will need to be prepared to discuss the harm you have suffered.*[100] (Emphasis added.)

Thus, the instructions clearly contemplate that the adjudicator will elicit information beyond the information the asylum seeker writes on the I-589. Practitioners should highlight this language if an IJ is threatening to pretermit the application.

In addition to carefully reviewing the I-589 instructions, practitioners should carefully read each question on the I-589 form, especially the substantive questions concerning the claim which begin on page 5 of the form.[101] Practitioners who have completed many I-589s in the past may be so accustomed to completing these forms in a particular way, that they may not have carefully read the questions themselves in some time.

For example, question 1.A. at page 5 asks:

> Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?
> If 'Yes,' explain in detail:
> 1. What happened;
> 2. When the harm or mistreatment or threats occurred;
> 3. Who caused the harm or mistreatment or threats;
> 4. Why you believe the harm or mistreatment or threats occurred.

For asylum seekers who have experienced multiple incidents of past harm, completing this question alone may require several pages of narrative. Many practitioners have provided a brief summary in this box and then attached a declaration that provides a detailed, chronological narrative.

With the Pretermission Memo and the *Matter of C-A-R-R-* decision, practitioners may need to rethink their customary asylum practice. Unless an IJ has stated on the record that providing a narrative in a declaration will be considered legally sufficient, it may be prudent for practitioners to describe the harm on the I-589 itself. Of course, it will likely be impossible to include all the required details in the small boxes given, so practitioners will need to continue each longer answer on the supplement page, page 12 of the I-589. Page 5 of the asylum instructions form

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[99] I-589 Instructions, at 6 (Jan. 20, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf.
[100] *Id.* at 6.
[101] Form I-589, Application for Asylum and for Withholding of Removal (Jan. 20, 2025) https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf.

states, "If you need more space, attach Form I-589 Supplement A or B (included in the application package) and/or additional sheet(s) indicating the question number(s) you are answering."[102] So, although the I-589 form itself only has one Supplement B page, the instructions make clear that the asylum seeker can attach multiple sheets of supplement pages. Page 6 of the instructions further indicates that the asylum seeker can include more details on "additional sheets of paper," other than Supplement B. ("If you answer 'Yes' to any question, explain in detail using Form I-589 Supplement B or additional sheets of paper, as needed.") Again, best practice would be to ascertain whether the IJ will consider the declaration to be part of the application or not in advance of the hearing.

4. **Beware of Expanded Data Collection**

DHS and DOJ issued requests for comments in May 2025 to redo many common USCIS forms including the I-589, to greatly expand the data that the government will collect on noncitizens' applications.[103] When the new forms are published, asylum seekers will be required to share all of their social media identifiers for the five years prior to filing. Additionally, a different rulemaking will add requirements to forms that the asylum seeker indicate the date of birth, place of birth, full street address, and telephone numbers (with start and end date of use) for parents, spouse, siblings, and children dating back five years. There is no exception for deceased, estranged or step-relations.[104] These additional questions, with their expansive data collection, will make it more difficult for asylum seekers to submit complete applications.

B. Steps to Take in Pending Filings

Practitioners should review all asylum filings they have made in pending cases. Practitioners must pay attention to trends in the court(s) where they practice and prioritize review of cases pending before IJs whom they have heard have been aggressively pretermitting cases. Even if a practitioner believes that an asylum case is assigned to an IJ who has not been applying the Pretermission Memo unreasonably, it is best practice to review all filings; EOIR frequently reassigns cases and practitioners should not assume that their case will remain with the IJ to whom it was previously assigned.[105]

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[102] *Id.* at 5.
[103] *See* National Immigration Project, National Immigration Project Submits Comments on Changes to USCIS Forms Which Will Vastly Increase Government Data Collection (May 6, 2025) https://nipnlg.org/work/resources/national-immigration-project-submits-comments-changes-uscis-forms-which-will-vastly.
[104] *Id.*
[105] Many immigration judges hired under the Biden administration have been terminated without being given a reason. As the Trump administration continues what appear to be ideological firings, it may become more likely that IJs who ensure noncitizens receive due process will lose their jobs, and asylum seekers' cases will be reassigned to IJs who adhere to the administration's policy priorities. *See* Nicolae Viorel Butler, *Trump Purges Immigration Judges With Biden Ties,* MIGRANT INSIDER (July 9, 2025) https://migrantinsider.com/p/trump-purges-immigration-judges-with.

1. **Reviewing and Supplementing Pending Asylum Applications for "Legal Sufficiency"**

While the Pretermission Memo references "legally insufficient asylum applications," it does not provide guidance on what makes an application sufficient or insufficient. Still, there are steps practitioners can take to ensure procedural compliance. Practitioners should review the filed I-589 and determine whether, without testimony to flesh out the claim, there is sufficient information in the I-589 for an IJ to grant the case. If there is not sufficient detail, then the practitioner must work with the asylum seeker to supplement the I-589 as well as provide other documents that support the claim.

