UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

Amicus Invitation No. 26-04-06	)

REQUEST TO APPEAR AS *AMICI CURIAE* AND BRIEF OF ASYLUM ADVOCACY PROJECT (ASAP) AND NATIONAL IMMIGRATION PROJECT AS *AMICI CURIAE*

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REQUEST TO APPEAR AS AMICI CURIAE

In accordance with the Board of Immigration Appeals' request for *amicus curiae*, the Asylum Seeker Advocacy Project ("ASAP") and the National Immigration Project hereby respectfully request permission from the Board to appear as *Amici* in the above-captioned matter. The Board makes the determination to grant such permission on a case-by-case basis when *Amici's* participation will serve the public interest. 8 C.F.R. § 1292.1(d). The issue of the asylum annual fee is important to our organizations, both of which are member organizations. ASAP's membership includes over 700,000 asylum seekers living in the United States. The National Immigration Project's members include attorneys, accredited representatives, community organizers, and community members, many of whom provide representation to or advocacy on behalf of asylum seekers.

ASAP and National Immigration Project have important insights to offer on the questions presented. Thousands of ASAP members have asylum applications pending at the Executive Office for Immigration Review ("EOIR") that are subject to the annual asylum fee, and thousands of ASAP members have filed claims for withholding of removal under the Immigration and Nationality Act and protection under the Convention Against Torture ("CAT") on the same Form I-589. Further, ASAP is currently litigating the lawfulness of EOIR's implementation of the AAF in *Asylum Seeker Advocacy Project v. EOIR*, No. 25-cv-03299-SAG (D. Md.).

National Immigration Project provides information and training to its members. National Immigration Project has written practice advisories on the H.R.-1 fees; has submitted comments on proposed rules concerning OBBBA-related fees; and has written to EOIR seeking clarity about EOIR fees.[1] Further, National Immigration Project provides representation to some applicants for asylum

[1] *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* (Jul. 22, 2025) https://nipnlg.org/work/resources/comparison-chart-immigration-related-fee-changes-brought-hr1-so-called-one-big; *National Immigration Project Submits Comment Opposing Increased ICE Arrest Fee* (June 23, 2026) https://nipnlg.org/work/resources/national-immigration-project-submits-comment-opposing-increased-ice-arrest-fee; *National Immigration Project Submits Letter to EOIR Seeking*

and applicants for withholding or CAT protection, including on petitions for review.

Cumulatively, ASAP and the National Immigration Project advise thousands of asylum seekers and their counsel on matters related to asylum and removal proceedings. These two organizations have deep knowledge of the provisions of OBBBA, fee regulations, and guidance. Additionally, the two organizations bring years of experience litigating the rights of asylum seekers, applicants for withholding of removal, and applicants for Convention Against Torture protection. As such, ASAP and the National Immigration Project have a strong interest in the Board fully considering all issues implicated by the three questions posed and respectfully request leave to appear as *amici curiae* and file the following brief.

Payment Fixes (Apr. 1, 2026) https://nipnlg.org/work/resources/national-immigration-project-submits-letter-eoir-seeking-payment-fixes.

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BIA QUESTIONS PRESENTED

1. Does [the annual asylum fee ("AAF")] apply only to Form I-589 applications for asylum under § 208 of the Immigration and Nationality Act ("INA"), or does it also apply to applications for withholding of removal under § 241(b)(3) of the INA and/or protection under the regulations implementing the Convention Against Torture ("CAT")?

2. If an Immigration Judge or Appellate Immigration Judge denies an asylum application through pretermission, or deeming the application abandoned, for failure to comply with the AAF requirement, must the adjudicator consider the related claims for withholding of removal under the INA and CAT that are submitted on the same Form I-589 application?

3. Are there any consequences to the alien's application for withholding of removal and request for protection under CAT when the alien fails to pay the mandatory AAF?

