Defensive Form I-589 Applications in Executive Office for Immigration Review Immigration Courts: Jurisdictional Framework, Procedural Requirements, and Northern California Implementation

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FINDINGS

DEFENSIVE FORM I-589 APPLICATIONS IN EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURTS: JURISDICTIONAL FRAMEWORK, PROCEDURAL REQUIREMENTS, AND NORTHERN CALIFORNIA IMPLEMENTATION

Executive Summary

The Form I-589, Application for Asylum and for Withholding of Removal, serves as the foundational document for asylum seekers pursuing protection in the United States, but its processing jurisdiction is determined by critical procedural events that shift adjudicatory authority between the U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR) immigration courts. When an asylum applicant is in removal proceedings, the I-589 is filed defensively with the immigration court rather than affirmatively with USCIS. The jurisdictional analysis turns on the timing relationship between Notice to Appear (NTA) issuance and docketing with EOIR, creating a complex regulatory framework that practitioners must navigate with precision to preserve client eligibility for asylum and compliance with the mandatory one-year filing deadline established under [8 U.S.C. § 1158(a)(2)(B)][1]. As of February 2026, the immigration law landscape is characterized by significant administrative changes, including a nationwide pause on asylum decisions at USCIS, the introduction of the $100 initial filing fee for I-589 applications filed with immigration courts, and procedural modifications affecting asylum merits interviews and removal proceedings. This report examines the jurisdictional framework governing I-589 applications in EOIR courts, the distinct procedural requirements for defensive filings, the current critical deadline structure, and practical implementation considerations specific to Northern California immigration practice. The research identifies that practitioners must distinguish between five distinct scenarios of I-589 filing timing relative to NTA processing to ensure proper jurisdiction and preserve the filing date for one-year deadline purposes. Northern California practitioners must also account for San Francisco Immigration Court's specific local procedures, concurrent state law implications under California Penal Code sections governing post-conviction relief, and the operational characteristics of the San Francisco Asylum Office. The legal landscape presents medium to high complexity regarding jurisdictional determinations, particularly where NTAs are issued but delayed in docketing with EOIR, requiring practitioners to employ strategic assessment of whether USCIS or EOIR holds jurisdiction and whether to file affirmatively or defensively based on client circumstances and timing considerations.

Jurisdictional Framework: USCIS and EOIR Authority Over I-589 Applications

The foundational statutory and regulatory structure allocating jurisdiction over asylum applications between USCIS and EOIR turns on whether the applicant has been placed in removal proceedings. [8 U.S.C. § 1158(a)(1)][1] vests USCIS with initial jurisdiction to adjudicate asylum applications filed by aliens physically present in the United States or seeking admission at a port of entry, providing that "any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...and irrespective of such alien's status), irrespective of how such alien arrived, may apply for asylum." Conversely, [8 C.F.R. § 208.2][2] establishes the jurisdictional boundary by providing that immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a [Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I-862, Notice to Appear][2], after the charging document has

been filed with the Immigration Court. The regulatory framework is not merely a default allocation of first-instance adjudicatory authority; rather, it establishes mutually exclusive jurisdictional zones in which USCIS cannot exercise authority once a charging document has been filed with EOIR, and EOIR cannot exercise jurisdiction until that filing occurs.

The critical triggering event for EOIR jurisdiction is the filing and docketing of a Notice to Appear (NTA) with the immigration court. [8 C.F.R. § 208.2(b)][2] provides that "Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I-862, Notice to Appear, after the charging document has been filed with the Immigration Court." The language is precise: jurisdiction attaches "after the charging document has been filed with the Immigration Court," not merely after issuance by the government. This distinction creates a temporal window during which neither agency may possess clear jurisdiction-after DHS has issued an NTA but before DHS has filed it with EOIR. This ambiguity has been the subject of significant litigation and regulatory clarification. The American Immigration Council's practice advisory on USCIS v. EOIR jurisdiction, grounded in the settlement agreement from [Mendez-Rojas v. Johnson][3], clarifies that under the "Grace Period Rule," if USCIS receives an I-589 application at the moment an NTA has already been filed and docketed with EOIR, USCIS's response depends on the precise timing: if the NTA has been filed and docketed for 21 calendar days or fewer, USCIS will accept the application, note the date of USCIS receipt as the filing date for purposes of the one-year deadline, and transfer the application to EOIR for adjudication.[3] If the NTA has been filed and docketed for 22 calendar days or more, USCIS will reject the application and return it with notice that the applicant must file directly with EOIR.[3]

This jurisdictional structure creates five distinct procedural scenarios that practitioners must evaluate to determine the proper filing venue and to preserve the filing date for one-year deadline calculation purposes. Scenario One occurs when an applicant has no NTA and is not in removal proceedings; in this circumstance, USCIS has jurisdiction and the applicant files affirmatively with USCIS by submitting Form I-589 to the appropriate USCIS service center.[4] The filing date for purposes of the one-year deadline is the date on which USCIS receipts the application.[4] Scenario Two presents the situation in which an applicant receives Form I-589 filed within 21 calendar days of the DHS filing and docketing an NTA with EOIR; USCIS will accept the application, send it to the EOIR immigration court having jurisdiction over the proceedings, and notify the applicant by mail that EOIR will adjudicate the Form I-589, with the date of USCIS receipt serving as the filing date for the one-year deadline.[4] Scenario Three involves an I-589 filed 22 calendar days or more after DHS filed and docketed the NTA with EOIR; in this situation, USCIS will reject the Form I-589 and return it to the applicant, requiring that the applicant file directly with the immigration court and take care to do so within the one-year filing deadline or seek an applicable exception.[4] Scenario Four occurs when an applicant files the I-589 after DHS issued an NTA but before the NTA has been filed and docketed with EOIR; USCIS will accept the Form I-589 and send it to the immigration court having jurisdiction, notifying the applicant that the Form I-589 has been forwarded to the court, with the date of USCIS receipt serving as the filing date.[4] Scenario Five transpires when an applicant files an I-589 after DHS previously issued an NTA but USCIS has not filed the NTA with EOIR; USCIS will accept the Form I-589, issue an NTA if one has not been issued, file the NTA with EOIR, and send the Form I-589 to the immigration court, with the date of USCIS receipt serving as the filing date for one-year deadline purposes.[4]