Significantly, page 5 of the I-589 instructions states, "You can amend or supplement your application at the time of your asylum interview with an asylum officer and at your hearing in Immigration Court by providing additional information about your asylum claim."[106] While an IJ may find that their own scheduling order on when supplemental material is due supersedes the general instructions that the application can be supplemented "at your hearing," the instructions clearly provide for the possibility of supplementing the application after its initial filing.

As the BIA continues to issue precedential decisions, seemingly on a weekly basis, that narrow asylum eligibility, practitioners will need to consistently check existing asylum submissions for legal sufficiency and supplement them if necessary. For example, on July 18, 2025, the BIA issued *Matter of K-E-S-G-*, which holds that a Particular Social Group (PSG) based on gender plus nationality, such as "Salvadoran women" does not meet the particularity requirement of the PSG definition.[107] *Matter of K-E-S-G-* likewise holds that "Salvadoran women viewed as property" does not meet the particularity and social distinction requirements to be a cognizable PSG.[108] Thus, practitioners who have submitted I-589s with only one or both of these PSGs as the stated protected characteristics will need to supplement their filing to avoid pretermission.[109]

2. **Beware of Matter of *M-A-F-***

As practitioners review their cases and make decisions about the need to supplement prior filings, it is critical that they be familiar with *Matter of M-A-F-*.[110] In *M-A-F-*, the BIA considered the case of an asylum seeker who had initially filed an application with false information in 2003, but later supplemented the application and provided truthful responses to the questions.[111] The BIA determined that both for purposes of applying the REAL ID Act, which was passed in 2006, and for calculating the clock on the One Year Filing Deadline, the date of the second application controlled in the case. The BIA held that:

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[106] Form I-589, Application for Asylum and for Withholding of Removal (Jan. 20, 2025) https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf.
[107] 29 I&N Dec. 145, 151-54 (BIA 2025).
[108] *Id.* at 154-55.
[109] The broader implications of *Matter of K-E-S-G-* are beyond the scope of this Practice Advisory. CGRS will be releasing practice materials on the implications of this decision shortly.
[110] *Matter of M-A-F-*, 26 I&N Dec. 651 (BIA 2015).
[111] *Id.* at 656.

> A later filed application that presents a previously unraised basis for relief—such as a fear of persecution on account of a different protected ground—will generally be considered a new application. Even an application that is based on the same protected ground may also be considered a new application if the [noncitizen's] later claim is predicated on a new or substantially different factual basis. By contrast, a subsequent application that merely clarifies or slightly alters the initial claim will generally not be considered a new application.[112]

Thus, in all cases where the asylum seeker is beyond the one-year filing deadline, and the practitioner is reviewing applications for legal sufficiency, the practitioner must determine whether the information the practitioner would like to add would be based on a new protected ground and/or a substantially different factual basis.

If, based on the facts of the case, the practitioner believes the applicant can prevail on the existing claim with greater detail, rather than a different claim, it will be easier to argue that *Matter of M-A-F-* does not apply. If practitioners are adding facts to an existing claim, they should frame the addition as "clarification" if the facts warrant doing so. Especially in cases where the asylum seeker was previously unrepresented, practitioners can argue that the adjudicator cannot have expected the unrepresented noncitizen to understand every potential ground for asylum.

On the other hand, if the initial I-589 did not include the strongest claim, the practitioner may feel that it would be best practice to add the stronger claim. The practitioner could consider whether the second application would fall under a One Year Filing Deadline exception. For example, the newly added protected ground could be based on changed circumstances in the applicant's life, such as a religious conversion, new political activity, or recently coming out as LGBTQ+. In such a situation, the asylum seeker can argue for an exception under 8 C.F.R. § 208.4(a)(4). Likewise, the asylum seeker may be able to put forward an exception based on extraordinary circumstances under 8 C.F.R. § 208.4(a)(5) if prior counsel was ineffective in failing to consider all grounds for asylum.[113] Practitioners should carefully review all of the one-year filing deadline exceptions.[114] If, for example, the asylum seeker has been maintaining lawful parole status, then they would only need to file the asylum application within a reasonable period of time after the second application is filed.[115]

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[112] 26 I&N Dec. at 655.

[113] To successfully argue ineffective assistance of counsel, the asylum seeker will need to follow the *Lozada* requirements set forth at 8 C.F.R. § 208.4(a)(5)(iii), namely including an affidavit about the alleged ineffective assistance, informing prior counsel of their deficiency, and filing a disciplinary complaint or explaining why such a complaint was not filed.