INTEREST OF AMICI CURIAE

The Asylum Seeker Advocacy Project ("ASAP") is a national voluntary membership organization of over 700,000 asylum seekers living in the United States. ASAP provides members with legal and community support, including time-sensitive updates about immigration policies, legal resources, and opportunities for members to work together for nationwide systemic reform based on the priorities identified by its membership. Thousands of ASAP members have asylum applications pending at the Executive Office for Immigration Review ("EOIR") that are subject to the annual asylum fee ("AAF") established by the One Big Beautiful Bill Act ("OBBBA"), and thousands of ASAP members have filed claims for withholding of removal under the Immigration and Nationality Act ("INA") § 241(b)(3), 8 U.S.C. § 1231(b)(3),[1] and protection under the Convention Against Torture ("CAT") on the same Form I-589. Further, ASAP is currently

[1] For ease of reference, citations to provisions of the INA are accompanied by parallel citations to the corresponding sections of Title 8 of the United States Code.

litigating the lawfulness of EOIR's implementation of the AAF in *Asylum Seeker Advocacy Project v. EOIR*, No. 25-cv-3299-SAG (D. Md.).

The National Immigration Project is a national membership organization of lawyers, legal workers, and advocates dedicated to advancing the rights of immigrants and their communities. The National Immigration Project has decades of experience litigating, publishing guidance, and providing training and technical assistance on immigration law, including withholding of removal and CAT claims. The National Immigration Project has been closely monitoring OBBBA's implementation and issuing practice resources to immigration law practitioners. The National Immigration Project has a strong interest in this case because its members and other immigration practitioners have reported concerns that EOIR is unlawfully requiring applicants to pay asylum fees to pursue withholding of removal and CAT protection claims, leading to erroneous removal orders and irreparable harm.

Amici submit this brief to assist the Board in correctly answering the questions presented.

SUMMARY OF ARGUMENT

The three questions presented by the Board have straightforward answers rooted in plain statutory text; judicial and BIA precedents confirming that claims for asylum, withholding, and CAT must be treated separately; and the mandatory nature of withholding and CAT protections.

First, OBBBA's plain text makes clear that AAF applies only to applications for asylum under INA § 208, 8 U.S.C. § 1158. The statute is unambiguous: 8 U.S.C. Section 1802(a) imposes an initial fee on noncitizens "who file[] an application for asylum under section 1158 [INA § 208]," and 8 U.S.C. Section 1808, entitled "Annual asylum fee," imposes an annual fee for each calendar year that the "application for asylum remains pending." *Id*. § 1808(a). OBBBA does not authorize

any fee on applications for withholding of removal or CAT protection—annual or otherwise[2]—so any attempt to do so would exceed EOIR's and the Board's statutory authority. Courts and the Board strictly enforce statutory boundaries between these forms of relief. And OBBBA does authorize fees on other distinct forms of immigration relief, confirming that Congress's omission of withholding and CAT claims was deliberate.

Second, if an immigration judge pretermits or deems an asylum application abandoned for failure to pay the AAF, the adjudicator must still consider related claims for withholding of removal and CAT protection on their merits. Withholding of removal and CAT protection are mandatory, non-discretionary protections that cannot be forfeited for nonpayment of a fee Congress imposed only on asylum claims. The use of a single Form I-589 does not merge distinct forms of relief; even if asylum is pretermitted or abandoned, withholding and CAT claims must still be adjudicated on the merits.

Third, nonpayment of the AAF has no lawful consequences for an applicant's claims for withholding of removal or CAT protection. The statute authorizes the imposition of fees only for the asylum claim itself, thus any attempt to deny or dismiss withholding of removal or CAT claims based on nonpayment of the AAF is unlawful.

[2] While this amicus brief focuses on the annual asylum fee to respond directly to the Board's questions, the statute likewise does not authorize imposition of the *initial* asylum fee on withholding or CAT claims. On June 8, 2026, amicus ASAP sought summary judgment on this issue as to both fees. *See Asylum Seeker Advoc. Project v. EOIR*, No. 25-cv-3299-SAG, ECF 123-1 at 26–31 (D. Md. filed June 8, 2026) (arguing that EOIR's policies applying asylum fees to withholding of removal and CAT claims are in excess of its statutory authority and must be set aside).

ARGUMENT

I. The Asylum Fees Apply Only to Applications for Asylum Under INA § 208, 8 U.S.C. § 1158, Not to Claims for Withholding of Removal or CAT Protection (Question 1).