EOIR Jurisdiction Attachment: The "Filing and Docketing" Requirement

The precise moment at which EOIR immigration courts obtain exclusive jurisdiction over I-589 applications requires careful temporal analysis. Under the plain language of [8 C.F.R. § 208.2(b)][2], EOIR jurisdiction

attaches when "the charging document has been filed with the Immigration Court." The regulatory framework distinguishes between the issuance of a charging document by DHS and its subsequent filing with the immigration court-these are separate events with distinct temporal markers. An NTA issued by ICE or USCIS marks the commencement of removal proceedings from a statutory standpoint under [INA § 239][1], but does not immediately vest EOIR with jurisdiction over asylum applications. Rather, jurisdictional exclusivity vests with EOIR only upon the filing of the charging document with the immigration court and, practically speaking, its entry into EOIR's database systems.

The [Mendez-Rojas settlement agreement][3] addressed a chronic administrative problem in which DHS would issue NTAs but not file them with immigration courts in a timely manner, or would file them but not enter them into EOIR's database, creating a jurisdictional vacuum during which asylum applicants could neither file affirmatively with USCIS (which would assert lack of jurisdiction based on NTA issuance) nor file defensively with EOIR (which would not recognize jurisdiction based on its database systems). The agreement and the accompanying Grace Period Rule established that if USCIS receives an I-589 application when an NTA has already been filed and docketed, USCIS will apply a 21-calendar-day grace period: applications received within 21 days of NTA filing and docketing will be accepted by USCIS, forwarded to EOIR, and the USCIS receipt date will be the filing date for one-year deadline purposes.[3] Applications received 22 or more days after NTA filing and docketing will be rejected by USCIS with notice directing the applicant to file directly with EOIR.[3]

Practitioners should be aware that there may be an additional practical wait after DHS provides an NTA to the immigration court before EOIR staff will realize that the NTA has been submitted, because entry into EOIR's electronic case management system may lag behind receipt of the physical document.[5] Although EOIR should theoretically have jurisdiction from the time it receives the NTA, as a practical matter EOIR staff may not realize jurisdiction has attached until the case is entered into the database. This creates strategic implications: if an applicant attempts to file defensively with EOIR before the NTA has been entered into the system, EOIR may reject the filing on the ground that it lacks jurisdiction. Conversely, if an applicant files with USCIS after an NTA has been issued but before it has been filed and docketed, USCIS may reject the application on the ground that it lacks jurisdiction. To navigate this jurisdictional lacuna, the Mendez-Rojas Uniform Procedural Mechanism (UPM) requires USCIS to contact ICE to determine whether ICE intends to file the NTA, and requires USCIS to exercise discretion to accept applications in borderline timing situations in order to prevent applicants from falling into the jurisdictional gap.

Defensive I-589 Filing in EOIR Immigration Courts: Procedural Requirements and Strategic Considerations

Filing Methods and Submission Requirements

When an applicant is in removal proceedings before EOIR, the I-589 must be filed defensively with the immigration court rather than affirmatively with USCIS. [8 C.F.R. § 1208.4(b)][6] specifies that "[t]he format and manner of filing of a defensively filed Form I-589 shall be governed by the rules of procedure set forth in 8 CFR 1003.12 (Service and filing of documents)." The EOIR Practice Manual provides that defensive asylum applications are filed "electronically, by mail, courier, in person at the court window, or in open court at a master calendar hearing."[7]

Practitioners in Northern California must account for the specific filing procedures at the three San Francisco Immigration Court locations: 100 Montgomery Street, Suite 800, San Francisco, CA 94104; 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111; and the Concord Hearing Location at 1855 Gateway

Blvd., Suite 850, Concord, CA 94520. The immigration court maintains a central filing system, but practitioners should verify the specific procedures and mailing addresses with each location, as procedures may vary.

Electronic filing through ECAS (Electronic Case Access System) is available for attorneys and accredited representatives who are registered with EOIR.[8] This method is generally preferred because it provides immediate timestamping and eliminates mail delays. However, ECAS filing requires that the user have a valid EOIR account and that the case be docketed in the EOIR system. For defensive I-589 filings, the case must already be pending in immigration court before ECAS filing is available.

Physical filing at the immigration court window involves presenting the original I-589 and two complete copies to the court clerk, along with all supporting documentation.[9] The clerk will stamp all copies with the date of receipt, retain the original, and return the stamped copies to the filer. The receipt-stamped copy serves as proof of filing and should be retained for the applicant's records and brought to all subsequent hearings. In-person filing at the window is preferable when possible because it provides immediate confirmation of receipt and allows the practitioner to visually confirm that the document has been properly date-stamped.

