

A LITIGATION GUIDE FOR ATTORNEYS

THE PRACTITIONER'S COMPANION

How to put *Protection Promised* to work in
immigration court.

A practical guide to citing the country-conditions record in asylum, withholding,
and CAT claims.

By Jeremiah Johnson, Senior Advisor

A Companion to Protection Promised · July 20, 2026



A Practitioner's Companion

Relief and Legal Standards for Afghan Nationals in U.S. Immigration Court

A companion to the AfghanEvac country-conditions report Protection Promised

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How to Use This Companion

This companion is a practical guide for immigration attorneys and accredited representatives who are using AfghanEvac's report **Protection Promised: America's Afghan Allies, from Welcome to Removal** as country-conditions and program-context evidence. Protection Promised documents the facts: the promise the United States made, the architecture it built, the dismantling of that architecture since January 2025, and the conditions Afghans face on return. This companion connects those facts to the legal standards that govern asylum, withholding of removal, and protection under the Convention Against Torture, and to the procedural questions that recur in Afghan cases.

Nothing here is legal advice, and nothing here substitutes for counsel's own judgment or for individualized evidence about a particular respondent. Case law in this area is unsettled and varies by circuit. Every proposition below should be checked against controlling authority in the jurisdiction where the case is pending. References in this companion to sections of Protection Promised (for example, "Section 7.1") point to the corresponding part of that report, where the underlying sources are collected and hyperlinked.

One matter in this companion is time-critical: If your client is in ICE custody, turn first to Section 9. Detention. These cases can produce consequences that cannot be undone, and the useful window for acting is measured in hours and days, not weeks.

1. The Three Frameworks at a Glance

Afghan respondents most often seek three overlapping forms of protection, each with a different standard and different consequences.

- **Asylum**, under INA § 208 (8 U.S.C. § 1158), requires a well-founded fear of persecution on account of a protected ground. It is discretionary, carries a one-year filing deadline with exceptions, and leads to lawful permanent residence and the ability to petition for family.
- **Withholding of removal**, under INA § 241(b)(3) (8 U.S.C. § 1231(b)(3)), requires a showing that it is more likely than not the respondent would be persecuted on a protected ground. It is a higher standard, but it is mandatory when met, has no one-year deadline, and cannot be denied as a matter of discretion, though it grants only protection from removal to the specific country, not a path to residence.
- **Protection under the Convention Against Torture (CAT)**, under 8 C.F.R. §§ 1208.16–1208.18, requires a showing that it is more likely than not the respondent would be tortured by, or with the consent or acquiescence of, a public official. CAT has no protected-ground or nexus requirement, and it is available even to respondents barred from asylum or withholding.

In Afghan cases these theories are usually pleaded together. The country-conditions record in Protection Promised is relevant to all three - the protected-ground analysis below is decisive for asylum and withholding, while CAT turns on the likelihood and source of torture rather than on likelihood of persecution and nexus to a protected ground.

ASYLUM, WITHHOLDING, AND CAT			
ELEMENT OR STANDARD	Asylum INA § 208	Withholding of Removal INA § 241(b)(3)	CAT Protection 8 C.F.R. §§ 1208.16–18
NATURE OF HARM	Past persecution or well-founded fear of persecution	Past persecution or clear probability of persecution	Past torture or risk of future torture
PROTECTED GROUND / MOTIVE	On account of race, religion, nationality, political opinion, or particular social group (PSG)	Same five protected grounds (race, religion, nationality, political opinion, PSG)	No nexus to protected ground required; must be for a proscribed purpose
BURDEN / STANDARD OF PROOF	"Well-founded fear" (reasonable possibility; lower than more-likely-than-not)	"More likely than not" (clear probability) the person would be persecuted	"More likely than not" the person would be tortured
PERSECUTOR / TORTURER	State actor or person/group the government is unwilling or unable to control	Same as asylum	Torture by, at the instigation of, or with consent/acquiescence of officials
BARS	Firm resettlement, one-year filing (with exceptions), persecutor bar, serious crime, etc.	Mandatory bars: persecutor, particularly serious crime, danger to US security, etc.	Persecutor and particularly serious crime bars preclude CAT withholding; deferral of removal remains available.
DISCRETION	Discretionary — meeting elements does not guarantee a grant	Mandatory if standard met and no bar applies	Mandatory if standard met; form (withholding vs deferral) depends on bars
RESULTING STATUS	Asylee status; path to LPR and eventually citizenship	Protection from removal to that country only; no LPR path by itself	Protection from removal to torture-risk country; may be deferral or withholding, no LPR path