[114] Practitioners may also cite the USCIS Asylum Officer's Training Plan on the One Year Filing Deadline (May 6, 2023), https://www.uscis.gov/sites/default/files/document/lesson-plans/One_Year_Filing_Deadline_Asylum_Lesson_Plan.pdf. It is not clear to what extent asylum officers are still using these training materials, particularly since the last publicly available version of this Training Plan is more than a decade old. Furthermore, practitioners should bear in mind that the USCIS training materials are not binding on EOIR, though the reasoning may be persuasive.

[115] 8 C.F.R. § 208.4(a)(5)(iv) ("The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application").

Practitioners should also preserve arguments for federal court appeal that *Matter of M-A-F-* was wrongly decided. In *Matter of M-A-F-*, the BIA specifically cites 8 C.F.R. §§ 208.4(c) and 1208.4(c)[116] which state that "upon the request of the [noncitizen], and as a matter of discretion, the asylum officer or immigration judge with jurisdiction may permit an asylum applicant to amend or supplement the application." The regulation goes on to state that if such a request causes a delay, it will stop the clock for employment authorization document (EAD) purposes. But nothing at this section of the regulation—the very regulation that clarifies the application of the one-year filing deadline—says anything about amending the application meaning that the amended application must also fall within one year of arrival in the United States. In fact, it is clear from the language of the regulation itself, that if requesting more time to supplement the application *delays* rather than *restarts* the clock, then the purpose of the regulation was not to determine that a supplemental application should be seen as a new application, regardless of whether it contains new grounds for protection. It would be nonsensical that the regulation would consider the filing of supplemental evidence as delaying the asylum EAD clock if the regulations intended the adjudicator to consider the supplemented application to be viewed as a new application.

This reading of the regulation comports with the purpose behind the one-year filing deadline, where Congress determined that individuals fleeing harm would know that that was why they left their country when they arrived in the United States and should therefore be able to file for asylum within one year.[117] There is no reason to punish asylum seekers who only retain counsel (or retain more thorough counsel) after filing their initial I-589 by applying the one-year filing deadline as the BIA does in *M-A-F-*. Of course, IJs and the BIA are bound by *M-A-F-*, so practitioners would only make these arguments to preserve them for appeal. [118]

3. Consider the Role of Declarations

As discussed above, *Matter of C-A-R-R-* raises more questions than it answers regarding the role of declarations in asylum applications. One reading of the decision, coupled with the Pretermission Memo, is that the safest practice for asylum seekers would be to stop submitting declarations as separate documents, and instead include the narrative that would be written in declaration form on the unlimited extra pages provided with the I-589. Using the extra form pages rather than writing in numbered paragraphs in an attached declaration would seem to raise form over substance in completing an asylum application, but only including a narrative on the

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[116] Subsequent to *Matter of M-A-F-,* 8 C.F.R. §§ 208.4(c) has been renumbered as 8 C.F.R. §208.4(b) though 8 C.F.R. § 1208.4(c) has remained unchanged.

[117] Michele R. Pistone and Philip G. Schrag, *The New Asylum Rule: Improved but Still Unfair*, 16 Geo. Immigr. L.J. 1, 9 (2001) ("Despite the fact that most genuine refugees were not able to apply within one year of their arrival, members of the 104th Congress were intent on imposing a deadline, apparently under the belief that such a bar was necessary to prevent time-consuming adjudication of fraudulent applications.")

[118] At least one federal court has rejected the reasoning of *M-A-F-*. *Ordonez Azmen v Barr*, 965 F3d 128, 137 (2d Cir 2020) ("Our reading of § 1158(a)(2)(D) and these other provisions of the INA persuades us that Congress did not intend to bar the agency from considering the asylum application of an applicant who shows changed circumstances that first arise after the application is filed, and did not require that the changed circumstances even relate to the delay in filing. To the contrary, Congress clearly contemplated that the agency could consider a change in circumstances such as the one alleged here at several stages in an applicant's proceedings—even when the change bears no relation to the reason for the delay, and even as late as a motion to reopen a final order of removal.")

I-589 may be the easiest way to technically comply with both the Pretermission Memo and *Matter of C-A-R-R-*.

For practitioners who regularly include lengthy declarations with their asylum applications, and only short answers on the I-589 form itself, *Matter of C-A-R-R-* does not clearly indicate whether such an application would be deemed "complete." In fact, *Matter of C-A-R-R-* references an obscure supporting document[119] to a 2024 rulemaking updating the form I-589, for the proposition that an application form is necessary in asylum cases to collect the relevant information rather than "permitting a free narrative."[120] But neither the BIA decision nor the Supporting Statement to the I-589 discuss how much information needs to be written on the I-589 itself, especially in cases where an applicant also includes a declaration.