A. The Statutory Text Is Unambiguous.

OBBBA's plain text makes clear that Congress created an annual fee for only asylum claims, and nothing in the statute authorizes the imposition of this fee on withholding of removal or CAT claims. "An agency literally has no power to act unless and until Congress confers power upon it." *City of Los Angeles v. Barr*, 941 F.3d 931, 938 (9th Cir. 2019) (cleaned up);[3] *see also Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 (BIA 2023) ("We have a duty to follow the plain and unambiguous language of the statute."). OBBBA contains only two provisions authorizing fees on asylum applications: Sections 1802 and 1808. Section 1802 imposes an initial asylum fee on any noncitizen "who files an application for asylum under section 1158 of this title [INA § 208]," 8 U.S.C. § 1802(a) (emphasis added), and Section 1808 imposes an annual asylum fee for each calendar year that the "application for asylum remains pending," *id*. § 1808(a). Both provisions are expressly limited to asylum applications and contain no reference to withholding of removal or CAT protection. In fact, throughout the entirety of OBBBA, Congress never once mentions withholding of removal or CAT protection claims. Likewise, OBBBA explicitly cites the asylum statute, INA § 208, 8 U.S.C. § 1158, but does not cite the statute authorizing withholding of removal, INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), nor does it cite the CAT implementing regulations at 8 CFR §§ 1208.16 et seq. Because Sections 1802 and 1808 are the only OBBBA provisions authorizing asylum fees, and neither extends beyond asylum applications

[3] This amicus brief primarily cites to Ninth Circuit precedent because the proceedings arise in the Ninth Circuit. *See Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989) (BIA has "historically followed a court's precedent in cases arising in that circuit").

under INA § 208, 8 U.S.C. § 1158, OBBBA provides no authority to impose such fees on requests for withholding or CAT relief. Absent such authorization, EOIR lacks authority to impose the AAF on applications for withholding or CAT relief and any attempt to do so would exceed its statutory authority. *See K Mart Corp. v. Cartier, Inc*., 486 U.S. 281, 291 (1988) ("If the statute is clear and unambiguous that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress" (internal quotation marks omitted)); *see also City of Los Angeles*, 941 F.3d at 938; *Matter of Duarte-Gonzalez*, 28 I&N Dec. at 690 (citing *K Mart Corp*., 486 U.S. at 291).

Congress's decision to impose fees on other forms of immigration relief, while omitting any reference to withholding of removal and CAT protection, confirms that no fees are authorized for these claims. OBBBA imposes fees on several other distinct forms of immigration relief, including special immigrant juvenile status, parole, adjustment of status, and cancellation of removal, *see* 8 U.S.C. §§ 1804, 1805, 1812, but not on withholding of removal or CAT protection. Congress also created a form-specific fee elsewhere in the statute. For example, OBBBA creates a fee associated with Form I-94 (Arrival/Departure Record), *see id*. § 1807, but does not create a similar fee for Form I-589. The complete omission of withholding of removal and CAT claims reflects a deliberate legislative choice to confine the annual asylum fee to asylum claims. *See* Russello v. United States, 464 U.S. 16, 23 (1983) ("[w]here Congress includes particular language in one section of a statute but omits it in another," courts presume that Congress acted intentionally). Therefore, OBBBA unambiguously requires the AAF only for asylum applications.

B. Courts and the Board Consistently Enforce Strict Statutory Boundaries Between Asylum and the Other Forms of Relief on the Same Form, Confirming That Asylum-Specific Statutory Provisions Cannot Reach Withholding or CAT Claims.

Because OBBBA does not authorize the imposition of the AAF on withholding of removal or CAT claims, the Board can resolve this issue on that basis alone. But even if further confirmation were needed, the statutory and regulatory framework—and precedent applying it—consistently treat asylum, withholding of removal, and CAT protection as separate forms of protection, confining each to the scope authorized by its governing legal authorities. Thus, OBBBA's asylum fees cannot implicitly extend to withholding of removal or CAT claims.

Withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), and protection under the CAT, as implemented in 8 C.F.R. §§ 1208.16 et seq., are distinct forms of protection that arise from separate legal authorities, are governed by different standards, and confer different rights than asylum. The Board has long treated these as independent forms of relief adjudicated under distinct legal standards, with distinct criteria and consequences. *See*, *e.g., Matter of S-I-K-*, 24 I&N Dec. 324, 329 (BIA 2007) (lawful permanent resident convicted of an aggravated felony is statutorily barred from applying for asylum but not INA withholding); *Matter of S-V-*, 22 I&N Dec. 1306, 1311 (BIA 2000) (analyzing CAT protection under its distinct regulations, separate from INA withholding). Likewise, courts have recognized that the legal contexts surrounding asylum, withholding of removal, and CAT protection are "not interchangeable." *Konou v. Holder*, 750 F.3d 1120, 1126 (9th Cir. 2014); *see also Kamalthas v. I.N.S.*, 251 F.3d 1279, 1283 (9th Cir. 2001) ("[C]laims for relief under the [CAT] are analytically separate from claims for asylum under INA § 208 [8 U.S.C. § 1158] and for withholding of removal under INA § 241(b)(3) [8 U.S.C. § 1231(b)(3)]."). Accordingly, courts have repeatedly and correctly confined each form of relief

