

1 PILLSBURY WINTHROP LLP
2 ADAM ALBRETT (SBN 191397)
3 2550 Hanover St.
4 Palo Alto, CA
5 Telephone: (650) 233-4500
6 Facsimile: (650) 233-4545

7 Attorney for X Y

8 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
9 OFFICE OF THE IMMIGRATION JUDGE

10
11 In the Matter of
12 X Y
13 In Removal Proceedings.

No. A 72 174 478

**PRE-HEARING BRIEF IN SUPPORT
OF X Y'S APPLICATION FOR
ASYLUM, FOR WITHHOLDING OF
REMOVAL, AND RELIEF UNDER
THE CONVENTION AGAINST
TORTURE**

Date: October 2, 2001
Time: 1:00 p.m.
Place: 550 Kearny St., Suite 800
San Francisco, CA
Judge: Hon. Michael Yamaguchi

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- 5 4. *Lopez-Galarza v. I.N.S.*, 99 F.3d 954 (9th Cir. 1996)
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- 8 7. *Pitcherskaia v. I.N.S.*, 118 F.3d 641 (9th Cir. 1997).
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supplement, Exhibit B at ¶13).
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- 25 24. 8 U.S.C. §1253(h).
- 26 25. *I.N.S. v. Stevic*, 467 U.S. 407 (1984).
- 27 26. *Garcia-Ramos v. I.N.S.*, 775 F.2d 1370 (9th Cir. 1985).
- 28 27. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

1 **I. INTRODUCTION**

2 X Y is a 34-year old Palestinian from the Occupied Territories of the West Bank,
3 which are under Israeli occupation.¹ Mr. Y and his family were persecuted by the Israeli
4 military throughout the 1970s, 1980s, and 1990s.² He came to the United States on October
5 11, 1993 and applied for asylum on May 27, 1994.³

6 During the 1948 Arab-Israeli war, Mr. Y’s parents fled from their hometown in
7 present day Israel to a West Bank refugee camp known as Dair Ammar. During the June
8 1967 war, Israel invaded the West Bank and took over Dair Ammar. In 1972, one year
9 after Mr. Y’s father passed away, the Israeli army transferred Mr. Y’s family to the Am’ari
10 camp near Ramallah, where Mr. Y was detained, beaten, and tortured.⁴ The first incident
11 occurred in 1972 when he was five years old and was trying to protect his 55-year old
12 mother who was being beaten by soldiers.⁵ Between 1972 and 1992, he was placed many
13 times in detention, several times for up to four months. While in custody, Mr. Y was
14 beaten on the head, torso, teeth, and hands; forced to stand in cold water and keep his arms
15 raised above his head to avoid being beaten; blindfolded and subjected to mock executions;
16 and deprived of sleep during interrogation sessions that lasted more than 24 hours at a
17 time.⁶ The last incident occurred just before he came to America in 1993.⁷ Three of his
18 four brothers also have been subjected to administrative detention and tortured. His brother
19 Z was once held for 5 years, and eight months ago was again placed in administrative
20 detention.⁸

21 ¹ Respondent’s supplement to I-589 (Exhibit B at ¶1).

22 ² Respondent’s supplement, Exhibit B.

23 ³ Respondent’s supplement, Exhibit B at ¶15.

24 ⁴ Respondent’s supplement, Exhibit B at ¶3, 6, 7, 9, 11, 12.

25 ⁵ Respondent’s supplement, Exhibit B at ¶3.

26 ⁶ Respondent’s supplement, Exhibit B at ¶6, 7, 9, 11, 12.

27 ⁷ Respondent’s supplement, Exhibit B at ¶12.

28 ⁸ Respondent’s supplement, Exhibit B at ¶13.

1 Despite the Madrid peace talks of 1991 and the Oslo Accords that were signed in
2 1993 and eventually led to the creation of a Palestinian Authority having control over non-
3 contiguous patches of the West Bank, many Palestinians continue to be persecuted today.
4 Mr. Y comes from an area of the West Bank that is still under Israeli military control.⁹ Mr.
5 Y faces a very real threat of death or other persecution if he is deported. Conditions in all
6 of the Occupied Territories, not just the areas that are under Israeli military control, are
7 worse than when he left.¹⁰ The Israeli government continues to use lethal force against
8 demonstrators in connection with the current uprising in the Occupied Territories.

9 Mr. Y's return to the Occupied Territories will be immediately known by his former
10 persecutors because entry into the Occupied Territories is controlled by the Israeli
11 military.¹¹ Because he was given a special travel document to leave Israel with the
12 understanding that he may never return, Mr. Y is likely to be detained, interrogated, and
13 subject to further torture.¹² According to the Immigration and Naturalization Service's
14 Resource Information Center, Mr. Y is stateless and cannot legally return to the Occupied
15 Territories because he has lost his residency by failing to return to the Occupied Territories
16 every two years to renew his residency papers.¹³ Mr. Y is greatly concerned that he will be
17 mistreated like fourteen Palestinian Americans, who returned to visit the Occupied
18 Territories, were arrested and are currently held in Israeli administrative detention without
19 having been charged.

20 Mr. Y is eligible to apply for asylum in the United States.¹⁴ Mr. Y therefore

21 _____
22 ⁹ Respondent's supplement, Exhibit B at ¶15.

23 ¹⁰ Respondent's supplement, Exhibit B at ¶15.

24 ¹¹ *Id.*

25 ¹² *Id.*

26 ¹³ *Response to Information Request Number PAL00001.MIA*, (Exhibit E at 1-2).

27 ¹⁴ Mr. Y arrived in the United States on October 11, 1993 and submitted a petition for
28 asylum on May 27, 1994, within one year of his entry in to the U.S. Respondent's
supplement, Exhibit B at ¶15.

1 requests that this court grant asylum and withholding of removal and also relief under the
2 Convention Against Torture. The requested relief is amply warranted in this case because
3 Mr. Y has been brutally persecuted in the past by Israel on account of his nationality,
4 political opinion, and race and has a reasonable fear that he will be killed or persecuted if he
5 is forced to return to any area in the Occupied Territories.

6 Mr. Y also is entitled to relief under the Convention Against Torture. In view of the
7 history of torture that will be presented at trial, Mr. Y has substantial grounds for believing
8 he is in danger of being subjected to future “torture” as defined by the Convention should
9 he return to Israeli-occupied Palestine.

10

11 **II. STATEMENT OF FACTS**

12 **A. Mr. Y Fled Violence Perpetrated By The Israeli Security Forces On**
13 **Account of His Political Views, National Heritage, and Social Group.**

14 Mr. Y was born on October 1, 1967 in the Dair Ammar refugee camp near the
15 village of the same name in the Occupied Territories of the West Bank. Israel invaded the
16 West Bank in June 1967 and has occupied it ever since. Mr. Y was born three months after
17 the 1967 war and, until he came to America in 1993, lived under a brutal military
18 occupation for about 26 years.¹⁵

19 In 1972, one year after his father passed away, he and his family were moved by the
20 Israeli army to a larger camp near Ramallah City, called the Am’ari camp. His first
21 experience with persecution under the Israeli occupation occurred in 1972 when he was
22 only five years old. His mother was doing laundry outside when an Israeli army patrol
23 approached her and beat her. They beat his mother because she was truthfully unable to tell
24 them anything about a recent act done by activists opposed to the occupation. The soldiers
25 assumed that she was trying to protect the activists even though she did not know anything.

26

27 ¹⁵ Respondent’s supplement, Exhibit B at ¶2.