4. Flesh Out CAT Claims

Practitioners should ensure that CAT claims are fully articulated. Unlike asylum, there is no nexus requirement for CAT claims, meaning that the applicant does not need to link a protected characteristic to the feared harm.[121] The legal standard for CAT is different, however, and to prevail the applicant must demonstrate that it is more likely than not they will face torture in their country of origin.[122] Practitioners should review I-589s to determine whether there is sufficient detail on the CAT claim question and, if the respondent fears torture by their country's government or has an argument that their government will acquiesce in torture, the practitioner should consider supplementing this claim. There is no one-year filing deadline for CAT claims, so even adding a new CAT claim will not raise the *Matter of M-A-F-* concerns discussed above. Likewise, there are no bars to CAT deferral,[123] so even if the IJ determines on the papers that there is a mandatory asylum bar, the respondent can still seek CAT deferral. Both practitioners and IJs frequently give short shrift to CAT claims, which have a different legal standard from asylum and statutory withholding. Practitioners should be sure to fully explore and articulate CAT claims in the event the IJ determines the respondent's claimed protected characteristic is not viable.

VIII. Options If an I-589 Is Pretermitted

If a practitioner receives an order pretermitting the asylum application and ordering removal, the practitioner will need to strategically determine with their client whether they should file a motion to reconsider with the IJ or appeal immediately to the BIA. If a case is beyond the 30-day BIA appeal deadline, a practitioner may need to file a motion to reopen with the IJ.

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[119] *See* Supporting Statement for Application for Asylum and for Withholding of Removal OMB Control No.: 1615-0067 Collection Instrument(s): Form I-589, available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202412-1615-003.
[120] *Matter of C-A-R-R-,* 29 I&N Dec. at 16.
[121] *See* 8 C.F.R. 1208.16(c).
[122] *Id.*
[123] 8 C.F.R. 1208.17(a).

The recent passage of the reconciliation bill[124] has astronomically raised fees for each of these options. Motions to reconsider or reopen before the IJ now cost $1045 while a BIA appeal now costs $1010.[125] Given these high fees, affording a motion and/or an appeal if the motion is denied on top of legal fees will be difficult for most noncitizens. While the new law specifies that some of the increased filing fees are unwaivable, there is no language in the new law that prohibits seeking a waiver of a motion to reconsider, a motion to reopen, or appeal fees.[126] Although Congress did not specify that there is no waiver for these processes, EOIR has signaled to its adjudicators that they should carefully assess fee waiver requests. PM 25-35[127] issued on July 9, 2025 cites an older, recently reinstated PM, PM 21-10, which adjudicators should follow in deciding fee waivers.[128] PM 21-10 states that EOIR adjudicators should decide fee waivers quickly, and that best practice is to issue a written ruling.[129] Nonetheless, PM 21-10 provides no substantive guidance on criteria to use to assess a fee waiver request, stating "[e]ach fee waiver request is assessed on its own merits, and EOIR has no policy directing the automatic grant or denial of a fee waiver request."[130] PM 25-36 also adds no substantive guidance but counsels IJs to be mindful of potential fraud in fee waiver requests.[131] Specific pros and cons to each option are discussed below, but all the options now require determining if the client can afford the filing fees and, if not, whether the client should seek a fee waiver.

A. Filing a Motion to Reconsider

A motion to reconsider seeks a new determination based on alleged errors of law or fact committed by the IJ or the BIA.[132] Given the purpose of a motion to reconsider, practitioners may file a motion to reconsider at various stages of the removal proceedings.[133] Practitioners may file a motion to reconsider after the IJ or the BIA rule on a legal issue or decision on an application for relief when two or more applications are pending; within 30 days of the IJ's final administrative order; or prior to filing the notice of appeal with the BIA. Practitioners s may also file a motion to reconsider within 30 days of the BIA's decision. Practitioners who seek reconsideration of a removal order from an EOIR adjudicator should be aware that filing a

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[124] One Big Beautiful Bill Act (OBBBA), H.R.1 — 119th Congress (2025-2026), https://www.congress.gov/bill/119th-congress/house-bill/1/text.
[125] EOIR, Update and Supplement EOIR Policy Regarding Fees, PM 25-36 (July 17, 2025) https://www.justice.gov/eoir/media/1408356/dl?inline; *see also*, EOIR, Types of Appeals, Motions, and Required Fees (Updated July 8, 2025) https://www.justice.gov/eoir/types-appeals-motions-and-required-fees.
[126] *See* National Immigration Project, Comparison Chart of the Immigration-Related Fee Changes Brought by H.R.1 the So-Called One Big Beautiful Bill Act (July 8, 2025) https://nipnlg.org/work/resources/comparison-chart-immigration-related-fee-changes-brought-hr1-so-called-one-big.
[127] Sirce E. Owen, EOIR, PM 25-36, Update and Supplement EOIR Policy Regarding Fees (July 17, 2025) https://www.justice.gov/eoir/media/1408356/dl?inline. The July 17 PM superseded a July 9 PM which interpreted the OBBA fee increases differently. Sirce E. Owen, EOIR, PM 25-35, Statutory Fees Under the One Big Beautiful Bill Act (July 9, 2025) https://www.justice.gov/eoir/media/1407326/dl?inline.
[128] James McHenry, EOIR, PM 20-19, Fees (Dec. 18, 2020) https://www.justice.gov/eoir/media/1387741/dl?inline.
[129] *Id.* at 2.
[130] *Id.*
[131] PM 25-36 at 2, note 6 and PM 25-35, at 2 note 5. ("Adjudicators should be mindful of potential fraud or misrepresentations on fee waiver applications, particularly from [noncitizens] who have employment authorization and have lived in the United States for many years. Instances of suspected fraud should be referred to EOIR's Anti-Fraud Program.")
[132] *See* 8 C.F.R. § 1003.23(b)(2) (Immigration Court); 8 C.F.R. § 1003.2(b)(2) (BIA).
[133] *Id*.

