

Know Your Rights

Information Packet About Detention, Deportation, and Defenses Under U.S. Immigration Law

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THE COURT PROCESS



You are currently being detained by the Immigration and Naturalization Service (“INS”), an agency of the United States Government. INS says that you may not have the right to stay in the United States and you may have to leave the country.

There are several legal procedures INS can use to remove you from the country. This document is specifically for those of you who are in removal proceedings before an immigration judge.

Those of you who received a document called a “Notice to Appear” are in removal proceedings and will see a judge.

For those of you who are in removal proceedings in front of an immigration judge, there are different reasons why you may be here.

Some of you may be in a different type of proceeding if you did not receive a Notice to Appear and:

- you were arrested by the Immigration Service at a border checkpoint or international airport,
Or
- you have entered the United States illegally after having been deported or removed,
Or
- you have been convicted of an aggravated felony and you do not have legal permanent resident status in this country.

If you are in this situation, then you may not see an immigration judge and not all of this information will apply to you.

If you do not fit the description of someone in a different proceeding but you have not received a Notice to Appear, you should check with an immigration officer to see what kind of proceeding you are in.

For some of you, the Immigration Service says that you should be removed because you do not have permission to be in the country.

Others of you came here legally with a visa or you have legal permanent residency. But the Immigration Service says that you committed a crime or violated an immigration law and that you should be removed.



Your first hearing will be either a “Master Calendar” hearing to review why you may have to leave the United States or a bond hearing.

At your first Master Calendar hearing the judge will explain your rights. You have the right to a lawyer, but the government will not pay for or provide that lawyer. In other words, there are no public defenders for Immigration Court. Before your hearing, an immigration officer should have already given you a list of free or low cost legal services in the area. If you did not receive this list, you can ask the judge for a copy. You can also ask the judge for more time to find a lawyer if you need it.

If you are ready to talk to the judge at your first Master Calendar hearing, the judge will ask whether you agree or disagree with each charge in the Notice to Appear. If you are in removal proceedings before an immigration judge the Immigration Service should have given you a document called a Notice to Appear. It contains information the Immigration Service believes about you including where you were born, the date you came to the United States, and whether you violated any criminal or immigration laws. It also explains why the Immigration service thinks you may have to leave the United States.

U.S. Department of Justice
Immigration and Naturalization Service **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: _____

In the matter of:

Respondent: _____ currently residing at: _____
(Number, street, city state and ZIP code) (area code and phone number)

1. You are arriving an alien.
 2. You are an alien in the United States who has not been admitted or paroled.
 3. You have been admitted to the United States, but are deportable for the reasons below.

The Service alleges that you:

1. Are not a citizen of the United States;
2. You are a native of _____ and citizen of _____;
3. You entered the United States at or near _____ on or about _____
4. You were then not admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(a) of law:

Section 212(a)(6)(A)(I) of the Immigration and Nationality Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.
 Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____ To be calendared and notice provided.
 On _____ at _____ to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: _____

See attached Notice to the Respondent for important information

Your name should be listed here.

The charges

Notice of court hearing, date and time.

Notice to Appear

This is the “A” number assigned to you by INS.

If you do not think that you received a Notice to Appear from the Immigration Service, you should ask an immigration officer for a copy as soon as possible. If you still do not receive a Notice, you should ask the judge for a copy at your first hearing.

It is very important for you to review the charges in the Notice to Appear carefully. If you do not think the charges are correct or you want to see evidence about your charges, you can deny the charges and ask the government to prove its case.

Take special note to see if INS says that you have been convicted of an aggravated felony. This charge has very serious consequences.

What is an aggravated felony?

It is a name Congress has given to certain crimes that have very serious immigration consequences.