28

1 Mr. Y and his 17-year old brother, Z, who were sitting in the living room at the time, ran
2 out to protect her. They were kicked and beaten by the soldiers, some of whom continued
3 to beat his mother in front of them. They also fired their weapons and told them that they
4 were going to kill them even though they were not a threat to them and were only defending
5 his mother. The soldiers cursed them by telling them they were dogs, pigs, and donkeys
6 and saying things like your “mother’s pussy” and “your sister’s pussy.” They asked
7 repeatedly, “what are you doing here?” “Just leave.” They eventually stopped beating
8 them, but before they left they broke the windows to their home.¹⁶

9 The occupation’s severe and inhumane treatment destroyed his childhood and
10 adolescence and forced him to think from a very early age about his rights as a human
11 being and his aspirations for his people to have their own nation on their land. In 1979,
12 when he was 12-years old, he and several other friends joined the People’s Party, a
13 democratic party founded by Fuad Nasser and Bashir Barghouti and whose platform
14 included: 1) opposing the occupation; 2) uniting and organizing Palestinians; 3) helping
15 farmers; 4) cleaning up the camps; 5) instilling a sense of civic responsibility in people; and
16 6) distributing pamphlets. The Israeli government was aware of his participation in the
17 party due to collaborators and informers, and friends or acquaintances, who were tortured to
18 provide information about his participation. In one incident a friend was coerced into
19 making a statement about Mr. Y being an activist even though Mr. Y was not active at the
20 time.¹⁷

21 Mr. Y was persecuted at home, while going to school, traveling to a neighboring
22 town, at work, and while being detained. Mr. Y’s only offenses were that he was a
23 Palestinian who was not going to leave his homeland to make way for Israeli settlers and
24 who was not going to stop being politically active to protest against the usurpation of his
25

26 ¹⁶ Respondent’s supplement, Exhibit B at ¶3.

27 ¹⁷ Respondent’s supplement, Exhibit B at ¶5, 11.

1 rights and the brutal effects of occupation. Mr. Y has not committed any non-political
2 crimes.¹⁸

3 Because of his political activities and Palestinian heritage, Mr. Y was sometimes
4 harassed and beaten. He would be spit on, beaten on the spot, or placed in detention and
5 tortured, simply on account of his nationality and unwillingness to emigrate. He was beaten
6 because his persecutor knew of his political activities, because he was a Palestinian and was
7 presumed to be an activist sympathizer, and because of his presence in the Occupied
8 Territories (i.e., unwillingness to emigrate). In one such incident in 1974 at the age of 16,
9 while coming from school, he was caught by several soldiers and taken to a local detention
10 center where he was kept for a week. The soldiers mistakenly assumed that, because other
11 students had recently participated in protests, he was planning in taking part in protests.
12 During the week he spent in detention, he was beaten repeatedly for hours with a baton on
13 his hands and face and kicked with boots. He was forced to keep his arms raised for 10-15
14 hours at a time. If he brought his arms down, he was beaten savagely. A few times he was
15 blindfolded and taken outside. A security official would tell him he was going to kill him.
16 He would fire his pistol not far from Mr. Y. He was terrified that he would never see his
17 family again and that his having lived through the brutal torture was for naught.¹⁹

18 In 1985, when he was 18 years old, soldiers came to his house to inspect it, without
19 a warrant. They barged into the house and asked him a few questions before they began to
20 beat him. They asked him about an event that he knew nothing about. They hit him in the
21 face over 100 times until he felt his head was as large as a basketball because it was so
22 swollen. As they beat him they told him that they were going to kill him. The severity of
23 the beating was so bad that he stopped breathing for a short time.²⁰

24

25 ¹⁸ Respondent's supplement, Exhibit B at ¶4.

26 ¹⁹ Respondent's supplement, Exhibit B at ¶6.

27 ²⁰ Respondent's supplement, Exhibit B at ¶7.

28

1 At the age of 19, Mr. Y attended Kalandia College, where he obtained an associates
2 degree in construction engineering. After graduating, he worked in construction until he
3 came to America.²¹

4 In 1987, soon after turning 20, he was walking with several friends and saw soldiers
5 coming towards them. He tried to run away. He was caught and taken to the notorious
6 Dahriya prison. At Dahriya, two of his front teeth were broken because his interrogator hit
7 them over and over again. He was hit with a baton repeatedly during his detention,
8 sometimes for hours. Sometimes he was blindfolded while he was being beaten. He was
9 forced to stand in cold water and had to keep his arms raised above his head for hours in
10 order to avoid being beaten. He was interrogated for over 24 hours at a time, allowed to
11 sleep 2-5 hours, and then interrogated again. He was held in a 24 foot by 30 foot cell in
12 which there were over 50 people at times. There was a pail in the room in which all of the
13 cell-mates were supposed to urinate and defecate. They were rarely were allowed to take a
14 shower. Anytime he was removed from the cell he was beaten. He saw people become
15 permanently disabled due to the beatings. During his beatings his interrogators would curse
16 him, make lewd references to female relatives, and threaten to kill him and his family.
17 They would ask him to tell them whom he knew to be an activist.²²

18 Mr. Y was prevented from contacting a lawyer or his family while he was
19 interrogated. His first contact with the outside world was with the Red Cross people several
20 weeks after arrival at Dahriya. He was interrogated and beaten for 30 days and tortured
21 throughout his detention, even though he signed a confession after two weeks of torture and
22 brought before a judge on the eighteenth day of his detention. His confession was written
23 in Hebrew, and he did not understand what he signed. The judge sentenced him to four
24 months in prison.²³

25 ²¹ Respondent's supplement, Exhibit B at ¶8.

26 ²² Respondent's supplement, Exhibit B at ¶9.

27 ²³ Respondent's supplement, Exhibit B at ¶10.

1 In 1988, at the age of 20, soldiers came to his home at 2 a.m. and took him to
2 Dahriya again, but this time because a friend who had been tortured broke down during
3 interrogation and indicated that Mr. Y was an activist opposed to the occupation. Neither
4 Mr. Y nor his friend had done anything at the time. Mr. Y was beaten, forced to keep his
5 arms raised in order to avoid being hit, and threatened with being killed, throughout the
6 three months that he stayed at Dahriya. He was also forced to sit for hours in a broiling
7 black barrel placed in the hot summer sun. Besides the sweltering heat, he was
8 overwhelmed by the odor of vomit, blood, feces, and urine from people who had been
9 placed in the barrel before him.²⁴

10 Between the ages of 23 and 25, Mr. Y was returned to administrative detention five
11 times. Each time he was in detention between one to two weeks. Each time during his
12 detention, he was hit with a baton repeatedly. As in his previous times in detention, he was
13 sometimes blindfolded while he was being beaten, forced to stand in cold water, and had to
14 keep his arms raised above his head for hours in order to avoid being beaten. He was often
15 interrogated for over 24 hours at a time, allowed to sleep for only 2-5 hours, and then
16 interrogated again.²⁵

17 Mr. Y comes from an area of the West Bank that is still under Israeli military
18 control. If he returns to the Occupied Territories, his presence will be immediately known
19 by his former persecutors because entry into and exit from all the Occupied Territories is
20 controlled by the Israeli military. Because Mr. Y was given a special travel document to
21 leave Israel with the understanding that he may never return, he is likely to be detained,
22 interrogated, and tortured again. He believes his return would conflict with what he
23 believes is Israel's program for depopulating the Occupied Territories by making life
24 unbearable for its residents. He fears returning because he believes that the Israeli security
25 forces will beat him again, whether or not he is politically active. For Mr. Y, the Occupied

26 ²⁴ Respondent's supplement, Exhibit B at ¶11.

27 ²⁵ Respondent's supplement, Exhibit B at ¶12.

1 Territories are a setting for an unending nightmare of torture, indefinite detention with no
2 charge, solitary confinement, collective punishment by preventing access to jobs, schools,
3 and food, and house demolitions.²⁶

4 Mr. Y also cannot return because he has not renewed his residency by returning
5 every two years to Israel as required by the Israeli authorities. The non-renewal of his
6 residency makes him stateless and prevents him from living permanently or working in the
7 occupied territories.²⁷ It is not necessary for Mr. Y to actually make it to some point in the
8 interior of the Occupied Territories before he is subjected to persecution. It is likely that
9 Mr. Y would be imprisoned and tortured if he presents himself at Ben Gurion Airport or
10 any other entry point to the Occupied Territories, all of which are controlled by Israel.