motion to reconsider neither tolls the notice of appeal deadline to the BIA nor the deadline for filing a petition for review (PFR) with the U.S. courts of appeal. Pursuant to the regulation, a respondent may only file one motion to reconsider per IJ decision[134] and cannot seek reconsideration of a denied motion to reconsider.[135]

A motion to reconsider is most likely to be effective if the practitioner believes that the IJ did not understand the facts of the case or the law. As discussed above, some IJs have pretermitted asylum between hearing dates and have not ordered removal. A motion to reconsider may be especially appropriate if the IJ does not issue a removal order because in that situation the respondent is not at immediate risk of physical removal. Since some IJs are pretermitting asylum applications based on their own review of the form and without giving notice to respondent's counsel, a motion to reconsider gives counsel the opportunity to explain why the submission does meet the legal standard of sufficiency. Further, in a motion to reconsider, counsel can argue that the procedure the IJ employed—pretermitting the I-589 without allowing the asylum seeker the opportunity to refile—violates 8 C.F.R. § 1208.3(c)(3), discussed above.[136] Practitioners can argue that agency guidance cannot conflict with regulations that were promulgated pursuant to the Administrative Procedures Act. Furthermore, if a practitioner files a motion to reconsider with the IJ in a case where there is not yet a final order of removal, they should argue that the fee does not apply, since the motion is not being filed to reconsider a final administrative order.[137]

The numerical limitation of one motion to reconsider per IJ decision and the $1045 fee[138] require practitioners to assess the likelihood of success before filing and whether it is worth doing so. If the IJ entered an order of removal simultaneously with the pretermission of the application, the practitioner will need to determine whether to file a motion to reconsider with the IJ immediately or whether to file a notice of appeal with the BIA immediately. Where the court issues a written decision ordering removal, the IJ should automatically reserve appeal on behalf of both parties.[139] If appeal is reserved, ICE is legally prohibited from executing a removal order during this 30-day

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[134] 8 C.F.R. § 1003.23(b)(2) states that "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the immigration judge's prior decision and shall be supported by pertinent authority." An IJ "decision" encompasses an interim decision, such as on removability, or a decision issuing a removal order. Moreover, a motion to reconsider on an interim decision is technically a pre-decision motion per 8 C.F.R. § 1003.23(a). Ultimately, practitioners may file more than one motion to reconsider in one case so long as it is not on the same decision, which would violate the prohibition on reconsideration of a denied motion to reconsider per 8 C.F.R. § 1003.23(b).

[135] 8 C.F.R. § 1003.23(b).

[136] National Immigration Project*, Enjoined Asylum Regulations Cheat Sheet,"* (Feb. 3, 2023) https://nipnlg.org/work/resources/enjoined-asylum-regulations-cheat-sheet; *see*, *supra* note 21 for information on where to find the correct version of this regulation.

[137] 8 C.F.R. § 1003.23(a) discusses "pre-decision motions" as motions "submitted prior to the final order of an immigration judge." That is a different section from the "motions to reconsider" section at 8 C.F.R. § 1003.23(b)(2) that encompasses a decision issuing a removal order. This interpretation comports with the longstanding ICPM 3.4(b)(2) provision that "a motion filed while proceedings are pending before the Immigration Court" do not require a filing fee.

[138] Sirce E. Owen, EOIR, PM 25-36, Update and Supplement EOIR Policy Regarding Fees (July 17, 2025) https://www.justice.gov/eoir/media/1408356/dl?inline; *see also*, EOIR, Types of Appeals, Motions, and Required Fees (Updated July 8, 2025) https://www.justice.gov/eoir/types-appeals-motions-and-required-fees.