2. Establishing a Protected Ground and Nexus

For asylum and withholding, the respondent must show that a protected ground is or would be at least one central reason for the harm. See INA § 208(b)(1)(B)(i); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992). Three grounds are generally most applicable in Afghan cases.

2.1 Political opinion, including imputed political opinion

The Taliban's targeting of those who served the United States and the former Republic can be, in the ordinary case, persecution on account of political opinion, actual or imputed. A persecutor's belief that the victim holds an opposing political view may be sufficient; the opinion need not be one the respondent actually holds. In addition to any direct evidence, counsel should reveal the persecutor's motive through the country-conditions record. Protection Promised, Sections 2, 7.1, and 7.2, documents the Taliban's systematic pursuit of former officials, security personnel, and U.S.-affiliated Afghans, and the United Nations' finding that returnees with those profiles face torture, detention, and death.

2.2 Particular social group

Several particular social group formulations recur in Afghan cases. A cognizable group must be defined by an immutable or fundamental characteristic, must be defined with particularity, and must be socially distinct within Afghan society. See *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985); *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014) *vacated in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016). A particular social group formulation cannot be defined by the harm or persecution. See *Matter of V-A-B-*, 29 I. & N. Dec. 621 (BIA 2026). Formulations to consider, and to identify for the individual record and under controlling circuit law, may include former Afghan government officials, former members of the Afghan National Defense and Security Forces, interpreters and others who worked for or on behalf of the United States, and family members of any of the foregoing. Past association with the former government or the U.S. mission is a characteristic the respondent cannot change and should not be required to change, which is the core of immutability under *Acosta*. The social-distinction element can be supported by the country-conditions evidence in Protection Promised, Section 7.2, showing that Afghan society and the Taliban themselves recognize and target these groups. A caution is warranted: the Board's social-group jurisprudence is unsettled and has been shifting, so counsel should confirm that any proposed formulation remains viable in the controlling circuit before relying on it, and may want to plead a particular social group in the alternative to religion and political opinion rather than as the primary ground.

Family membership was once considered a well-recognized particular social group, and it is important in Afghan cases because the Taliban pursues relatives of targeted individuals as a matter of practice. See Protection Promised, Section 7.2. However, the Board's acceptance of family membership as a particular social group has been significantly curtailed and counsel

should be prepared to address recent Board precedent with controlling circuit law. Where the respondent is targeted because of a family member's service or profile, counsel may be able to plead family-based PSG in addition to any imputed political opinion.

2.3 Religion, and the path for women and girls

The Board of Immigration Appeals has not recognized gender, standing alone, as a protected ground, and its precedent on particular social groups is unsettled and shifting. *See Matter of K-E-S-G-*, 29 I. & N. Dec. 145 (BIA 2025). For that reason, consider whether a woman's or girl's claim can also fall under religion, and counsel may want to lead with it. In *Matter of S-A-*, 22 I. & N. Dec. 1328 (BIA 2000), the Board held that a young woman persecuted for refusing to conform to strict religious rules governing the conduct and dress of women established eligibility on the basis of religion, and it recognized that such harm may also be on account of imputed political opinion or membership in a particular social group. The Taliban's enforced veiling, its bans on education and employment for women, and its violent punishment of dissent are imposed to enforce a religious code and map onto that framework. The religious character of the persecution is corroborated at the level of U.S. religious-freedom policy: the State Department has designated the Taliban an "Entity of Particular Concern," and the U.S. Commission on International Religious Freedom has repeatedly recommended that Afghanistan be designated a "Country of Particular Concern." Protection Promised, Section 7.3, collects this evidence, along with the International Criminal Court's arrest warrants for the Taliban's leadership for persecution on gender grounds, which, while not a domestic legal authority, is probative of the character of the persecution. If the facts support it, a practical sequence can look like this: lead with religion, plead imputed political opinion, and raise a particular social group in the alternative, verifying the current state of the law before filing.