11 Furthermore, Mr. Y cannot find refuge in Jordan. Assuming Mr. Y had at one time
12 a temporary two-year Jordanian passport, according to the INS Information Resource
13 Center, Mr. Y is not eligible for anything better than a “five-year passport” that is only
14 good as a travel document and that does not allow one to work, benefit from social services
15 in Jordan, or get citizenship.²⁸

16 **B. Palestinians have been persecuted ruthlessly by the Israeli security**
17 **forces and settlers as a consequence of their being members in a**
18 **different racial group and having a different national heritage, and their**
19 **actual or imputed political opinions.**

20 As demonstrated below, Palestinians in the West Bank and the Gaza Strip
21 (hereinafter “the Occupied Territories”) are a distinct national, ethnic and racial group and
22 are even recognized as such by Israel. Palestinians in the Occupied Territories have been
23 living under a brutal occupation since 1967. According to Israeli historian Benny Morris,
24 "Israelis like to believe, and tell the world, that they are running an 'enlightened' or 'benign'

25 ²⁶ Respondent’s supplement, Exhibit B at ¶15.

26 ²⁷ *Response to Information Request Number PAL00001.MIA*, Exhibit E at 1-2.

27 ²⁸ *Response to Information Request Number PAL00001.MIA*, Exhibit E at 2-3.

1 occupation, qualitatively different from other military occupations the world has seen. The
2 truth was radically different. Like all occupations, Israel's was founded on brute force,
3 repression and fear, collaboration and treachery, beatings and torture chambers, and daily
4 intimidation, humiliation and manipulation."²⁹

5 **1. Palestinians are severely and inhumanely oppressed.**

6
7 **a. Severe prohibitions on and punishment for freedom of**
8 **expression.**

9 Soon after the military occupation began in 1967,³⁰ the Israeli government passed a
10 series of laws³¹ that prohibited the display of Palestinian political symbols, such as flags,
11 nationalistic poetry and songs, the use of the word "Palestine," placement of national colors
12 near each other, even on T-shirts in the form of "streaks of green, black and red...."³² Such
13 expressions are punishable by fines or imprisonment.³³ Due to the severe consequences for
14 peaceful, cultural, political and national heritage expression, "[d]uring 20 years of
15 occupation, a Palestinian child's right to personal expression was almost continuously
16 violated. For example, when children sang songs, acted in plays or wore traditional clothes,
17 they had to be constantly on the alert that the occupation authorities did not regard these
18

19
20 ²⁹ *The Origin of The Palestine Conflict*, Jews for Justice in the Middle East, (Exhibit F at
21 51) citing *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*, Benny
Morris (Knopf 1999).

22 ³⁰ *Occupier's Law—Israel and the West Bank*, Raja Shehadeh, (Institute for Palestine
23 Studies 1985) (Exhibit G at 156).

24 ³¹ *Country Reports on Human Rights Practices for The Occupied Territories 2000*, Dept. of
25 State, Bureau of Democracy, Human Rights Labor (February 2001) (Exhibit D at 15);
Occupier's Law, Exhibit G at 156-161.

26 ³² *Occupier's Law*, Exhibit G at 159.

27 ³³ *Country Reports on Human Rights Practices for The Occupied Territories 2000*, Exhibit
28 D at 15; *Occupier's Law*, Exhibit G at 156-161

1 activities as nationalistic or otherwise undesirable. The self-image of Palestinian children
2 suffered as a result.”³⁴

3 **b. Preventing Palestinians from building homes on their land even**
4 **though the population has almost tripled in size since the**
5 **beginning of the occupation.**

6 Israel has not only restricted the freedom of speech or expression of Palestinians. In
7 violation of international law and the Fourth Geneva Convention,³⁵ Israel has confiscated
8 over 52 percent of the land in the West Bank and 30 percent of the Gaza Strip for military
9 use or for settlement by Jewish civilians.³⁶

10 **c. Depriving Palestinians of sufficient water.**

11 The Israeli government has not only deprived the Palestinians of housing; since
12 1967, the Israeli government has been severely and inhumanely depriving them of access to
13 water.³⁷

14 Currently, some 350 Palestinian wells are in operation in the West
15 Bank. Twenty-three of them, representing 6.5 percent of all the wells,
16 were drilled since the beginning of the occupation. Many wells that
17 had been in use prior to 1967 are no longer functioning because of
18 technical and/or maintenance problems, or because they have dried
19 up. Israel did not allow their owners to use these wells again, and the
20 few permits Israel granted were not even sufficient to renew the
operation of wells that had not been functioning. The numerous
bureaucratic difficulties imposed by Israel were intended to
discourage Palestinian residents from drilling a new well or even
restarting or repairing existing wells. To obtain a permit, an applicant

21 ³⁴ *Palestinian Children in the Occupied Palestinian Territory*, UN Committee on the
22 Exercise of the Inalienable Rights of the Palestinian People, (1990) (Exhibit H at 20).

23 ³⁵ Geneva Convention relative to the Protection of Civilian Persons in Time of War,
24 Articles 47 and 49 (Exhibit I at 14-15).

25 ³⁶ *The Origin of The Palestine Conflict*, citing *Intifada: The Palestinian Uprising Against*
26 *Israeli Occupation*, ed. Z. Lockman and J. Beinon (South End Press, 1989) (Exhibit F at
27 21).

28 ³⁷ *Disputed Waters—Israel’s Responsibility for the Water Shortage in the Occupied*
Territories, B’Tselem Israeli Center for Human Rights in The Occupied Territories
(September 1998) (Exhibit J at 1-2).

1 must pass eighteen stages of approval in various departments of the
2 Civil Administration, Mekorot, the Water Planning Authority, and
the Ministry of Agriculture.³⁸

3 The severity of Israel's policy is clearly evident one when one notes that Palestinians were
4 allowed to drill 23 new wells³⁹ since the beginning of the occupation even though the
5 Palestinian population had almost tripled by 1997⁴⁰ and that the Palestinians are forced to
6 consume less than one-third of the minimum amount of water that a person requires.⁴¹
7 Besides preventing access to natural sources of water such as wells, Israel is preventing
8 some two hundred thousand Palestinians living in 218 West Bank villages from getting
9 access to the water network in the Occupied Territories

10 For the Palestinians, the lack of water is a constant reminder of the brutal
11 occupation and the source of continuous suffering, especially in the summer. Every
12 summer, hundreds of thousands of Palestinians suffer from a severe water shortage, and
13 most of them have no running water all summer long⁴² because Israel's water cuts the water
14 allocated to Palestinian towns and villages in order to meet the increased consumption of
15 water in Israel and the Israeli settlements.⁴³ The shortage of water prevents them from
16 drinking, bathing—even in hospitals⁴⁴—running kidney dialysis machines, cleaning,
17 providing water for animals, and forces them to water crops with sewage water⁴⁵ which is

18 ³⁸ *Id.* at 3.

19 ³⁹ *Id.*.

20 ⁴⁰ *Palestinian Children in the Occupied Palestinian Territory*, Exhibit H at 3-4 (Palestinian
21 population in 1967 was 1,030,100); Palestinian Central Bureau of Statistics, (Exhibit K at
2) (Palestinian total population in 1997 was 2,895,683).

22 ⁴¹ *Disputed Waters*, Exhibit J at 9 (Israeli water commissioner acknowledges that the
23 *minimum* amount of water for household uses needed by a person per year is 100 cubic
24 meters, but forces the Palestinians to consume less than one-third that while the Israelis
consume more than the minimum amount).

25 ⁴² *Id.* at 2.

26 ⁴³ *Id.* at 2.

27 ⁴⁴ *Id.* at 16.

28 ⁴⁵ *Id.* at 13.

1 likely to cause illness when the sewage watered produce is eaten.⁴⁶

2 **d. Expropriating Palestinian land to give it to recent immigrants.**

3
4 As indicated above, water from the Occupied Territories is diverted to Israel and the
5 Israeli settlements in the Territories.⁴⁷ Between 1967 and 1999, Israel expropriated land
6 from Palestinians,⁴⁸ in order to build one hundred and forty-five Israeli settlements in the
7 Occupied West Bank and Gaza Strip which now accommodate 172,000 Israeli citizens.⁴⁹
8 Successive Israeli governments established the vast majority of settlements directly, and all
9 settlements received governmental support for infrastructure, construction, establishment of
10 public institutions, and the like.⁵⁰

11 **2. Israeli security forces' routine use of torture and other human rights**
12 **violations.**

13 In an official Israeli report [released at the insistence and by the order of the Israeli
14 Supreme Court], the Israeli government admitted that the Israeli security service tortured
15 detainees between 1988 and 1992.⁵¹ According to the Israeli report, “[m]ost of the
16 violations were not caused by lack of knowledge of the line between what was permitted
17 and what was forbidden, but were committed knowingly....”⁵² Before the release of the
18

19 ⁴⁶ *Id.* at 2.