Certified mail filing is also permissible and is governed by the receipt rule rather than the mailbox rule.[10] Under EOIR procedures, an application is not deemed "filed" until it is received by the immigration court. A document is not considered filed merely because it has been received by the U.S. Postal Service or commercial courier. Practitioners filing by mail must mail the original and one copy of the I-589 and certificate of service to the immigration court, include a self-addressed, stamped return envelope so that the court can mail back a stamped copy, and use a mail service that offers tracking so proof of delivery can be provided. The practitioner must simultaneously mail a copy to the ICE Office of the Chief Counsel at the specified address, also using tracked mail service. Proof of service on ICE (showing the date, method, and recipient) should be retained and may be requested by the court.

Filing at a master calendar hearing is another method available to applicants already scheduled for court. The applicant or their representative can hand the I-589 application and certificate of service to the bailiff, who will pass them to the immigration judge.[9] The judge should be asked to stamp all copies, retain the original, and return the copies stamped to the applicant. One copy should be handed to the ICE government attorney, and another retained by the applicant for their records.

Current Filing Fee Requirements and Payment Procedures

As of February 2026, a significant change in the fee structure for asylum applications in EOIR courts has taken effect. The current I-589 filing fee is $100 for initial filing with immigration court.[11] This represents a substantial change from prior practice, when no filing fee was required for defensive asylum applications in EOIR courts. The fee is non-waivable and non-reducible, meaning applicants cannot request a fee waiver or fee reduction for I-589 filings in immigration court.[11]

The payment procedure is critical and must be completed before or contemporaneously with the submission of the Form I-589. As of September 23, 2025, EOIR established an online payment portal through which applicants can pay the filing fee.[11] The process requires the applicant to visit the immigration court payment website, enter their A-Number (Alien Number), and select "Court - I-589, Application for Asylum (Initial Filing)" from the filing type dropdown menu. After payment, the system generates a receipt with a Payment Tracking ID, which the applicant should retain and include or reference when submitting the I-589 itself.[11] If the Payment Tracking ID cannot be located or accessed after more than five days have passed, the applicant can contact the immigration court to request the ID.

Applicants may pay by credit card, debit card, electronic bank transfer (ACH) through Form G-1650, or check (with Form G-1651 exemption form signed and included) if payment cannot be made electronically. The fee applies per Form I-589 submission, not per applicant; thus, a family filing one joint Form I-589 pays $100 total, while family members filing separate Forms I-589 each pay $100.

Applicants whose cases remain pending with USCIS for 365 days after the initial filing must pay an annual asylum fee of $102 (effective as of recent updates).[12] However, this annual fee applies primarily to USCIS filings; the immigration court filing fee structure may differ, and practitioners should verify current procedures with the relevant immigration court.

Certificate of Service and Proof of Service on Government Counsel

Defensive I-589 filings must be accompanied by a certificate of service demonstrating that a copy has been served on the ICE Office of the Chief Counsel. The EOIR Practice Manual requires that the applicant or their representative provide proof of service to the government attorney. This can be accomplished through three methods: personal delivery to the ICE government attorney at the courthouse, delivery to the designated drop-off point at the immigration court, or certified mail or courier service to the ICE Office of the Chief Counsel.

The certificate of service should be on a separate sheet of paper and should state: "I, [applicant's or representative's name], hereby certify that I [hand delivered/placed in the mail] a copy of this document to [the ICE Office of the Chief Counsel / a representative of ICE] at [the address where delivery occurred] on [date]." The certificate should be signed and dated. The signed original certificate should be included with the copy served on ICE, and a copy should be retained for the applicant's records and included in the filing packet submitted to the immigration court.

One-Year Filing Deadline: Critical Timeline and Statutory Framework

Statutory Deadline and Calculation Methodology

[8 U.S.C. § 1158(a)(2)(B)][1] establishes the mandatory one-year filing deadline by providing that "any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and irrespective of such alien's status), irrespective of how such alien arrived, may apply for asylum...if such alien demonstrates by clear and convincing evidence that the alien applied for asylum within 1 year after the date of the alien's arrival in the United States." The statute mandates that the applicant establish eligibility by "clear and convincing evidence," a heightened evidentiary standard that requires the adjudicator to be substantially sure of the applicant's claim. The one-year period is calculated from the date of the applicant's last arrival in the United States.[13] If an applicant has entered the United States multiple times, the one-year period begins from the most recent entry date, regardless of prior entries or prior asylum applications.

The filing date is the date on which the I-589 application is received by the adjudicating agency or court, not the date the application is mailed.[13] If an applicant mails their I-589 within the one-year period but it is received after the one-year period has expired, the application will be treated as untimely unless the applicant can provide clear and convincing documentary evidence that the application was mailed within the one-year period (in which case the mailing date may be considered the filing date).[13] For affirmative filings with USCIS, the receipt date shown on the I-797C receipt notice is the operative filing date. For defensive filings with EOIR, the date stamped on the I-589 by the immigration court clerk is the operative filing date. For I-589 applications sent from USCIS to EOIR under the grace period rule, the date of USCIS receipt serves as the

filing date for one-year deadline purposes.[4]

The regulations provide that the one-year filing deadline is calculated from the date of the applicant's last arrival in the United States or April 1, 1997, whichever is later.[14] This provision was enacted as part of the [Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996][1], which created the one-year deadline for the first time. For applicants who entered the United States before April 1, 1997, the effective deadline date is April 1, 1998, not one year from their actual entry date.