[139] *See* 8 C.F.R. 1003.6 (a).

window when an appeal can be filed.[140] As such, if the practitioner files a motion to reconsider during this 30-day appeal window, Immigration and Customs Enforcement (ICE) is not legally permitted to remove the respondent.[141] That being said, ICE has acted aggressively over recent weeks and has often ignored the law.[142] If the respondent is detained, there may be a greater likelihood that ICE would respect the automatic stay of having a BIA appeal pending as opposed to having a motion to reconsider pending. On the other hand, if the IJ can be convinced to reconsider and allow the respondent to pursue asylum, the case will move forward faster, which is a better result for detained noncitizens.

If the IJ does not respond to the motion to reconsider by the filing deadline for the BIA appeal, the practitioner should timely file a Notice of Appeal (Form EOIR-26) with the BIA, as discussed below. The practitioner can raise the same legal issues on appeal as were raised in the motion, along with any other appealable issues. If the IJ denies the motion to reconsider, the practitioner can simultaneously appeal the IJ's decision ordering the respondent removed and the IJ's decision to deny the motion to reconsider.

B. **Appealing to the BIA**

A respondent may appeal an IJ's decision to the BIA by completing and filing a Notice of Appeal with the Board within 30 calendar days of the IJ's decision.[143] The 30-day period starts to run from the IJ's oral decision or the mailing or electronic notification of a written decision.[144] Notices of Appeal now carry a $1010 filing fee, although it is still possible to seek a fee waiver.[145] The Notice of Appeal should include a concise statement to identify the grounds for the appeal. If neither the Notice of Appeal nor the documents filed with it adequately identify the basis for the appeal, the BIA may summarily dismiss the appeal.[146]

The noncitizen will need to appeal in several circumstances in the pretermission context. First, if the practitioner has already had the opportunity to argue against pretermission to the IJ and the IJ has rejected those arguments and ordered the respondent removed, the practitioner should appeal. Second, if the IJ has developed a practice of pretermitting most asylum applications, and the practitioner determines that a motion to reconsider would be futile, the practitioner should file an appeal with the BIA as quickly as possible. Likewise, if a practitioner is retained after the application has been pretermitted, and the appeal deadline is approaching, the practitioner should

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[140] If the respondent files a notice of appeal, ICE is also legally prohibited from executing a removal order during the entire pendency of a BIA appeal.
[141] 8 C.F.R. 1003.6 (a).
[142] Alisha Ebrahimji, *American Citizens Say They Were Detained by ICE*, CNN, June 27, 2025, https://www.cnn.com/2025/06/27/us/american-citizens-detained-ice-immigration; NYCLU, *Lawsuit: ICE Unlawfully Arrests 19-Year-Old Asylum Seeker at his Immigration Hearing, Orgs File for Immediate Release* (June 13, 2025) https://www.nyclu.org/press-release/lawsuit-ice-unlawfully-arrests-19-year-old-asylum-seeker-at-his-immigration-hearing-orgs-file-for-immediate-release
[143] BIA Practice Manual Chapter 4.4(b); Chapter 3.1(b).
[144] 8 C.F.R. § 1003.38(b).
[145] Sirce E. Owen, EOIR, PM 25-36, Update and Supplement EOIR Policy Regarding Fees (July 17, 2025) https://www.justice.gov/eoir/media/1408356/dl?inline; *see also*, EOIR, Types of Appeals, Motions, and Required Fees (Updated July 8, 2025) https://www.justice.gov/eoir/types-appeals-motions-and-required-fees.
[146] BIA Practice Manual Chapter 4.4(b)(4)(E).

file the Notice of Appeal with the BIA immediately. Even where the I-589 lacked sufficient detail about the past harm, future harm, and/or the asylum seeker's protected characteristic or otherwise has a deficient record, it is generally best to appeal to the BIA to trigger a stay of removal[147] and thereafter file a motion to remand with a more developed I-589 and supporting evidence.[148]

Practitioners can include in the Notice of Appeal the arguments outlined above. While appeals to the BIA can and should preserve due process and other constitutional issues, the BIA is more likely to grant an appeal based on arguments grounded in the INA, regulations, and binding precedent. Thus, practitioners should raise the argument that policy memoranda cannot create new law and that the Pretermission Memo directly conflicts with INA §§ 240 and 208 as well as 8 C.F.R. § 1208.3(c)(3) which requires the IJ to reject the I-589 if it is incomplete and give the respondent 30 days to resubmit it. The practitioner should further argue that PM 25-28 and PM 21-06 conflict with one another and that, in any event, the regulations carry more weight since they were issued subject to notice and comment rulemaking. Given the current composition of the BIA and political pressure on executive branch employees, practitioners should be sure to preserve all arguments that they may need to make in PFRs in federal court, including constitutional arguments.

C. **Filing a Motion to Reopen**

A motion to reopen (MTR) is a request to the IJ or to the BIA to reopen proceedings in which a final administrative order[149] has already been entered. Unlike motions to reconsider, a motion to reopen is the proper vehicle for submitting new evidence. A motion to reopen would be the primary recourse,[150] if more than 30 days have passed since the IJ pretermitted their I-589 and issued a removal order. Motions to reopen before the IJ now carry a $1045 fee.[151]

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[147] 8 C.F.R. §1003.6(a).