20 ⁴⁷ *Id.* at 2.

21 ⁴⁸ *The Origin of The Palestine Conflict*, citing *Intifada: The Palestinian Uprising Against*
22 *Israeli Occupation*, ed. Z. Lockman and J. Beinun, Exhibit F at 21; *Settlements*, B’Tselem
23 Israeli Center for Human Rights in The Occupied Territories (May 8, 2001) (Exhibit L at
24 1).

23 ⁴⁹ *Settlements*, B’Tselem Israeli Center for Human Rights in The Occupied Territories,
24 Exhibit L at 1.

25 ⁵⁰ *Id.*

26 ⁵¹ *Israel Admits Torture*, British Broadcasting Corporation Online (February 9, 2000)
(Exhibit M at 1).

27 ⁵² *Id.* at 2.

1 report, Israel denied that it used any interrogation methods that amounted to torture.⁵³

2 According to the U.S. State Department, between 1996 and 1999, Israel tortured
3 detained Palestinians and Palestinians who are about to be detained.⁵⁴ The State
4 Department's *The Occupied Territories Country Report on Human Rights Practices for*
5 *1998* states that "[I]n 1997 B'tzelem [sic], a respected Israeli human rights group, found that
6 a large percentage of Palestinian detainees whom it surveyed had been tortured while in
7 Israeli detention."⁵⁵ According to the B'Tzelem report, "the GSS annually interrogates
8 between 1,000-1,500 Palestinians. Some eighty-five percent of them - at least 850 persons a
9 year - are subjected to methods which constitute torture."⁵⁶ Despite the Oslo accords of
10 1993 which led to the establishment of a Palestinian Authority in 1994 with some autonomy
11 in a patchwork of non-contiguous areas, according to a 1999 B'Tselem report, at least 85
12 percent of Palestinian detainees continue to be tortured during interrogation.⁵⁷ According
13 to the U.S. State Department,

14 ⁵³ *Id.* at 1.

15 ⁵⁴ *Country Reports on Human Rights Practices for The Occupied Territories 2000*, Exhibit
16 D at 7; *Country Reports on Human Rights Practices for Israel and The Occupied*
17 *Territories 1999*, Dept. of State, Bureau of Democracy, Human Rights Labor (February
18 2000) (Exhibit N at 3-4); *The Occupied Territories Country Report on Human Rights*
19 *Practices for 1998*, Dept. of State, Bureau of Democracy, Human Rights Labor (February
20 1999) (Exhibit O at 8); *Country Reports on Human Rights Practices for Israel and The*
21 *Occupied Territories*, Dept. of State, Bureau of Democracy, Human Rights Labor, 1997
22 (January 1998) (Exhibit P at 8-9); *The Occupied Territories Country Report on Human*
23 *Rights Practices for 1996*, Dept. of State, Bureau of Democracy, Human Rights Labor,
24 (January 1997) (Exhibit Q at 7).

25 ⁵⁵ *The Occupied Territories Country Report on Human Rights Practices for 1998*, Exhibit O
26 at 8.

27 ⁵⁶ *Interrogation Methods of the General Security Service Comprehensive Report*, B'Tselem
28 Israeli Center for Human Rights in The Occupied Territories (February 1998) (Exhibit R at
1); *Routine Torture: Interrogation Methods of the General Security Service*, B'Tselem
Israeli Center for Human Rights in The Occupied Territories (February 1998) (Exhibit S at
4).

⁵⁷ *Oslo: Before and After—The Status of Human Rights in the Occupied Territories*,
B'Tselem Israeli Center for Human Rights in The Occupied Territories (May 1999)
(Exhibit T at 13).

1 The GSS[, Israel's General Security Service] systematically uses
2 interrogation methods that do not result in detectable traces of mistreatment
3 of the victims, or which leave marks that disappear after a short period of
4 time. Common interrogation practices include hooding; forced standing or
5 squatting for long periods of time; prolonged exposure to extreme
6 temperatures; tying or chaining the detainee in contorted and painful
7 positions; blows and beatings with fists, sticks, and other instruments;
8 confinement in small and often filthy spaces; sleep and food deprivation; and
9 threats against the detainee's life or family. Israeli interrogators continued to
10 subject prisoners to violent "shaking," which in at least one past case
11 resulted in death.⁵⁸

12 In a May 1999 B'Tselem report, B'Tselem stated that "Israel is the only
13 democratic state in the world that officially sanctions torture: in the Landau
14 Commission report and in decisions of its Supreme Court sitting as the High Court
15 of Justice, which has consistently allowed the GSS to use methods of torture during
16 interrogation."⁵⁹ On September 6, 1999, the High Court of Justice prohibited torture,
17 but indicated that it would be allowed in the cases of necessity, or if the Knesset
18 passes legislation legalizing torture or ill-treatment.⁶⁰ It should be noted that
19 international law prohibits torture and does not allow an exception for necessity.⁶¹

20 The High Court's prohibition has not had an effect on Israeli torture practices:
21 while initial reports suggested that torture may have declined in the days after the High
22 Court's judgment, the very Israeli organization, Public Committee Against Torture in
23 Israel, that argued the case that led to the High Court judgment to prohibit torture

24 ⁵⁸ *The Occupied Territories Country Report on Human Rights Practices for 1998*, Exhibit O
25 at 8.

26 ⁵⁹ *Oslo*, Exhibit T at 13.

27 ⁶⁰ *Public Committee Against Torture in Israel et al. v. State of Israel*, High Court
28 Judgement, B'Tselem Israeli Center for Human Rights in The Occupied Territories (6
September 1999) (Exhibit U at 6, 11); *Israel, The Occupied West Bank & Gaza Strip, and
Palestinian Authority Territories*, Human Rights Watch World Report 2000, (2000)
(Exhibit V at 3).

⁶¹ *Israel, The Occupied West Bank & Gaza Strip, and Palestinian Authority Territories*,
Exhibit V at 3.

1 except at times of necessity, reported that by mid-September it had filed fifty-five
2 petitions for injunctions against torture.⁶² Additionally, “[s]ince the beginning of the Al-
3 Aqsa *intifada*, on 29 September 2000, B’Tselem fieldworkers...[have found that] there
4 has definitely been a significant increase in the number of beatings and abuse,...[some
5 of which involved severe violence]..., a result, in part of the increased friction between
6 the residents of the occupied territories and the security forces.”⁶³ Furthermore, more
7 than a year after the Court’s judgment was issued, in a letter dated 20 September 2000,
8 the Special Rapporteur of the United Nations Commission on Human Rights, Sir Nigel
9 Rodley, advised the Israeli Government that “torture and other ill-treatment is still
10 being carried out by the Israeli security forces and police during interrogation, *despite*
11 *the September 1999 ruling of the Israeli High Court* which determined that the
12 systematic use of various interrogation techniques by the authorities was illegal.⁶⁴

13

14 ⁶² *Id.* at 2.

15 ⁶³ *Standard Routine—Beatings and Abuse of Palestinians by Israeli Security Forces during*
16 *the Al-Aqsa Intifada*, B’Tselem Israeli Center for Human Rights in The Occupied
Territories (May 2001) (Exhibit W at 3).