Exceptions to the One-Year Deadline: Changed Circumstances and Extraordinary Circumstances

The statute recognizes that strict application of the one-year deadline would produce unjust results in certain circumstances. [8 U.S.C. § 1158(a)(2)(D)][1] provides that an applicant may apply for asylum beyond the one-year limitation if the applicant demonstrates "either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application for asylum within the [first year of entry]." The applicant must also demonstrate that the application was filed within a "reasonable period of time" after the changed or extraordinary circumstance occurred.[15]

"Changed circumstances" under [8 C.F.R. § 208.4(a)(4)][16] means that "there have been fundamental changes in the country conditions of the applicant's country such that the applicant's conditions of return have changed materially." Examples include a significant change in security conditions, a change in political leadership that affects persecution of the applicant's social group, or a fundamental shift in the legal status of a persecuted group (such as decriminalization of homosexuality). The applicant must establish not only that country conditions have changed, but that these changes materially affect the applicant's own eligibility for asylum-that is, the applicant must show that the changed circumstances now create conditions for persecution that did not exist at the time of entry.[15]

"Extraordinary circumstances" under [8 C.F.R. § 208.4(a)(5)][16] refers to "events or factors directly related to the failure to meet the one-year deadline." The regulations enumerate six non-exhaustive categories of extraordinary circumstances: (1) the applicant maintained Temporary Protected Status (TPS), lawful immigrant or nonimmigrant status, or was granted parole, until a reasonable period before filing the asylum application; (2) the applicant filed an asylum application before the one-year deadline, but it was rejected as not properly filed or returned for corrections, and was re-filed within a reasonable period thereafter; (3) the death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family; (4) the applicant was in immigration proceedings but was not informed of the one-year deadline; (5) ineffective assistance of counsel under specific criteria (including failure to investigate asylum eligibility, gross negligence, or abandonment of the client); or (6) other events or factors beyond the applicant's control.[16]

To establish that extraordinary circumstances excuse an untimely filing, the applicant must demonstrate three elements: (1) the existence or occurrence of the extraordinary circumstances; (2) that the circumstances directly relate to the failure to file the application within the one-year period; and (3) that the delay in filing was reasonable under the circumstances.[15] The Board of Immigration Appeals has established that even when facts fit within one of the enumerated categories of exceptions, an individualized analysis as to the facts of the case is still required; the existence of a categorically recognized circumstance does not automatically excuse the untimely filing.[15]

Northern California Asylum Court Deadline Procedures

San Francisco Immigration Court has specific local procedures for managing one-year filing deadline cases. At the master calendar hearing, the immigration judge must determine whether the applicant intends to apply for asylum and, if so, schedule a hearing on the asylum application before the one-year deadline expires.[17] If the applicant refuses a date within the one-year deadline, the immigration judge must note on the record that the applicant was advised of the deadline. The reset date must be scheduled with the immigration judge before whom the case is currently pending. The San Francisco court has established procedures for expedited master calendar hearings to allow applicants approaching the one-year deadline to file their applications before the deadline expires, consistent with EOIR Policy Manual guidance.

If an applicant files an I-589 with minimal supporting documentation and seeks a continuance to supplement the application, EOIR procedure permits the immigration judge to stop the one-year clock by entering code 21 into the case management system; otherwise, the clock continues to run, and the case must generally be adjudicated within 180 days of the master calendar hearing.[17]

Current Regulatory Landscape and Administrative Changes Affecting I-589 Processing

Nationwide Pause on Asylum Processing and Merits Interview Suspension

As of December 2, 2025, USCIS issued a Policy Memorandum placing all pending Form I-589 asylum applications on hold pending comprehensive review.[18] This pause affects all asylum applications pending with USCIS regardless of the applicant's country of nationality. Simultaneously, for applicants from countries listed in Presidential Proclamation 10949 (the list of countries subject to travel restrictions), USCIS has frozen processing of asylum applications and all other USCIS benefit requests, and is conducting a comprehensive re-review of all approved benefit requests for nationals of these countries who entered the United States on or after January 20, 2021.[18]

The practical effect of the pause is that asylum applications filed affirmatively with USCIS that would normally progress to interview scheduling are instead placed in a holding status with no processing timeline. For applicants with pending USCIS I-589 applications, there is significant uncertainty regarding when (or whether) the case will be released from the pause and processed. However, the pause does not automatically affect defensive asylum applications already in immigration court proceedings, though immigration judges have discretion regarding case scheduling and may take the administrative pause into account when setting hearing dates.

Practitioners with clients whose I-589 applications are subject to the national pause should monitor USCIS notices, check case status regularly through the USCIS online portal or by contacting the USCIS Contact Center, and consider whether the client's circumstances (such as approaching one-year filing deadline or detention status) warrant an emergency motion to lift the pause or an intervention request.

Asylum Merits Interview Timeline Changes Under the Integrity and Fairness Rule

For asylum applicants placed into expedited removal who receive positive credible fear determinations, the new Integrity and Fairness Rule (IFR) implemented as of 2024-2025 establishes compressed timelines for asylum merits interviews (AMI) conducted by USCIS asylum officers.[19] The AMI must be scheduled 21 to 45 days after the positive credible fear determination, evidence must be submitted 14 days prior to the interview (potentially as little as seven days after the positive credible fear determination), and a decision must be issued within approximately 60 days of the positive credible fear determination.[19]

These compressed timelines create practical challenges for applicants and their representatives in gathering corroborating evidence, securing expert evaluations, obtaining and translating documents from the applicant's

country of origin, and presenting a complete case. For applicants with asylum merits interviews scheduled in the San Francisco Asylum Office (which covers Northern California), practitioners should be aware that the compressed timeline may not permit adequate time to develop a comprehensive case and should consider whether to request an extension for good cause (such as pending medical evaluations or country conditions reports still in preparation).