There are a number of crimes which are considered aggravated felonies, but the most common are:

- *trafficking in drugs, which includes possession for sale or transportation or importation of drugs.*
- *a crime of violence for which the judge sentenced you to at least 1 year.*
- *a crime of theft or burglary for which the judge sentenced you to at least 1 year.*
- *sexual abuse of a minor*
- *murder or rape*
- *most firearms offenses*
- *alien smuggling*
- *unlawful entry or attempted re-entry to the United States after prior deportation for an aggravated felony.*

The law is still new and there are questions about how to interpret it. Ask a lawyer if you have questions.

If you have criminal convictions, the immigration judge cannot change the decision of the criminal court. However, if your criminal conviction is on direct appeal in criminal court then you are not removable for that offense because your conviction is not yet final and you should tell the judge.

In some limited circumstances it may be also possible to go back to a criminal court to fight your conviction even after it has become final. These are complicated cases and difficult to win. If you want to explore this option further, we recommend that you talk to a lawyer who knows both criminal and immigration law.

If the judge decides that the charges against you are correct, the judge will then decide whether you have a way to legally stay in the United States.

Before making the decision whether or not to fight your case, it is important for you to understand the consequences of removal. First, if you are removed, you lose any permission you have to stay in the United States. Second, if you are removed, you cannot legally return to the United States for at least ten years or more depending on your case.

If this is your second removal, you cannot return for twenty years. And if you were convicted for an aggravated felony, you may never be able to return. Sometimes, you can get permission from the Immigration Service to come back before the waiting period is over, but it is very difficult to get this permission. Even after the waiting period is over, you will have to have a way to come back legally, for example, with a tourist visa, visitor's visa, or family visa.

Remember, it is a crime to reenter the United States without permission after you have been removed from the country. If found guilty, you can be sentenced to prison for up to twenty years. The sentence varies depending on your criminal history. The Immigration Service can also deny you permission to ever return to the United States if you reentered illegally after being ordered deported or removed.

CITIZENSHIP

“Citizenship” is one of the ways that you may be able to stay in the United States legally. Sometimes people are United States citizens but do not realize it. **United States citizens cannot be removed from the United States and must be released from detention.** You may be a citizen if you answer “yes” to one of the following questions:

1. Were you born in the United States?
2. Do you have a parent or grandparent born in the United States?
3. Do you have a parent or grandparent who became a U.S. citizen before you were born?
4. Did at least one of your parents become a citizen before you turned 18 years old?
5. Have you ever served in the U.S. military and been honorably discharged?

If you answered yes to any of these questions, you should tell an immigration officer and the immigration judge that you think you may be a U.S. citizen. It is very important to provide as much specific information as possible in order for the Immigration Service to be able to verify your claim to United States citizenship, for example, your parents’ identity, their dates and places of birth in the United States, and their periods of residence.



ASYLUM/WITHHOLDING/PROTECTION FROM TORTURE

“Asylum” is one of the seven possible ways that you may be able to stay in the country legally. You may be able to ask for this protection in the United States if you fear you will be harmed if you return to your own country or if you have suffered harm there in the past. The threat or harm must come from the government or someone the government cannot or will not control.

You must show that the threat or harm is because of your:

- **Race**
- **Religion**
- **Nationality**
- **Political beliefs**
- **Or your membership in a particular social group**

This group could be:

- *a village* • *family* • *clan*
- *union* • *political party* • *religious organization*
- *student or human rights group*

Or some other threatened group such as:

- *women*
- *homosexuals*
- *women who oppose certain practices in their home countries such as genital mutilation*
- *or people who oppose their government's policy on birth control and family planning.*

However, if the only reason you left your country was to look for work and you do not have any fear of returning or have not been harmed in the past, then you probably do not qualify for asylum.

If you entered the United States before April 1997, you were required to file your asylum application by April 1, 1998.

If you entered after April 1, 1997, you have up to one year from the date you entered to file your application. You may still be able to apply after these deadlines if there were special reasons why you were not able to apply on time or if the conditions in your country have gotten worse since you came to the United States.

If you fear returning to your country, tell the judge.

If you fear returning to your country but have been convicted of an aggravated felony, you cannot ask for asylum in the United States. But, you may qualify for a similar protection called “Withholding of Removal”. To apply for “withholding,” the sentence you received for the aggravated felony must be less than five years and the judge must find that your crime was not “particularly serious”.