17 ⁶⁴ *Civil and Political Rights Including the Questions of Torture and Detention*,
18 E/CN.4/2001/66, United Nations Commission on Human Rights, Special Rapporteur Sir
19 Nigel Rodley, (25 January 2001) (emphasis added) (Exhibit X at 3-4). (Sir Nigel Rodley
20 reported to the Israeli Government the following cases, some of which involved the shabeh
treatment—sensory isolation, sleep deprivation, and painful binding in an uncomfortable
position:

- 21 (a) Haled Jum'a Al Shami, forced into the shabeh position for continuous periods of
between 12 and 36 hours... interrogated for 36 hours without sleep.
- 22 (b) Sadat Heil Bsharat subjected to violence and sexual abuse. His interrogators are
alleged to have put a stick into his rectum which resulted in bleeding.
- 23 (c) Abed El-Kader Mohammed Yussuf Zaharan reportedly seated in the shabeh
24 position. Additionally he was allegedly deprived of sleep and kept in solitary
confinement. Following his interrogation it is said that he made a confession in order to
25 end his ill-treatment.
- 26 (d) Mustafa Taufik Awad During the first 20 days of his detention he was said to have
27 been repeatedly interrogated for periods of between 15 and 20 hours per day in the
shabeh position. He was reportedly kept in solitary confinement and deprived of sleep.

28 (...continued)

(continued...)

1 _____
2 (e) .Mohammed Ahmed Mohammed Abu-Tam'a was allegedly arrested on 17
3 February 2000. He was then taken to the Russian Compound in Jerusalem where he was
4 reportedly interrogated for the next six days for 20 hours per day. He was forced into
5 the shabeh position. On one occasion he was allegedly kicked and beaten by one of his
interrogators. In addition, he is said to have been deprived of sleep and kept in solitary
confinement.

6 (f) Raed Ahmed El-Hamari, from Bethlehem, was reportedly arrested on 22 August
7 1999. He was taken by GSS interrogators to the Russian Compound and interrogated
8 there for the following 60 days. He was allegedly interrogated in the shabeh position,
9 deprived of sleep and kept in solitary confinement. After going on hunger strike for six
10 days it is understood that he was treated at the Kupat-Holim hospital but was not
11 hospitalized. His interrogation was resumed after his treatment and after a further three
12 days tied to a chair in the shabeh position, he was transferred to a cell known as "asfir"
13 to be interrogated by Palestinian collaborators. He was allegedly forced to crouch in a
closed-off corner of the cell. He was threatened with a knife and prevented from eating
or using the toilet. After a period of some 10 days, during which he remained in the
corner, he was attacked by three collaborators who burned his left arm and shoulder
with cigarettes. He then agreed to confess and was returned to the GSS interrogation
room, whereupon he was interrogated for a further 20 days.

14 (g) Mohammed Naim Sweiti was allegedly arrested on 9 January 2000, following
15 which he was reportedly interrogated by the GSS at the Russian Compound in
16 Jerusalem until approximately 15 March 2000. He was reportedly denied access to a
17 lawyer for 36 days. During the first days of his detention he was said to have been
18 beaten, particularly on his stomach. He was kept in solitary confinement and was
interrogated whilst forced to sit in the shabeh position.

19 (h) Hussam Mohammed Bushnak, from Jenin, was allegedly beaten following his
20 arrest by the Nazareth police on 5 January 2000.

21 (i) Lafi Ali-Rajabi was reportedly arrested around July 1999 whilst attending the court
22 hearing of one of his relatives in Ramleh. On 14 January 2000 it is believed that Al-
23 Rajabi had contact with his family by telephone, during the course of which he
expressed concerns about his personal safety. A few hours later his family was informed
by the authorities that he had killed himself. His body was reportedly transferred to the
Abu Kabir institute for an autopsy and was subsequently delivered to the family on 17
January 2000. The body reportedly showed signs of ante mortem torture, including
bruising and ligature marks around the neck.

24 (j) Ashraf Amin Taufiq Hamed was reportedly arrested on 18 November 1999. He
25 was allegedly held in solitary confinement and interrogated on three occasions whilst in
the shabeh position.

26 (k) Ramez Fayez Mohamed Rashid, from the El Nusseirat refugee camp in the Gaza
27 Strip, was reportedly arrested in February 2000 and sentenced to three years'
imprisonment for entering Israel without the required permit. He was reportedly
detained in El Nafha prison. On 9 August 2000, he is believed to have received a visit

28 (...continued)

1 a. **Mr. Y Suffered Persecution When Soldiers Beat Him At The**
2 **Ages Of Five and Eighteen, and Interrogators Tortured Him At**
3 **The Ages Of Sixteen and Twenty.**

4 The Ninth Circuit has stated that “[it] is well-settled law of this circuit that
5 eligibility for asylum ‘may be based on past persecution alone.’”⁶⁸ Although the Act does
6 not define it specifically, “persecution” is generally described as “the infliction of suffering
7 or harm upon those who differ . . . in a way that is regarded as offensive.”⁶⁹ Subsequent
8 case law has further clarified just what is “offensive,” and this circuit has settled on an
9 objective definition. The definition is objective “in that it turns not on the subjective intent
10 of the persecutor but rather on what a reasonable person would deem ‘offensive.’”⁷⁰

11 Persecution does not require physical harm or threats to life or liberty.⁷¹ Physical
12 abuse, even if not life threatening, often constitutes persecution.⁷²

13 Mr. Y suffered persecution in 1972 when he was five years old when Israeli army
14 soldiers beat him, his mother, and brother, and threatened to kill them as they shot their
15 weapons.⁷³ Mr. Y also suffered persecution in 1983 when he was detained at the age of
16 sixteen and his interrogators beat him repeatedly for hours with a baton on his hands and
17 face and kicked him with boots, subjected him to mock executions while blindfolded.⁷⁴

18 ⁶⁸ See *Lopez-Galarza v. I.N.S.*, 99 F.3d 954, 959 (9th Cir. 1996)(quoting *Desir v. Ilchert*, 840
19 F.2d 723, 729 (9th Cir. 1988).

20 ⁶⁹ See *Fisher v. I.N.S.*, 79 F.3d 955, 961 (9th Cir. 1996)(en banc).

21 ⁷⁰ See *Pitcherskaia v. I.N.S.*, 118 F.3d 641, 647 (9th Cir. 1997).

22 ⁷¹ See *Singh v. Ilchert*, 134 F.3d 962, 967 (9th Cir. 1998).

23 ⁷² See *Montoya-Ulloa v. I.N.S.*, 79 F.3d 930, 931-2 (9th Cir. 1996) (holding that an alien who
24 was beaten by the Sandanista Youth, a group recognized and sponsored by the Sandanista
25 government in Nicaragua, suffered persecution); see also *Korablina v. I.N.S.*, 158 F.3d
26 1038, 1045 (9th Cir. 1988) (holding that an alien who witnessed repeated violent attacks and
27 experienced one violent attack herself suffered persecution); see also *Desir*, 840 F.2d at 729
28 (holding that alien who was arrested and beaten on multiple occasions suffered
persecution).

⁷³ Respondent’s supplement, Exhibit B at ¶3.

⁷⁴ *Id.* at ¶6.

1 This treatment at the age of five and sixteen amounted to an infliction of suffering or harm
2 in a way that is regarded as “offensive,” and thus should satisfy the standard for
3 persecution.

4 Soon after turning 20 years of age, Mr. Y’s arm was broken by soldiers taking him
5 to be detained, and two of his front teeth were broken while being intentionally struck
6 during interrogation. He was also subjected to interrogation and beatings for over 24 hours
7 at a time, allowed to sleep 2-5 hours, and then interrogated again.⁷⁵

8 Also while Mr. Y was 20 years of age, he was placed in detention and repeatedly
9 beaten with a baton, forced to stand in cold water and keep his arms raised for hours. Mr. Y
10 was also forced to sit for hours in a broiling black barrel placed in the hot summer sun
11 which almost suffocated him. Mr. Y was tortured in this manner for about four months.
12 This treatment at the age of twenty amounted to an infliction of suffering or harm in a way
13 that is regarded as “offensive,” and thus should satisfy the standard for persecution.⁷⁶

14 Mr. Y’s medical evaluation reveals that his bodily evidence is consistent with a
15 history of the types of torture Mr. Y suffered.⁷⁷ “The methods of torture employed, such as
16 being forced to hold postures for long periods of time, exposure to extreme heat or cold,
17 near-suffocation, or beatings with hands, are often preferred by torturers precisely because
18 they do not leave any long-term scars or disfigurement.”⁷⁸

19 **b. Mr. Y Suffered Persecution “on Account of” Protected Grounds.**

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21 The Supreme Court has held that an applicant for asylum need not provide direct
22 proof that his persecutor acted “on account of” an enumerated ground, but rather need only

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24 _____
⁷⁵ *Id.* at ¶9.