3. Past Persecution, the Regulatory Presumption, and Rebuttal

A respondent who establishes past persecution on a protected ground is entitled to a regulatory presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The burden then shifts to the government to rebut the presumption, by a preponderance of the evidence, either by showing a fundamental change in circumstances such that the respondent no longer has a well-founded fear, or by showing that the respondent could avoid future persecution by relocating within the country and that relocation would be reasonable.

Both rebuttal theories are addressed directly by the country-conditions record. On changed circumstances, Protection Promised, Section 8.2, documents that the Taliban remains in full control, the amnesty it declared has not held, the targeting of at-risk profiles has continued into 2026, restrictions on women have widened, and the humanitarian situation has deteriorated. On internal relocation, Section 7.5 documents that the Taliban exercises nationwide control through checkpoints, informant networks, and inherited biometric and employment records, so that

relocation is neither safe nor reasonable for the profiles at issue. Counsel opposing a changed-circumstances or internal-relocation argument should cite the State Department's own Country Reports on Human Rights Practices, discussed in Protection Promised, Section 7, which immigration judges typically weigh first.

4. Well-Founded Fear Without Past Persecution

Where past persecution is not established or not relied upon, the respondent must show a well-founded fear of future persecution, which requires a fear that is both subjectively genuine and objectively reasonable. A fear can be objectively reasonable even if the chance of persecution is well below fifty percent. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (explaining that an applicant may have a well-founded fear even where “every tenth” person is persecuted, so the standard is satisfied by a reasonable possibility of persecution that may be as low as 10%); *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987). A respondent may also establish a well-founded fear by showing a pattern or practice of persecution of a group of which the respondent is a member. 8 C.F.R. § 1208.13(b)(2)(iii). The documentation in Protection Promised, Sections 7.1 and 7.2, of the Taliban's systematic targeting of former officials, security personnel, and U.S.-affiliated Afghans is directly relevant to a pattern-or-practice theory.

5. Withholding of Removal

Withholding under INA § 241(b)(3) requires a clear probability, meaning that it is more likely than not, that the respondent's life or freedom would be threatened on a protected ground. The protected-ground and nexus analysis is the same as for asylum (except in the Sixth and Ninth Circuits, *see Guzman-Vazquez v. Barr*, 959 F.3d 273, 274 (6th Cir. 2020); *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017)) (A protected ground must be “a reason,” not “a central reason” for threat to life or freedom), but the risk showing is higher. Withholding has no one-year filing deadline and is not discretionary, which makes it essential for respondents who are time-barred from asylum or who present adverse discretionary factors. Counsel should be mindful of the mandatory bars, including the persecutor bar and the bar for a particularly serious crime, and should be prepared to distinguish arrests without convictions, discussed in Section 8 below.

6. Protection Under the Convention Against Torture

CAT protection requires a showing that it is more likely than not the respondent would be tortured if returned, by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. §§ 1208.16(c), 1208.18(a). CAT has no protected-ground or nexus requirement and no discretionary denial, and it reaches respondents barred from other relief.

Two points matter in Afghan cases. First, the Taliban is the de facto government of Afghanistan and exercises governmental authority throughout the country, so harm the Taliban inflicts is torture by a public official for CAT purposes; where the Taliban acquiesces in or willfully turns a blind eye to torture by others, that too satisfies the standard. Second, the record of torture of returnees is unusually well documented. Protection Promised, Section 7.1, sets out the United Nations' findings that involuntary returnees with at-risk profiles have been subjected to torture, including a documented case of a returnee beaten, waterboarded, and subjected to mock execution, and Section 7.2 collects verified cases of returnees killed within days or weeks of return. That evidence goes directly to the likelihood element of a CAT claim.