A separate form of protection is available if you are likely to be **tortured** by a government official in your country. The United States has signed a treaty promising that it will not return anyone who fears being tortured in their home country. You may have rights under this treaty if you have this fear. Tell the immigration judge if you fear torture in your home country.

CREDIBLE FEAR AND PAROLE

Those of you who came to the United States through a port of entry (such as, an airport or a bridge) and expressed a fear of returning to your country will soon be interviewed in what is known as a “credible fear interview”. In this interview, an INS asylum officer will ask you about your fear of returning to your country. You, as an asylum-seeker, may consult with a person or persons of your choice (including a lawyer or legal representative) prior to your credible fear interview. Any person with whom you choose to consult may be present at the interview and may be permitted to present a statement at the end of the interview.

After your interview, if the INS official determines there is a significant possibility that you are eligible for asylum, your case will be referred to an immigration court for a hearing. If you are not found to have credible fear of torture or persecution you will be returned to your home country, but you may be able to request that a judge review this decision before you are deported. The immigration judge must review the negative decision within 7 days of the negative credible fear determination

If you have not been interviewed in a “credible fear interview”, you should request one. In the Chicago District, INS should take approximately 14 days from your preliminary interview at the port of entry in giving you an interview.

If after your interview, INS determines you have credible fear, you may ask INS to be released on “parole” from detention. For a granting of parole, you must establish you have a “sponsor” with whom you can live.

Other proof that will support a granting of parole include:

- Proof of identification of the detainee (passport, state id, birth certificate)
- Proof that you passed your credible fear interview (copy of the INS decision)
- Proof there are no bars to asylum
- Proof of a sponsor (see sworn statement of sponsor on back)
- Proof of ties to the community (e.g. letters from church groups, etc.)
- Proof of legal assistance from a not-for-profit organization (such as a letter)
- Proof of willingness to report to INS and to obey any order.
- Proof of other humanitarian factors

(Please see the other side of this page to view an affidavit of support by a sponsor)

Even if you are released from detention, you must still appear before the court. You will receive a Notice to Appear in court. If you do not attend your court hearing, the judge may order you deported in your absence. If you change address, you must notify the court.

SWORN STATEMENT IN SUPPORT OF
(NAME OF DETAINEE) APPLICATION FOR PAROLE

A-- --- ---

State of _____
County of _____

I, (name of sponsor), hereby state under oath as follows:

1. I am a (legal permanent resident/US citizen) of the United States (please see attached).
2. I am a (relation) of (name of detainee), a political asylum applicant from (home country) who is currently detained at (name of detention facility).
3. I work as a (position) for (company/employer) at (address).
4. I am prepared to provide food and lodging for (name of detainee) for as long as his case is pending. If (name of detainee) is paroled, s/he will reside with me at the following address:
 (address)
 (phone number)
5. While (name of detainee) case is pending, we will do everything in our power to make sure that s/he attends all hearings in court.
6. If you require any further information, please call or write me at the above address.

(sponsor's signature)

(date)

(notary's signature)

(date)

CANCELLATION OF REMOVAL

“Cancellation of Removal” is one of the possible ways that you may be able to stay in the United States legally. There are two types of Cancellation of Removal. The information on this sheet is about the second type of Cancellation of Removal. It is for people who have lived in the United States, with or without permission, for a long time. If you win this type of cancellation you receive legal permanent residence and you can remain in the country legally.

You must meet three requirements to ask for this type of Cancellation:

1. You have lived in the United States continuously for at least the last ten years, either legally or illegally; AND
2. You have a spouse, parent, or child who is a U.S. citizen or legal permanent resident and you can show that they would suffer very extreme hardship if you were removed from the United States; AND
3. You have not had certain criminal problems. If you have served time in jail for any criminal sentences for a total of six months or more during the last ten years then you do not qualify. Most felonies and drug crimes, with a few exceptions, prevent you from applying. Also two misdemeanor crimes of theft or fraud prevent you from applying.