25 ⁷⁶ *Id.* at ¶11.

26 ⁷⁷ Affidavit of Dr. Ameena Ahmed Regarding Medical Evaluation, Exhibit C at 4, ¶(23).

27 ⁷⁸ *Id.*

1 show “some evidence of [the persecutor’s motive], direct or circumstantial.”⁷⁹ Further, the
2 Ninth Circuit has established that the applicant is entitled to a presumption where the
3 persecutor is a government acting through military force.⁸⁰ In that case, the court stated:

4 [w]hen a government exerts its military strength against an individual or
5 group within its population and there is no reason to believe that the
6 individual or group has engaged in any criminal activity or conduct that
7 would provide a legitimate basis for governmental action, the most
8 reasonable presumption is that the government’s actions are politically
9 motivated.⁸¹

10 Neither Mr. Y nor his family engaged in any type of criminal activity to provide a
11 legitimate basis for the Israeli security services’ and military’s brutal treatment.⁸²

12 **i. Mr. Y Suffered Persecution Because of His Political Opinions
13 and because the Israeli Government and Military Imputed to
14 Him Anti-Occupation Political Beliefs.**

15 Persecution under section 243(h) of the Act includes persecution on account of
16 opinions that the persecutor falsely attributes to the alien. This doctrine of “imputed
17 political opinion” was recognized by the Ninth Circuit in *Hernandez-Ortiz*, as the court
18 stated:

19 In most societies, a failure to take sides or to articulate a political opinion,
20 does not ordinarily trigger retribution. However, when through legally
21 cognizable inferences or otherwise, an alien establishes a prima facie case
22 that he is likely to be persecuted because of the government’s belief about
23 his views or loyalties; his actual political conduct, be it silence or affirmative
24 advocacy and his actual political views, be they neutrality or partisanship,
25 are irrelevant; whatever the circumstances, the persecution is properly
26 categorized as being “on account of . . . political opinion.”⁸³

27 ⁷⁹ See *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

28 ⁸⁰ See *Hernandez-Ortiz v. I.N.S.*, 777 F.2d 509, 516 (9th Cir. 1985).

⁸¹ *Id.*

⁸² Respondent’s Supplement, Exhibit B at ¶14.

⁸³ *Hernandez-Ortiz*, 777 F.2d at 517.

1 The Ninth Circuit has repeatedly affirmed the doctrine of imputed political opinion.⁸⁴

2 Mr. Y was persecuted on account of his political beliefs when he was detained five
3 times between Mr. Y was persecuted on account of political opinions imputed to him by the
4 Israeli military when soldiers beat his mother, brother and him when Mr. Y was five years
5 old.⁸⁵ They beat her because they assumed she was an activist sympathizer when she was
6 truthfully unable to tell them anything about a recent act done by activists opposed to the
7 occupation.⁸⁶ When Mr. Y was a sixteen year old student, Mr. Y was placed in detention—
8 where he was brutally tortured—by soldiers who mistakenly assumed that he intended to
9 participate in protests because other students had recently attended protests.⁸⁷ The brutal
10 treatment of Mr. Y and his mother and brother on account of their perceived support for
11 activists is sufficient to support a claim for asylum.⁸⁸ On account of three of his four
12 brothers having been detained and brutally tortured by being subjected to mock executions,
13 beatings, extreme temperatures, and sleep deprivation, Mr. Y’s brothers suffered a level of
14 mistreatment that amounts to “a pattern or practice closely tied to the petitioner,” which
15 should warrant a grant of asylum.⁸⁹

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⁸⁴ See e.g. *Canas-Segovia v. I.N.S.*, 970 F.2d 599, 601 (9th Cir. 1992) (“Imputed political opinion is still a valid basis for relief after *Elias Zacarias*”); *Meza-Manay v. I.N.S.*, 139 F.3d 759 (9th Cir. 1998).

⁸⁵ Respondent’s supplement, Exhibit B at ¶3.

⁸⁶ *Id.*

⁸⁷ Respondent’s supplement, Exhibit B at ¶6.

⁸⁸ See *Rodriguez v. I.N.S.*, 841 F.2d 865, 870-71 (9th Cir. 1987) (holding that applicant whose father, stepmother, half-sister, half-brother, and brother were killed “clearly established” her eligibility for asylum, even where applicant did not witness the deaths and was not personally threatened).

⁸⁹ See *Arriaga-Barrientos v. I.N.S.*, 937 F.2d 411, 414 (9th Cir. 1991); Respondent’s supplement, Exhibit B at ¶13).

1 perceive Palestinians to be activists (i.e., opposed to the occupation) or supporters of
2 activists simply on account of their being Palestinian.⁹² As a Palestinian, Mr. Y was
3 persecuted “on account of” his race and nationality, when in 1972 when he was 5-years old,
4 soldiers beat him, his mother and brother because they suspected that they were activist
5 sympathizers,⁹³ when, in 1973, he was detained, interrogated and tortured at sixteen years
6 of age because soldiers suspected that he intended to participate in protests,⁹⁴ and when, in
7 1988, he was detained, interrogated and tortured at twenty years of age because of a
8 coerced confession by a friend.⁹⁵

9 **2. There Has Not Been a Fundamental Change in Circumstances Such**
10 **That Mr. Y No Longer Faces a Well-Founded Fear of Persecution.**

11 “An alien who established past persecution is presumed to have a well-founded fear
12 of future persecution.”⁹⁶ The I.N.S. bears the burden of rebutting this presumption, and to
13 do so must show there has been “a fundamental change in circumstances such that applicant
14 no longer has a well-founded fear of persecution, or by showing that the applicant could
15 avoid persecution by relocating to another part of the applicant’s country of nationality . . .
16 and under all circumstances, it would be reasonable to expect the applicant to do so”⁹⁷

17 The “fundamental change in circumstances” test replaces the “changed country
18 conditions” test, formerly codified at 8 C.F.R. §208.13(b)(1)(i) (2000). The Ninth Circuit,
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21 _____
22 ⁹² Respondent’s supplement, Exhibit B at ¶3, 6, 11.

23 ⁹³ *Id.* at ¶3.

24 ⁹⁴ *Id.* at ¶6.

25 ⁹⁵ *Id.* at ¶11.

26 ⁹⁶ *Meza-Manay*, 139 F.3d at 765 (citing 8 C.F.R. §208.13(b)(1)(i)).

27 ⁹⁷ *Aguirre-Cervantes v. I.N.S.*, 242 F.3d 1169, 1179 (9th Cir. 2001) (citing Asylum
Procedures, 65 Fed.Reg. 76,121, 76,133 (Dec. 6, 2000) (to be codified at 8 C.F.R.
§§208.13(b)(1)(i)(A) & (B), 208.13(b)(1)(ii))).

1 however, has not interpreted this new standard as easing the burden on the I.N.S.⁹⁸

2 The Ninth Circuit also recently reversed a BIA decision that affirmed an
3 Immigration Judge’s denial of asylum where the I.N.S. introduced information about
4 general changes in the country.⁹⁹ In *Chanchavac*, the I.N.S. introduced the U.S.
5 Department of State Country Report for Guatemala, which stated: “guerrilla strength has
6 declined, the guerrilla movement is confined to the rural highlands, and persons who fail to
7 report for military service are inducted into the army, not prosecuted.”¹⁰⁰ The court rejected
8 this evidence, reasoning “[n]one of this information rebuts the presumption that
9 Chanchavac has a well-founded fear of persecution if he returns to Guatemala He fears
10 being beaten and killed by the military on account of imputed sympathy for the
11 guerrillas.”¹⁰¹

12 In the instant case, there has not been “a fundamental change in circumstances” such
13 that Mr. Y no longer has a well-founded fear of persecution, and Mr. Y would not be able
14 to avoid persecution simply by relocating to another part of the Occupied Territories.
15 Furthermore, under all the circumstances, it would not be reasonable to expect Mr. Y to do
16 so.