to the statutory and regulatory provisions that specifically authorize it.[4] Whether sought alongside asylum, after asylum has been denied, or without any asylum claim at all, withholding of removal and CAT protection remain distinct forms of relief. A request for withholding or CAT protection is simply not an "application for asylum" within the meaning of 8 U.S.C. Sections 1802 and 1808.

Federal courts have repeatedly applied the principle that asylum-specific statutory provisions do not extend to withholding of removal or CAT claims, even reversing adjudicators who failed to respect it. As the following examples show, the judiciary has consistently enforced statutory walls between these forms of relief, confirming that the AAF, authorized only for an "application for asylum" for each calendar year it "remains pending," 8 U.S.C. § 1808(a), cannot reach claims Congress deliberately left fee-free:

1. The persecutor bar. The persecutor bar expressly applies to asylum under INA § 208(b)(2)(A)(i), 8 U.S.C. § 1158(b)(2)(A)(i), and to statutory withholding under INA § 241(b)(3)(B)(i), 8 U.S.C. § 1231(b)(3)(B)(i). The Supreme Court has recognized that it does not bar deferral of removal under the CAT, illustrating that restrictions applicable to one form of relief do not automatically extend to another. *Negusie v. Holder*, 555 U.S. 511, 513 (2009).

[4] *See also, e.g.*, *Nasrallah v. Barr*, 590 U.S. 573, 582–83 (2020) (holding that the bar on judicial review of factual challenges to final orders of removal does not apply to CAT orders, notwithstanding their joint review in a petition for review); *I.N.S. v. Stevic*, 467 U.S. 407, 423–24 (1984) ("no textual basis in the statute for concluding that" fear standard for asylum claim "is relevant to a withholding of deportation claim"); *Hernandez-Martinez v. Garland*, 59 F.4th 33, 38–44 (1st Cir. 2023) (affirming denial of asylum and withholding but vacating the CAT claim denial and remanding it, treating all three under distinct legal standards requiring independent analysis); *Ramsameachire v. Ashcroft*, 357 F.3d 169, 185 (2d Cir. 2004), *superseded in part by statute on other grounds*, INA § 208(b)(1)(B)(iii), 8 U.S.C. § 1158(b)(1)(B)(iii) (highlighting "need to give independent treatment to asylum and CAT claims"); *Radiowala v. Att'y Gen. United States*, 930 F.3d 577, 583 (3d Cir. 2019) ("asylum and withholding are two separate forms of relief with different standards of proof"); *Jian Tao Lin v. Holder*, 611 F.3d 228, 232 n.2 (4th Cir. 2010) (asylum, withholding, and CAT are "separate types of immigration relief"); *Efe v. Ashcroft*, 293 F.3d 899, 906–07 (5th Cir. 2002) ("The Convention Against Torture claim is separate from the claims for asylum and withholding of removal and should receive separate analytical attention."); *Mansour v. I.N.S.*, 230 F.3d 902, 908–09 (7th Cir. 2000) (holding that the BIA could not import an adverse credibility finding from the asylum context into its CAT analysis, and remanding for further consideration of CAT relief while affirming the denial of asylum and withholding).

2. The one-year filing deadline. Courts have uniformly held that the asylum-specific one-year filing deadline at INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B) has no effect on co-pending withholding of removal or CAT claims, and have consistently proceeded to adjudicate those claims on their merits after declining jurisdiction over an untimely asylum claim. *See, e.g., Sumolang v. Holder*, 723 F.3d 1080, 1082–84 (9th Cir. 2013); *Ghouri v. Holder*, 618 F.3d 68, 70–71 (1st Cir. 2010); *Molathwa v. Ashcroft*, 390 F.3d 551, 553 (8th Cir. 2004).