7. The One-Year Filing Deadline and Its Exceptions

Asylum applicants must generally file within one year of their last arrival. INA § 208(a)(2)(B). The deadline does not apply to withholding or CAT, and it is subject to two statutory exceptions: changed circumstances that materially affect eligibility, and extraordinary circumstances relating to the delay in filing. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a).

The events documented in Protection Promised are fertile ground for both exceptions. Changed circumstances may include the deterioration of conditions in Afghanistan and the specific post-2025 U.S. policy actions that changed a respondent's situation, such as the termination of Temporary Protected Status, the revocation or expiration of humanitarian parole, and the suspension of the pathways a respondent was pursuing, all documented in Sections 5.1 through 5.6. Extraordinary circumstances may include the respondent's maintenance of lawful status through TPS or parole during the year after arrival, a recognized basis for delay, followed by the loss of that status. Federal regulations provide a nonexhaustive list of what changed circumstances that materially affect eligibility and extraordinary circumstances relating to the delay in filing include. *See* 8 C.F.R. § 1208.4(a)(4) & (5).

The applicant must also have filed the asylum application within a reasonable period of time from the occurrence of the changed or extraordinary circumstance in order to establish an exception to the one-year filing deadline. Arguing an exception to the one-year filing deadline requires counsel to be precise. Counsel should develop the specific timeline for each client and tie it to the documented policy changes or circumstances.

8. Discretion, and Adverse Characterizations

Asylum and several other forms of relief require a favorable exercise of discretion. For Afghan respondents the equities can be unusually strong and are set out in Protection Promised, Section 9: service to the United States, lawful entry through U.S. government operations in reliance on explicit promises, loss of status attributable to the government's own actions rather than the respondent's, extensive vetting, and family ties in the United States.

A recurring issue is the government's characterization of a respondent as a criminal based on arrests that did not result in conviction. An arrest is not a conviction, innocent people are arrested, and an agency's characterization is not evidence. Counsel should insist that removability, eligibility, and discretion rest on the actual record rather than on a label. Where the government invokes conduct rather than a conviction, counsel should analyze carefully whether the conduct actually triggers a ground of inadmissibility or a bar, and should not concede the point based on characterization alone. Counsel should also account for measures that deliberately decouple detention from conviction: the Laken Riley Act mandates the detention of certain noncitizens on the basis of an arrest or charge alone. The fact that a respondent has been subjected to mandatory detention under that Act therefore reflects an arrest, not guilt, and should not be imported into the merits or the exercise of discretion. Protection Promised, Section 5.8, documents a case in which these characterizations were applied to a decorated Afghan ally who was never convicted of anything.

It is important to remember that the record of evidence in bond proceedings and merit proceedings are separate. Counsel should be prepared to object to reference or reliance on evidence in bond proceedings that have not been independently filed in merits proceedings. Likewise, counsel should independently file bond evidence that supports the respondent in merit proceedings.

9. Detention, Habeas, and Bond

Where a client is taken into ICE custody, counsel should be prepared to file a petition for a writ of habeas corpus ***immediately*** when detention is unlawful. Habeas *only* challenges the unlawful and unconstitutional detention, *not* the government's discretion to initiate removal proceedings or execution of a removal order. Counsel should consider filing a petition for a writ of habeas corpus in parallel with any request for bond rather than in place of it. Generally, a district court can waive the exhaustion requirement if administrative remedies, such as bond, would be inadequate, inefficacious, futile, or void. *See Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Habeas proceedings are highly technical, and counsel must independently research controlling law and local rules of procedures. Remember that speed matters here in a way it does not elsewhere in this companion.