For this type of cancellation, special rules apply if you have been physically or psychologically abused by a spouse or parent who is a U.S. citizen or legal permanent resident. These rules also apply if your child has been abused by his or her other parent. In this type of cancellation, you only need to show that you have lived in the U.S. continuously for the last three years. You must also show good moral character and extreme hardship to yourself if you were to be deported.

VOLUNTARY DEPARTURE

If you have no defense or relief to removal that will allow you to remain in the United States, “voluntary departure” is a way to avoid an order of removal. With voluntary departure, you are still required to leave the United States and you must pay for your trip to your home country using your own money, but it has some advantages. Through voluntary departure, you can avoid some of the negative consequences of a deportation or removal order. You will not have a record of deportation or removal. You will not have as many problems if you later want to return to the U.S. legally in the future.

Not everyone is eligible for voluntary departure. If you are deportable as an aggravated felon, you are not eligible. (For an explanation of aggravated felony, please see brochures on “the judicial process” or “cancellation of removal”).

There are different stages of the immigration court proceedings you are under. The longer you wait to ask for voluntary departure in the immigration court proceedings, the more restrictions apply.

1

First Stage: Before your last hearing

You can ask for voluntary departure before your last hearing, which is usually the individual hearing. Voluntary departure has fewer restrictions at this stage. At this stage you qualify for voluntary departure as long as you are not:

- an aggravated felon,
- deportable for terrorist activities or
- a security risk to the U.S. government.

By asking the Immigration Judge for voluntary departure at this stage, you cannot go forward with any other defense to deportation and you must be able to:

- agree to give up your appeal rights;
- present your passport/other travel documents
- pay a bond.

The most time you can ask for before having to leave the U.S. is 120 days at this stage.

2

Second Stage: After your last hearing

You may also ask for voluntary departure at the end of your last hearing, even after the immigration judge has denied all other relief. Voluntary departure is harder to obtain at this stage if you have not been in the country for very long or have criminal problems. To be eligible for voluntary departure at the end of court proceedings, you must show:

- You have been physically present in the U.S. for 1 year before you were placed in removal proceedings;
- You have been a person of good moral character for the last 5 years;
- You have not been convicted of an aggravated felony;
- You are not deportable for terrorist activities;

- You have resources to pay your own way back;
- You have a passport and travel documents;
- You can pay a bond of at least \$500

At the end of proceedings, the maximum time the judge will give you is 60 days to leave the country. The bond will be returned to you as long as you comply with the order of voluntary departure and comply with all INS appointments and hearing dates.

If you are granted voluntary departure, but fail to pay a bond or leave by the required date, your grant of voluntary departure turns into a deportation order. You will face additional bars if you try to re-enter the U.S. or try to apply for an immigration benefit in the future.

CANCELLATION OF REMOVAL FOR LAWFUL PERMANENT RESIDENTS

If you are a lawful permanent resident (“LPR”) in removal proceedings because you have been convicted of a crime, you may still be able to keep your LPR status and avoid removal through “cancellation of removal” if you meet certain requirements.

Under U.S. immigration law, anyone who is not a U.S. citizen can be removed if he or she commits certain crimes or acts. For example, a person can be removed for just about any crime having to do with drugs.

To be eligible for “cancellation of removal,” you must show:

1. You have been a legal permanent resident for at least 5 years.
2. You have lawfully resided in the U.S. for 7 continuous years after being legally admitted to the US.
3. You have no aggravated felony convictions.