3. The adverse credibility bleed-through prohibition. Courts have repeatedly reversed decisions that allowed asylum credibility findings to dictate the outcome of CAT claims, emphasizing that CAT protection arises from a distinct legal framework requiring independent analysis. *See, e.g., Kamalthas*, 251 F.3d at 1283–84; *Ramsameachire*, 357 F.3d at 184–85; *Zubeda v. Ashcroft*, 333 F.3d 463, 476 (3d Cir. 2003), abrogated on other grounds, *Auguste v. Ridge*, 395 F.3d 123, 148 (3d Cir. 2005); *Mansour*, 230 F.3d at 908–09; *Acha v. Garland*, No. 20-60674, 2022 WL 152503, at *1 (5th Cir. Jan. 18, 2022) (unpublished per curiam).

4. The particularly serious crime ("PSC") bar. The PSC bar illustrates that even provisions that apply to more than one form of relief do so only to the extent the relevant statute expressly provides—and no further. The PSC bar to asylum under INA § 208(b)(2)(A)(ii), 8 U.S.C. § 1158(b)(2)(A)(ii) and to statutory withholding under INA § 241(b)(3)(B)(ii), 8 U.S.C. § 1231(b)(3)(B)(ii), have different operative standards and, critically, neither applies to deferral of removal under the CAT, which is governed by 8 C.F.R. §§ 1208.16 et seq. *See Delgado v. Holder*, 648 F.3d 1095, 1100–08 (9th Cir. 2011) (applying different frameworks to evaluate PSC bar for asylum and withholding claims); *Gutierrez-Vargas v. Garland*, 42 F.4th 877, 882 (8th Cir. 2022) ("An applicant who is ineligible for withholding of removal because of a conviction for a [PSC] is still eligible for deferral of removal under CAT" if CAT requirements are met).

5. Asylum ineligibility in withholding-only proceedings. When a noncitizen reenters the United States after a prior removal order and DHS reinstates that order, the applicant may be placed in "withholding-only" proceedings, where the regulations authorize consideration of withholding of removal and CAT protection, but not asylum. *See Alvarado-Herrera v. Garland*, 993 F.3d 1187, 1190 (9th Cir. 2021) (explaining the interaction between the statutory reinstatement provision, INA § 241(a)(5), 8 U.S.C. § 1231(a)(5), and the United States' implementation of CAT obligations). Rejecting efforts to import asylum eligibility into that framework, the Ninth Circuit held that applicants with reinstated removal orders remain eligible to seek withholding and CAT protection while being categorically barred from applying for asylum. *Iraheta-Martinez v. Garland*, 12 F.4th 942, 946–48, 951–53 (9th Cir. 2021) (the INA and implementing regulations establish a "comprehensive set of rules governing which noncitizens are eligible for what forms of relief").

A clear rule emerges: the reach of a statutory provision is defined by the statute in which it appears, and it does not travel to claims governed by a different statutory framework simply because those claims happen to arise in the same proceeding. The AAF is an asylum-specific provision. It was authorized only for "application[s] for asylum" under INA § 208, 8 U.S.C. § 1158; not for withholding of removal governed by INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), nor CAT protection governed by regulations implementing treaty obligations, 8 C.F.R. §§ 1208.16 et seq. Because Congress authorized the AAF only for asylum applications, it cannot be imposed on withholding or CAT claims that arise under different legal authorities.

II. An Immigration Judge Who Pretermits or Deems an Asylum Application Abandoned Must Still Adjudicate Withholding of Removal and CAT Claims, Notwithstanding Their Use of a Shared Form I-589 (Question 2).

Because Congress did not authorize the AAF for withholding of removal or CAT claims, an immigration judge who pretermits or deems abandoned an asylum application for failure to pay the AAF must nevertheless adjudicate any withholding of removal or CAT claims. That conclusion follows directly from the statute, which does not authorize a fee for those claims. *See supra* Section I. It is further reinforced by the mandatory nature of withholding of removal and CAT protection. Moreover, the use of a shared form for multiple types of immigration relief is routine and cannot extend OBBBA beyond its plain text to reach withholding or CAT claims.

Withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) is mandatory and non-discretionary. When an applicant establishes a clear probability of persecution on account of a protected ground, the government "may not remove" that noncitizen to their country of origin. INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A). There is no statutory authority to condition adjudication of a withholding claim on payment of a fee imposed exclusively on asylum applications.