Three features of the current record support that approach. First, federal courts have repeatedly ordered detained Afghans released after finding their detention unlawful or unconstitutional. Protection Promised, Section 5.8, collects those decisions, including Mohammad Ali Dadfar, Sayed Naser, and M-Z-H- v. Hermosillo, with citations. Second, habeas has proven effective at scale: more than 45,000 habeas petitions challenging immigration detention have been filed since January 2025, and an analysis by The Marshall Project and the Midwest Newsroom found that filings in Iowa, Kansas, Missouri, and Nebraska were overwhelmingly successful, with most resolved cases producing bond hearings or release. Third, the consequences of detention are not limited to liberty. Protection Promised, Section 5.9, documents the death of Mohammad Nazeer

Paktiawal, an Afghan special-forces ally, within twenty-four hours of being taken into ICE custody.

Filing in parallel matters because bond may not be available. Recent measures, including the Laken Riley Act, mandate the detention of certain noncitizens on the basis of an arrest or charge alone, without any conviction. Where mandatory detention forecloses a bond hearing, habeas may be the only route to a custody determination before a neutral judge. The point in Section 8, that an arrest is not a conviction and that an agency's "criminal" characterization is not evidence, belongs in the habeas petition as well as in the merits and discretionary analysis.

As to mechanics, a petition under 28 U.S.C. § 2241 is generally filed in the federal district of confinement and names the immediate custodian as respondent. Counsel should confirm the client's physical location promptly, because transfers between facilities can change the proper forum. Where there is a medical condition, a risk of imminent removal, or a transfer that would frustrate review, counsel should seek expedited consideration or emergency relief at the time of filing. Exhaustion requirements, jurisdictional rules, and the availability of relief vary by circuit and should be verified before filing.

Finally, bond and merits proceedings remain distinct, and the evidentiary point in Section 8 applies here as well: evidence submitted in custody proceedings should be independently filed in the merits record where it supports the respondent.

10. Using Protection Promised as Evidence

Protection Promised is designed to be submitted as country-conditions and program-context evidence. A few practical notes.

First, it is documentary evidence, not a substitute for individualized proof. Pair it with the client's own declaration, corroborating documents, and, where available, an individualized expert opinion.

Second, immigration judges weigh the recency of country-conditions evidence. Confirm you are filing the current edition, and note its July 2026 currency date on the record.

Third, the report is fully sourced. Every factual assertion is supported in its Table of Authorities and Sources, and the underlying government records, court filings, and United Nations and human rights documentation are hyperlinked, so that counsel can retrieve and separately submit the primary source where a judge prefers the original.

Fourth, cite to specific sections rather than to the report as a whole, so the court can locate the precise support for each proposition.

Fifth, although Protection Promised is comprehensive and fully sourced, it is just one report. Counsel must independently research and submit additional relevant country-conditions evidence when available.

11. Key Authorities

The following are core authorities referenced above. This list is a starting point only; counsel must verify each against current law and controlling circuit precedent.

- INA § 208, 8 U.S.C. § 1158 (asylum), including the one-year deadline and exceptions at § 208(a)(2)(B), (D).
- INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (withholding of removal).
- 8 C.F.R. § 1208.13 (asylum eligibility; past-persecution presumption; pattern or practice).
- 8 C.F.R. §§ 1208.16–1208.18 (withholding and Convention Against Torture).
- 8 C.F.R. § 1208.4 (one-year deadline; changed and extraordinary circumstances).
- 28 U.S.C. § 2241 (habeas corpus; challenges to unlawful immigration detention).
- *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (well-founded-fear standard).
- *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (political opinion; nexus).
- *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985) (particular social group; immutability).
- *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014), vacated in part on other grounds sub nom. *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016) (particularity and social distinction).
- *Matter of V-A-B-*, 29 I. & N. Dec. 621 (BIA 2026) (a particular social group cannot be defined by the harm).
- *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987) (well-founded fear).
- *Matter of K-E-S-G-*, 29 I. & N. Dec. 145 (BIA 2025) (gender and particular social group; precedent unsettled).
- *Matter of S-A-*, 22 I. & N. Dec. 1328 (BIA 2000) (religion; persecution for refusing to conform to religious rules governing women).

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ABOUT THIS COMPANION

This companion shows attorneys how to use *Protection Promised* in court — which sections support which claims, how to introduce it as country-conditions evidence, and how to cite the underlying record.



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