Immigration Court Filing Fee Implementation and Annual Fee Requirements

As noted above, the $100 initial filing fee for I-589 applications filed in immigration court became effective in 2025. Additionally, USCIS implemented an annual asylum fee (AAF) of approximately $102 for applicants whose asylum applications remain pending with USCIS for 365 days or more after the initial filing.[12] These fees are non-waivable and non-reducible.

For immigration court filings, some judges have begun enforcing the $100 annual asylum fee requirement even though court orders and regulatory provisions remained ambiguous regarding the fee's applicability and enforceability.[20] ASAP and other advocacy organizations have challenged the fee through litigation. Practitioners should verify with the specific immigration court whether annual fees are currently being enforced and should obtain guidance from the court regarding payment procedures if annual fees are being demanded.

Recent Changes to Temporary Protected Status and Work Permit Validity

TPS designations for Burma (Myanmar) ended effective January 26, 2026, and TPS for Haiti ended effective February 3, 2026.[21] These changes do not automatically terminate TPS holders' status but require TPS beneficiaries to understand their new circumstances and explore alternative forms of relief, including asylum if they have not previously applied. For asylum applicants with family members who held TPS, the change in family members' status may affect derivative asylum eligibility or may create independent asylum claims for family members.

Additionally, as of December 4, 2025, new work permits issued to asylum seekers are valid for 18 months rather than the previous five years.[22] This represents a significant change in the practical benefits of asylum pending status and may affect client planning and strategic decision-making regarding whether to pursue asylum versus other forms of relief.

Form I-589 Preparation and Completion in the Defensive Context

Structural Requirements and Form Sections

Form I-589 is a comprehensive application comprising multiple sections that must be completed in their entirety. The form is divided into major parts: biographical information (Part A), background information (Part B), information about persecution or torture feared (Part C), additional information and prior applications (Part D), information required at asylum interview or hearing (Part E), information to be completed at removal hearing if applicable (Part F), and signature and preparer information (Part G).

All questions on the form must be answered; if a question does not apply or the answer is unknown, the applicant must write "N/A," "None," or "Unknown" rather than leaving the space blank.[23] Asylum applications with missing answers or blank spaces may be rejected by USCIS or returned by the immigration court as incomplete. The applicant must sign and date the form in Part D, and if an attorney or representative prepared the form, that person must complete and sign Part E.

Part A: Biographical Information and Immigration Status

Part A collects comprehensive biographical information including the applicant's current legal name (with all variations or aliases listed if applicable), A-Number (if the applicant has been assigned one-which is common in defensive proceedings when an NTA has been issued), date and place of birth, nationality, marital status, and information about spouse and children. The applicant should always use their true name and date of birth rather than information from false identity documents, as misrepresentations on the I-589 can result in frivolous asylum claim findings and permanent bars to asylum.

The form asks for the applicant's current address and mailing address in the United States. The current address should be where the applicant actually resides. The mailing address can be the same or different; if different, it should be where the applicant reliably receives mail. If the applicant's residence address is not safe for receiving mail (such as an address shared with an abusive partner or a location where mail delivery is irregular), the applicant may provide an attorney's address or a trusted friend's address as the mailing address, though this will result in the applicant not receiving notices directly from USCIS or the immigration court.

The form requests information about immigration status, including whether the applicant entered with inspection (and, if so, the form and expiration date of lawful status), entered without inspection (EWI), or used fraudulent documents. The applicant must truthfully report entry status, as false statements regarding entry status can form the basis for fraud findings and frivolous asylum determinations. If the applicant entered with fraudulent documents, the applicant should indicate that they entered with a fraudulent document rather than claiming EWI.

Part B: Persecution Experience and Future Fear

Part B is the substantive heart of the asylum application. It asks the applicant to describe in detail the persecution the applicant has suffered in their home country, the persecution feared if returned to the home country, whether the applicant has suffered torture, and whether the applicant fears torture if returned. The applicant must provide specific, detailed accounts of incidents of persecution or threats, including dates, locations, the identities of persecutors (if known), the circumstances of each incident, and any physical or psychological harm suffered.

The applicant should succinctly summarize the claim in the space provided on the form but should not rely solely on the form itself; instead, the applicant should prepare a comprehensive affidavit (often called a "declaration") that provides the detailed narrative. The EOIR Practice Manual and practitioner guidance strongly discourage writing only "See attached affidavit" in response to the essay questions; immigration judges often follow along with the I-589 itself during the merits hearing rather than reading the attached affidavit first, so the form should contain at least a summary of the key persecution claims, with the option to expand on these in attached documents.

The applicant must also check the box for withholding of removal and Convention Against Torture (CAT) relief if applicable. Best practice is to check the CAT box in nearly all cases, as this preserves CAT eligibility if the case is referred to immigration court and helps preserve relief alternatives if asylum is not granted.

Part C: Persecution Grounds and Nexus to Protected Grounds

Part C requires the applicant to identify which of the five protected grounds form the basis of the persecution claim: race, religion, nationality, membership in a particular social group (PSG), or political opinion. The applicant must check all that apply and must provide detailed explanation of how the persecution is connected to each ground. This is the "nexus" requirement-demonstrating that the persecution was "on account of" one of the protected grounds, not merely because the applicant was in the wrong place at the wrong time or because the applicant was targeted for reasons unrelated to the protected grounds.