Examples of aggravated felonies include:

- Certain drug crimes or trafficking in firearms, explosive devices or drugs.
 - Drug trafficking includes:
 - Transportation, distribution, importation;
 - Sale and possession for sale;
 - Possession of over 5 grams of cocaine base (different from “cocaine”);
 - May include two convictions for simple possession of drugs.
- A certain crime for which you received a sentence of one year or more, (whether you served time or not), including the following:
 - Theft (including receipt of stolen property)/Burglary
 - A crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
 - Document fraud (including possessing, using, or making false papers, unless it was your first time and you did it only to help your husband, wife, child, or parent)
 - Obstruction of justice, perjury, bribing a witness
 - Commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers
 - Certain gambling crimes (if you have another gambling conviction)
- Rape/Sexual abuse of a minor/Murder
- Felony alien smuggling (unless it was your first and you were helping only your husband, wife, child or parent)
- Fraud or income tax evasion, if the victim lost over \$10,000
- Failure to appear (if you were convicted of missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years.
- Money laundering (over \$10,000)

If you were convicted of one of the above-listed crimes in a state court, there may be an argument that your crime is not an aggravated felony if the state law is in some way different from federal law. Or if you are being charged with an aggravated felony with a sentence of one year or more and are able to get the sentence reduced. Speak to an attorney to find out more.

If you are not eligible for cancellation and you are not eligible for any other defense to deportation, you will be ordered removed. If you are eligible for cancellation of removal, then you will be scheduled to go to court again to file your application. You will be given some forms and a date by which to file the forms with the court. Once the forms are filed, you will have a hearing to prove you deserve cancellation of removal. It may be weeks or months before this hearing, depending on the court’s schedule.

If you are eligible for cancellation of removal and you want to win your case, you will need to demonstrate more than your lawful permanent resident status. You will need to show the Immigration Judge that you deserve to win your case by showing positive factors such as:

- Family ties in the U.S. (LPR or U.S. citizen spouse, parents, children or siblings)
- Long residence in the United States
- Good work record (letters from employers), special responsibilities of the job
- Rehabilitation (from drug or alcohol abuse or criminal behavior)
- Ties to the community, e.g. church membership, participation in community/school projects

ADJUSTMENT OF STATUS/FAMILY PETITIONS

It may be possible for you to remain legally in the U.S. by having your relative file papers for you so that you can “adjust status” to lawful permanent resident in the U.S.

Your relative must be a legal permanent resident or U.S. citizen in order to help you get legal status. He or she may be able to help you by filing a “relative petition.”

You may be able to get legal status through a relative petition if you are the:

- Husband or wife of a U.S. citizen or lawful permanent resident (a lawful permanent resident is someone with a “green card” or “mica”)
- The son or daughter of a U.S. citizen
- The unmarried son or daughter of a lawful permanent resident
- The brother or sister of a U.S. citizen who is 21 or older
- Parent of a U.S. citizen who is 21 years or older.

However, if you entered the U.S. illegally, unless your relative filed papers for you before January 15th of 1998 or unless you last entered the U.S. with inspection, you cannot apply for lawful permanent resident status in the U.S. You must attend a consular appointment in your home country.

Even if your relative has filed a petition and the petition is approved, this is only the first step of the process. Everyone, except spouses, parents and minor children of U.S. citizens (under 21 years old) have to wait in line for a visa number before they can apply for legal permanent resident status. The “priority registration date”- the date that INS received the petition filed by your relative determines your place in that line. If you are not “at the front of the line” you will not be able to apply for adjustment of status.

If you are eligible to apply for adjustment of status, but have had prior encounters with INS, a criminal history, fraud, health problems or, in certain cases, unlawful status may make the process of becoming a legal permanent resident more difficult.

Even if you have a criminal conviction, you may be eligible for adjustment of status with a “212(h) waiver”. This waiver is not available to persons who are already legal permanent residents who have an aggravated felony.

If you are already a legal permanent resident now facing removal from the U.S., you may be able to readjust your status through a U.S. citizen or legal permanent resident family member if they file papers for you AND apply for “adjustment of status.”

If your spouse, parent, stepparent or child is an LPR or U.S. citizen and has been threatening you or beating you, you may be able to apply for a family petition under a special law for victims of domestic violence.