[148] *See* 8 C.F.R. § 1003.2(c)(4) (a motion to reopen before the BIA is generally considered to be a motion to remand to the IJ.)

[149] An order of removal become final: (1) upon an immigration judge's order if the noncitizen waives his or her right to appeal to the BIA (including a stipulated order of removal by which the noncitizen automatically waives appeal pursuant to 8 C.F.R. § 1003.25(b)); (2) upon expiration of the 30-day period for filing a BIA appeal if the right to appeal is reserved but no appeal is timely filed; (3) upon the BIA's dismissal of the appeal; (4) if the case is certified to the BIA or the Attorney General, upon the subsequent order; (5) upon an immigration judge's order of removal in absentia; (6) where the immigration judge grants voluntary departure, upon overstay of the voluntary departure period or failure to timely post the required bond; or (7) where the immigration judge grants voluntary departure and the noncitizen appeals to the BIA, upon the BIA's order of removal or overstay of the voluntary departure period granted by the BIA. 8 C.F.R. §§ 241.1; 1241.1.

[150] Alternatively, practitioners may file the Notice of Appeal late and seek equitable tolling of the 30-day deadline. *See Matter of Morales-Morales*, 28 I&N Dec 708 (BIA 2023) (holding that the 30-day filing deadline for a Notice of Appeal is subject to equitable tolling). The practitioner could explore with the noncitizen whether extraordinary circumstances prevented filing the appeal and whether the noncitizen diligently pursued their rights.

[151] Sirce E. Owen, EOIR, PM 25-36, Update and Supplement EOIR Policy Regarding Fees (July 17, 2025) https://www.justice.gov/eoir/media/1408356/dl?inline; *see also*, EOIR, Types of Appeals, Motions, and Required Fees (Updated July 8, 2025) https://www.justice.gov/eoir/types-appeals-motions-and-required-fees.

There are different statutory grounds and regulatory grounds for seeking reopening such as joint motions to reopen[152] and reopening based on the EOIR adjudicator's *sua sponte*[153] authority. While no deadline or number limitation applies to regulatory grounds for seeking reopening, these motions are vulnerable to the EOIR adjudicator's discretionary whims, do not trigger an automatic stay of removal, and present jurisdictional issues for U.S. Courts of Appeals. Conversely, statutory-based motions to reopen are subject to strict deadlines or other requirements, and noncitizens are generally limited to one motion per removal proceedings, but may trigger a stay of removal[154] and provide a strong jurisdictional anchor if they must be appealed to the U.S. courts of appeals. Generally, it is best practice to present at least one statutory basis and a *sua sponte* argument in motions to reopen.

Where a removal order was not issued *in absentia*, as in the pretermission context, practitioners should seek reopening pursuant to INA § 240(c)(7)(B). This reopening ground requires presenting newly discovered facts or a change in the noncitizen's circumstances since the time of their last hearing in immigration court.[155] This reopening ground is subject to a 90-day deadline from the final removal order.[156] When seeking to reopen based on newly discovered facts or a change in the noncitizen's circumstances since the time of their last hearing in immigration court pursuant to INA § 240(c)(7)(B), the respondent will need to establish why the facts included in the motion to reopen could not have been discovered or presented at a prior hearing.[157] A motion to reopen to apply for discretionary relief, such as asylum, must be based on circumstances that arose after the hearing, or establish that the respondent was not fully apprised of their right to apply for such relief or provided the opportunity to do so at the prior hearing.[158] In pretermission cases, the practitioner can argue a due process violation—the asylum seeker never had an opportunity to be heard because the asylum application was pretermitted without notice and without giving the respondent a chance to provide further facts in support of their case. The practitioner should also argue that the IJ prevented the material facts from being part of the record by incorrectly relying on the Pretermission Memo instead of applying 8 C.F.R. §1208.3(c)(3) and giving the respondent 30 days to correct any deficiencies. Finally, the practitioner could argue that the IJ failed to fulfill their duty to develop the record which requires the asylum seeker to have an opportunity to present testimony.