CAT protection is equally mandatory. Under the implementing regulations, protection under CAT "will be granted" because a noncitizen "is entitled to protection under the [CAT]" if they meet the eligibility requirements. 8 C.F.R. § 1208.16(c)(4).[5] Like withholding, CAT protection is non-discretionary once the standard is met and carries no fee under the OBBBA.

[5] *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, Title XXII, § 2242 (1998) (setting forth United States' treaty obligation under the CAT); 8 C.F.R. § 1208.16(c)(4) ("If the immigration judge determines that the [noncitizen] is more likely than not to be tortured in the country of removal, the [noncitizen] ***is entitled to*** protection under the [CAT]. Protection under the [CAT] ***will be granted*** either in the form of withholding of removal or in the form of deferral of removal.") (emphases added). Even when the current administration sought to close the U.S.-Mexico border pursuant to INA § 212(f), 8 U.S.C. § 1182(f), it continued to conduct CAT screenings for potential torture in the country of removal. *See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 111 (D.C. Cir. 2026).

Pretermission or abandonment of an asylum claim for failure to pay the AAF pertains only to the asylum claim and has no lawful effect on legally distinct claims filed in the same proceeding. An immigration judge may deny asylum while still granting withholding, *see, e.g., Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 820, 823 (BIA 1990) (IJ denied asylum in the exercise of discretion but separately granted withholding of removal; BIA affirmed); *Matter of T-Z-*, 24 I&N Dec. 163, 163 (BIA 2007) (IJ denied asylum in the exercise of discretion but granted withholding of removal); the same logic applies to fee-based pretermission. The BIA recently held in *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291, 295 (BIA 2025), that when an asylum application is pretermitted pursuant to an "asylum cooperative agreement," the immigration judge must still evaluate the noncitizen's eligibility for withholding of removal or CAT protection in the country of proposed removal. Thus, the BIA has already confirmed that immigration courts must adjudicate mandatory withholding and CAT claims even after pretermitting asylum claims.

The fact that asylum, withholding, and CAT claims are presented on the same Form I-589 does not permit pretermission or abandonment of asylum to extinguish independently governed withholding and CAT claims. Treating the entire Form I-589 as one undifferentiated "application" for fee purposes conflates distinct claims and exceeds the scope of what OBBBA authorized. Indeed, the Form I-589 Instructions themselves recognize that the single Form I-589 is used to apply for multiple forms of relief—asylum, INA withholding of removal, and two forms of protection under the CAT. The Instructions include distinct "Basis of Eligibility" sections for asylum, withholding of removal, and CAT protection; explain in the withholding section that "[i]f asylum is not granted, you may still be eligible for withholding of removal" under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), or under the CAT; and explain in the CAT section that "[i]f it is more likely than not that you will be tortured in a country but you are ineligible for withholding of removal,

your removal will be deferred under 8 CFR sections 208.17(a) and 1208.17(a) [regulations implementing the CAT]." *See* Instructions for Form I-589, 1–4 (Jan. 20, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf.

The use of a single form to request multiple kinds of immigration relief is unremarkable. Agencies routinely administer multiple forms of immigration relief through a single form while applying different substantive rules and fee requirements depending on the benefit sought.[6] For fee purposes, what matters is the underlying benefit sought, not the form on which it is requested. Thus, the government's decision to provide a single application form for asylum, withholding of removal, and CAT claims cannot expand OBBBA's reach by converting withholding and CAT claims—each governed by separate legal authorities—into "asylum applications" under 8 U.S.C. Sections 1802 and 1808.

For these reasons, an immigration judge who pretermits or deems abandoned an asylum claim must still adjudicate the separately governed withholding of removal and CAT claims.

III. Nonpayment of the Annual Asylum Fee Has No Lawful Consequences for Withholding of Removal or CAT Claims (Question 3).

The answer to Question 3 follows directly from the answers to Questions 1 and 2. Because the AAF applies only to asylum claims, and because withholding of removal and CAT protection are mandatory forms of protection not subject to any fee, nonpayment of the AAF cannot lawfully result in any adverse consequence for those distinct claims.