17 **a. Israel Continues to Practice Torture Despite an Israeli High**
18 **Court Judgment Prohibiting It.**

19 On September 6, 1999, the High Court of Justice prohibited torture, but
20 indicated that it would be allowed in the cases of necessity, or if the Knesset passes
21

22 _____
23 ⁹⁸ See *Aguirre-Cervantes*, 242 F.3d at 1179-80 (rejecting the I.N.S.’ argument that because
24 the applicant had reached the age of nineteen there had been a “fundamental change in
25 circumstances” such that she no longer had a well-founded fear of persecution from her
26 abusive father).

27 ⁹⁹ See *Chanchavac v. I.N.S.*, 207 F.3d 584 (9th Cir. 2000).

28 ¹⁰⁰ *Id.* at 592.

¹⁰¹ *Id.*

1 legislation legalizing torture or ill-treatment.¹⁰² It should be noted that international
2 law prohibits torture and does not allow an exception for necessity.¹⁰³ See
3 discussion *supra* at Statement of Facts II.B (page 15). Furthermore, torture is
4 presently in the process of being formally legalized by statute.¹⁰⁴

5 **b. Mr. Y—Who Is Stateless— Is Unlikely to Be Treated Better**
6 **Than Palestinian Americans Who Return to the Occupied**
7 **Territories and Are Detained and Tortured.**

8 Israel has demonstrated hostility to Palestinians returning to the Occupied
9 Territories, or Arabs going to Israel even if they are American citizens.¹⁰⁵ A stateless
10 Palestinian such as Mr. Y,¹⁰⁶ is not going to fare much better. There are fourteen
11 Palestinian and Arab Americans in Israeli administrative detention who have not been
12 charged and have been mistreated or tortured.¹⁰⁷ Also, Mr. Y was issued an Israeli travel
13

14 ¹⁰² *Public Committee Against Torture in Israel et al. v. State of Israel*, High Court
15 Judgment, Exhibit U at 6, 11; *Israel, The Occupied West Bank & Gaza Strip, and*
Palestinian Authority Territories, Exhibit V at 3.

16 ¹⁰³ *Israel, The Occupied West Bank & Gaza Strip, and Palestinian Authority Territories*,
17 Exhibit V at 3.

18 ¹⁰⁴ *Israel, The Occupied West Bank, Gaza Strip, and Palestinian Authority Territories*,
19 Human Rights Watch 2001 (2001) (Exhibit Z at 1) (Israel’s Knesset (parliament) has
20 submitted legislation to permit torture.).

21 ¹⁰⁵ *Another US Citizen Tortured By Israel, American Arab Anti-Discrimination Committee*,
22 (April 2, 2001) (Exhibit AA at 1) (The American Arab Anti-Discrimination Committee was
23 founded by former U.S. Senator James Abourezk); *US Citizen Tortured in Israeli Jails,*
American Arab Anti-Discrimination Committee, (October 2, 2000) (Exhibit BB at 1); *Letter*
to President Clinton Demanding Protection for Arab-Americans Detained and Tortured by
Israel, American Arab Anti-Discrimination Committee (August 18, 1999) (Exhibit CC at 1);
State Department Addresses Israel’s Treatment of Arab Americans, American Arab Anti-
Discrimination Committee (May 17, 2001) (Exhibit DD at 1).

24 ¹⁰⁶ *Response to Information Request Number PAL00001.MIA*, Exhibit E at 1-2. (Palestinian
25 who does not return every two years to the Occupied Territories to renew his residency
becomes stateless).

26 ¹⁰⁷ *Another US Citizen Tortured By Israel, American Arab Anti-Discrimination Committee*,
27 Exhibit AA at 1; *US Citizen Tortured in Israeli Jails, American Arab Anti-Discrimination*
Committee, Exhibit BB at 1; *Letter to President Clinton Demanding Protection for Arab-*
28 (...continued)

1 document to leave Israel with the understanding that he would *not* return.¹⁰⁸ Given this
2 prior understanding, it is unlikely that his return will be welcomed by Israeli authorities,
3 and is highly likely to lead to persecution given the treatment of American-Palestinian and
4 American-Arab returnees.

5 **c. Mr. Y is Likely to be Persecuted Upon Arrival If He Were to be**
6 **Returned to the Occupied Territories.**

7 Mr. Y is no longer a resident of the Occupied Territories due to his not having
8 returned every two years to renew his residency.¹⁰⁹ It is likely that Mr. Y would be
9 imprisoned if he presents himself at Ben Gurion Airport or any other entry point to the
10 Occupied Territories, all of which are controlled by Israel. It is not necessary for Mr. Y to
11 actually make it to some point in the interior of the Occupied Territories before he is
12 subjected to imprisonment. Mr. Y therefore has a real fear of being subjected to the same
13 torture he previously experienced.

14
15 **d. Torture and Human Rights Abuses Remain Common**
16 **Throughout the Occupied Territories, and Therefore, it Would**
17 **Not be Reasonable to Expect Mr. Y to Relocate to Another Part**
18 **of the Territories.**

19 Despite the signing of the 1993 Oslo Accords, Israel has security control over 97¹¹⁰
20 percent of the Occupied Territories, complete control over movement within the Occupied
21 Territories and to and from the Occupied Territories, and human rights abuses remain a

22 _____
23 (continued...)
24 *Americans Detained and Tortured by Israel*, Exhibit CC at 1; *State Department Addresses*
25 *Israel's Treatment of Arab Americans*, Exhibit DD at 1.

26 ¹⁰⁸ Respondent's supplement, Exhibit B at ¶15).

27 ¹⁰⁹ *Response to Information Request Number PAL00001.MIA*, Exhibit E at 1-2.

28 ¹¹⁰ *Israel, The Occupied West Bank & Gaza Strip, and Palestinian Authority Territories*,
Exhibit V at 2.

1 reality of life in the Occupied Territories.¹¹¹ “According to B’Tselem’s estimates, some
2 eighty-five percent of Palestinian detainees are tortured during interrogation. This figure
3 did not decline during the six year period following the signing of the Oslo Accords.¹¹²

4 Since Israel controls 97 percent of the Occupied Territories and has complete
5 control over movement within the Occupied Territories and to and from the Occupied
6 Territories, Mr. Y is certain to come into contact with the Border Police, police, and the
7 military, exposing him to potential abuse and torture.¹¹³ Assuming Mr. Y can return, there
8 is effectively no place in the Territories in which Mr. Y can seek refuge. Furthermore, even
9 if there was a place for him to move to, it would be unreasonable to force him to relocate
10 given that he has no means of support in the Territories other than his brothers who live
11 under direct Israeli military occupation¹¹⁴ and the poor economic situation in the Territories
12 that is characterized by 60 percent unemployment in the Gaza Strip and 40%
13 unemployment in the West Bank.¹¹⁵

14 There has not been a “fundamental change in circumstances” such that Mr. Y no
15 longer has a well-founded fear of persecution. Further, Mr. Y could not avoid future
16 persecution by relocating to another part of the Occupied Territories, nor would it be
17 “reasonable” to expect him to do so.

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21 ¹¹¹ *Country Reports on Human Rights Practices for The Occupied Territories 2000*, Exhibit
22 D at 2; *Israel, The Occupied West Bank, Gaza Strip, and Palestinian Authority Territories*,
Exhibit L at 1, 6;

23 ¹¹² *Oslo*, Exhibit T at 13.

24 ¹¹³ *Sheer Brutality: The Beatings Continue—Beatings and Maltreatment of Palestinians by*
25 *Border Police and Police Officers During May-August 1997*, Exhibit EE at 3, 4, 31.

26 ¹¹⁴ Respondent’s supplement, Exhibit B at ¶1.

27 ¹¹⁵ *Arafat: Uprising has cost Palestinians \$5 bln*, Agence France Presse (May 20, 2001)
(Exhibit FF at 1-2).

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1 misdemeanor. One minor brush with the law cannot justify returning Mr. Y to Palestine to
2 be subjected to certain torture and persecution in his country of origin.