OBTAINING CRIMINAL, INS, and FBI RECORDS

CRIMINAL RECORDS

Criminal convictions can result in deportation proceedings. In order to determine whether or not you should apply for any immigration benefit it may be necessary to first obtain copies of your criminal records and consult with an expert in immigration.

You can do this by calling or going to the courthouse in the county where the criminal case took place and asking the clerk to make copies of your case. Normally you will need to obtain a copy of the information/indictment or charging document AND a copy of the final disposition in each case. Request a copy of the documents from the clerk by referring to your case number. If you don't have the case number, ask the court clerk for assistance.

Be prepared to pay copying costs which are typically \$2.00 for the first page and \$.50 for each additional page. Certified dispositions are \$6.00 dollars.

If you never went to court, or your case was not resolved, contact an attorney to resolve your case prior to trying to obtain your records.

INS RECORDS

To obtain a copy of what is in your immigration file, you can make a "Freedom of Information/Privacy Act Request by completing an INS Form G-693. You may ask an immigration officer for one. You do not have to complete the entire form. You should at least include your name and address and "A" Immigration File number and date of birth, and you need to sign the form. Make sure to keep a copy for your self and mark the envelope you are sending out "FOIA Request." Also, if you are detained, your address will be that of the detention center where you are currently detained.

Mail this form to the INS office where your file is located. In Chicago, you should send your request to:

FOIA Officer
U.S. Immigration & Naturalization Service
10 W. Jackson
Chicago, IL 60604

FBI RECORDS

If you have criminal convictions, one of the documents the Immigration Service has in your file is a "rap sheet" from the FBI which lists your criminal history, including any arrests, even if you were not convicted. You can usually get this faster that you can get a copy of your INS file. Send 1)a completed fingerprint card, 2)a money order for \$18 made out to the "FBI," and 3)a letter asking for your rap sheet to:

U.S. Department of Justice
Criminal Justice Information Services Division
Clarksburg, WV 26306

Do NOT send a copy to the Court or the Immigration Service.

OBTAINING DEPARTMENT OF CORRECTIONS RECORDS

These include attendance records, work evaluations, disciplinary records, visitors lists, GED certificates, and medical and mental health records. Remember to be specific in your written request.

Illinois

In order to obtain your records from the Illinois Department of Corrections, you should send a letter requesting those records along with an authorization for release of information form. All requests must be made to the address of the **last facility** in which you were incarcerated. If you do not know the address of the last facility, you may request it by calling 217/522-2666 or writing to:

Illinois Department of Corrections
1301 Concordia Court
PO Box 19277
Springfield, IL 62794

Wisconsin

Written inquiries must be made to:

Records Custodian
149 East Wilson Street,
P.O. Box 7925
Madison, Wisconsin 53707-7925

Indiana

Requests must be made in writing to:

Attention: Sue Searcy
State of Indiana Department of Corrections
Records Department
E334, IGCS, 302 West Washington Street
Indianapolis, Indiana 46204

or **fax** your request to: Sue Searcy at 317/232-5728

AGENCIES OFFERING FREE OR LOW-COST LEGAL SERVICES**ILLINOIS**

LEGAL ASSISTANCE FOUNDATION OF CHICAGO,
LEGAL SERVICES CENTER FOR IMMIGRANTS
111 West Jackson Boulevard
Chicago, Illinois 60604
(312) 341-9617

TRAVELERS & IMMIGRANTS AID OF CHICAGO
TIA/Chicago Connections
208 S. LaSalle, Suite 1818
(312) 629-1960
(may charge nominal fees)
(represent those 200% below poverty level)

KANSAS AND MISSOURI

LEGAL AID OF WESTERN MISSOURI
920 Southwest Boulevard
Kansas City, Missouri 64108

LEGAL SERVICES OF EASTERN MISSOURI, INC.
4232 Forest Park Boulevard
St. Louis, Missouri 63108
(314) 534-4200

IOWA AND NEBRASKA

CLINICAL LAW PROGRAM
University of Iowa Law College
Boyd Law Building
Iowa City, Iowa 52242
(319) 335-9023
(limited geographical area)