For applicants claiming persecution based on political opinion, the form asks whether the applicant has expressed political opinions in their home country or how such opinions might be imputed based on circumstances. For applicants claiming persecution based on membership in a particular social group, the form asks the applicant to describe the social group and explain why the persecutors view the applicant as a member. For LGBTQ+ applicants or applicants fleeing gender-based violence, the form should clearly indicate persecution based on the applicant's sexual orientation, gender identity, or gender.

San Francisco Immigration Court and Asylum Office Implementation

San Francisco Immigration Court Local Procedures and Judge Preferences

The San Francisco Immigration Court, despite its nominal geographic designation, handles cases from Northern California including the Bay Area counties and parts of the Central Valley. Master calendar hearings in San Francisco immigration court are typically scheduled several months after the NTA is docketed, with actual wait times ranging from 6 to 18 months depending on court capacity and case complexity. Individual hearings (merits hearings) on asylum applications are typically scheduled 4 to 18 months after the master calendar hearing, though complex cases may be scheduled further in the future.

San Francisco Immigration Court judges have diverse practices regarding asylum case management. Some judges are known to grant continuances liberally to allow applicants time to gather evidence and secure representation; others maintain stricter scheduling and may advance cases toward final hearing even if the applicant requests additional time. Practitioners should inquire about specific judge practices and should file detailed written motions requesting continuances rather than relying on oral requests at master calendar hearings. San Francisco judges generally expect written motions filed at least 15 days before a scheduled hearing, with responses due within 10 days of the motion filing.

The court maintains local rules and procedural orders that supplement the EOIR Practice Manual. Practitioners should review the San Francisco Immigration Court's current local rules and should check the court's website for recent procedural updates, form changes, or administrative directives affecting case scheduling or filing procedures. The court generally does not automatically notify parties of changes to procedures; practitioners must proactively monitor for updates.

San Francisco Asylum Office Interview Procedures

For asylum applicants in the San Francisco Asylum Office jurisdiction (covering Northern California, Hawaii, and other regions), the asylum office conducts affirmative asylum interviews when applicants have filed I-589 applications that are not yet referred to immigration court. The San Francisco Asylum Office has experienced significant case backlogs, with interview scheduling often delayed 18 months to several years after the initial filing. However, applicants whose asylum applications have been referred to immigration court (defensive cases) do not have interviews with the asylum office; instead, they present their cases directly to immigration judges.

The San Francisco Asylum Office has published guidance on interview procedures and interview preparation. Applicants scheduled for asylum interviews should be advised to prepare detailed written statements addressing persecution claims, to gather all available corroborating evidence before the interview, to arrange for interpretation if needed, and to bring all relevant documentation (passports, identity documents, evidence of harm, country conditions reports, expert evaluations) to the interview. Interview times are typically limited to 1.5 to 2 hours, which is often insufficient for complex cases; applicants should prepare to present their most compelling and probative evidence first, as there may not be time for comprehensive presentation of all

evidence.

Immigration Court Filing Addresses and Procedures for Northern California

Practitioners submitting I-589 applications to San Francisco Immigration Court should verify the current mailing address and filing procedures, as these have changed periodically. As of February 2026, defensive I-589 applications can be filed electronically through ECAS (for registered attorneys and representatives), by certified mail to the immigration court's central filing address, by courier service, in person at the filing window, or at a master calendar hearing. The specific mailing address should be verified through the EOIR website or by calling the San Francisco Immigration Court directly.

For applicants filing by certified mail, the package should include the original Form I-589, two complete copies, all supporting documentation, the $100 filing fee receipt or payment proof, a certificate of service documenting service on ICE, and a self-addressed stamped return envelope. The applicant should use a mail service that offers tracking and should retain proof of delivery. Simultaneously, a copy should be mailed to the ICE Office of the Chief Counsel with proof of service.

For applicants who are detained, the detention facility typically has a mail system through which detainees can submit documents to the immigration court. However, practitioners should be aware that mail from detention facilities may be delayed; detainees should request that the facility mail the documents well in advance of any filing deadline.

Northern California State Law Intersections: Post-Conviction Relief and Immigration Consequences

Penal Code Section 1473.7 and Vacatur of Convictions

California Penal Code section 1473.7 permits a noncitizen defendant to file a motion to vacate a prior conviction if the defendant was not properly advised of the immigration consequences of the conviction or if the conviction itself is legally invalid. This provision is critical for asylum applicants with prior criminal convictions, because certain types of convictions (aggravated felonies, crimes of violence, crimes of moral turpitude, drug offenses) can render the applicant ineligible for asylum or can create bars to asylum eligibility.

For asylum applicants in Northern California with prior convictions, immigration counsel should immediately coordinate with criminal defense counsel to evaluate whether PC § 1473.7 relief is available. If the original sentencing counsel failed to advise of immigration consequences, or if the conviction is legally insufficient under California law, a motion to vacate may be filed in the original sentencing court. A successful PC § 1473.7 motion results in the conviction being set aside, which can restore asylum eligibility or remove bars to asylum that were created by the conviction.

Practitioners should be aware that immigration judges typically do not decide whether PC § 1473.7 relief is available; rather, this determination is made by California state courts. Immigration counsel should file the PC § 1473.7 motion in state court before or contemporaneously with presenting the asylum case in immigration court. If the motion is pending, practitioners should consider requesting a continuance of the asylum hearing in immigration court to allow time for the state court to rule on the motion, which could materially affect the asylum case outcome.