3 **4. Mr. Y Has a Well-Founded Fear of Future Persecution.**

4
5 Even if the court finds that Mr. Y has not established past persecution, Mr. Y
6 demonstrate that he has a well-founded fear of future persecution on account of political
7 opinion, imputed political, Palestinian national origin. Mr. Y does not need to demonstrate
8 that he individually would be singled out for persecution because he can show: (1) there is a
9 “pattern or practice in his country of nationality . . . of persecution of a group of persons
10 similarly situated to the applicant on account of race, religion, nationality, membership in a
11 particular social group, or political opinion”; and (2) his “inclusion in and identification
12 with such group of persons such that his or her fear is reasonable.”¹¹⁸

13 Palestinians refers to “Arabs-- Christian, Muslim and Druze--whose historical roots
14 can be traced to the territory of Palestine as defined by the British mandate borders.”¹¹⁹
15 Arabs speak Arabic and have a distinct culture which is identifiable by dress, folklore, and
16 customs that are different from the Israeli occupiers.¹²⁰ Palestinians also have a strong
17 national identity which Israel represses.¹²¹ Many Palestinian Arabs¹²² have been persecuted
18 by the Israel government by a variety of means that are recognized as torture by the
19 international community.¹²³ Mr. Y is an Arabic speaking Palestinian Arab Muslim.¹²⁴ It is

20 ¹¹⁸ 8 C.F.R. §§208.13(b)(2)(i) and (ii).

21 ¹¹⁹ *Palestine, Israel, and the Arab-Israeli Conflict—a Primer*, The Middle East Research
22 and Information Project, (2001) (Exhibit GG at 2).

23 ¹²⁰ *Palestinian Folklore Politically Powerful*, HH Exhibit at 3-5.

24 ¹²¹ *Palestinian Children in the Occupied Palestinian Territory*, Exhibit H at 20.

25 ¹²² *The Origin of The Palestine Conflict*, citing *Intifada: The Palestinian Uprising Against
26 Israeli Occupation*, ed. Z. Lockman and J. Beinon, Exhibit F at 21; *Interrogation Methods
27 of the General Security Service Comprehensive Report*, Exhibit R at 1-4.

28 ¹²³ *Country Reports on Human Rights Practices for The Occupied Territories 2000*, Exhibit
D at 7; *Country Reports on Human Rights Practices for Israel and The Occupied
Territories 1999*, Exhibit N at 3-4; *The Occupied Territories Country Report on Human
(...continued)*

1 clear that there is a pattern or practice of persecution of Palestinian Arabs on account of
2 nationality and political opinion, and that Mr. Y is included and identified within the group
3 of Palestinian Arabs such that his fear of persecution is reasonable.

4 **B. MR. Y SHOULD ALSO BE GRANTED WITHHOLDING OF**
5 **REMOVAL.**

6 To qualify for withholding of removal, an applicant must show that if he were
7 returned to his country of nationality, his life or freedom would be threatened on account of
8 race, religion, nationality, membership in a particular social group, or political opinion.¹²⁵
9 This provision has been interpreted to mean it is “more likely than not” that the alien would
10 be subject to persecution.¹²⁶ Once the applicant has demonstrated that his life or freedom
11 would be threatened on account of one of the enumerated grounds, withholding must be
12 granted.¹²⁷ Furthermore, some forms of past persecution (*i.e.*, where life or freedom was
13 threatened) also trigger a presumption that the applicant is entitled to withholding of
14 removal.¹²⁸

15 Based on the facts set forth above applicable to his claim for asylum, Mr. Y has
16 demonstrated that he suffered persecution where his life or freedom was threatened.
17 Further, Mr. Y has clearly shown he meets the clear probability standard. Accordingly, Mr.
18 Y is entitled to withholding of removal.

19

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(continued...)

21 *Rights Practices for 1998*, Exhibit O at 8; *Country Reports on Human Rights Practices for*
22 *Israel and The Occupied Territories*, Exhibit P at 8-9; *The Occupied Territories Country*
23 *Report on Human Rights Practices for 1996*, Exhibit Q at 7.

24 ¹²⁴ Respondent’s supplement, Exhibit B at ¶1.

25 ¹²⁵ INA §243(h); 8 U.S.C. §1253(h).

26 ¹²⁶ *I.N.S. v. Stevic*, 467 U.S. 407, 421 n. 15 (1984); *Garcia-Ramos v. I.N.S.*, 775 F.2d 1370,
27 1373 (9th Cir. 1985).

28 ¹²⁷ *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

¹²⁸ *Surita v. I.N.S.*, 95 F.3d at 821.

1 **C. MR. Y SHOULD ALSO BE GRANTED WITHHOLDING OF**
2 **REMOVAL BASED ON THE CONVENTION AGAINST TORTURE.**

3 Under the Convention Against Torture,¹²⁹ a person is eligible for relief if there are
4 “substantial grounds”¹³⁰ for believing the person is in danger of being subjected to torture
5 upon return to the country of removal. The definition of torture is:

6 any act by which *severe pain or suffering*, whether physical or mental, is
7 intentionally inflicted on a person for such purposes as obtaining from him
8 or a third person information or a confession, punishing him for an act he or
9 a third person has committed or is suspected of having committed, or
10 intimidating or coercing him or a third person, or for any reason based on
11 discrimination of any kind, when such pain or suffering is inflicted by or at
12 the instigation of or with the consent or acquiescence of a public official or
13 other person acting in an official capacity. It does not include pain or
14 suffering arising only from, inherent in or incidental to lawful sanctions.¹³¹

15 Mr. Y suffered severe physical¹³² and mental pain¹³³ or suffering. See discussion *supra* at
16 Argument II.C. (page 29).

17 Mr. Y is entitled to relief based on the Convention Against Torture because based
18 on his past experience there are substantial grounds for believing he is in danger of being
19 subjected to (1) severe pain and suffering (2) which is intentionally inflicted, (3) by or at
20 the instigation of or with the consent or acquiescence of a public official, (4) to obtain a
21 confession from him or to punish him for an act he is suspected of having committed.

22 _____
23 ¹²⁹ Convention Against Torture, opened for signature February 4, 1985, G.A. res. 39/46, 39
24 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/RES/39/708 (1994), (hereinafter “CAT”) (Exhibit II).

25 ¹³⁰ Article 3(1) of the Convention Against Torture, Exhibit II at 2.

26 ¹³¹ Article 1 of CAT. (emphasis added), Exhibit II at 1-2.

27 ¹³² *Winning Asylum Cases*, Robert Jobe et al., Immigrant Legal Resource Center, Chapter 6
28 p.9, (April 2000) citing *Torture and Other Cruel, Inhuman or Degrading Treatment or*
29 *Punishment: Report of the Special Rapporteur*, U.N. ESCOR, Comm’n Hum. Rts. 41st
30 Sess., Para. 119, U.N. Doc. E/CN 4/1986/15 (1986).

31 ¹³³ *Id.*

1 **IV. CONCLUSION**

2 For the foregoing reasons, Mr. Y is eligible and deserving of asylum, and
3 respectfully requests that he be granted asylum in the exercise of discretion. In the
4 alternative, Mr. Y should be granted withholding of removal because he would face serious
5 threats to his life or freedom if he is returned to the Occupied Territories, or relief under the
6 Convention Against Torture.

7 Dated: September 25, 2001.

PILLSBURY WINTHROP LLP
ADAM ALBRETT

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By _____

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Attorney for X Y

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PROOF OF SERVICE BY HAND

I am a citizen of the United States, over 18 years of age, not a party to this action and employed in Palo Alto, California at 2550 Hanover Street, Palo Alto, California 94304.

Today I served the attached:

RESPONDENT’S PRE-HEARING BRIEF

by causing a true and correct copy of the above to be hand delivered in sealed envelope(s) with all fees fully paid, addressed as follows:

The Hon. Michael Yamaguchi
Executive Office for
Immigration Review
Office of the Immigration Judge
550 Kearny Street, Suite 800
San Francisco, CA 94108

James Stolley, Esq.
Office of the District Counsel
U.S. Immigration &
Naturalization Service
550 Kearny Street, Suite 1000
San Francisco, CA 94108

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 25, 2001.

Adam Albrett