EOIR itself initially acknowledged this. In October 2025, EOIR's counsel told the District Court for the District of Maryland that "the nonpayment of the annual asylum fee would not impact

[6] For example, Form I-765 (Application for Employment Authorization) carries fees ranging from $0 to $560 depending on the category of employment authorization and method of filing. *See* USCIS Fee Schedule, Form G-1055, at 22, 50 (May 29, 2026), https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf. Likewise, Forms I-131 and I-360 encompass multiple distinct immigration benefits that carry different fees or no fee at all. *See id.* at 9, 38–49 (I-131); *id.* at 14 (I-360).

someone's application for the[] other avenues." Transcript of Oral Argument at 41:14–25, *Asylum Seeker Advoc. Project v. EOIR*, No. 1:25-cv-3299-SAG (Oct. 28, 2025). Two weeks later, EOIR's counsel confirmed in writing that EOIR intended to "post public notice, which will clarify that asylum fees are not required for applications for CAT/withholding of removal under INA." *Asylum Seeker Advoc. Project*, No. 1:25-cv-3299-SAG, ECF 123-4 (Nov. 10, 2025). EOIR reversed this position without explanation in its January 2, 2026 Policy Memorandum[7]—a reversal that raises serious questions under the Administrative Procedure Act. *See Asylum Seeker Advoc. Project*, No. 1:25-cv-3299-SAG, ECF 123-1 at 26–29.

EOIR's attempt to impose adverse consequences on respondent's—and any other applicant's—withholding and CAT claims is unlawful.[8] Dismissal of the entire Form I-589 application, including claims for withholding of removal and CAT protection, for failure to pay the AAF conditions access to mandatory forms of humanitarian protection Congress created on payment of a fee that Congress never authorized. For applicants who face persecution, torture, or death if removed, the resulting harm is irreparable. "When sanctions are drastic . . . elementary fairness compels clarity." *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995) (cleaned up). Dismissing withholding or CAT claims for nonpayment of the AAF exceeds EOIR's and the Board's statutory authority, conflicts with the mandatory nature of those protections, and falls below the constitutional minimum required by *Mathews v. Eldridge*, 424 U.S. 319 (1976).[9]

[7] *See* Daren Margolin, Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Policy Memorandum 26-01, Annual Asylum Fee (Jan. 2, 2026), https://www.justice.gov/eoir/media/1422321/dl?inline.

[8] Amici are aware that immigration judges are nonetheless unlawfully imposing adverse consequences on withholding of removal and CAT claims for failure to pay the AAF, using a "template order" supplied by EOIR that authorizes dismissal of the entire Form I-589, including non-asylum claims. *See Asylum Seeker Advoc. Project v. EOIR*, No. 1:25-cv-3299-SAG, ECF 85-1 at 4–5 (template order attached as exhibit to sworn declaration of EOIR Director Daren K. Margolin, Jan. 29, 2026); *id.* ECF 122 (EOIR stipulating that ECF 85-1 is an exemplar template order).

[9] Even if the statutory text left any doubt—and it does not—the Fifth Amendment's Due Process Clause independently bars dismissing withholding and CAT claims as a consequence of nonpayment of the AAF. An applicant who faces persecution or torture if removed has a protected liberty interest in the adjudication of those claims. *See Mathews*, 424 U.S. at 334–35 (procedural protections must be commensurate with the nature of the interest at stake). Removal to a

CONCLUSION

The Board should answer the questions presented as follows: (1) the AAF applies only to applications for asylum under INA § 208, 8 U.S.C. § 1158, not to withholding of removal or CAT claims—a reading compelled by OBBBA's plain text; (2) an immigration judge who pretermits or deems an asylum application abandoned must still adjudicate co-pending withholding and CAT claims on their merits; and (3) nonpayment of the AAF has no lawful consequences for withholding of removal or CAT claims.

Respectfully submitted, June 24, 2026

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Amici in Support of Respondent

country where an applicant faces torture or death is among the most severe deprivations of liberty the government can impose. *See C.J.L.G. v. Barr*, 923 F.3d 622, 633 (9th Cir. 2019) (en banc).

STATEMENT OF SERVICE

Pursuant to the instructions in the BIA Amicus Invitation No. 26–04-06 (Asylum Fee Applicability), I have caused three (3) paper copies of the Request to Appear as Amicus Curiae and amicus brief with the Clerk's Office at the address provided in the Request for Amicus:

Amicus Clerk - Board of Immigration Appeals

Clerk's Office 5107 Leesburg Pike, Suite 2000

Falls Church, VA 22041

Further, pursuant to the instructions in the BIA Amicus Invitation No. 26–04-06, If the Clerk's Office accepts the attached brief, it will then serve a copy on the parties and provide parties time to respond.

Therefore, no further service is required at this time.

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