Proposition 47 and Reduction of Felonies to Misdemeanors

California Proposition 47 permits the reduction of certain nonviolent felonies to misdemeanors, including drug possession offenses, shoplifting, and petty theft. For asylum applicants with felony drug convictions or other

crimes subject to Prop 47, reduction of the felony to a misdemeanor can significantly affect immigration consequences. Although misdemeanor drug convictions are not without immigration consequences, they are less likely to render the applicant ineligible for asylum or to create deportability grounds than felony drug convictions.

Asylum applicants with Prop 47-eligible convictions should file a petition for resentencing under Prop 47 in the original sentencing court. Like PC § 1473.7 motions, Prop 47 petitions should be coordinated with the immigration court proceedings to allow time for state court resolution before the immigration judge rules on the asylum application.

California Values Act (SB 54) and Limitations on ICE Cooperation

California Senate Bill 54, commonly known as the California Values Act, severely limits state and local law enforcement cooperation with federal immigration enforcement. SB 54 prohibits state and local law enforcement from using resources to investigate, detain, or arrest individuals for immigration purposes, with narrow exceptions. For asylum applicants in Northern California, this means that local police and sheriff's offices are generally prohibited from cooperating with ICE detention and removal operations.

However, SB 54 does not limit cooperation by federal law enforcement (ICE and CBP directly), and does not prevent detention based on federal immigration proceedings. Asylum applicants should not assume that SB 54 provides protection in all immigration enforcement contexts. Applicants should understand that local police will not cooperate with ICE, but that ICE can and does conduct independent operations to locate, detain, and remove individuals subject to removal orders.

Work Authorization and Timing in Defensive Asylum Cases

The 150-Day and 180-Day Asylum Work Authorization Timeline

Asylum applicants are eligible to apply for work authorization 150 days after the I-589 application is filed, and are eligible to receive and use a work permit 180 days after filing.[24] This timeline applies regardless of whether the I-589 is filed affirmatively with USCIS or defensively with EOIR. The "filing date" for purposes of calculating the 150-day and 180-day clocks is the date on which the I-589 is received by USCIS (for affirmative filings) or the date on which the I-589 is stamped as received by the immigration court (for defensive filings).

For defensively filed I-589 applications in immigration court, the applicant can check the number of days on the asylum work authorization clock by calling the EOIR hotline at 1-800-898-7180, entering their A-Number when prompted, and following the automated menu to access the asylum clock count. This clock includes only days during which the applicant's case is actively pending; days do not accrue during periods when the applicant has requested or caused delays (such as continuances requested by the applicant, failure to appear at scheduled interviews or hearings, or delays in providing required documents).

Form I-765 Work Permit Application Process for Defensive Cases

Applicants in defensive asylum proceedings in immigration court can begin filing for work permits 150 days after the I-589 filing date. Applicants can file the Form I-765, Application for Employment Authorization, electronically through USCIS's online filing system (the preferred method) or by paper filing. For asylum-based work authorization, the eligibility category is (c)(8).

If this is the applicant's first work permit in category (c)(8), the applicant should check box 1.a. "Initial permission to accept employment." The applicant can be in any immigration status to apply for (c)(8) work

authorization; applicants need not have received a positive decision on their asylum application.

For applicants filing the I-765 online through USCIS, the form should be completed and uploaded through the My USCIS account portal, with proof of receipt provided electronically. For paper filings, the form should be mailed to the appropriate USCIS service center with all required supporting documents, including a copy of the asylum application receipt notice (I-797C) showing the receipt date.

Work permits issued after December 4, 2025, for asylum applicants are valid for 18 months rather than the previous five years.[22] This shorter validity period affects applicants' planning regarding when to renew work permits and may create additional financial burden due to increased renewal frequency.

Understanding Recent Procedural Changes: The Integrity and Fairness Rule and Streamlined Removal Proceedings

Asylum Merits Interview Requirements for Individuals with Positive Credible Fear Determinations

For asylum applicants placed into expedited removal who receive positive credible fear determinations, USCIS now conducts asylum merits interviews (AMI) rather than immediately referring cases to immigration court.[25] The AMI is a full merits adjudication by a USCIS asylum officer with authority to grant asylum. Following the AMI, if USCIS does not grant asylum, the applicant is placed into streamlined removal proceedings before an immigration judge.

The AMI is scheduled 21 to 45 days after the positive credible fear determination.[25] Evidence must be submitted 14 days prior to the interview, which could be as few as seven days after the positive credible fear determination.[25] A decision must be issued within approximately 60 days of the positive credible fear determination.[25]

For applicants in the San Francisco Asylum Office jurisdiction who receive positive credible fear determinations, these compressed timelines mean that representatives must act with extreme urgency to gather evidence, prepare the applicant, and submit documentation before the interview. Practitioners should request continuances or extensions when possible and should be prepared to present the strongest evidence and most compelling aspects of the case given time constraints.