While most represented pretermission-based motions to reopen will likely proceed pursuant to INA § 240(c)(7)(B) and be filed within the 90-day deadline, pro se individuals may miss the 90-day deadline because they are unaware of the deadline and are unable to secure counsel in a timely manner. While the short and strict 90-day deadline makes it difficult to file a timely motion to reopen, practitioners can raise an equitable tolling argument. The common law principle of equitable tolling effectively functions as an extension of the filing deadline. U.S. Courts of Appeals and the BIA have recognized that equitable tolling is warranted in various

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[152] 8 CFR § 1003.23(b)(4)(iv) (IJ).
[153] 8 CFR § 1003.23(b)(1) (IJ).
[154] For a full discussion on stays of removal, refer to the National Immigration Project and American Immigration Council, *Practice Advisory: Stays of Removal* (Jan. 17, 2025) https://nipnlg.org/work/resources/stays-removal.
[155] INA § 240(c)(7)(B); *see also* 8 CFR § 1003.23(b)(3) (IJ).
[156] INA § 240(c)(7)(C)(i); 8 CFR § 1003.23(b)(1) (IJ).
[157] 8 CFR § 1003.23(b)(3) (IJ).
[158] *Id*.

situations, including government interference and due process violations at the prior removal hearing.

Practitioners filing motions to reopen filed beyond the 90-day deadline should also assess if their client is eligible for a motion to reopen under INA § 240(c)(7)(C)(iv) (VAWA eligible) as this statutory motion to reopen ground has a waivable one-year deadline. It is possible that the longstanding backlogs in immigration courts have allowed VAWA-based facts to arise in a client's case. Indeed, it is not uncommon for asylum seeker to have filed an I-589 many years ago and, because of their vulnerability, married or intended to marry a lawful permanent resident or U.S. citizen.

IX. Conclusion

Matter of C-A-R-R- and the Pretermission Memo add new land mines to the already-difficult area of asylum practice. Practitioners must take proper steps in newly filed and existing cases to ensure that their clients have an opportunity to present their cases in immigration court while preserving issues for federal appeal if necessary.

X. Appendix: Redacted Portions of *Matter Of C-A-R-R-* Asylum Applications

APPENDIX A

MATTER OF C-A-R-R-
LEGALLY INSUFFICIENT ASYLUM APPLICATION

Part B. Information About Your Application

*(**NOTE:** Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)*

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, **Part 1. Filing Instructions, Section II., Basis of Eligibility, Parts A. - D., Section V., Completing the Form, Part B.; and Section VII. Additional Evidence That You Should Submit**, for more information on completing this section of the form.

I. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below.

I am seeking asylum or withholding of removal based on:

- ☐ Race
- ☐ Political opinion
- ☐ Religion
- ☐ Membership in a particular social group
- ☐ Nationality
- ☐ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

Gangs are after me. They have machetes to kill me.

B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

When I left my country, I was life threatened.

Part B. Information About Your Application (Continued)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States (including for an immigration law violation)?

☒ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☒ No ☐ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

3.B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

The gangs were after me-still after me to kill me.

Part C. Additional Information About Your Application

(**NOTE:** *Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.*)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☒ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response.

If you were previously denied asylum by USCIS, an immigration judge, or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2.A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☒ No ☐ Yes

2.B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.

Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☒ No ☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see **Instructions, Part 1. Filing Instructions, Section V. Completing the Form, Part C.**

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation)?

☒ No ☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release.

If you have been arrested in the United States, you must submit a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents.

APPENDIX B

MATTER OF C-A-R-R-
LEGALLY SUFFICIENT ASYLUM APPLICATION

[redacted]

Part B. Information About Your Application

(NOTE: *Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)*

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below.

I am seeking asylum or withholding of removal based on:

- ☐ Race
- ☒ Political opinion
- ☐ Religion
- ☒ Membership in a particular social group
- ☐ Nationality
- ☒ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

I have been threatened in the past in my hometown by a neighbor named [redacted] who felt that I called the police on his father after an argument between us over [redacted] had done. He threatened to kill me and his father once lunged at me with a machete. I will explain further in a declaration.

B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

[redacted] and his father still live in the same area and I fear that they might try to harm me or kill me if I return to El Salvador. I also fear that the police or security forces in El Salvador might profile me as a gang member erroneously and torture me or even kill me due to the crackdown on gangs and the state of exemption. I will explain further in a declaration.

[redacted]

Part B. Information About Your Application (Continued)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States (including for an immigration law violation)?

☒ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☒ No ☐ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

3.B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

Yes, I fear that I might be tortured by the Salvadoran government since I will be profiled as a gang member because [redacted] and will be detained upon return as a deportee. I fear that during this process and while in detention I will be tortured as part of the violence against accused gang members during the state of exemption. I also fear [redacted] who I fear want to take revenge on me and can kidnap and torture me before killing me. I will explain further in a detailed declaration.

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[redacted]

Part C. Additional Information About Your Application

(**NOTE:** *Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.*)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☒ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2.A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☒ No ☐ Yes

2.B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.

[redacted]

Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No ☒ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

When I entered the country i was [redacted] years old, and because I did not know what to do I sought help from a church with my immigration case. I know they were working on my case and I thought everything was done properly. I know they filed an asylum application for me, like this one, but I do not remember when they did so. I will explain further in a statement.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation)?

☐ No ☒ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

Please See Attached [redacted]