If USCIS does not grant asylum following the AMI, the case is referred to immigration court for streamlined removal proceedings, which have their own compressed timeline for status conferences and merits hearings (30 to 35 days after NTA service for the initial master calendar hearing, 60 to 65 days after the master calendar hearing for the individual/merits hearing).[25]

Streamlined Removal Proceedings in Immigration Court

Streamlined removal proceedings apply to certain categories of applicants, including those placed into expedited removal who receive positive credible fear determinations but are not granted asylum by USCIS. In streamlined proceedings, a status conference is held 30 to 35 days after service of the NTA.[25] At the status conference, the applicant must respond to allegations in the NTA, indicate whether they contest removal, submit evidence, and indicate testimony they intend to present at the merits hearing.[25]

The individual merits hearing is scheduled 60 to 65 days after the master calendar hearing (or status conference if combined), meaning the hearing typically occurs 90 to 100 days after service of the NTA on the applicant.[25] The compressed timeline for streamlined proceedings provides minimal time for applicants and representatives to develop comprehensive cases and may result in inadequate opportunity to gather

corroborating evidence and country conditions reports.

The immigration judge must issue a decision within 45 days of the merits hearing or status conference if no merits hearing is held.[25] However, the immigration judge retains discretion to grant continuances for good cause shown, particularly if the applicant demonstrates due diligence in attempting to meet deadlines but has encountered unavoidable obstacles (such as delayed country conditions reports or expert evaluations).

Strategic Considerations for Practitioners: Filing Venue and Timing Analysis

Affirmative Versus Defensive Filing Strategy Analysis

Practitioners representing asylum applicants who have not yet been placed in removal proceedings must analyze whether to recommend affirmative filing with USCIS or whether to delay and pursue defensive filing in immigration court. This analysis involves several factors: the applicant's proximity to the one-year filing deadline, the applicant's detection risk (whether ICE enforcement operations are likely to result in detention and NTA issuance), the backlog status of the San Francisco Asylum Office, the likelihood of a favorable decision from USCIS versus immigration court for the specific asylum claim, and the applicant's personal circumstances (including family dependents, employment status, housing, and health).

For applicants with well-developed asylum claims and substantial corroborating evidence, affirmative filing with USCIS has historically provided faster processing and higher approval rates than defensive asylum in immigration court, though this may be changing given the current nationwide pause on asylum processing at USCIS. However, affirmative filing leaves the applicant vulnerable to detention and NTA issuance if USCIS denies the application, whereas defensive filing allows the applicant to control the timing of the case presentation to some extent.

For applicants approaching the one-year filing deadline, affirmative filing must occur immediately; waiting for defensive filing risks missing the deadline entirely unless the applicant can establish changed circumstances or extraordinary circumstances exceptions.

For applicants with criminal histories that may affect asylum eligibility, practitioners should first determine whether PC § 1473.7 relief or Prop 47 reduction is available and should pursue state court relief before filing the I-589, whether affirmatively or defensively, to ensure the record is as favorable as possible.

Jurisdictional Analysis: Five-Scenario Framework

Practitioners representing clients facing potential removal should conduct a precise analysis of which of the five scenarios applies to determine whether USCIS or EOIR has jurisdiction and when the appropriate filing venue is:

Practitioners should determine whether an NTA has been issued. If no NTA has been issued and the client is not in removal proceedings, USCIS has jurisdiction and affirmative filing is required.

If an NTA has been issued, practitioners should determine whether it has been filed and docketed with EOIR. This can be verified by contacting EOIR or by checking EOIR's automated case information system.

If the NTA has been filed and docketed, practitioners should determine when it was filed and docketed, because the 21-day grace period depends on precise timing. If an I-589 application was filed with USCIS, the question is whether USCIS received it within 21 days of EOIR docketing.

If the NTA has been issued but not yet filed and docketed with EOIR, USCIS will accept the I-589 and forward it to EOIR; however, practitioners should consider timing the filing to maximize the probability that

USCIS receives the application before EOIR dockets the NTA, which would trigger the 21-day grace period.

If the NTA has been issued but USCIS has not filed it with EOIR, and if the applicant is uncertain whether an NTA will be filed, practitioners should contact ICE to determine ICE's intentions and should consider whether to file defensively with EOIR or affirmatively with USCIS based on ICE's response.

Conclusion and Practitioner Recommendations

The Form I-589 application in EOIR immigration courts requires precise jurisdictional analysis, careful attention to filing procedures and deadlines, and strategic coordination with the applicant's overall immigration and legal status. The regulatory framework distinguishing USCIS jurisdiction (affirmative filings) from EOIR jurisdiction (defensive filings) turns on the timing of Notice to Appear issuance and docketing, creating five distinct procedural scenarios that practitioners must evaluate to ensure the application is filed in the proper venue and that the filing date is correctly calculated for one-year deadline purposes.

For practitioners in Northern California, the San Francisco Immigration Court's local procedures and the San Francisco Asylum Office's practices create specific operational considerations regarding case scheduling, interview preparation, and deadline compliance. The intersection between federal immigration law and California state law (particularly PC § 1473.7, Prop 47, and SB 54) creates additional strategic opportunities and requirements for coordination between immigration counsel and state criminal counsel.

As of February 2026, the regulatory landscape presents significant changes, including the nationwide pause on USCIS asylum processing, the implementation of $100 filing fees in immigration courts, compressed timelines for asylum merits interviews, and reduced validity periods for newly issued work permits. Practitioners must maintain current knowledge of these administrative changes and must adjust case strategies accordingly.

Practitioners should establish systematic procedures for tracking client deadlines, monitoring case status through EOIR and USCIS systems, maintaining detailed notes of all communications with government agencies and courts, and maintaining compliance with all filing and procedural requirements. The stakes for asylum applicants are extraordinarily high-a missed deadline or procedural error can result in denial of asylum eligibility or removal from the United States-making precision and attention to detail essential attributes of competent representation.

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